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A Compleat Collection OF STATE-TRYALS, AND PROCEEDINGS UPON Impeachments for HIGH TREASON, AND OTHER CRIMES and MISDEMEANOURS; FROM The Reign of King *HENRY* the Fourth, TO The End of the Reign of Queen *ANNE.*

The THIRD VOLUME.

With an Exact Alphabetical Table *to the Whole.*

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A

Complete Collection

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A Compleat

A Compleat

COLLECTION

OF

TRYALS, &c.

The TRYAL of *George Borosky* alias *Boratzi*, *Chriſtopher Vratz*, *John Stern*, and *Charles John* Count *Coningſmark*.

Publiſh'd by AUTHORITY.

On *Tueſday* the 28*th* of *February* 1681. The Seſſions of the Peace for the City of *London*, and of *Oyer* and *Terminer* for the City of *London* and County of *Middleſex*, which was adjourned over till this day, was held at the Seſſions-houſe in the *Old Bailey*: And there having been an Indictment found at *Hicks's-hall* by the Grand Jury for the County of *Middleſex* againſt *Charles George Borosky*, *Chriſtopher Vratz* and *John Stern* for murdering *Thomas Thynn* Eſq; and againſt *Charles John* Count *Coningsmark* as acceſſory before the Fact, the ſaid Perſons being in *Newgate*, were brought to the Bar to be Arraigned and Tryed: And they being Foreigners, an Interpreter was ſworn to acquaint them in a Language they underſtood, what they were Accuſed of.

Clerk of the Crown. CHarles *Borosky* hold up thy hand. (*Which he did.*) *Chriſtopher Vratz* hold up thy hand. (*Which he did.*) *John Stern* hold up thy hand. (*Which he did.*) *Charles John Coningſmark* hold up thy hand. (*Which he did.*)

You ſtand Indicted in the County of Middleſex *by the Names of* Charles George Borosky, *late of the Pariſh of St.* Martins *in the Fields, in the County of* Middleſex, *Labourer*; *otherwiſe called* George Boratzi *of the ſame Pariſh and County, Labourer*; Chriſtopher Vratz *of the ſame Pariſh and County, Gentleman*; John Stern *of the ſame Pariſh and County, Gentleman*; *and* Charles John Coningſmark, *of the ſame Pariſh and County, Eſquire*; *otherwiſe called* John Coningſmark *of the ſame Pariſh and County, Eſquire*: *For that you the ſaid* Charles George Borosky *alias* Boratzi, Chriſtopher Vratz *and* John Stern, *not having God before your Eyes, but being moved and ſeduced by the Inſtigation of the Devil, upon the Twelfth Day of* February, *in the Thirty Fourth Year of the Reign of our Sovereign Lord King* Charles *the Second, with Force and Arms in the Pariſh of St.* Martins *in the Fields in the County of* Middleſex *aforeſaid, in and upon* Thomas Thynn, *Eſquire*; *in the Peace of God, and our ſaid Sovereign Lord the King, then and there being, Feloniouſly, Wilfully, and of your Malice aforethought, did make an Aſſault.*

Assault. And that thou the said George Borosky *alias* Boratzi, *a certain Blunderbuss of the Value of Five Shillings, the said Blunderbuss being then charged with Gunpowder, and Four Leaden Bullets; which said Blunderbuss thou the said* George Borosky *alias* Boratzi *in both thy hands so as aforesaid, Loaden to and against the said* Thomas Thynn *then and there hadst and heldest. And that thou the aforesaid* George Borosky *alias* Boratzi, *knowing the Blunderbuss aforesaid, to be so as aforesaid, charged with Gunpowder and Leaden Bullets, to and against the said* Thomas Thynn *then and there, with Force of Arms, Feloniously, Wilfully, and of thy Malice aforethought, didst Discharge and Shoot off. And that thou the said* George Borosky *alias* Boratzi, *with the said Leaden Bullets shot and sent out of the Blunderbuss aforesaid, by the violence and force of the Gunpowder aforesaid: And by thee the said* George Borosky *alias* Boratzi *so as aforesaid discharged and shot off, the said* Thomas Thynn *in and upon the right side of the Body of the said* Thomas Thynn, *near the short Ribbs of the right side of the Body of the said* Thomas Thynn *then and there Feloniously, Wilfully, and of thy Malice aforethought didst Strike and Wound; giving unto him the said* Thomas Thynn *then and there with the Leaden Bullets aforesaid, so as aforesaid shot and sent out of the Blunderbuss aforesaid by force and violence of the Gunpowder aforesaid, by thee the said* George Borosky *alias* Boratzi, *so as aforesaid discharged and sent out, in and upon the right side of the Body of him the said* Thomas Thynn, *near the short Ribbs, on the right side of him the said* Thomas Thynn *four mortal wounds, every one of them of the breadth of one Inch, and of the depth of six Inches; of which said mortal wounds, he the said* Thomas Thynn *from the said twelfth day of* February *in the thirty fourth Year aforesaid, unto the thirteenth day of the same Month of* February *at the Parish of St.* Martins *in the Fields aforesaid, did languish and lived languishing: On which said thirteenth day of* February, *in the thirty fourth Year aforesaid, he the said* Thomas Thynn *at the Parish of St.* Martins *in the Fields aforesaid, of the mortal wounds so as aforesaid given, died. And that you the said* Christopher Vratz *and* John Stern, *then, that is to say at the time of the Felony and Murder aforesaid, by the said* George Borosky *alias* Boratzi; *so as aforesaid Feloniously, Wilfully and of his Malice aforethought, done and committed, then and there Feloniously, Wilfully, and of your Malice aforethought, by force and arms were present, aiding, comforting, abetting, assisting and maintaining the said* George Borosky *alias* Boratzi, *the Felony and Murder aforesaid Feloniously, Wilfully and of his Malice aforethought to do and commit. And so you the said* George Borosky *alias* Boratzi, Christopher Vratz *and* John Stern, *the said* Thomas Thynn *in manner and form aforesaid, Feloniously, Wilfully, and of your Malice aforethought didst kill and murder against the Peace of our Sovereign Lord the King, His Crown and Dignity. And that thou the said* Charles John Coningsmark *before the Felony and Murder aforesaid, by the said* George Borosky *alias* Boratzi, Christopher Vratz *and* John Stern *in manner and form aforesaid, Feloniously, Wilfully, and of their Malice aforethought, done and committed, to wit, the said twelfth day of* February, *in the thirty fourth Year aforesaid, at the Parish of St.* Martins *in the Fields aforesaid, them the said* George Borosky *alias* Boratzi, Christopher Vratz *and* John Stern *the Felony and Murder aforesaid, in manner and form aforesaid Feloniously to do and commit, Feloniously, Wilfully and of thy Malice aforethought didst stir up, counsel, perswade and procure, against the Peace of our Sovereign Lord the King, his Crown and Dignity.*

Sir *Francis Pemberton.*

L. Ch. Just. Why you must read this to them now in their Language, or else they can't understand it.

L. Ch. Just. North. You that are the Interpreter, tell them that you are going to interpret the Indictment to them by degrees.

Mr. *Vandore.* Yes, my Lord, I will.

L. Ch. Just. Don't read all the Circumstantials, but only the substance of the Indictment.

Then the Clerk of the Crown went near the Bar, and dictated to the Interpreter deliberately, who interpreted it to the Prisoners.

L. Ch. Just. Well, you have told them the substance of it, that they are Indicted for killing Mr. *Thynn.*

Mr. *Vandore.* Yes.

L. Ch. Just. Well, what says the first man?

Cl. of Cr. I asked him if he be Guilty of the Murder whereof he stands Indicted, and he says he is not Guilty.

L. Ch. Just. Does he say so?

Mr. *Vandore.* Yes, he says he is not Guilty.

L. Ch. Just. Why now tell him the Formality, that he must put himself upon the Jury here.

[*Then Sir* Nathaniel Johnson *was sworn Interpreter.*

L. Ch. Just. Ask him this Question. Tell him he is accused of the Murder of Mr. *Thomas Thynn*; ask him if he be Guilty, or not Guilty.

Mr. *Vandore.* He says he is not Guilty, my Lord. I ask'd him just now.

L. Ch. Just. Then Sir *Nathaniel Johnson*, if you can make him to understand it, tell him; that our manner of Tryal here is by Twelve men, and that is by putting himself upon the Country, and therefore ask him, how he will be tryed. Tell him that the method is by saying, By God and the Country.

Sir *N. Johnson.* My Lord, he is a very dull kind of man, he knows not how to Answer, nor what to say; nor won't say any thing, that is the truth of it.

L. Ch. Just. Ask him if he be willing to be tryed after the manner of the English.

Sir *N. Johnson.* Yes, he says he is willing to be tryed according to the fashion of the English.

L. Ch. Just. North. He hath pleaded not Guilty, and the other follows of course.

L. Ch. Just. Ask the other, the Captain, the same thing.

Sir *N. Johnson.* He desires a French Interpreter, for he speaks French.

L. Ch. Justice. Surely here are enough People that understand French, but ask him if he does not understand English.

Sir *N. Johns.* He can understand some he says.

L. Ch. Just. Then ask him, whether he be Guilty, or not.

Sir *N. Johnson.* He says he is not Guilty, my Lord.

L. Ch. Just. Now ask Mr. *Stern*, but first, ask the Captain howhe will be tryed.

Sir *N. Johnson.* He says he will be tryed by God, and half his own Country, and half English.

L. Ch. Just. He shall have his Request.

Sir *N. Johnson*, He desires one thing further.

L. Ch. Just. Look you Sir *Nathaniel Johnson*, you must tell him this; he shall be tryed by half Foreigners,

Foreigners, and half Engliſh; that is it I ſuppoſe he deſires.

Sir *N. Johnſon.* My Lord, he deſires that there may be none of the Jury that are any thing a Kindred or Relation to Mr. *Thomas Thynn*, nor any particular Friend of his, and he is ſatisfied.

L. Ch. Juſt. No, there ſhall not, we will take care of that. Now ask Mr. *Stern* then the like Queſtion.

Sir *N. Johnſon.* My Lord, he ſays he is not Guilty.

L. Ch. Juſt. Ask him too how he will be tryed; Whether by a Jury?

Sir *N. Johnſon.* He ſays he's content to be tryed as the others are, by half Strangers and half Engliſh.

L. Ch. Juſt. Now then ask my Lord *Coningſmark* what he ſays.

Mr. *Thynn.* He ſpeaks *Engliſh*, my Lord.

L. Ch. Juſt. But not well enough may be, to underſtand the whole.

L. Ch. Juſt. North. Sir *Nathaniel*, what does he ſay?

Sir *N. Johnſon.* My Lord, he ſays it is a Concern of his Life, and therefore he deſires he may have not only one Interpreter, but others: He deſires he may have two or three, that they may make no Miſtake.

L. Ch. Juſt. Very well.

Sir *N. Johnſon.* He ſays that I underſtand the *Dutch* Language; but his Life and Honour are concerned, and therefore he would have three or four.

L. Ch. Juſt. Who would he have?

Sir *N. Johnſon.* Sir *Tho. Thynn* ſaid they had one that was brought by them.

Mr. *Thynn.* That is *Vandore*, who is ſworn already.

L. Ch. Juſt. Look you, Sir *Nathaniel*, tell my Lord, if he pleaſes, he ſhall have a *French* Interpreter; for I know he ſpeaks that Language very well.

Sir *N. Johnſon.* My Lord, he ſays, That *High Dutch* is his Natural Language, and he can expreſs himſelf beſt in that.

[*Then one* Vanbaring *was called for by the Count, but did not appear.*

Wm. Montague, Eſq;

L. Ch. Bar. Sir *N. Johnſon*, You muſt ask the Count whether he be Guilty of the Indictment, as Acceſſory before the Fact.

Sir *N. Johnſon.* I have asked my Lord, and Not Guilty he anſwers.

Cl. of the Cr. How will you be tryed?

Sir *N. Johnſon.* He ſays, he will be tryed by God and half his own Country, or half Foreigners and half Engliſh; and he deſires they may be Perſons of ſome Quality, as they uſe to treat Perſons of his Quality, and Strangers.

L. Ch. Juſt. There ſhall be ſuch Strangers, tell him. You have Merchants of good Account, I ſuppoſe, upon this Pannel?

Under-Sheriff. Yes, my Lord, they are all ſuch.

Sir *N. Johnſon.* He deſires he may be tryed diſtinctly from the others.

L. Ch. Juſt. That cannot be: But look you Sir, Pray tell my Lord this, That though the Evidence muſt be given, and the Jury muſt be charged all together, yet in this caſe we will diſtinguiſh his Caſe to the Jury, if there be occaſion.

L. Ch. Bar. And his Evidence will come diſtinct.

Mr. *Vandore.* My Lord, he asks this Queſtion of your Lordſhip and this Honourable Court, if it be agreeable, and according to the Juſtice of this Nation, that my Lord may be allowed two or three days Delay, becauſe he is to prepare himſelf and Witneſſes for his Tryal.

Sir *N. Johnſon.* My Lord, he ſays this, his Witneſſes are not prepared, and he not having had time to recollect himſelf, ſo as to fit himſelf for his Defence, therefore he begs the favour of the Court, that he may have a day or two's time to recollect himſelf. He ſays he is to anſwer Circumſtances with Circumſtances, my Lord; he ſays he has ſome Witneſſes as to Circumſtances that are very material to anſwer ſuch Circumſtances as are brought againſt him; he does not underſtand the Law, my Lord, nor has had no time to have any Council to inform himſelf.

L. Ch. Juſt. You muſt tell him this, That which he is charged with is matter of Fact that none can inſtruct him in but himſelf, Council can do him no good in ſuch a caſe as this.

Sir *N. Johnſon.* My Lord, he ſays, the Matters that are objected againſt him are only Circumſtances, my Lord, and they require an Anſwer, which he can do by other Circumſtances, and he deſires time to recollect himſelf, two or three days reſpite, he deſires if it were but a little time, a day or two.

Mr. *Thynn.* My Lord, our Witneſſes are all ready, and the Counſel inſtructed, and wait here to go on.

L. Ch Juſt. North. Look you, pray will you tell him, When the Tryal is once begun, the Jury can neither eat nor drink till they have given their Verdict; that is the Law, and we can't change the Law, therefore we cannot allow him the time he deſires. He knows what he is Accuſed of, and has known it a good while, and has had time to recollect himſelf, and prepare himſelf.

Sir *N. Johnſon.* My Lord, he ſays, the Jury are not yet together, nor charged with him, and therefore till the Jury are charged, he thinks he may have time, if your Lordſhip pleaſe to allow it.

L. Ch. Juſt. Look you, you muſt tell him, that he is to underſtand that here is but one Indictment againſt the Principals and himſelf, and we cannot try this by piece-meals; we cannot try the Principals now, and my Lord *Coningſmark* another time.

Sir *N. Johnſon.* If it muſt be ſo, he ſays, he muſt throw himſelf upon your Lordſhip; he hopes he ſhall have nothing but what is juſt and fair, and he hopes your Lordſhip will be of Counſel to him, as the Faſhion of this Country is; if any thing ariſes of Matter of Law, he deſires he may have the Advantage of it: And if he can't have a day or two, he ſays, the Innocency of his Caſe will protect him. Count *Coningſmark* knowing how innocent he is, won't ſtick for a day or two, but he will be ready to be tryed as your Lordſhip ſhall think fit; he has Innocence on his ſide, and that will protect him.

L. Ch. Juſt. Let my Lord know, that we will be careful in Examining all things that concern him.

Sir *N. Johnſon.* He ſays, he does not fear it, my Lord, having to do with ſuch Honourable Perſons, nor doubt it at all.

L. Ch. Juſt. Then ſwear a Jury. But look you, my Lord *Coningſmark*, conſider this, As the Gen-

tlemen of the Jury come to be ſworn, if you do diſlike any of them, you may except againſt them.

Sir *N. Johnſon.* My Lord, he ſays, being altogether a Stranger here in *England*, and not knowing any of the Perſons, he begs the favour of the Bench, that he may have the Names of thoſe that are Returned of the Jury, and a little time to conſider of it.

L. C. J. That we cannot do: All we can do for you is, we will take as much care as we can, that you may have indifferent Perſons, and Perſons of Quality.

L. C. J. North. Pray tell him, the Law gives him the Privilege of a peremptory Challenge.

Sir *N. Johnſon.* He ſays, my Lord, he does not know who they are, but they may be Perſons that are touched, and may have ſomething of evil Will or Spleen againſt him. His Father ſerved againſt the King of *Denmark*, and againſt the *Poles* and the Papiſts, and his Father was a Proteſtant, and ſerved the Proteſtant Cauſe.

L. C. J. What Country-men are they, Mr. Sheriff?

Under-Sheriff. They are *French* and *Dutch* moſt of them, I do not believe there is ever a *Dane* amongſt them.

L. C. J. We will call all *French men*, if he had rather have them than *Dutch*.

Sir *N. Johnſon.* He would very gladly have them all *High Dutch*; if not, that he may have ſome.

L. C. J. I thought he had excepted againſt the *Dutch*.

Sir *N. Johnſon.* No, againſt the *Danes*, for his Father in the Wars burnt their Towns.

L. C. J. Examine them as they come to the Book. If there be any of the *Roman* Catholick Religion, and don't let any ſuch be ſworn.

Mr. *Sheriff Pilkington.* There is none ſuch amongſt them, I dare ſay.

L. C. J. Sir *Nat. Johnſon*, tell my Lord, he ſhall have no *Roman* Catholicks at all.

Sir *N. Johnſon.* He thanks your Lordſhip. He deſires he may have the Pannel to look upon, and he hopes that is an eaſy Favour.

L. C. J. Let him have the Pannel, if it will do him any good. He is a Stranger, ſatisfy him in what we can.

[Which was delivered to him, and he looked it over.

L. C. J. Tell him as the Jury is called he ſhall have every one of the *Outlandiſh-men* and *Engliſh-men* brought before him.

Sir *N. Johnſon.* My Lord, he thanks you for this favour.

L. C. Bar. Sir *Nat. Johnſon*, tell the *Count*, They call firſt an *Engliſh-man*, then a Foreigner, and they ſhall be brought to view.

L. C. J. Pray have you told the other perſons, that their time to challenge is before the Jury is ſworn?

Sir *N. Johnſon.* The *Polander* ſays he can challenge none, becauſe he knows none.

L. C. J. What ſay the reſt?

Mr. *Vandore.* They ſay they know no body, and can except againſt no body.

Cl. of Cr. Call Sir *Will. Roberts.*

[Who appearing, ſtood up.

L. C. J. My Lord *Coningſmark*, there is the Foreman.

Sir *N. Johnſon.* He has nothing to ſay againſt him.

L. C. J. Then hold him a Book, and ſwear him. *[Which was done.*

Cl. of Cr. Call Mr. *Downing.*

Interpreter. He ſays he is no Foreigner.

L. C. J. Then he muſt not be ſworn.

Cl. of Cr. Moſes Charas. *[Who appeared.*

Interpret. He has nothing to ſay againſt him. But he himſelf ſays, he does not ſpeak *Engliſh*, but he deſires to ſpeak *French*.

Cl. of Cr. Then tell him in *French*, he muſt lay his Hand on the Book and be ſworn, and hearken to his Oath.

Sir *Fr. Winnington.* We challenge him for the King.

L. C. J. For what Cauſe?

Sir *Fr. Winnington.* My Lord, we take it that we need not ſhew any Cauſe, unleſs there be any want of the Number in the Pannel.

L. C. J. Then we muſt do him right, and tell him what Advantage the Law gives him. Tell my Lord, you that underſtand *Engliſh*, that this Gentleman is challenged for the King, and if the King ſhew any good Cauſe for it, he muſt not be ſworn, elſe he muſt. And the way for him to cauſe the King's Council to ſhew their Cauſe, (if he deſire it) is to challenge all the reſt.

Mr. *Williams.* We wave our challenge; for the reaſon why we challenged him was, becauſe he did not underſtand *Engliſh*, which will be no reaſon at all.

Then he was ſworn.

Cl. of Cr. Sir *Henry Ingoldsby.*

Sir *N. Johnſon.* He challenges him, my Lord.

Cl. of Cr. Sir *William Gulſton.*

Sir *N. Johnſon.* He excepts againſt him, my Lord.

L. C. J. Does he challenge him in reſpect of what I ſaid to him about the *Outlandiſh* Gentlemen, that the King is to ſhew cauſe? Or how does he challenge him?

Interpret. My Lord, he ſays, he hears he is a Friend to Mr. *Thynn*.

L. C. J. Well let him be paſſed by then.

Cl. of Cr. Sir *John Muſters.* *[Who did not appear.*

Sir *N. Johnſon.* He ſays, my Lord, he only deſires indifferent perſons.

Cl. of Cr. Henry Herbert, Eſq;

Sir *N. Johnſon.* He challenges him.

Cl. of Cr. Richard Paget, Eſq;

Sir *N. Johnſon.* He deſires to ſee him.

L. C. J. Let him be brought into the middle, that he may look upon the Priſoners.

Interpret. He has nothing to ſay againſt him.

Then he was ſworn.

Cl. of Cr. James Bucgone.

Interpret. He excepts againſt him.

Cl. of Cr. Claudius Devolee.

Interpret. He excepts againſt him too.

Cl. of Cr. Charles Beelow.

Interpret. He ſays he looks like a Man, and he does not except againſt him. *[And he was Sworn.*

Cl. of Cr. Ralph Bucknall, Eſq;

Interpret. He challenges him.

Cl. of Cr. Thomas Earsby, Eſq;

Interpret. He challenges him too.

L. C. J.

L. C. J. Look you, Sir *Nath. Johnſon*, pray tell him he can challenge but Twenty.

Sir *N. Johnſon.* He ſays very well; he will not do any more. He deſires the favour, that thoſe that he challenges may not come near thoſe that are ſworn.

L. C. J. Well, it ſhall be ſo; we will take care of it.

Cl. of Cr. Richard Gowre, Eſq;

Sir *N. Johnſon.* He excepts againſt him.

Cl. of Cr. George Hocknall, Eſq;

Interpret. He challenges him. [*But then the* Count *looking in his Paper, retracted his challenge, and he was ſworn.*

Cl. of Cr. Peter Vandenhagen.

Interpret. He ſays nothing to him. [*Then he was ſworn.*

Cl. of Cr. Walter Moyle, Eſq;

Interpret. He does not challenge him. [*He was ſworn.*

Cl. of Cr. Chriſtopher Ripkey.

Interpret. He does not challenge him. [*He was ſworn.*

Cl. of Cr. Thomas Henſlow, Eſq;

Interpret. He does not except againſt him. [*Then he was ſworn.*

Cl. of Cr. Lewis Doncarr.

Interpret. He challenges him.

Cl. of Cr. Peter Lecane. [*He did not appear.*

David Collivaux.

Interpret. He challenges him, becauſe he knew Mr. *Thynn*, they ſay.

Cl. of Cr. Andrew Lodderley.

Interpret. He challenges him.

Cl. of Cr. James Burk.

Interpret. He challenges him.

Cl. of Cr. Daniel Griggion.

Interpret. He does not challenge him. [*So he was ſworn.*

Cl. of Cr. Robert Jordan, Eſq;

Interpret. He challenges him.

Cl. of Cr. Lucy Knightley, Eſq;

Interpret. He challenges him.

Cl. of Cr. John Haynes, Eſq;

Interpret. He does not except againſt him. [*He was ſworn.*

Cl. of Cr. Lewis le Count.

Interpret. He challenges him.

Cl. of Cr. John Belliew.

Interpret. He challenges him.

Cl. of Cr. James Frontein.

Mr. *Williams.* We challenge him for the King.

Cl. of Cr. John Maſſey.

Interpret. He challenges him.

Cl. of Cr. Andrew Primow.

Interpret. He challenges him.

Cl. of Cr. Nicholas Beuſoy.

Interpret. He challenges him. He ſays they are all *Walloons*, and therefore he challenges them.

L. C. J. Why does he except againſt *Walloons*?

Interpret. Becauſe they have always ſerved againſt the *Swedes*.

Cl. of Cr. John Lebarr.

Interpret. He does not except againſt him. [*And ſo he was ſworn.*

Cl. of Cr. Cryer, count theſe, *&c.*

Sir *Will. Roberts*, Bart.	*Walter Moyle*, Eſq;
Moſes Charas, Gent.	*Chr. Ripkey*, Gent.
Richard Pagett, Eſq;	*Tho. Henſlow*, Eſq;
Charles Beelow, Gent.	*Dan. Griggion*, Gent.
Geo. Hocknall, Eſq;	*John Haynes*, Eſq; And
Pet. Vandenhagen, Gent.	*Joh. Lebarr*, Gent.

Then Proclamation for Information and Proſecution was made: And a Chair was ſet for the Count, *at his Requeſt.*

Cl. of Cr. GEntlemen, Look upon the Priſoners, you that are Sworn, and hearken to their Cauſe; they ſtand Indicted *prout* in the Indictment, *mutatis mutandis* —— againſt the Peace of our Sovereign Lord the King, his Crown and Dignity. Upon this Indictment they have been Arraigned, and thereunto have ſeverally pleaded, *Not Guilty*: And for their Tryal, have put themſelves upon God and their Country; which Country you are. Your Charge is to enquire, whether they, or any of them are guilty of the Offences whereof they ſtand Indicted, or not Guilty. And if you find them, or any of them Guilty, you are to find what Goods or Chattels, Lands or Tenements they had at the time of the Felony and Murder committed, or at any time ſince. If you find them or any of them Guilty, you are to inquire, whether they or any of them fled for it: If you find that they, or any of them fled for it, you are to inquire of their Goods and Chattels, as if you had found them Guilty; if you find them or any of them not Guilty, nor that they did fly for it, you are to ſay ſo, and no more, and hear your Evidence. But if you acquit any one of the Principals ——

L. C. J. That is a Miſtake, it muſt be all the Principals.

Cl. of Cr. If you acquit the Principals, you are not to inquire of *Charles John Coningſmark* as acceſſory before.

Mr. *Keene.* May it pleaſe your Lordſhip, and you Gentlemen that are ſworn of this Jury, *George Borosky*, alias *Boratzi*, *Chriſtopher Vratz*, and *John Stern*, the Priſoners at the Bar, ſtand here Indicted; for that they not having the fear of God before their Eyes, but being moved and ſeduced by the Inſtigation of the Devil, the 12th Day of *February*, in the 34th Year of the Reign of this King, feloniouſly and voluntarily, and of their Malice afore-thought, did make an Aſſault upon *Thomas Thynn*, Eſq; at the Pariſh of St. *Martin's in the Fields*, in this County; and that the ſaid *George Borosky*, having in his Hands a Blunderbuſs, which he knew to be charged with four leaden Bullets, did diſcharge it at Mr. *Thynn*, and gave him four mortal Wounds, of which Wounds he languiſhed till the 13th Day of *February*, and then dyed: And that they, the ſaid *Chriſtopher Vratz*, and *John Stern* were there preſent, aiding, aſſiſting and abetting him to commit the ſaid Felony and Murder; and ſo that they the ſaid *George Borosky*, *Chriſtopher Vratz*, and *John Stern*, did of their Malice afore-thought, in manner aforeſaid, Murder the ſaid *Thomas Thynn*. And *Charles John Coningſmark*, the other Priſoner at the Bar, ſtands Indicted, for that he before the Felony and Murder aforeſaid, ſo done and committed, to wit, the 12th Day of *February* aforeſaid, did of his Malice afore-thought, move, incite, counſel, perſuade and procure the ſaid *Borosky*, *Vratz*, and *Stern*, to do that Murder, againſt the Peace of the King, his Crown and Dignity. To this Indictment they have ſeverally pleaded *Not Guilty*; and you are to enquire, whether they are Guilty, as they are charged, or no.

Sir *Francis Withins.* My Lord and Gentlemen, I am of Counſel in this Caſe for the King, againſt

gainſt the Priſoners at the Bar. There are three of them Indicted as Principals in this Murder, the fourth as Acceſſory before. In this Caſe that is now before you, Gentlemen, I cannot chuſe but take Notice unto you, that a Murder of this Nature has never been heard of to be perpetrated upon *Engliſh* Ground, both in reſpect of the Perſon Murdered, and in reſpect of the Circumſtances of the Fact. For the Perſon Murdered, a Gentleman of that Quality and Eſtate, that he hath left but few Equals behind him. That this Man being in his Coach, ſhould be way-layed, ſurpriſed, murdered, and this Murder committed in the midſt of our Streets, is that which works Amazement in all *Engliſh* Hearts. And our only Comfort upon this ſad Occaſion is, that there is not one Native of this Countrey found amongſt all thoſe that are Accuſed to be Inſtruments in this Barbarous Fact.

I did Obſerve to you, Gentlemen, before, that there are three named to be Principals; *Borosky*, whom for diſtinction ſake, I ſhall call by the Name of the *Polander*, *Vratz*, who is called the Captain, and *Stern*, who is called the Lieutetenant. *Borosky* the *Polander*, we ſay, was the Man that diſcharged this Blunderbuſs againſt this Worthy Gentleman that was ſlain; but though he was the only Man that diſcharg'd it, yet if we can ſatisfie you that *Vratz* and *Stern* were with him at the ſame time, aiding and aſſiſting him when he gave the Blow, they are as much Principals as he that ſhot off the Gun. It will be natural to open to you what is ſaid againſt this Captain *Vratz*; he is a *Swede* by Birth, and did formerly belong to Count *Coningſmark*; he was a Retainer to him. Afterwards, I think in the War he was made a Captain. This Gentleman had been formerly in *England*, but at the laſt time he came, which was three Weeks, or thereabouts, before the Murder was committed, his Lodging was in *King-ſtreet* at *Weſtminſter*. This Captain *Vratz*, we ſhall prove, did often diſcourſe that he had a Quarrel with Mr. *Thynn*, that ſeveral times before this Murder was actually done, he ordered his Servant to way-lay his Coach; and upon that very fatal Day, the 12th of *February*, when this unhappy Accident fell out, having Information that Mr. *Thynn* was gone out in his Coach, immediately he puts on his Boots, gives Order to his Servant to bring his Cloaths to him at ſuch a Place, becauſe he ſhould remove his Lodging, he ſaid, that Night, that he ſhould bring his Cloaths to the *Black-Bull Inn* in *Holbourn*, and bring his Horſe thither too. When he went from his Lodging, the *Polander* went along with him, and they came to the *Black-Bull* in *Holbourn*, where they met with *Stern*. We ſhall ſhew you, that theſe three Gentlemen being thus Armed, one with a Blunderbuſs, the Second with Piſtols, and the other very well provided, rid out about ſix of the Clock, the Murder being committed about ſeven or eight. At their going out, they enquired which was their way to *Temple Barr*, they were ſeen to ride through the *Strand* to St. *James's*, the Fact was done in the *Pall-Mall*, and we ſhall ſhew you the way of it was thus; Mr. *Thynn* paſſing thro' the Street to go home in his Coach, three Perſons came riding up to the Coach-ſide, and while the one ſtopped the Horſes, immediately the Blunderbuſs was diſcharg'd into the Coach againſt Mr. *Thynn*, and gave him thoſe Wounds, of which the next Morning he dyed. Preſently theſe three Men ran away, but one of them let fall a Piſtol upon the Place, which I ſhall obſerve as a material Circumſtance againſt theſe Perſons, becauſe we ſhall prove whoſe the Blunderbuſs was. Theſe things being done, this Murder committed, and they gone away, it began to work in Peoples Thoughts, and Circumſtances began to come out, that this Blunderbuſs ſhould be ordered to be bought by Captain *Vratz*, who had diſcourſed with many Perſons about the Quarrel he had with Mr. *Thynn*, and given Order to his Servant to way-lay his Coach; and theſe Perſons being rid out at that time, there was a great Suſpicion that they did it. Great care there was taken, and great means uſed, as no doubt there would be, to apprehend the Malefactors; and by great Providence it was found out at laſt, that this Captain *Vratz*, according to his Word, had altered his Lodging, and was got to a Doctor's Houſe, that lived, I think, in *Leiceſter-Fields*. Being there ſurpriſed, and coming upon his Examination, he did not deny but he was there one of the three that was at the Place when and where Mr. *Thynn* was Murdered, but he pretended, he did intend to fight him in a Duel, and kill him fairly, as he called it. But Gentlemen, I muſt obſerve this to you, in my ſmall time of Experience of the World, I never knew a Man go to fight a Duel, and carry out with him a Second with a Blunderbuſs. 'Tis not poſſible he ſhould go with ſuch a Deſign as he would inſinuate, but rather with an Intention of Murder. For the *Polander*, he came into *England* but the *Fryday* before, and ſo we ſhall prove to you that which will ſtick hard upon the Count. Upon *Fryday*, he being landed, he inquires for the young Count's Tutor, which was at an Academy of one Monſieur *Faubert's*; and there he enquires for the Count's Secretary; he lay there, I think, that Night, and upon *Saturday* he was conveyed to the Count's Lodgings. There alſo he was lodged for one Night. The Count was pleaſed to beſpeak him a very good Sword, and a Coat for him, that he might be well arm'd, and there he lay on *Saturday* Night, as I ſaid, the Night before the Murder was committed. Upon *Sunday*, Gentlemen, there being a Meſſage ſent to this Doctor, where *Vratz* lay, the Night following that the Count would ſpeak with the Doctor, the Doctor came, and the Doctor and the *Polander* went away to Captain *Vratz*'s Lodging, and from thence to *Holborn*, to the *Black-Bull*, and the Captain was carried in as much ſecreſie as he could, for he was carried in a Sedan; and I think we ſhall be able to prove by the Perſons that carried him, that this was the Man. For the other Gentleman, *Stern*, the Lieutenant, as they call him, he was an ancient Acquaintance of Capt. *Vratz*'s, had known him long ago in *England*, and complained to him, that Lodgings might be very dear: but the Captain told him, he had a Deſign; and if he would aſſiſt him as a brave Fellow, would maintain him, and he ſhould not want Money to bear all his Charges. But we ſhall prove that this was the third Perſon that rid out with the *Polander*, and the Captain in this Garb that I told you of, this Night that the Fact was done. And indeed, Gentlemen, upon their Examination they have every one confeſſed the Fact; even the *Polander* confeſſed that he did ſhoot off the Blunderbuſs; and *Vratz* confeſſed that he was there, and the Lieutenant *Stern*; ſo that if there had been no more

more Evidence, it would have been ſufficient to maintain the Iſſue, and in our Circumſtances, it is more perhaps than could be expected. This, Gentlemen, is the principal Sum of the Evidence that will be given againſt the three Principals. For the fourth, Gentlemen, Count *Coningſmark*, he is a Perſon of great Quality, and I am extraordinary ſorry to find the Evidence ſo ſtrong againſt him, as my Brief imports; I wiſh his Innocence were greater, and our Evidence leſs; for he is a Perſon of too great Quality, one would hope, to be concerned in a thing of this Nature; but that he was the main Abettor and Procurer of this Barbarous Buſineſs, we ſhall prove upon theſe Grounds: Firſt, That he had a Deſign upon Mr. *Thynn*'s Life; for, Gentlemen, coming into *England*, about three Weeks before this Matter was tranſacted, firſt he lies in Diſguiſe, and lives private, and removes his Lodging from Place to Place frequently; that he ſent a Perſon to inquire of the *Swediſh* Reſident, whether, or no, if he ſhould kill Mr. *Thynn* in a Duel, he could by the Laws of *England* afterwards marry the Lady *Ogle?* So that Mr. *Thynn*'s death was in Proſpect from the beginning. Gentlemen, We ſhall prove to you, as I did in ſome meaſure open before, that the Count himſelf was pleaſed to give expreſs Order, that the *Polander* ſhould have a good Sword bought him; that before he came into *England*, he was very much troubled, by reaſon of the ſtormy Weather, for fear he ſhould be caſt away; that he lodged him in his own Lodging the Night before this Act was perpetrated; and that Captain *Vratz* was the Morning before, and immediately after, with the Count. Another thing, Gentlemen, that I had almoſt forgot; The Count was willing to be inſtructed in the Laws of *England*, and inquired, Whether a Man might lawfully ride out upon a *Sunday?* And being told, That after Sermon he might; he was very well ſatisfied; and the Day he inquired of it, was the Day that the Murder was committed. After the thing was done, Count *Coningſmark* the next Morning pretended he was to go to *Windſor*, and leaves his Lodging; but inſtead of going to *Windſor* (being ſtill in his diſguiſe) he goes to *Rotherhith*, by the Water-ſide, and there, I think, he continues two or three Days in a black Peruque; (and that is Diſguiſe enough for ſuch a Gentleman.) And afterwards he goes to *Graveſend*; but, I think, he was upon the Water ſome time, before he thought it convenient to land; and there he was ſurpriſed in this Diſguiſe. And when he was ſurpriſed and taken, he ſhew'd himſelf to be in great diſorder; but being charged with the Fact, acknowledged nothing of the Matter; but how it ſhould come to paſs, that he ſhould lie ſo long diſguiſed, upon no Pretence that can be known, and afterwards to pretend that he had a Buſineſs to effect, and then he was to go into *France*, that will lie upon him to anſwer. But theſe are the inducing Evidences that we give to you; his keeping the *Polander* in his Houſe, his diſguiſing of himſelf, and his inquiring, Whether if he killed Mr. *Thynn*, he might not marry my Lady *Ogle?* His flight the next Day, and pretending to go to *Windſor*, when he went quite the other way, and all in a Diſguiſe; and theſe Perſons not having any appearance, or any reaſon whatſoever, for any particular Quarrel to Mr. *Thynn*, but the Count having ſome diſguſt to him, upon the Terms that the Witneſſes will tell you of by and by, and being related to the Count, we muſt leave it to you to judge, whether theſe Gentlemen did it ſingly and purely upon their own Heads, or whether they were not ſet upon it by the Count.

Sir *Fra. Winn.* My Lord, I ſhall not trouble you with repeating of our Evidence, but we will begin and call our Witneſſes, directly to prove the Murder done by theſe Gentlemen; we will prove the Fact downright upon them, and then we ſhall afterwards come to the *Count*.

Mr. *Williams*. My Lord, firſt we will direct Evidence to the Principals, and then to the Acceſſory. Call *William Cole* and *William Ellers*.

L. C. J. Swear ſome Perſons to Interpret the Evidence that ſhall be given: I do it for the ſake of the *Aliens* that are of the Jury; for ſome of them underſtand no *Engliſh*, and they will not know what to make of the Evidence, if they do not repeat it to them in their own Language.

Then Vandore *and* Wright *were ſworn for the King.*

Sir *N. Johnſon*. My Lord deſires that the Doctor and the Taylor that are in Priſon may be ſent for, to be here, for they are Witneſſes for him.

Sir *Fra. Winn*. We deſire they may be here too, for they are Witneſſes for the King, and I believe they are here, my Lord.

Sir *N. Johnſon*. Mr. *Vandore* does not ſpeak *French*.

Sir *Will. Roberts*. Mr. *Craven* ſpeaks *Dutch* and *French* very well.

Mr. Craven *was ſworn.*

Sir *N. Johnſon*. The *Count* deſires the favour of Pen and Ink.

L. C. J. Let the *Count* have Pen and Ink.

Mr. *Williams*. Call *William Cole* and *William Ellers*.

Who appear'd, and were ſworn.

Which is *William Cole?* Set him up. Acquaint my Lord and the Jury how Mr. *Thynn* was Aſſaulted, and the manner of it.

Cole. My Lord, my Maſter was coming up St. *James's-ſtreet*, from the Counteſs of *Northumberland*'s.

Sir *Fra. Winn*. Name your Maſter.

Mr. *Williams*. Who was your Maſter?

Cole. Mr. *Thynn*. And I had a Flambeau in my Hand, and was going before the Coach, and coming along, at the lower end of St. *Alban's-ſtreet*, I heard the Blunderbuſs go off; ſo upon that I turned my Face back, and ſaw a great Smoak, and heard my Maſter cry out he was Murdered: and I ſee three Horſemen riding away on the right ſide of the Coach, and I purſued after them, and cryed out Murder; I ran to the upper end of the *Hay market*, till I was quite ſpent, and was able to go no further, and turning back again, my Maſter was got into the Houſe, and I underſtood he was wounded: that is all I know.

Mr. *Williams*. You ſay you heard a Blunderbuſs go off, and turning back, you ſaw three Men riding away from the Coach.

Cole. Yes.

Mr. *Williams*. Look upon the Priſoners at the Bar: Can you ſay all them, or any of them were the Men?

Cole.

Cole. No I cannot; I did not ſee their Faces, but I ſaw the Horſe of one of them was a little Bay Horſe.

Mr. *Williams.* But do you take any of them Men to be one of the three?

Cole. I did not ſee any of their Faces.

Sir *Fr. Winn.* What time of Night was it?

Cole. A quarter after Eight.

Sir *Fr. Winn.* Pray what day of the Week?

Cole. Sunday.

Sir *Fr. Winn.* What day of the Month?

Cole. The 11*th* or 12*th* of *February.*

Sir *Fr. Winn.* Then, where is *William Ellers?* Pray do you tell the Court and Jury how Mr. *Thynn* was wounded, and by whom, and what you know of it.

Ellers. My Lord, I came with my Maſter from St. *James's-ſtreet* from my Lady *Northumberland's*, and as I came at St. *Alban's-ſtreet*, there came three Men riding by the right ſide of the Coach, and as they rid, one of them turned about, and bid me ſtop, you Dog; and juſt as I looked about, the fire was let into the Coach upon my Maſter, and the Men ran away as faſt as they could.

Sir *Fr. Winn.* How many were there of them?

Ellers. There were three.

Sir *Fr. Winn.* Were thoſe Men at the Bar, or any of them the Perſons?

Ellers. I cannot tell.

Sir *Fr. Winn.* What were the words they ſaid when the Coach was ſtopped: Hold, hold, or ſtop, you Dog?

Mr. *Williams.* What Condition was your Maſter in then? Was he ſhot then?

Ellers. Yes.

Mr. *Williams.* We will give you ſome Evidence now out of their Examinations.

L. C. J. You had beſt give ſome Evidence of his Wounds.

Mr. *Williams.* Yes, we will. Call Mr. *Hobbs* the Surgeon.

L. C. J. Look you, Mr. *Craven*, you hear what theſe Witneſſes ſay, tell it to the Gentlemen of the Jury that are *Outlandiſh* Men, That theſe Witneſſes ſwear, there were three Men did do this thing; the one of them ſtopped the Coach, and the other ſhot into it, but it was at that time of Night, they could not know their Faces, and they all rid away.

Mr. *Craven.* My Lord, if you pleaſe, the Witneſſes may ſpeak by degrees, and between every Witneſs I will give the Jury an Account.

L. C. J. Well, it ſhall be ſo; but theſe ſay no more than what I tell you, That three Men did do this.

Then he Interpreted it to the Jury.

L. C. J. What ſays that Gentleman to you?

Mr. *Craven.* He ſays, he hears that three Men did do it, but he ſays, he does not hear that they knew any of them.

Then Mr. Hobbs *was ſworn.*

Mr. *Williams.* Had you the ſearching of Mr. *Thynn's* Body after it was hurt?

Mr. *Hobbs.* Yes.

Mr. *Williams.* How did you find him?

Mr. *Hobbs.* I was with him, Sir, that Night he was wounded, and I found him ſhot with four Bullets which enter'd into his Body and tore his Guts, and wounded his Liver, and his Stomach, and his Gall, and wounded his great Guts, and his ſmall Guts, and broke one of the Ribs, and wounded the great Bone below.

Sir *Fran. Winn.* What time came you to him?

Mr. *Hobbs.* About Nine or Ten of the Clock.

Sir *Fran. Winn.* Did he die of thoſe Wounds?

Mr. *Hobbs.* Yes he did die of thoſe Wounds.

Mr. *Williams.* Did you apprehend them all Mortal, or any, or which of them?

Mr. *Hobbs.* I believe there was never a Wound but it might prove Mortal.

Sir *Fran Winn.* Now tell us what Day of the Week, and what Day of the Month it was.

Mr. *Hobbs.* It was *Sunday-Night*, the 12th of *February*, I think.

L. C. J. What did you obſerve of the Bullets, was there any thing done to them more than ordinary?

Mr. *Hobbs.* I could not ſee any thing, I have them here, my Lord.

L. Chief Baron. Were they Iron or Lead?

Then Mr. Hobbs *delivered them into Court.*

Mr. *Hobbs.* Two of them, the little ones, may be Iron, for one of them went through a thick Bone, and yet there was no Impreſſion on it.

L. C. J. And this that has the Impreſſion, you think might be done againſt the Bones.

Mr. *Hobbs.* Yes.

L. C. J. Was this left ragged on purpoſe to do the more Miſchief?

Mr. *Hobbs.* Which, my Lord?

L. C. J. This that is left at the end here. Would this be more Mortal than another Bullet, or harder to heal?

Mr. *Hobbs.* No, but as they take up a greater ſpace in flying.

L. C. J. Would not the raggedneſs hinder the healing?

Mr. *Hobbs.* No, only bruiſe the Fleſh, which bruiſed Fleſh muſt come away before it can be healed. All Bullets wound by bruiſing of the Fleſh.

L. C. J. Well, theſe were the four Bullets that were found in Mr. *Thynn's* Body?

Mr. *Hobbs.* I verily believe they are. Dr. *Lowre* had them out of my Hands for a Day or two, but I believe them to be the ſame.

L. C. J. Was there any lodged in the Stomach?

Mr. *Hobbs.* Yes, one of the little ones.

L. C. J. Had they broke the great Bone?

Mr. *Hobbs.* Yes, the great Bone in the bottom of the Belly.

L. C. J. Two of them?

Mr. *Hobbs.* A great one and a little one; two of them paſſed through that Bone, and lodged in the Back-Bone.

L. C. J. Was any of them gone through the Body?

Mr. *Hobbs.* One of them lay between the Ribbs and the Skin.

L. C. J. None were got quite through then?

Mr. *Hobbs.* None.

Sir. *Fr. Winn.* Call the Coroner, Mr. *White.*

L. C. J. Tell the Jury, Mr. *Craven*, what this Witneſs has ſaid.

[*Then he Interpreted it*]

L. C. J. What ſays that Gentleman?

Mr. *Craven.* He ſays, 'tis very well, he underſtands part of it.

L. C. J. Do the reſt of them underſtand it?

Sir *N.*

Sir *N. Johnson.* He told it in *French* to the others.

L. C. J. Let Mr. *Hobbs* have the Bullets again when the Jury have seen them.

[*Then Mr.* White *was sworn.*]

Sir *Fr. Winn.* Now we will ask the Coroner a Question or two. Pray will you acquaint my Lord, what you know of this Murder of Mr. *Thynn.*

Mr. *White.* On the Thirteenth of *February*, in the Afternoon, I sat upon the Body of *Thomas Thynn* Esq; and I found he had four Holes on his right-side, behind his short Ribbs, and they seem'd to be like Holes made with Bullets. And I gave order to open the Body.

L. C. J. And there the Bullets were found?

Mr. *White.* There the Surgeon found them.

L. C. J. Were you by?

Mr. *White.* I was at the taking them out.

L. C. J. 'Tis fit that the *Polander* should have one to Interpret what is said against him.

Mr. *Williams.* Captain *Vratz*, you hear what is said, and understand it.

Interpreter. He says he does understand it.

Mr. *Williams.* Pray tell the *Polander* what is said. That is, the two first Witnesses say, Three Persons assaulted the Coach, and one shot into the Coach, and by that means Mr. *Thynn* was killed, by the shot out of the Blunderbuss; and the Surgeon does say, that these four Bullets were found in his Body.

[*Then it was Interpreted to the* Polander.]

Interpreter. He says, my Lord, he cannot tell how many Bullets were in, he did not charge it himself, but he fired it, he says.

Sir *Fr. Winn.* He confesses he fired then.

Sir *W. Roberts.* My Lord, the Jury desire to know if the *Pole* can tell who did charge it?

L. C. J. North. Ask him who charged it?

Interpreter. He can tell, my Lord, he says.

L. C. J. It will be not be very material that, for his Evidence can charge no Body but himself.

Sir. *Fr. Winn.* Now, my Lord, if you please, we will call those Persons, the Justices of the Peace that examined these Men upon their apprehension for the Murther of Mr. *Thynn.* Call Mr. *Bridgman*, and Sir *John Reresby.*

[*Who were sworn standing upon the Bench.*]

Interpreter. My Lord, he says the Blunderbuss was given him by the Captain.

Sir *Fr. Winn.* Mr. *Bridgman*, were you by at the taking of the Examination of these Persons?

Mr. *Bridgman.* Yes, I was. And these were the Examinations that were taken.

Sir *Fr. Winn.* Were you by all the while?

Mr. *Bridgman.* Sir *John Reresby* and I did take these Examinations. And I will read them if you please.

L. C. J. As to that, let it alone, if you please. Mr. *Bridgman*, when the *Polander* was examined concerning this Murder, what did he say?

Mr. *Bridgman.* He owned it, to the best of my remembrance; but I refer to the Examination if I mistake.

L. C. J. Look upon it to refresh your Memory, Sir, and then tell us.

Mr. *Williams.* Look first what the *Polander* said, and then we will go on to the others.

Sir *Fr. Winn.* Now, Sir, will you please to acquaint my Lord, and the Jury, what he or any of them confessed of the Fact.

L. C. J. What the *Polander* confessed first.

Mr. *Bridgman.* The *Polander* upon his Examination before Sir *John Reresby* and me, did own that he came into *England* at the desire of Count *Coningsmark.*

L. C. J. Speak only as to himself; for it is Evidence only against himself.

Sir *Fr. Winn.* My Lord, his Confession is intire, and we can't separate it.

L. C. J. But we must direct what is just and fitting. His Evidence can charge no body but himself; and that is the reason I would not have his Examination read, for it cannot be read but only against himself.

Mr. *Bridgman.* Upon his Examination he confessed, that he was present when the Captain stopped the Coach; that he fired the Musquetoon by the Captain's order; and that before he did it, the Captain bid him as soon as ever he stopped the Coach, to fire.

Sir *Fr. Winn.* Did he confess he did fire?

Mr. *Bridgman.* Yes, he did.

L. C. J. North. As he does now.

L. C. J. Look you, now do you tell the *Polander*, that the Evidence against him is, That he did fire this Musquetoon, or Blunderbuss, or what you will call it?

Interpreter. He does confess it.

L. C. J. Tell him what I say, that this Evidence is given against him, That he did formerly acknowledge he discharged the Blunderbuss into the Coach, when Captain *Vratz* stopped the Coach.

Interpreter. Yes, my Lord, he says 'tis true, he fired according to his order.

Sir *Fr. Winn.* Pray, Sir, consider what was confessed by the Captain.

Mr. *Bridgman.* He confessed he had a design to fight with Mr. *Thynn*, and Mr. *Thynn* having several times refused to fight with him, he resolved to oblige him to fight by force, and therefore he had taken these Persons along with him; that if he should fail in his Revenge, or after the thing done he should be pursued, he might make his Escape. He confessed he was there, and stopped the Coach, but the *Polonian* fired by mistake, for he did not bid him to fire, but only in case he should be hindered from fighting, or making his Escape.

L. C. J. He confessed he came to fight Mr. *Thynn.*

Mr. *Bridgman.* Yes, he did so.

L. C. J. And that he stopped the Coach?

Mr. *Bridgman.* Yes.

Sir *Fr. Winn.* You said after the thing was done; what was that thing?

Mr. *Bridgman.* After he had fought, in case he should be stopped in his Escape, he bid the *Polander* fire.

Sr. *Fr. Winn.* Did he confess any thing of the delivery of the Gun to him?

Mr. *Bridgman.* He confessed the *Polander* had the Gun, but he said nothing from whom he had it.

L. C. J. Now Captain *Vratz*, you hear what is said against you by this Gentleman; that you owned you came thither with a design to fight Mr. *Thynn*, and force him to fight if he should not be willing; and you brought these Men with you to carry you off, in case you should kill him; that you did stop the Coach, and you said you did not give him order to fire, unless he refused to fight you.

Mr. *Bridgman.* No, unleſs he could not make his Eſcape.

L. C. J. Now what ſay you to this?

Sir *N. Johnſon.* He deſires to underſtand it.

L. C. J. Why then ſpeak it to him, you that are the Interpreter.

[*Then Mr.* Craven *interpreted it to him in French.*

L. C. J. Now ſpeak aloud and tell us what he ſays.

Mr. *Craven.* He ſays 'tis very true, that he was there, and had that Gentleman and the *Polander* along with him as his ſervants, Mr. *Thynn* being a Gentleman that had always a great many ſervants about him. And he ſays, my Lord, that he had received an Affront from Mr. *Thynn*; upon that, he challenged him, and ſent Letters out of *Holland* to deſire him to give ſatisfaction by fighting, but could have no ſatisfaction; and therefore becauſe in *England* Duels were forbid, he thought to make a Rencounter of it, and took theſe Gentlemen along with him, that if ſo be Mr. *Thynn's* ſervants ſhould aſſault him, or knock him on the head, or hinder him from eſcaping, that they might get him off.

Sir *Fr. Winn.* I beg one favour of you, Sir, that you would ask him one Queſtion, and that is, What the Affront was that Mr. *Thynn* gave him?

L. C. J. That he apprehends he gave him?

[*The Interpreter asked him.*

Mr. *Craven.* My Lord, he ſays, That at *Richmond* he heard he ſpoke and gave out very ill language of Count *Coningſmark*, who was his Friend, and a man he had many Obligations to, and ſo of himſelf too, and he would never acquaint Count *Coningſmark* with it, but would have ſatisfaction, and take the Quarrel upon himſelf, being a Gentleman; he ſays, that he heard that he called him Hector, and gave ſuch ill language as was never to be ſuffered.

Sir *N. Johnſon.* And the faſhion in *Germany* is, if they won't fight, to ſhoot them.

Sir *Fr. Winn.* How can you tell that, Sir? the Interpreter that asked the Queſtion ſays no ſuch thing.

L. C. J. Pray will you ask him this, Whether ever he ſaw Mr. *Thynn*, and how many times?

Mr. *Craven.* He ſays he has ſeen him ſeveral times in the Play-houſe, and riding in his Coach; he did not ſee him at *Richmond*, for if he had, he would not have put it up ſo long.

Mr. *Williams.* I believe he never ſpoke to him in his life.

L. C. J. Ask him that Queſtion, whether he ever ſpoke to him?

Mr. *Craven.* He ſays he had no Friend to ſend to Mr. *Thynn*, and he could not ſpeak with Mr. *Thynn* himſelf; for Mr. *Thynn* might think that he was not a Gentleman good enough to fight with him.

L. C. J. Ask him this, about what time he ſaw him at the Play-houſe?

Mr. *Craven.* He ſays he does not remember exactly the time when he did ſee him at the Play-houſe.

L. C. J. Ask him whether this Affront that he pretends, was given him ſince he laſt came over, or when he was in *England* before?

Mr. *Craven.* He ſays 'tis eight Months ago ſince he received the Affront.

L. C. J. That was before he went out of *England.*

Mr. *Craven.* Yes, it was before.

Sir *Fr. Winn.* He ſays he writ to Mr. *Thynn* out of *Holland*; we deſire to know by whom he ſent his Challenge?

L. C. J. Ask him if he ſent a Challenge to Mr. *Thynn*, and by whom?

Mr. *Craven.* He ſays he could ſend no leſs than a Gentleman; and he had never a Gentleman to ſend by, and ſo he ſent his Letter by the Poſt.

Mr. *Williams.* Mr. *Bridgman*, now we would ask you concerning Mr. *Stern*, the Third man.

Mr. *Bridgman.* Let me have the Examination, and I will look upon it and tell you.

Mr. *Williams.* Pray do, Sir, tell us what he ſaid.

Mr. *Bridgman.* Upon his Examination he confeſſed, that the Captain told him, he had a Quarrel with a Gentleman, and that if he would aſſiſt him in it, he would make his Fortune. And that the Captain gave him Money to buy the Blunderbuſs.

Sir *Fr. Winn. Stern* did confeſs that, did he?

Mr. *Bridgman.* Yes.

L. C. J. Did he confeſs he was at the Fact?

Mr. *Bridgman.* Yes, he confeſſed he was at the Fact; and he ſaid, when he came beyond *Charing-Croſs*, he was about ten Yards before, and he heard the Captain ſay, ſtop to the Coach, upon which he turned about, and preſently ſaw the ſhot made, and he ſaw the other Perſons ride away, and he made away after them: and the Captain further told him, that he would give two or three, or four hundred Crowns, to find a Man that would kill Mr. *Thynn.*

Sir *Fr. Winn.* What did he ſpeak about Stabbing, or about an *Italian?*

Mr. *Bridgman.* He ſaid that the Captain deſired him to get an *Italian* that would ſtab a Man, and that he would get two Ponyards for that purpoſe; and that it was before the *Polonian* came over.

L. C. J. This is no Evidence againſt the Captain; but pray will you tell *Stern* the Lieutenant, what it is that Mr. *Bridgman* does teſtifie againſt him; that he acknowledged thus and thus before him. And pray ſpeak it again, Mr. *Bridgman.*

Mr. *Bridgman.* The Captain told that Gentleman, that he had a Quarrel with a Gentleman, with whom he was reſolved to fight; that he wanted a good Servant, and if he would aſſiſt him, he would make his Fortune; that he gave him Money to buy the Muſquetoon, and owned he was there; that he went out with the Captain and *Polander* on Horſeback, about five or ſix a Clock on *Sunday*; that they went towards *Charing-Croſs*, and when they were gone beyond *Charing-Croſs*, into the *Pall mall*, he heard the Captain ſay to the Coach-man, Stop; and turning immediately, he ſaw the ſhot go off; and that they riding away, he followed them: and that before the *Polander* came over, the Captain deſired him to get an *Italian* to ſtab a Man.

[*Then that was Interpreted to* Stern.]

Mr. *Craven.* My Lord, he denies that he ſpoke any thing of four hundred Pound, or about the *Italian.*

L. C. J. Tell him it is teſtified, that he confeſſed he was at the ſhooting of this Gentleman.

Mr. *Craven.* He ſays he was there, and being about ten Yards off, he heard one ſay, Hold to the Coach, but he cannot ſay it was the Captain.

Sir *Fr. Winn.* But was he there?

Mr. *Craven.* Yes, he ſays he was.

Sir *Fr. Winn.* Who cauſed him to be there?

L. C. J. Ask

L. C. J. Ask him upon what occaſion he was there?

Mr. *Craven.* He ſays the Captain intreated him to be there to be his Second, to fight with a Gentleman, and that was the reaſon.

L. C. J. Pray tell him 'tis teſtified here, that he bought the Muſquetoon, and charged it.

Mr. *Craven.* He ſays he did aſſiſt at the loading of it, he was by.

Sir *Fr. Winn.* Pray, my Lord, let us know who it was aſſiſting him?

L. C. J. Why, that is no Evidence againſt any body.

Sir *Fr. Winn.* But, my Lord, it was delivered to the *Polander* charged, and we deſire to know who loaded it?

L. C. J. North. That is no Evidence; but yet the Queſtion may be asked, and the Jury may be told 'tis no Evidence.

L. C. J. But we muſt not let the Jury be poſſeſſed by that which not Evidence.

L. C. J. North. Pray will you ask him, Mr. *Craven*, who helped him to load the Gun.

Mr. *Craven.* The Captain was by, he ſays, and the Captain and he did it together.

Sir *Fran. Winn.* Now we will ask Sir *John Reresby* the ſame Queſtions, You were by, Sir, at the Examinations of theſe three men, pray what did the Polander ſay upon his Examination?

Sir *John Reresby.* My Lord, I cannot charge my Memory with the Particulars; but if your Lordſhip pleaſes, I will read it.

L. C. J. No, refreſh your memory with it, and then tell us the ſubſtance of it.

Sir *John Reresby.* In general, he did confeſs to me, that he was the perſon that did diſcharge the Blunderbuſs into Mr. *Thynn*'s Coach, and that he was commanded ſo to do by Captain *Vratz.*

L. C. J. That is the ſubſtance of all.

Sir *Fra. Winn.* That is as to him, but what did Captain *Vratz* ſay?

L. C. J. He ſaid, that he did go out with an intention to fight with Mr. *Thynn*, and did take theſe perſons with him; that he did not order the Polander to diſcharge, but he miſtook him when he bid the Coach-man ſtand, the other apprehended he bid him ſhoot, and he did ſo.

Mr. *Williams.* What ſaid *Stern?*

Sir *John Reresby. Stern* did ſay this, that the Captain told him he had a quarrel with an Engliſh Gentleman, and deſired him to go along with him and aſſiſt him in it, and be his ſecond; but ſaid he, I was chiefly carried out to keep off the people, in caſe there ſhould be a croud about them when they were fighting; this is the chief part of what they did confeſs.

L. C. J. We would not trouble you with more than is material, Did he acknowledge he was there at the time when he was ſhot?

Sir *John Reresby.* Yes, he did about nine or ten yards off, I think.

L. C. J. All three confeſſed they were there?

Sir *John Reresby.* Yes, they did ſo.

L. C. J. North. They had a deſign of killing, which was unlawful.

Sir *John Reresby.* They ſaid, they came on purpoſe to fight.

Sir *Fra. Winn.* Call *Michael Fenderoſton*: My Lord, we would willingly ſpare your time, and offer only what is proper in this Caſe, and now we ſhall produce our Evidence againſt the Count, and if any thing fall out in that Evidence that touches theſe three men (which we think will be but the killing of dead men) your Lordſhip will take notice of it. Now we ſhall not go to open the heads of our Evidence againſt the Count, Sir *Francis Withins* has given an account of the general, and our Witneſſes will beſt declare it.

Mr. *Williams.* We will begin with *Frederick Hanſon.* (*Who was ſworn and ſtood up.*)

Mr. *Hanſon.* How long have you known Count *Coningſmark?*

Mr. *Hanſon.* A matter of four years.

Mr. *Williams.* Pray do you remember his laſt coming into *England?*

Mr. *Hanſon.* Yes my Lord, I do remember it.

Mr. *Williams.* Then let us know the time.

Mr. *Hanſon.* I think 'tis above a month ſince.

Mr. *Williams.* Where was his Lodging firſt?

Mr. *Hanſon.* The firſt time I ſaw him was in the Poſt-houſe.

Mr. *Williams.* Did he come privately or publickly?

Mr. *Hanſon.* Privately to my beſt knowledge.

Mr. *Williams.* Which was his firſt Lodging?

Mr. *Hanſon.* In the Hay-market.

Mr. *Williams.* Where there?

Mr. *Hanſon.* At the corner houſe.

Mr. *Williams.* How long did he continue there?

Mr. *Hanſon.* A matter of a week.

Mr. *Williams.* Pray in all that time did he keep privately at home, or did he go abroad ſometimes?

Mr. *Hanſon.* I believe he kept his Chamber all the time.

Mr. *Williams.* Were you with him at any time there?

Mr. *Hanſon.* Yes, I was.

Mr. *Williams.* What Company did uſe to be with him to your knowledge?

Mr. *Hanſon.* To my knowledge, I have ſeen Dr. *Frederick* in his Company.

Mr. *Williams.* One Dr. *Frederick*, you ſay, Who elſe?

Mr. *Hanſon.* When I came from *Whitehall* on a Sunday in the evening, when my Lord was going to bed, I called, if I could be admitted to ſee him, ſo I went in to him, and a little after the Doctor came.

Sir *Fra. Winn.* Pray Sir, at that time that he was in that Lodging, did he wear his own hair, or was he in a diſguiſe?

Mr. *Hanſon.* That Sunday night he was in his night-Cap and night-Gown, ready to go to bed.

Mr. *Williams.* When you firſt came to him to the Poſt-houſe, did you go of your own accord, or were you ſent for?

Mr. *Hanſon.* Count *Coningſmark* ſent for me.

Mr. *Williams.* Was it ſent in his own name, or the name of another?

Mr. *Hanſon.* It was in a ſtrange name, *Carlo Cuſk.*

Mr. *Williams.* Have you the Note by you?

Mr. *Hanſon.* No.

Mr. *Williams.* In whoſe Character was it writ?

Mr. *Hanſon.* In the Count's own Character.

Sir *Fra. Winn.* What was his Name in his firſt Lodging? What Title was he called by, Captain, or what?

Mr. *Hanſon.* I know of no other name but only the ſtranger.

Sir *Fra. Win.* Was it known to any Perſon in the Family?

Mr. *Hanſon.* No.

Mr. *Williams.* When did he remove from thence?

Mr. *Hanſon.* I know not.

Sir *Fra. Winn.* You ſay the firſt place of his Lodging was in the *Hay-market*, where did you ſee him the ſecond time?

Mr. *Hanſon.* At a corner Houſe, I know not the name of the Street.

Sir *Fran. Withins.* Did he direct you to come to him?

Mr. *Williams.* Had you any diſcourſe with him, what his buſineſs was here in *England*?

Mr. *Hanſon.* I asked him, if we ſhould have his company here ſome time; he told me he was come over about ſome buſineſs, and was afterwards to go into *France.*

Mr. *Williams.* Then he never told you what that buſineſs was?

Mr. *Hanſon.* No.

Mr. *Williams.* Where was his ſecond Lodging, do you ſay?

Mr. *Hanſon.* It was at a corner houſe, not above two ſtreets off from the former.

Mr. *Williams.* How long did he continue in his ſecond Lodging?

Mr. *Hanſon.* A few days, becauſe the Chimney did ſo ſmoak, that he could have no fire made in it.

Sir *Fra. Winn.* Then I ask you, in his ſecond Lodging, was he there publickly or privately?

Mr. *Hanſon.* He was there after the ſame manner that he was in his firſt Lodging.

Mr. *Williams.* Whither went he afterwards?

Mr. *Hanſon.* To St. *Martins* Lane, I think it is called.

Mr. *Williams.* How long did he continue there?

Mr. *Hanſon.* There I ſaw him the laſt time before he went away.

Mr. *Williams.* When was that?

Mr. *Hanſon.* It was Sunday evening after I came from *Whitehall.*

Mr. *Williams.* Was it near the time of killing Mr. *Thynn*?

Mr. *Hanſon.* It was about two or three hours afterwards.

Mr. *Williams.* Was he as private there, as he was in his other Lodgings?

Mr. *Hanſon.* Yes.

Mr. *Williams.* What Company came to him thither?

Mr. *Hanſon.* The ſame that came to him in the other.

Sir *Fra. Winn.* Who were they?

Mr. *Hanſon.* The Doctor was in his Company.

Sir *Fra. Winn.* And who elſe?

Mr. *Hanſon.* I ſaw one Captain *Vratz* there.

Sir *Fra. Winn.* Sir, I ask you upon your Oath, you are a man of underſtanding, did you frequently ſee Captain *Vratz* in his Company? How often do you remember you ſaw him at his Lodging?

Mr. *Hanſon.* I do not remember that I ſaw Captain *Vratz* at that Lodging above one ſingle time.

Mr. *Williams.* Pray Sir thus; Did Captain *Vratz* come with the Count into *England* this laſt time?

Mr. *Hanſon.* To my beſt remembrance he did.

Mr. *Williams.* You ſay Captain *Vratz* came with the Count to *England.*

Mr. *Hanſon.* I believe he was before the Count, but not long before; I can't exactly tell.

Mr. *Williams.* How long before the Count?

Mr. *Hanſon.* Truly I can't tell, but I believe not long.

Mr. *Williams.* What makes you think he came into *England* with him?

Mr. *Hanſon.* Becauſe I ſaw him in Company with the Count, as ſoon as I ſaw the Count.

Mr. *Williams.* Were they in Company at the Poſt-houſe?

Mr. *Hanſon.* Yes.

Sir *Fra. Winn.* And you ſaw him once at his firſt Lodging?

Mr. *Hanſon.* Yes.

Mr. *Williams.* Pray Sir, have you carried any Meſſage from the Count to the *Swediſh Reſident*?

Mr. *Hanſon.* My Lord, I can ſay this upon my Oath, to my beſt remembrance, Count *Coningſmark* never charged me, or gave me any poſitive Order to go to the *Swediſh Envoy*, but he did name the *Swediſh Envoy* to me, as if he were willing to know his advice; and ſo I being obliged to pay my Reſpects to the *Swediſh Envoy*, who had treated the young Count and my ſelf very civilly before; and ſo paying my Reſpects to the ſaid *Envoy*, I did remember the Converſation I had with the Count, and ſpoke with the ſaid *Envoy* about this buſineſs, and that is all that I can ſay.

Sir *Fra. Winn.* What was that Meſſage?

Mr. *Hanſon.* I ſay there was no direct meſſage: But I ſay this was the buſineſs; Count *Coningſmark* told me in private familiar diſcourſe, that he had heard that Eſquire *Thynn* had ſpoken ſome abuſive language of him, and he would fain know what the conſequence of this would be, if he ſhould call him to account about this buſineſs; and he named the Swediſh Envoy to me: And I ſaw his deſire was to know his Opinion about the buſineſs, what the conſequence of it would be. So I ſpoke to the Swediſh Envoy, and he gave me this anſwer, That if the Count ſhould any way meddle with Eſquire *Thynn*, he would have but bad living in *England*; but what the Law would ſay in that particular Caſe he could not anſwer, but he would enquire, and afterwards would give me an account, but I never ſpake with him after.

Sir *Fra. Winn.* I ask you, becauſe you have been formerly examined in another place about this matter. Do you remember any thing that ever you heard the Count ſpeaking of fighting with Mr. *Thynn*?

Mr. *Hanſon.* Count *Coningſmark* ſpoke to me in the *German* Language; I ſpoke to the *Swediſh* Agent in *French*; and when I was before the King and Council I ſpoke in *Engliſh*; therefore I deſire no evil conſtruction may be made of it. I cannot remember the Count ſpake of killing or duelling. On the contrary I can ſwear for Count *Coningſmark* this, that I am confident he never told me that he had reſolved or would fight with Mr. *Thynn*, or would call him to account, but if he ſhould call him to account, what would be the conſequence of it.

Sir *Fra. Winn.* Call him to account, about what?

Mr. *Hanſon.* The Count in familiar diſcourſe with

with me did tell me, that he had heard Esquire *Thynn* had spoken abusively of him.

Sir *Fra. Winn.* How had he spoken abusively of him?

Mr. *Hanson.* He reflected upon his Person and upon his Horse.

Mr. *Williams.* Was there any thing in that Message about marrying my Lady *Ogle*?

Mr. *Hanson.* That was the last part of the Question, That if he should meddle with Esquire *Thynn*, what the consequence might be, if the Laws of *England* would be contrary to him in the hopes or pretensions he might have to my Lady *Ogle*.

Mr. *Williams.* You mince your words mightily; pray remember your self; did he speak of killing Mr. *Thynn*, or that Mr. *Thynn* should be destroyed?

Mr. *Hanson.* No, his Phrase was; if he should have an advantage of him, when he should meddle with him, or call him to an account, what the Consequence might be; I can say this upon my Conscience.

Sir *Fra. Winn.* Sir, you are in a place where you are sworn to speak the Truth, the whole Truth, and nothing but the Truth; what Relation have you to Count *Coningsmark*'s Family?

Mr. *Hanson.* I have no Relation to the Family at all.

Sir *Fra. Winn.* Are not you Governour to the young Count?

Mr. *Hanson.* The Countess has given me her younger Son, for me to be his Companion in his Travels.

Sir *Fra. Winn.* Sir, I ask you a plain Question, let it lye at your own door, if you won't tell the Truth; had you any Conversation with Count *Coningsmark*, wherein he did desire you to ask advice of the *Swedish* Envoy or Resident here, about duelling Mr. *Thynn*, or in case he should kill Mr. *Thynn*, or upon any such account?

Mr. *Hanson.* My Lord, I say this was spoken in several Languages, by the Count in *Dutch*, by my self to the Envoy in *French*; and I do know I Swore before the King and Council, but I cannot lay this to Count *Coningsmark*'s Charge, for then I must forswear my self.

Sir *Fra. Winn.* Sir, you can answer me all my Questions in *English*, if you please, what the Discourse was.

L. C. J. Pray Sir thus, what was the Discourse as near as you can remember it, between Count *Coningsmark* and you, relating to Mr. *Thynn*?

L. C. J. North. Tell the whole, Sir, for you are bound to tell the whole indifferently.

Sir *Fra. Winn.* And pray remember what you swore in another Place.

Mr. *Hanson.* The Count sent to me a Note, that he had a mind to speak with me, and he entertained me with a familiar Discourse about his Travelling, and about the setling of his business, and thereupon he fell upon other Discourse about Mr. *Thynn*, and not to mistake, having had time in my own Chamber, I have put it down in writing, to satisfie my Lord and all this Honourable Court, what I can say about this Matter.

Mr. Hanson *reads*——*'Tis very hard to give a true account.*

L. C. J. Read it to your self if you will, and tell us the Substance.

Mr. *Hanson.* If my words may not turn to the prejudice of my Lord Count *Coningsmark*, but this is the substance of the thing; my Lord Count *Coningsmark* did tell me in a familiar Discourse, that Esquire *Thynn* had spoken some reflecting Words upon him; he did desire to know if he did call him to account, whether in this case the Laws of *England* might not go contrary to his Design, in his Pretensions that he might have upon my Lady *Ogle*. And in that familiar Discourse, he seemed to think that Monsieur *Lienburgh* could give him advice. In a little while afterwards, I was paying my respects to the Envoy, and reflecting upon the Count's Conversation, I spoke to him about this business, and his answer was this; he told me, that if he should meddle with Mr. *Thynn*, he would have no good living in *England*: But as to the particular Question, what the Consequence of the Law might be, he did not know, but would inquire and tell me, but I never asked him any Question about it afterwards. And if my Conversation with this Count, or with Monsieur *Lienburgh*, should turn to the Count's prejudice, I should be answerable for it to God and my own Conscience, all the days of my Life. I desire Mr. *Thynn*'s blood might be revenged, but I desire also that innocent Blood may be spared.

Sir *Fra. Winn.* Pray Sir, will you look upon that Paper, you signed it.

L. C. J. North. Only to recollect your Memory.

Then he was shew'd his Examination before the Council.

L. C. J. Now have you read it over, that there is under your own hand, do you now again deliver the substance of your discourse you had with Count *Coningsmark*, as you will stand by it.

Mr. *Hanson.* I see that there are expressions in this Paper.

L. C. J. Speak not what is in that Paper, but what discourse (as near as you can) you had with Count *Coningsmark*.

Mr. *Hanson.* My Discourse with Count *Coningsmark* was this; in a familiar Discourse amongst other things, he spoke, that he heard Esq; *Thynn* had affronted him, I don't know upon what Subject, but I believe it was words reflecting upon him and his Horse, he did not tell me that he desired me to go, nor did he give me any positive charge to go to the Swedish Envoy, but by the discourse I had with him, I did understand that he was desirous to have his advice, I thought his inclinations were, that I should go and ask his advice; I did not go on purpose to do the Message, nor did I receive any order that can be called a Message in my Life, to my remembrance; but when I came to pay my respects in a familiar Discourse, I did propose this to the Envoy; what might be the Consequence, if the Count should call Mr. *Thynn* to account; and he told me the same Answer that I have already told you. Now this I desire only to consider, that it was spoken in divers Languages; and if a man should write down my Expressions now, as they came from me, they would upon reading, perhaps, appear not so well; so if these Expressions of mine should turn to Count *Coningsmark*'s Prejudice, as that I should Swear that this Phrase of killing or duelling was used, or that ever Count *Coningsmark* told me that he resolved to call, or that he would call him to an account, I might do him

wrong

wrong perhaps, but if he ſhould call him to account, what might be the Conſequence of it.

Sir *Fr. Winn.* I would not intangle you, but only I would ſeek after the Truth. I do not ask you poſitively, whether he did bid you go to ask Advice of the *Swediſh* Envoy, that he did reſolve ſo and ſo; but did he diſcourſe it thus, if he ſhould Duel him, or Fight him?

Mr. *Hanſon.* As I am before God Almighty, I cannot ſay I heard ſuch Expreſſions.

Mr. *Williams.* Pray Sir, you confeſs you acquainted the Envoy with it?

Mr. *Hanſon.* Yes.

Mr. *Williams.* Did you bring the Envoy's Anſwer to the Gentleman, or no?

Mr. *Hanſon.* If I ſhould be upon the Goſpel, I am ſure I cannot exactly tell what was the Expreſſion.

L. C. Baron. What was it that you diſcerned he doubted, if he did call Mr. *Thynn* to account?

Sir *Fr. Winn.* He ſpoke in relation to a Marriage, pray what was it?

Mr. *Williams.* What did that *if* relate to?

Mr. *Hanſon.* If he ſhould ask him ſatisfaction about it, having heard that he had ſpoken abuſive words of him.

Sir *Fr. Winn.* What then was to follow?

Mr. *Hanſon.* If he ſhould call him to account, then how the Laws of *England* might do in this Point.

Mr. *Williams.* To whom?

Mr. *Hanſon.* To the Count.

Mr. *Williams.* What ſhould befall him?

Mr. *Hanſon.* Whether the Law ſhould be contrary to him in the Deſign and Propoſals he might have, concerning the young Counteſs of *Ogle.*

Mr. *Williams.* Well, I ſee you will give no reaſonable anſwer to that; but now when came the *Polander* over into *England?*

Mr. *Hanſon.* I cannot ſay poſitively I can tell when he came.

Mr. *Williams.* But when did you ſee him firſt?

Mr. *Hanſon.* Upon the *Fryday* he came and asked me for the Count at Monſieur *Faubert*'s Academy. Now the young Count *Coningmark*'s Chamber and mine joyns together, next to one another, and there came a Man with him, I do not know his Name, but if I ſee the Man I know him.

Mr. *Williams.* You ſay the *Polander* came over on *Fryday.*

Mr. *Hanſon.* He came to me on *Fryday.*

Mr. *Williams.* And he came to you to the *French* Academy, to enquire for Count *Coningſmark?*

Mr. *Hanſon.* Yes, he did ſo.

Mr. *Williams.* Had he any Letters?

Mr. *Hanſon.* Yes, he had two Letters.

Mr. *Williams.* From whom, and to whom?

Mr. *Hanſon.* I asked him if he had any Letter for Count *Coningſmark*, and he ſaid no; but he told me he had two Letters, and the one was to the Count's Secretary, and the other was to the Count's Steward in *London.* So I gave him back his Letters, and asked him whence he came? He told me, he was juſt come into *England.* I asked him, whether he had been a great while at Sea? And he told me, yes; and that it was Stormy, and he had like to have been caſt away; ſaid I, I hear you are expected therefore; have you paid your Lodging? No, ſaid he; then ſaid I, go and pay your Lodging, and come to me in the Morning early.

Sir *Fr. Winn.* You ſay you heard he was expected, pray who expected him?

Mr. *Hanſon.* The Count; for he had ſpoken formerly twice of the *Polander*, and in the great Storm thought he had been drowned. To the beſt of my remembrance, I have heard the Count ſpeak twice of this *Polander.*

Sir *Fr. Winn.* Of this Man?

Mr. *Hanſon.* I ſuppoſe it is the ſame.

Sir *Fr. Winn.* You ſay you ſaw him on *Fryday.*

Mr. *Hanſon.* Yes, I did.

Mr. *Williams.* When did he ſpeak of the Stormy Weather? And that he was afraid the *Polander* might miſcarry?

Mr. *Hanſon.* About twelve or thirteen Days before.

Mr. *Williams.* Now ſay as near as you can what the Count ſaid.

Mr. *Hanſon.* He ſaid the *Polander* was a mighty able Man, and underſtood Horſes, and the Count had a mind to buy *Engliſh* Horſes, and intended to have had this *Polander* as a Groom to dreſs them after the *German* way, and no Man was abler than the *Polander* to do it; and when he ſpoke of it, I went once to the Change, and inquired whether the Ship was loſt.

Sir *Fr. Winn.* By whoſe Directions did you go to inquire whether the Ship was loſt?

Mr. *Hanſon.* I had no Direction, but only Count *Coningſmark*'s ſpeaking about it.

Sir *Fr. Winn.* He ſeemed to be concerned at it, did he?

Mr. *Hanſon.* Yes, he was afraid that the *Polander* would be drowned.

Mr. *Williams.* You ſay you directed him to clear his Quarters?

Mr. *Hanſon.* Yes, I did ſo.

Mr. *Williams.* Did you ſee him again the next Day?

Mr. *Hanſon.* Yes, he came the next Day.

Mr. *Williams.* Was he the next Day in Company with the Count or no?

Mr. *Hanſon.* I brought him to the Count.

Sir. *Fr. Winn.* Where?

Mr. *Hanſon.* It was a little before Noon; becauſe I went the back Way, and left him at the Count's Lodging.

Mr. *Williams.* Did you leave him with the Count?

Mr. *Hanſon.* Yes, I did.

Mr. *Williams.* Pray, as long as you were there what paſſed between the Count and the *Polander?*

Mr. *Hanſon.* I remember very well what paſſed between the Count and him, for I have thought of it. He ſpoke to him, and called him *Thou*, as to his Servant, and asked him, Where he had been all the while? And he anſwered he had been at Sea, and toſſed up and down.

Sir *Fr. Withins.* Pray what Directions had you given about a Sword for that *Polander?*

Mr. *Hanſon.* I went to the Count's Lodgings, and being deſired by him to ſtay, I deſired he would excuſe me, for I could not ſtay, becauſe I was to go about another Buſineſs; he told me the Fellow was all naked, and he had no Man to ſend to buy him a Riding-Coat; I told him I would very willingly and heartily do it. And after I had dined, I went to an Houſe near the *Hay-Market*, and bought a Riding Coat, and brought the Riding Coat to the Count's Lodgings. I delivered it to the Count. Then the Count told me his Man had never a Sword, and I asked him how much his Lordſhip would pleaſe

to

to beſtow on a Sword, he told me a matter of 10*s.* or thereabouts; I told him I did not know where I ſhould get ſuch a Sword, nor how to ſend for it, becauſe I was to meet his Brother; but I withal ſaid, it is no matter for that, I will take care you ſhall have it; this Evening I went into St. *Martin's-Lane*, but could not find ever a Sword worth a Groat. Then I went as far as *Charing-Croſs* to a Cutler whom I knew, ſo I told him, Sir, ſaid I, I have a Commiſſion to beſtow 10*s.* upon a Sword for a Servant, therefore, ſaid I, I leave it to your Diſcretion, uſe my Friend well, and uſe your ſelf favourably too. I asked him when I ſhould have the Sword, he told me in the Evening; I told him I would call for it when I came from the Play, where I was to be with the Count's Brother. When I came back with the young Count *Coningſmark* from the Play, I called for the Sword, but he told me it was not ready. I ſeemed to be a little angry, and told him that it was ſtrange, a Gentleman could not get a little Sword ready for him in an whole Afternoon. Well, Sir, ſaid he, pray do not be impatient, I will ſend you the Sword, and afterwards he ſent it to the Academy, and I afterwards ſent the Sword to Count *Coningſmark*'s Lodgings.

Mr. *Williams*. Pray had you this Direction for the Sword, after you had brought the *Polander* to the Count, or before?

Mr. *Hanſon*. Count *Coningſmark* did never give me any Direction or Charge to buy a Sword for him, but I did offer my Service if he pleaſed, becauſe he ſaid, he had no body to ſend.

Mr. *Williams*. Sir, You do not know the Queſtion, or you won't apprehend it; pray when had you this Direction from the Count to buy this Sword?

Mr. *Hanſon*. On *Saturday* in the Afternoon.

Mr. *Williams*. When was it you brought the *Polander* to the Count?

Mr. *Hanſon*. In the Morning.

Sir *Fr. Winn*. Pray let me ask you another Queſtion, when was it you firſt heard Mr. *Thynn* was kill'd?

Mr. *Hanſon*. I heard it I believe about eight a Clock in the Evening on *Sunday*.

Sir. *Fr. Winn*. Had you any Diſcourſe with the Count about the Murder?

Mr. *Hanſon*. Yes, I had.

Sir *Fr. Winn*. Pray tell what that Diſcourſe was?

Mr. *Hanſon*. I was at *Whitehall* till ten of the Clock, and then I went to the Count; but I deſire this may not be taken as an extraordinary Viſit, becauſe I uſed to go to him on *Sundays* in the Evenings, and thoſe three *Sundays* before he was taken, I uſed to come to him in the Evening, after I had been at *Whitehall*. When I came into his Lodgings, I found him in his Night-Cap, and his Night-Gown; he asked me what News, I told him I could tell him great News, and that was of the killing of Eſq; *Thynn*, who was ſhot in his Coach: the Embaſſador of *Savoy* had told me all that he had heard about it, and I told it him. After I had ſpoken of this Buſineſs, he asked me where his Brother was; I told him, his Brother was at the Duke of *Richmond*'s. And after ſome Diſcourſe I went away.

Sir *Fr. Winn*. When you told him of the Murder of Mr. *Thynn*, did he make no Anſwer, nor ſay any thing about it?

Mr. *Hanſon*. He did not make me any Anſwer, by which I could conclude that Count *Coningſmark* was any way concerned in the Buſineſs.

Sir *Fr. Withins*. Pray Sir, I ask you upon your Oath, the Count is a Man of great Quality himſelf; when you told him of ſuch an horrid Murder, what, did he ſay nothing about it?

Mr. *Hanſon*. He asked me ſeveral Queſtions, what the People did ſay, but I would not make any miſtake.

Sir *Fr. Winn*. Tell all he ſaid Sir about it.

Mr. *Hanſon*. I told him the greateſt News I heard was, the killing of Mr. *Thynn*; and I told him who brought the News, and I told him the Court was heartily angry at it, that ſuch an Accident ſhould happen, and I ſaid it was an *Italian* trick, not uſed in *England*.

Sir *Fr. Winn*. What ſaid he then?

Mr. *Williams*. Pray do you remember what he ſaid?

Mr. *Hanſon*. What I have anſwered now. He made me ſuch Queſtions upon this Story as I have told you.

L. C. J. Let him explain himſelf, Pray as near as you can, relate what Diſcourſe you had with Count *Coningſmark*, that *Sunday* Night, after you came to him, and told him of the Murder.

Sir *Fr. Winn*. What did he ſay to you?

Mr. *Hanſon*. I will tell you my Lord, the Count was ſurpriſed, as every Man would be, to hear of ſo ſad an Accident, and ſo the Count asked me what the People ſaid, ſo I told him what I heard at *Whitehall*, I cannot call to my memory all the Particulars; but I ſaid the King was heartily ſorry, and all the Court, for ſo ſad an Accident, and I muſt wrong myſelf, or Count *Coningſmark*; if I ſhould undertake to relate exactly what paſſed, for I cannot remember it.

Mr. *Williams*. But you ſaid juſt now, that you told the Count it looked like an *Italian* Trick, not uſed in *England*.

Mr. *Hanſon*. Yes, I did ſo.

Mr. *Williams*. What did he reply to that?

Mr. *Hanſon*. Not a word.

Mr. *Williams*. Did he mention any thing of Fortifications to you then?

Mr. *Hanſon*. Yes, he gave me a Plan, or a Draught of a Fortification done with his own Hand, and that was all the diſcourſe.

Mr. *Williams*. So then he diverted the diſcourſe to the Buſineſs of Fortification.

L. C. J. The Evidence is heard, what it is that he ended all the Diſcourſe with, ſhewing him a Paper of Fortifications.

Sir *Fr. Winn*. But this he does ſay, He asked him what the People did ſay of it?

Mr. *Hanſon*. For my Life I dare not ſay I remember any more than I have told.

L. C. J. Look you, Sir, now will you in *French* deliver this, for the Benefit of thoſe Jury men that don't underſtand *Engliſh*.

Mr. *Williams*. We pray, my Lord, that our Interpreter may do it.

L. C. J. When a Man can ſpeak both Languages, he needs no Interpreter, he is his own beſt Interpreter.

Mr. *Williams*. My Lord, I will tell you why I ask it; there is a great deal of difference, I find, where you to examine a Man with the Hair, and where you examine him againſt the Hair: where you find it difficult to make a Man anſwer, you will pump him with Queſtions, and croſs interrogate him, to ſift out the Truth; now if you leave this Man to the Interpretation of what he

hath

hath ſaid himſelf, he will make a fine Story of it, and we ſhall be never the wiſer.

L. C. J. You may examine him in French if you will.

Mr. *Williams.* And I underſtand none but Pedlar's French.

Sir *Fr. Winn.* The truth of it is, what your Lordſhip ſays cannot be oppoſed regularly; but I do appeal to your Lordſhip, and all the Judges, and all the Court, whether this man does anſwer like an ingenuous man; you ſee he ſhifts.

L. C. J. I do not ſee it, nor do I believe any ſee he ſhifts in any thing you ask of him; either he tells you what the Queſtion is, or the Reaſon of it; how far that is a Reaſon, is left to the Jury to conſider.

Sir *Fr. Winn.* Certainly it can do no hurt to have an Interpreter.

L. C. J. North. My Lord, if there be two ways to take, 'tis beſt to take that which will give ſatisfaction to all Perſons, let him be asked by the Interpreter, what Queſtions the Counſel would have anſwered, and then let him tell his Anſwer in French.

L. C. J. If that be liked better, let it be ſo. Mr. *Craven*, can you tell the ſubſtance of the Evidence that this Gentleman hath given?

Mr. *Craven.* No, I cannot, his Evidence has been ſo long, and ſo many croſs Queſtions have been asked.

Sir *Fr. Winn.* I would ſpare your time ——

L. C. J. But this is the way to ſpend our time.

Sir *Fr. Winn.* I know your Lordſhip does not value time in ſuch a caſe as this is, but you would have the truth found out.

L. C. J. You muſt repeat firſt the diſcourſe you had with Count *Coningſmark.*

Sir *Fr. Winn.* My Lord, we will reduce it to two or three Queſtions. Mr. *Craven*, will you pleaſe to ask him what diſcourſe he had with Count *Coningſmark.*

Mr. *Craven.* He ſays, the diſcourſe he had with Count *Coningſmark* about the *Polander*, was, that he came over as a Groom to ſerve him to look after his Horſes; that he had occaſion for ſeveral Engliſh Horſes, and Engliſh Servants to look after them as Grooms; and among the reſt of his Grooms, he intended the Polander ſhould be one, to dreſs his Horſes after the German way.

Sir *Fr. Winn.* So far he goes as to that, That the *Polander* came over to ſerve the Count.

L. C. J. Look you, Sir, does not he tell you, the Count had a purpoſe to buy Horſes here?

Mr. *Craven.* He ſays there was a diſcourſe about Bills of Exchange of 7000 Piſtoles to buy Horſes.

Sir *Fr. Winn.* Pray then will you ask him, what diſcourſe he had with Count *Coningſmark* about the death of Mr. *Thynn*, and what the Conſequences in Law might be.

Mr. *Craven.* My Lord, he ſays, that the diſcourſe with Count *Coningſmark*, concerning the Swediſh Agent, was, That in caſe he ſhould ask Satisfaction of Mr. *Thynn*, for the Affronts that he had given him, not underſtanding the Cuſtoms of the Nation, if he ſhould call him to account, what prejudice it might be to him; for he did not hear, he ſays, that Count *Coningſmark* deſigned any thing, or reſolved upon killing him, or any thing of that nature; but whether if he ſhould call him to account, what the Laws of *England* might be.

Mr. *Williams.* Call *John Wright.*

Sir N. *Johnſon.* My Lord, the Count deſires to know if he may be permitted to make his Defence againſt theſe Witneſſes.

L. C. J. No, he is not to make his Defence now. But pray tell him if my Lord have a deſire to ask any Queſtions of this Witneſs, he may ask what he pleaſes.

L. C. J. North. Let the Queſtion be put to the Interpreter, that we may know what the Queſtion is before the Witneſs gives an Anſwer.

Mr. *Craven.* He asks him if he has not ſeen him oftner in his Lodging undreſſed than dreſſed? And whether he was not to take Phyſick from his Phyſician?

Mr. *Hanſon.* I do not remember that in all the time I ſaw Count *Coningſmark*, I ſaw him dreſſed four times in his Coat, I cannot ſay I remember three times in all. The firſt time when he came, he was in a Campaign Coat; but all the time he was in his Lodging, as I remember, he was in his Night-gown and Cap. As to the other part of his Queſtion, whether I heard that he took Phyſick? I ſay this, When I ſaw Count *Coningſmark* firſt at his Lodging; when I came to him, on the *Sunday* Evening, I was told the Count was in Bed: It was late, but I ventured to go into his Room, and ſat a quarter of an hour there; and afterwards the Doctor came in, Dr. *Frederick*, I ſaw him oftentimes at his Lodging; and at the ſame time the young Count was ſick of an Ague: And when he came one Evening to ſee the young Count, I asked him what was the Diſtemper the Count had? The Doctor anſwered me, that he had not told any body that the Count was ſick, or what he was ſick of, but he hoped in God in a ſhort time he would be recovered.

Mr. *Craven.* He asks him if he gave him any poſitive Order, that he ſhould go of any Meſſage to the Swediſh Envoy?

Mr. *Hanſon.* This I have anſwered before, and I ſay now, If this diſcourſe that I had with the Swediſh Envoy, turn to the Lord Count *Coningſmark*'s prejudice, it would grate upon my Conſcience all my life: Count *Coningſmark* never gave me any poſitive Order to carry any Meſſage; but I did gather, by his diſcourſe, that the Count might be deſirous to know the Envoy's Opinion about this Queſtion; and therefore I thought, the Count deſiring it, I would do it to pleaſe him, rather than by Order. But I do not know that ever the Count had a mind to give me ſuch an Order, but I did it voluntarily.

L. C. J. In plain Engliſh, Did he ever direct you to go to the Swediſh Envoy?

Mr. *Hanſon.* No, my Lord, he never did direct me.

L. C Baron. How came you to chooſe a Foreigner to know what the Laws of *England* are?

Mr. *Hanſon.* I thought it would pleaſe the Count to know his Opinion.

L. C. Baron. But how came you to chooſe a Foreigner, I ask?

Mr. *Hanſon.* He has been 19 Years here in *England*, and ſure he ſhould know.

Mr. *Craven.* My Lord, he asks him if ever he told him that he had a deſign to fight Mr. *Thynn*,

or

or do him any Prejudice, or ſend him a Challenge?

Mr. *Hanſon*. My Lord, I am upon my Oath, and this I ſay, I ſpeak it before God and the Court, Count *Coningſmark* did never tell me that he had any mind, or did reſolve to call Eſquire *Thynn* any ways to account.

Mr. *Williams*. Call *John Wright*.

[*Who ſtood up, and was ſworn.*

Sir *Fr. Winn*. We ſhall ask him but a Queſtion or two, my Lord.

Mr. *Williams*. Pray tell me the time when this *Polander* came into *England*, that man at the Bar?

Mr. *Wright*. He came the 10th day of this month.

Mr. *Williams*. Pray what Ship did he come in? Where did you firſt meet with him?

Mr. *Wright*. Here in Town.

Mr. *Williams*. Where was it?

Mr. *Wright*. At the *Croſs-Keys* in *Throgmorton-ſtreet*.

Mr. *Williams*. Pray when you firſt ſaw him, what did he ask you?

Mr. *Wright*. He asked me where Count *Coningſmark*'s Lodgings were? I told him, I thought he was at *Oxford*, I meant the young Gentleman, for I did not know the other was in Town; but I went and inquired, and they told me, it was at *Faubert*'s Academy.

Mr. *Williams*. Whither went you with the Polander then?

Mr. *Wright*. I went to my Lord's Lodgings.

Mr. *Williams*. What Lord?

Mr. *Wright*. The young Count's Lodgings.

Mr. *Williams*. Well, and what then?

Mr. *Wright*. And I came to Mr. *Hanſon*, and he did deliver a Letter to Mr. *Hanſon*, and I ſtayed there about half an hour, or thereabouts.

Mr. *Williams*. When was this?

Mr. *Wright*. Upon *Friday*, the 10th day of this month.

Mr. *Williams*. How long was Mr. *Hanſon* and the *Polander* together?

Mr. *Wright*. About half an hour.

Mr. *Williams*. What ſaid *Hanſon* to him in your preſence?

Mr. *Wright*. Mr. *Hanſon* ſaid nothing.

Mr. *Williams*. Was there any thing ſaid about going back, and paying his Lodging, and coming back?

Mr. *Wright*. Mr. *Hanſon* came down to me, and told me he was glad to ſee me, and bid me take the *Polander* back with me, and bring him to him to morrow betimes, for he muſt diſpatch him about his Buſineſs.

Sir *Fr. Winn*. Then he ſaid nothing to the *Polander*?

Mr. *Wright*. No, but to me.

Sir *Fr. Winn*. Well, what did you do the next morning?

Mr. *Wright*. I came to him the next morning, to this *Polander*, and he took his things with him, which was a Sea-bed that he had, and a Gun with a Wheel-lock, and ſome other things.

Sir *Fr. Winn*. And whither did you bring him?

Mr. *Wright*. I brought him to the upper end of the *Hay-market*, *Monſieur Faubert*'s School.

Mr. *Williams*. To what place did you come in the morning, ſay you?

Mr. *Wright*. Sir, if it pleaſe, you, I brought him within a door or two of Mr. *Faubert*'s the Horſe-maſter, that teaches to ride the great Horſe; for he did deſire that we might go to an Houſe hard by, becauſe he would not carry his carriage to my Lord, he had a Sea bed, a Portmantle, a Gun, and other things; and ſo I brought him to an Houſe, and there I called for a Pot of Ale; and he put down his things and went out, I thought he had gone to make water, but within a little while after returns again, and Mr. *Hanſon* comes in with him; he asked me why I did not come ſooner? I told him, I had ſome other Buſineſs, I was with ſome French Merchants to look upon ſome Goods. So he bid the *Pole* pay me for my trouble, and take up his things, and go along with him; and he did do ſo, and I never ſaw the *Pole* afterwards.

L. C. J. You that are the Interpreters, repeat what he hath ſaid to the Jury. [*Which was done.*

Sir *Fr. Winn*. We have done with this man, the uſe we make of him, is to follow this *Polander*, and we ſhall bring him to the Count by and by. Call Dr. *Frederick Harder*.

[*Who was ſworn.*

L. C. J. The Doctor underſtands Engliſh, don't he?

Sir *Fr. Winn*. Yes, we are told he does.

Mr. *Williams*. How long have you known the Count that ſtands there at the Bar?

Dr. *Harder*. I have known him a good while, it may be this four or five Years. I have known him four or five Years.

Mr. *Williams*. How long have you known Captain *Vratz*?

Dr. *Harder*. About a Year and a half, or two Years.

Mr. *Williams*. Was my Lord and Captain *Vratz* acquainted then? Dr. *Harder*. Yes.

Mr. *Williams*. Was he in Employment under my Lord? Was he in the Count's Service?

Dr. *Harder*. He was with the Count, but whether he was his Companion, I cannot tell.

Mr. *Williams*. Did he live with the Count?

Dr. *Harder*. Yes.

Mr. *Williams*. Did Captain *Vratz*, when the Count came laſt over into *England*, come over with him?

Dr. *Harder*. Yes, by my knowledge.

L. C. J. Do you know it or not?

Dr. *Harder*. Captain *Vratz* came to me, and told me, my Lord deſired to ſpeak with me, and I went with him to my Lord.

Sir *Fr. Winn*. Was that the firſt Meſſage you received from the Count?

Dr. *Harder*. Yes, it was.

Mr. *Williams*. How long was that ago?

Dr. *Harder*. The ſame day the *Morocco* Embaſſador did exerciſe in *Hide-Park*.

Sir *Fr. Winn*. How long is that ago?

Dr. *Harder*. About a Month ago.

Sir *Fr. Winn*. What, was that his firſt Lodging after he came laſt into *England*?

Dr. *Harder*. It was in the *Hay-market*.

L. C. J. Was it a corner Houſe, as the other Witneſs ſaith, or not?

Dr. *Harder*. Yes it was.

Mr. *Williams*. Was the Count a private Lodger there?

Dr. *Harder*. He lay in his Bed when I came to him; he came as a Traveller privately.

Mr. *Williams*. Did he go by his own Name, or another Name?

Dr. *Harder*. No body did queſtion him about his Name, but when I did come to him, I did diſcourſe him about his Body.

Mr. *Williams.* Pray Sir, thus; you went often to visit him, pray did you inquire for him by his own Name, or any other Name?

Dr. *Harder.* He desired that he might be private, because he was to take some Medicines, and he would not have it known.

Mr. *Williams.* Now Sir, I would ask you, did you observe him to be in any disguise? Did he wear a Perriwig, or how?

Dr. *Harder.* He had a Perriwig.

Mr. *Williams.* Was it a fair Perriwig, or what colour?

Dr. *Harder.* It was brown or black.

Sir *Fr. Winn.* Sir, was he in a disguise, or no?

Dr. *Harder.* He had his own Cloaths, but he had a Perriwig.

Sir *Fr. Winn.* Pray what Name did he go by, his right Name, or any particular Name?

Dr. *Harder.* In the first beginning I gave him no Name, but said he to me, If any body ask you about me, I would not be known; for if they know that I lie privately thus, they will think I ail some ill Distemper, therefore I would have you call me by the Name of *Carlo Cuski.*

Mr. *Williams.* Were you with him, pray Sir, upon the *Sunday* Morning that Mr. *Thynn* was murdered?

Dr. *Harder.* I cannot certainly tell, but I was with him in the Afternoon.

Sir *Fr. Winn.* Pray call your self to mind, Sir.

Dr. *Harder.* I cannot certainly tell.

Sir *Fr. Winn.* What time were you with him in the Evening?

Dr. *Harder.* At nine a Clock at Night, or thereabouts.

Mr. *Williams.* Did you receive any Letter from Captain *Vratz* at any time?

Dr. *Harder.* I did upon *Saturday* morning, the *Saturday* before Mr. *Thynn* was murdered.

Sir *Fr. Winn.* Have you that Letter about you?

Dr. *Harder.* No.

Sir *Fr. Winn.* What was in the Letter?

Dr. *Harder.* He desired me to go to the Count, who had a desire to speak with me. I came there, and had some speech with him about his Indisposition. I told him he had better stay till next day before he took Physick, because it was cold Weather. And after that went with the *Polander* to my Lodging, and the Captain's man came in, and then said, here is a man that will direct you to Captain *Vratz*'s Lodging; which I did not know.

Mr. *Williams.* Look you, Sir, you say you went to the Count, did you shew the Count that Letter from Captain *Vratz*, or no?

Dr. *Harder.* The Count saw it.

Mr. *Williams.* Then hear a little, When was it you shew'd the Letter to the Count? Was it *Saturday* or *Sunday*?

Dr. *Harder.* It was *Saturday.*

Mr. *Williams.* Now, was the *Polander* then in the Count's Lodgings, or no?

Dr. *Harder.* Yes, he was.

Mr. *Williams.* Was there any discourse about him then?

Dr. *Harder.* I had never seen him in my life.

Mr. *Williams.* But was there any with the Count?

Dr. *Harder.* No, not at all.

Sir *Fr. Winn.* Then, upon your Oath I ask you once more, Was the *Polander* ever in Company with you and my Lord, at any time?

Dr. *Harder.* No.

Sir *Fr. Winn.* Upon the *Sunday*, upon your Oath?

Dr. *Harder.* No.

Sir *Fr. Winn.* Nor the *Saturday* evening?

Dr. *Harder.* No, I have not seen him since that morning when the Captain's man took him along with him to his Master.

Mr. *Williams.* Pray how came the *Polander* into your company on *Saturday* morning?

Dr. *Harder.* I had him from my Lord's that morning.

Mr. *Williams.* Then my Lord and the *Polander* were together?

Dr. *Harder.* No, they were not together.

Mr. *Williams.* Was the *Polander* in my Lord's Lodgings?

Dr. *Harder.* Yes, the *Polander* was below stairs.

Mr. *Williams.* And did you take him from the Lodging?

Dr. *Harder.* Yes, I did.

Mr. *Williams.* How long did he continue with you?

Dr. *Harder.* Not at all, I went home with him.

Mr. *Williams.* Had you no discourse with him?

Dr. *Harder.* No, none at all.

Mr. *Williams.* Where did you part with him?

Dr. *Harder.* I brought him to my House; and when he came in a doors, the Captain's man being there, I told him there was a man would shew him the Captain's Lodgings; and he took him away along with him.

Mr. *Williams.* You say, the Captain's man had the *Polander* from you; pray name that man.

Dr. *Harder.* I cannot tell his Name.

Mr. *Williams.* Was his Name *Berg*?

Dr. *Harder.* I believe it was.

Sir *Fr. Winn.* You say you delivered a Letter from Captain *Vratz* on *Saturday* morning to the Count?

Dr. *Harder.* Yes.

Sir *Fr. Winn.* Did the Count read the Letter, and tell you the Contents of it?

Dr. *Harder.* No, it was not sealed.

Sir *Fr. Winn.* Did not you know the Contents of it then?

Dr. *Harder.* No.

Sir *Fr. Winn.* Pray, when you delivered the Letter from Captain *Vratz* to the Count, what did the Count say to you?

Dr. *Harder.* The Letter was not written to the Count, but it was writ to me.

Mr. *Williams.* What was the reason that you shewed it to him then?

Dr. *Harder.* I received a Letter from Captain *Vratz*, that the Count desired to speak with me; and afterwards I was desired to direct this man, the *Polander*, to Captain *Vratz*; and so I directed him to Captain *Vratz*, and nothing more I know.

Sir *Fr. Winn.* Well, Sir, one thing more and I have done with you, for you will not I see give a reasonable Answer; pray, when the Polander came along with you from the Count's, did you observe he had any thing about him?

Dr. *Harder.* He had a great Campaign Coat.

Sir *Fr. Winn.* Did he seem to have any thing under it?

Dr. *Harder.* He had a Portmantle under it, I think, or some such thing.

Mr. *Craven.* My Lord, the Count desires to ask him some Questions.

L. C. J. Let him ask what Questions he will.

Mr. *Cra-*

Mr. *Craven.* My Lord, he asks him whether he does not remember, when he first came to Town, he had not his Body full of Spots?

Dr. *Harder.* Yes, my Lord, when he came from *Tangier*, he had spots over all his Breast; and it was feared they might get up higher towards his Neck, and indanger him very much.

Mr. *Craven.* He says, If my Lord pleases, he will shew it openly.

L. C. J. No, there is no need of that Doctor. Did you give him Physick for that?

Dr. *Harder.* Yes, for that I did administer Physick to him.

Mr. *Craven.* He says, my Lord, he over-heated himself in riding to *Tangier*, thinking to do the King and the Nation Service, and the Heat broke out in spots over his Breast.

L. C. J. The Doctor knows nothing of that.

Mr. *Craven.* He asks whether the Doctor was not desired by him to cure him; whether he did not tell him he would cure him of those Spots?

Dr. *Harder.* He desired me to administer Physick unto him.

Mr. *Craven.* He says he went to *Strasburgh*, and when he came back, he was in the same condition he was in before; and he asks whether the Doctor did not undertake to cure him?

Dr. *Harder.* Yes, I did administer Physick unto him; and this my own man can testify and be witness of; because my Lord bid me take care that he might be private, for he would not have it known that he did take Physick; but I told my man, said I, 'tis my Lord *Coningsmark*, and therefore pray take care of him, and see that the Physick be made very well up.

L. C. J. You seem to intimate, as if he lay private to take Physick, pray let me ask you this Question, Did you give him Physick all this time?

Dr. *Harder.* Not always purging Physick, but some sort of Physick all the time?

L. C. J. What every night and morning?

Dr. *Harder.* Yes, every day.

Mr. *Craven.* The Count desires to ask him where he was that unhappy day this Business was done?

Dr. *Harder.* I found him that day ill, lying down upon the Bed, I asked him how his Physick had worked; he told me he was afraid he had got some cold; and indeed I found him very much disordered, and I went home and fetched him some Physick to take that night.

L. C. J. By the Oath you have taken, was there any other occasion, or had you any other discourse with him, when you came on the *Sunday* night but concerning his Physick?

Dr. *Harder.* My Lord, I will tell you the Truth; I never heard the Count speak any word in my life, that he had any concern, or design of any quarrel at all, nor any discourse, but about the administration of his Physick.

L. C. J. Let me ask you this Question, for they desire it here, What was the occasion? And whether you know the occasion, why my Lord altered his Lodgings so often?

Dr. *Harder.* The first occasion was this, Because it was in the *Hay-market*; and his Man said it would be quickly known if he did continue there; so he would take another Lodging, which was in *Ruperts-Street*, and there he lodged three days; but the Chimney did so smoke, that my Lord could not stay, because he could have no Fire in his Chamber, and the weather was very cold, for it did snow, and therefore I told my Lord, it was not so proper for taking of Physick: Thereupon he desired me to take him another Lodging in *Queen street*, which I did look about for, but it was not ready, so he had a Lodging taken for him in St. *Martins lane*, where he lodged till he went away.

Mr. *Williams.* Pray, Sir, the Physick that you gave the Count, did it require his keeping within doors? might not he walk abroad with it, upon your Oath?

Dr. *Harder.* It did require him to keep in.

Mr. *Williams.* Pray then, how comes it to pass that the Count so suddenly could go by Water to *Gravesend*?

Dr. *Harder.* I do not know what was done afterwards.

Sir *Fr. Winn.* I would ask you one Question, and I would fain have you give me a fair answer to it, What became of the Letter that Capt. *Vratz* writ to you, and you shewed it to the Count?

Dr. *Harder.* It remained there upon the Table.

Sir *Fr. Winn.* Did not you keep your own Letter?

Dr. *Harder.* It was not of any Concern.

Sir *Fr. Winn* If the Letter were written to you, it is not so long since, but you can tell us the Contents of it; pray what were the Contents?

L. C. J. Can you remember what were the Contents?

Dr. *Harder.* He desired me to go to Count *Coningsmark*, who would speak with me, and that I would give his man an Answer when I came from him.

Sir *Fra. Winn.* But what were you to go to the Count to do?

Dr. *Harder.* Nothing, but the Count discoursed to me about his own Body and Indisposition.

Sir *Fr. Winn.* But Capt. *Vratz* was no Physician; why should he send you a Letter to talk about Physick?

Dr. *Harder.* It was nothing but my Lord would speak with me.

Mr. *Williams.* We need not trouble our selves with this Fellow, he confesses he found the *Polander* in the Count's House.

Sir *Fr. Withins.* Pray, Sir, let me ask you, Who was with the Count on *Sunday* night?

Dr. *Harder.* Mr. *Hanson* was there, I think.

Sir *Fr. Withins.* Who else?

Dr. *Harder.* The Captain came in, and went out again.

Sir *Fr. Winn.* What time of Night was it that *Vratz* came in to the Count?

Dr. *Harder.* It was at the same time that I was with him.

Sir *Fr. Winn.* That he swears to be about nine a Clock; Was it after Mr. *Thynn* was killed?

Dr. *Harder.* We had not heard it.

Sir *Fr. Winn.* Sir, was it nine of the Clock?

Dr. *Harder.* Yes, it was.

Mr. *Williams.* You say you found the *Polander* at the Count's Lodgings?

Dr. *Harder.* Yes, upon *Saturday* morning.

Mr. *Williams.* Then he came along with you from the Count's Lodgings?

Dr. *Harder.* Yes, to my House.

Mr. *Williams.* And you parted with him there?

Dr. *Harder.* Yes, the Captain's man took him away with him.

Mr. *Williams.* That was *Berg*, wa'nt it?

Dr. *Harder.* Yes.

Then this Evidence was interpreted to the Jury.

Mr. *Craven.* He desires the Jury should know what the Doctor said about his Sickness.

L. C. J. Let it be repeated to them.

Mr. *Craven.* He desires to know whether he may not speak it in French himself?

L. C. J. No, the Interpreter must do it; (*which was done.*) My Lord, would you ask any more Questions of the Doctor?

Count Con. No more Questions but them I have asked.

Sir *Fr. Winn.* Call *Thomas Howgood.*

(*who was sworn.*)

Mr. *Williams.* Pray, did you sell any Sword to the Count?

Mr. *Howgood.* I sold a Sword to the Governor, a broad Horseman's Sword.

Mr. *Williams.* When was this?

Mr. *Howgood.* On *Saturday* was fortnight.

Mr. *Williams.* What time was it that he bespoke it?

Mr. *Howgood.* He bespoke it half an hour after six at night.

Mr. *Williams.* What did he say to you when he bought it?

Mr. *Howgood.* He said he would call for it about eight a Clock at night, when he came from the Play.

Mr. *Williams.* What kind of Sword was it?

Mr. *Howgood.* An Horseman's Sword, as broad as two fingers, such as the Gentlemen of the Guards wear.

Sir *Fr. Winn.* When he came for the Sword, what said he?

Mr. *Howgood.* He was angry it was not done, and I told him that I would send it to him quickly.

Sir *Fr. Winn.* Where was it sent?

Mr. *Howgood.* To the Governor's Lodgings at the Academy.

Mr. *Williams.* Now, my Lord, we will call several Persons that were privy to the concealing of this Gentleman, that can give you a better account, *Richard Hays* and *Robert French.*

(*Robert French* appeared, and was sworn.)

Sir *Fr. Winn.* Pray, will you tell my Lord what you know of the Count's concealing himself and changing his Habit.

Mr. *French.* I never saw him, my Lord, before I came here in Court, but it seems he did lodge in my House three or four days.

Sir *Fr. Winn.* How long is it since?

Mr. *French.* Between three weeks and a month ago, just ten days before the Murder.

Sir *Fr. Winn.* What Name did he go by then?

Mr. *French.* I did not know his Name.

Sir *Fr. Winn.* Who used to resort to him at that time?

L. C. J. You say, Sir, you saw him not, what company did come to him?

Mr. *French.* I did not see him indeed.

Sir *Fr. Winn.* Pray did Capt. *Vratz* come to him to your House?

Mr. *French.* He lodged with him all the time.

Sir. *Fr. Winn.* You say you know Capt. *Vratz* was there?

Mr. *French.* Yes.

Mr. *Williams.* Did Dr. *Harder* use to come to him?

Mr. *French.* Yes, several times a day.

Mr. *Williams.* What Name did he enquire for him by?

Mr. *French.* The Doctor took the Lodging, and it was for a stranger, I heard no Name at all.

Interpreter. My Lord desires to know, whether you did not suspect he took Physick in the House?

Mr. *French.* I suppose the Doctor did give you an account of that, I don't know that he did.

Interpret. Did not your Maid know of any such thing?

Mr. *French.* My Maid is here, she will give you an account.

Sir *Fr. Winn.* Call *Anne Prince*; (*who was sworn.*) Pray do you acquaint my Lord what you know of Count *Coningsmark*; whether ever you saw him at your Master's House in the *Hay-market*?

Prince. Yes, he lodged there.

Mr. *Williams.* When?

Prince. He came thither last *Fryday* was a month.

Mr. *Williams.* How long did he stay there?

Prince. Till *Wednesday.*

Mr. *Williams.* At that time who used to frequent his Company?

Prince. I know no Body but the Doctor that used to come to him.

Mr. *Williams.* What Name did he go by?

Prince. No Name at all as I know of; they did not ask for him by any Name.

Mr. *Williams.* Did the Captain use to come to him?

L. C. J. Her Master says he did lie there.

Prince. Yes, he used to lodge there.

Mr. *Williams.* Did the Captain give him any Physick?

L. C. J. No, but the Doctor did.

Sir *Fr. Winn.* He only asks a merry Question.

L. C. J. But we are now upon the Life and Death of a man, pray let us have those Questions asked that are serious, not such light things as are permitted in ordinary Cases.

Sir *Fr. Winn.* Now my Lord, we will call *Francis Watts.*

Mr. *Craven.* Maid, my Lord asks, whether he did not take a Vomit in your House?

Prince. Not that I know of.

Then Francis Watts *was sworn.*

L. Ch. J. How old is the Child?

Fr. Watts. Fifteen Years old last *Christmass.*

L. Ch. Baron. Ask him whether he understands what an Oath is?

Mr. *Thynn.* He was sworn before the King and Council.

L. Ch. Baron. If he were sworn before the Council, he may give Evidence here sure.

Sir *Fr. Winn.* Were you at the Count's Service at any time?

Watts. Yes.

Sir *Fr. Winn.* How long?

Watts. I was with him eleven days; I came to him upon the *Fryday.*

Sir *Fr. Winn.* How long was it before the Death of Mr. *Thynn*?

Watts. I think it was ten days before the Death of Mr. *Thynn.*

Sir *Fr. Winn.* What was your Employment with him?

Watts

Watts. His Boy to wait upon him.

Sir *Fr. Winn.* Did you lye in the ſame Lodging?

Watts. No, at my Father's.

Sir *Fr. Winn.* What was the Agreement between your Father and the Count?

Watts. Six pence a Day, and my Diet.

Sir. *Fr. Winn.* What Company did you obſerve came to the Count's Lodgings?

Watts. That Gentleman there in the black Perriwig.

Sir *Fr. Winn.* Was he often with your Maſter?

Watts. Yes, every Day.

Sir. *Fr. Winn.* How many Lodgings had he while you were with him?

Watts. Three: One in the *Hay-market*, and one in *Ruperts-ſtreet*, and then the laſt in St. *Martins*.

Mr. *Williams.* Thus Child, Do you remember the time of killing Mr. *Thynn*?

Watts. Yes.

Mr. *Williams.* Were you in your Maſter's Service then?

Watts. Yes, I was.

Mr. *Williams.* Who was in your Maſter's Company that Morning before Mr. *Thynn* was killed?

Watts. I came up, as I uſed to do in the morning, to my Maſter, and he asked me what was the matter with the buſtle in the Street? and I told him ſome body was taken upon ſuſpicion for killing Eſq, *Thynn*.

Sir *Fra. Winn.* That was on *Monday* morning; but the *Sunday* morning before, what Company did you obſerve there then?

Watts. I cannot tell any thing exactly of the *Sunday* morning.

Sir *Fra. Winn.* Was Captain *Vratz* there?

Watts. I can't exactly remember.

Sir. *Fr. Winn.* What time in the Evening was it reported Mr. *Thynn* was killed?

Watts. About eight a Clock.

Sir *Fran. Winn.* Can you tell who brought the firſt News?

Watts. One of my Lady *Seymour*'s Maids, who was telling the People of it below.

Sir *Fran. Winn.* Did you obſerve any body come to your Maſter's Lodgings afterwards?

Watts. Yes.

Sir *Fran. Winn.* Pray who came?

Watts. That Gentleman in the black Perriwigg.

Mr. *Williams.* Pray in what Habit was he? And how came he in?

Watts. He came in a great Coat; I can't tell whether it was Cloath or Camblet.

Mr. *Williams.* And what, did he ſpeak to any Body, or go ſtrait up?

Watts. No, he ſpoke to no Body, but went ſtrait up Stairs.

Mr. *Williams.* Did he go up to your Maſter's Lodgings?

Watts. Yes, I believe ſo, but I ſtay'd below in the Shop.

Mr. *Williams.* How long did you ſtay in the Shop?

Watts. I ſtay'd there about half an Hour.

Mr. *Williams.* Did you leave him there?

Watts. Yes, I did.

Mr. *Williams.* Did he continue there all the time that you were in the Houſe?

Watts. Yes.

Mr. *Williams.* What time did you go away?

Watts. About three quarters of an Hour after that Gentleman came in.

Sir *Fr. Withins.* Do you remember you had any diſcourſe with the Count, about riding on *Sundays*?

Watts. He asked me on *Sunday* in the Forenoon, whether People were ſuffered to ride about the Streets on Horſeback on *Sundays*.

Sir *Fr. Winn.* This was that *Sunday* Morning, was it?

Watts. Yes: he asked if they might be ſuffered to ride about the Streets on *Sunday*? I told him, yes, before Sermon time, and after Sermon time.

Sir *Fr. Winn.* About what time of the Day was it that he had this diſcourſe?

Watts. About ten or eleven a Clock.

Sir *Fr. Winn.* Are you ſure it was *Sunday*?

Watts. Yes.

Sir *Fr. Winn.* Then I ask you another Queſtion; Upon *Sunday* Morning, or any other time, do you remember that the *Polander* was with the *Count*, your Maſter?

Watts. He came in on the *Saturday* Morning.

Mr. *Williams.* Was he in the Company or Preſence of the *Count*?

Watts. I was above Stairs when he came in.

Sir *Fr. Winn.* What do you know of any Sword that was delivered to him?

Watts. Upon the *Sunday* Morning there was a Sword brought to my Maſter's Lodgings, and my Maſter's Man took it of me, and carried it up Stairs, and this Man, the *Polander*, afterwards had it below Stairs.

Mr. *Williams.* When was this Sword brought to your Maſter's Houſe?

Watts. It was on the *Sunday* Morning.

Mr. *Williams.* What, the Cutler brought the Sword?

Watts. No, it was ſent by a Porter from Mr. *Hanſon*.

Mr. *Williams.* What Room was it carryed into when it was brought?

Watts. I think I did not carry it up: Yes truly, now I remember, I did, and delivered it to my Maſter.

Mr. *Williams.* Pray what did the Count ſay to you?

Watts. I asked him if there needed an Anſwer to the Note I carryed with it, and he ſaid no.

Mr. *Williams.* To whom was the Sword delivered afterwards?

Watts. It was brought down, and afterwards this *Polander* had it.

Mr. *Williams.* That Man there?

Watts. Yes.

Mr. *Williams.* You ſay that the Sword was given to the *Polander*: Pray ſpeak that the Jury may hear. Who brought down the Sword?

Watts. I ſaw it in the *Polander*'s keeping when it was below, but I cannot ſay who brought it down.

Sir *Fr. Winn.* Where did the *Polander* dine on *Saturday*?

Watts. He dined with my Maſter's Man and I on *Saturday*.

Sir *Fr. Winn.* Where did he lye that Night? At whoſe Chamber?

Watts. At our Lodgings in the Garret, in my Maſter's Man's Chamber.

Sir *Fr. Winn.* What Day was this, do you ſay?

Watts. Saturday.

Mr. *Williams.* When the *Polander* had the Sword, do you remember any Boots that he had under his Arm?

Watts.

Watts. Yes, he had Boots under his Arm.

Mr. *Williams.* And he had the Sword with him when he went away?

Watts. Yes.

Mr. *Williams.* Had he any Coat?

Watts. Yes, a new Coat.

Mr. *Williams.* Well, I ask you once more, what time of Day was it that he went away with the Sword and the Boots?

Watts. It was in the Fore-noon.

Mr. *Williams.* What Day of the Week?

Watts. Sunday Morning.

L. C. J. Ay, but your Doctor that you examin'd before, says, the *Polander* went away with him, and he was not there on *Sunday* Morning.

Sir *Fr. Winn.* It is true, my Lord, it was too tender a Point for the Doctor, he lyes under some Suspicion; and 'tis *proximus ardet* with him.

L. C. J. Well, call him again: Look you, Doctor, you were asked before, and now you are asked again, were you at Count *Coningsmark*'s Lodgings on *Sunday* Morning?

Dr. *Harder.* I cannot certainly tell.

L. C. J. When did you see the *Polander* at the Count's Lodgings, and whether was it on *Sunday* Morning?

Dr. *Harder.* On *Sunday* Morning I did not see him. The only time was when I fetched him from my Lord's, I have not seen him before nor since.

L. C. J. Then call up the Boy again. Where did the *Polander* dine on *Saturday*?

Watts. He dined with me and my Master's Man.

L. C. J. Where?

Watts. Below in the Kitchin of our Lodgings.

L. C. J. Where lay the *Polander* that Night?

Watts. He lay in our Garret.

L. C. J. When went he from your Master's Lodgings?

Watts. On *Sunday* Morning.

Mr. *Williams.* Had he an old Coat, or a new Coat upon him?

Watts. He had a new Coat.

L. C. J. Was the Doctor with him?

Watts. Yes, the Doctor went away with him.

Dr. *Harder.* I have not seen the *Polander* above once in my Life.

Sir *Fr. Winn.* But were you at the Count's on *Sunday* Morning, or no, I ask you?

Dr. *Harder.* I do not know whether it was *Saturday* or *Sunday*.

L. C. J. But when you fetched him away, was it *Saturday* or *Sunday* Morning?

Dr. *Harder.* My Lord, I can't very well remember.

L. C. J. Had the *Polander* a Sword when you went away with him?

Dr. *Harder.* I cannot positively say, but (as Travellers commonly have) he might have a Sword.

Sir *Fr. Winn.* Now come to your self, and deal honestly, for you are upon your Oath; I ask you, Friend, this, You say he might have a Sword, do you remember a pair of Boots?

Dr. *Harder.* No, I do not.

Sir *Fra. Winn.* Do you remember the Coat he had uppermost?

Dr. *Harder.* Yes he had something under his Coat, but I don't know it was Boots.

L. C. Baron. Had he a Buff-Coat under his Campaign?

Watts. Yes.

Sir *Fran. Withins.* Let me ask you one Question, young Man, Do you remember you saw any Musquetoon in your Master's Lodging?

Watts. I did see a Gun there.

Sir *Fra. Withins.* When was that?

Watts. I saw it upon *Saturday*.

Mr. *Williams.* The Musquetoon or Gun that was in your Master's Lodgings, was it that which was bought by the *Polander*, or no?

Watts. I can't tell that.

Mr. *Williams.* Was it a long Piece or a short Piece?

Watts. It was not a short Piece.

L. C. J. Did the *Polander* take it away with him?

Watts. No, not that I know of.

Mr. *Williams.* Now, young Man, I would ask you as to *Monday* Morning: About what time on *Monday* Morning did you come to your Master's Lodgings?

Watts. It was between seven and eight a Clock, a little after seven.

Mr. *Williams.* What condition was he in? Was he in Bed, or up?

Watts. He was up.

Mr. *Williams.* What was he doing? Was he packing up?

Watts. Not that I see.

Sir *Fr. Winn.* It was when he asked you about the Hubbub in the Street; pray tell what he said to you.

Watts. He asked me what the matter was with the bustle in the Street, and I told him that some were taken that had kill'd Esq; *Thynn*; and I told him all the Story as near as I could: He asked me when Esq; *Thynn* was murdered? I told him the Night before, but I did not mind any thing that was done: But as I went down Stairs, I met with a Stranger, and he went up Stairs, but I never saw my Master after, till he was taken.

Sir *Fr. Winn.* Did he ask you what Mr. *Thynn* was?

Watts. Yes, and I told him I heard he was a Man of a great Estate, and well-beloved, and that the Duke of *Monmouth* was in the Coach but a little before, and if he had not gone out, he had been kill'd too.

Sir *Fr. Winn.* What said the Count to you, when you told him Mr. *Thynn* was well-beloved?

Watts. He said nothing.

Sir *Fr. Winn.* Can you remember who it was came to your Master then?

Watts. I know the Man if I see him again.

Sir *Fr. Winn.* Do you know his Name?

Watts. No, I do not know his Name.

Mr. *Williams.* Were any of your Master's Goods carried away then?

Watts. Yes.

Mr. *Williams.* What Goods were carried away then?

Watts. Two Portmantles.

Mr. *Williams.* Who carried them away?

Watts. My Father carried them away.

Mr. *Williams.* What time was it?

Watts. Between eight and nine of the Clock.

Sir *Fr. Winn.* It was time to be gone. How parted you and your Master?

Watts. The Stranger did come in, and I never saw my Master afterwards.

Sir *Fr. Winn.* What, did your Master take no leave, nor say any thing to you?

Watts. No.

Sir

Sir *Fr. Winn.* What kind of Perriwig had he when he went away?

Watts. He had a black Perriwig.

Sir *Fr. Winn.* What Cloaths?

Watts. A light coloured Suit, with gold Buttons.

L. C. Baron. Will the Count ask the Boy any Queſtions?

Mr. *Craven.* Did you ſee the Gun in the Room after the *Polander* was gone?

Watts. Yes.

L. C. J. 'Tis very plain, that this Gun was none of the Gun that did this Miſchief, but the Gun the *Polander* brought over from beyond Sea.

Sir. *Fr. Winn.* Call the Boy's Father, *Thomas Watts* (who was ſworn) How long have you known the Count?

T. Watts. I do not know him but as I have ſeen him.

Sir *Fr. Winn.* Were you employed to carry any thing for him?

T. Watts. Two or three times I was.

Mr. *Williams.* When were you laſt employed by him?

T. Watts. The Morrow after the Murder was committed.

Mr. *Williams.* What Time in the morning was it?

T. Watts. It was between 8 and 9 of the Clock in the morning.

Mr. *Williams.* What was it you did for him?

T. Watts. I carried a Portmantle, and a Portmantle Trunck, and ſome other things.

Mr. *Williams.* Where were you directed to deliver theſe?

T. Watts. His Man told me they were to go to *Windſor.*

Mr. *Williams.* Well, tell the whole Story.

T. Watts. He bid me carry them to *Charing-Croſs*, that they might be put into the Coach there. But when he came to *Charing-Croſs*, a Coach-man and he had ſome Words, and he bid him open his Boot, and then he took the things from me, and put them into the Coach.

L. C. J. Who was it that told you they were to go to *Windſor*?

T. Watts. It was his Man.

Sir *Fr. Winn.* I would ask you, Sir, when was the firſt time you knew the Count?

T. Watts. It was ten or eleven days before.

Sir *Fr. Winn.* What was the occaſion that brought you acquainted with him?

T. Watts. I was Dr. *Frederick*'s Porter, and he ſent me to carry ſome things to the Count.

Mr. *Williams.* Was it your Son that waited upon him?

T. Watts. Yes. For when I brought the things, they ſaid they had forgot to give me a Sword which I was to carry with the things; and I ſaid, that I had a Boy that I would ſend, and I did ſo, and ſo they took a Liking to the Boy.

Mr. *Williams.* What was the Agreement for your Son's Service?

T. Watts. Six pence a Day, and his Victuals.

Sir *Fr. Winn.* What was the man's name (as you remember) that gave you the things to carry to the Coach, which were ſaid to go *Windſor?*

T. Watts. I can't tell his Name.

Mr. *Williams.* He that pinched and puſhed you back, and took the things from you, and put them into the Coach?

L. C. Juſtice. Did you ſee the Count that Morning?

T. Watts. No, I did not ſee him.

Mr. *Williams.* Have you been laboured and ſought to by any body to conceal your Boy, that he ſhould not be brought at this Tryal?

T. Watts. No, Sir.

Mr. *Williams.* Had you no endeavours uſed with you about it?

T. Watts. No.

Mr. *Williams.* Did no body ſpeak of any ſuch thing to you?

T. Watts. No.

Mr. *Williams.* Did any Merchant or any body ſend to you about this Boy, to take him into Service?

T. Watts. There was a Merchant that would have helped the Boy to a place on *Saturday* laſt, but the Perſons that would have procured it, were about it a good while ago.

Mr. *Williams.* Call *Derick Raynes*, and *Richard Chappel.* (*who were Sworn, and* Raynes *ſtood up.*)

When did you ſee the *Count*, the Priſoner at the Bar?

Raynes. On *Monday* in the Afternoon.

Mr. *Williams.* What time was it in the Afternoon?

Raynes. In the Evening.

Mr. *Williams.* Where was it?

Raynes. At my Houſe.

Mr. *Williams.* Where is that?

Raynes. At *Rotherith.*

Mr. *Williams.* How came the Count to your Houſe?

Raynes. I know not, I was not at home when he came.

Mr. *Williams.* Pray when you ſaw him, had he his own Hair or a Perriwig, or how was he habited?

Raynes. He had black Hair then.

Mr. *Williams.* How long did he continue at your Houſe?

Raynes. From *Monday* till *Thurſday* Morning.

Mr. *Williams.* Was he privately there or publickly?

Raynes. He walked up and down the Houſe.

Sir *Fr. Winn.* What Country-man are you?

Raynes. I am a *Sweed.*

Sir *Fr. Winn.* What became of him after *Thurſday*?

Raynes. On *Thurſday* Morning he took Water and went to *Deptford.*

Sir *Fr. Winn.* What way did he go, by Boat, or how?

Raynes. A Waterman carried him.

Mr. *Williams.* Pray what did the Count ſay to you about his coming in a diſguiſe to your Houſe?

Raynes. I knew nothing at all. I came late home, and when I came to know of him what he was, then he told me that he was Count *Coningſmark.*

Mr. *Williams.* What did he ſay to you when you diſcovered that he was the Count? What did he tell you of his buſineſs?

Raynes. He ſaid nothing; but that he was deſirous to go to *Graveſend.*

Sir *Fr. Winn.* Upon your Oath, Sir, did you furniſh him with any Cloaths?

Raynes. Yes, I lent him a Coat.

Sir *Fr. Winn.* What ſay you to a black Suit?

Raynes. The black Suit did not belong to me.

Sir *Fr. Winn.* What ſay you to a Velvet Cap?

Raynes.

Raynes. I help'd him to a Coat, Stockings, and Shoes.

Sir *Fr. Winn.* Then I ask you, what did he declare to you?

Raynes. Why, he did desire to have those Cloaths.

Sir *Fr. Winn.* You are an honest man, tell the truth.

Raynes. He declared nothing to me.

Sir *Fr. Winn.* When you dressed him, why did he put on that habit?

Raynes. He thought his own Cloaths were too cold to go upon the water.

Sir *Fr. Winn.* Had he no Cloaths before?

Raynes. Yes, he had.

Mr. *Williams.* You had the warmer Coat, had you?

Sir *Fr. Winn.* Did he desire you to let him have your Cloaths, because he was in trouble?

Raynes. He desired a Coat of me, and a pair of Stockings to keep his Legs warm, and when he had got them, his own Shoes would not come on, so I lent him a pair of Shoes.

Sir *Fr. Winn.* I do ask you, did he declare the Reason why he would have those Cloaths, was, because he would not be known?

Raynes. He said he was afraid of coming into trouble.

Sir *Fr. Winn.* Why were you unwilling to tell this?

Raynes. Assoon as I came to know he was the man, I told him he should not stay in my House.

Sir *Fr. Winn.* Did you lend him those Cloaths, or sell them?

Raynes. I lent him them.

Sir *Fr. Winn.* Had you them again?

Raynes. No, I had not.

Sir *Fr. Winn.* Are you paid for them or no?

Raynes. No, my Ship lies at the Key, and I came home late in the Evening, and found him there.

Sir *Fr. Winn.* Set up *Richard Chappel.*

Mr. *Williams.* When did you first see that Gentleman?

Chappel. On *Thursday* Morning at Ten of the Clock.

Mr. *Williams.* Where?

Chappel. At *Rotherith.*

Mr. *Williams.* How came you to him? Who brought you?

Chappel. That Man.

Mr. *Williams.* What were you to do with him?

Chappel. To carry him to *Gravesend.*

Mr. *Williams.* Do you row in a pair of Oars, or a Sculler?

Chappel. A Sculler.

Mr. *Williams.* Whither did you carry the Count that day?

Chappel. To *Deptford.*

Mr. *Williams.* Whither the next day?

Chappel. To *Greenwich.*

Mr. *Williams.* And whither then?

Chappel. To *Greenhithe,* and then the next day to *Gravesend.*

Mr. *Williams.* Was he in the same Cloaths all the while?

Chappel. Yes, all the while.

L. C. Baron. Were you hired to wait upon him all that time?

Chappel. Yes, I was to have 5 *s.* every 24 hours.

L. C. Baron. Was he alone?

Chappel. No, this man was with him.

L. C. J. Did he go in the Sculler with him?

Chappel. Yes, to *Deptford.*

Mr. *Williams.* Well, now we will call the Gentleman that seized him at the Water-side at *Gravesend.*

Sir *Fr. Winn.* What did the Count call himself? What profession did he tell you he was of?

Chappel. He told me he was a Merchant.

Sir *Fr. Winn.* Did he say he was a Jeweller upon your Oath?

Chappel. Yes, he said he had bought Jewels.

Sir *Fr. Winn.* Where is Mr. *Gibbons,* and Mr *John Kid.* [*Who were sworn, and Mr.* Kid *stood up.*

Mr. *Williams.* Mr. *Kid,* pray Sir, will you acquaint my Lord and the Jury, in what Condition you found the Count at *Gravesend.* Tell the whole Story, and speak aloud, that all may hear you.

Mr. *Kid.* I had some Information upon *Friday* Night of him.

Mr. *Williams.* Of whom, and what?

Mr. *Kid.* Of the Count where he was. So I made it my Business to inquire into it. On *Saturday* in the Afternoon a Gentleman came to me, and gave me certain Information where he thought that Gentleman the Count was. This Gentleman coming to me said, Mr. *Thynn* is a stranger to me, but, said he, I would not have Mr. *Thynn*'s Blood lie at my door. This same person who is put out in the *Gazette,* I believe, is at a neighbour's house of mine. Says he, I desire you to be private in it, because it may do you a Prejudice; so we went into a Coach at *Charing-Cross* to go to a Justice of Peace; I did not know where Sir *John Reresby* lived, but inquired of Mr. *Gibbons,* who told me, but he was not at home, and Mr. *Bridgman* was not at home; so we went to the Recorder, and there we had a Warrant, and then I came by water to *Rotherith,* and this same *Raynes* that was Examined, and his Wife where he lay, were gone to *Greenwich* to carry his Cloaths, a grey Suit, and other Cloaths that he had left. So going down to *Greenwich* we called every Boat that was upon the River aboard of us, to know whence they came. And we had taken her Sister along with us, and she called out her Sister's Name, *Mall Raynes,* and her Brother's Name, *Derick Raynes,* and so at last we got the Boat wherein they were, on board us. And we asked the man, what he had done with the Gentleman that lay at his House? He declared, he was gone away he did not know whither. So I went back again to this Gentleman that gave me this first Information, who did go to him as a Neighbour, to know whither he was gone, and where he was to be found, and where he would land. So he declared the Particulars, That if we missed him that Night, we should have him in the *Hope* upon *Monday* Morning, upon a Vessel that was to be cleared on *Monday* Morning. So upon *Sunday* Night coming to *Gravesend* about 8 or 9 a Clock, or thereabouts, there he landed. There were 13 or 14 *Swedes* at the same House where he was to land. So we thought it convenient to take him at his first landing, for fear of further danger. So I staid at the *Red-Lyon* Back-stairs, and he landed at the Fore-stairs where the Watermen were. As soon as he was laid hold of, I came to him; said I, your Lordship shall not want for any thing that is convenient. He desired to know, whether I knew him? I told him, yes; and that his Name was Count *Coningsmark.*

Coning ſmark. That is my Name, ſays he; I do not deny it. So the Mayor came and the *Cuſtom-Houſe* Officers ſearched him, and found nothing at all of any Arms about him. He deſired he might be uſed like a Gentleman, and ſo he was, for there was no abuſe given to him, as I know of. Coming up the River, the moſt of my diſcourſe was about Martial Affairs; a Serjeant that had the Command of a File of Muſqueteers, which the Deputy-Governour ſent to guard the Count to *Whitehall*, a Gentleman ſitting there by me was asking me concerning Mr. *Thynn*'s Murder; I told him, that I was at *Newgate* on *Friday*, and there I ſaw thoſe that had done *that* barbarous Fact. With that, my Lord asked, what Lodgings there were in *Newgate*. And whether the Captain had a good Lodging? I told him a very good one. He asked me, whether he confeſſed any thing? I told him he had confeſſed ſome particulars; And ſaid I, 'tis the moſt barbarous thing that ever was done. Certainly, ſays my Lord, this Mr. *Thynn* muſt have Correſpondence and Commerce with ſome Lady that this Captain knew, that belonged to the Court, or he would never have done it. As for the *Polander*, I told him, that he had confeſſed, he wept mightily. With that my Lord ſeemed very much concerned, and took up his Cloaths and bit them, and ſat a while up, but was very much diſcompoſed, and then deſired to lie down.

Sir *Fr. Winn.* That was, when you told him, the *Polander* had confeſſed.

Mr. *Kid.* Yes; my Lord was mightily altered in his Countenance.

Sir *Fr. Winn.* Did you at the firſt time that you ſeized him charge him with the Murder?

Mr. *Kid.* No, I did not.

Sir *Fr. Winn.* Was he in a black Perriwig.

Mr. *Kid.* His Cap fell off, and his Perriwig, juſt as I came to him.

Sir *Fr. Winn.* Set up Mr. *Gibbons.* Pray will you tell what paſſed.

Mr. *Gibbons.* My Lord, As ſoon as ever he came to ſhore, I walked by him, and gave him a little kind of a juſtle, and my reaſon was, to ſee whether he had not a black Coat under his Campaign: I walked cloſe to him juſt in this manner, as he walked along, ſo he turns about again, and went down to the Water-ſide, and asked the Watermen, Watermen, Have you ſtowed your Boat? They anſwered, Yes; Then come away ſaid he; ſo ſoon as he came back again, I catched him faſt hold by the Arm, and the firſt word he ſaid to me was, What do you come to rob me? Said I, my Lord, you are my Priſoner, and I told him I was the King's Meſſenger that had waited there ſeveral days for him; and holding of him very hard, whether that was the occaſion of it, or the Watermen that were on the other ſide of him, he dropped down his Sword between his Legs; but when I named his Name he gave a little ſtart and his Perriwig dropped off of his Face. We went up the Street to the Mayor, and the People crowding about us were very rude and very rugged, and he deſired he might be well uſed. We did all we could to keep the People from him; we went up to the Mayor's Houſe, and when we came there, I deſired he might be ſearched, whether he had any Arms; He ſaid, he had none, and there was none.

Sir *Fr. Winn.* When you had the Cuſtody of him, whither did you carry him?

Mr. *Gibbons.* We carried him to the Mayor's Houſe, and after we removed him from his Houſe to an Inn.

Sir *Fr. Winn.* What did you do the next Day?

Mr. *Gibbons.* We ſtaid there about ſome 2 or 3 Hours. After an hour or half an hour's time, near upon an hour, my Lord came to me, and asked me my Name; and he ſaid, the reaſon was, that after his Trouble was over, he would give me thanks for my Civility to him. Captain *Sinkleer*, who ſtood by, gave him my Name before I could, that it was *Gibbons.* Yes, ſaid I, my Name is *Gibbons*, and I belong to the Duke of *Monmouth*: Why, ſays he, the Duke of *Monmouth* has no Command now, and therefore how could I take him by his Order? My Lord, ſaid I, I do not apprehend you by his Order; you have killed a very good Friend of mine, and had not Providence ordered it otherwiſe, you had like to have killed a more particular Friend, and a Maſter: So, my Lord, he ſeemed to be very ſorry at that; but, ſays he, I don't think they would have done any harm to the Duke of *Monmouth.*

Sir *Fr. Winn.* What elſe did he ſay?

Mr. *Gibbons.* I think I have told you all that is Material.

Sir *Fr. Winn.* Were you in the Boat at any time, and gave him any Account of the Man's having Confeſſed; what did he ſay to it?

Mr. *Gibbons.* Sir, I was not there, nor I did not come up in the ſame Boat with him.

Mr. *Williams.* Did he mention any thing about a ſtain to his Blood?

Mr. *Gibbons.* I ask your pardon, he did ſo.

Mr. *Williams.* What did he ſay?

Mr. *Gibbons.* Says he, it is a ſtain upon my Blood; but one good Action in the Wars, or one Lodging upon a Counterſcarp will waſh away all that.

L. C. J. What did he ſay was a ſtain upon his Blood?

Mr. *Gibbons.* My Lord, if you pleaſe, I will tell you. As I ſaid, he asked me my Name, becauſe he would come to give me thanks for my Civility after his Trouble was over; the Captain being quicker than I, told him my Name: Yes, Sir, ſaid I, 'tis *Gibbons*, and I belong to the Duke of *Monmouth*; ſaid he, he has no Command now, how could you come upon his Order? Said I, I do not come upon his Command, but you have killed a very good Friend of mine, and a Country-man, and if Providence had not ordered it otherwiſe, you had killed a more particular Friend of mine, and a Maſter, that I had ſerved many Years; ſaid he, I don't think they would have done the Duke of *Monmouth* any Injury: After that he walked up and down a while, and then ſaid he, 'tis a ſtain upon my Blood; but one good Action in the Wars, or lodging upon a Counterſcarp will waſh away all that. The Mayor was in the Room, and ſeveral others.

Sir *Fr. Winn.* Pray Sir, one thing more, when you did ſpeak to him of Confeſſion, did he ſay any thing to you about Captain *Vratz*?

Mr. *Gibbons.* Sir, he was only asking of me how things were, what the People ſaid, or ſome ſuch thing? I was not forward to tell him at firſt, but afterwards I did tell him, that

the Captain had made a Confeſſion, tho' it was a thing I did not know then. Says he, I do not believe the Captain would confeſs any thing.

L. C. J. Did he ſay ſo?

Mr. *Gibbons.* Yes, he did, to the beſt of my remembrance.

Sir *Fr. Winn.* We have done with our Evidence, my Lord.

L. C. J. My Lord *Coningſmark*, will you ask him any thing?

Count *Coningſmark.* No.

L. C. J. Then the next thing is, You heard the Evidence that is given againſt you. Now you muſt come to your Defence; I will put you in mind of ſome things, my Lord, which things it will concern you to give ſome Account of. It is here laid to your Charge, That you were Acceſſory to this Murder of Mr. *Thynn*; and that you were the Perſon that directed and deſigned it. And theſe Evidences there are againſt you, that you were cognizant of this, and that you were the Perſon that deſigned this: That you came into *England* about a Fortnight or three Weeks before the death of Mr. *Thynn*, that Captain *Vratz*, who was one of them that killed him, came with you, that he lay at your Lodging, that he was conſtantly with you, that you lay *Incognito* there, and private, would not be known what your Name was, that you ſhifted Lodgings from time to time, that *Borosky* the *Polander* came over by your Order, was brought to your Lodging, was provided for there, that he had Cloaths, and he had a Sword provided by your Lordſhip for him, and that there was care taken that it ſhould be an extraordinary good Sword, that you did diſcourſe to Mr. *Hanſon* about your calling Mr. *Thynn* to account, and this much about the time, or a little before the time of his death, and what the Laws of *England* would be in caſe you ſhould call Mr. *Thynn* to account; and particularly you deſired to know what Monſieur *Lienberg*'s Opinion might be concerning it, and eſpecially what in relation to my Lady *Ogle*. And that after all this, Mr. *Borosky* was not only cloathed by you, but was ſent by you to *Vratz*, (that the Doctor ſays) and after *Vratz*, him, that he lay in your Lodging that Night before this evil thing was done, and that after the thing was done, the ſame Night *Vratz* came to your Lodging and was with you, and had private Conference with you, that the next Morning you got up and went away, tho' you had taken Phyſick the Night before, and tho' you your ſelf, nor your Doctor thought you fit to go abroad, and you go away *Incognito*, in a Perriwig, diſguiſed, you direct your Servant to carry your Cloaths one way, while you go another; then you go down to the Water-ſide, and lye private near the River, at a *Swede's* Houſe at *Rotherith*, for ſeveral Days together; you afterwards take great care to conceal your ſelf by changing your Cloaths, and putting your ſelf in a Garb not like your own, and giving out you were a Merchant or a Jeweller, or ſome other Trade; that afterwards you trifled away the time and went two or three Miles, and then ſtruck in upon one ſide of the River, and afterwards on the other ſide of the River, ſuſpiciouſly up and down not to be known, and this, not like your ſelf in any manner, but in a pittiful poor Diſguiſe, and hire a Sculler to carry you, from whom you concealed your ſelf, and ſo all along you trifled away the time till you were taken at *Graveſend*; that afterwards when you were taken, you were inquiſitive about the Captain, whether he did confeſs; that you ſhould likewiſe ſay ſome ſuch ſuſpicious Words as theſe, That you believed thoſe that killed Mr. *Thynn*, had no deſign againſt the Duke of *Monmouth*, that you believed the Captain would not confeſs, that you ſeemed to be concerned when you were told the *Polander* had confeſſed; that afterwards you ſhould ſay, my Lord, this is a ſtain to my Blood; but one good Action in the Wars, or a Lodging upon a Counterſcarp, will take away all this, or waſh it clean. And then, which is alſo teſtified againſt you, that you ſhould ask the Boy that very Morning of the Day the Murder was committed, whether they uſed in *London* here to permit Men to ride up and down on Horſeback upon a *Sunday*? Now theſe things, my Lord, it will import you to give ſome account of.

Sir *N. Johnſon.* My Lord ſays, he deſires he may anſwer all theſe things one after another.

L. C. J. Let him do ſo. And firſt let him anſwer what his Reaſon was to come into *England* in ſuch a manner *Incognito* at this time, and lye concealed when he had been in *England* before, and lived in a mighty good Equipage and Condition?

Mr. *Craven.* My Lord, he ſays that hearing there was a Peace between *Sweedland* and *England*, and *Holland* deſigned, and like to be confirmed ſuddenly againſt the *French*, he came with a deſign to ſerve *England*, and to raiſe a Regiment of Horſe here for the Service of the King of *England*.

Count *Coningſmark.* If any ſuch Peace ſhould be, if any appearance of an Alliance between *England* and *Holland*, and *Sweedland*, I had a deſign to propoſe, if I could have a Regiment.

L. C. J. Why did he come unknown, and in a Diſguiſe?

Sir *N. Johnſon.* Secondly, He ſays, my Lord, the Reaſon of his coming *Incognito* was; becauſe he had a Diſtemper upon his Arms and Breaſt, and having formerly tryed and employed this Phyſitian, and having experience that he was an able Man, he was reſolved to lye privately till he had cured himſelf, for he could not drink Wine nor keep Company, having this Diſtemper upon him, and he was afraid if he had kept Company it would have hindered his Cure, and he ſhould not have been ſo ſoon cured as if he kept in the Houſe; and he ſays, that his Equipage could not come till after, and he would not willingly appear till he had his Equipage as a Man of his Quality ought to do, and theſe were the Reaſons that made him keep private.

L. C. J. Pray ask him upon what occaſion he did change his Lodgings ſo often?

Sir *N. Johnſon.* He ſays, That his firſt Lodging was changed, becauſe it was too cold for him, and he ſays, the next Lodging where he was, thoſe that were there can tell, the Room where he was, ſmoaked ſo cruelly, that he was not able to endure it. And he ſays, he liked the Houſe ſo well, that he ſent to ſee if the Chimney could be mended, and it was not to be done, otherwiſe he had gone back to that Houſe, and he has the Man and his Wife to bear Witneſs of it if you pleaſe.

L. C. J. Let him call them.

Count. Call *Joſeph Parſons* and his Wife [*but they did not appear.*]

L. C. J. Then

L. C. J. Then ask my Lord this, To what purpose he did bring over this *Polander* here? He ought to consider of that, and give an account why he brought him hither.

Interpreter. He says this *Pole* was taken into his Service when he went to *Tangier*, when he went several Thousand Miles to do the King Service, and he had designed at that time to bring him into *England* to dress his Horses after the *German* way.

L. C. J. Had the *Polander* been a Groom formerly?

Interpreter. He says he thinks he had been Groom to his Unckle before.

L. C. J. But to what purpose did he bring him hither?

Interpreter. He says there was a great discourse about *Strasburgh*'s being besieged, he did design to buy some Horses, for every one did Arm themselves, and he says he sent over 1000 Pistoles to be answered by the Merchants here, to buy Horses.

L. C. J. Hath he any body to prove it?

Count. There is Mr. *Risby*, Mr. *Hanson*, and my Brother.

Young *Count.* My Lord, I had a Bill of Exchange.

L. C. J. For how much Money, my Lord?

Young *Count.* For 1000 Pistoles to buy Horses, and he has bought one Horse, and was to buy more.

L. C. J. Do you hear, Gentlemen, what he says? He came over to buy Horses, and he returned 1000 Pistoles for that purpose, and his Brother does attest there was such a Sum returned by Bills of Exchange, for the buying of Horses.

Interpreter. My Lord, he says he does fear that the Jury that do not understand *English*, do not understand his Reasons for being in a Disguise.

L. C. J. Can't he give an account of it himself?

Mr. *Williams.* No, my Lord, his Evidence must be Interpreted to them by the Interpreter.

L. C. J. The Doctor's Evidence hath been heard already about the same matter.

Sir *N. Johnson.* He desires, my Lord, to know this; whether he may not say the same things over again to the Jury in *French*, there are a great many Persons of Quality that understand it, and they will see whether he speak true.

L. C. J. Let him if he pleases.

Sir *Fr. Winn.* But then, my Lord, I hope that your Lordship will tell the Jury it goes for nothing without Proof.

Then the Count *spake to the Jury in* French.

L. C. J. My Lord, I do not know whether the Gentlemen that are of your right Hand heard you or not.

Jury-man. We understand not *French*.

Then the Count *spake it in* Dutch.

Interp. He says, if it had not been for the great stormy Weather, the *Polander* had been sooner in *London*, for he sent for him before. He says, the Letters go from *Strasburgh* to *Hamburgh* in seven Days, and that most commonly Ships do come from thence in eight Days, but in a great deal less time than the *Polander* came over in. And he says that he writ four Months before to fetch the *Polander* over, and he might have been here long e're now, if it had not been for the Weather.

L. C. J. Then, my Lord, I would ask you some more Questions, which it concerns you to answer. Upon what occasion did you make your discourse of Mr. *Thynn*'s death to Mr. *Hanson*? Had you any discourse with him? And upon what occasion?

Sir *N. Johnson.* My Lord, he says in common Discourses, 'tis impossible to give an account of the Discourse, or remember the occasion of it so long ago.

L. C. J. Ask him if he had any Quarrel with Mr. *Thynn*? Or knew Mr. *Thynn*?

Sir *N. Johnson.* He says, my Lord, that he never had any Quarrel with Mr. *Thynn*, nor to the best of his remembrance with his Eyes never saw Mr. *Thynn*.

L. C. J. Then I ask you this, my Lord, Did you ever hear Mr. *Thynn* had married my Lady *Ogle* before you last came into *England*?

Interpreter. He says, he never heard of it till he was going to *Strasburgh*, and then all the whole Town did talk of it.

L. C. J. How long is that ago?

Interpreter. Half a Year ago.

L. C. J. Then it was before his last coming into *England*.

Sir *Fr. Winn.* My Lord, his discourse with Mr. *Hanson*, was not when he was last in Town, but before.

L. C. J. Then pray ask him this, What occasion he had to ask the Boy upon *Sunday*, Whether Horses might ride about the Town of a *Sunday*?

Interpreter. He says, my Lord, this is a very strange thing, That he should go and ask a Scullion-Boy, whether People might ride on *Sundays*, when he himself over and over again has rid upon *Sundays* to *Hide-Park*, as many Persons of Quality do.

L. C. J. Has he any body to prove it?

Sir *N. Johnson.* Here is Major *Ogletborp* (who with divers other Gentlemen testified they had seen him riding diverse times, on *Sundays*, in *Hide-Park*)

L. C. J. Then that Question signifies nothing, there could be nothing in that Question.

Sir *N. Johnson.* My Lord, he desires that I may be examined concerning the Boy, of what I heard by chance from the Boy himself, and I will give you an account of it upon my Faith and Reputation.

L. C. J. Do so, Sir *Nathaniel*, say what you can say.

Sir *N. Johnson.* My Lord, I having had the Honour to serve a while under my Lord's Father, I was desirous, knowing the Honour of the Family, and bearing a great respect to it, to do my Lord all the reasonable Service I could. So hearing my Lord was taken, and in *Newgate*, I went to wait upon him, and coming there, Mr. *Richardson* told me, there was a little Boy waited at the Count's Door for his Wages, as he said. So I spake to the Boy, and asked him what doest thou stay for? He told me for his Wages. Said I, certainly my Lord will pay you your Wages; how long have you serv'd him? he said a little while, and then said I, if you lived with him, what do you know of his Business? And then of himself he began and told me, Only this I know, that *Vratz*, was in my Master's Chamber that Night, and the *Polander* that Night went out with a pair of Boots under his Arm, and more than this I

do not know. Said I, Boy who do you ſerve? Says he, I have no Maſter at preſent, but then of his own accord he told me, Sir *Thomas Thynn* had promiſed him a place, and in the mean time, I am, ſays he, to go to ſerve my Lord *Privy Seal*; ſo my Lord gave him Twenty Shillings for his Wages.

Interpreter. My Lord deſires the Boy may be asked whether he did not go to fetch Phyſick.

L. C. J. Ask him, where is the Boy?

Watts. No, I do not remember it.

L. C. J. Now, you ſhould put the Count in mind.

Sir *Fr. Winn.* We obſerve what a ſort of Interpreter Sir *N. Johnſon* is: He ſpeaks more like an Advocate than an Interpreter, he mingles Interpreter and Witneſs and Advocate together, I don't know what to make of him.

L. C. J. The Count had taken Phyſick that day.

Sir *Thomas Thynn.* My Lord, I deſire to be heard, I never ſpake to the Boy in all my Life.

Mr. *Thynn.* Nor I. But he gave the ſame Teſtimony he gives now, before the King and Council.

L. C. J. Look you, Sir *Thomas*, it does not concern you at all to ſpeak to that, there is no reflection made upon you in it. But my Lord *Coningſmark*, it will concern you a little, to ſhew upon what occaſion Captain *Vratz* came to you that Night that Mr. *Thynn* was killed.

Interpreter. He ſays, my Lord, he can't tell why he came there, it's a proper Queſtion to ask Captain *Vratz* himſelf.

L. C. J. That can't be.

Interpreter. He ſays, my Lord, he kept his Chamber at that time, he had taken cold upon his taking Phyſick, and the Captain came to give him a viſit, and he never reflected upon any one he came for, he was lying upon his Bed.

L. C. Baron. Pray ask my Lord this, Why this man that was ſent over to attend Horſes, ſhould come upon the *Fryday*, and a Campaign Coat be bought him on the *Saturday*, and he furniſhed with a Sword on the *Sunday*?

Interpreter. My Lord, the Noiſe is great, but I ſuppoſe your Lordſhip deſires to know what was the reaſon, why he bought a Sword for him and a Coat?

L. C. Baron. Ay, and how he came by the Buff-Coat?

Interpreter. He ſays, he had that before.

L. C. Baron. But why muſt he have ſuch a ſtrong Basket-hilted Sword furniſhed him in a day's time?

Interpreter. He ſays, my Lord, As to the Cloaths, when he ſaw him with all his Cloaths torn, he muſt of neceſſity get him a Coat, or elſe he was a ſhame to him, and his Service. And as for the Sword, it was no more (he ſays) then what Servants of his bulk and making uſed to wear.

Sir *N. Johnſon.* And he ſays, all the Servants of Gentlemen in *Germany*, wear ſuch broad Swords.

L. C. J. You know it your ſelf, Sir *Nathaniel Johnſon*, you have travelled there.

Sir *N. Johnſon.* Yes, my Lord, they do, and the *Poles* much broader and greater Swords then the others. Here is one in Court that hath a a great broad Sword now by his Side.

L. C. J. Now, my Lord, it will import you to give ſome accompt, how, you having brought over this *Polander* (as you ſay) to chooſe Horſes, and help you in the management of them, to take care of them in the Nature of a Groom, how you came to part with him to Captain *Vratz* aſſoon as he came over?

Interpreter. My Lord, he ſays, Being that he was ſick himſelf, and there was no hopes of the Alliance between *England* and *Holland*, he had no ſuch occaſion for him, as when he wrote for him, and therefore ſaw no reaſon to keep him.

L. C. J. How long was it, before that he wrote for him?

Count. My Lord, after the Seige of *Strasburgh*, when every body thought there would have been a War, but it was not ſo; therefore I had not need of him, but he had been 7 Weeks at Sea, and my Lord, 'tis a common thing in *Germany*.

Interpreter. He ſays, 'tis a common thing in their Country, to give Servants away, if there be no occaſion for them.

Count. My Lord, 'tis a common thing in *Germany*, it may be, it may not be ſo much uſed in *England* to give a Servant away.

L. C. Baron. What! the next day that he comes over?

L. C. J. What ſay you, Sir *Nathaniel Johnſon*?

Sir *N. Johnſon.* Yes, my Lord, 'tis very frequent in *Germany* to give a Servant away if there be no uſe of him, for theſe *Polanders* are like ſlaves.

Interpreter. And, my Lord, he ſays, that Mr. *Ruſſel* does know, that the Merchant that ſent him over hither is a man of good Repute, and if this man had had an ill Reputation in *Germany*, he would not have ſent him.

Witneſs. My Lord, I know very well he is a man of very great Credit in *Hamburgh*, and of great Eſtate.

L. C. J. Did he ſend over this *Polander*?

Witneſs. Yes, my Lord, ſo I underſtand.

L. C. J. Can you ſpeak of his Credit, Sir *Nathaniel Johnſon*?

Witneſs. Of the Merchant's Credit I can, my Lord, I know him to be a man of conſiderable Eſtate and Credit. He is a man of ſuch Reputation, that he would not ſend a man of an ill Reputation.

L. C. Baron. Oh Sir, *Nemo repente fit turpiſſimus.* He could not be ſo ill a man at the firſt daſh, he muſt be a man probable for ſuch a ſervice.

Sir *Fr. Winn.* You may obſerve, my Lord, how Sir *Nathaniel Johnſon*, who is Interpreter in the Caſe, is a Witneſs, and argues for the Priſoner too.

Mr. *Williams.* Pray Sir *Nathaniel*, is a Rencounter the killing of a Man after this manner?

Sir *N. Johnſon.* A Rencounter is another ſort of thing, Sir, you don't ſpeak as if you were a Soldier.

Mr. *Williams.* My being a Soldier or not is nothing to the buſineſs, but the Captain ſaid, he intended to have made a Rencounter of it.

Sir *Fr. Winn.* But my Lord, we deſire to take notice of Sir *Nathaniel*'s forwardneſs; for it may be a Preſident in other Caſes.

L. Ch. J. What do you talk of a Preſident? When did you ſee a Preſident of a like Tryal of Stran-

Strangers, that could ſpeak not a word of Engliſh; but you would fain have the Court thought hard of, for doing things that are extraordinary in this Caſe.

Mr. *Craven.* My Lord he deſires he may inform the Jury what he ſent for this *Polander* for.

L. C. J. Let him.

Then the Count ſpake it in French *and* Dutch.

L. C. J. My Lord, another thing is this, How came your Lordſhip preſently to go away in ſuch a private ſecret manner, and to direct your Cloaths to be ſent as it were to *Windſor*? And your ſelf to go away, and to make ſuch a private withdrawing of your ſelf down the River in this manner?

Mr. *Craven.* My Lord, he ſays, that one *Markham* that is here, came and told him that upon the killing of this Man by the *Polander* and the Captain who were taken in ſuch a fact, there was a diſcourſe of it that it might turn to his prejudice, and that the Common people do commonly fall upon Strangers, that his Taylor told him, that he heard the Common people name him as concerned in it, and that he believed, if the Common people did catch him, they would tear him to pieces, and ſo his friends did counſel him that he would withdraw himſelf.

L. C. J. Is the Taylor here? Call him.

Interpreter. Call *Markham* the Taylor (who ſtood up.)

Sir *N. Johnſon.* My Lord, he ſays that he was afraid the people might tear him to pieces, before he could come to juſtify himſelf.

L. C. J. Look you friend, did you come to Count *Coningſmark*'s Lodgings after Mr. *Thynn* was killed, on the Monday morning?

Markham. Yes.

L. C. J. What did you tell him?

Markham. I told him nothing, but I was ſent there by Mr. *Hanſon*, ſays he, tell the Count that the Duke of *Monmouth* and ſeveral Noblemen have been here: Now I had not ſeen the Count at that time before, but he told me where he lodged, when I came there I told the Count of it, but he told me he knew nothing of it, but ſaid he, I am ſorry if any ſuch thing be done.

L. C. J. But what did you ſay his friends adviſed him to about it?

Markham. I did ſay nothing of it.

Then the Count ſpake to him in Dutch.

Markham. That was afterwards.

L. C. J. What was that afterwards?

Markham. I was told, the people ſaid, if he were taken, he would be knocked on the head.

L. C. J. What time afterwards was it?

Markham. After he went away.

L. C. J. Who told you ſo then?

Markham. Mr. *Hanſon* told me ſo then, I would not tell a lye for all the World.

Count. He can tell alſo when I went away—— *the reſt he ſpake in* Dutch.

Interpreter. He ſays this man can witneſs, that he asked his man what money he had left, and he told him that he had not above 10 or 11 *l.* ſo he put his hand in his bag and took out ſome, and put it into his pocket.

Count. So ill was I provided for an eſcape.

L. C. J. Ask him that Queſtion, do you know any thing of what money he took with him?

Markham. No, I ſaw him take an handful of Silver, but what it was I can't tell.

Mr. *Thynn.* He had 7 or 8 *l.* about him when he was taken.

Interpreter. He deſires leave to tell it to the Jury, (which he did.)

L. C. J. Now, my Lord, this will require ſome Anſwer, how came you to tell thoſe Gentlemen that took you, that you believed Mr. *Vratz* and the reſt would have done the Duke of *Monmouth* no harm?

Interpreter. He ſays, the people told when he was taken, that the Duke of *Monmouth* was in the Coach, and that they did follow the Coach a great way, and would not do the Action till the Duke of *Monmouth* was out of the Coach.

Count. They did tell me, the Crowd that were about me, that thoſe that were taken ſaid they would not do it till the Duke was out.

Interpreter. And he ſays, that gave him ſufficient reaſon to ſay to Mr. *Gibbons* that he did believe, they had no deſign upon his Grace the Duke of *Monmouth*.

L. C. J. He heard it ſo commonly, it ſeems. Now my Lord, there is one thing more that you ſhould explain your ſelf in, what you meant by this, when you ſaid it would be a ſtain upon your blood, yet one Noble Act in War, or the Lodging upon a Counterſcarp would waſh it off?

Interpreter. He ſays my Lord, that tho' he knew himſelf not Guilty of any thing, yet his being taken upon ſuſpicion, and clapped up in Priſon, would be a great diſgrace to him, and would be worſe reſented in his own Country than the thing it ſelf was. It being not the Cuſtom in his Country to take Perſons of his Quality Priſoners in that manner.

L. C. J. Now, my Lord, Is there any perſon that you would have called to ask any Queſtions of? If you have, they ſhall be called.

Count. No, my Lord, but if you pleaſe to give me leave to tell ſomething that may be neceſſary.

Then he ſpake in Dutch.

Sir *N. Johnſon.* My Lord, he ſays, if you will give him leave, though it does not come very well from himſelf, yet he deſires to ſay ſomething for his own Reputation.

Mr. *Williams.* He ſhould be armed with Witneſſes to make his defence.

L. C. J. 'Tis fit for men that ſtand here to ſay any thing that is reaſonable for themſelves. My Lord, if you can ſpeak any thing that you apprehend the Jury can underſtand, ſpeak to them what you pleaſe, ſo as they underſtand it, but do not be too long.

Mr. *Craven.* My Lord, if your Lordſhip pleaſe, he ſays he would ſpeak it firſt in French, and then in German.

L. C. J. Ay, but then the Engliſh men of the Jury will not underſtand a word of it; he had better ſpeak in Engliſh to the Jury.

L. C. J. North. My Lord, It is an Indifferent thing, it may be Interpreted, not being matter of Fact.

Sir *N. Johnſon.* My Lord he ſays it is a great happineſs in all his trouble, that he was in a Country, where he was to appear before a Proteſtant Judicature, himſelf being a Proteſtant, and his fore-Fathers alſo. He ſays that his fore-Fathers under *Guſtaphus Adolphus* were Souldiers, and did there with their Swords in their hands, and the loſs of their blood endeavour to ſettle the Proteſtant Religion in *Germany*, and protect it there; he ſays, that it has been the honour

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of himſelf, and his Family, that they have always been ready to venture their Blood, and their Lives for the Advantage of the Proteſtant Religion, as the Examples of his Grandfather and Father do ſhew, and there never was any thing done by his Family, but what was done for the Honour of his Country, and his Religion; and he ſays, that if any of his former Actions can give any the leaſt ſuſpicion of his being Guilty of this or any foul Fact, he is very willing to lay down his Life, and very willing to have it cut off immediately.

Count. Immediately.

Sir *N. Johnſon.* He ſays, that he is very ready upon all occaſions to ſerve the King of *England*, and that he loves the *Engliſh* Nation ſo well, as always to be ready to do any thing to ſerve them.

Count. Without any intereſt in the world, againſt the Will of all my Relations, and I have brought my Brother into *England* to be brought up into the Proteſtant Religion to ſhew my Inclinations to the Religion, and the *Engliſh* Nation.

L. C. J. Have you done?

Sir *Fr. Winn.* Yes, my Lord, we have done with our Evidence, and we have no matter of Fact to reply unto: but we think it is our Duty, conſidering the Defence my Lord has made, that we ſhould take ſome care to put the King's Evidence a little together, it being a caſe of ſuch nature, and ſo cruel and horrid a Murder.

My Lord, and you Gentlemen of the Jury, I am of Counſel here for the King, and you are Gentlemen upon an inquiry to find out the Offenders in a very great, a barbarous, and a wilful Murder. And, my Lord, in relation to the Principals, I need not ſpend your Lordſhip's and the Jury's time about them; for all thoſe three Men, that are indicted as Principals, do my Lord confeſs the Fact, tho' they do it in a different manner, and tho' in Form of Law they are pleaded not Guilty; yet when they come to be asked the Queſtion, their Guilt flies in their Faces, and they cannot deny it. So then for thoſe three Men there is no need to ſpend time in repeating the Evidence.

But, my Lord, that that ſeems to require the Conſideration of the Jury is, whether this wicked, and horrid Murder be only circumſcribed in the Guilt of it to thoſe three Men that have confeſſed it, or whether any rational man in the World will believe upon the account they give themſelves, that they only had a deſign, a ſtudy, or a delight to kill this Innocent Gentleman. No, my Lord, the thing muſt lie a little deeper, and there muſt be ſome other reaſon why this barbarous Murder was committed, I would crave your pardon for what I ſay. My Lord, I would not ſpeak any thing that ſhould miſlead a Jury in matters of Blood, and I think it was rightly ſaid by your Lordſhip, that when a Man is tryed for his Life, We ought all to behave our ſelves ſeriouſly as in a matter of weight and moment. And ſo it is, I think, a very ſerious thing, and a matter of concernment to us all to inquire who hath ſhed Innocent Blood; for ſuch was this poor Gentleman's Blood that was killed, Innocent Blood.

My Lord, this Count is a very unhappy Perſon to have ſuch a Relation as has been proved to be of the Principals; I will do my Lord no wrong in the repetition, if I do, and am miſtaken, I crave your direction, I am ſure you will correct me in it. Two of the Perſons that are Principals, that was Captain *Vratz* and the *Polander*, happen'd to be Perſons Relating to my Lord's Family, as his ſervants. For it is agreed by the Witneſſes that were that Count's Friends, that they came over into *England* with the Count, the laſt time he came over in that private manner, and 'tis likewiſe proved, and not denied by him, that Captain *Vratz* was frequently with him, not only to the very day when this bloody Fact was done, but after that great Crime was committed; I ſay, my Lord, 'tis a very unfortunate thing for this Lord, that thoſe men ſhould have ſo near a Relation to him, who have had their hands in it, and can give no account why they did it.

My Lord, I do know (and your Lordſhip has juſtly directed us) that no Evidence from one Priſoner, or the Confeſſion of one can charge the others in point of Evidence; but I cannot but take notice, that Captain *Vratz* could give no Reaſon in the world for it, but as it were for ſome Affront to the Count and himſelf. But, my Lord, the Evidence that lies heavy upon this Lord at the Bar, is made up of theſe Particulars.

Firſt, that here is a Murder committed is plain, then that this Lord did fly, is alſo plain, and when he did fly, Gentlemen, he kept himſelf in diſguiſe before that Fact was committed, and whether or no the Reaſons be ſufficient that he has given to your Lordſhip, and the Jury, muſt be left to conſideration. He ſays that he had not his Equipage, that he was not very well, and that he could not drink Wine: Thoſe I take to be the Reaſons given, why my Lord *Coningſmark* did conceal himſelf, till the time after the Fact was committed.

L. C. J. He was taking of Phyſick, and he thought it might be prejudicial to him to drink Wine, or keep company.

Sir *Fr. Winn.* But, my Lord, theſe kinds of ſhifts, we think, are not able to ballance the Evidence, for that which is truly the Evidence is this Mr. *Hanſon*, who is very much converſant in that Family, and who did give his Evidence very unwillingly; yet, he did really confeſs that which will go very far in this Caſe; for after he was preſſed ſeveral times (your Lordſhip, and the Court, and the Counſel preſſed him) to tell what was the Reaſon of that diſcourſe he had with the *Swediſh* Reſident, and he was asked, Had you any Command from my Lord *Coningſmark*? He anſwered no; but, ſays he, I thought it would pleaſe him, if I could have the Opinion of the Agent or Reſident to know what the Laws of *England* were, if ſo be he called Mr. *Thynn* to account, and what the conſequence would be in reference to his deſign upon my Lady *Ogle*, and upon this he does go, and ask the Queſtion of the Reſident.

Now, what does he mean by this calling to account? We muſt take things according to the Reaſon of them. Certainly it was ſome offence that he had taken to Mr. *Thynn*, and that is plain in regard when he was asked what the Prejudice did refer to, Mr. *Hanſon* was pleaſed to name that great Lady, my Lady *Ogle*, and ſaid ſhe was mentioned, and he did deſire

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to know what the Influence of the Laws of *England* would be in that matter, if he ſhould call him to account.

My Lord, I think with ſubmiſſion it carries this in it, as if he had a purpoſe in his mind to call Mr. *Thynn* to account by quarrelling with him and hazarding him in his Life; I do not undertake, nor would not of my ſelf, to expound it, but this I will ſay, it muſt ſignify ſomething, and muſt have ſome conſideration, and without all doubt a Perſon of this Lord's Quality would not let fall ſuch an Expreſſion, but for ſome end and purpoſe.

My Lord, after Mr. *Hanſon* had given his long Evidence, which came ſo difficultly from him, we traced it down by ſeveral Witneſſes, *Wright*, *Harder*, and others, that this *Polander* came over, as it happen'd, on the *Fryday*, (which is a thing that comes mighty cloſe) upon the *Saturday*, he is provided with a Coat and a Sword; on the *Sunday* he committed this inhuman bloody Fact. Now it is a mighty unfortunate Circumſtance upon this Lord, that this ſhould be a man whom my Lord *Coningſmark* ſhould be ſo very much concerned for, that becauſe he was not come, he ſhould be afraid he had miſcarry'd in the Weather, to that his Anſwer was this, that he was ſent for over by him to look after his Horſes, and he had come a great deal ſooner, if it had not been for the ſtormy Weather. But, your Lordſhip obſerves, that it was not above three or four months before, and then by his own ſhewing the buſineſs of Mr. *Thynn*, and his Marriage with my Lady *Ogle* was talked of far and near; and ſo, my Lord, it makes the ſuſpicion of the malice the greater, that he who has done this bloody Murder, and has been ſo much under the Command of this Lord's Family, that he ſhould come but two days before, and the Count provide him with a Sword that very day, and then that Letter from Captain *Vratz* to Dr. *Harder*, which he carried to the Count, and the Count read, but of which he can tell you none of the Contents; that ſpeak ſomething in regard when the Doctor went away, this *Polander* was ſent to the Captain by the Doctor; but this is certain, however, there was a Sword that was brought by the Cutler, that Sword was carried up to the Count's Chamber, that Sword was delivered afterwards to the *Polander*; for he had it on the *Sunday* morning when he went away with the Boots under his Arm, and the Campaign Coat upon his Back, with a Buff-Coat under it; and he went out, and never returned till the Fact was committed.

I ſay, my Lord, it carries a vehement ſuſpicion, that he was privy to this Murder, becauſe this was a ſervant at his Devotion, and your Lordſhip and the Jury ſee what kind of a Creature he is, likely to do any thing, being at the Command of ſo great a Perſon.

But then, my Lord, to come cloſer to the matter (for I will only repeat that which is moſt material) there is the Evidence of the Boy, who, I muſt ſay, tells you a very ſenſible Story; he tells you upon what account he came to him, that he was there ten Days before the Murder was committed; he ſwears expreſsly, That the *Polander* lay there the Night before, was there that morning, went away with the Sword, and Dr. *Harder* with him; that this Murder was committed about eight a Clock at Night, that Captain *Vratz* came buſtling into the Count's Lodgings, where he lay concealed, and the Boy by agreement, being to go home every Night, ſtaid till half an hour paſt nine, and left the Captain there at that time, and the Captain had been there in the Morning.

My Lord, Surely it is a ſtrange thing, and much to be wonder'd at, that the Captain, who had the management of this Murder, had no where to go for a Refuge, but to his Patron my Lord *Coningſmark*, reeking hot with Mr. *Thynn*'s Blood, when the Blow was given, within an hour after the Murder committed, (for ſo the Boy ſwears expreſsly, for the Blow was given at eight a Clock) and afterwards he went to the Doctor's to bed about ten a clock at night, as the Doctor hath confeſſed; I take that for a mighty Evidence. And then, my Lord, upon the Monday morning when the Boy comes in, the Count asks him, *What was the matter with the Buſtle in the Street the laſt night?* Will any man in *England* believe, but that he had had earlier news of it? And for what reaſon ſhould he ask the Queſtion, if Mr. *Hanſon* ſpeaks true, who brought the news in from *Whitehall*?

But the great Queſtion that we wonder ſhould be asked the Boy, is, *What Mr.* Thynn *was?* Which certainly was a very odd expreſſion, if we conſider what Mr. *Hanſon* ſays, *That the Count had mentioned him in his diſcourſe, and my Lady* Ogle *too.* One of the Count's Anſwers was, *It could not be imagined that he could ſpeak to a Scullion-Boy*; but you ſee the Boy ſwears it, and tells it ſo, as that it is very probable.

We now come, my Lord, to give an account of his Flight.

The Father of the Boy comes in the morning: And I would obſerve, tho' he pretended his buſineſs and his diſtemper brought him over, and that he was ill, and under Cure; yet this matter made the place too hot to hold him; ſtay here he durſt not, immediately he forgot his Phyſitian's Preſcriptions, and gave order to his man to ſend away his things. Then the Boy's Father was ſent for, and the Portmantles are given him, and he is told my Lord was going to *Windſor*; but when he came to *Charing-croſs*, the things are put into a Coach in the *Strand*, and from thence they went for *Rotherith*.

Then came the man at whoſe houſe he lay, and he was a *Swede*, and by the way I would obſerve, the Witneſſes are moſt of them my Lord's own Friends, unwilling to tell the truth till we get it (and that very hardly) from them. This Man was very unwilling to tell his knowledge, but he got him the Cloaths, which Cloaths, by the bulk of the Man, one would think would hardly fit the *Count*; but the more he was diſguiſed, the more was his Security; and when he was asked this Queſtion, *Why he deſired to have thoſe Cloaths to ſecure him?* He ſaid at laſt, *It was to prevent Trouble.*

Now let us conſider, my Lord, whether the Count has given any Anſwer to that. My Lord, there is nothing in what he ſaid, under pardon. He ſays, *He went away, becauſe he was afraid the People would tear him in pieces, before he could juſtify himſelf.* If he were innocent, he knew where to go to be ſecure from any hurt from the People; he might have applied himſelf to your Lordſhip, or to any other Magiſtrate. He is ſo ingenious he could not but know he might have protected himſelf under the Government, which

which protects and ſecures any man whatſoever if he be innocent.

I have theſe two things more to mention, and then I ſhall leave it to your Lordſhip and the Jury; and one is the Evidence of Mr. *Gibbons*, and Mr. *Kid*.

Mr. *Kid* gives that which to me is a very material Evidence of what paſſed when they ſeized him: As they were coming up the River, the Count asks him, Whether there were any good Lodgings in *Newgate*? and particularly expreſſed his Care of the Captain, to ask whether he were well lodged. And when he was told that the *Polander* had confeſſed, he ſays he ſeemed on the ſudden to be very much concerned, bit his Cloaths, and threw himſelf along with ſome agony. My Lord, an innocent man needed not to uſe any ſuch actions.

Then comes Mr. *Gibbons*, who was very inſtrumental in the purſuing of him, and is known to be an honeſt Man, he gives this Evidence, That when there was a Diſcourſe about Mr. *Thynn*, and his old Maſter the Duke of *Monmouth*, the Count preſently reply'd, *They meant to have done the Duke of* Monmouth *no harm*; and walking about the room, on a ſudden, burſt out into this expreſſion, *This is a ſtain upon my Blood; but one good Action in the Wars, or lodging upon a Counterſcarp, will waſh it all away.*

Now, my Lord, as to what he anſwers to this, I ſay any Man may make that evaſion which he would excuſe it by, to ſay that the Accuſation is a ſcandal or a ſtain may be worſe than the Guilt of the Action: But your Lordſhip and the Jury ſee plainly, if ſo be the thoughts of a Man's own Heart be that he is guilty, it will break out ſome way or other. Theſe things I only repeat, I leave them to the Conſideration of the Jury.

But when I have ſaid this, there is one thing more, and that is above all relating to the Captain: Says Mr. *Gibbons*, *I did not know that the Captain had confeſſed, but I did venture to ſay he had*; but the Count replied, *He did not believe the Captain had confeſſed.* My Lord, you ſee how the Captain appears before you, and if the Count will take upon him to ſay, he does not believe the Captain would confeſs; it doth ſtrongly argue he knew as much of the Captain's mind, as he himſelf. Then look upon the reſolute Behaviour of the Captain, the familiarity he lived in with the Count, that he had always been a Dependent upon his Family, it ſhews ſome reaſon for his aſſurance of ſecrecy from the Captain, that he would not confeſs the Author of this moſt notorious Murder, and it lies heavy upon him. My Lord, I look upon the Diſcovery of this as a very miraculous thing; And pray conſider, Gentlemen, where ſhall a Man go to ſettle his thoughts for the Original buſineſs? Do you (or can you) think it was begun, invented and contrived by yonder three Men? To what end or purpoſe; or for what advantage to them? You have heard the Evidence that I have repeated to you; You have heard what this Lord has ſaid for himſelf; how he has fled, and what has been done. My Lord, I will not uſe any thing of Argument to perſwade the Jury; but I cannot chuſe but ſay, we know no where to go for the Author of this villanous Fact, nor whom to accuſe as the prime Contriver, but this Count before you. I pray the God of Heaven to direct you in your Enquiry; and if I have ſaid any thing amiſs, I beg your Pardon for it.

[*Then a great Shout was made, which the Court rebuked the People for.*

Mr. *Williams*. My Lord, I did not think to have ſaid any thing more in this Caſe; but I muſt crave your Lordſhip's and the Jury's Patience for a few words. As for the three Perſons at the Bar, (the *Pole*, the Captain and the Lieutenant) it is, Gentlemen, very notorious they are guilty of this moſt Helliſh Murder. But all the labour and difficulty of this matter is, how far this Count is Guilty, or not Guilty.

Pray, Gentlemen, do but obſerve the nature of this Crime, and the manner of our Evidence that has been given you. The Crime he is accuſed of, is, for being Acceſſory to a Wilful Murder; Acceſſory before the Fact; Contriving of it, and laying the Train, which theſe Perſons were made uſe of to fire. This being ſo, it is almoſt impoſſible to give you that clear light and pregnant proof againſt an Acceſſory, as againſt the Principals. The Principal is he that doth the Fact; that is notorious and open. The Acceſſory is the Perſon that prepares the Scheme, contrives the management, firſt ſets the Wheel on work, gives the neceſſary Inſtructions, who lies behind the Curtain. Now, conſidering that, and the nature of the thing, it is impoſſible to give a clearer Evidence than what you have had.

Pray, Gentlemen, do but firſt conſider who hath been the Privadoes and the Intimates of this Count, with whom he has had Conference ſince he came into *England*, *Hanſon*, and Dr. *Frederick*, who are brought as Witneſſes (tho' unwilling ones) againſt him; the Boy that was employed by him. He is in no other hands; I cannot hear he was among any other Perſons but theſe, and Captain *Vratz*, and the *Polander*. Theſe are his Company, and thoſe alone with whom he had converſation. Now, Gentlemen, that we ſhould be able to produce theſe very Men (that were his only Companions) againſt him as Witneſſes, is a mighty thing, conſidering the privacy he lay in.

As for *Vratz*, his moſt intimate Privado, he came over with him into *England*, lived with him in his firſt Lodging, and was continually with him during his ſtay. So then, what can we expect about this Man, Gentlemen, when he had laid his Deſign with all the privacy he could, would have as little Converſation with Engliſhmen as he could. It was very craftily laid, that he would converſe with none but thoſe that were privy to his Deſign, or had an hand in it in a great meaſure. Then pray conſider how it was carried on, Gentlemen; *Vratz*, who was the great Commander, and the *Polander*, who was the immediate Actor in it, had been his own Servants. *Vratz*, I ſay, he had a great confidence in; he came over with him; and will not any Man believe, that this Man, who eat of his Bread, who lay in his Family, was a likely Man to do this for his ſake that thus cheriſh'd him? For whoſe ſake pray can it be thought to be? Not for his own ſake; for the Captain tells you he never had any communication or converſation with this unhappy Gentleman, Mr. *Thynn*. So that if it were as they would have it, that they did it out of reſpect to this Count, who

who was the Captain's Friend, it will turn upon the ſame point, and confirm the ſuſpicion. Why ſhould the *Polander* do it, if he had no reaſon to do it upon his own account? For he never ſaw the Face of Mr. *Thynn*, but was brought hoodwink'd in a manner to the Fact.

Therefore whether it were not done for his ſake, is that which you are to conſider; and as a Proof that for the Count it was done, I ſhall pitch upon one Circumſtance that will bring it home to his door, and that is, the Evidence of *Hanſon* his Brother's Tutor: And by the way I cannot but repeat it, that this Thread goes thro' all the Cloth, we have no Witneſſes but thoſe of his own familiar Acquaintance and Dependence. Now *Hanſon* has (tho' very ſhufflingly) told you, the Count and he had ſome Diſcourſe about my Lady *Ogle*; and tho' we cannot come to know all the Circumſtances, yet he does acknowledge ſo much as that there was mention made of requiring ſatisfaction of Mr. *Thynn*, or ſome account of him, and what might be the conſequences of the Laws of *England*, in reference to my Lady *Ogle*, in caſe he ſhould call him to account. So far he is plain, tho' he will not tell what the Diſcourſe was; that there was a Diſcourſe of my Lady *Ogle*, of Mr. *Thynn*, of asking ſatisfaction of Mr. *Thynn*, or calling him to account, and what the conſequences in Law might be. And pray, Gentlemen, obſerve, being to take Advice about this matter, they would not conſult an Engliſh Lawyer, tho' I ſee one behind him now, but a Foreigner, the *Swediſh* Agent; not ask the Opinion of one Man of this Kingdom. And then he gives you a mighty Reaſon for it, That the *Swediſh* Reſident knew very well how to adviſe him in this Affair, becauſe he had lived in *England* about 19 Years: So that all his Acquaintance and Friends, the Managers of the Buſineſs, and thoſe conſulted with about it, all Outlandiſh-men; I cannot ſay they are all Guilty, but I will ſay this makes our Proof more difficult.

Gentlemen, This being taken notice of as a mighty Circumſtance, I would bring it a little more home to this Gentleman, whom we accuſe as Acceſſory before the Fact. Pray conſider how all along he lay skulking, and hiding himſelf in diſguiſe, and ſhifting his Lodging from place to place. I need not repeat it, but I would deſire you to think of what was concurrent with that very day, and, as it were, concomitant with the very Murder, and that will appear to be ſufficient to ſatisfy any rational Man. We are not picking up an Evidence upon flying Words, or unconcluding Circumſtances, but we offer Facts to you, and Facts are to guide you, you being to compare Facts with Facts. As to his lurking and hiding, this Gentleman gives you no manner of rational account, that he had any buſineſs with any Man in *England* that ſhould occaſion his lying private; but only he tells you, he labour'd under a Diſtemper that he would not have diſcover'd; and yet take him in that very Diſtemper, and in the proceſs of his Cure, as ſoon as this Fact is over, the next Morning he values neither his Diſeaſe, nor his Phyſick, but goes by Water, and made an Attempt to fly abroad. Will any underſtanding Man believe that he came privately into *England*, that he lay skulking here, that he made uſe of another Name, and other Cloaths, that he ſhould do all theſe things, and run away ſo immediately after the Fact was done, and all only becauſe of a little Diſtemper of Spots on his Breaſt?

But then, ſays he, it was reported in the World, and told him the next Morning, that the People, the Rabble, would tear him in pieces. He was asked where he had this Report, and he brought up a Taylor, and depended mightily upon it, but the Taylor denied it; and, Gentlemen, he that fails in one thing he ſays, is not to be credited in another without good Proof. He ſays that he ſaid no ſuch thing, ſo that, Gentlemen, this fictitious Argument of his Fear falls to the ground.

Then obſerve what follows upon this villainous Fact; he flies away privately, he goes to a *Swediſh* Houſe at *Rotherith*, from thence by a *Swede* he muſt be put into a Skuller, and that Skuller muſt be towing of him for ſeveral days together, till he come to *Graveſend*, from whence he was to have gone over Sea. Pray lay all this together, and weigh it well, and ſee if you can imagine any other Reaſon for it all, than what we alledge.

I would obſerve it to you, Gentlemen, and pray think of it, what the Count has ſaid to you in his own Defence in ſo many Languages, without Proof, muſt paſs for nothing. The Court has had a great deal of Patience to hear him, and ſhewn him a great deal of Favour in permitting it; but without Proof, I ſay, it all paſſeth for nothing. And what Proof he hath made of it, I muſt ſubmit to you; for I will not ſpend your time in running into Particulars: And where he has proved any thing, pray compare Facts with Facts, eſpecially that concerning the Captain *Vratz*, which is not, in my Opinion, to be anſwered, that he lived with him, that he ſhould be with him on the *Sunday* Morning, that in the Evening he ſhould come thither again after the Fact done, that he ſhould be left in his Chamber, and continue in the Houſe ſo long. Will any one believe, that when *Vratz* came over with the Count from abroad, lodged with him here, was every day with him in familiar Converſation, ſhould come that Morning before, and in the Evening immediately after, and ſtay with him ſo long, and yet the Count be innocent? Nay, will not any Man rather abſolutely conclude him an Acceſſory to the Murder?

Then, Gentlemen, take into your Conſideration his Flight, and Endeavours to eſcape out of the hands of Juſtice; if there were no more, that is a great Evidence of his Guilt, but you have much more, and as ſtrong as you can deſire or expect. He ſays he was afraid of the People; alaſs he needed not to fear that, he finds a very fair and generous Treatment here, he knew the Temper of our *Engliſh* Nation well enough, to know they do not preſently fly in Men's Faces; and he could not but know, he might, without danger, reſign himſelf up to the Law if he were innocent.

Gentlemen, We have given you a fair and a full Evidence, we have offer'd you ſufficient Proof in Fact, and have offer'd no Shams to you; and I do not doubt but you will do right to the Honour of *England*, and the Juſtice of the Nation, which are deeply concerned in this Caſe.

[*Then there was a great Noiſe made.*

L. C. J. Look you, Gentlemen, the Council for the King have been very large in the repeating of the Evidence, therefore you muſt not expect from me, that I ſhould go over it again, in the ſame method that they have done. I will direct you a little as to ſome Points in Law as to this Caſe: Here is, as they tell you truly, a Murder as horrid and barbarous as peradventure can be committed upon any Subject. It is a Murder of a very bad nature, ſo that the repeating of it is enough to make all Men abhor it; it needs no Aggravation, it is in its own nature ſo very barbarous; and thoſe Gentlemen that had a hand in it, muſt certainly needs be aſhamed, and look upon themſelves as not fit to be accounted Men, whoever they be that had any hand in it, ſo barbarous and inhuman, and baſe in its own nature, and ſo unworthy of a Man.

I muſt tell you, Gentlemen, when one Man ſhoots another, and two are with him, tho' they do nothing but come on purpoſe to countenance that evil Fact, that is Murder in them All; All that were preſent are guilty, when ever ſuch an Act is done: And three or four come together, and one does the Fact, and the others ſtand by to countenance it, whether they be there to bring the Party off, or to animate him, and put him into a condition that he may murder and kill, it is Murder in All, and they are All as equally guilty, as he that ſhot, or actually gave the Blow.

Now as to theſe three Perſons here, the *Polander* that ſhot, *Vratz* who was with him and ſtop'd the Coach, and *Stern* that was by with them, they do all acknowledge themſelves to be there at this Murder; the leaſt they ſay for themſelves, is, that they came to countenance a fighting with Mr. *Thynn*, that is the leaſt any of them ſay; for Captain *Vratz* makes this his Excuſe, that he intended to kill him (as he calls it) fairly, and the others were to ſtand by to let him make the beſt of it; ſo that they All came with a murderous Intent, and a Murder followed. And I muſt declare this for Law to you, that this is Murder in them All, if you believe themſelves; ſo that I think there is little, very little for you to conſider concerning theſe three Men, but according to what they have acknowledged of themſelves both before the Council, and here likewiſe in your own Preſence, they ſeem All to be guilty of this Murder.

The more doubtful Queſtion is concerning Count *Coningſmark*, that ſtands here before you, for he was not at the Murder, nor is he charged as Principal; and the Queſtion will be as to him, Whether he commanded, or gave any Authority or Direction to have this Murder committed; That is the thing that is now charged upon him, and without that he cannot be Acceſſory in this Caſe.

Now, Gentlemen, you muſt conſider as to that, ſeveral things are certain and poſitive; That this *Polander* was once his ſervant; That he was brought over from beyond Sea by his Order; That he was given by him to Captain *Vratz*; That *Vratz* was his great Acquaintance, and lay in his Lodging ſome time, tho' not at this very time. Theſe things are plain: Now what Anſwer is given to this? You hear, he ſays, the *Polander* was taken for him, and hired as a Servant beyond Seas, knowing that he had skill in Horſes; and the Count having remitted Money to buy Horſes, he was willing to have him manage the Horſes, and to have his Judgment in them, and ſent for him three Months before for that purpoſe, and that he came for that purpoſe; but knowing that the occaſion for which he was to buy his Horſes was paſt over, there being like to be no War, and therefore there would be no occaſion for Horſes, he was willing to part with the *Polander*, as he ſays, is uſual for Perſons of Quality in his Country to do upon ſuch occaſions, to give their Servants to one another; and ſo having cloathed him firſt, he gave him to Captain *Vratz*: And you hear how much of this is made good by Witneſſes, and how far this is ſatisfactory to you as an Excuſe and Reaſon for this, I leave to you.

There is more too that is very plain: It is apparent that the Count bid him come to his Lodging after this Murder was committed. According to the calculation of the time, it muſt be after the Murder, for that was about eight a clock, and he was there about nine. You hear what Anſwer the Count gives to that; That he came as formerly he had done, he knowing nothing of this, nor of Mr. *Thynn*'s Murder, and that he did not ſpeak to him concerning it.

The next thing, Gentlemen, is, 'Tis plain the Count did lie private when he came to *England*; and he tells you (he brings the Doctor to witneſs it;) his occaſion of Privacy was, becauſe he had a Sickneſs, which he was loth ſhould be known, having been formerly in ſplendor in *England*; but now, without his Equipage, he would not publickly appear; and he was afraid, if he appeared in Company, he ſhould be inticed to drink high, and that would retard his Cure. And the Doctor tells you, he was under his Hands for Cure of his Diſeaſe, which was ſome Spots upon his Body.

It is plain too, that Count *Coningſmark* did go away the next Morning after he had heard of the Murder, he acknowledgeth it himſelf; and that he did conceal himſelf upon the Water. and was taken in ſuch a manner as the Witneſſes ſpeak. But withal he tells you the occaſion of this was, A Stranger here, Captain *Vratz*, as he heard, was accuſed for the Murder, and ſeized, and he did not know what this might occaſion to him; how the common People might fall upon a Stranger that was of that Man's Acquaintance; and it was through his Fear of the People (leſt they ſhould fall upon him before he could vindicate himſelf) that he withdrew himſelf, and concealed himſelf in this manner. As it was told you by the Counſel it was an unreaſonable fear in him, for there is no ſuch diſorderly proceeding (we thank God) in *England*; but he tells you he was afraid of it; and if he were, being a Stranger, he might not know our Conſtitution ſo well.

But I muſt tell you another thing for Law, Gentlemen, which was urged by the Counſel for the King. Captain *Vratz* doth ſay, that he, knowing of an Affront that had been given to the Count, and having received an Affront himſelf, he did, without the Count's knowledge, do this Murder, for Revenge, upon Mr. *Thynn*. It has been ſaid by the Counſel, it will be all one whether it were with the knowledge of Count *Coningſmark*, or not. Now, I muſt tell you, Gentlemen, the Law is not ſo: For if a Gentleman has an Affront given him which he does

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ſeem to reſent, if any of his Servants officiouſly, without acquainting him with it, out of too much Zeal and too forward a Reſpect to their Maſter's Honour, will go and piſtol and kill him that they apprehend has affronted their Maſter, he not knowing of it, it will not charge their Maſter with any Guilt at all. The Law, Gentlemen, is not ſo as was urged; for if it were without the Count's knowledge and direction, if a zealous Captain has gone and over-ſhot himſelf, out of reſpect to his Maſter's Honour, when really it was a Diſhonour to himſelf, and all that were acquainted with it, this cannot lie upon him, to make Count *Coningſmark* guilty. But it lies upon me to direct you, for otherwiſe you might ſwallow it as a Maxim, to be all one in Law, which it is not.

So that it will return to this, Whether here be any Proof that Count *Coningſmark* did conſent to this Murder, or any ways countenance the killing of Mr. *Thynn*, or command any of theſe Perſons to do it.

Look you, Gentlemen, there are ſome ſuſpicious Speeches that are mentioned here of the Count's. One is, that the Boy ſhould ſay that the Count asked him whether Men might ride in *London* on *Sundays*? You hear what Anſwer is given to that. The Count denieth that he asked any ſuch Queſtion: And to ſhew and prove that ſuch a Queſtion could not likely be asked, he ſays and proves, by divers Perſons, that it was an ordinary thing for himſelf to ride on *Sundays* in *Hide-Park*, before this Buſineſs long.

It is alſo ſaid, that when he was taken, he ſhould ſay, That he did believe they intended the Duke of *Monmouth* no hurt. Now that he ſaid theſe words he doth not here deny; but he ſays he ſpoke it upon the common Report, that theſe Men had watched the Coach till they ſaw his Grace out of it, and then they did do this Villany; ſo that he apprehended they had no deſign to hurt the Duke at all. This is the anſwer he gives; how ſatisfactory it is, I leave it to you.

Then as to thoſe other Words; That it would reflect upon his Family, and ſtain his Blood; but he preſently recollected himſelf, and ſaid, One brave Action in the Wars, or Lodging upon a Counterſcarp would waſh it off. You hear what he ſays to that: He looked upon it as an Injury to his Family, and it would be ſome ſtain to his Blood, that he ſhould be accuſed of ſo baſe and unworthy an Act; but that Accuſation he thought might be waſhed off; and ſo, though he were innocent, it might be looked upon as a Stain, which a brave Behaviour in the Wars would wipe off.

Gentlemen, Thus, as near as I can, I have given you an Account of the moſt material Things that are objected againſt him, and his Anſwers to them. I muſt leave it to you, whether upon the Evidence which you have heard, you do believe that this Murder was directed or countenanced by Count *Coningſmark*. If it were, he then is guilty as Acceſſory before, and you muſt find it; but if you believe he did not know it till after the Murder was done, then he is innocent, and you muſt acquit him. And upon the whole, Gentlemen, I muſt leave it to you.

Then, it being late, after an Officer was ſworn to keep the Jury, the Court adjourned for a while; and in half an hour returned; and ſent for the Jury, who came in, and anſwering to their Names, gave this Verdict.

Cl. of Cr. Gentlemen, Are you all agreed of your Verdict?

Omnes. Yes.

Cl. of Cr. Who ſhall ſay for you?

Omnes. Foreman.

Cl. of Cr. George Borosky, alias *Boratzi*, hold up thy Hand, (which he did.) Look upon the Priſoner; How ſay you? Is he guilty of the Felony and Murder whereof he ſtands Indicted, or not guilty?

Foreman. Guilty.

Cl. of Cr. What Goods and Chattels, Lands and Tenements?

Foreman. None to our knowledge.

Cl. of Cr. Chriſtopher Vratz, hold up thy hand—Is he guilty, *&c.*

Foreman. Guilty.

Cl. of Cr. What Goods, *&c.*

Foreman. None to our knowledge.

Cl. of Cr. John Stern, hold up thy hand ——. Is he guilty or, *&c.*

Foreman. Guilty.

Cl. of Cr. What Goods, *&c.*

Foreman. None to our knowledge.

Cl. of Cr. Charles John Coningſmark, hold up thy hand (which he did.) How ſay you, is he guilty of the Felony whereof he ſtands Indicted as Acceſſory before, or not guilty?

Foreman. Not guilty.

Count *Con.* God bleſs the King and the Honourable Bench.

Cl. of Cr. Then hearken to your Verdict as the Court hath recorded it, you ſay that *George Borosky*, &c. and ſo you ſay all.

Then the Jury was diſmiſſed, and the Court ordered to take a Recognizance from the Count, with three Sureties, to appear the next Seſſions and to anſwer any Appeal if brought; after which the Judges went away, and the Recorder, with the Lord Mayor and Aldermen ſtay'd to pronounce Sentence on the convicted Malefactors.

Cl. of Cr. Keeper, Set *George Borosky* to the Bar, hold up thy hand (which he did) Thou ſtandeſt convicted of Murder, for killing *Thomas Thynn* Eſq; what canſt thou ſay for thy ſelf why the Court ſhould not give Judgment upon thee to die according to Law?

Interpreter. He ſays, he prays God to have mercy upon him.

Cl. of Cr. Tye him up. Set *Chriſtopher Vratz* to the Bar ——

Interpreter. He ſays he hears he is condemned, but he was never rightly examined, nor fairly tried.

Cl. of Cr. Set *John Stern* to the Bar ——

Interpreter. He ſays he did it for the Captain's ſake, he went as a Second along with him.

Then the Priſoners being tyed all up by the Executioner, Proclamation was made for Silence, during the pronouncing of the Sentence.

Mr. *Recorder.* You the Priſoners at the Bar, *George Borosky*, *Chriſtopher Vratz*, and *John Stern*, you have been all Indicted for the Murder of a Gentleman of great Quality, Mr. *Thynn*; a great, and heinous and a crying Crime, that cries aloud for Vengeance: You have been brought to your

Tryal, and tried indifferently by a Jury not conſiſting only of the Country-men of the Party ſlain, but compounded of Foreigners and Freeholders of the County too. Theſe impartial Men have found you Guilty, and indeed the Plainneſs of your Guilt is ſuch, that you your ſelves have acknowledged your ſelves Guilty. For when you were apprehended, your Guilt did ſo ſtare in your Faces, and you could give ſo little an account how you had beſtowed that time wherein he was Murdered, that you were forced to confeſs your intereſt in the Fact.

It is our Duty to pronounce the Sentence of the Law againſt you upon this Conviction; but it is alſo our uſage to open the nature of the Crime for which the convicted Perſon is to ſuffer Death, for the Conviction of the Offenders themſelves. Now your Crime is one of the deepeſt die, it is the wilful ſhedding of innocent Blood, to which you could be led by nothing but what you are charged with in the Indictment, the motion and ſeduction of the Devil. This Crime of Murder is put into the higheſt and foremoſt rank. When God himſelf had given Laws to the World under the Old Adminiſtration, after the Command of honouring Father and Mother, in the next place he forbids Murder. This Crime you have committed, and that, with the moſt aggravating Circumſtances that I have ever known attend any Crime of this nature. It was committed upon a Gentleman of great Quality, that was ſo far from giving you any Provocation to it, that you acknowledge your ſelves you never had any communication with him. It was done, upon a Day when you ought to have exerciſed, and buſied your ſelves in Acts of Piety and Religious Worſhip. It was done, in the Streets of the City near the King's Royal Palace. But the greateſt Circumſtance of all is the doing it in ſuch a manner, that is, it was done by way-laying; a ſort of killing the moſt unworthy, the moſt baſe and the moſt ungenerous of all other. For that it gives the Party aſſaulted no liberty for any Prevention, or any Defence by any prudence he can uſe; and the Conſequence of it is, as much as lies in the Malefactor, to deſtroy as well the Soul as the Body; by ſuch an inſidious Murder to take a Man out of this life before he can have any opportunity to prepare for another life. Therefore in our publick ſolemn Prayers in our Church it has very juſtly and worthily been made part of our Liturgy, to pray to be delivered from Murder and ſudden Death.

You that are Strangers in this Countrey, if you had been tried and convicted of a breach of our Municipal Laws, the peculiar Laws of this Kingdom, much Indulgence might be ſhewn to you becauſe of your little acquaintance with the Law. But that is not your Caſe: Your Offence is a tranſgreſſion againſt the Law of God, written in large Characters in the Nature of Man. It is againſt the Laws of all Nations, even your own Countrey from whence you come, and any other Countrey where-ever you could go, are ſevere in their Laws againſt that by which you have broken the Law in ſo foul a Fact. The very *Barbarians* could ſay, *This Man is a Murtherer, and Divine Vengeance will not ſuffer him to live*; ſo that they all think the Divine Vengeance concern'd to revenge it.

You have ſlain this innocent Gentleman which is but a ſingle Diſtemper as it concerns him, but if it ſhould go unpuniſhed, it would turn to a peſtilential Contagion. If ſuch Aſſaſſinations and Murders of Perſons ſhould not be ſeverely puniſhed, it were a greater Woe than ever was brought upon this Kingdom. Therefore it is thought fit by his Majeſty to make his Juſtice ſignal and exemplary upon thoſe that have thus baſely and inhumanly brought themſelves under the Cenſure of it. That when the fame of this barbarous Action ſhall go abroad, his Juſtice ſhall alſo be celebrated upon the Actors, and that this Kingdom is maintained by Juſtice.

I have but one thing more to ſay to you, and and that is in tenderneſs to you your ſelves. You are to conſider that you are to receive another Judgment than that you will be condemned by here, and that you may be prepared for that is your great and your only Care. Now it is Repentance that is the only Antidote againſt the ſting of Death. You cannot be found Innocent, your ſelves acknowledge your Guilt, then let it be your care to be found Penitent. For that purpoſe you ſhall have the aſſiſtance of ſome of our learned Divines here, and you will do well to hearken to their good Counſels. I pray God you may ſubmit to Juſtice patiently, and that your Contrition may be correſpondent to your Crime, that ſo you may obtain Pardon and everlaſting Favour from God.

It remains only that we paſs the Sentence of Law againſt you, which is this,

That you ſhall go from hence to the Place from whence you came, from thence to the Place of Execution, where you ſhall be ſeverally hanged by the Neck untill you be dead: And the Lord have mercy upon your Souls.

Then the Priſoners were carried away, and the Court adjourned.

THE

THE

TRYAL

OF

Nathaniel Thompſon, William Pain,

AND

John Farwell.

Publiſh'd by AUTHORITY.

Trinity Term, XXXIV. *Caroli Secundi* Regis.

On Tueſday *the* 20*th of* June 1682, *before the Right Honourable Sir* Francis Pemberton, *Lord Chief Juſtice of His Majeſties Court of* King's Bench, *by* Niſi prius *in the* Guild-Hall *of the City of* London, *came on the Tryals of* Nathaniel Thompſon, William Pain, *and* John Farwell, *upon an Information brought againſt them for ſeveral Treſpaſſes and Miſdemeanours in Writing, Printing, and Publiſhing Letters Importing that Sir* Edmondbury Godfrey *murdered himſelf, as alſo for ſeveral Falſities relating to the ſaid Matter Printed in ſeveral Papers, called the* Loyal Proteſtant Intelligence. And the Jurors Names, were as follow,

Peter Houblon.	Jur.	*George Widdowes.*
John Ellis.		*William Sambrooke.*
William Barret.		*William Jacomb.*
Joſhua Brooks.		*John Delmee.*
Gervas Byfield.		*Samuel Bayly.*
Jonathan Lee.		*Samuel Howard.*

The

The INFORMATION *was in the* Attorney General's *name.*

Sir *Robert Sawyer.*

FOR that in *Hillary* Term, in the 30*th* and 31*th* years of this King's Reign, in the Court of King's Bench at *Weſtminſter*, by a Jury of the County of *Middleſex* were indicted, *Robert Green*, *Gerald*, Clerk, *Henry Berry*, *Lawrence Hill*, *Dominick Kelly* and *Philbert Vernatt*; for that they by the Inſtigation of the Devil, *&c.* The 12*th* of *October* in the 30*th* year of this King's Reign, at the Pariſh of St. *Mary le Strand* in the County of *Middleſex* aforeſaid, with Force and Arms, in and upon Sir *Edmondbury Godfrey* Knight, in the Peace of God and the King then and there being, felonioufly, wilfully, and of their malice aforethought, did make an Aſſault, and kill and murther him in this manner, *viz. Green* did fold and faſten a Linnen Handkerchief about his Neck, and therewith choaked and ſtrangled him, of which choaking and ſtrangling he inſtantly died: And the others, *viz. Gerald*, *Berry*, *Hill*, *Kelly* and *Vernatt* were preſent, aiding, abetting, comforting, aſſiſting and maintaining the ſaid *Green* to kill and murther the ſaid Sir *Edmondbury Godfrey* in form aforeſaid; and ſo they the ſaid *Green*, *Gerald*, *Berry*, *Hill*, *Kelly*, and *Vernatt* in manner and form aforeſaid, him the ſaid Sir *Edmondbury Godfrey* felonioufly, wilfully, and of their malice aforethought, did kill and murther, againſt the Peace of our ſaid Lord the King, his Crown and Dignity: To which indictment afterwards, the ſaid Term, the ſaid *Robert Green*, *Henry Berry*, and *Lawrence Hill* ſeverally pleaded, Not Guilty, and put themſelves upon the Countrey; and after in the ſaid Term of St. *Hillary*, in the ſaid Court of King's Bench at *Weſtminſter*, for the Felony and Murther aforeſaid, by a Jury of their Countrey in due manner were tryed, and thereof lawfully convicted and attainted, as by the Record thereof in the ſaid Court of King's Bench at *Weſtminſter* remaining more fully appears; which ſaid *Robert Green*, *Henry Berry* and *Lawrence Hill* were afterwards executed and ſuffered Death, according to the form and effect of the Judgment and Attainder aforeſaid: And whereas one *Miles Prance* upon the Tryal of the Indictment aforeſaid, was produced a Witneſs and ſworn for the King, and gave material Evidence againſt the ſaid *Green*, *Berry*, and *Hill* to prove them guilty of the Felony and Murther aforeſaid: And one *William Bedloe*, *John Brown*, *Elizabeth Curtis*, *Zachary Skillarne* and *Nicholas Cambridge* upon the Tryal aforeſaid, were Witneſſes in like manner produced and ſworn for the King, and gave diverſe material evidences againſt the ſaid *Green*, *Berry* and *Hill*, to prove them guilty of the ſaid Felony and Murther: And whereas alſo the ſaid *Gerald*, *Robert Green*, *Lawrence Hill*, *Dominick Kelly* and *Philbert Vernatt*, at the time of the Felony and Murther aforeſaid were Papiſts, and Maintainers of the Romiſh Superſtitions; And the ſaid *Gerald*, *Dominick Kelly* and *Philbert Vernatt* have fled, and not yet appeared to the ſaid Indictment; And whereas alſo by the Coroner's Inqueſt taken upon the view of the Body of the ſaid Sir *Edmondbury Godfrey* lying dead, before *John Cooper* Gent. one of the Coroners of the ſaid County of *Middleſex* by the Oaths of honeſt and lawful men of the ſame County above the number of twelve perſons, it was found that certain Malefactors unknown, Felonioufly and of their malice prepenſe him the ſaid Sir *Edmondbury Godfrey* did ſtrangle and choak, of which he died: The ſaid *Nathaniel Thompſon*, *William Pain* and *John Farwel*, well knowing the premiſſes, and being perſons Devilliſhly affected, deviſing, practiſing, and with all their ſtrength intending the Peace and common Tranquillity of their Kingdom of *England* to diſturb, and as much as in them lay the due Courſe of the Law to deſtroy, and ſubvert and elude, and the Juſtice of this Kingdom of *England* to defame and ſcandalize, and as well the ſaid *Miles Prance*, *William Bedloe*, *John Brown*, *Elizabeth Curtis*, *Zachary Skillarne*, *Nicholas Cambridge*, as the ſaid *John Cooper*, and the honeſt and lawful men ſworn upon Inqueſt aforeſaid, upon view of the body aforeſaid, to bring into the greateſt hatred, contempt and vile eſteem with all the King's Subjects, and to deter the King's Subjects from finding detecting and proving the deſigns of Papiſts againſt our Lord the King and the true Religion now by Law eſtabliſhed, and impiouſly and wickedly deviſing and intending them the ſaid *Gerald*, *Dominick Kelly*, and *Philbert Vernatt*, from undergoing the pains and ſentences by Law upon them to be inflicted, for the murther aforeſaid, and to aid and aſſiſt them (altho' they be Guilty) to be found Not Guilty thereof; And to deceive and beguile the King's Subjects in the premiſſes with their falſe Affirmations and Arguments, and cauſe and procure that it ſhould be believed and eſteemed, that the ſaid *Green*, *Berry*, and *Hill*, the perſons for the Murther of the ſaid Sir *Edmondbury Godfrey* as aforeſaid convicted and executed, had been convicted, and executed unjuſtly, and that the ſaid Sir *Edmondbury Godfrey* was *felo de ſe*, and himſelf had felonioufly murthered. They the ſaid *Thompſon*, *Pain*, and *Farwel*, their moſt impious wicked and diabolical intentions to fulfil and perfect afterwards, to wit the 23*th* of *February*, in the four and thirtieth year of the Reign of our now Sovereign Lord the King, at the pariſh of Saint *Mary le Bow*, *London*, with force and arms, *&c.* falſly, unlawfully, unjuſtly, wickedly, and diabolically, made, compoſed, and cauſed to be printed, a certain falſe ſcandalous and defamatory Libel, Entituled *a Letter to Mr.* Miles Prance *in relation to the Murther of Sir* Edmondbury Godfrey: In which ſaid Libel amongſt other things, it is contained, as follows, *And hearing that the Coroner's Jury or Inqueſt were firſt of Opinion, and accordingly declared, he was* felo de ſe, *and that there was much Art and Skill uſed to procure their Verdict to the contrary, more particularly the refuſing of the body at their inſtance and requeſt to be opened*: And in another place of the ſame Libel, it is further contained as follows, *They ſay, that if a Man or any other Creature be ſtrangled or hang'd, and his Body cold, and the blood ſettled in the Veins* (*as he muſt needs be, if your Evidence be true*) (meaning the Evidence of

of the ſaid Miles Prance) *run twenty Swords through ſuch a body, not one drop of blood will come out, but on the contrary, his body when found was full of blood, in ſo much that (over and above the Cakes or great Gobbets of congealed putrified blood found afterwards in his Cloths) the Conſtable when he pulled the ſword out of his body, it craſhed againſt his back bone, and gobbets of blood and water guſhed or gubled out of that wound in abundance, not only in that very place where the ſword was pulled out, but in all his paſſage to the White houſe; eſpecially, there where his body was lifted over two high ſtumps, and alſo when he was laid upon the Table, the blood and water ſo iſſued out of that wound, that it ran from off the Table upon the Floor, and from thence into the Cellar*; ſo that they do averr, that that wound that he received by that Sword, muſt of neceſſity be the Cauſe of his Death: And in another part of the ſame Libel, it is further contained as follows, *They obſerve that* Bedloe's *before the Committee of Lords, and your Evidence in relation to this Gentleman's Death, are as different as the Eaſt is from the Weſt; for you dogg him out of St.* Clements, *the other decoys him from* Charing-Croſs; *you ſwear he was ſtrangled with an Handkerchief near the Stables going to the Water-ſide,* Bedloe *that he was ſmothered with a Pillow in a Room in the great Court in* Somerſet *houſe; you ſay that he took Horſe at* Sohoe, Bedloe *ſays he took Coach at* Clarendon-*houſe, with many more ſuch like Contradictions; and conſidering the old Proverb, Fore-warned, fore-armed; a further and fuller accompt of the whole matter expect.* And that the ſaid *Nathaniel Thompſon, William Pain,* and *John Farwell,* their moſt impious, wicked and diabolical intentions to fulfil and perfect, afterwards, to wit the third day of *March,* in the ſaid four and thirtieth year of the Reign of the ſaid late Lord the King, at the ſaid Pariſh of St. *Mary le Bow, London* aforeſaid, with Force and Arms, *&c.* falſly, unlawfully, unjuſtly, evilly, maliciouſly, ſcandalouſly and diabolically, made, compoſed, and cauſed to be printed, another falſe, ſcandalous and defaming *Libel*; intituled, A *ſecond Letter to* Miles Prance, *in reply to the Ghoſt of Sir* Edmondbury Godfrey. In which laſt mentioned Libel amongſt other things, it is further contained, as follows, *Next whereas my Letter ſaith (and that truly) that the Coroner's Jury were firſt of opinion, and accordingly declared he was* ſelo de ſe, *and that much Art and Skill was uſed to procure their Verdict to the contrary.* And in another place of the ſame laſt mentioned Libel, amongſt other things, it is further contained, as follows; *And it would be very material, if the Coroner would declare, what he received for that Job, and of whom; and what Evidence he had to induce the Jury to find (as the Inquiſition imports) that he was ſtrangled with a Linnen cloth, a Matter of fact never ſo much as ſpoken of untill you came in with your Evidence, which was not in ſome weeks after; And I do again auerr, that the Body was required by the Jury to be open'd, and was refuſed; and if the Body was in their and the Coroner's power (as the Ghoſt inſinuates) ſuch power was concealed from and denied the Jury.* And in another place of the ſame laſt mentioned Libel, it is amongſt other things contained, as follows: *He is to underſtand, that Mr.* Brown, *the two Chirurgeons, (meaning the ſaid* Zachary Skillarne *and* Nicholas Cambridge) *and Mrs.* Curtis, *are no competent (nor can be material) Witneſſes in this Caſe.* And in another place of the ſame laſt mentioned Libel, it is further contained, as follows; *But Mr.* Prance, *it will be fully proved, that the Body was full of Blood, and that there were Cakes or Gobbets of dry Blood found in his Cloaths, which with his Body ſtunk extreamly: And it will be alſo fully and effectually proved that his Eyes, Noſtrils, and Corners of his Mouth were Fly-blown.* And in another place of the ſame laſt mentioned Libel, amongſt other things, it is contained as follows: *And as to the ſeventh and laſt Paragraph which relates only to the difference betwixt you and Mr.* Bedloe's *Evidence, I muſt take notice that what you and he ſwears is very contradictory:* And in another place of the ſame laſt mentioned Libel, amongſt other things it is further contained, as follows; *But I cannot omit to take further notice of Mrs.* Curtis's *Affidavit, in relation to the Wax found upon the Cloaths, in which I cannot ſay, but ſhe may ſwear true; but this I do averr, that if it be ſo, thoſe drops were put upon the Cloaths long after he was found. And after the Jury had ſat on the body; for there was no ſuch thing then on the Cloaths. And, I ſuppoſe, this was ſome artifice uſed by thoſe, who either out of intereſt or deſign, were deſirous to confirm his being murthered at* Somerſet-*houſe.* And the ſaid Attorney General for the ſame Lord the King, gives the Court here to underſtand and be informed: That the ſaid *Nathaniel Thompſon, William Pain,* and *John Farwell,* in their further proſecution aforeſaid, falſly, wickedly, and maliciouſly, their contrivances and intentions aforeſaid, afterwards to wit the *7th* day of *March,* in the four and thirtieth year of our ſaid Lord the King, at the Pariſh of St. *Mary le Bow, London,* with Force and Arms, *&c.* falſly, unlawfully, unjuſtly, wickedly, maliciouſly, ſcandalouſly, and deviliſhly, compoſed, made and cauſed to be printed, a certain other falſe, ſcandalous, and defamatory Libel, intituled, *The Loyal Proteſtant and True Domeſtick Intelligence, or News both from City and Country.* In which laſt mention'd Libel, it is contained, as follows, *that there is not in the ſaid Letter,* (meaning the ſaid falſe, ſcandalous, and defaming Libel,) Entituled, a Letter to Mr. *Miles Prance,* in relation to the Murther of Sir *Edmondbury Godfrey,* before firſt mentioned, the leaſt *item or circumſtance, but what will be by undeniable Evidence made out to be the Truth: So the ſaid Mr.* Prance, *having not as yet vouchſafed an Anſwer to that Letter, he will ſpeedily receive a further Letter relating to that Murther, wherein the further truth will not only be fully ſet forth, and other Circumſtances ſet out:* And further, that the ſaid *Nathaniel Thompſon, William Pain,* and *John Farwell,* in their further proſecuting, falſly, wickly, and maliciouſly, their contrivances and intentions aforeſaid, with Force and Arms, *&c.* falſly, unlawfully, wickedly, maliciouſly, and deviliſhly, compoſed, and cauſed to be printed, a certain other falſe, ſcandalous, and defamatory Libel, intituled, *The Loyal Proteſtant Intelligence, &c.* In which laſt mentioned Libel, amongſt other things, it is contained, as follows: *Whereas* Dick Janeway *in this day's Mercury, promiſes an Anſwer to the late Letter to Mr.* Prance, &c. *This is to give him, and all the world notice, That ſuch an Anſwer is impatiently expected by the Author of that Letter, who queſtions not but to prove every Tittle of that Letter, to the*

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Satisfaction of all mankind; And beſides, he is very deſirous that the Courantier *(according to his laſt* Pacquet *of Advice to* Rome*) would go on, and uſe his Intereſt, to procure the Lord Mayor, Court of Aldermen, and Common Council of* London*, to inſpect the Truth of that Letter; whereby it will appear inevitably, that there is not one* Papiſt *or* Popiſhly affected *perſon concerned in that Letter, or in the proof of the particulars thereof; but the ſame (with divers other material circumſtances relating to the Murther of Sir* Edmondbury Godfrey*, and the* Fraud *and* Blind *put upon the World in relation thereto) will be more fully, plainly and manifeſtly proved, without giving ill Words, or ſcurrilous Language, or Reflections to any perſons that really are, or ſuppoſed to be therein concerned in any circumſtance whatſoever.* And that the ſaid *Nathaniel Thompſon, William Pain,* and *John Farwell,* in their further proſecution aforeſaid, falſly, wickedly, and maliciouſly, their contrivances and intentions, after, to wit: The firſt day of *April,* in the four and thirtieth year of the Reign of our ſaid Lord the King, with Force and Arms, *&c.* at the Pariſh of St. *Mary le Bow, London,* aforeſaid, falſly, unlawfully, unjuſtly, wickedly, maliciouſly, ſcandalouſly, and deviliſhly, made, compoſed, and cauſed to be printed, a certain other falſe, ſcandalous, and defamatory Libel, Intituled, *The Loyal Proteſtant Intelligence,* &c. In which laſt mentioned Libel, amongſt other things, it is contained, as follows; *Laſt* Wedneſday, Nathaniel Thompſon *upon Summons appeared before the Lords of his Majeſties moſt honourable Privy Council, about the Letters to Mr.* Miles Prance, *concerning the Death of Sir* Edmondbury Godfrey, *where he juſtified the Matter, and produced the Authors, who are ready to prove (by undeniable and ſubſtantial Witneſſes, not in the leaſt accuſed or ſuſpected of* Popery*, as the malicious Party do ſuggeſt) that every Tittle and Iota of thoſe Letters are true.* And that in another part of the laſt mentioned Libel, amongſt other things, it is contained, as follows; *Mr.* Thompſon *and the Gentlemen his Friends are to attend the next* Wedneſday *at Council, where they do not doubt, but that Honourable Board will put them into a Method to prove the whole, or any particular, which their Honours in their great Wiſdom ſhall think convenient to be brought to the Teſt or Examination.* And further, that the ſaid *Nathaniel Thompſon,* &c. the Twenty third day of *February,* in the aboveſaid Thirty-fourth year of our ſaid Lord the King; and divers other days and times betwixt the ſaid Twenty-third of *February,* and the aforeſaid Thirty-fourth year, and the day of the exhibiting of the ſaid Information at the Pariſh of St. *Mary le Bow, London,* aforeſaid, knowingly, and every of them knowing the ſaid ſeveral Libels to be falſe, malicious, ſcandalous and ſeditious, with Force and Arms, *&c.* falſly, unlawfully, unjuſtly, wickedly, maliciouſly, ſcandalouſly, ſeditiouſly and deviliſhly, the ſaid falſe, malicious, ſcandalous and ſeditious Libels uttered and publiſhed, and each of them uttered and publiſhed in manifeſt contempt of the Laws of this Kingdom of *England,* and the Scandal and Defamation of the publick Juſtice of the ſame, to the evil Example of all others in like Caſe offending; and againſt the King's Peace, his Crown and Dignity, *&c.*

Then Proclamation for Information being made, Mr. Thompſon *acquainted my Lord and the Jury with the Effect of the Information, as follows:*

Mr. *Thompſon.* My Lord, and you Gentlemen of the Jury, This is an Information againſt *Nathaniel Thompſon, William Pain,* and *John Farwell,* and it is for writing and printing ſeveral Scandalous Libels, about the Death of Sir *Edmondbury Godfrey*: In which we ſet forth, that *Green, Berry,* and *Hill,* were indicted for the Murther of Sir *Edmondbury Godfrey,* and thereof convicted and attainted, and that the ſaid *Green, Berry,* and *Hill,* were executed for it; that upon their Tryal for that Matter ſeveral Witneſſes were examined, namely Mr. *Prance, Bedloe,* and *Curtis,* and ſeveral others to prove, Sir *Edmondbury Godfrey* murthered at *Somerſet-houſe*; and before the Tryal there was an Inqueſt taken by the Coroner of *Middleſex,* by which it does appear, that Sir *Edmondbury Godfrey* was murthered by ſeveral Perſons unknown, and that the Defendants, to reflect upon the Juſtice of the Nation, and ſcandalize the Witneſſes produced at that Tryal, and to make it believed that theſe Perſons died Wrongfully, did write and print ſeveral ſcandalous Libels and Letters, one of them intituled, A Letter to *Miles Prance,* concerning the Murther of Sir *Edmondbury Godfrey,* and in theſe Letters did ſuggeſt, as if he had been *felo de ſe,* and do reflect upon every one of the Witneſſes, as if they had contradicted themſelves, and alſo do reflect upon the Coroner, as though he had bribed the Jury, and do undertake by theſe Arguments and ſeveral others (that you will hear) to prove that Sir *Edmondbury Godfrey* murthered himſelf; And that in another Libel that *Thompſon* printed, called his Loyal, Proteſtant Intelligence, he ſays, he will make it out by a Cloud of Witneſſes: This we ſay is againſt the Peace of the King, and defaming of the Juſtice of the Nation: If we prove this Matter upon them, you are to find them Guilty.

Mr. Serj. *Maynard.* My Lord, The Matter which you have now before you, is as impudent a thing as ever was done. Gentlemen, Sir *Edmondbury Godfrey* was murthered, and *Green* and the Contrivers of it have been executed for it; the Matter hath paſſed the Examination of the Parliament, and the King and Council and all; Now this *Thompſon* is a Printer, I may as well ſay a Printer of Libels, for he does conſtantly print Libels againſt the Religion eſtabliſhed, and the Juſtice of the Nation; The Jury that were impannelled upon the Coroner's Inqueſt, he ſays of them, that they at firſt did agree that he murthered himſelf, and afterwards did return, and find that he was murthered by others: Gentlemen, it is plain that he was murthered by others, and the particular perſons have been tryed for it, and found guilty. Now this Perſon after all this, What does he do? He takes upon him to write a Letter to *Prance,* (*Prance* was one of the Witneſſes in that Caſe) he writes it by the name of a Letter, but it is a foul and wicked Libel; and therein ('tis too long for me to mention the particulars) he

he ſcandalizes the publick Juſtice of the Nation, he undertakes to vindicate the Murderers, and to accuſe the proceedings of the Nation. But Gentlemen, we will prove theſe Men guilty of framing and publiſhing of theſe wicked Libels, and that is all that is needful to be done upon the point of Evidence. We will call our Witneſſes.

Then Mr. *Clare* was ſworn, and produced a Copy of the Record of the conviction and attainder of *Green*, *Berry*, and *Hill*, for the Murther of Sir *Edmondbury Godfrey*. As alſo a Copy of the Inquiſition, taken by the Coroner of *Middleſex*, upon the view of the Body of the ſaid Sir *Edmondbury Godfrey*, whereby it is found that he was murthered by them, ſtrangled with a Cord by perſons unknown. Both which (Mr. *Clare* having ſworn to be true Copies) were read.

Sir *Francis Pemberton.* *Lord Chief Juſtice.* This matter of his being thus ſtrangled, was found before it was diſcovered who did the Murther. It was upon the ſight of the body, and they ſuppoſed it to be done by a Cord, but afterwards it came to light that it was done with an Handkerchief.

Mr. *Thompſ.* (To the Counſel of the Defendants) If you will put us to prove all, we muſt prove that theſe men were executed.

Then Captain Richardſon *was ſworn.*

L. C. J. Were theſe men executed for this Murder?

Capt. Rich. Yes, I ſaw them executed.

Then Mr. Prance *was ſworn.*

Mr. *Thompſ.* Did you give Evidence upon the Trial of *Green*, *Berry*, and *Hill*, for the Murder of Sir *Edmondbury Godfrey*?

Mr. *Prance.* Yes.

Mr. *Thompſ.* Do you remember that *Brown* was a Witneſs too?

Mr. *Prance.* Yes, *Brown* was.

Mr. *Thompſ.* Was *Curtis* a Witneſs, and Mr. *Bedloe*?

Mr. *Prance.* That *Curtis* was, I don't remember, Mr. *Bedloe* was.

Then Curtis *was ſworn.*

Mr. *Thompſ.* Were you a Witneſs at the Trial of *Green*, *Berry*, and *Hill*?

Mrs. *Curtis.* Yes, I was.

Then Sir John Nicholas *and Sir* Philip Lloyd, *and* William Bridgman, *Eſq; were ſworn, and the two Letters in the Information were ſhewed to them.*

L. C. J. Were theſe ſhewed to the Defendants, *Thompſon*, and *Pain*, and *Farwell*, at the Council?

Sir *Phil. Lloyd.* Theſe were the ſame, I know becauſe they are endorſed by my hand; *Thompſon* owned the Printing of both, and one other of the Defendants owned the writing of one of them, and the other of the other.

L. C. J. But *Thompſon* owned the Printing of both?

Sir *Phil. Lloyd.* Yes, my Lord.

Mr. *Sol. Gen.* Did *Pain* and *Farwell* own the bringing of both to *Thompſon* to print?

Sir *Phil. Lloyd.* One owned the one, and the other the other.

Then Sir John Nicholas *and Mr.* Bridgman *teſtified the ſame.*

Mr. *Saunders*, of Counſel with *Pain*, ſaid to Sir *Phil. Lloyd*. Did *Pain* or *Farwell* own that they brought both, or one the one, and the other the other?

Sir *Ph. Lloyd.* One the one, and the other the other.

Mr. *Saunders.* Then pray, Sir, which was that *Farwell* did own?

Sir *Phil. Lloyd.* My Lord, my own memory does not tell me which, but here are Notes ſay that *Farwell* owned the firſt, and that *Pain* owned the ſecond.

L. C. J. Do you beleive them to be true?

Sir *J. Nicholas.* Yes, Sir, I took the Notes.

Mr. *Yalding.* Did he readily diſcover his Authors?

Sir *Phil. Lloyd.* Yes, he did.

Aſſociat. The Title is thus, A Letter to Mr. *Miles Prance*, in relation to the Murder of Sir *Edmondbury Godfrey*. Shall I read it all?

L. C. J. All of it.

Aſſociat. Read it in theſe words. Mr. *Prance.*

A Letter to Mr. *Miles Prance*, in Relation to the Murder of Sir *Edmondbury Godfrey*.

Mr. *Prance*,

PErceiving by ſome late Pamphlets ſeveral Rumors rais'd, as if there were endeavours us'd to aſperſe your *Evidence* in Relation to the Death of Sir *E. B. G.* and to lay that Murther upon Himſelf. And remembering the *Conſternation*, which then was in all people's minds, by the diſcovery at that time of a Dreadful and moſt Horrid *Popiſh Plot*, which occaſion'd divers to report, and moſt to believe (even ſeveral days before the dead Body was found) *That he was Murder'd by the* Papiſts *at* Somerſet-houſe. And hearing that the *Coroner's Jury* or *Inqueſt* were firſt of Opinion, and accordingly declar'd he was *Felo de ſe*; And that there was much Art and Skill us'd to procure their *Verdict* to the contrary; More particularly, the refuſing of the Body (at their Inſtance and Requeſt) to be opened; and oppoſing the Aſſiſtance of the *Coroner* of *Weſtminſter*, who is taken notice of to be a Knowing and Impartial Man in the Execution of his Office;) who was deſir'd to, and did attend for that purpoſe, but was diſmiſs'd with a Guinea; telling him, they had no need of his Service. I made it my buſineſs, partly for Your's, but chiefly for the Truth's ſake, to make a ſtrict Enquiry into the farther Cauſes of the aforeſaid Rumors, and do find theſe particulars very much urg'd, and diſcours'd of, *(viz.)*

I.

In oppoſition to the Evidence of his being dog'd up and down, and lodg'd in a great Houſe at St. *Clement*'s on *Saturday* the 12*th* of *October* 1678. (being the Day he was firſt miſſing.) It is affirm'd he went out of his Houſe that very *Saturday* Morning about nine a Clock; (which is the laſt time he ever returned thither;) And about ten that Forenoon was in the Fields walking towards *Marybone*, (in which Pariſh his dead Corps was afterwards found,) and was there met by a Brewer in St. *Giles*'s, who diſcourſed with him; And about eleven of the ſame day he was ſeen paſſing by the Lady *Cook*'s Lodgings near the *Cock-pit*; After which, he was ſeen in St. *Martin*'s *lane*, went by the Church, and down *Church-lane* into the *Strand*; About one paſſed by the door of one Mr. *Ratcliff* an *Oyl-man* in the *Strand*, and ſoon after was met in the back Court of *Lincolns-Inn* by two Gentlemen, who obſerved him to make a ſudden turn, and to go out at the back door; They went out at that door alſo, and did ſee him turn the corner Wall, between which place and *Turn-ſtile*, he was met by a Barriſter at Law; And that a Perſon living near *Primroſe-hill*, declared before divers Perſons, that he ſaw him about three that *Saturday* in the Afternoon walking in thoſe Fields, his uſual Walk being that way.

II.

They ſay, the place where, and the poſture wherein he was found, are very remarkable. As to the place; It was in a Ditch on the South ſide of *Primroſe-hill*, ſurrounded with divers *Cloſes*, fenced with high Mounds and Ditches, no Road near, only ſome deep dirty Lanes made only for the conveniency for driving *Cows* and ſuch like *Cattle* in and out of the Grounds; And thoſe very Lanes not coming near 500 Yards of the place, and impoſſible for any Man on Horſeback with a *dead Corpſe* before him at Midnight to approach, unleſs Gaps were made in the Mounds, as the *Conſtable* and his Aſſiſtants found by Experience when they came on Horſeback thither. As to the poſture, his Breaſt was unbuttoned, his Waſtcoat and Shirt put by, his Sword run in under his left Pap next his Skin, the Point coming out at his right Shoulder about ſix Inches, his left Arm doubled under him, (on which his Head ſeemed to lean,) and his right Arm ſtiff, ſtretch'd out upon the Bank, his Belly and Breaſt being ſupported by the ſide of the Bank, his Knees knit together, and with his Hipps a little bending or doubling under him.

And they infer from thence, that he being a tall raw-bon'd Man, (after he had been ſeveral days dead,) could never be crooked ſo as to be cram'd into a *Sedan*, (which are very low built, and difficult to be carried with proper Braces, much more as you evidenced, with *Cords*) then ſtraitened, and his Legs opened, and mounted on Horſeback, and then put into the poſture he was found in, and ſtiffened again.

III.

Now altho' the Matters aforeſaid may be ſaid to be only *circumſtantial*, yet they produce undeniable Arguments againſt your Evidence, *viz. They ſay, that if a Man, or any other Creature, be Strangled, or Hanged, and his Body cold, and the Blood ſettled in the Veins*, (as he muſt needs be, if your *Evidence* be true,) *run twenty Swords thro' ſuch a Body, not one drop of Blood will come out*: But on the contrary, his Body when found, was full of Blood, inſomuch, that (over and above the *Cakes* or great Gobbets of congealed putrefied Blood found afterwards in his *Cloaths*) the *Conſtable* when he pulled the Sword out of his Body, it craſhed againſt his Back-bone, and Gobbets of Blood and Water guſhed or gubbled out of that Wound in abundance, not only in that very place where the Sword was pulled out, but in all his Paſſage to the *White-houſe*, eſpecially there where his Body was lifted over two high Stumps; and alſo when he was laid upon the Table, the Blood and Water ſo iſſued out of that Wound, that it ran from off the Table upon the Floor, and from thence into the Cellar; So that they do aver that that Wound that he received by that Sword, muſt of neceſſity be the Cauſe of his Death. And they take notice, that ſo much of the Sword as was in his Body, was diſcoloured and blackiſh; and that part that came out at his back was of a dulliſh colour, and the Point thereof was ruſty; Alſo, that the *Cloaths*, *Belt* and *Scabbard* were weather-beaten to rags; his Body ſtunk extremely; his Eyes, Noſtrils, and corners of his Mouth were fly-blown; all which muſt naturally be by his being ſo long in the Air.

IV.

They ſay, *That when a Man is Strangled, or Hanged, his Eyes will be extorted, his Face will be ſwelled and black*; Whereas his Eyes were ſhut, his Face was pale, only the left part of his Chin, with his Breaſt and Belly being next the Earth, were putrefied, and looked of a blue and greeniſh colour, more eſpecially about the Wound; For that the Blood, when hot, running to the Wound, cauſed the greater putrefaction in that place; whereas, if the Wound had been made after he was Dead, and Cold, the reſt of his Body would have putrefied as ſoon, and as much as there.

V.

They ſay, *That the cleanneſs of his Shoes makes againſt your Evidence*; *For his Shoes were cleaned or rather glazed on the very bottoms of the Soles, occaſioned by his walking in the Graſs, and Graſs-ſeeds were obſerved to ſtick in the Seams of his Shoes*; *And beſides, there was not one ſpeck of Dirt on his Cloaths, or Legs, not ſo much as a Horſe-hair ſticking thereon*; Whereas the *Conſtable*, and thoſe that went with him, were dirty'd and moil'd up to the very Saddle-skirts, and not eaſily to be cleaned; And Mr. *Prance*, you know that a tall *Dead Man* on Horſe-back, cannot lift up his Legs to ſave them from the Dirt.

VI.

As to the looſeneſs of his Neck, and the Rim or green Circle about it, they ſay they are ridiculous and impertinent Arguments againſt ſo many Demonſtrative ones; eſpecially, when there is not a *Nurſe*, or any Woman of Age, that hath

hath buried any Relations, but will tell you it's very common for People to die with Necks as looſe as his was. And the Rim about his Neck was ſo far from being like one made with a *Cravat* or *Handkerchief*, that it ſeems to be occaſioned by the great height and ſtiffneſs of his *Collar*, which was faſt buttoned about his Neck, and on which his Head reſted, and was unbuttoned about ten of the Clock the next day, before the *Coroner* or *Jury* came. But if that Rim, or thoſe Bruiſes, that your Evidence ſeems to make the Cauſe of his Death, were really ſo; Then they alledge, that in ſuch caſe, the whole Maſs of Blood would have ſettled there, and his Neck and Bruiſes would have ſwelled, and have been perfect black, which was not in His Caſe.

VII.

They alſo ſay, That all theſe Matters are Notorious, and will be proved by divers credible and undeniable Eye and Ear-witneſſes; And beſides, They obſerve, That *Bedloe*'s (before the *Committee of Lords*,) and your Evidence in relation to this Gentleman's Death, are as different as the *Eaſt* is from the *Weſt*; For you dogg him out of St. *Clement*'s; the other decoys him from *Charing-croſs*: You ſwear he was Strangled with a Handkerchief near the Stables going to the Water-ſide; *Bedloe*, that he was Smothered with a *Pillow* in a Room in the great *Court* in *Somerſet-houſe*. You ſay he took Horſe at *Soboe*; *Bedloe* ſays he took *Coach* at *Clarendon houſe*, with many more ſuch like *Contradictions*; And conſidering the Old Proverb, *Fore-warn'd, fore-arm'd*. A further and fuller Account of the whole matter expect, I being loth at preſent to exceed the Bounds of a Letter, I am,

SIR,

Cambridge Feb. 23. 1681. Your very Loving Friend,

TRUEMAN.

London, Printed for *M. G.* at the Sign of Sir *E. B. G*'s Head near *Fleet-bridge*.

Sir *Francis Winnington*. Now read the other Letter.

Aſſociat. This is intitled a ſecond Letter to Mr. *Miles Prance* in reply to the Ghoſt of Sir *Edmondbury Godfrey*.

Mr. *Prance*,

SInce my Laſt to you of the 23*d* paſt, I have ſeen a prolix, railing, and impertinent Pamphlet, intitled, *Sir* E. B. G*'s Ghoſt*, and pretended to be an Anſwer to my ſaid Letter. And conceiving you are better acquainted with Ghoſts than my ſelf, I thought fit to direct my Anſwer to that Ghoſt to you, and thereby ſhew the Ridiculouſneſs thereof, as alſo vindicate the Truths contained in my ſaid former Letter, and ſhew you and the World further Circumſtances to juſtify the ſame; and therefore, according to the method of my former Letter, I ſhall proceed by theſe Heads.

And firſt, Not underſtanding what the Ghoſt means, by arraigning the Juſtice of the Nation, unleſs he would aſſert that all that are legally, (are likewiſe juſtly hanged;) and ſo conſequently, that the Mother and her two Sons were juſtly hanged in *Gloceſterſhire*, for the Murder of the Lady Viſcounteſs *Campden*'s Steward, tho' he afterwards appeared alive; And I do not find that ever his appearance arraign'd the Juſtice of the Nation. And remitting the Conſideration of Mr. *Brown*'s, the Surgeons, and Mrs. *Curtis*'s Evidence in relation to the Blood, to its proper place; and affirming (as the truth is,) that Mrs. *Celliers*, Mrs. *Mary Gibbon*, the *Newgate* Prieſts, *James Magragh*, and all other *Iriſh men*, or *Iriſh* Evidences, or other Papiſt or Papiſts, or Popiſhly affected Perſons whatſoever; as alſo thoſe concerned in the late Sham of his having hang'd himſelf, are ſtrangers to, and had not the leaſt knowledge or intimation of the Contents of my ſaid former Letter, nor any way concerned therein, or in or with any part thereof; (as the ſaid Ghoſt moſt falſly and maliciouſly inſinuates.) I take notice that the ſaid Ghoſt ſeems to admit ſo much of the Truth of the ſaid Letter, as that it was reported divers days before the dead Body was found, that he was murdered in *Somerſet-houſe* by the Papiſts, and which Report was made even the next Morning after he was miſſing, (being *Sunday* the 13th of *October* 1678.) Now I would fain have this Ghoſt to inform the World who firſt raiſed that Report: But as to Mr. *Dugdale*'s Letter of it. I cannot give it any better Anſwer, than that as his Evidence hath ſince been disbelieved in Matters of greater Conſequence; ſo he not producing any ſuch Letter, you muſt give me leave alſo to ſuſpect him in this. But as to the other Evidences of Mr. *Birch* and the reſt: Theirs I believe to be very true; for it's no Miracle that a Report ſo cunningly raiſed, (without any ground) might as induſtriouſly be promulged to moſt Parts of the Kingdom before the reſpective Days they ſpeak of, eſpecially when the Plot had filled all Men's Heads with Fears and Jealouſies, without which it had not been in the Power or Art of the Ghoſt, or any of his Tribe, to have ſuggeſted the leaſt Surmiſe to contradict his being *Felo de ſe*.

Next, whereas my Letter ſaith, (and that truly) that the Coroner's Jury were firſt of opinion, and accordingly declared, he was *Felo de ſe*, and that much Art and Skill was uſed to procure their Verdict to the contrary. This Ghoſt, inſtead of contradicting that Truth, would inſinuate, as if that Letter reflected upon the Reputation of the Jurors, when as there was no ſuch thing employed or intended, they being known to be honeſt Men, of good Reputation, and free from Fraud or Guile, and conſequently the eaſier to be over-reached by the Cunning of thoſe and that Party, whoſe Intereſt it was to deceive them, and who never leave any Stone unturn'd to attain their Deſigns. And I cannot but obſerve how skilful and induſtrious theſe People ſtill are, to hide and prevent the Truth of that Man's Death from clearly appearing and ſhining forth, as without doubt it would, and muſt do, was not the Matter now (as formerly) puzzled with Legends, and long Stories, nothing to the purpoſe. And as to the Coroner's Warrant for burying the Body, and recited in the Ghoſt, it's notorious they are common Tricks, uſed by Men of his Profeſſion, who (if any Money is like to come) will uſually adjourn the Jury,

and then make ſuch Warrants (they knowing, that if the Verdict be *Felo de ſe*, it's then out of their power to give leave to bury the Corps.) And it would be very material, if the Coroner would declare what he received for that Jobb, and of whom, and what Evidence he had to induce the Jury to find (as the Inquiſition imports) that he was ſtrangled with a Linnen Cloth, a Matter of Fact never ſo much as ſpoken of, until you came in with your Evidence, which was not in ſome Weeks after. And I do again aver, That the Body was required by the Jurors to be opened, and was refuſed; and if the Body was in their and the Coroner's Power, (as the Ghoſt inſinuates) ſuch Power was concealed from, and denied the Jury. And it's very probable the Coroner of *Weſtminſter*'s Aſſiſtance was refuſed, for ſome ſuch indirect Doings, for that there was not the leaſt difference betwixt the Coroners in relation to their Juriſdictions; and the *Weſtminſter* Coroner came not voluntarily of himſelf, but was importuned to be there by Mr. *Wigg*, and divers others of the chief Inhabitants of St. *Martin*'s Pariſh. And particularly, the Reverend Dr. *Lloyd* (who Preached the Funeral Sermon) ſpoke to the Coroner of *Weſtminſter* before he went, ſo that it had been proper to have given the Matters mentioned in that Sermon in Evidence before the Jury. And it's obſervable, the Perſon mentioned to give the Information to the Doctor of the two Wounds in the Body, and that two Hours before it was found, was never produced; For if he had, and that Sir *E. B. G.* had been murdered, ſuch Perſon might have been ſecured, and thereby the Murderers detected. But I ſuppoſe the Ghoſt will not pretend either that Sermon, or the Pamphlet printed by *Nath. Thompſon* to be legal, or (indeed) any Evidence at all.

And now, Mr. *Prance*, being come to the ſeveral Paragraphs of my Letter, I ſhall take them in order as they are placed, and give the Ghoſt particular Anſwers accordingly.

I.

As to Sir *E. B. G*'s Perambulations therein mentioned to be on the *Saturday* he was firſt miſſing, they are true in every particular, and will be proved by divers able, credible and undeniable Witneſſes. And how vain it is for the Ghoſt to ask, Why theſe Witneſſes did not come in ſooner at the Tryal of *Green*, *Berry*, and *Hill*, do you judge, when all the World remembers the great Torrent that carried all before it in favour of the Plot, and the Murder of Sir *E. B. G.* by the Papiſts, without which (as *T. O.* was heard to ſay) his Plot had failed; And when it is duly conſidered, that the two Perſons that firſt found the Body, (for no other cauſe) ſuffered much in their Perſons and Eſtates, by a long and chargeable Impriſonment. And all others that then ſeem'd to doubt of the truth of that Man's being murdered by the Papiſts, were ſtigmatized with the odious Names of Papiſts, and Encouragers (if not Promoters) of the Plot: It will appear no wonder, if People were unwilling to diſcover their Knowledges, or to come voluntarily (without proceſs) to give their Evidence. And how can it be imagined thoſe three unfortunate Men, being kept cloſe Priſoners, could make enquiry after proper Evidences, or (againſt the common Vogue) draw into ſuſpicion the Aſſertion of his being murdered by the Papiſts?

II.

The Ghoſt hath ſo much ingenuity to grant the ſecond Paragraph of my Letter, as to the place and poſture he was found in, but would avoid the inacceſſableneſs of the place, pretending a Lane near, when as that Lane is, in effect, unpaſſable with two on a Horſe, and comes not within 500 Yards of the place, and the Mounds thither very high, and the Conſtable and his Aſſiſtants (tho' they lived in the Pariſh, and well knew the way) were forced to break a Gap in the Mounds, tho' they were ſingly hors'd. And whereas the Ghoſt alledges, That you do not depoſe he was carried to the place wholly on Horſeback, he hath run himſelf into a worſe Dilemma, having made no proviſion of Men (either as to ſtrength or number) to carry ſo great and weighty a Corps, in the dead of the Night, over ſuch Mounds and Fences; but let all inquiſitive People deſirous of Truth, take the pains but to go to the Place (and that without any Burden on their backs) they will ſoon be convinced of the Aſſertion of the difficulty (if not impoſſibility) of the bringing a dead Corps thither, either on Foot or on Horſeback. And the Pretenſions of the Ghoſt's, as to the limberneſs of the Body and Joynts, does not anſwer that Part of my Letter which relates to the impoſſibility of his being put into a *Sedan*. For his Body, when found was ſtiff; ſo that what limberneſs happened or appeared afterwards, hath no relation to the Queſtion. For it's a certain Maxim, a dead limber Body cannot be ſtiffened. And pray, Mr. *Prance*, give us an account what became of the *Sedan*, and the Cords? And how you could carry it with Cords; for the meaneſt Sedan-man in Town will tell you it is impracticable, or rather impoſſible; And you may, if you pleaſe make an experiment with a Cord.

III.

As to the Body being full of Blood, when found; the Ghoſt endeavours to diſprove that Aſſertion, by the Evidence of Mr. *Brown* the Conſtable, the two Surgeons and Mrs. *Curtis*, and produceth the Evidence given at the Tryal of *Green*, *Berry*, and *Hill*, and an extrajudicial Affidavit ſince made by Mr. *Brown*, and another by Mrs. *Curtis*, to countenance ſuch his Denial. But, Mr. *Prance*, (when you ſee the Ghoſt) tell him the matter of the Blood will (and I aſſure you and all the World, it will) be proved by divers credible and undeniable Evidence; And that I may pacify the Ghoſt in the mean time, he is to underſtand that Mr. *Brown*, the two Surgeons, and Mrs. *Curtis*, are no competent (nor can be material) Witneſſes in this caſe. For Mr. *Brown*, as he did a raſh and unaccountable Act (to give it no worſe Name) in removing the Body before the Coroner and Jury ſaw it, (which hath occaſion'd all this Diſpute,) ſo he muſt not think to help himſelf by Affidavits, or to juſtify one ill Act by another; And beſides, as he unadviſedly (and contrary to all Law and Practice) removed the Body before the Coroner and Jury came; ſo he did the ſame in the

the dark, (about eight a Clock at Night) when the Candle was blown out; whereby it was impoſſible for him to look for any Blood, ſo as to find it: And neither he or the Surgeons (by any Day-light) ſaw the Place where the Body was found, or where the Sword was pulled out, until after 10 a Clock the next Day; before which time much of the Blood was taken up, and the reſt trampled out of ſight by the great Concourſe of the People which came thither. And as for Mrs. *Curtis*, ſhe only ſaw the Body after it was brought home, when as the Body was ſtrip'd at the *White houſe*, and a Blanket borrowed there to wrap the Body in. So the World may judge of the Truth of her Affidavit. But (Mr. *Prance*) it will be fully proved, that the Body was full of Blood; and that there were Cakes or Gobbets of dry Blood found in his Cloaths, which (with his Body) ſtunk extremely. And it will be alſo fully and effectually proved, that his Eyes, Noſtrils, and corners of his Mouth were Fly-blown; tho' the Ghoſt (without the leaſt colour of Reaſon) pretends it to be contrary to Nature and Reaſon; when as common Experience daily evinces the contrary. And I do obſerve, that the Ghoſt omits to take notice of two material Circumſtances in this 3d Paragraph, (*viz.*) The firſt as to the Sword's craſhing againſt the Back bone: The ſecond, as to that part of the Sword which was in his Body being diſcoloured. And pray, Mr. *Prance*, do You (or the Ghoſt) give the Reaſons thereof, and of its point being ruſty; as alſo, what was, or could be the Cauſe of the ſpots in the Shirt, Waſtcoat and Drawers of greeniſh Colour, mentioned in Mrs. *Curtis*'s Affidavit.

IV.

As to the 4th Paragraph of my Letter, I perceive the Ghoſt admits, that when a Man is ſtrangled or hanged, his Eyes will be extorted; and admits that Sir *E. B. Godfrey*'s Eyes (when found) were ſhut; only he ſeems to quarrel with the colour of his Face: And, ſeeing he admits his Face not black (as all hanged Mens are, when cold) I care not to conteſt, whether his Face was pale or ruddy, or a little ſwell'd, or not, thoſe being very inconſiderable Circumſtances. But his denying the Putrefaction charged in that Paragraph, and the Conſequences deduced from thence, is not only a great untruth, but is directly oppoſite to the Evidence given by Mr. *Skillarne*, at the Tryal before mentioned. *Page* 37, 38.

V.

As to the 5th Paragraph, the Ghoſt is ſo far from anſwering the Aſſertions therein, as that he only quibbles at Words; and begging the Queſtion, deduces thence impertinent and ridiculous Arguments. For it will be proved, that his Shoes were glazed at the bottom of the Soles, and which muſt of neceſſity be occaſioned by his walking on the Graſs. And (Mr. *Prance*) if you and the Ghoſt will walk thither, you will eaſily experience it, and ſo may any body elſe ſatisfy himſelf in this Speculation: As alſo, as to the Graſs-ſeeds that ſtuck in the ſeams of his Shoes; which is ſo far from being impoſſible at that time of the Year, (as the Ghoſt would argue) as that it will be proved by undeniable Evidence. But (Mr. *Prance*,) pray ask the Ghoſt how he came there without a ſpeck of Dirt; and who pick'd the Horſe-hairs off his Cloaths; and let him contrive (if he can) a probable or rational way for a dead Man on Horſe-back, to hold up his Legs, or to ſave them or his Cloaths from the Dirt: For though a Man may walk thither very clean, yet it's impoſſible at that time of the Year to ride, either without being dirtied, and and ſome Horſe hairs ſticking on his Cloaths: But perhaps the next Account from the Ghoſt will be, that he either rid with Gambadoes, or elſe a pair of Fiſhermens Boots.

VI.

As to the 6th Paragraph, Pray, Mr. *Prance*, tell the Ghoſt, his railing againſt Popiſh Nurſes, and Popiſh Midwives, is no Anſwer to the Aſſertions in that Paragraph; for all the Women in the Town are competent Judges thereof, and I hope the Ghoſt will not ſay they are all Papiſts. But pray tell the Ghoſt he takes no Notice of the height of the Collar, and its being faſt button'd about his Neck when found. Nor the concluſion of that Paragraph; and therefore I ſuppoſe he admits it to be all true.

VII.

And as to the 7th and laſt Paragraph, which relates only to the Difference betwixt Yours and Mr. *Bedloe*'s Evidence; I muſt take Notice, that what you and he ſwear, are very contradictory, and much more than I hinted in my ſaid Letter: And though part of it be as he and you were informed; yet you and he ſwear the Informations were received from the Perſons actually concerned in the Murder, and who had confidence enough in Mr. *Bedloe* (though he refuſed 4000 *l.* to help to kill him, and 2000 *l.* to help to carry him away,) as to ſhew him the dead Body, and ſo were under no Temptation of miſ-informing either him or your ſelf. And pray, Mr. *Prance*, will you let the World know what Reward you were to have for that Job; for certainly you deſerved as much as Mr. *Bedloe*, and needed more, you having a Wife and Children, and he a Batchelor?

Thus, Mr. *Prance*, having gone through each Paragraph of my Letter, and anſwered the Ghoſt to your Satisfaction; I ſhould leave here, fearing I have been too tedious already: But I cannot omit to take further Notice of Mrs *Curtis*'s Affidavit, in relation to the drops of Wax found upon the Cloaths, in which I cannot ſay but ſhe may ſwear true; but this I do aver, that if it be ſo, thoſe drops were put upon the Cloaths long after he was found, and after the Jury had ſat on the Body; for there was no ſuch thing then on the Cloaths: And I ſuppoſe this was ſome Artifice uſed by thoſe, who either out of Intereſt or Deſign, were deſirous to confirm his being murdered at *Somerſet-houſe*, and to carry on the great Lie, and impertinent Story then invented, and given out (amongſt other) that he was laid under the High-Altar there; and if my Information fail not, there were other ſuch like Tricks uſed, which I ſhall make bold to acquaint thoſe more nearly concerned therein, than your ſelf; and ſhall give them to underſtand, that it's no wonder a Man in Sir *E. B. G*'s Circumſtances, ſhould kill himſelf, ſuch accidents being no News to that Family, wherein Melancholy and Diſtraction

ſtraction (that often produces ſuch Effects) hath been predominant, and might occaſion the Words he ſpake to Sir *Tho. Robinſon*, as to his being the firſt Martyr.

And now, Mr. *Prance*, for a Concluſion, If you were guilty of the murder of Sir *E. B. G.* how durſt you (as you did) on the *Fryday* after he was found, go to *Primroſe-Hill* to ſee the Body, and not be afraid it ſhould at your approach have bled afreſh? And how came you (after *Green*, *Bury* and *Hill* were hanged) to declare in anſwer to a ſolemn Queſtion, that you knew nothing of the death of Sir *E. B. G?* Pray remember me to your old Friend and Lodger Mr. *Renn*, my reſpects alſo to your Wife, not forgetting your little Daughter, who gave you ſo good Advice before you took your Journey into *Nottinghamſhire*, and help'd to take *Beddingfield*, who was bury'd 14 Months.

I am,

Cambridge, *March* 13. 1681. *Your Loving Friend,*

TRUEMAN.

London, Printed for *N. Thompſon.* 1682.

Then the Aſſociate read out of a Paper, Intituled, The Loyal Proteſtant Intelligence, *&c.* Number 125. *Tueſday, March* 7. 1681. *the following Paragraph.*

March 4. 1682. WHereas the Mayor of *Gotham*, in his pretended *True Proteſtant Mercury* of *Saturday* laſt, ſeems mightily offended with a Letter therein mentioned to be ſent to Mr. *Prance*, concerning the murder of Sir *E. B. Godfrey*; and endeavours to avoid the Examination of the Truth of the Matter of Fact contained in that Letter, by his old way of railing and ſtigmatizing all honeſt *Church of England Men* with the Name of *Papiſt*, or *Popiſhly affected:* He, and his *Whiggiſh Tribe*, are hereby deſired to take Notice, That there is not in the ſaid Letter the leaſt *Item* or Circumſtance, but what will be by undeniable Evidence made out to be the Truth. So, the ſaid Mr. *Prance* having not as yet vouchſafed an Anſwer to that Letter, he will ſpeedily receive a further Letter relating to that Murder; wherein the further Truth will not only be fully ſet forth, and other Circumſtances ſet out; but alſo it will thereby plainly appear, that the Reputation of that dead Knight is ſo far from being therein murdered, or the Juſtice of the Nation from being queſtioned; as that it will concern Mr. *Prance*, Mr. *M. G.* and all Parties on that ſide, to lay their Heads together more effectually than they did on *Wedneſday* Morning laſt: For Truth ſeeks no Corners; and, were it not for a vitious and unſanctified Generation of Vipers, need not require an Advocate. For, though a Lie may prevail for a time, and eclipſe the Truth, yet at length Truth will ſhine forth, with the aſſiſtance of that God, who is the Author of Truth it ſelf.

Then a Paragraph out of another of the like Intelligences, *was read. The* Intelligence *was* Number 127. *Saturday, March* 11. 1681.

March 9. 1682. WHereas *Dick Janeway*, in this day's *Mercury*, promiſes an Anſwer to the late Letter to Mr. *Prance*, &c. This is to give him, and all the World Notice, That ſuch an Anſwer is impatiently expected by the Author of that Letter, who queſtions not, but to prove every tittle of that Letter, to the Satisfaction of all Mankind: And beſides, he is very deſirous that the *Courantier* (according to his laſt *Pacquet* of Advice from *Rome*) would go on, and uſe his Intereſt to procure the Lord Mayor, Court of Aldermen, and Common-Council of *London*, to inſpect the Truth of that Letter; whereby it will appear inevitably, that there is not one *Papiſt*, or *Popiſhly affected* Perſon concerned in that Letter, or in the Proof of the Particulars thereof; but the ſame (with divers other material Circumſtances relating to the Murder of Sir *E. B. Godfrey*, and the *Fraud* and *Blind* put upon the World in relation thereto) will be more fully, plainly, and manifeſtly proved, without giving ill Words, or ſcurrilous Language, or Reflections to any Perſons that really are, or ſuppoſed to be therein concerned, in any Circumſtance whatſoever.

Mr. *Serj. Maynard.* You ſee what they have done; they ſay, What was teſtified againſt the Murderers of Sir *Edmundbury Godfrey*, they ſay was a Lie. They go over all the Evidence given againſt theſe Fellows, and undertake, by undeniable Witneſſes to prove the contrary.

L. C. J. To the Defendant's Counſel, What ſay you to it?

Mr. *Saunders.* I am of Counſel for *Pain*, my Lord, the Charge againſt *Pain* is, That he ſhould own, that he did bring one of theſe Letters to be Printed; I have forgot whether Sir *Philip Lloyd* ſaid the Firſt or the Second.

L. C. J. The Second he ſays.

Mr. *Saunders.* If *Pain* did own it, I think he did more ingenuouſly, than when he did make it, or bring it to the Preſs: But, my Lord, it was a raſh unadviſed Act; but not out of any Malice: My Lord, we will prove that *Pain* was not a *Papiſt*, nor any of his Family. My Lord, this cannot juſtify or excuſe them, it will only extenuate their Fault. We will call ſome Witneſſes.

L. C. J. I will hear any thing in this Caſe, be as large as you will, you ſhan't ſay you are ſtinted; for it is a Buſineſs of mighty Concern.

Mr. *Gooding.* I am of Counſel, my Lord, for *Pain:* My Lord, We have made Application to Perſons to intercede for us; we are ſorry for what we have done, and have offered to give any Satisfaction.

L. C. J. To me he ſaid, he would make it out by *Five Hundred* Witneſſes: They would make it as plain as the Day.

Mr. *Thompſon.* Since the laſt time that was appointed for the Tryal, they have Printed, That they would prove it by *Threeſcore* Witneſſes; and were very ſorry it did not come on.

Mr. *Yalden.* I am of Counſel, my Lord, for *Thompſon*, who, I think, was unfortunately drawn into the Buſineſs; and that by *Pain* and *Farwell*, though they turn all upon him now. It was a great piece of Ingenuity for him to diſcover his Authors; and it had been very Miſchievous if they had not been diſcovered.

L. C. J. What ſay you to the two *Proteſtant Intelligences?*

Mr. *Yalden.* They are as much the Author of them, as of the other. *Thompſon* ſays, the Authors would be able to prove it by undeniable Witneſſes:

Witneſſes: *Thompſon*'s Intelligence is open to any Man that will put any thing into it, and he is paid for his Pains.

Mr. *Osborne.* I am of Counſel for *Farwell*, my Lord, It was a Fooliſh thing to do as we have done: But that is no Satisfaction, my Client ſays he hath ſeveral Witneſſes.

L. C. J. Call them, they ſhall be heard.

Mr. *Farwell.* I begin with *Hazard*, my Lord, he and I went to the Place.

Then Hazard *was ſworn.*

Mr. *Hazard.* I went along with Mr. *Farwell.* He was at the *Rainbow-Coffee-Houſe*, it was in the Morning, and he deſired me to go to the Place where Sir *Edmondbury Godfrey* was found.

L. C. J. What Day was it?

Mr. *Hazard.* I can't tell, I went along with him, and ſtay'd as long as he did. I ſaw Sir *Edmondbury Godfrey* lying upon the Table, his Shoes were clean as if he had been on an *Haymow*, and his Eyes were cloſed.

L. C. J. Where was he?

Mr. *Hazard.* Upon a Table in the *White-Houſe.* There were Gobbets of Blood (that I will aver, my Lord) by the Ditch-ſide, and likewiſe at a Place where there were two or three things to go over, there was more Blood; I can't tell how he was carried, or how he came there, but I ſaw him at the *White-houſe.*

Mr. *Williams.* Who went along with you, beſides Mr. *Farwell?*

Mr. *Hazard.* No body.

Mr. *Williams.* Did he bring you to the Place where the Body lay?

Mr. *Hazard* Yes.

Mr. *Serj. Maynard.* What did *Farwell* tell you when he deſired you to go with him?

Mr. *Hazard.* Why, Word was brought by one *Hancock* a Wood-Monger, to the *Coffee-houſe*, ſome would not believe him, but ſent a Porter to Sir *Edmondbury Godfrey*'s Houſe, and then when the Porter came, and ſaid the Body was found, and carried to a *White-houſe* on *Primroſe-hill*, he ſpake to me to go and ſee the Body, and I fetched my Coat, and was there quickly.

Mr. *Williams.* When you came near the Ditch, did *Farwell* ſhew you the Place?

Mr. *Hazard.* He and others that were there.

Mr. *Williams.* I ask you this, Did any body ſhew you the Place where the Body lay, beſides *Farwell?*

Mr. *Hazard.* No.

Mr. *Osborne.* Did he go to the Place directly, or about over Ditches?

Mr. *Hazard.* Truly, I know the way to *Primroſe-hill* as well as he. We went as direct a Way as we could.

L. C. J. The ſtraighteſt way to the Place?

Mr. *Hazard.* Yes: We went over ſeveral Ditches.

Sir *Fr. Winn.* As you were going over ſeveral Ditches, there was no body with you, but *Farwell*, was there?

Mr. *Hazard.* No.

Mr. *Williams.* Did you enquire of any body as you went along?

Mr. *Hazard.* I can't remember ſuch a ſmall Circumſtance.

Then William Batſon *was ſworn.*

Mr. *Osborne.* What do you know about the Blood that was in the Ditch where Sir *Edmondbury Godfrey* was found?

Mr. *Batſon.* The Morning after the Murder was diſcovered, and that Sir *Edmondbury Godfrey* was found in the Fields, I went with two or three Neighbours, and went to the *White-houſe*, and I ſaw him lye upon the Table in the *White-houſe*, and coming back again, they ſhew'd me in a Ditch where they ſaid he lay, ſome Blood, I cannot ſay it was his Blood; and going a little farther, I ſaw ſome more whitiſh Blood, and this is all I can ſwear.

L. C. J. Was it frofty Weather?

Mr. *Batſon.* My Lord, I can't tell whether it was, but I'll aſſure you the Blood looked to me more like Blood that was laid there, than any thing elſe.

One Fiſher *was ſworn.*

Mr. *Farwell.* Was you there when Sir *Edmondbury Godfrey* was ſtripped?

Mr. *Fiſher.* Yes, I ſtripped him of his Cloaths, pulled off his Hoſe and Shoes, I was Carpenter to my Lord *Wooton*, and I was ſent for in *October*, a Day or two before, and I came to get the Houſe covered up, and to take Order with my Partner: And as I went, there was a Report that Sir *Edmondbury Godfrey* was found and laid up in the *White-houſe*, and when I came, the Coroner and the Jury were there, and I got into the Room where Sir *Edmondbury Godfrey* lay upon the Table and took his Hat off; and I ſaw two Wounds within an Inch and a half one of another, one went no further than his Bone, and the other went through his Back. And, my Lord, immediately there was an Order come down from the Coroner, to get him ſtripp'd. They ask'd me if I would give an Hand, I told them yes. I pull'd off his Shoes, and they were clean, and I pulled off three pair of Stockings and a pair of Socks, his black Breeches and his Drawers, and they came off very well; there was a Man in the Company that deſired to help, ſo I got upon the Table, and ſet him upright with his Breech upon the Table, and his Feet hanging down; we unbutton'd his Coat, and pull'd it off, I came to his Flannel-Shirt, and when I came to his Back, there was Blood. But I did not ſee any Blood till I came to his Back-part. About his Throat there was ſomething that had girt him.

L. C. J. He looked as if he were ſtrangled, did he?

Mr. *Fiſher.* Yes, and his Neck was ſo weak that you might turn it any where.

L. C. J. To the Defendant *Farwell.*

How do you pretend he murdered himſelf? That he ran himſelf through?

Mr. *Farwell.* I make no Inference, my Lord. But I would only prove that what I write is true, I writ only the firſt Letter; and there are three Heads I am charged with, upon that Letter, and that about the Blood is one. My Lord, I was concerned they ſhould pretend there was no Blood at all, when I came there, there was near my Hat full of Blood.

L. C. J. Can you tell who laid it there?

Mr. *Farwell.* My Lord, If you will hear two Witneſſes more, I will ſatisfy your Lordſhip who laid it there. My Lord, this Man was one of them that helped to remove the Body out of the Ditch.

Another Witneſs, John Rawſon, *called by Mr.* Farwell, *and ſworn.*

Rawſon. My Lord, I was there taking him up, we fetched the Conſtable, and pulled him out of the Ditch, and when we had done, we pulled the Sword out, and removed him to the Houſe, and

and there was Blood upon ſome Poſts (explaining himſelf to me, on a couple of Stumps to go over upon) and going into the Door, his Back did ſweep a little againſt the ſide, and there was ſome Water and Blood lighted there, and likewiſe lay upon the Table where he lay, and upon the Floor.

Mr. *Farwell.* Did the Blood of his Body fall upon the Floor, and go through the Floor into the Cellar?

Mr. *Rawſon.* Some drops were there, I won't ſwear whether it were Blood or no, my Lord.

Mr. *Farwell.* My Lord, I deſire the ſame Queſtion may be put to Mrs. *Rawſon.*

Mrs. Rawſon *ſworn.*

Mrs. *Rawſon.* My Lord, if you pleaſe, I have not a word to ſay, but there was Blood and Water ran through the Table, that is all I can ſay.

Mr. *Farwell.* My Lord, as to the difference between Mr. *Prance*'s Evidence and Mr. *Bedloe*'s, I deſire I may prove the Difference between them.

L. C. J. You ſhall make any Proof you will.

John Stanley, *called by Mr* Farwell, *and ſworn.*

Mr. *Farwell.* I call him to prove the Copies of the Journals of the Houſe of Lords.

L. C. J. What would you infer from the Journals.

Mr. *Farwell.* My Lord, they charge me that I ſhould ſay there is a great deal of difference between the Evidence Mr. *Bedloe* gave in the Houſe of Lords, and the Evidence that *Prance* gave at the Tryal of *Green*, *Berry* and *Hill.*

L. C. J. Would you prove any Evidence given by *Bedloe* out of the Journals?

Mr. *Farwell.* I can prove he gave that Evidence before the Houſe of Lords.

But Mr. *Farwell* afterwards went off from that Proof, and called Mr. *Hobbs*, Mr. *White*, Mr. *Chaſe* the Father, and Mr. *Chaſe* the Son, and Mr. *Lazinby*, who were ſworn.

Mr. *Farwell.* I ask Mr. *Chaſe*, what he obſerv'd about Sir *Edmondbury Godfrey.*

Mr. *Chaſe* the Son. My Lord, on *Fryday* Morning, the Day after the Body was found, I went to *Primroſe-hill*, in Company with my Father, to ſee the Body which they ſaid was found, I came into the Field where the Company in the Field ſaid the Body had been laid, the Body had been then carried into the Houſe, I looked into the Ditch where they ſaid the Body was laid, I could not ſee Blood in the Ditch, but four or five Yards aſide off the Ditch, there ſeem'd ſome Blood to me, which the Conſtable ſaid, followed the Sword when it was pulled out of the Body; I ſaw the Body in the Houſe, and ſaw the two Wounds; he had a great Contuſion on the left Ear, and his whole Face was very much bruiſed.

L. C. J. Do you believe there was any Violence offered to him?

Mr. *Chaſe.* My Lord, I believe he was ſtrangled, for I don't believe thoſe Injuries that were offered about him, could be after he was dead.

L. C. J. What ſay you, Mr. *Hobbs?*

Farwell. I deſire he may be asked, Whether he did not propoſe to Mr. *Godfrey*, that the Body might be opened, that any Doubt may be lay'd aſide, concerning his being Murdered in that Place?

Mr. *Hobbs.* My Lord?

L. C. J. Had you any doubt, whether he was Murdered or not?

Mr. *Hobbs.* Indeed, my Lord, I thought he was ſtrangled, that was my Opinion, I can't tell whether I was miſtaken. I ſaid to Dr. *Goodall* it would be very well if Mr. *Godfrey* would ſend for a Surgeon and a Phyſician from the Court, and others from the City, to ſatisfy all Perſons.

Mr. *Farwell.* What Colour was his Face?

Mr. *Hobbs.* My Lord, it was bloted.

L. C. J. Did it look as if Violence had been uſed to him?

Mr. *Hobbs.* Ay, my Lord; and the bloody Veſſels of his Eyes were ſo full, as if he had been troubled with ſore Eyes.

Mr. *Farwell.* Did you obſerve any Fly-blows in his Face?

Mr. *Hobbs.* No, my Lord, not that I know of.

L. C. J. What ſay you, Mr. *Chaſe?*

Mr. *Chaſe.* My Lord, on *Fryday* when I came to ſee the body at the *White houſe* I found a great Contuſion, and two wounds, one yielded towards the right; the other went into the body. I troubled my ſelf no more at that time, but the next day I was deſired by Dr. *Lloyd* that I would go to his Houſe and ſee the body again, and there I found a ſwelling upon the left Ear, as if a knot had been tyed, there I found him beaten from this place to this (pointing to the Neck and Stomach) I never ſaw any man beaten ſo in my life. Before this buſineſs was broached, Mr. *Farwell* did take me aſide at Man's *Coffee-Houſe*, and did tell me what proof he could make of this buſineſs, I told him, Mr. *Farwell* I love you well, don't meddle with the buſineſs, for I know it is impoſſible any thing can be ſaid againſt it that hath the face of truth. I did ſo a ſecond time (my Lord) when the book came out, I found one before I went to *New-Market*, and the other at *New-Market*; I was very much troubled to ſee them. The Night before *Eaſter*, the *Eve* of *Eaſter-day*, I met with Mr. *Farwell* at an Houſe where I had been with a good friend of his and mine, and *Farwell* came and asked for me, and he came up to the Room as they called for another Bottle of *Wine*, I told them it was needleſs, only ſince Mr. *Farwell* is come up, ſaid I, I will drink one glaſs with you. And he told me then, that 6 Months before I had given him good Counſel if he had taken it.

Mr. *Farwell.* My Lord, I deſire Mr. *Smith* to be called.

L. C. J. Let him. But he came not then.

Mr. *Brown* is called by Mr. *Farwell*, and ſworn.

Mr. *Farwell.* I deſire Mr. *Brown* may be asked whether his Eyes were not fly-blown?

L. C. J. 'Tis propos'd to you by Mr. *Farwell*, whether the Eyes of Sir *Edmondbury Godfrey* were not fly-blown?

Mr. *Brown.* No, my Lord, I did not ſee any Fly-blows.

Mr. *Farwell.* Whether there were any ſpecks, that one might call Fly-blows?

Mr. *Brown.* My Lord, I did not ſee any ſpecks that one might call Fly-blows.

Mr. *Farwell.* I deſire that I might call two Witneſſes to prove that he ſaid ſo.

L. C. J.

L. C. J. What will you get by that, Mr. *Farwell*, to diſparage your Witneſs?

Mr. *Brown.* My Lord, Mr. *Farwell* would have had me ſaid ſo, but I never ſaid ſo.

Then *Smith* came.

L. C. J. What do you ask *Smith*?

Mr. *Farwell.* Only about the blood.

Mr. *Brown.* My Lord, he came to me another time, and told me I was wrong in my Affidavit, as if he knew what I could make Affidavit of better than my ſelf.

Mr. *Farwell.* My Lord, I was not the party that told him ſo.

Mr. *Brown.* He was at my houſe twice, at *Mary-bone*, at the ſign of the *Sun*.

L. C. J. Was *Pain* with him there?

Mr. *Brown.* My Lord, there was a Man with *Plate-buttons* with him there. I don't know *Pain*.

Mr. *Smith* Sworn.

L. C. J. Well, what ſay you, Mr. *Smith*, it is required of you by Mr. *Farwell*, here to declare, whether you took up any of Sir *Edmondbury Godfrey*'s blood, and brought it home in your handkerchief?

Mr. *Smith.* No, my Lord, I know nothing of that.

Mr. *Farwell.* I deſire *Rawſon* and his Wife may be called again.

Rawſon appears.

L. C. J. What ſay you, 'tis required by Mr. *Farwell*, whether you ſaw any fly-blows in Sir *Edmondbury Godfrey*'s Eyes?

Mr. *Rawſon.* There was ſomething like fly-blows, but I can't ſay they were fly-blows.

L. C. J. Did you obſerve the flies were buſie at that time of the Year?

Mr. *Rawſon.* My Lord, I did not ſee them.

[Then the people laughed.

Mr. *Farwell.* I deſire *Rawſon's* wife may come.

Mr. *Rawſon.* I muſt fetch her then.

Rawſon's Wife appears.

L. C. J. Look you, Mr. *Farwell* requires of you to tell us whether there were any fly-blows in the Eyes of Sir *Edmondbury Godfrey*?

Mrs. *Rawſon.* If it pleaſe you, my Lord, there were a great many people ſaid there were fly-blows, I took no great notice of them.

L. C. J. He asks you what you ſay to his Mouth, and his Noſtrils, were there fly-blows?

Mrs. *Rawſon.* If it pleaſe you, my Lord, I can't ſay nothing to it, for I did not much mind it, but they ſeemed fly-blows.

L. C. J. Have you any more Witneſſes, Mr. *Farwell*?

Mr. *Farwell.* I pray Mr. *Lazingby* (my Lord) may be asked whether men that kill themſelves look as Sir *Edmondbury Godfrey* did?

L. C. J. Mr. *Lazingby*, Mr. *Farwell* requires of you, whether you have ſeen men that have killed themſelves look in ſuch a manner about the Neck and Face?

Mr. *Lazingby.* My Lord, he appeared to me to be ſtrangled and that which ſtrangled him, was kept about his Neck till he was cold. My Lord, People that are hanged and let down while warm, the blood drains away by the Veſſels that are broken, and their Faces are rather leſs, and their Faces become very pale; but the thing wherewith he was ſtrangled remaining about his Neck, the blood could not drain away, but it made his Face look bloody. The two Mr. *Chaſes*, the King's Apothecary was there when I was there, and the blood that was ſome four Yards from the Ditch, I put my finger in it, and ſmelt to it, and it ſmelt like that which comes from a body, after a fortnights time dead, rather than a weeks; my Lord, it was blood and water. The water will ſeparate from the blood.

Sir *Fr. Winn.* But you believe he was ſtrangled?

Mr. *Lazingby.* Yes, his Neck from this place hither (pointing to the upper part of his Neck, and then to his Stomach and Breaſt) was very much diſcoloured and black, and his mouth was diſcoloured. Now when ever a man is bruiſed whilſt he is alive, or whilſt he is warm, that part after the perſon is dead will ſooneſt corrupt.

L. C. J. It ſtands to reaſon that the bruiſed part will firſt corrupt.

Mr. *Lazingby.* My Lord, after Mr. *Chaſe* the Apothecary and I had ſeen him at the *Whitehouſe*, I went up to drink a Glaſs of Beer, and Mr. *Chaſe's* Son unbuttoned Sir *Edmondbury Godfrey*'s Collar, which was more than I ſaw, when I was come in, and unbuttoning the Collar, there were 2 great Creaſes both above and below, ſo they ſent for me down to come and ſee it, ſo I put the Collar together and I perceived the Collar made the mark like a ſtraight Ring upon a finger, the Neck being ſwelled above the Collar and below, by the ſtrangling with a Cord or Cloath.

Sir *Fr. Winn.* Do you think he killed himſelf now, Mr. *Farwell*?

Mr. *Lazingby.* There was ſomething in the Cover of his Eyes like matter, but I can't ſay it was fly-blows. His Eyes were open, my Lord, and his Eyes were Blood-ſhed, as Mr. *Hobbs* hath given you an account, as if he had an extraordinary great cold, or a man that had a blow upon the Temples or Forehead.

Mr. *Farwell.* Whether were his Eye-lids cloſed?

Mr. *Lazingby.* My Lord, his Eyes were open when I ſaw him.

Mr. *Farwell.* When I ſaw him about 6 a Clock in the morning, his Eyes were ſhut.

Mr. *Lazingby.* I felt upon his Cloaths. I admired that his Cloaths were not wet, there having been ſo great a ſtorm the afternoon before?

L. C. J. And his Cloaths were not wet?

Mr. *Lazingby.* His Cloaths were as dry as mine.

Mr. *Farwell.* My Lord, they made a great fire there, and dryed his Cloaths.

L. C. J. Come Mr. *Farwell*, there is no man ſo blind as he that won't ſee. Will you call any more Witneſſes?

Mr. *Farwell.* I will call no more Witneſſes; but I ſuppoſe they will Offer againſt me that I am a Papiſt.

Mr. Serj. *Maynard.* No, no.

L. C. J. Truly your Religion is not worth the enquiring into; Tis not much to the purpoſe what Religion you are of.

Mr. Serj. *Maynard.* Gentlemen, you hear he hath been able to make no defence for himſelf, but for the ſatisfaction of the World, my Lord hath taken great pains in hearing him. I ſhall ſpeak but very few words, and call a Witneſs or two of ſome new matter; that if it be

poſſible to convince him, we will do it. We need not do it becauſe his own Witneſſes tell you of the ſeveral Bruiſes and Wounds he had, that there were no fly-blows, no putrified Matter. How can a man that ſtabbs himſelf, bruiſe and beat himſelf in the manner that you have heard? There is never a Witneſs that hath ſpoken on his ſide, but hath ſpoken againſt him, to prove himſelf as malicious a fellow as can be. What had he to do with this? Sir *Edmondbury Godfrey* was murdered, was found, inquiry made after it, and proſecution thereupon, now comes this fellow and permits ſeveral Arguments againſt it, every one of them from matter of fact that is falſe, and yet publiſhes it to the World, that he will prove it by 500 undeniable Witneſſes. We will now call ſome Witneſſes to prove him as wicked a Lyer as lives. I ſay what had he to do with it, only meer malice? He would have me ask him, what Religion he is of? I ſhall not ask him, for I don't think he is of any, none of any Religion can be ſo Wicked to own ſuch a thing. We ſhall deſire the favour to call a Witneſs or two, to prove ſomething more than hath yet been proved in this Murder, tho' there was Evidence enough upon the Tryal to prove it.

Mr. *Sol. Gen.* Gentlemen, Mr. *Farwell* does pretend that he hath only told ſo many Lies, and hath left the World to make uſe of it. And hath brought Witneſſes to colour this matter over, and in hopes to make you believe the matter is true. But Mr. *Farwell* hath forgot himſelf, his Paper is quite otherwiſe, for he hath argued upon it, and made Inferences, that therefore Sir *Edmondbury Godfrey* murdered himſelf, therefore he is Guilty of the higheſt malice in the World. He tells a great many falſities, and from thoſe falſities hath inferred others. The Paper is full of Arguments.

L. C. J. Gentlemen, I did give him leave to go into what Evidence he would in this Caſe, not that I thought it material, for if he could have proved never ſo much, yet his Malice had never been the leſs to have gone and aſperſed the Government. What had he to do to meddle with it? To what purpoſe ſhould he write Books concerning the matters of Government, to traduce the Juſtice of the Nation? The people had ſuffered as *Malefactors*, and what had he to do with it? If they had ſuffered Innocently, he ought to have done no ſuch thing as this is.

Mr. Serjeant *Maynard.* My Lord, but one Witneſs.

L. C. J. Pray call whom you will.

Mr. Serjeant *Maynard. John Oakely.* We will prove that he was way-layed that very day he was ſtrangled.

Mr. *Sol. Gen.* We have no need to call any Witneſſes now, to overdo a thing. We may leave it here.

Jury-Man. Pray, my Lord, if they have any more Witneſſes, let us hear them.

L. C. J. Tis nothing to this purpoſe to call any for the King, nor hath *Farwell*'s Evidence ſignified any thing to this. He did deſign and would (no doubt of it) have been very much ſatisfied if he could have made but ſome probable Evidence that Sir *Edmondbury Godfrey* killed himſelf, and I was deſirous to hear what they would ſay for themſelves. But you hear what a kind of Evidence it is, not a Witneſs he hath called, but is as much againſt him as can be, and does evince it plainly, that the man was killed, and that he was killed by ſtrangling, and ſo the Evidence was upon the Tryal of *Green, Berry,* and *Hill.* If he could have raiſed a doubt about it, yet his Offence had not been mitigated by it, for a private Perſon is not to arraign the Juſtice of the Nation; but I was willing to hear what could be ſaid in the Caſe, whether a doubt could be made in the World, that Sir *Edmondbury Godfrey* was not murdered. And you ſee how his very Evidence hath in all things confirmed the Evidence *Prance* hath given, that he was killed, and that he was killed by ſtrangling. I muſt leave it with you, Gentlemen, they are all three in this Miſchief, 'tis a Combination of them, to affront the publick Juſtice of the Nation, and what is the end of it? The end of it is to make people believe there is no Popiſh Plot, but it is plain he was killed by the Popiſh party; as *Prance,* upon his Evidence againſt *Green,* and the others atteſted. But if they could have made it out that he killed himſelf, all of them would have cryed out the Popiſh Plot was a ſham, nothing but a thing raiſed by the Proteſtants againſt the Papiſts, and all the Plot muſt have gone for nothing. Gentlemen, I do leave it to you, whether upon this Evidence you do not believe them all to be Guilty of this Deſign, of Traducing the Juſtice of the Nation.

The *Jury* thereupon, without going from the Bar found them all three Guilty of the Information.

And the People gave a great Hum.

Monday, July 3. 1682.

Nathaniel Thompſon, William Pain, and *John Farwell,* were brought up by Rule, to the Bar of the Court of the King's Bench to receive their Judgment: Mr. *Thompſon* the Counſellor moved for Judgment, and particularly pray'd they might have ſome corporal puniſhment, acquainting the Court that ſince their Tryal (tho' they had as much time and liberty given them by the *Lord Chief Juſtice,* to call their Witneſſes, and examine whom they would, as they could deſire,) the very next News-Book *Thompſon* put out, he took upon him to give an Account, as tho' Juſtice had not been done him; and further ſaid, if there was any doubt of the Fact with Mr. *Thompſon,* or Mr. *Farwell,* or Mr. *Pain,* there were Affidavits to ſatisfie the world about it.

Then Mr. Spence's *Affidavit was read.*

Richard Spence Citizen and Upholder of *London,* living in *Arundel* Street in the *Strand* in the Pariſh of St. *Clement's Dane,* in the County of *Middleſex,* having been twice ſubpæna'd to give Evidence for the King, upon an Information, exhibited in the Crown-office againſt *Nathaniel Thompſon, William Pain* and *John Farwell,* and not being called at their Tryal to give Evidence in

in open Court, maketh Oath that upon *Thurſday* the tenth day of *October* 1678. it being the *Thurſday* before Sir *Edmondbury Godfrey* was miſſing from his own Houſe in *Hartſhorne* Lane in the *Strand*: As he this Deponent was coming from St. *James*'s Market to go to his own Houſe, about ſeven of the clock at night, there were then at the Water-Gate of *Somerſet*-Houſe, five or ſix men ſtanding together, who laid hold on this Deponent as he was paſſing by them, and they taking hold of both this Deponent's Arms, dragg'd him down about a yard within the Water-Gate of *Somerſet*-Houſe, it being dark; but one of the ſaid Men, which this Deponent believes to have been *Hill*, (for that this Deponent knew *Hill* very well, as alſo his Maſter Doctor *Godwyn*,) cryed out and ſaid this is not he, upon which they immediately let this Deponent go.

Jurat. 10 *die Julii*,
1682. *Coram me*,
W. Dolbin.

RICHARD SPENCE.

Whereupon the *Clerk of the Crown* ſaid, that it was one Captain *Spence*, whom he knew very well, and that he was a Tall black Man, and like Sir *Edmondbury Godfrey*.

Then John Oakely's *Affidavit was read.*

John Oakely, of the Pariſh of St. *Martins* in the *Fields* in the County of *Middleſex*, Servant to Mr. *Robert Breedon* of *Hartſhorne* Lane in the ſaid Pariſh and County, Brewer, maketh Oath that on *Saturday* the 12*th* day of *October*, in the year of our Lord 1678, about eight or nine of the clock in the Evening, he was in the City of *London*, in the Company of his Father *Robert Oakely* of *Biſſiter* in the County of *Oxon* Maulſter, and his Father came with him ſo far as *Ludgate*, where they parted. And this Deponent going homewards to his Maſter *Breedon's* Houſe, coming by *Somerſet*-Houſe in the *Strand*, when he came near the Gate of that Houſe which leads down to the Water-ſide, commonly called the Water-Gate, which was about Nine of the clock at Night, he there ſaw Sir *Edmondbury Godfrey*, and paſt cloſe by him and put off his Hat to him, and Sir *Edmondbury Godfrey* put off his Hat again to him; and after that this Deponent had paſſed beyond Sir *Edmondbury Godfrey*, he this Deponent turned about and looked upon him again, and Sir *Edmondbury Godfrey* ſtood ſtill, and there was a Man or two near Sir *Edmond*. And this Deponent further ſaith that he knew Sir *Edmondbury Godfrey* very well, for that he ſaw him almoſt daily paſs by his Maſter *Breedon*'s Houſe in *Hartſhorne* Lane, going or coming from his own dwelling Houſe, which was alſo in *Hartſhorne* Lane. And this Deponent further ſaith, that about two or three days after, when the Rumor was that Sir *Edmondbury Godfrey* was miſſing, he acquainted his fellow-Servant *Elizabeth Dekin*, that he ſaw Sir *Edmondbury Godfrey* near the Water-Gate at *Somerſet*-Houſe in the *Strand*, that very *Saturday* night that he was reported to have been miſſing from his Houſe in *Hartſhorne* Lane. And this Deponent further ſaith, that he told the ſame thing to his Uncle *Ralph Oakely* of the Pariſh of little Saint *Bartholomew*, about a week after the time that Sir *Edmondbury Godfrey*'s body was found, and alſo that he told the ſame thing to his Father the aforeſaid *Robert Oakely*, and to ſeveral others in a ſhort time after.

Jurat. 22 *die Junii*,
1682. *Coram me*,
John Moore *Mayor*.

JOHN OAKELY.

Sworn to again the 1ſt of *July*, 1682. Before Judge *Dolbin*, and is left filed up in the *Crown-office*. *Examinat.*

Vide *Green*, *Berry* and *Hill*'s Tryal, folio 16, as to the time of Sir *Edmondbury Godfrey*'s being at *Somerſet*-Houſe.

After which the Court conſulted together, and Mr. Juſtice *Jones* having firſt ſet out the Greatneſs of their Crime, gave the Judgment of the Court, which was, that *Thompſon* and *Farwell* ſhould ſtand upon the Pillory, in the Palace-yard, the laſt day of the Term, between the hours of Ten and One of the clock, for the ſpace of an hour, and each of them to pay an Hundred pound Fine, and to be Impriſoned till they had paid it. And as for *Pain*, he told him becauſe the Court did not conceive him altogether ſo guilty, they would inflict no corporal Puniſhment on him, but did adjudge him to pay an Hundred pound Fine, and to be Impriſoned till he pay'd it.

Afterwards the Court was moved to explain their Judgment, it being apprehended that it was pronounced upon the Pillory; and the Court did declare that their intention was (and ſo the expreſſion upon the Pillory was to be underſtood) that they ſhould ſtand in the Pillory.

Accordingly *Wedneſday* the 5*th* of *July*, 1682. *Thompſon* and *Farwell* ſtood in the Pillory in the Old Palace-yard at *Weſtminſter*, with this Writing over their Heads.

For Libelling the Juſtice of the Nation, by making the World believe that Sir Edmondbury Godfrey *murdered himſelf.*

THE TRYAL OF

Ford Lord *Grey* of *Werk*, *Robert Charnock*, *Anne Charnock*, *David Jones*, *Frances Jones*, and *Rebecca Jones*.

Michaelmas-Term, *Jovis* 23. *Nov. A. D.* 1682. 34 *Car.* II. *in B. R.*

The KING againſt FORD Lord GREY of *Werk*, and OTHERS.

THERE having been an Information preferred againſt the the Right Honourable *Ford* Lord *Grey* of *Werk*, and others, by His Majeſty's Attorney General Sir *Robert Sawyer*, the firſt day of this *Michaelmas-Term* (a Copy of which Information follows) and the Lord *Grey* having then pleaded to it *Not Guilty*, and the other *Defendants* the like afterward, and the King's Attorney joyned Iſſue upon it; *Tueſday* the 21*ſt* of *November*, was appointed for Tryal of this Cauſe; but it was then adjourned to this day, becauſe one of the Witneſſes for the King was not ready; but this day it came on about nine in the Morning, at the *King's-Bench-Bar*, and held till two in the Afternoon, * all the Judges of the ſaid Court being preſent.

* Sir *Francis Pemberton*, C. J. Sir *Thomas Jones*, Sir *William Dolben*, and Sir *Thomas Raymond*.

Firſt, Proclamation was made for Silence, and then for Information, if any Perſon could give any, concerning the Miſdemeanor and Offence whereof the Defendants ſtood Impeached: Then the Defendants being called, and appearing, were bid to look to their Challenges, and the Jury being all Gentlemen of the County of *Surrey*, were Call'd, Challeng'd and Sworn in this Order.

Cl. of Crown.

1. Sir *Marmaduke Greſham*, Jur.
2. Sir *Edward Bromfield*, Jur.
3. Sir *Robert Knightley*, Jur.

Sir *John Thompſon*.

Mr. Serj. *Jefferies*. We challenge him for the King.

Mr. *Holt*. Then we challenge *toutz per availe*, unleſs the King ſhew his Cauſe of Challenge; for by the Statute of 24 *Ed.* 1. the King cannot challenge without Cauſe.

Mr. Serj. *Jefferies*. But by the Courſe of Practice, all the Pannel muſt be called over before the King ſhew his Cauſe.

Sir *Robert Sawyer*.

Mr. *At. Gen.* Before the Party can have his Challenges allowed, he muſt ſhew his Cauſe; but they muſt go on with the Pannel, in the King's Caſe, to ſee if the Jury be full without the Perſons challenged, and that is ſufficient.

Sir *Francis Pemberton*.

L. C. J. If they challenge any Perſon for the King, they muſt ſhew Cauſe in due time. For I take the Courſe to be, that the King cannot challenge without Cauſe, but he is not bound to ſhew his Cauſe preſently; it is otherwiſe in the Caſe of another Perſon.

Mr. Serj. *Jefferies*. That hath always been the regular Courſe.

Mr. *Holt*. Our challenging *toutz per availe*, doth ſet all the reſt aſide till Cauſe be ſhewn.

L. C. J. The Statute is, the King ſhall ſhew Cauſe; but when it comes in a Caſe between the King and another Party, that they both challenge, the other Party ſhall ſhew Cauſe firſt.

Mr. *Holt*. My Lord, we challenge *toutz per availe*.

L. C. J. You muſt ſhew a reaſon for it then.

Mr. *At. Gen.* The King ſhall not be drawn to ſhew his Cauſe, if there be enough in the Pannel beſides.

Mr. *Williams*. That is to ſay then, that the King may chuſe whom he pleaſeth againſt the Statute.

Mr. Serj. *Jefferies*. No, Sir, we deſire none but honeſt and indifferent Gentlemen to try this Cauſe.

L. C. J. The old Challenge is taken away, by that Statute, from the King, *quia non ſunt boni pro Domino Rege*, and therefore if the King challenge any, he muſt ſhew Cauſe, but it muſt be in his time, and not before you ſhew yours. Let him ſtand by a while.

Cl. of Cr.

Cl. of Cr. John Sandys, Esq;
Mr. Serj. *Jefferies*. We challenge him for the King.
Mr. *Holt*. For what Cause, Sir?
Mr. Serj. *Jefferies*. We will tell you in good time.

Cl. of Cr. 4. *Sigismund Stiddulph*, Jur.
John Weston.

Mr. *Weston*. My Lord, I am no Freeholder.
Mr. *Holt*. He challenges himself.
L. C. J. Well, he must be set aside.

Cl. of Cr.
5. *Thomas Vincent.*
6. *Philip Rawleigh.*
7. *Robert Gavel.*
8. *Edward Bray.*
} Jur. {
9. *Thomas Newton.*
10. *John Halsey.*
11. *Tho. Burroughs*, and
12. *John Pettyward.*

Cl. of Cr. Gentlemen, you of the Jury that are Sworn, hearken to your Charge.

Surrey, ss. Sir *Robert Sawyer*, Kt. His Majesty's *Attorney-General*, has exhibited an Information in this Court, against the Right Honourable *Ford* Lord *Grey* of *Werk*; *Robert Charnock*, late of the Parish of St. *Botolph Aldgate*, *London*, Gent. *Anne Charnock*, Wife of the said *Robert Charnock*; *David Jones*, of the Parish of St. *Martin in the Fields*, in the County of *Middlesex*, Milliner; *Frances Jones*, Wife of the said *David*; and *Rebecca Jones* of the same, Widow; for that they (with divers other Evil-disposed Persons, to the said *Attorney General* yet unknown) the 20th day of *August*, in the 34*th* Year of the Reign of our Sovereign Lord the King that now is, and divers other Days and Times, as well before as after, at the Parish of *Epsom* in the County of *Surrey*, falsly, unlawfully, unjustly and wickedly, by unlawful and impure ways and means, conspiring, contriving, practising and intending the final Ruin and Destruction of the Lady *Henrietta Berkeley*, then a Virgin Unmarried, within the Age of 18 Years, and one of the Daughters of the Right Honourable *George* Earl of *Berkeley* (the said Lady *Henrietta Berkeley*, then and there being under the Custody, Government and Education of the aforesaid Right Honourable *George* Earl of *Berkeley* her Father) they the said *Ford* Lord *Grey*, *Robert Charnock*, *Anne Charnock*, *David Jones*, *Frances Jones*, and *Rebecca Jones*, and divers other Persons unknown, then and there, falsly, unlawfully and devilishly, to fulfil, perfect, and bring to effect, their most wicked, impious and devilish intentions aforesaid; the said Lady *Henrietta Berkeley*, to desert the aforesaid Right Honourable *George* Earl of *Berkeley*, Father of the aforesaid Lady *Henrietta*; and to commit Whoredom, Fornication and Adultery, and in Whoredom, Fornication and Adultery to live with the aforesaid *Ford* Lord *Grey* (the said *Ford* Lord *Grey*, then and long before, and yet, being the Husband of the Lady *Mary*, another Daughter of the said Right Honourable *George* Earl of *Berkeley*, and Sister of the said Lady *Henrietta*) against all Laws, as well Divine as Human, impiously, wickedly, impurely and scandalously, to live and cohabit, did tempt, invite and solicite, and every of them, then and there, did tempt, invite and solicite. And that the aforesaid *Ford* Lord *Grey*, *Robert Charnock*, *Anne Charnock*, *David Jones*, *Frances Jones*, and *Rebecca Jones*, and other Persons unknown, with Force and Arms, *&c.* unlawfully, unjustly, and without the Leave, and against the Will of the aforesaid Right Honourable *George* Earl of *Berkeley*, in prosecution of their most wicked Conspiracies aforesaid; the said Lady *Henrietta Berkeley*, then and there, about the Hour of Twelve in the Night time, of the said 20*th* day of *August*, in the Year aforesaid, at the aforesaid Parish of *Epsom* in the County of *Surrey* aforesaid, out of the Dwelling-house of the said Right Honourable *George* Earl of *Berkeley* there situate and being, and out of the Custody and Government of the said Earl of *Berkeley*, did take, carry and lead away. And the said Lady *Henrietta Berkeley*, from the said 20*th* day of *August* in the Year aforesaid, and continually afterwards, unto the day of the Exhibition of this Information, at the Parish of *Epsom* aforesaid, in the County of *Surrey* aforesaid, and in divers secret places there with the said *Ford* Lord *Grey*, unlawfully, wickedly, and scandalously to live, cohabit and remain, did procure and cause, and every of them did procure and cause, to the great displeasure of Almighty God, to the Ruin and Destruction of the said Lady *Henrietta Berkeley*, to the Grief and Sorrow of all her Friends, and to the evil and most pernicious Example of all others in the like Case offending; and against the Peace of our said Sovereign Lord the King, his Crown and Dignity. To this Information, the Defendant, the Lord *Grey*, and the other Defendants, have severally pleaded *Not Guilty*, and for their Tryal, have put themselves upon the Country, and the King's *Attorney* likewise, which Country you are: Your Charge is to inquire whether the Defendants, or any of them, are Guilty of the Offence and Misdemeanor whereof they stand Impeached by this Information, or not Guilty: If you find them or any of them Guilty, you are to say so; if you find them, or any of them not Guilty, you are to say so and no more, and hear your Evidence.

For which Evidence to come in, Proclamation was made, and then Edward Smith, *Esq; a Bencher of the* Middle-Temple, *open'd the Information.*

Mr. *Smith*. May it please your Lordship, and Gentlemen, you of the Jury; Mr. *Attorney General* hath exhibited an Information in this Court, against *Ford* Lord *Grey* of *Werk*, *Robert Charnock*, *Anne Charnock*, *David Jones*, *Frances Jones*, and *Rebecca Jones*, wherein is set forth, That the Defendants, the 20*th* of *August*, in the 34*th* Year of this King, at *Epsom* in your County, did conspire the Ruin and utter Destruction of the Lady *Henrietta Berkeley*, Daughter of the Right Honourable *George* Earl of *Berkeley*; and for the bringing about this Conspiracy, they have seduced her to desert her Father's House, tho' she be under the Age of 18 Years, and under the Custody and Government of her Father; and solicited her to commit Whoredom and Adultery with my Lord *Grey*, who was before married to the Lady *Mary*, another Daughter of the Earl of *Berkeley*, and Sister to the Lady *Henrietta*. That after they had thus inveigled her, they did upon the same 20*th* day of *August*, carry her away out of the House, without the Earl's Licence, and against his Will, to the Intent she might live an ungodly and dishonourable Life with my Lord *Grey*. And after they had thus carried her away, they obscured her in secret places,

places, and ſhifted about from place to place, and continued this Courſe of Life ever ſince. And this the Information ſays, is to the Diſpleaſure of Almighty God, the utter Ruin of the young Lady, the Grief and Affliction of her Friends, the evil Example of all others in the like Caſe offending, and againſt the King's Peace, his Crown and Dignity. To this all theſe Defendants have pleaded *Not Guilty*; if we ſhall prove them or any of them Guilty of any of the Matters charged in this Information, you ſhall do well to find them Guilty.

Mr. *At. Gen.* My Lord, and Gentlemen of the Jury, The Courſe of our Evidence will be this; That this unhappy Gentleman, my Lord *Grey*, has for four Years together, proſecuted an Amour with this young Lady; and when it came to be detected (ſome little Accident diſcovering ſomewhat of it) my Lady *Berkeley* did find there was ſome Buſineſs of an extraordinary nature between them, and thereupon forbid my Lord *Grey* her Houſe. My Lord *Grey* he made many pretences to my Lady, that he might come to the Houſe to give them a Viſit before he departed, being to go into the Country; and he takes that opportunity to ſettle this matter of conveying the young Lady away in a very ſhort time. And early on the *Sunday* Morning, ſhe was, by *Charnock*, another of the Defendants, conveyed from the Houſe of my Lord *Berkeley* at *Epſom*, and brought here to *London*. We ſhall in the Courſe of our Evidence ſhew how ſhe was ſhifted from place to place, and the ſeveral purſuits that were made in ſearch after her. We ſhall diſcover to you, how ſhe was hurried from one Lodging to another, for fear of Diſcovery. Nay, we ſhall prove, that my Lord *Grey* has owned and confeſſed that he had her, that ſhe was in his Care and Cuſtody, and that he owned the ſeveral Inſtances of his Amours. But I had rather the Evidence ſhould ſpeak it, than I open ſo much as the Nature of it.

Mr. *Sol. Gen.* My Lord, we ſhall call our Witneſſes, who will very fully make out this Evidence that Mr. *Attorney* has opened to you. That my Lord *Grey* did a long time make Love to this young Lady, tho' he were before married to her Siſter. This Treaty was diſcover'd by my Lady *Berkeley*, laſt Summer, upon an Accident of ſurprizing the young Lady in writing a Letter to my Lord, and thereupon my Lady *Berkeley* chargeth my Lord *Grey* with theſe Applications to her Daughter that did ſo much misbecome him. My Lord *Grey* was then ſo ſenſible of his Fault, that he ſeem'd very full of Penitence, and aſſured my Lady, he would never do the like again, and earneſtly deſired her by all means, to conceal it from my Lord *Berkeley*; for if this ſhould once come to be known to him, he and the young Lady would not only be ruined, but it would occaſion an irreparable Breach between their two Families, and of all Friendſhip between my Lord *Berkeley* and him. And therefore he deſired my Lady *Berkeley* (who had juſtly forbid him her Houſe for this great Crime) leſt the World ſhould inquire into the Cauſes of it, and ſo it ſhould come to be known, that his Baniſhment from her Houſe, might not be ſo ſoon or ſudden: But he begged of her Ladyſhip, that he might be permitted to make one Viſit more, and with all the Proteſtations in the World aſſured her, it was not with any purpoſe of Diſhonour, that he deſired to come and ſee her, but that his Departure might be by degrees, and ſo the leſs taken notice of. When my Lady had thus charged my Lord with his unworthy Carriage to her Family, and he had ſeem'd thus penitent for it; ſhe charges her Daughter alſo, with her giving any allowance to theſe undecent Practices of my Lord's; ſhe thereupon falls down on her Knees to her Mother, to ask her Pardon for her great Offence, and with Tears in her Eyes, confeſs'd ſhe had done very much amiſs, and did humbly hope ſhe might obtain her Forgiveneſs for it, being young, and ſeduc'd by my Lord *Grey*, and promiſed ſhe would ſee him no more, nor have any thing more to do with him. My Lord *Grey* he is permitted to come once more to the Houſe, upon thoſe Aſſeverations and Promiſes of his, that it ſhould be with no diſhonourable purpoſes in the World. It was, it ſeems, in his way to his own Houſe at *Suſſex*, but coming thither, he takes an occaſion to continue there, and ſtay a little too long for a Viſit; whereupon my Lady *Berkeley* began to ſuſpect it was not a tranſient Viſit he came to make at her Houſe, but that he had ſome ill deſign in proſecution of the ſame Fault that he had been ſo long guilty of. And that Suſpicion of her's was but too well grounded, as appear'd afterwards. Our Witneſſes will tell you, that my Lord *Grey*, juſt before his Departure, was obſerved to be very ſollicitous and earneſt with his Man *Charnock* (whom we ſhall prove by undeniable Evidence to be the Man that convey'd her away) giving him ſome Directions with great earneſtneſs, what to do was indeed not heard, but the Event will plainly ſhew it. For my Lord *Grey* himſelf, he went on his Journey into *Suſſex*, and lay at *Guilford* that Night ſhe was carried away, and the next Morning ſhe was miſſing. Thereupon my Lady ſends after my Lord *Grey*, juſtly ſuſpecting him to be guilty of this Violence and Outrage offered to her Daughter and Family, and they overtook him at *Guilford* before he was got any further on his Journey, and there acquaint him the Lady was carried away, and that my Lady ſuſpected (as well ſhe might) he knew whither. Then immediately he makes haſte up to Town, and writes my Lady a Letter, that truly he would take care to reſtore Peace to the Family that by his Folly had been ſo much diſturbed: And there were ſome hopes of retrieving the matter, that this Scandal upon ſo noble a Family might not be made publick; for certainly an Offence of this nature was not fit ſhould be ſo, nor indeed was ever heard of in any Chriſtian Society; I am ſure, I never read of any ſuch Cauſe in the Courts of Law. And it was impoſſible any way to have prevented the Scandal, but that which my Lady took, to paſs over all, by deſiring to have her Child reſtored again to her, before ſuch time as it was gone ſo far, as there is too great Reaſon to ſuſpect it now is. But after that, my Lord *Grey* was ſo far from performing what he had ſo ſolemnly promiſed, and making the matter up, that he ſtood upon Terms; he was Maſter of the Lady, and he would diſpoſe of her as he thought fit: Third Perſons and Places muſt be appointed where ſhe muſt be diſpoſed of; with Capitulations, that he ſhould ſee her as often as he thought fit; which was (if poſſible) a worſe Indignity than all that he had done before.

We

We ſhall prove to your Lordſhip, that he did, a long time before this Violence was offered, make applications to this young Lady, and that muſt (as any Man will believe) be upon no good Account. We ſhall ſhew all the baſe Tranſactions in carrying away the Lady, after that Confidence which my Lady repoſed in his Proteſtations to do nothing diſhonourably, ſo as to admit him to make a Viſit; which certainly was the greateſt Breach of the very Laws of human Society, againſt all the Laws of Hoſpitality, beſides the great Tranſgreſſion of the Laws of God and Men. Yet even then, he ſeduced the Lady away. For we ſhall plainly prove ſhe was carried away by his Coach-man that once was, afterwards his Gentleman, and how ſhe was from time to time conveyed to and fro.

Mr. Serj. *Jefferies.* This Story is indeed too melancholy to be often repeated, the Evidence had better tell it: Only this one Aggravation I would take notice of, which will be made out in the proof to you of this matter charged; and that is this, That my Lord *Grey*, after ſuch time as it was known ſhe was in his Power, gave one Reaſon for his not delivering her up (and I am ſorry to ſee his Lordſhip ſhould think it a Reaſon) he had inquired how far the Law would extend in ſuch a caſe, and that he knew, and could give a Precedent for it (which the Witneſs will tell you of) that the Law could not reach him; and that as long as he had run ſuch a Courſe for obtaining that which was his greateſt Pleaſure, he would not now part with her, but upon ſuch Terms, that he might have acceſs to her when he pleaſed. To ſuch a height of Confidence was this Gentleman arrived, in this barbarous and infamous Wickedneſs. But as I ſaid, it is a Story too black to be aggravated by any thing but by it ſelf; we ſhall therefore call our Witneſſes, and prove our Fact.

About this time the Lady Henrietta *came into the Court, and was ſet by the Table at the Judges Feet.*

Earl of *Berkeley.* My Lord, my Daughter is here in Court, I deſire ſhe may be reſtored to me.

Mr. Serj. *Jefferies.* Pray, my Lord *Berkeley*, give us leave to go on, it will be time enough to move that anon. Swear my Lady *Berkeley* —— (*which was done, but ſhe ſeem'd not able to ſpeak.*) ——

Mr. *Sol. Gen.* I perceive my Lady is much moved at the ſight of her Daughter. Swear my Lady *Arabella* her Daughter. (*Which was done.*)

Mr. Serj. *Jefferies.* Pray, Madam, will you acquaint my Lords the Judges, and Jury, what you know concerning the Letter you diſcovered, and how you came by that diſcovery?

Lady *Arabella.* My Mother coming to my Lady *Harriett*'s Chamber, and ſeeing there a Pen wet with Ink, examined her where ſhe had been writing. She, in a great Confuſion, told her ſhe had been writing her Accounts. My Mother not being ſatisfied with her Anſwer, commanded me to ſearch the Room. Her Maid being then in the Room, I thought it not ſo much for her Honour to do it then. I followed my Mother down to Prayers; after Prayers were done, my Mother commanded my Lady *Harriett* to give me the Keys of her Cloſet and her Cabinet. When ſhe gave me the Key, ſhe put into my Hands a Letter, which was written to my Lord *Grey*, which was to this effect. —— *My Siſter* Bell *did not ſuſpect our being together laſt Night, for ſhe did not hear the Noiſe. Pray come agen* Sunday *or* Monday, *if the laſt, I ſhall be very impatient.* —— I ſuppoſe my Lady *Harriett* gave my Lord *Grey* Intelligence that this was found out; for my Lord *Grey* ſent his Servant to me, to acquaint me he deſired to ſpeak with me. When he came in firſt, ſhe (I mean my Lady *Harriett*) fell down upon the Ground like a Dead Creature. My Lord *Grey* took her up, and afterwards told me, ſaid he, *You ſee how far it is gone between us*; and he declared to me, he had no Love, no Conſideration for any thing upon Earth but for her; *I mean dear Lady* Hen, ſaid he to me; for I ſay it juſt as he ſaid it. And after this, he told me, he would be revenged of all the Family, if they did expoſe her. I told him it would do us no Injury, and I did not value what he did ſay; for my own particular, I defied him and the Devil, and would never keep Counſel in this Affair. And afterwards, when he told me he had no Love, no Conſideration for any thing upon Earth but her, I told my Lady *Harriett*, *I am very much troubled and amazed, that you can ſit by and hear my Lord* Grey *ſay and declare, he has no Love for any but you, no Conſideration for any one upon Earth but you, when it ſo much concerns my Siſter; for my part, it ſtabs me to the Heart, to hear him make this Declaration againſt my poor Siſter* Grey. ——

[*Here ſhe ſtopt a while.*

Mr. Serj. *Jefferies.* Pray go on, Madam.

Lady *Arabella.* After this ſhe ſaid nothing; I told her I ſuſpected my Woman had an Hand in it, and therefore I would turn her away. This Woman, when my Lady *Harriett* ran away, being charged with it, ſwore ſhe had never carried any Letters between them; but after my Mother's coming to *London*, both the Porter at St. *John*'s, and one *Thomas Plomer* accuſed her that ſhe had ſent Letters to *Charnock*, who was my Lord *Grey*'s Coach-man, now his Gentleman. I told her then, I did much wonder, ſhe being my Servant, ſhould convey Letters between them without my knowing: She then confeſs'd it to me, but withal ſhe told me, *How could I think there was any ill between a Brother in Law and a Siſter?* And upon this ſhe confeſs'd to me ſhe had ſent Letters to *Charnock*, tho' before ſhe had forſworn it.

Mr. *At. Gen.* Madam, have you any thing further to teſtify in this Cauſe? Have you any Matters that you remember more?

Lady *Arabella.* There is more of it to the ſame effect; but all of it is only to this effect.

L. C. J. My Lady *Arabella*, pray let me ask you, have you any more to ſay to this Matter?

Lady *Arabella.* It is all to this purpoſe.

Mr. Serj. *Jefferies.* Then if you pleaſe, Madam, to turn now your Face this way towards the Gentlemen of the Jury, who have not heard what you ſaid, and give them the ſame relation that you gave to the Court; and pray be pleaſed to lean over the Seat, and expoſe your ſelf a little, and let them have the ſame Story you told before, and pray tell the time when it was.

[*Then ſhe turned her Face towards the Bar.*

Lady *Arabella.* It was in *July*, Sir.

Mr. Serj. *Jefferies.* Pray, Madam, tell what happen'd then.

Lady

Lady *Arabella.* In *July* laſt, ſome time then, my Mother came into my Lady *Harriett*'s Chamber, and ſeeing a Pen wet with Ink, ſhe examined her who ſhe had been writing to. She, in great Confuſion told her, ſhe had been writing her Accounts, but my Mother was not ſatisfied with that Anſwer.——The ſight of my Lord *Grey* doth put me quite of Countenance and Patience.——

[*Here ſhe ſtop'd again.*]

[*My Lord* Grey *then was by the Clerks under the Bar, and ſtood looking very ſtedfaſtly upon her.*]

L. C. J. Pray, my Lord *Grey*, ſit down (*which he did*) It is not a very extraordinary thing, for a Witneſs, in ſuch a Cauſe, to be daſhed out of Countenance.

E. of *Berkeley.* He would not, if he were not a very impudent barbarous Man, look ſo confidently and impudently upon her.

Mr. Serj. *Jefferies.* My Lord, I would be very loth to deal otherwiſe than becomes me, with a Perſon of your Quality, but indeed this is not ſo handſome, and we muſt deſire you to ſit down. Pray go on, Madam.

Lady *Arabella.* After this, my Mother commanded me to ſearch my Lady *Harriett*'s Room; Her Maid being then in the Room, I thought it not ſo much for her Honour to do it then. I followed my Mother down to Prayers. After Prayers were done, my Mother commanded my Lady *Harriett* to give me the Keys of her Cabinet and of her Cloſet, and when ſhe gave me the Keys, ſhe put a Note into my Hand, which was to my Lord *Grey*; and that was to this Effect——*My Siſter* Bell *did not ſuſpect our being together laſt Night, for ſhe did not hear any Noiſe: Pray come again* Sunday *or* Monday, *if the laſt, I ſhall be very impatient.* —— I ſuppoſe my Lady *Harriett* gave my Lord *Grey* intelligence of this, for he ſent a Servant to tell me he deſired to ſpeak with me. Upon his firſt coming in, my Lady *Harriett* fell upon the Ground like a Dead Creature, and my Lord *Grey* took her up, and ſaid, *Now you ſee how far it is gone between us: I love nothing upon Earth but her, I mean dear Lady* Hen, ſaid he to me, *and if you do expoſe her, I will be revenged upon you and all the Family, for I have no Conſideration for any thing but her.* After that I told him, We defied him, he could do us no Injury; and for my own particular, I defied him, and the Devil and all his Works, and would not have any thing to do with ſuch a Correſpondence. After this, I told my Lady *Harriett*, I was much troubled and amazed, that ſhe ſhould ſit by and hear my Lord *Grey*, her Brother in Law, ſay he had no Conſideration for any thing on Earth but her. *For my part*, ſaid I, *Madam, it ſtabs me to the Heart, to hear this ſaid againſt my poor Siſter* Grey. I told her I ſuſpected my Woman had an Hand in this Affair, and therefore I would put her away. Afterwards, the ſame Day my Lady *Harriett* run away, this Woman came to me; and I then told her, *You have ruined her*, and asked her, *Why would you ſend Letters between my Lord* Grey *and my Lady* Harriett? She denied it, and ſwore ſhe never did it, but when we came to *London*, the Porter of St. *John*'s came and accuſed her of conveying Letters to *Charnock*, my Lord *Grey*'s Gentleman, formerly his Coach-man. I then asked her again about it; ſhe then acknowledged to me ſhe had done it, *But Madam*, ſaid ſhe, *how could I think there could be any prejudice or ill between a Brother in Law and a Siſter in Law?* Said I, *Were not you my Servant? Why did you not tell me? Beſides, you know we have all reaſon to hate* Charnock *for a great many things.* This is all I have to ſay that is material, all elſe is to the ſame effect.

Mr. Serj. *Jefferies.* Now this Matter being thus diſcovered to the Counteſs of *Berkeley*, this unfortunate Young Lady's Mother; ſhe ſent for my Lord *Grey*, and we ſhall tell you what happen'd to be diſcourſed between them two, and between the Lady and her Mother, and what Promiſes of Amendment he made. My Lady *Berkeley*, pray will you tell what you know.

[*She ſeem'd unable to do it.*]

—— She is very much diſcompoſed, the ſight of her Daughter doth put her out of Order.

Lady *Arabella.* I have ſomething more to ſay, that is, I told my Lady *Harriett*, after my Lord *Grey* had made his declaration of his Love to my Siſter, to me, That if ever he had the Impudence to name her Name to me, I would immediately go to my Father, and tell him all.

[*Then the Counteſs lean'd forward, with her Hood much over her Face.*]

Mr. *At. Gen.* Pray, my Lady *Berkeley*, compoſe your ſelf, and ſpeak as loud as you can.

Lady *Berkeley.* When I firſt diſcovered this unhappy Buſineſs, how my Son in Law, my Lord *Grey*, was in love with his Siſter, I ſent to ſpeak with him, and I told him he had done barbarouſly and baſely, and falſely with me, in having an Intrigue with his Siſter in Law. That I looked upon him next my own Son, as one that was engaged to ſtand up for the Honour of my Family, and inſtead of that, he had endeavour'd the Ruin of my Daughter, and had done worſe than if he had murdered her, to hold an Intrigue with her of Criminal Love. He ſaid, he did confeſs he had been falſe, and baſe, and unworthy to me, but he deſired me to conſider (and then he ſhed a great many Tears) what it was that made him guilty, and that made him do it. I bid him ſpeak. He ſaid, he was aſham'd to tell me, but I might eaſily gueſs. I then ſaid, What? Are you indeed in Love with your Siſter in Law? He fell a weeping, and ſaid, he was unfortunate; but if I made this Buſineſs Publick, and let it to take Air (he did not ſay this to threaten me, he would not have me to miſtake him) but if I told my Lord her Father, and his Wife of it, it might make him deſperate, and it might put ſuch Thoughts into his Wife's head, that might be an occaſion of parting them; and that he being deſperate, he did not know what he might do, he might neither conſider Family, nor Relation. I told him this would make him very Black in Story, tho' it were her Ruin. He ſaid that was true, but he cou'd not help it; he was miſerable, and if I knew how miſerable, I would pity him: He had the Confidence to tell me that. And then he deſired, tho' he ſaid I had no reaſon to hear him, or take any Counſel he gave me (and all this with a great many Tears) as if he were my Son *Durſley*, that I would keep his Secret. *For my Lord, if he heard it, would be in a great Paſſion, and poſſibly, he might not be able to contain himſelf, but let it break out into the World. He may call me Rogue and Raſcal perhaps in his Paſſion,* ſaid he, *and I ſhould be ſorry for it, but that would be all I could do,* and what the evil Conſequence might be, he knew

knew not, and therefore it were beſt to conceal it. And after many words to pacify me, tho' nothing, indeed, could be ſufficient for the Injury he had done me; he gave it me as his Advice, that I would let my Daughter *Harriett* go abroad into Publick Places with my ſelf, and he promiſed, if I did, he would always avoid them. For a Young Lady to ſit always at Home, he ſaid, it would not eaſily get her out of ſuch a thing as this. And upon this, he ſaid again, he was to go out of Town with the D. of *M.* in a few Days, and being he had been frequently in the Family before, it would be looked upon as a very ſtrange thing, that he went away, and did not appear there to take his Leave. He promiſed me, that if for the World's ſake, and for his Wife's ſake (that no one might take notice of it) I would let him come there, and ſup before he went into the Country, he would not offer any thing, by way of Letter, or otherwiſe, that might give me any Offence. Upon which I did let him come, and he came in at Nine a Clock at Night, and ſaid, I might very well look ill upon him, as my Daughter alſo did (his Siſter *Bell*) for none elſe in all the Family knew any thing of this Matter but ſhe and I. After Supper he went away, and the next Night he ſent his Page (I think it was) with a Letter to me, he gave it to my Woman and ſhe brought it to me; where he ſays that he would not go out of Town.——If your Lordſhip pleaſe I will give you the Letter——But he ſaid, he fear'd my apprehenſions of him would continue.—— There is the Letter.

L. C. J. Show it my Lord *Grey*, let us ſee if he owns or denies it.

Lord *Grey*. Yes, pray do, I deny nothing that I have done.

Mr. Juſt. *Dolbin*. Be pleaſed, Madam, to put it into the Court.

Mr. *At. Gen.* It is only about his keeping away.

L. C. J. Shew it my Lord *Grey*.

Mr. Serj. *Jefferies*. With ſubmiſſion, my Lord, it is fully proved without that.

L. C. J. Then let the Clerk read it, Brother.

Cl. of the Crown. There is no Direction, that I ſee upon it, it is Subſcribed *Grey*.

[*Reads.*]

MADAM,

AFTER I had waited on your Ladyſhip laſt Night, Sir Thomas Armſtrong *came from the D. of* M. *to acquaint me that he could not poſſibly go into* Suſſex; *ſo that Journey is at an end. But your Ladyſhip's apprehenſions of me I fear will continue: therefore I ſend this to aſſure you, that my ſhort ſtay in Town ſhall no way diſturb your Ladyſhip; if I can contribute to your Quiet, by avoiding all places where I may poſſibly ſee the Lady. I hope your Ladyſhip will remember the promiſe you made to divert her, and pardon me for minding you of it, ſince it is to no other end that I do ſo, but that ſhe may not ſuffer upon my Account: I am ſure, if ſhe doth not in your Opinion, ſhe never ſhall any other way. I wiſh your Ladyſhip all the Eaſe that you can deſire, and more quiet Thoughts than ever I expect to have. I am, with great Devotion,*

Your Ladyſhip's,
Moſt Humble, and
Obedient Servant,
Grey.

Mr. *At. Gen.* Madam, will you pleaſe to go on with your Evidence.

Lady *Arabella*. I have one thing more to ſay: After this, three or four Days after this ugly Buſineſs was found out, I told my Lady *Harriett*, ſhe was to go to my Siſter *Durſley*'s. She was in a great Anger and Paſſion about it, which made my Mother ſo exaſperated againſt her, that I was a great while before I got my Mother to go near her again.

Mr. Serj. *Jefferies*. My Lady *Berkeley*, will you pleaſe to go on.

Lady *Berkeley*. When I came to my Daughter (my wretched unkind Daughter, I having been ſo kind a Mother to her, and would have died rather (upon the Oath I have taken) than have done this, if there had been any other way to reclaim her,) and would have done any thing to have hid her Faults, and died ten times over, rather than this Diſhonour ſhould have come upon my Family. This Child of mine, when I came up to her, fell into a great many Tears, and begged my Pardon for what ſhe had done, and ſaid, ſhe would never continue any Converſation with her Brother in Law any more, if I would forgive her; and ſhe ſaid all the things that would make a tender Mother believe her. I told her, I did not think it was ſafe for her to continue at my Houſe, for fear the World ſhould diſcover it, by my Lord *Grey*'s not coming to our Houſe as he uſed to do; and therefore I would ſend her to my Son's Wife, her Siſter *Durſley*, for my Lord *Grey* did ſeldom or never viſit there, and the World would not take notice of it. And I thought it better and ſafer for her to be there with her Siſter, than at home with me. Upon which this ungracious Child wept ſo bitterly, and begg'd ſo heartily of me that I would not ſend her away to her Siſter's, and told me, it would not be ſafe for her to be out of the Houſe from me. She told me, ſhe would obey me in any thing; and ſaid, ſhe would now confeſs to me, tho' ſhe had denied it before, that ſhe had writ my Lord *Grey* word that they were diſcovered, which was the reaſon he did not come to me upon the firſt Letter that I ſent to him to come and ſpeak with me. And ſhe ſaid ſo many tender things, that I believed her Penitent, and forgave her, and had Compaſſion upon her, and told her (tho' ſhe had not deſerved ſo much from me) ſhe might be quiet (ſeeing her ſo much concerned) I would not tell her Siſter *Durſley* her Faults, nor ſend her thither, till I had ſpoken with her again. Upon which, ſhe, as I thought, continuing Penitent, I kiſſed her in the Bed when ſhe was Sick, and hoped that all this ugly Buſineſs was over, and I ſhould have no more Affliction with her, eſpecially if my Lord removed his Family to *Durdants*, which he did. When we came there, ſhe came into my Chamber one *Sunday* Morning before I was awake, and threw her ſelf upon her Knees, and kiſſed my Hand, and cried out. *Oh Madam! I have offended you, I have done Ill, I will be a good Child, and will never do ſo again; I will break off all Correſpondence with him, I will do what you pleaſe, any thing that you do deſire. Then*, ſaid I, *I hope you will be happy, and I forgive you. Oh! do not tell my Father* (ſhe ſaid) *let not him know my Faults. No*, ſaid I, *I will not tell him; but if you will make a Friend of me, I deſire you will have no Correſpondence with your Brother in Law;*

and tho' you have done all this to offend me, I will treat you as a Sister more than as a Daughter, if you will but use this Wicked Brother in Law as he deserves. I tell you that Youth and Vertue and Honour, is too much to sacrifice for a base Brother in Law. When she had done this, she came another day into my Closet and there wept very much, and cry'd out, *Oh Madam! 'tis he, he is the Villain that has undone me, that has ruined me. Why?* said I, *What has he done? Oh!* said she, *he hath seduced me to this. Oh!* said I, *fear nothing, you have done nothing I hope that is ill, but only hearkning to his Love.* Then I took her about the Neck and kissed her, and endeavoured to comfort her. *Oh Madam!* said she, *I have not deserved this kindness from you; but 'tis he, he is the Villain that hath undone me: But I will do any thing that you will command me to do; if ever he send me any Letter, I will bring it to you unopened; but pray do not tell my Father of my Faults.* I promised her I would not, so she would but break off all Correspondence with him.——

[*Here she swooned, and soon after recovered and went on*]

——Then my Lord *Grey*'s Wife, my Daughter *Grey*, coming down to *Durdants*, he was to go to his own House at *Up-Park* in *Sussex*, and he writ down to his Wife to come up to *London*.—— It is possible I may omit some Particular things that were done just at such or such a time, but I speak all I can remember in general. My Lord *Grey*, when I spoke to him of it, told me, he would obey me in any thing, if I would banish him the House he would never come near it; but then he pretended to advise me like my own Son, that the World would take notice of it, that therefore it would be better for me to take her abroad with me, he would avoid all places where she came, but he thought it best for her not to be kept too much at Home, nor he absolutely forbid the House, but he would by degrees come seldomer, once in six Weeks or two Months. But to go on to my Daughter *Grey*'s coming down to *Durdants*; he writing to his Wife to come up to *London*, that he might speak to her before he went to his own House at *Up-Park*, my Daughter *Grey* desired he might come thither, and it being in his way to *Sussex*, I writ him word, that believing he was not able to go to *Up-Park* in one Day from *London*, he might call at my Lord's House at *Durdants*, and dine there by the way, as calling in, intending to lie at *Guilford*, for it is just the half way to *Guilford*. He, instead of coming to Dinner, came in at Nine a Clock at Night (I am sure it was so much) for it was so dark, we could hardly see the Colour of his Horses, from my Lord's great Gate, to the place where we were in the House: And coming at that time of Night, I thought if I turned him out of the House, my Lord would wonder at it, and so would all the Family. Therefore I was forced, as I then thought in point of discretion, to let him lie there that Night, which he did, and he told me, *Madam, I had not come here, but upon your Ladyship's Letter, nothing else should have brought me*: Because I was to give him leave to come, knowing the Faults he had committed against the Honour of our Family. Upon which I told him, *My Lord, I hope you have so much Honour and Generosity in you, after the Promises you have made me, and the Confidence and Indulgence I have shewn you, that you will give my Daughter no Letters, and I will look to her otherwise, that you shall have no Conversation with her.* He desired me to walk up with him into the Gallery, and there he told me he had brought no Letters, and would have had me looked in his Pocket. I told him that would be to no purpose, for his Man *Charnock* (whom we knew he did not prefer from being his Coach-man to be his Gentleman, but for some extraordinary Service he did him, or he thought he would do him) might have Letters enough, and we be never the wiser: But I trusted to his Honour and his Christianity; and I told him, that his going on in any such way would be her utter Ruin. He told me he would not stay there any longer than the next Day; nay, he would be gone immediately if I pleased, and he sent his Coach to *London*, and had nothing but Horses left. But his Wife desiring her Husband to stay, I had a very hard Task to go through, being earnestly prest, both by her and my own Lord's importunities for his stay. But my Lord *Grey*, whilst he was there, did entertain me with his Passion, he had the Confidence to do it, and he wished himself the verieſt Rake-hell in the World, so he had never seen her Face since he was married. *And*, said he, *Madam, you will always think me a Villain, and never have a good Opinion of me, I shall be always unfortunate, both in my self, and your bad Opinion of me.* Seeing this, I thought it was time to do something more; and I told him that Night he should stay no longer, he should be gone; and his Wife seemed to be much concerned, and would fain have him stay. For by this time she began to find out that there was some disorder in her Mother and the Family, tho' she knew not what it was; and she sent her Sister *Lucy* to beg he might stay: I told her I would not suffer it: However, she proposed an Expedient how her Sister *Harriett* should take Physick, and keep her Chamber while he was there. That I was in a sort compelled to do, and I told him, upon their importunity for his stay, that his Sister *Harriett* should be seen no more by him, but take Physick while he stayed there: To which he replied, *Madam, indeed it is rude for me to say it to you, but I must say it, give me my Choice, either to be drown'd or hanged.* Upon this I was extremely disturbed, and the next Morning, I told him, I was not satisfied he should stay in *England*; he had ordered his Wife to go into *France*, and she was to go within a Month after, I would have him go with her; he told me, he had Law-Suits and he could not: I told him, he had told me before, they were of no great consequence, and therefore they could not hinder him; and I prest him very much, and I fell into a great Passion at last; and told him, if he would not go, I would tell her Father, and he should take care of her, to send her where she should be safe enough from him. For I was sensible the World would take notice if he came not thither; and said I, *I am not able to bear you should.* Upon this, he promised me with all the Oaths, Imprecations and Promises in the World, that he would go and follow his Wife into *France* at *Christmass*, and stay there 8 Months; and by that time, I did hope this unfortunate miserable Business might be over: For I had a great kindness for my Child, and would have done any thing to save her,

her, if it had been in my Power, or would yet do any thing: I would give my Life that the World did not know so much of it as now it must this Day. The World knows I had always the greatest Kindness and Tenderness for her, which was such, that some that are now here have said since, that it was my Indulgence to her, and not making it known to my Lord, that encouraged this last ill Business. And thereupon my Lord *Grey* was ordered by me to go away, and he promised me so to do, which was upon *Saturday*. I then went up to her Chamber and saw her very melancholly, and did what I could to comfort her. Said I, *I warrant you, by the Grace of God, do but do what you ought, and I will bring you off of this Business, be chearful, and be not so much cast down* (for I thought she was troubled at my Carriage to her) *and tho' I said some severe things to you at Dinner* (as I did talk of her going away, and being sent abroad) *be not troubled, for I only meant it out of Kindness to you; for all I design, is only to seek an Occasion of getting him away; and therefore, as long as he stays, I will seem to whisper with you, and look frowningly upon you, that if he hath any Tenderness for you, he may see I am angry with you, and do the more to leave you at quiet: But take no notice of it, for I now smile to you, tho' I frowned before him, be not affrighted.* In the Afternoon I told her the same thing again. *But then*, said she, *he will shew my Letters to him, and that will ruin my Reputation for ever, and that troubles me, but yet it need not, for I never writ to any Man but him, and if he doth shew them, he will expose himself for a base unworthy Man, and I can but deny it, and he can never prove it. This is true*, said I, *and very well said, and therefore be not afraid of him, but trust to the Friendship of your Mother, and do as you ought to do, and I am confident we shall bring you clear off from this ugly Business.* And then said she, *But oh Madam! my Sister, my Sister* Grey, *will she forgive me this?* I told her, her Sister *Grey* was good-natured and religious, and I made no doubt she would forgive her the Folly of her Youth, and if she would take up yet, she was young, and her Sister would impute it to that, *and*, said I, *I am sure she will forgive you*; and I told her, I would do all that lay in my power to assist her; and I bid her be chearful and trust in God and in my Friendship. She was to blame, indeed, she acknowledged, but she was young, and he was cunning, and had made it his Business to delude and intice her. I told her it was true, and therefore now she must consider with her self, what was to be done to bring her off; which I doubted not, if she would do but as she ought; she promised me so to do; and yet that very Night when I was in my Sleep she ran away.——

[*Here she swooned again.*

Mr. Serj. *Jefferies.* What time went my Lord *Grey* away, Madam, that day?

Lady *Berkeley.* He went away about four a Clock in the Afternoon.

Mr. Serj. *Jefferies.* And the ensuing Night the Lady was gone?

Lady *Berkeley.* Yes, that Night she went away too.

Mr. Serj. *Jefferies.* My Lord, I crave leave to acquaint you with one Circumstance that has been already hinted, that is about *Charnock*, a Person that is taken notice of by both the Ladies that have given Evidence, and one of the Defendants in this Information. This Man, as they seem to intimate, for some extraordinary Service he had done my Lord *Grey*, or was designed for the doing of, was removed from the Degree of his Coach man, to the waiting upon him in his Chamber. He at this time came with my Lord *Grey* to *Durdants*, a House of my Lord *Berkeley*'s near *Epsom*, and which was in the way to my Lord *Grey*'s House in *Sussex*, that is called *Up-Park*. And they being there, notwithstanding all those Protestations and Promises made by my Lord *Grey* to his Lady Mother, as you have heard, to meddle no more in this matter, yet we shall give you an account, how that the Day before the Night that the young Lady went away, my Lord *Grey* was very importunately busy with his Man *Charnock*; what Discourses they had, or what Directions he gave him perhaps may not be known; but his earnestness in talking with him, and his impatience and restlessness we shall prove; and then give you a very full Proof that *Charnock* was the Person that took her away; and then let the Jury and the Court make the Conclusion.

Mr. *At. Gen.* It may be, my Lord, we shall not be able to prove the actual Taking away from thence, but only by undeniable Circumstantial Proof. Such Impieties use not to be acted openly.

L. C. J. Truly, as far as I can see, here has been more done barefaced, than one would think should be done in any Christian Nation.

Then a Clergyman that stood by was sworn, but his Name not told.

Mr. Serj. *Jefferies.* Pray, Sir, will you tell my Lord and the Jury what you know.

Mr. —— My Lord, I was at *Durdants*, my Lord *Berkeley*'s House near *Epsom* in *Surrey*, at the time of this ill Accident, and some time after. And upon the *Saturday* in the Afternoon I (immediately after Dinner was over at my Lord's own Table) walked into the great pav'd Hall; and stood in the Door that looked towards the *Downs*; and my Lord *Grey* came into the Hall alone, and walked three or four times very thoughtfully, and then leaned upon the Window, and often looked upon the Ground, and within a little while he steps into the *Steward's Hall*, where the Gentlemen were at Dinner, and he calls to *Charnock*, who came out to him. He takes him out of the Hall to the Foot of the Stair-case, and there they talked together a great while, and after some time my Lord *Grey* went away, and *Charnock* did so too, I think to his Dinner again, I cannot tell any thing to the contrary. The Reflection I made upon this Passage then was, That my Lord *Grey* was very punctual in giving his Servant Orders, which I thought he was to carry to *London* with him, but I suspected nothing of this matter, nor any thing else that was ill then. Mr. *Charnock* then passing by me, said I, *Mr.* Charnock, *How long will it be before you are going?* He made me no Answer, not one word. Thereupon I went into the Library, and between that and Mr. *Charnock*'s Chamber there was but a very thin Wall, and presently after I came into the Library, my Lord *Grey* sent one (as the Messenger said) for Mr. *Charnock*, and he went down to him, as I suppose, and in a little time came up again. And after that, I do believe I did hear another Messenger come from him to Mr. *Charnock* again, I will not swear that, for I am not sure of it; because, being at that time busy in reading, I

made no Reflection upon it till afterwards. But about a Fortnight or three Weeks after, there comes a Gentleman to see me at my Lodgings, and falling into discourse what News there was; our first Discourse was of the Lady's being missing; he said, it would be sad he feared when she was heard of. *Why*, said I, *what do you mean? I suppose Mr.* Forrester *and she are together*, for that was the talk of the *Town*. *No*, said he, *it is no such thing; but if you will make it a Secret, unless it comes to be made a publick Business, I will tell you; I do not doubt my Lord* Grey *carried her away with a design to debauch her. That is hard to be believed*, said I, *I cannot believe it. Why*, said he, *you were there when he went away? Yes*, said I, *but how long was that before the Lady was missing?* said he, *It was that Afternoon.* Then came into my mind his earnest discourse with *Charnock*, and that which I observed about it, and the sending so often for him; and I told that Person of it. *Why* Charnock, said he, *was the Man that took her away.*

Mr. Serj. *Jefferies*. Who was it that said so to you, Sir? Name him.

Mr. ——— Mr. *Rogers*, my Lord *Berkeley*'s Chaplain.

Mr. Serj. *Jefferies*. If your Lordship please to observe the particular times, when my Lord *Grey* was so earnest in giving *Charnock* Directions, that was on the *Saturday* at Noon, and it was that Night the young Lady went away.

L. C. J. When came my Lord *Grey* to my Lord *Berkeley*'s?

Mr. *At. Gen.* The *Tuesday* or *Wednesday* before, I think, some Days it was.

Mr. Serj. *Jefferies*. But upon the *Saturday* Night it was she went away; this unfortunate Lady that we have produced, her Mother, and so the Lady her Sister, spoke both of their Fears of *Charnock*. Now we shall prove, that this *Charnock* was on the *Sunday* Morning, at eight of the Clock in the Morning here in *London*, with a young Lady, in what Habit that young Lady was, our Witnesses will tell you; and others will give you an account what Habit this Lady went away in, and then it will be seen who she was. Call *Eleanor Hilton*.

Mr. *At. Gen.* But if you please, Mr. Serjeant, I think it will be proper first to examine my Lady *Lucy*, who upon the missing this young Lady followed my Lord *Grey* to *Guilford*, and overtaking him, acquainted him with it, and immediately he took Post and came to *London*. Pray swear my Lady *Lucy*.

[*Which was done, she being in a Box by the Bar.*

L. C. J. Well, what do you ask that Lady?

Mr. Serj. *Jefferies*. We produce her, my Lord, to hear what pass'd between her and my Lord *Grey* at *Guilford*. Pray, Madam, will your Ladyship acquaint the Court what occasion you had to go to *Guilford*, and what you said to my Lord *Grey*, and what he said to you, and did afterwards.

Lady *Lucy*. My Lord, as soon as my Lady *Harriett* was missing, supposing my Lord *Grey* could best give an account where she was, I went after him to *Guilford*, and he was gone half an hour from thence before I came thither, but by sending Post after him, he was overtaken, and came back to me. I told him my Lady *Harriett* was gone away, and I conjured him by all that was sacred and dear to him, to prevent so great a Misfortune as this would be to the Family. He then pretended he did not know any thing of her going, but promised me, that if he could find her out, he would endeavour to perswade her to return Home, but he would not force her. After several Discourses, which it is impossible for me to remember particularly (saying that he had done nothing that was illegal, and if she did not any thing, we could do nothing against him;) He at last parted from me, to go to *London*, as I suppose. I begged of him that I might be permitted to go along with him, that I might speak to her, supposing I might retrieve this Business, and recover her, before it were gone too far, but he denied it me, and went away. After that I met him, a Day or two after, I think, I cannot tell justly the time, and he pretended, he did not know where she was, but only he knew where to send to her; and he would do all he could to get her to return Home. He was sensible of what a Misfortune this was to the Family. But soon after, he went to *Up-Park* again, as he said, to shew us that he was not with her. And he afterwards writ me a Letter, wherein he says, he could not perswade her to come Home, but the Conclusion of it was, "He would do all "he could to restore Peace and Quiet to the "Family, which by his Follies were so miserably disturbed.

Lady *Arabella*. My Lord, I desire to speak one thing. About six Weeks ago I met my Lord *Grey* at my Lord Chief Justice's Chamber, and he told me, he had my Lady *Harriett Berkeley* in his Power, or in his Protection, or to that effect, he said.

Mr. *At. Gen.* Pray tell, Madam, when that was?

Lady *Arabella*. About six Weeks ago, I cannot justly say the Day.

Mr. Serj. *Jefferies*. But if your Ladyship pleases, my Lady *Lucy*, it will very much satisfy the Jury, if you would shew the Letter you speak of.

Mr. *Williams*. Ay, pray Madam, shew the Letter.

Lady *Lucy*. It was a Letter before that which he writ to me at *Durdants*.

L. C. J. When was that Letter you speak of written?

Lady *Lucy*. About a Week after my Sister was gone, I cannot exactly remember the Day.

Mr. *Williams*. Pray, Madam, can you produce that Letter?

Lady *Lucy*. No, I have it not here.

Mr. Serj. *Jefferies*. Then swear *Eleanor Hilton*.

[*Which was done.*

Mr. *Sol. Gen.* Is your Name *Eleanor Hilton*?

Mrs. *Hilton*. Yes, it is, Sir.

Mr. *At. Gen.* Pray speak out, that my Lord and the Jury may hear you. Do you remember the 20*th* of *August* last? Did *Charnock* come to your House with a young Lady? Did you see her, and what time of the Day was it?

Mrs. *Hilton*. I cannot tell what Day of the Month it was.

Mr. Serj. *Jefferies*. What Day of the Week was it?

Hilton. It was on a *Sunday*.

Mr. *Sol. Gen.* What Month was it in?

Hilton. I cannot tell, truly.

Mr. Serj. *Jefferies*. About what time of the Year was it?

Hilton. About eight or nine Weeks ago, or something more.

Mr. Serj.

Mr. Serj. *Jefferies.* Well, what did you see then?

Hilton. There was a young Lady that came to our House, she came of her self, *Charnock* he was not with her; he came before indeed, and asked me if I had any Room to spare, and I shewed him what we had; he went away, and I saw no more of him; afterwards, as I said, she came; but who she was, or what she was, I cannot tell.

Mr. Serj. *Jefferies.* Can you describe her Cloaths?

Hilton. She had a Coloured Night-gown on, of several Colours; I cannot say what particular Stuff it was: And she had a Petticoat on White and Red.

Mr. Serj. *Jefferies.* Did you see her Face?

Hilton. I cannot say I did fully.

Mr. *At. Gen.* Do you think you should know her again, if you should see her?

Hilton. I cannot say that.

Mr. Serj. *Jefferies.* (*to the Lady* Harriett) Pray, Madam, will you stand up a little, and turn up your Hood. [*Which she did.*

Hilton. Truly, I cannot say that is the Lady.

Mr. *At. Gen.* Do you believe it was she?

Hilton. I cannot say it, truly.

Mr. *At. Gen.* Have you seen her Picture since, and is this Lady like that Picture?

Hilton. Mr. *Attorney.* She says, she cannot say it is the same Lady.

Mr. *Sol. Gen.* Pray, Mistress, to what purpose was she brought to your House?

Hilton. They did not tell me that.

Mr. *At. Gen.* Was it not to lodge there?

Hilton. She staid there but a while, and went away again.

Mr. *At. Gen.* Whither did she go then?

Hilton. To one *Patten*'s in *Wild-street.*

Mr. Serj. *Jefferies.* You went with her, Mistress, Did not you?

Hilton. Yes, I did so.

Mr. Serj. *Jefferies.* Pray, was there any Letter or Note brought to your House for *Charnock*?

Hilton. Yes, I brought it to Mrs. *Charnock.*

Mr. Serj. *Jefferies.* Did you hear any Reason given for her Removal from your House?

Mr. *At. Gen.* Pray did she go to Bed at your House?

Hilton. She did lie down.

Mr. Serj. *Jefferies.* What time of the Day was it?

Hilton. About nine or ten a Clock in the Morning.

Mr. *Sol. Gen.* Pray, did she say she had been at Church, or what did she say?

Hilton. She said somewhat to that purpose, she said she was weary.

Mr. Serj. *Jefferies.* What Company came to the Lady, while she was at your House?

Hilton. No body but Mrs. *Charnock.*

Mr. Serj. *Jefferies.* Did you see Mrs. *Charnock* in her Company?

Hilton. Yes.

Mr. Serj. *Jefferies.* You saw her come in to her?

Hilton. Yes.

Mr. Serj. *Jefferies.* Did she behave her self to her, as to a Lady of Quality?

Hilton. I cannot tell that, truly.

Mr. Serj. *Jefferies.* Why, how did she carry it to her?

Hilton. Whether she was in Bed or no, I cannot tell; but when she came in, the young Lady said, *How do you Mrs.* Charnock? She said, *Your Servant, Madam,* or to that purpose, I cannot exactly tell.

Mr. Serj. *Jefferies.* You brought the Note to Mrs. *Charnock*, you say?

Hilton. Yes.

Mr. *At. Gen.* Did she stay at Mrs. *Patten*'s after that?

Hilton. I suppose she might.

Mr. *Sol. Gen.* Pray recollect your self a little, and tell us what Colour was her Manteau?

Hilton. Truly, it was all manner of Colours, Red, and Green, and Blue, and I cannot tell what Colours.

Mr. *At. Gen.* What coloured Petticoat?

Hilton. Red and White.

Mr. *Sol. Gen.* How long after this, did you hear my Lord *Berkeley*'s Daughter was missing?

Hilton. A while after.

Mr. *At. Gen.* How long? Was it that Week?

Hilton. I cannot tell, it was not long after.

Mr. *At. Gen.* Was it the same Lady that came to your House in those Cloaths, that went to *Patten*'s at Night?

L. C. J. Why, she says she went with her, do not examine her the same things over again.

Mr. *At. Gen.* Were you examined before Sir *William Turner*, about this Matter?

Hilton. Yes, I was.

Mr. *At. Gen.* Was it the Day of the Month you then said it was?

Hilton. I suppose it might; I cannot tell the Day of the Month.

Mr. *At. Gen.* Was it the Month?

Hilton. It is like it was.

L. C. J. She has fix'd it now to be about eight or nine Weeks ago.

Mr. Serj. *Jefferies.* Did she give any Reason why she was removed?

Hilton. None at all.

Mr. Serj. *Jefferies.* Now, my Lord, we will bring it down to be this very Lady. My Lady *Arabella*, Pray, Madam, what Cloaths did my Lady *Harriett* go away in?

Lady *Arabella.* My Lady *Harriett* had such Cloaths as they speak of, I cannot say she went away in her Night-gown, but here is one that can: But there was a striped Night-gown, of many Colours, Green, and Blue, and Red.

L. C. J. She does remember she had such a one, but she cannot say she went away in it.

Mr. Serj. *Jefferies.* Was there not a Chequer'd Petticoat Red and White?

Lady *Arabella.* She had such a Petticoat, but I cannot say she went away in it; she had also a White Quilted Petticoat.

Mr. Serj. *Jefferies.* Then swear Mrs. *Doney* (*which was done.*) My Lord, we call this Gentlewoman to gave an account what Habit she went away in; for she lay with her always.

Mr. *At. Gen.* Did you lie with my Lady *Harriett Berkeley*, when she stole away?

Mrs. *Doney.* Yes indeed, Sir, I did lie in the Chamber that Night, and she went away with her Morning Cloaths, which lay ready for her there, against she did rise in the Morning. It was a striped Night-gown of many Colours, and a Petticoat of White and Red, and a Quilted Petticoat.

Mr. *At.*

Mr. *At. Gen.* Was ſhe ſo habited, that came to the Houſe, Mrs. *Hilton*?

L. C. J. She has ſaid ſo already.

Mr. Serj. *Jefferies.* Now you are pleaſed to obſerve, that beſides the Circumſtance of the Cloaths, there is mention made of a Note; Mrs. *Hilton* ſays ſhe received a Letter and gave it to Mrs. *Charnock*; and that ſoon after they went to *Patten*'s Houſe in *Wild-ſtreet*. We ſhall call the People of that Houſe, to give an account what Gentlewoman it was that came to their Houſe. Pray ſwear Mr. *Patten*.

[*Which was done.*

Mr. *Sol. Gen.* Pray, will you tell my Lord and the Jury, whether Mr. *Charnock* and his Wife came to your Houſe, and with whom, and about what?

Mr. *Patten.* My Lord, about the latter end of *July*, or the beginning of *Auguſt*, Mr. *Charnock* and his Wife came to my Houſe when we were juſt removed, to take ſome Lodgings for a Perſon of Quality; but they did not ſay who. Said I then, *We have no Lodgings now ready*; ſaid they, *We ſhall not want them yet, till towards the middle of* September. Says my Wife, *I ſuppoſe by that time our Houſe will be ready; and if it will do you any kindneſs you may have it.* About the 20*th* of *Auguſt*, being *Sunday*, Mrs. *Hilton* brings a Gentlewoman with Mrs. *Charnock*, to my Houſe; and when they were come, they called me up, and ſeeing them all three there, I told Mrs. *Charnock*, *We have no Lodgings fit for any body of any Quality, at preſent.* Says Mrs. *Hilton*, *Let's ſee the Candle*, and runs up ſtairs into a Room where there was a Bed, but no Hangings; when they came in, they locked themſelves into the Room. My Wife's Daughter being in the Houſe, I deſired her to ſend for my Wife, who was then abroad; which ſhe did. They deſired my Wife's Daughter to lodge with the Gentlewoman that they brought thither, and they were making the Bed ready. I ſent them up word, *That I deſired they would walk into the Dining-room for the preſent*; they ſent me word down again, *They did not deſire to do that, for they were afraid the Light would be ſeen into the Street*; and withal, if any body came to enquire for Mrs. *Charnock* or Mrs. *Hilton*, I ſhould ſay there was no body there. Preſently after, I think (or before, I cannot juſtly ſay which) a Letter was carried up ſtairs to them, upon which they came down ſtairs, and away they went up the Street, and when they were gone a little way on foot, Mrs. *Charnock* deſired them to turn back again, for ſhe hoped to get a Coach, and ſhe did ſo, and went away.

Mr. *At. Gen.* So they did not lodge there?

Mr. *Patten.* No, they did not.

Mr. Serj. *Jefferies.* Did they ſay any thing of care that was to be taken, how they paſs'd by my Lady *Northumberland*'s?

Mr. *Patten.* My Lord, I do not well remember that: But the next day Mrs. *Hilton* comes again to our Houſe, and ſhe runs up Stairs into the ſame Room, and ſits her down upon the Bed-ſide. Said I to her, Mrs. *Hilton*, *What Gentlewoman was that that was here laſt Night?* Says ſhe, *I cannot tell, but I believe ſhe is ſome Perſon of Quality, for Mrs.* Charnock *brought her to our Houſe at ſeven a Clock in the Morning. But whoever ſhe is, ſhe is much troubled, we could get her to eat nothing, but her Eyes were very Red with Crying, and we came away to your Houſe at Night; becauſe hearing ſome noiſe of People in the Street, ſhe was afraid ſome of her Father's Servants were come, but it was only ſome People that were gathered about to obſerve the Blazing Star. So we whip'd out of the Door, and ſo came to your Houſe, for we had never a Back-door out of our own.*

Mr. *At. Gen.* Pray give an Account what Habit the Gentlewoman was in that came to your Houſe.

Mr. *Patten.* She had a Striped Flower'd Gown, very much ſullied, it was flung about her, juſt as if ſhe had newly come out of Bed. I did ſee her Face, But when I had juſt looked upon her, ſhe clapped her Hood together over it preſently.

Mr. Serj. *Jefferies.* Do you think you ſhould know her again if you ſee her?

Mr. *Patten.* I believe I might.

Mr. Serj. *Jefferies.* Pray, Madam, ſtand up again, and lift up your Hood.

[*Which ſhe did.*

Mr. *Patten.* This is the Lady. I ſaw her Face twice, once as I told you, and then when ſhe went away, I dop'd down and peep'd up, and looked her in the Face again, tho' ſhe hid it as much as ſhe could.

Mr. *At. Gen.* Thus we have proved it upon *Charnock* and his Wife.

Mr. Serj. *Jefferies.* He gives an Account of the 20*th* of *Auguſt*, which was the Day after ſhe went from her Father's Houſe. Pray call Mrs. *Fletcher.*

Mr. *At. Gen.* We ſhall now prove, that they went from thence to one *Jones*'s; that my Lord *Grey* came there to take Lodgings, and after ſhe was brought came thither again, and tho' he changed his Hair into a Perriwig, yet he was known for all his Diſguiſe.

Mr. *Sol. Gen.* My Lord, you ſee that it is proved upon three of the Defendants, my Lord *Grey*, and *Charnock*, and his Wife; now we ſhall prove it upon the other two, the *Jones*'s. Swear *Mary Fletcher.* [*Which was done.*

Mr. Serj. *Jefferies.* Sweetheart, pray tell the Court, where you lived, and when my Lord *Grey* came to your Houſe; tell the time as near as you can, and the Day of the Week?

Fletcher. Sir, he came to *David Jones*'s on the *Tueſday* after my Lady *Berkeley* was miſſing.

L. C. J. Where does *David Jones* live?

Fletcher. At *Charing-Croſs* juſt over-againſt the *Statue.* And living there, my Lord *Grey* came there in a Hackney-Coach, firſt on the *Monday* without a Perriwig, or any thing of that, and deſired Mr. *Jones* to come to the Coach-ſide, which he did, and after a little Diſcourſe with Mr. *Jones*, they came both into the Houſe, and went up two pair of ſtairs to look upon Lodgings. After that, I had order to make ready the Room for ſome Lodgers who were expected to come that Night, but did not till the next Day. About *Tueſday* at Nine of the Clock, my Lord *Grey* comes again in a Coach to the Door, and threw his Cloak over his Face, he was then without his Perriwig too, and deſired to ſpeak with Mr. *Jones*: I and my Fellow Servant ſtanding at the Door, he deſir'd to ſpeak with my Maſter. I went to him and told him, and he came up, and after he had been at the Coach-ſide, he bid us go down, and keep down in the Kitchen, and would not let us come up any more.

more. And afterwards, my Fellow-Servant and I were bid to go to Bed, and my Miſtreſs ſhut up the Shop-windows herſelf.

Mr. Serj. *Jefferies.* Well, go on, what happen'd after that?

Maid. Afterwards there was the Warming-pan, and the Candleſtick, and other things were carried up into the Chamber by my Miſtreſs's Siſter. Says my Fellow-Servant, *There is ſome great Stranger ſure, come to lodge here, that we muſt not know of. Ay,* ſaid I, *this is ſome great Intrigue or other.* After a while came in ſome Company that ſtayed all Night. I know not who they were, nor how they came.

Mr. Serj. *Jefferies.* Well, what was done the next Morning?

Maid. I was never admitted into the Room while they were there, but through the opening of the Door I did ſee one Lady in Bed, but I cannot ſay who ſhe was, nor what ſhe was.

Mr. *At. Gen.* Do you know her if you ſee her again? Look at that Lady; is that ſhe?

Maid. No, I do not know her; I cannot ſay that is ſhe: My Miſtreſs, and my Miſtreſs's Siſter ſtood both before me, when I juſt peep'd into the Room, and when ſhe perceiv'd that, I did ſee her pull the Cloaths over her Face.

Mr. *Sol. Gen.* How long did ſhe ſtay there?

Maid. Nine Nights.

Mr. Serj. *Jefferies.* Do you know my Lord *Grey* well?

Maid. Yes, I have ſeen him often.

Mr. Serj. *Jefferies.* And did you know him notwithſtanding his Diſguiſe?

Maid. Yes.

Mr. Serj. *Jefferies.* What did Mrs. *Jones* ſay to you about my Lord *Grey*?

Maid. She ſaid to us, *What Fools were we, to ſay this was my Lord* Grey, *it was a Country Gentleman.*

Mr. Serj. *Jefferies.* But you are ſure it was my Lord *Grey*?

Maid. Yes, I am ſure it was he.

Mr. *At. Gen.* Did any Body elſe lodge at your Houſe at that time.

Maid. Yes, Captain *Fitz-Gerrard.*

Mr. *At. Gen.* What Diſcourſe had you with him about this Lady?

Mr. *Williams.* You, Woman, did my Lord *Grey* ſtay there?

Maid. I cannot ſay he did.

L. C. J. Mr. *Attorney*, if the Queſtion you ask, be to introduce another part of your Evidence from Captain *Fitz-Gerrard* himſelf, it may be ſomething; otherwiſe that can be no Evidence againſt the Defendants, what Diſcourſe was with another.

Mr. Serj. *Jefferies.* It is ſo, my Lord, And therefore we ask you, Sweetheart, what paſt between you and the Captain?

Maid. Captain *Fitz-Gerrard*, the *Monday* Morning ſeven-night, after my Lord *Grey* firſt came, called me to his Bed-ſide, and asked me if I knew what Lady that was that lodged in the Houſe, and what Cloaths ſhe wore, and whether ſhe were Young or Old, and whether ſhe were married or no? I told him, I could not tell any thing, for I could never ſee her.

Mr. Serj. *Jefferies.* Do you know what Linnen ſhe brought with her? Did you waſh any for her?

Maid. Yes, one Shift.

Mr. *At. Gen.* What kind of Shift was it?

Maid. I ſaid, *It could be no Perſon of Quality, by her Shift.*

Mr. Serj. *Jefferies.* Why ſo?

Maid. Becauſe the Body was finer than the Sleeves, and Ladies uſe to make the Sleeves finer than the Body.

[*At which there was ſome laughing.*

Mr. *Williams.* A very pretty Evidence!

Mr. Serj. *Jefferies.* Pray call Mrs. *Doney* again, becauſe you ſhall not make ſo ſlight a buſineſs of the Shift as you pretend, for ſuch Actions as theſe muſt be detected by Circumſtances.

Mr. *At. Gen.* Mrs. *Doney*, pray did you ſhew this Woman another of my Lady *Harriett Berkeley*'s Shifts?

Mrs. *Doney.* Yes, I did.

Mr. Serj. *Jefferies.* Was it the fellow of that ſhe went away with?

Mrs. *Doney.* Yes, it was.

Mr. Serj. *Jefferies.* Woman, do you believe, upon your Oath, that was the fellow of the Shift you ſaw?

Maid. Yes, Sir.

Mr. Serj. *Jefferies.* Was the Body of that you ſaw from this Gentlewoman, finer than the Sleeves?

Maid. Yes, it was.

Mr. *At. Gen.* Then pray Swear Captain *Fitz-Gerrard.* [*which was done.*

Mr. *Sol. Gen.* Pray Sir, will you tell the Court and the Jury, what Paſſages fell out at your Lodgings?

Capt. *Fitz-Gerrard.* My Lord, It was my Fortune, ſix Months ago, to take a Lodging at Mr. *Jones*'s, and while I kept my Lodgings there, I had occaſion ſometimes to go to *Windſor*, to wait upon His Majeſty; and one Night coming home to my Lodging, my Servant that waits upon me in my Chamber, told me, there was a Lodger lately come to the Houſe, who lay in the upper Rooms. I asked who it was, he told me, the Maid of the Houſe told him it was a Miſtreſs of my Lord *Grey*'s. I asked how long ſhe had been there, he ſaid it was but two or three Days ſince ſhe came. I never thought of this for four or five Days after, nor thought my ſelf obliged to take notice of the Diſcourſe of the Servant in the Houſe; but being in *Covent-Garden* in Company, there was ſome Diſcourſe about my Lady *Harriett Berkeley*'s being gone from her Father's, as it was the talk of the Town. I came home about Nine a Clock at Night, and having no Servant juſt then ready to wait upon me, Mr. *Jones* himſelf came very kindly to put me to Bed. I had ſome Fancy, upon the Diſcourſe of the Town, this might be my Lady *Harriett*. Upon which, I ſaid to Mr. *Jones*, *You cannot but hear of the Report of my Lady* Berkeley's *being run away from her Father, and I know you have a Dependence upon my Lord* Grey, *and I have a Suſpicion you conceal her in your Houſe. If you do,* ſaid I, *you do a very diſhoneſt thing, a very ill thing, and occaſion a great deal of trouble and diſquiet to a Noble Family. And poſſibly my Lord and my Lady may not know ſhe is alive; therefore, I deſire you as a Friend, to make a diſcovery of the Lady, that they may know where ſhe is.* He ſeemed very angry upon my ſaying of this, and told me, *As long as I lodged in his Houſe quietly, I need not trouble my ſelf who lodged there beſides.* Upon that I thought more earneſtly upon this thing; and I told him again, *I am reſolved to go into the Room, and know who*

this

this Lady is that lies here, for now I ſuppoſe there is ſomething more in it. Says he again, *No Body ſhall offer ſuch a Rudeneſs in my Houſe.* Said I, *I aſſure you I will do it.* He grew very angry, but I went from him to my Sword, and was going up. Says he, *Pray, Mr.* Fitz-Gerrard, *do not offer ſuch a thing as this is; you would take it unkindly your ſelf, to have your Houſe ſearched at this time of Night. Well,* ſaid I, *upon Condition that I may ſee her to morrow Morning before ſhe goes away, who ſhe is, I will make no diſturbance in your Houſe to Night.* Upon that he left the Room, promiſing me, I ſhould to morrow Morning ſee who the Lady was. I went out early the next Morning, upon ſome neceſſary Buſineſs, and coming home between Eleven and Twelve a Clock, ſaid I to him, *Now is a very civil time to ſee this Lady, who ſhe is, for it is not fit you ſhould receive any Perſon into your Houſe, in ſuch Circumſtances, when there is ſuch Cauſe of a Suſpicion.* Says he, *She is now gone out of the Houſe.* And this is all that I can ſay in this Matter. I never ſaw the Lady there then, nor did I ever ſee her in my Life, but once or twice at *Epſom.*

L. C. J. Did they lock the Door upon you, Captain?

Capt. *Fitz-Gerrard.* No, they did not.

Mr. Serj. *Jefferies.* And you know nothing more?

Capt. *Fitz-Gerrard.* I neither knew when ſhe came, nor who ſhe was.

Mr. *At. Gen.* Then ſwear Mr. *Smith* here, who married one of my Lord *Berkeley*'s Daughters.

[*Which was done.*

Mr. *Smith.* Before my Lord *Berkeley* made this Affair publick, he uſed all means poſſible to know where my Lady *Harriett* was; and after it was known to him what concern my Lord *Grey* had in it, there were all Means uſed to make it up: And diſcourſing with my Lady *Berkeley* about it, it was propoſed that ſhe ſhould be married, but that would coſt a great deal of Money; that my Lord did not ſtick at, nor my Lady, if any Divine of the Church of *England* did think it proper to treat with any Perſon about it, after ſuch a ſecret Correſpondence between her and my Lord *Grey.* And my Lord ſaid, *If my Lord* Grey *would not proſecute her with any more Viſits, he would give a Sum of Money to marry her.* Said I, *Then, my Lord, will you give me leave to wait upon my Lord* Grey *in it?* He anſwered, *Yes.* So I went to him, and offered him that my Lord *Berkeley* would give 6000 *l.* with her, if he would place her in a third Hand, where it might be convenient to treat with any one about it. He talked with me as if he knew where ſhe was, but would not diſcover it. Says he, *You muſt always ſuppoſe, I will take your Propoſal in this manner, if ſhe is in my Power, which it may be ſhe is, it may be not.* Said I, *My Lord, you make that* (if) *only as a Subterfuge, for to be ſure, you know where ſhe is.* Says he, *She is beyond Seas, and if you will give me leave to viſit her ſometimes, I will promiſe ſhe ſhall come again; but that depends upon Time and Tide, it cannot be ſo very ſoon.* Said I, *My Lord, you may as well ſend Horſes to* Dover, *and ſo over to* Calais, *for I ſuppoſe ſhe may not be far.* He ſaid, *it would be a Work of Time, but he would write to her.* I deſired he would write that Night. *For,* ſaid I, *my Lord, if this Buſineſs be taken in time, ſhe may yet be ſaved, if you will contribute what you can to it.* He promiſed me to write that Night to her, but it would be ſome time before ſhe got to Town. Then, diſcourſing further with my Lord about it. Says he, *If I ſhould bring her to Town, I will not uſe any Force or Perſuaſion to her, if ſhe be obſtinately bent not to come home again, Betray her to be ſure I will not. I am ſure, my Lord,* ſaid I, *that your Perſuaſions would do very much with her, and a great deal of good may come of it, if the Matter be ſpeeded. But,* ſays he, *if I ſhould bring her to Town, then my Lord* Berkeley *would diſturb her with my Lord Chief Juſtice's Warrant.* Said I, *If you will bring her to Town, I will ask my Lord and my Lady, how long time they will allow for the making up of this Treaty; and in the mean time, ſhe ſhall be free from any diſturbance.* Says my Lady *Berkeley,* when I ſpoke to her of it, *Tho' my Lord* Grey *has been ſo barbarous to a Family, that has been ſo kind to him; yet, if I give him my word, I will keep it inviolably to him; and I do promiſe him, if he will bring her to any place where my Daughter* Lucy *may viſit her, I will engage there ſhall be no Search made after her. And if he can contribute to carry her into a Place where ſhe may be ſafe, and not viſit her himſelf, he ſhall have* 2000 *l. to do it. This Meſſage of my Lord's being barbarous, Madam,* ſaid I, *is not fit for me to carry to my Lord* Grey, *but you will promiſe not to take her away, if he bring her to Town, but from the moment you know where ſhe is, ſhe ſhall be ſafe.* Thereupon my Lord *Grey* promiſed to write to her, whether he did or not, I cannot tell. Afterwards, he ſaid he had writ, but ſhe would not come.

Mr. *At. Gen.* What Expence has my Lord been at in looking after her?

Mr. *Smith.* A great Expence, I cannot tell particularly.

Mr. Serj. *Jefferies.* My Lord, we have but one Witneſs more, and that is a Gentleman, who, by Order from my Lord and Lady *Berkeley,* kept my Lord *Grey* Company, and he will tell your Lordſhip what my Lord *Grey* confeſſed to him, what a Paſſion he had for the Lady, and what methods he uſed to get rid of it, but could not. Swear Mr. *Craven.* [*Which was done.*

Mr. *Sol. Gen.* Will you tell my Lord and the Jury, whether you were ſent by my Lord *Berkeley,* to be with my Lord *Grey* at *Up-Park,* and what paſs'd there between you?

Mr. *Craven.* My Lord, the *Wedneſday* after my Lady *Harriett Berkeley* went away, my Lady *Berkeley* told me, my Lord *Grey* had proffered he would go down into the Country for ſix Months, to ſhew that he had no Deſigns upon her; and therefore, if ſhe would propoſe ſome Friend of hers to go along with him to keep him Company, he would be very well ſatisfied with it; and then my Lady *Berkeley* told me, ſhe would fix upon no body but me, if he would take me with him. Then I met my Lord *Grey* on *Wedneſday* Morning at Sir *Thomas Armſtrong*'s, and afterwards, went down to his Houſe to him. When I came there, he met me on Horſeback, and came up civilly and kindly to me. I thought fit to give him a Caution, having received ſuch Orders from my Lady. *My Lord,* ſaid I, *I am ſorry I am forc'd to come upon ſuch an account as this, to be a Guard over your Words and Actions, and I am very much troubled that this unfortunate thing has happen'd, and you are reputed to be the Occaſion of it.* Says he, *I do own,* Craven, *I have done a very ill thing; but that is paſt, I cannot help that now; but the thing that is to be thought on is, what is to be done for the future. My Lord,* ſaid I, *the beſt way, if I may give you my Advice, were to ſend her home*

again,

again before any Report be ſpread abroad of the Buſineſs. How can that be? Says he, *I do not know where ſhe is, but I have had a Letter from her, as I told my Lady, I did believe I ſhould find a Letter here when I came down. I will ſhew you the Letter,* which he did. *My Lord,* ſaid I, *this Letter will be thought as of your own penning before you came out of Town. I cannot tell what they will think,* ſaid he, *but here it is.* Said I, *My Lord, I have a great Reſpect for your Lordſhip, and do very much deſire, for your own Reputation and Honour, as well as theirs, it may be made up in ſome way before it be too publick.* We were diſcourſing of this. *How ſhall that be done?* ſays my Lord *Grey. My Lord,* ſaid I, *if you would conſent to this, to ſend her over into* France *to* Calais *or* Diep, *we will there find ſome body that will help her into a* Nunnery; *and when ſhe is there, ſhe may write to her Mother, that ſhe found ſhe had an Intention to marry her to a Match ſhe could not by any means approve or like of, and therefore ſhe went away to prevent her being forced to it; and this would be as plauſible a thing as any in the World. And when that Letter ſhould come, my Lady* Berkeley *ſhould ſhew it about to her Friends; nay more, ſhe ſhould go over her ſelf to fetch her back again, that ſhe might receive her into her Houſe with Honour.* He ſaid, *That was a very plauſible thing, and he would do it, if he could tell where ſhe was;* but her Letter to him was, *that ſhe was gone from her Father, but ſhe did not think fit to let him know where ſhe was, for fear he ſhould deliver her up again.* Then my Lord *Grey* asked me in what Condition they were all at my Lord *Berkeley's* about it. Said I, *They are in ſuch a Confuſion and Trouble they are all Mad almoſt.* Says he, *How does my Lord bear it?* Said I, *He is ſo afflicted that it will go near to break his Heart.* Says he, *He is indeed one of the Men in the World that is to be pittied; ſhe pittieth him very much, but for her Mother ſhe doth not care.* One Day when we went out a Shooting, as we did ſeveral Days together; Mr. *Craven,* ſays he, *I will tell you the whole Intrigue between my Lady* Harriett *and I. I have had a great Affection for her ever ſince ſhe was a Child, and have always been taking great delight in her Company; and keeping her Company ſo often till ſhe grew up, my Paſſion grew to that height, that I could ſtifle it no longer, but I was forced to tell her of it, and then I could not ſpeak to her of it, but writ. But withal I begged her to take no notice of it to any Body, for if ſhe did, it would ruin us both. She was very angry to hear of it, and neither by writing nor ſpeaking could I perceive ſhe had any Affection for me again, till the Parliament ſat at* Oxford; *and then I did purſue my Love and my Amours, and at laſt, ſhe one Day told me,* ſaid ſhe, *I have now conſider'd of it, and if you do not leave writing or ſpeaking to me of this Matter, the very firſt time you write or ſpeak to me again I will tell my Father and Mother of it. That ſtruck him ſo,* he ſaid, *that he did not know almoſt what to ſay or what to do, and he walked up and down juſt like a Ghoſt; but he bid it as well as he could, that it ſhould not be perceived by others. But that Parliament being quickly diſſolved, he did intend to go down to* Suſſex *to his Houſe there, being he found ſhe was reſolved againſt admitting his Affection, and he would ſtay there ſeveral Years, till he had weaned himſelf of his Paſſion, and by that time ſhe would be diſpoſed of otherwiſe, and he might be at Eaſe. And he hiding his trouble as much as he could from my Lord* Berkeley *and my Lady, forbore to ſpeak to her, but only when he ſaw her he could not forbear looking earneſtly upon her and being troubled. My Lord* Berkeley, *not knowing any thing of it, asked him to go to* London *with us and not to* Suſſex; *he was very much perſuaded by my Lord and my Lady to it; and at laſt, my Lady* Harriett Berkeley *came to him, and told him,* Said ſhe, *You are very much perſuaded by my Father and Mother to go to* London *and not to* Up-Park, *why do not you go with them? Madam,* ſays he, *you have ſtopp'd my Journey to* London, *you have hindred my going with them, for I will rather ſuffer any thing than render you any diſturbance, and if I go to* London *with you, I ſhall not be able to contain my ſelf; but if I go to* Suſſex, *I alone ſhall have the trouble of it. But one day, when my Lord of* Aylesbury *was leading my Lady* Berkeley, *and my Lord* Grey *was leading my Lady* Harriett, *ſhe took my Lord* Grey's *Hand and ſqueez'd it againſt her Breaſt, and there was the firſt time he perceiv'd ſhe lov'd him again; and then ſhe told him he ſhould go to* London *with them; and he did go, and from that time, for a twelve-month before ſhe went away, he did ſee her frequently, almoſt every Night, perſuing his Amour in writing and ſpeaking to her as often as he could have Opportunity. And tho' my Lady* Berkeley *put a* French-Woman *to lie with her, yet ſhe did uſe to riſe from the* French-Woman, *and he did uſe to ſee her. And one Day,* ſays he, *do not you remember you came to the Chamber Door, and ſhe was angry at your coming, and that the Door was not bolted, and if you had come in, you had found me there?*

Mr. Serj. *Jefferies.* Do you remember any ſuch thing?

Mr. *Craven.* I do not, unleſs it were at *Durdants. And,* ſays he, *you cannot imagine what I have ſuffered to come to ſee her. I have been two Days locked up in her Cloſet without Meat or Drink, but only ſome Sweetmeats.*

Mr. Serj. *Jefferies.* What did he ſay of his making Addreſſes to other Ladies to take off his Paſſion?

Mr. *Craven.* He ſaid, *He did all he could, for he would fain have avoided bringing ſuch an Infamy upon his own Family and his Lady's, and he did endeavour to cool his Paſſion, by making Love to two other Ladies, whom he courted, and enjoyed both of them, but yet all did ſignify nothing, he could not ſubdue it.*

Mr. *At. Gen.* Pray tell us what Terms he inſiſted upon, for his parting with her, and what he ſaid the Law was in the Caſe?

Mr. *Craven.* I told him, *my Lord, beſides the Diſhonour you bring upon your ſelf and two Noble Families, you ſhould do all that in you lies, to avoid the Puniſhment that will come upon you for it by the Law. Oh,* ſays he, *you miſtake your ſelf in that, for you muſt think I have conſider'd of all that before; they cannot do any thing in Law againſt me for it; let them examine the Caſe of Mrs.* Heneage *and my Lord* Cavendiſh.

Mr. *At. Gen.* What, did he ſay he would not part with her but upon Terms?

Mr. *Craven.* He ſaid, *I cannot perſwade her, and I will not betray her. Truly,* ſaid I, *My Lord, you had better betray her, and when ſhe comes to be ſenſible of her own good, ſhe will thank you for it. Then he owned he had her in his Power, but would not part with her never to ſee her again.*

Mr. *At. Gen.* What were the Terms he ſtood upon?

Mr. *Craven.* My Lady *Berkeley* ſent me to the Coffee houſe, and deſired me to ask him, *If he would give her an Anſwer to what ſhe had met him at my Lord Chief Juſtice's about.* My Lord told me,

He did not approve of ſending her to the place propoſed, but he would ſend her to his own Siſter, his Brother in Law Mr. Nevil's. I told my Lady of it, who ſaid, *if he did ſtate the Caſe right to Mr.* Nevil, *ſhe was ſure he would not receive her, nor let him come to her if he did.* After that, Mr. *Petit*'s was propoſed, ſo he might viſit her. But he did ſay, *If that be the Deſign, that they would have her from me, and I not to come at her when I pleaſe, they ſhall never ſee her while they live, nor will I ever deliver her.*

Mr. Serj. *Jefferies.* We reſt here, to know what they on the other hand ſay to it, and we think this Foul Fact is fully proved.

Lord *Cavendiſh.* My Lord Chief Juſtice, I deſire to be heard one word in this Matter. This Gentleman, Mr. *Craven,* that was laſt examined, has been pleaſed to tell a very long improbable Story in it ſelf, and amongſt other things that he has ſaid, he has been pleaſed to make uſe of my Name impertinently enough; for he ſpeaks of a Caſe that that Noble Lord, he ſays, was pleas'd to mention to him. If he did mention that Caſe to him, and did name my Name, he alſo mentions the Caſe of two Ladies, he ſays, my Lord was concerned with. I deſire to know how he came to name my Name, and not name the two Ladies he ſpeaks of, that that Noble Lord made his Courtſhip to and enjoy'd?

L. C. J. My Lord *Cavendiſh*, I could have wiſhed he had not named your Lordſhip, becauſe it was not at all to the purpoſe.

Lord *Cavendiſh.* My Lord, I am not concerned at it at all, more than at the Impertinency of his uſing my Name.

L. C. J. I could have wiſhed indeed, the Gentleman had ſpared your Lordſhip's Name.

Lord *Cavendiſh.* I deſire to know why my Name was mentioned more than the two Ladies Names?

Mr. *Craven.* My Lord *Grey* did not mention the two Ladies Names to me.

Lord *Grey.* No, nor my Lord *Cavendiſh*'s neither, it is all a Lie.

Lord *Cavendiſh.* I will believe my Lord *Grey*'s Word, more than I will his Oath.

L. C. J. That your Lordſhip may do if you pleaſe. But we muſt not do ſo here. Come, what ſay you to it on the other ſide?

Mr. *Williams.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel in this Caſe for my Lord *Grey* and the other Defendants. And that we may come cloſely to the Queſtion; I deſire I may firſt ſtate the Queſtion before you upon this Information, and then you will the better judge how far the Evidence that has been given, is pertinent to the Iſſue that you Gentlemen are to try. The Parts of the Information are theſe: That my Lord *Grey*, and the reſt of theſe Defendants, ſhould Conſpire together to Ruin and Deſtroy this Young Lady, and in the Execution thereof, to bring this their Conſpiracy to effect, they did often ſollicite and intice her to commit Adultery with my Lord *Grey*; and in proſecution of theſe their ill Purpoſes and Deſigns, ſhe was by Force and Arms taken away from the Cuſtody and Tuition of the Earl of *Berkeley* her Father, and being ſo taken away, my Lord *Grey* and the reſt of them, did procure her to live ſcandalouſly with my Lord *Grey*, in Whoredom and Adultery. Theſe are the Parts of the Charge, and the Queſtion is, whether we are Guilty of it. For the Evidence, I dare preſume to ſay, that they have not made any direct Proof of the Matter charged. On the other ſide, they have, I do agree, offer'd ſomething conjectural, upon which a Man may imagine and think what he will; but how far you are to conclude the Defendants Guilty, out of thoſe Preſumptions, muſt be left to you, I know you will very well conſider of it. It is plain, we are in a very tender Caſe; it is a Caſe of Honour on all ſides, and I have often heard it, and always believ'd it, *That Perſons of Honour and Quality in the World, would rather loſe their Lives than their Honour.* And I believe it is the Opinion of my Client, my Lord *Grey*, as well as of the Proſecutors in this Information. And therefore, you Gentlemen, I doubt not, will expect to have a clear Evidence to convict him of this Crime. And it is not only his Honour is concerned, but that alſo of another great, illuſtrious and noble Family, to which he is by Marriage allied. So that the acquitting of my Lord *Grey* of this Matter, doth, in a great meaſure, acquit the other Family of ſo great a Scandal. For that will falſify the Information, and by your Verdict you will remove thoſe Stains, that elſe may ſtick on both ſides. We are equally between the two Families, and your Conſideration will be, whether you will lay a Stain upon both of them, or acquit them both. Now there has been no proof againſt my Lord *Grey*, of any one point in the Information.——

L. C. J. No? Sure you are much miſtaken, it is a direct proof againſt my Lord *Grey*, I muſt tell the Jury ſo, and therefore apply your Defence to it as you can.

Mr. *Williams.* Truly, My Lord, I hope it is not, and our Caſe is beſt ſtated, by laying open the Truth of the Fact, and then the Matter will plainly appear. I cannot go about to juſtify the Paſſion and the Folly, for I may well call it ſo, of my Lord *Grey* and this Young Lady in this Caſe. It is misfortunate enough, to be accuſed of a thing of that Nature, and it may be a great deal worſe to be convicted. I ſhall agree there have been thoſe Tranſactions between them, that it may be, we cannot juſtify in ſtrictneſs every thing that my Lord *Grey* has done. But yet, we ſay he is not guilty of this Information. We do agree, there has been an extraordinary Paſſion, nay, I muſt ſay, a very unjuſtifiable one, between this Lady and my Lord *Grey*: But to conclude out of that, that becauſe there was ſuch an unreaſonable, unjuſtifiable, extraordinary Affection between them, therefore we muſt inferr and conclude him Guilty of this Information, is a very forced and unreaſonable Conſtruction; for there are Degrees in Love, and we muſt not conclude the worſt thing a Man can be guilty of, becauſe he is guilty of ſome Degree. Then, to come home to the Caſe of my Lord *Grey*, we ſhall prove, and give your Lordſhip and the Jury undeniable Satisfaction, that my Lord *Grey* is ſo far from having inveigled away this Young Lady, or being any way inſtrumental to the conveying her away, that he uſed all means he could to have prevented any thing of that Nature before, by diſcovering to my Lady *Berkeley* her Mother, my Lady *Arabella*, and my Lady *Lucy*, her Siſters, all Perſons of great Honour, and her neareſt Relations, that ſhe did intend to go away, by warning them, and giving them full Notice, that there might be ſuch an Intention

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in the young Lady? We ſhall prove likewiſe, that no Man in the World could do more, when ſhe was gone, to retrieve her. We ſhall make it out by undeniable Circumſtances, proved even by their own Witneſſes. It happen'd that my Lord *Berkeley* and his Family withdrew to a Country-Houſe of his near *Epſom*, in your County, Gentlemen. My Lady had ſome Jealouſy, as ſhe has been pleaſed to teſtify, that there might be ſome extraordinary Paſſion between my Lord *Grey* and the young Lady; having diſcovered it by ſome Letters, as ſhe hath given Evidence. My Lord *Grey* acquainted her with his Suſpicion, that ſhe intended to go away, and was ſo juſt, that he did not conceal any one thing that he knew; yea, to acquit himſelf that he had no ill deſign himſelf, and if ſhe did get away it was none of his Fault, he produc'd a Copy of a Letter of Admonition, which my Lord *Grey* himſelf had written to her: And when my Lady had heard his Advice about it, and his Counſel he gave her, ſhe ſaid, *her Father could not have given her better Counſel.* This was ſo early as *July*, in the beginning of *Auguſt*, my Lord *Berkeley* going down to his Country-Houſe at *Epſom*, and the Family removing thither. Then my Lord *Grey* was ſick here in Town; and in this Sickneſs of his, there was a Letter ſent to my Lord *Grey* from his Lady, deſiring him to come down to my Lord *Berkeley*'s; but it ſeems he had been under ſome Engagement to my Lady *Berkeley*, not to come without her Leave, and having Regard to his Word paſt to my Lady, he would not do it. My Lady *Berkeley*, in a few Days after, ſent for him her ſelf, and therein thanks him that he was ſo juſt to his Word and Honour, that he would not come down without her Invitation. Upon *Tueſday* before this unhappy Lady went away from her Father's Houſe, my Lord *Grey* came to my Lord *Berkeley*'s. When he came down, he was very kindly receiv'd by my Lord and my Lady. On the *Thurſday* following my Lady *Berkeley* acquaints my Lord *Grey*, that this young Lady had a deſign to leave her Father and Mother's Family, and run away. My Lord *Grey* was ſo frank with her, as to tell her; *Madam, I have long ſuſpected ſuch a thing, as I have told you; but, Madam, your Daughter* Harriett *is all Day in your Eye, you may lock her up at Night, and ſecure her if you pleaſe.* This was a timely Caution given before ſhe made her Eſcape. On the *Friday* following, comes a Letter from an unknown Hand to my Lady *Berkeley*, that intimated, *That except they had a great Care of their Daughter, and a ſtrict Eye over her, ſhe and her Father ſhould not long enjoy her Company.* My Lady *Berkeley* ſhews this Letter to my Lord *Grey*, ſays he, *Madam, this is no more than what I have often told you, I have given you ſome Intimations already, and my Thoughts and Advice about it; and whoever it be that writ this Letter, I am afraid her Apprehenſions of ſome ill Uſage may put her upon ſome ſuch Deſign.* And he repeated it again, *Madam, let me caution and adviſe you, have her always in your Eye, and lock her up ſafe at Night.* This was repeated over and over, to my Lady *Lucy* and my Lady *Arabella.* Thus it continued till *Saturday*, my Lord *Grey* reſolved to go to his Country-Houſe at *Up-Park*, and took his Leave of my Lord *Berkeley* and his Family accordingly, and went that Night to *Guilford*, and there he lay, and roſe the next Morning to go onwards of his Journey, but was purſued, it ſeems, by my Lady *Lucy*. For ſhe tells you, *When this young Lady had left her Father's Family, ſhe immediately on the* Sunday *Morning came to* Guilford, *and ſent after my Lord, who was newly gone on his Way, and was found in his Way to his Houſe in* Suſſex. *Having received my Lady* Lucy's *Commands, he returns to* Guilford, *and there he had the firſt Notice given him of my Lady* Harriett's *Eſcape*; ſays he to my Lady *Lucy, This is no more than I have fairly warned you of before; had you taken my Counſel. Was ſhe lock'd up? No,* ſaid ſhe, *ſhe is gone away, and your Lordſhip muſt needs know where ſhe is, and therefore pray get her to return home again.* Says my Lord *Grey, I aſſure you, I know nothing at all of it, and to give you all the ſatisfaction I can in the World, I did not only warn you of it before, but I ſhall be as induſtrious as any of you all, you ſhall find, to recover her again. For that purpoſe, I will ſee if ſhe have croſſed the River, or is gone any other Way; and if I can make any Diſcovery, by Letter or any other way, I will ſend you word immediately, and I am ſo ſincere with you, that if any Letter come to your Family for me, I give free Liberty to my Lord and all his Family to open them themſelves, and ſee what is in them; and if I do receive any from her any other way, a true Copy of it ſhall be ſent; and more than all this, if my Lord be not ſatisfy'd with what I have ſaid, let my Lord or my Lady ſend, and ſet what Spy upon me and my Actions they pleaſe.* And it ſeems he was taken at his Word, and they made choice of a very proper Gentleman, and you heard what Diſcoveries he has made, and how he has worded the Matter. For firſt he makes my Lord *Grey* at one time a very ſubtle Lover, full of all Intrigues, and one that could conceal all within himſelf, and yet (when it would do him ſo much Injury) ſo open, as abſolutely to unboſom himſelf to one that was an abſolute Spy upon him and his Actions, and tell him ſuch things, as no Man in the World ſure is ſuch a Fool as to tell another in his Circumſtances. But that I leave to the Jury (as my Lord *Cavendiſh* has ſaid) to conſider of the Impertinency of his long Story. When he had parted from my Lady *Lucy* he comes to *London*, and uſeth all the Diligence he could to find her out. On *Wedneſday* again he leaves *London*, when he could not find her, and goeth to his own Houſe: Upon *Thurſday* this Gentleman Mr. *Craven* comes thither to him. There he finds a Letter from my Lady *Harriett*, and becauſe he would be exact to his Word, he keeps a Copy of the Letter, and ſends the Original of it to my Lord *Berkeley*'s. Now no Man will imagine, if he had ſuch an Intrigue with this Lady, as they would make the World believe, that he would ever have ſent ſuch a Letter out of his Cuſtody, which would have been a colourable Excuſe for him. Nay, we do not reſt here, but by the way we produce this Letter to this Gentleman, who it ſeems was our Guardian, and told him moreover, *Here is my Anſwer to this Letter*, and ſends a Copy of his Anſwer with the Letter from her to my Lady *Berkeley*. Then there comes a ſecond Letter, and he, according to his Word, diſcovers that, and there is not one Circumſtance in all his Carriage that doth accuſe him. After this ſecond Letter was imparted to my Lord *Berkeley*'s Family, he continued a while at *Suſſex*, and afterwards when he returned to *London* he uſed all the means imaginable, for a Perſon that was ſo near concern-

ed, in point of Relation, and in regard of his own Reputation, to have found her out, but could not. These are the Circumstances of my Lord *Grey*'s particular Interest in this Matter, and when we have made out these Circumstances, we hope the World will believe him not Guilty. It seems the young Lady is now in Court; she is so just, it seems, as to come to do my Lord Right, and that one thing will knock all their Conjectures on the head; for she best knows what has been done, and the Jury will consider, whether this be imaginable, that my Lord *Grey* should conceal her all this while, and produce her now, when if any Violence have been offered her, she may freely tell it. And as for the Man that could tell so very readily this was the very Lady that came to his House, when she had so hooded and muffled up her self, we must leave him and his Credit to the Jury. We shall therefore desire, when we come to the Close of our Evidence, that this young Lady may be here examined upon her Oath, and then I hope the Truth will come out.

Mr. *Thompson.* My Lord, because your Lordship seems to be somewhat satisfied that there is a direct Proof of the Matter charged against my Lord *Grey*, therefore I suppose it will not be amiss to open the Fact, and in three words to state the Charge, and the nature of their Evidence to maintain it.——

L. C. J. Come, come, call your Witnesses and make out your Defence.

Mr. Just. *Dolbin.* If you can prove what Mr. *Williams* says, you do something, but do not think to make long Speeches, go on to the Evidence.

L. C. J. Pray, Mr. *Thompson*, do not you believe we want any of your Help to recollect the Evidence given, or to direct the Jury about it, do you disprove it if you can.

Mr. *Thompson.* My Lord, the Course of Practice I always took to be so, to open and observe upon the Evidence given, and then answer it. But I submit to your Lordship for that; you may do as you please.

Lord *Grey.* Then, my Lord, I desire I may speak something my self. Certainly, my Lord, no Man ever lay under a more infamous Accusation, than I now do; and therefore I hope your Lordship will pardon me, if I defend my self as well as I can from it; and undoubtedly, if in any Case a Man be allowed to speak for himself, it must be allowed to me in this. My Honour lies here at stake, and if my Life did so too, I am not, nor should be more concerned to save that, than I am to clear my Reputation, which is and ought to be very dear to me. My Lord, were I guilty of the Villanies that here are laid to my Charge, I certainly should need no other Punishment, I am sure, I could not have a worse, than the Reflections of my own Conscience for them, and I ought to be banish'd the Society of Mankind. My Lord, I must confess, I have been so unhappy (tho' it is more than they could else prove) as to have a very great Kindness for this unfortunate young Lady, my Lady *Harriett Berkeley*; but yet, not so criminal a one as the Witnesses that have been produc'd would have you to believe, nor as the Information would insinuate. I do here protest, I was no way assisting to her Escape, nor privy to it, nor have I ever at all since detained her from her Father, tho' I have suffer'd a Fortnight's close Confinement and Imprisonment for it; and all this I doubt not to make out to your Lordship's and the Jury's Satisfaction. I shall say no more of the Justice of my Cause, but endeavour to prove it; and, my Lord, this is that which I say to it. The Evidence that has been given, consists most of such and such Discourses that have been between the Witnesses and my self, and those I shall give what Answer is fit to be given to them. A Negative, as your Lordship very well knows, is not to be proved. Particular Discourses we have had, of the same nature as Mr. *Williams* has opened, about my cautioning them concerning her Attempts to go away; and I shall appeal to my Lady *Berkeley* her self, whether that be not so. If my Lady *Berkeley* own it to be true, I hope that is very good Proof. My Lord, about the time that they speak of, concerning the Letter, which I take to be in *June* or *July*, I was sent for by my Lady *Berkeley* into her Chamber; when I came there, my Lady told me there was a Letter, which she said, was design'd to go from her Daughter to me. I asked her, *if she had read the Contents of the Letter*, she said, *No.* I asked her, *whether the Direction of the Letter were to me*, she could not tell that. But my Lady had told me, *her Daughter had given her the Account of what had pass'd between us, that she was satisfied there was a Correspondence of Love between us.* To remove all Fears, I proffer'd to absent my self. I desire my Lady may answer whether this be not so.

L. C. J. That will be to intricate the Business, to go on thus. Pray, my Lord, if you will ask any Question of any body, tell them your Counsel, and let them ask them, but to make long Discourses all day is not to be permitted.

Lord *Grey.* My Lord, I will ask then my Questions all together by and by. My Lady *Berkeley* going down with my Lord to *Durdants*, desired that my Wife might go down with her, to which I readily consented. Soon after that, I fell sick and kept my Bed a while. When I was well again, and going into *Sussex*, I sent for my Wife to Town, and would not go fetch her, because I would keep my word with her Ladyship. My Lady *Berkeley* thereupon wrote me a Letter, *wherein she thank'd me for not coming according to my Promise, and commended my Modesty in it*; and said, *There would be no apprehension of any ill from me, if I did come thither for a short time.* And thereupon being invited by her Ladyship, to take her House in my way to *Sussex*, I did come down thither. And I urge this, to shew that there was no Conspiracy or Design of any such thing in me, for I had not gone to *Durdants*, if I had not been sent for, and so there was no Design in my going. When I came thither it was the *Tuesday*, and on the *Thursday*, my Lady *Berkeley* did acquaint me, *she was under great Apprehensions and Fears*; and I asked her the Reason of it. She told me, *That she had been at some Ease, her Daughter having made a great Submission to her, and Promise of constant Obedience, and that she would do all as she would have her, if she would but give her Leave to go to Town with her; but yet, for all this, one Morning she puts on her Hoods and Scarfs, and was going away, and had done it, but that the* French-Woman *and another prevented it.* I told my Lady *Berkeley* then, *Madam*, said I, *I have good Reason to believe she may have some such Intention.* I did not give my Reason

ſon at that time, but I ſhall by and by. *But,* ſaid I, *if ſhe do go away, I cannot imagine but that it is poſſible ſhe may ſend to me, and I will give your Ladyſhip notice as ſoon as ever I know; and tho' you ſeem to be ſatisfy'd, and to think your Daughter ſecure here, yet you do not think her ſo indeed, and you muſt needs uſe her ill, or ſhe would have no thoughts of going from you. For my part, if ſhe do go away and come to me, I will ſhun it as I would Death, and you have now fair warning, ſhe is all Day in your Eye, pray be ſure to lock her up ſafe at Night.* Upon *Friday* following comes a Letter without a Name to it, and Mr. *Williams* has open'd to you the Contents of the Letter. She read the Letter when her Daughter was in the Room, who asked what the Letter was, and being denied to have any account of it, was in the greateſt Confuſion in the World, and leap'd and run down Stairs like a mad Thing, and my Lady her ſelf was very much diſturbed at it. When I ſaw the Letter, *Madam,* ſaid I, *This Letter ought to confirm you in the Reſolution of taking my Advice; it can come from no Body, but ſome one that is to aſſiſt in the executing of this Deſign, but thinks it too dangerous to engage in, and gives you this warning to prevent it. You have ſufficient Caution given you to make you careful.* Whereas, my Lord, If I had been in any ſort of Conſpiracy of that Nature, to take her away, my Lady *Berkeley* certainly ſhould have been the laſt Woman in the World that I would have communicated it to. My Lord, I went away from *Durdants* on the *Saturday,* and ſo to *Guilford,* where I lay that Night, and went on my Journey the next Morning, but was overtaken on the Road, by a Meſſenger from Lady *Lucy,* who was come to *Guilford* to ſpeak with me; when I came back to her, ſhe told me, *my Lady* Harriett *was gone away that Night, and they did believe I knew where ſhe was.* Said I, *Madam, I have as great a Share in this Misfortune as any of you all, becauſe of your Suſpicion; but ſure you muſt have uſed her very ill and make her do this; and you are much to blame, when you had all that warning from me; why did you not ſecure her, and lock her up as I adviſ'd you?* Said ſhe, *She was lock'd up, but the Key was left in the Door.* Upon this I went to *London,* and I had appointed my Lady *Lucy* to meet her on *Monday* Morning, to give an Account what I could learn; but I told her, that I had heard nothing of her, nor is there any Proof that I did ſee her at any time, till I own'd it before your Lordſhip at your Chamber. She ſeem'd not to believe me when I told her ſo. *Madam,* ſaid I, *It is certainly true; and to convince you that I have no hand in this Matter, I will go immediately into* Suſſex, *and there I will ſtay as long as you will have me; and if you pleaſe to go your ſelf with me, or ſend any body elſe, to obſerve what I do.* She thought it not fit for her ſelf to go with me: But my Lady *Berkeley* and ſhe afterwards pitch'd upon Mr. *Craven,* who had been a long time a Servant in the Family, and I agreed with my Lady in that, to have him, and receive him as a Spy upon me. Diſcourſing with my Lady *Lucy,* ſaid I, *Madam, Now I will tell you the Reaſon, which I forbore to tell my Lady* Berkeley, *why I had good Ground to ſuſpect my Lady* Harriett *had a Deſign to go away, and it was this; My Lady* Harriett *came to me one Day, about ſix Weeks or more ago, in the Court-Yard at St.* John's, and ſays ſhe to me, *I am uſed like a Dog, I live the Life of a Slave here, I can endure it no longer; by the Eternal God that made me, I will not be alive long, unleſs I can ſet my ſelf at Liberty.* This I ſaid to my Lady *Lucy; and theſe,* ſaid I, *were Reaſons enough for me to warn you to look well after her.* I did, according to Agreement, go into *Suſſex* immediately, and I then told my Lady *Lucy, I believed I might have a Letter from my Lady* Harriett, *by the* Wedneſday *Night's Poſt, becauſe,* ſaid I, *ſhe cannot write ſooner than that, and if I have, I will ſend you word.* When I was there, Mr. *Craven* came the next day to my Houſe; and as ſoon as he came; ſaid I, *Here is a Letter I have received from my Lady* Harriett, *and if you will, you may take a Copy of it.* I took a Copy of it my ſelf, and ſent the Original of it to my Lady *Lucy,* though they have not thought fit to produce the Letter now in Court, that your Lordſhip and the Jury might ſee it. But here is mine, which was the firſt Account what was become of her after ſhe went away, that I received, except what Account I had from my Lady *Lucy* at *Guilford*; and this will ſhew to all the World, that I was not ſo much privy to her going away, as they ſay I was. I had denied to aſſiſt her in it, when ſhe complained to me of her ill Uſage; and when ſhe attempted to go away before, I, upon my Lady's telling me of it, gave her ſufficient Caution. And for the truth of all this, I appeal to thoſe very Witneſſes that have been produc'd againſt me. When I had ſhewn this Letter to Mr. *Craven,* I ſent it away by a Servant of my own, to my Lord *Berkeley's,* and writ to my Lady *Lucy,* and deſired her to pen whatever Anſwer ſhe ſhould think fit to ſend. My Lady *Lucy* did write to me back again, and told me the Subſtance of what I was to write, but the penning of it ſhe did leave to me, for ſhe believed I would do it effectually. I did write an Anſwer to my Lady *Harriett's* Letter, and that Anſwer I ſhewed to Mr. *Craven,* and asked him if it were ſufficient, and he ſeem'd to approve of it. The Lady her ſelf is in Court, I know not whether ſhe can give an Account of the Letter, I ſuppoſe ſhe can tell you what an one it was. I had afterwards another Letter from her in Anſwer to mine, and that I have here, and it will appear by both of thoſe Letters, whether I had any Intereſt in her going away. Tho' perhaps that would not have been ſuch a Crime neither, and yet I think withal, that there is not a tittle of Proof that I had any hand in it, not one Proof of any Circumſtance like it. And if there be any Crime, it muſt be the taking her away, to ſuch an Intent and Purpoſe as is charged in the Information. Before I came to Town, I was ſent for about ſome other Buſineſs, yet I would not come till I had my Lady's Conſent; for I ſent her word, *my Lady* Harriett *writ in her Letter, that ſhe was going beyond Sea, and if I went to* London *I might prevent it, but I would not go without my Lady's or Mr.* Craven's *Conſent and Approbation.* When I came to Town, I was one Day at the Coffee-houſe in *Covent-Garden,* I was then ſent to by this Lady, who was in an Hackney-Coach at the Door, and when I came to the Coach-ſide to her, ſhe gave me a tedious Hiſtory of her ill uſage at home, which made her come away. And when your Lordſhip's Warrants were out to ſearch for her, I came up to your Lordſhip, and I dare appeal to your Lordſhip, whether I did not acquaint you, *that ſhe only ſought for Protection, and was willing to return home, ſo ſhe ſhould be ſatisfied ſhe*

ſhould

ſhould not be ill treated again. You then told me, *I could not protect her againſt her Father.* I then told your Lordſhip and my Lady *Berkeley*, *She was not in my Houſe, nor in my Cuſtody.* They replied, *She was in my Power*; but how could ſhe be in my Power? When ſhe was not in my Cuſtody, nor in my Lodging. But my Crime was, that I knew where ſhe was. And if I do deſerve Puniſhment for keeping my Word and Faith with her, which I gave her in a Letter, upon her Importunity not to betray her, I muſt ſubmit to it, I could not in Honour do otherwiſe. My Lord, I deſire this firſt Letter may be read, which was firſt ſent by my Lady *Harriett* to me.

L. C. J. Surely, my Lord, for all your long Diſcourſe, you cannot but apprehend your ſelf miſtaken, when you ſay there is no Crime charged in the Information, but the taking her away to ſuch an Intent and Purpoſe. Surely there are other things beſides that. And what you ſpeak, if not proved, your Lordſhip knows, muſt paſs for nothing.

Mr. *Williams.* My Lord, your Lordſhip has made a right Diſtinction between Diſcourſes and Proofs. Therefore Diſcourſes between Strangers and third Perſons, are not to be ſtood upon, but the Proofs are; and all the Evidence together muſt be left to the Jury, to conſider what is material and pertinent, and what not. We ſhall therefore go on to our Evidence; and ſhall begin with my Lady *Berkeley* firſt, and ask her Ladyſhip ſome Queſtions. And we deſire to know whether ſhe hath ſeen this Letter?

L. C. J. But take notice, the Letter you propoſe, we cannot read it.

Mr. *Williams.* But, my Lord, it was agreed between my Lady *Lucy* and my Lord *Grey*, that if he received any Letters from my Lady *Harriett*, he ſhould communicate them to my Lady *Berkeley*, and this Letter coming to him, he firſt ſhews it to *Craven*, this Man that was thus ſet as a Spy upon him, and after ſent it to my Lady *Lucy*, and whatſoever Anſwer they would have ſent, was promiſed ſhould be, and accordingly was firſt ſhewn to *Craven*, and then ſent. If this were the Agreement, and theſe Letters were thus written, then ſure we may read them.

L. C. J. You may ask my Lady *Berkeley* any Queſtions, but muſt not read any ſuch Letters.

Mr. Serj. *Jefferies.* Pray, Mr. *Williams*, let us go according to the Courſe of Law, and give no Evidence, but what is fit to be given as Evidence.

Mr. *Williams.* Then thus, Madam, pray can you remember the Diſcourſe that paſt between my Lord *Grey* and your Ladyſhip in *June*, concerning your Daughter and him?

Lady *Berkeley.* Where?

Mr. *Williams.* At St. *John*'s.

Lady *Berkeley.* I do not well know what Diſcourſe you mean; but any particular Diſcourſe that was there I will anſwer to.

Mr. *Williams.* That Diſcourſe that paſt between you the firſt time that you acquainted my Lord *Grey* that you ſuſpected there was too much Familiarity between him and your Daughter?

Lady *Berkeley.* The firſt time, do you ſay?

Mr. *Williams.* Yes, Madam, I think you were pleas'd to ſay, that upon your firſt Diſcovery, you ſent for him and talked with him.

Lady *Berkeley.* I did not ſay upon my firſt Diſcovery, but when I had diſcover'd it. For I would be very punctual to the Truth in my Evidence.

Mr. *Williams.* You ſay, your Ladyſhip had ſome Diſcourſe with him in *June*.

Lady *Berkeley.* I think it was in *June*.

Mr. *Williams.* Pray, Madam, can you remember what my Lord *Grey* promiſed your Ladyſhip then?

Lady *Berkeley.* He told me then, *he would obey me in any thing, even if I would baniſh him my Houſe.*

Mr. *Williams.* Was there any Letter then produc'd by your Ladyſhip or my Lord *Grey*?

Lady *Berkeley.* Of what concern?

Mr. *Williams.* Any Letter that related to your Daughter?

Lady *Berkeley.* No, but I told him of a Letter that was found, that ſhe had writ to him.

Mr. *Williams.* Madam, pray, have you that Letter, or any Copy of it?

Lady *Berkeley.* No, it was torn to pieces, I can bring the pieces, I believe, if there were occaſion.

Mr. *Thompſon.* Your Ladyſhip read it, I ſuppoſe?

Lady *Berkeley.* No, my Daughter *Bell* read it, and tore it in pieces.

Mr. *Williams.* Was there any Diſcourſe between your Ladyſhip and my Lord *Grey*, about any other Letter?

Lady *Berkeley.* Not at that time.

Mr. *Williams.* Was there at any other time?

Lady *Berkeley.* Yes, at the *Charter-Houſe* at my Lord's Houſe, one day my Lord *Grey* deſired me to walk into the Gallery, *for he had ſomething to communicate to me*, and the Diſcourſe that paſt between us then was this, *he ſhew'd me there a Letter of the Paſſionate Love he had for her, with ſome good Counſel in it.*

Mr. *Williams.* Did your Ladyſhip approve of the Counſel he gave her?

Lady *Berkeley.* Never when there was ſo much Love and Paſſion in the Letter.

Mr. *Williams.* Pray, Madam, recollect your ſelf, were you not pleas'd to like of that Letter?

Lady *Berkeley.* I could never like of the Paſſionate Expreſſions in it; there might be ſomething in it well ſaid enough, but with the greateſt Expreſſions of Paſſion and Love; in ſo much, that he himſelf ſaid of it, *Madam, I'm aſham'd of that part*, and would have had me overlook'd it.

Mr. *Williams.* Did your Ladyſhip ſay, *Her Father could not give her better Advice*?

Lady *Berkeley.* Not that I know of.

Mr. *Thompſon.* Pray, Madam, did you ever ſay ſo?

Lady *Berkeley.* Surely I did not: For I could not but think he could give her a great deal better Advice.

Mr. *Williams.* Does your Ladyſhip, pray Madam, remember any Diſcourſe between my Lord *Grey* and you, upon the *Thurſday* before your Daughter went away?

Lady *Berkeley.* I cannot tell for *Thurſday*.

Mr. *Williams.* Does your Ladyſhip remember the Letter you received from an unknown Hand?

Lady *Berkeley.* Yes, I do.

Mr. *Williams.* Did you ſhew that Letter, or read it to my Lord *Grey*?

Lady *Berkeley.* My Lord *Grey* came up to me, and

and seem'd to be very careful of my Concerns, *Madam*, said he, *Pray take care, for I saw a Letter directed to your Ladyship, without the Mark of the Post, or the Penny-Post upon it. And*, said he, *I give you this Caution about it before it comes to you*, because my Lord was by: I arose up and went to the other side of the Room, and my Lord *Grey* followed me, and when I took up the Letter, I saw something that I thought to be very odd and unusual in his Carriage, as if he were in great disorder, as I was; and I went to my Chamber, thither my Lord *Grey* followed me, and that Letter he would see, because, he said, it had put me in some disorder, I told him he should not see it as then. I sent for my Daughter *Lucy* into my Closet, and shew'd it her, and she was in great disorder about it too.

Mr. *Williams*. Pray, Madam, can you remember whether that Letter did caution you *to look well to your Daughter, or else you were not like to have her Company long?*

Lady *Berkeley*. The Letter did say some such thing, *I must look after my Daughter, or I should lose her.*

Mr. *Thompson*. And this was on the *Friday* before she left your Ladyship, Madam, was it not?

Lady *Berkeley*. Yes, it was so, I think.

Mr. *Williams*. Pray, Madam, what did my Lord *Grey* say upon that?

Lady *Berkeley*. He was extreamly earnest to see the Letter, *because*, he said, *it had so disordered me*; and at last I was perswaded to let him see the Letter; he turned the Letter up-side down, and looked on the Subscription. *Madam*, says he, *Is this all that disorders you so much, I am us'd to have many such Letters by the Penny post; this is nothing but to amuse you. It is a very silly Letter, and written by some Woman, as you may see by the Spelling.*

Mr. *Williams*. Did he caution you to lock up your Daughter a Nights to secure her?

Lady *Berkeley*. Not one Word upon this Letter; but the next Morning again talking about this Letter, he said, *It was a foolish Letter, and what should I trouble my self about it for?*

Mr. *Williams*. But, Madam, had you any Caution given you by my Lord *Grey* about this time, to take care of your Daughter?

Lady *Berkeley*. Not that I remember, to lock her up.

Mr. *Williams*. What then did he say?

Lady *Berkeley*. I will tell you what he said to me once or twice. *Madam, whatever you do, do not make her desperate.* I asked him what he meant by that Word? Said he, *It is not necessary to explain that Word to you, I meant nothing but do not use her ill.* Now, my Lord, I was so far from that, that I used her with all the Tenderness of a Mother, like a Sister rather than a Daughter; nay, he himself has confess'd, she was better us'd than he imagin'd she was.

Mr. *Williams*. Did your Ladyship, at any time, intimate to my Lord *Grey*, that you had any Apprehensions of her intending to go away?

Lady *Berkeley*. I did tell him, That when I was at *London*, my Woman that lay with her, did rise about eight a Clock, and left my Daughter alone in the Room, and when she came up again, my Daughter had put on her Hood and Scarf, and her Petticoat was pin'd up, as ready to go out, and the Woman being affrighted at this, called up my other Daughter, and so prevented it; and after came and told me she had pin'd up her Petticoat thus about her, and she did not know what she meant to do. Upon this, I went to my Daughter, *and*, said I, *What is the reason that you pin'd up your Petticoat, and put on your Hood and Scarf?* Says she, *I had not my Scarf on.* But says my Woman to me, when I came into the Room, *You thrust something into your Gown. It is true, I did so, Madam*, said she, *but it was upon this account, I had got a Sheet of Paper, upon which I intended to write, and seeing her come in, I put it in my Gown.*

Mr. *Williams*. Pray, Madam, did my Lord *Grey* at any time caution your Ladyship about your Daughter, to lock her up, or tell you his Opinion that he thought she would leave you?

Lady *Berkeley*. I cannot positively say that; but he us'd to say to me, *Madam, do not make her desperate*; I do not know that ever he advised me, as to the locking of her up.

Mr. *Thompson*. Did he desire you, Madam, to take care that she did not go away from you?

Lady *Berkeley*. I do not remember it.

Mr. *Williams*. Pray, Madam, can you tell who brought that Letter from an unknown Hand to you at *Durdants?*

Lady *Berkeley*. It came down with other Letters to my Lord's Steward.

Mr. Serj. *Jefferies*. But your Ladyship says my Lord *Grey* was very sollicitous about that Letter.

Lady *Berkeley*, Yes, Sir, he came to me, and very earnestly cautioned me about it, *For*, said he, *I see there is neither the General-Post nor the Penny Post Mark upon it.* And knowing himself guilty of what he was guilty of, he might be afraid left my Lord should see it, and so his Business come out.

Mr. *Williams*. Pray, my Lady *Lucy*, do you remember that ever my Lord *Grey* advised the locking her up?

Lady *Lucy*. Upon discoursing of the Letter that came from an unknown Hand, my Mother said to my Lord *Grey*, *Sure that is such a horrid thing that it can never be done*; my Lord *Grey* might then reply and say, *If you fear it, you may lock her up*; but I do deny that ever I heard him say any thing to caution my Mother, that he thought she was going.

Mr. *Williams*. Madam, the Question I ask your Ladyship is, whether my Lord *Grey* did or no direct or advise to lock her up?

Lady *Lucy*. Upon my Mother's Discourse concerning the unknown Letter, and how sad a thing that would be, he might say, *That if she fear'd that, she might lock her up*; but he never did say that he did think she would go.

Mr. *Thompson*. Pray, when was this, Madam, how long before she left the Family?

Lady *Lucy*. The Day before.

Mr. *Williams*. Then, Madam, for the Discourse you had with him at *Guilford*, what said he, he would do?

Lady *Lucy*. It was at *London*, that he pass'd his Word to go down into the Country.

Mr. *Williams*. What did he promise you to do there, Madam?

Lady *Lucy*. He said he would not stir from *Up-Park* till he heard from my Father.

Mr. *Williams*. What did my Lord say to you, Madam, about the Letters he should receive?

Lady *Lucy*. He did say he would send us all the Letters that came to him from her, and if any came to our Hands we were to open them.

Mr. *Wil-*

Mr. *Williams.* Was my Lord *Grey* willing to receive a Spy, Madam, upon him?

Lady *Lucy.* Yes, he was.

Mr. *Williams.* Was there any Letter ſent to your Ladyſhip from my Lord *Grey*?

Lady *Lucy.* Yes, there was a Letter with one in it from my Lady *Harriett.*

Mr. *Williams.* Have you thoſe Letters by you, Madam?

Lady *Lucy.* No, I have neither of them here.

Mr. *Williams.* Can you tell the Contents of it?

Lady *Lucy.* I have told them already.

Mr. *Williams.* Pray, Madam, will you pleaſe to recollect your ſelf a little, when you were at *Guilford*, and told my Lord *Grey* that my Lady *Harriett* was gone away, did not my Lord tell you, *you had not obſerved the Directions and Advice he gave about her, to lock her up*, and did not you then anſwer him, *Yes, the Door was lock'd, but the Key was left in?*

Lady *Lucy.* I did reply, *the Woman had not lock'd it carefully enough after her.*

Mr. *Williams.* Did you not ſay, *that the Door was lock'd but the Key was left in?*

Lady *Lucy.* I do not remember a Word of that.

Mr. *Williams.* Madam, will you pleaſe to caſt your Eye upon that Letter, and ſee if that Paper be a true Copy of the Letter you had?

L. C. J. What Paper is that you offer, Mr. *Williams?*

Mr. *Williams.* It is a Letter from the Young Lady, to my Lord *Grey.*

L. C. J. You know no Uſe can be made of that Paper, why do you offer it? It is contended that my Lord had the Lady in his Power, and then would not ſhe write any thing?

Mr. *Williams.* Then, my Lord, there is the Young Lady her ſelf, we deſire ſhe may be examined.

Mr. Serj. *Jefferies.* But before we part with my Lady *Lucy*; if you have done, we deſire to ask her a Queſtion; It is here inſinuated, as if there had been ſome Hardſhip put upon this Young Lady, or ſome ill Uſage in her Father's Family; Now for the Honour of that Noble Family, I would have that Point clear'd, and therefore, pray Madam, did you ever obſerve any Unkindneſs, any Severity or harſh Uſage, that was uſed to this Lady, by my Lord or my Lady at any time?

Lady *Lucy.* So far from that, that all of us had a Jealouſy that ſhe was loved beſt.

Mr. Serj. *Jefferies.* Pray take notice of that, Gentlemen.

L. C. J. Pray, Madam, let me ask you one Queſtion. After my Lady had diſcovered this Evil Affection between my Lord *Grey* and this Young Lady, did ſhe then put any indecent Severities upon her, or uſe her very hardly?

Lady *Lucy.* My Lord, I came out of *France* but two Days before ſhe went away. I ſaw no ſuch thing.

Mr. *Williams.* We ask her about my Lord *Grey*, and you ask her about a third Perſon.

Mr. Serj. *Jefferies.* Oh good Mr. *Williams*, we know why we ask her that Queſtion. It is an extraordinary Caſe. Pray my Lady *Arabella*, will you anſwer the ſame Queſtion?

L. C. J. Ay Madam, pray let me ask you, after this ill buſineſs between my Lord and her was diſcovered, did my Lady *Berkeley* (I cannot ſay my Lord, for he knew nothing of the Matter till ſhe was gone away) uſe her ill or unkindly?

Lady *Arabella.* No, no, my Lord, no Mother in the World could be more indulgent and kind. She did indeed find it neceſſary to have a ſtricter Eye over her, and ſhe did put a Woman about her to look after her, and did not permit her to write any Letters. She had, or expreſſed a greater kindneſs for her, than any of us all beſides.

Lady *Berkeley.* Ay, and that my Lord *Grey* knows to be true.

L. C. J. No, no, when my Lord *Grey* was in his Paſſion, he might ſay ſo, but he has no Proof to ſhew of it.

Mr. Serj. *Jefferies.* My Lady *Lucy* and my Lady *Arabella*, what Perſon did you fear ſhould take her away, pray?

Lady *Arabella.* We were not afraid of any Body but my Lord *Grey.*

Lady *Lucy.* There was no Reaſon for fear of any Body but him.

Mr. *Williams.* My Lord, there is the Young Lady, we deſire ſhe may be Sworn.

Mr. *At. Gen.* We oppoſe it, Sir, and have very good Reaſon ſo to do, and we think it is time to do it now, if ever.

L. C. J. Why ſhould ſhe not be Sworn, Mr. *Attorney?*

Mr Juſt. *Dolbin.* If the Lady her ſelf have the Confidence to be Sworn, I ſee no Reaſon why ſhe ſhould not.

Mr. *At. Gen.* This Caſe, my Lord, is in the Nature of a Raviſhment of Ward, for it is for taking a Young Lady out of the Tuition and Cuſtody of her Father, who is her Guardian by Nature, and it is apparent in the Proofs, ſhe is highly Criminal in this very Matter her ſelf, in conſenting to go away in ſuch a Manner, and to ſuch an evil Purpoſe; and now ſhe comes to excuſe one, that is not only a Partaker in her Fault, but the firſt Seducer. Now, my Lord, when we have proved this Matter of Love upon her, that is laid in the Information, ſure ſhe cannot be a Witneſs for them, ſhe would be a Witneſs to excuſe her ſelf.

L. C. J. Mr. *Attorney*, I do think truly, that notwithſtanding what you ſay, ſhe may be a Witneſs, being no Party to the Information. But withal, I think there is very little Credit to be given to what ſhe ſays.

Mr. *Williams.* Sure theſe Gentlemen forget themſelves much in offering to hinder or oppoſe one's being a Witneſs, that is no Party in the Cauſe.

Mr. Serj. *Jefferies.* Truly, my Lord, we would prevent Perjury if we could.

[*Then ſhe was ſworn.*

L. C. J. Brother *Jefferies*, we cannot oppoſe it, if they will preſs it, and ſhe conſent, but I tell you what I think of it.

Mr. *Williams.* If ſhe be Sworn, my Lord, we would ask her a Queſtion or two. Madam, we would deſire your Ladyſhip to anſwer whether my Lord *Grey* had any hand in your Eſcape?

Lady *Henrietta.* No, Sir.

Mr. Juſt. *Dolbin.* You are upon your Oath, Madam, have a care what you ſay, conſider with your ſelf.

Lady

Lady *Henrietta.* Yes, I know I am upon my Oath, and I do upon my Oath ſay it.

Mr. *Williams.* Did my Lord *Grey* adviſe you to it?

Lady *Henrietta.* No, I had no Advice from him, nor any Body about him, nor did he know any thing of it, it was all my own Deſign.

Mr. Serj. *Jefferies.* Madam, I would ask you this Queſtion, and pray conſider well before you anſwer it. Did you ſee my Lord *Grey* on the *Sunday* after you went away from your Father's?

Lady *Henrietta.* No, I did not.

Mr. Serj. *Jefferies.* Did you ſee him on *Monday*?

Lady *Henrietta.* No.

Mr. Serj. *Jefferies.* Did you on *Tueſday*?

Lady *Henrietta.* No.

Mr. Serj. *Jefferies.* Did you on *Wedneſday*?

Lady *Henrietta.* No.

Mr. Serj. *Jefferies.* Good God! Pray, Madam, how long afterwards was it that you ſaw him?

Lady *Henrietta.* Sir, it was a great while after.

Mr. *Williams.* How many Days or Weeks after was it?

Lady *Henrietta.* Sir, I cannot tell.

Mr. Serj. *Jefferies.* As near as you can, Madam, when was it?

Lady *Henrietta.* I can remember the firſt place that I ſaw him at after, but the time exactly I cannot.

Mr. *Williams.* Where was that, Madam?

Lady *Henrietta.* It was in a Hackney-Coach.

Mr. *Williams.* That was the time, I ſuppoſe, that you ſent for him out of the Coffee-Houſe in *Covent-Garden*?

Lady *Henrietta.* Yes, I did ſo.

Mr. *Williams.* Pray, Madam, did you write any Letter to my Lord *Grey* after your going away?

Lady *Henrietta.* Yes, I did by the next Poſt.

Mr. *Williams.* When did you write that Letter, Madam?

Lady *Henrietta.* I did write it upon the *Tueſday* after I came away. I hope that is no Offence.

L. C. J. No? Is it not? You ſhould have writ to ſomebody elſe ſure.

Lady *Henrietta.* I thought him the fitteſt Perſon for me to write to, and I did not imagine it would be any ways ſcandalous for him, he being the neareſt Relation I had in the World, except my own Brother, that could protect me.

Mr. *Williams.* Had you any Anſwer from my Lord *Grey* to that Matter, Madam?

Lady *Henrietta.* Yes, and a very harſh Letter it was.

Mr. *Williams.* Did you write him any other Letter.

Lady *Henrietta.* Yes, but I received no Anſwer of it at all.

Mr. *Thompſon.* Pray, Madam, did my Lord *Grey*, at any time, perſwade you to return to your Father's?

Lady *Henrietta.* Yes, he did ſo ſeveral times.

Mr. Serj. *Jefferies.* Pray, Madam, do you know *Charnock*, that was my Lord *Grey*'s Gentleman?

Lady *Henrietta.* Yes I do.

Mr. Serj. *Jefferies.* Upon your Oath, did not he carry you away from *Durdants*?

Lady *Henrietta.* No.

Mr. Serj. *Jefferies.* Nor did not his Wife aſſiſt you in it?

Lady *Henrietta.* No.

Mr. Serj. *Jefferies.* Nor was ſhe not with you on the *Sunday* Morning?

Lady *Henrietta.* No, nor was not with me.

Mr. *At. Gen.* Were you not at Mrs. *Hilton*'s then, Madam?

Lady *Henrietta.* No.

Mr. *At. Gen.* Were you at *Patten*'s?

Lady *Henrietta.* No.

Mr. *Sol. Gen.* Nor at *Jones*'s?

Lady *Henrietta.* No, nor at *Jones*'s upon my Oath.

Mr. *At. Gen.* Pray who did come with you from *Durdants*?

Lady *Henrietta.* I ſhall not give any Account of that, for I will not betray any Body for their Kindneſs to me.

Mr. *Wallop.* If it be no Body in the Information, ſhe is not bound to tell who it was.

Lady *Henrietta.* If I have vowed to them before, not to diſcover, I will not break my Vow to them.

Mr. Juſt. *Dolbin.* If they ask you of any Body in the Information, you have heard their Names, you muſt tell if it were any of them, but you are not bound to tell if it were any one elſe.

Lady *Henrietta.* No, it was none of them. I went away upon another Account.

L. C. J. If you have no further Queſtions to ask her, pray, Madam, ſit down again.

Lady *Henrietta.* Will you not give me Leave to tell the Reaſon why I left my Father's Houſe?

Mr. Juſt. *Dolbin.* If they will ask you it they may. You are their Witneſs.

Mr. *Williams.* No, my Lord, we do not think fit to ask her any ſuch Queſtion; ſhe acquits us, and that is enough.

Lady *Henrietta.* But I deſire to tell it my ſelf.

L. C. J. Truly, I ſee no Reaſon to permit it, except we ſaw you were a more indifferent Perſon to give Evidence than we find you.

Lady *Henrietta.* Will you not give me Leave to ſpeak for my ſelf?

Mr. Juſt. *Dolbin.* My Lord, let her ſpeak what ſhe has a Mind to, the Jury are Gentlemen of Diſcretion enough, to regard it no more than they ought. But, Madam, for God's ſake conſider you are upon your Oath; and do not add wilful Perjury to your other Faults.

Lady *Henrietta.* I have been very much reflected upon here to Day, and my Reputation ſuffers much by the Cenſure of the World, and therefore——

L. C. J. You have injur'd your own Reputation, and proſtrated both your Body and your Honour, and are not to be believed.

Mr. Juſt. *Jones.* You are, Madam, to anſwer only ſuch Queſtions as are asked you pertinent to the Iſſue that the Jury are to try, and if the Counſel will ask you no Queſtions, you are not to tell any Story of your ſelf.

Mr. *Ireton.* My Lord, as to the Evidence of *Patten*, the Caſe is quite otherwiſe than they would repreſent it to be, about *Charnock*'s coming thither for Lodgings, for Mrs. *Patten* is a Midwife, and uſed to lay Mrs. *Charnock*, and it was for her to Ly-in at *Patten*'s Houſe, becauſe it would be inconvenient to Ly-in at my Lord *Grey*'s.

L. C. J. What does that ſignify? But prove what you can.

Mr. *Thompſon.* Where is Mrs. *Patten*, they would not produce her, becauſe they knew it was againſt them. [*She appearing was ſworn.*

L. C. J. Well, what do you ask of this Woman now?

Mr. *Ireton.* I would ask her, my Lord, whether were there any Lodgings beſpoke in your Houſe againſt *September*?

Mrs. *Patten.* I know nothing of that.

Mr. *Ireton.* Was there any body in *June* or *July* at your Houſe to beſpeak Lodgings?

Mrs. *Patten.* I cannot tell the Month nor the Day.

Mr. *Thompſon.* Pray Miſtreſs ſpeak what you do know.

Mrs. *Patten.* Mr. *Charnock* and his Wife did come to my Houſe laſt Summer.

Mr. *Williams.* What was their Buſineſs?

Mrs. *Patten.* For Lodgings.

Mr. *Thompſon.* Did they tell you who they were for? Did they talk about Lying-in?

Mrs. *Patten.* They were only for his Wife.

Mr. *Ireton.* Did he tell you what time he ſhould come?

Mrs. *Patten.* He did tell me they were not fit to come into yet, but they might at ſuch a time, but ſhe did not know her own Reckoning: But they were not taken.

Mr. *Ireton.* Are not you a Midwife?

Mrs. *Patten.* I was Mrs. *Charnock*'s.

L. C. J. What is that to this purpoſe?

Mr. Serj. *Jefferies.* Now you are ſweetly brought to Bed.

Mr. *Ireton.* Pray, Woman, will you tell what they ſaid to you.

Mrs. *Patten.* Mr. *Charnock* and his Wife came to our Houſe for Lodgings. I asked her who they were for, ſhe ſaid they were for a Gentlewoman. I asked her who ſhe was. Says ſhe, *For my ſelf to Ly-in here.* Said I, *how comes that about?* Says ſhe, *about the time that I Reckon, my Lord's Family will be in Town, and I find it not convenient to Ly-in at our own Houſe; then my Father and Mother have ſent for me into the Country, to Ly-in there, but I cannot think of going thither, becauſe of changing my Midwife. Then,* ſaid I, *truly, Mrs.* Charnock, *any thing in my Houſe is at your Service.* Said ſhe, *I think it convenient rather to be here than to go into the Country; but I do not deſire that my Lord's Family ſhould know that I intend to Ly-in here, for I would not inconvenience my Lady's Houſe, and yet my Lady, it may be, will not permit me to go out.*

L. C. J. But, Miſtreſs, there came one to your Houſe from Mrs. *Hilton*'s, Who was that?

Mrs. *Patten.* I do not know, I was not at Home then.

L. C. J. Did you not come home before they went away?

Mrs. *Patten.* No, Sir.

Mr. Serj. *Jefferies.* Was that Woman they brought to Ly-in, in your Houſe, Miſtreſs?

Mrs. *Patten.* Who do you mean, Sir?

Mr. Serj. *Jefferies.* The other Gentlewoman that came with Mrs. *Charnock* and Mrs. *Hilton.* The Lady that ſpoke juſt now.

Mrs. *Patten.* I do not know, I never ſaw her Face in my Life, that I know of, what my Huſband ſaw I cannot tell, I ſaw her not, it may be ſhe, it may be not, for any thing I know.

L. C. J. Well, Gentlemen, have you done, will you call any more Witneſſes?

Mr. *Williams.* We have done, unleſs they call any more.

Mr. Serj. *Jefferies.* We ſhall only call a Noble Lord, my Lord of *Aylesbury*, to teſtify what he knows, being very much converſant in the Family, of the Treatment he has obſerved of this Lady.

L. C. J. That needs not, for there is no body that fixeth any thing of the Matter upon my Lord or my Lady.

Mr. *Wallop.* We do hope in your Lordſhip's Obſervations upon the Evidence to the Jury, you will pleaſe to take notice, that there is no Colour of Evidence of any Actual Force upon the Lady which is laid in the Information, that my Lord did *vi & armis abducere,* &c.

L. C. J. Oh, Mr. *Wallop*, fear not, I ſhall obſerve right to the Jury; but you have read the Book that is written concerning Juries lately, I perceive.

Mr. Serj *Jefferies.* He has ſtudied ſuch Books no doubt, and has learn'd very good Counſel from *Whitaker.*

L. C. J. Look you, Gentlemen of the Jury, here is an Information on the behalf of the King, againſt my Lord *Grey*, and the other Defendants; and it doth ſet forth, that my Lord *Grey* having married one of the Daughters of the Earl of *Berkeley*, and having opportunity thereby of coming to the Earl of *Berkeley*'s Houſe, he did unlawfully ſolicite the Lady *Henrietta*, another Daughter of the Earl of *Berkeley*'s, a young Lady, to unlawful Love; and that he did intice her from her Father's Houſe; and that he did cauſe her to be conveyed away from thence againſt her Father's Conſent; and that he did unlawfully uſe her Company afterwards in a very ill manner, an unjuſtifiable manner; and this, Gentlemen, is the Subſtance of the Information; in truth it is laid, that he did live in Fornication with her. Now, Gentlemen, to this my Lord *Grey* and the other Perſons, the *Charnocks* and the *Jones's* have all pleaded not Guilty to it. Now then, the Queſtion before you is, whether there was any ſuch unlawful Solicitation of this Lady's Love; and whether there was any Inveiglement of her to withdraw her ſelf and run away from her Father's Houſe without his Conſent; and whether my Lord *Grey* did at any time frequent her Company afterwards. Gentlemen, the Evidence that has been given, you have heard what it is, and it is very plain, (if you do believe theſe Witneſſes that ſpeak it from my Lord's own Mouth) that he hath a long time unlawfully ſolicited her to Luſt. For there is nothing elſe in it, Gentlemen (that is the plain Engliſh of it all) he has inticed her to unlawful Luſt. My Lady ſhe gives Evidence of it from his own Mouth, that there was an Intrigue of unlawful Love between them: She ſays my Lord *Grey* condemn'd himſelf for it ſeveral times, but yet proſecuted it; he own'd it was a moſt diſingenuous and diſhonourable thing in him, which indeed it was; he did therein in truth make a right Eſtimate of the thing. He did own he had betray'd the Family, and brought it into great Scandal, and had abus'd both Father and Mother by this unlawful Solicitation of their Daughter to this unworthy wicked Affection; but he excuſed it all with the greatneſs of his Paſſion, and that was all; he pray'd her to conſider, *it was a great and paſſionate Love, a Love that he could not reſiſt; he loved her above all Women living*, and many fair Promiſes of Amendment and deſiſting he made, but you ſee how he has perform'd them. You hear my Lady *Arabella* tells you there was a Letter written by my Lady *Harriett*, this Lady that appears now in Court as a Witneſs for my Lord *Grey*, which ſhe had out of her own Hand, and ſhe tells you the Effect

of

of it; it was to invite my Lord another Night as he had been with her a former Night, and to ſhew the greatneſs of her longing for him, ſhe deſires it might be quickly, not to ſtay till *Monday*, for if he did ſhe ſhould be mighty impatient, if he delay'd ſo long; and withal ſhe told him, her Siſter *Bell*, which I take to be my Lady *Arabella*, *had not diſcovered it, nor heard the Noiſe that was between them that Night they were together.* My Lady *Lucy*, ſhe tells you he owned there was an unlawful Love between him and her Siſter, it muſt needs then be true if he owned it to her, and he ſaid that it put him upon mighty Inconveniences, and he owned he had done ſo much wrong to the Family, that he could never repair it. You hear my Lady tells you ſhe forbid him the Family; and you hear likewiſe, what little Deſigns he had, and what he pretended that he might continue to come to the Family, if you believe my Lady. For he pretended that this would be the way to make it publick, if he were forbid the Houſe altogether; but he would be under her Direction, he would do nothing but what ſhe ſhould approve of; that he would not apply himſelf to her Daughter to ſpeak to her, nor write to her. And you hear that for all this, he did before my Lady *Arabella* vent a great deal of Paſſion for her, *that ſhe was the only Perſon in the World he had any Love for*; that my Lady *Arabella* tells you ſhe heard him ſay, when he had ſeen her fall down like a dead Woman. When he had made my Lady a Promiſe that he would not come down without Leave, he ſends his own Wife thither firſt to beg that he might come down, and very earneſt and importunate ſhe was with her Mother, not knowing any thing of the Intrigue, but was made inſtrumental to get Leave to come down. And at length, Leave was given him to dine there, as he went to *Suſſex*, but he comes at nine a Clock at Night, and then Excuſes were made by him for it; and my Lord *Berkeley* deſiring him to ſtay, who was not acquainted with the unlawful Affection that was between his Daughter and him, and accordingly he did ſtay till *Saturday*. You hear, Gentlemen, what is ſaid to you now, as to her carrying away, for all that has been hitherto obſerved to you, has been only to the unlawful Solicitation of this Lady to unlawful Love. My Lady tells you, that that very Night that my Lord *Grey* went from her Houſe was her Daughter carried away. You ſee then, the Queſtion will be, whether my Lord had any hand in carrying her away, and for that you muſt weigh theſe Circumſtances. It is pretty manifeſt that this Coach-man, that is *Charnock*, did carry her away. Now the Chaplain tells you, that my Lord was earneſt in ſeveral Diſcourſes that day with *Charnock*, and under ſome great Trouble, he could diſcern that in his Countenance, and ſeveral times he was ſent for to him, as tho' there was ſome mighty earneſt Buſineſs impoſed upon *Charnock* to do. *Charnock* made as tho' he went away, it ſeems, with his Lord, who went away about four a Clock, and the Lady was carried away in the Morning between twelve and one which is the time ſpoken of. Now to prove that *Charnock* carried her away, you have theſe Circumſtances; She was brought to the Houſe of *Hilton*, there was a Lady brought in there that Morning about nine a Clock by *Charnock*; *Charnock* was the Afternoon before going to *Up-Park* with his Lord, but it is manifeſt that he was back that Morning at *London*, and ſo brought the Lady thither that Morning. If you believe *Hilton* the Witneſs, it is manifeſt ſhe had been a Journey, and was very weary, ſo that ſhe was fain to go to Bed at nine a Clock. This Lady that was there brought by *Charnock* and his Wife, was afterwards carried to *Patten*'s Houſe, Mrs. *Hilton* ſwears it; and Mr. *Patten* ſwears they did come in there. There was a great deal of Policy uſed in the Caſe, and Care taken; and Mrs. *Hilton* tells you why, *they ſaw ſome Men about the Door, which they were afraid might be Men that came to look after the Lady, and ſo they ſlid away thro' the Back-door*, which proves ſomething in that ſhe was to be conceal'd. Then conſider the Circumſtances of the Cloaths that do ſo exactly agree. There was a Gown with red and green Flowers ſtriped, and there was a Petticoat ſtriped with Red, and a White Quilted Petticoat under that the Lady had on that came to *Patten*'s; and the Lady's Woman who lay with her and look'd after her, deſcribes to you her Gown and Petticoat to be the ſame as thoſe were that the Lady had on, who was hurried away from *Patten*'s Houſe at Night to another Lodging. We cannot indeed diſcover where that was. Now then, after this, my Lord *Grey* he undertakes to my Lady *Berkeley*, that he would go to *Up-Park*, and ſtay there till he had Leave to come to Town. *Patten*, who ſaw the Lady, ſwears this is the very Lady that ſits here, and who has been examined, but denies it. If ſhe was the Lady that was brought to *Patten*'s, ſhe was the ſame that was brought to *Hilton*'s, whither *Charnock* brought her, and ſo there is a full Evidence of the Guilt of *Charnock* and his Wife, who was the Solicitor about the Buſineſs, took Lodgings for her, help'd her away from *Hilton*'s, and help'd her to *Patten*'s, and from *Patten*'s ſomewhere elſe. So that if you believe them, *Charnock* and his Wife are both Guilty. As to my Lord *Grey*, who went to *Up-Park* on the *Wedneſday*, ſoon after he came to Town again, and it is poſitively ſworn that he came to *Jones*'s upon the *Tueſday*, and ſent for *Jones* out to come to him, who was in a Hack-Coach, where he diſcourſed with him a pretty while, and afterwards the Room is provided for the Lady up two pair of ſtairs in *Jones*'s Houſe. She is brought thither, my Lord *Grey* came twice to the Houſe, and both times without his Perriwig, as the Maid ſwears ſhe knew him very well, and there he took Lodgings for a Lady, and that Lady came afterwards. Now if this falls out to be my Lord *Berkeley*'s Daughter, then you have it puſh'd home upon my Lord *Grey*. That this was my Lord *Berkeley*'s Daughter, you have this Evidence made up of Circumſtances. *Firſt*, The Policy uſed in the Caſe by my Lord, to have all ſo privately managed. Another Circumſtance there is, tho' at firſt it ſeems but ſlight, yet if it be well conſider'd will ſignify very much, and that is what the Maid does teſtify. She ſays her Linnen was brought down to be waſhed, and there was a Shift that was very remarkable, for it had the Body of one ſort of Cloth, and the Sleeves of another, and that ſhe took ſpecial notice of it, and thence would have concluded that the Lady was not a Perſon of Quality; and another of thoſe very

Shifts that belonged to my Lady *Harriett* was brought to her afterwards, and ſhe ſwears it was of the ſame Faſhion and Make with that which the Lady had that lodged in their Houſe; and it was, as all do agree, juſt in the ſame manner as this was, with the Body of one Cloth and the Sleeves of another. Then, there is Colonel *Fitz-Gerrard* was in thoſe very Lodgings at that time; and he comes and tells you, that having heard of my Lord *Berkeley*'s Daughter's Departure from her Father, and conſidering the Circumſtances that he had heard the Maid ſay that it was my Lord *Grey*'s Miſtreſs that was brought in thither, and ſuch other Circumſtances concurring, he did conclude this to be the Lady, and he tells *Jones* his Suſpicions concerning it (whoſe Wife was by the way ſo very officious to conceal the Lady, that ſhe would not ſuffer her Maids to come up ſtairs, but would rather ſhut up the Shop-windows her ſelf, than the Maids ſhould come to ſee her.) Mr. *Jones* having Diſcourſe with the Colonel about this, and finding the Lady was ſmoak'd, was angry at the Colonel's Curioſity, which increaſed the Colonel's Suſpicion. He told *Jones*, *This muſt needs be the Lady, and I will ſee her.* Which he very much fearing, intreated him not to diſturb his Houſe at that time of Night, and upon Promiſe to let him ſee her the next Morning, he deſiſted; but told him, *He knew not what he was doing, he did a very ill thing to conceal a young Lady from her Friends, her Father and Mother not knowing where ſhe was, might give her over for Dead.* But in the Morning the Lady was convey'd away. This, to me, is a ſhrewd Circumſtance that *Jones* knew her to be the Lady, and to conceal all the Matter, got ſo much time to ſend her away. To what purpoſe elſe was ſhe carried away, when the Colonel was to ſee her, that he might be ſatisfied about his Suſpicion, and ſo acquaint her Father? But ſhe was conveyed away preſently. Gentlemen, it is manifeſt by all the Witneſſes, and by what the Defendants Counſel themſelves open'd, that under this Abſence of the Lady from her Father, he had an Intercourſe of Letters with her, which is a great Circumſtance to prove that ſhe was carried away by his Contrivance. He could tell the Lady *Lucy*, *That ſhe ſhould never be brought back again, without he might have Leave to viſit her.* So that it ſeems he had full Power over her. There is another Gentleman, who has told you he was ſet as a Spy over him; and if you believe him, my Lord *Grey* has made a Confeſſion to him as he would to his Ghoſtly Father, he has told you the Intrigue of all his unlawful Love, from the Beginning to the End; how long he was engaged in it before he had any Comfort from the Lady, when he had the firſt Demonſtration of Kindneſs from her, and the whole Matter all along. There is another Gentleman that was ſent to treat with my Lord (Mr. *Smith*) concerning this; he tells you, my Lord *Grey* and he being in a long Diſcourſe, he offered that he would deliver her to one Perſon, but not to another: She ſhould be firſt ſent to his Brother-in-law, Mr. *Nevil*'s in *Berkſhire*, afterwards to another Place, Mr. *Petit*'s, ſo as he might have Acceſs to her; but he tells you alſo, this was the Concluſion of all, *He would never part with her, nor never deliver her, upon any other Terms than that he might have Acceſs to her whenever he would.* Now lay all this together, and ſee what it amounts to. He that had ſo great a Paſſion for her, he that could not be without the Sight of her, but uſed ſuch ways to come to ſpeak to her, he that had Letters from her all along, he that had ſuch Power over her, that he could deliver her, as he ſaid, or not, and would keep her in ſpite of her Father, unleſs he might have Leave to viſit her as often as he pleaſed; and conſider then, I ſay, whether it is not more than probable, that he had a Hand in carrying her away. It is plain beyond all Contradiction, ſhe was carried away by his Man, who was in his Company that Night, he pretended to go to *Up-Park*, but was in *London* the next Morning by nine a Clock. My Lord came afterwards to take Lodgings for her, two Days one after another. Whether then he be not as Guilty as *Charnock* or any of the reſt, nay indeed, the main Mover of this ill Thing, you are to conſider upon the Evidence that has been given. But you muſt, withal, take into your Conſideration, what my Lord *Grey* ſays for himſelf. He has asked ſeveral Queſtions of the Ladies that were examined, but truly never a one worth the remembering, that I know of, or that made to his purpoſe. He does indeed pretend that the young Lady was hardly uſed at home, and that ſhe fled to him as to a Sanctuary for Protection; and you hear the ſeveral Witneſſes examined to that Point; and they all ſay ſhe was uſed, notwithſtanding the Diſcovery of this ill Buſineſs, with the greateſt Kindneſs and Reſpect that a Child could be uſed with by her Mother, and no Hardſhip put upon her, but only ſhe was forbid to write any Letters to my Lord *Grey*, and had a Maid put upon her, to keep her from running away, becauſe once before ſhe attempted it, as her Mother did believe. The Lady her ſelf is here, ſhe has been examined; ſhe indeed denies this all along; ſhe ſays that this Coach-man *Charnock* did not carry her away; ſhe ſays ſhe was not at *Hilton*'s, nor at *Patten*'s, nor at *Jones*'s; that ſhe never ſaw my Lord *Grey* till a long time after ſhe went from her Father's. But this is all diſproved by the other Witneſſes, and ſo whether you will believe her ſingle Teſtimony, or theirs, I muſt leave it to you. You muſt conſider under what Circumſtances ſhe is, and truly ſhe doth not ſeem to be any way fit to be believed in this Matter. *Jones* and his Wife are as guilty as any of the reſt, for their Contrivance to keep her ſecret, eſpecially, after that he had promiſed *Fitz-Gerrard* to let him ſee her. Look you, as to the long Diſcourſe my Lord *Grey* made, I muſt tell you, it is not to be believed further than it is proved. Now my Lord *Grey* did tell us, that he from time to time had given Caution to my Lady, that ſhe ſhould look to her Daughter, and lock her up, for elſe ſhe would, as he believed, run away. My Lady denies it all, and ſo it goes all for nothing, and you are to take no notice of it. I muſt leave it to you, whether you do believe what theſe Witneſſes have ſworn, if you do believe the Evidence produced for the King, moſt certainly they are all five guilty of the Charge in the Information.

Mr. Juſt. *Dolbin.* There is no Evidence againſt *Rebecca Jones.*

L. C. J. No, there is not.

Mr. Serj. *Jefferies.* No, we cannot inſiſt upon it that there is, you muſt find her not Guilty.

Mr. Juſt. *Jones.* I muſt remember you of one Thing,

Thing, Gentlemen, and that is, what drop'd from my Lord *Grey*'s own Mouth, that when my Lord, as he ſays, gave his Advice that ſhe ſhould be looked after carefully, he would not give his Reaſon for it, but after he did, as he ſays, tell it my Lady *Lucy*, that ſhe complained to him at St. *Jones*'s, *that ſhe led the Life of a Dog or a Slave, and ſhe would not endure it any longer, and deſired him to aſſiſt her or ſhe would do herſelf a Miſchief.* Why was not this told before?

L. C. J. Ay, but Brother, my Lady *Berkeley* denies it all too.

[*Then the Jury began to withdraw.*

Earl of *Berkeley.* My Lord Chief Juſtice, I deſire I may have my Daughter delivered to me again.

L. C. J. My Lord *Berkeley* muſt have his Daughter again.

Lady *Henrietta.* I will not go to my Father again.

Mr. Juſt. *Dolbin.* My Lord, ſhe being now in Court, and there being a *Homine Replegiando* againſt my Lord *Grey*, for her, upon which he was committed, we muſt now examine her. Are you under any Cuſtody or Reſtraint, Madam?

Lady *Henrietta.* No, my Lord, I am not.

L. C. J. Then we cannot deny my Lord *Berkeley* the Cuſtody of his own Daughter.

Lady *Henrietta.* My Lord, I am married.

L. C. J. To whom?

Lady *Henrietta.* To Mr. *Turner.*

L. C. J. What *Turner*? Where is he?

Lady *Henrietta.* He is here in Court.

[*He being among the Croud, way was made for him to come in, and he ſtood by the Lady and the Judges.*

L. C. J. Let's ſee him that has married you. Are you married to this Lady?

Mr. *Turner.* Yes, I am ſo, my Lord.

L. C. J. What are you?

Mr. *Turner.* I am a Gentleman.

L. C. J. Where do you live?

Mr. *Turner.* Sometimes in Town, ſometimes in the Country.

L. C. J. Where do you live when you are in the Country?

Mr. *Turner.* Sometimes in *Somerſet-ſhire.*

Mr. Juſt. *Dolbin.* He is, I believe, the Son of Sir *William Turner* that was the Advocate, he is a little like him.

Mr. Serj. *Jefferies.* Ay, we all know Mr. *Turner* well enough. And to ſatisfy you this is all a part of the ſame Deſign, and one of the foulеſt Practices that ever was uſed, we ſhall prove he was married to another Perſon before, that is now alive, and has Children by him.

Mr. *Turner.* Ay, do Sir *George* if you can, for there never was any ſuch thing.

Mr. Serj. *Jefferies.* Pray, Sir, did not you live at *Bromley* with a Woman as Man and Wife, and had diverſe Children, and living ſo intimately were you not queſtion'd for it, and you and ſhe owned your ſelves to be Man and Wife?

Mr. *Turner.* My Lord, there is no ſuch thing, but this is my Wife I do acknowledge.

Mr. *At. Gen.* We pray, my Lord, that he may have his Oath.

Mr. *Turner.* My Lord, Here are the Witneſſes ready to prove it that were by.

Earl of *Berkeley.* Truly, as to that, to examine this Matter by Witneſſes, I conceive this Court, tho' it be a great Court, yet has not the Cogniſance of Marriages: And tho' here be a Pretence of a Marriage, yet I know you will not determine it, how ready ſoever he be to make it out by Witneſſes, but I deſire ſhe may be deliver'd up to me her Father, and let him take his Remedy.

L. C. J. I ſee no Reaſon but my Lord may take his Daughter.

Earl of *Berkeley.* I deſire the Court will deliver her to me.

Mr. Juſt. *Dolben.* My Lord, we cannot diſpoſe of any other Man's Wife, and they ſay they are Married. We have nothing to do in it.

L. C. J. My Lord *Berkeley*, your Daughter is free for you to take her; as for Mr. *Turner*, if he thinks he has any Right to the Lady, let him take his Courſe. Are you at Liberty and under no Reſtraint?

Lady *Henrietta.* I will go with my Husband.

Earl of *Berkeley.* Huſwife, you ſhall go with me home.

Lady *Henrietta.* I will go with my Husband.

Earl of *Berkeley.* Huſwife, you ſhall go with me, I ſay.

Lady *Henrietta.* I will go with my Husband.

Mr. *Williams.* Now the Lady is here, I ſuppoſe my Lord *Grey* muſt be diſcharged of his Impriſonment.

Mr. Serj. *Jefferies.* No, my Lord, we pray he may be continued in Cuſtody.

L. C. J. How can we do that, Brother, the Commitment upon the *Writ de Homine replegiando* is but till the Body be produced, and here ſhe is, and ſays, ſhe is under no Reſtraint.

Mr. Serj. *Jefferies.* My Lord, if you pleaſe to take a little time to conſider of it, we hope we may ſatisfy you that he ought ſtill to be in Cuſtody.

L. C. J. That you can never do, Brother.

Mr. Serj. *Jefferies.* But your Lordſhip ſees upon the Proofs to Day, this is a Cauſe of an extraordinary foul Nature, and what Verdict the Jury may give upon it we do not know.

Mr. *At. Gen.* The Truth of it is, we would have my Lord *Grey* forth-coming, in caſe he ſhould be Convicted, to receive the Judgment of the Court.

L. C. J. You cannot have Judgment this Term, Mr. *Attorney*, that is to be ſure, for there are not four Days left. And my Lord *Grey* is to be found to be ſure, there never yet before this was any thing that reflected upon him, tho' this indeed, is too much and too black if he be guilty.

Mr. Juſt. *Dolbin.* Brother, you do ill to preſs us to what cannot be done; we, it may be, went further than ordinary in what we did, in committing him being a Peer, but we did it to get the Young Lady at Liberty; here ſhe now appears, and ſays ſhe is under no Reſtraint; What ſhall we do? She is properly the Plaintif in the *Homine replegiando*, and muſt declare, if ſhe pleaſe, but we cannot detain him in Cuſtody.

L. C. J. My Lord ſhall give Security to anſwer her Suit upon the *Homine replegiando.*

Mr. *Williams.* We will do it immediately.

L. C. J. We did, when it was moved the other Day by my Brother *Maynard*, who told us of Ancient Precedents, promiſe to look into them, and when we did ſo, we found them to be as much to the purpoſe, as if he had caſt his Cap into the Air, they ſignified nothing at all to his Point. But we did then (as we did at

firſt

first tell my Lord, so) him if he did produce the Lady we would immediately Bail him. And she being now produced, we are bound by Law to Bail him. Take his Bail.

[*And accordingly he was Bail'd at the Suit of the Lady* Henrietta Berkeley, *by Mr.* Forrester, *and Mr.* Thomas Wharton.]

Earl of *Berkeley*. My Lord, I desire I may have my Daughter again.

L. C. J. My Lord, We do not hinder you, you may take her.

Lady *Henrietta*. I will go with my Husband.

Earl of *Berkeley*. Then all that are my Friends seize her I charge you.

L. C. J. Nay, let us have no breaking of the Peace in the Court. But, my Lord *Cavendish*, the Court does perceive, you have apprehended your self to be affronted by that Gentleman Mr. *Craven*'s Naming you in his Evidence; and taking notice of it, they think fit to let you know, that they expect you should not think of righting your self, as they have some Thoughts you may intend. And therefore you must lay aside any such Thoughts of any such satisfaction. You would do your self more Wrong by attempting to right your self in any such way.

Lord *Cavendish*. My Lord, I am satisfy'd that your Lordship does think it was impertinently spoken by him, and shall not concern my self any further, but only desire that the Court would give him some Reproof for it.

Then the Court broke up, and passing through the Hall there was a great Scuffle about the Lady, and Swords drawn on both sides, but my Lord Chief Justice coming by, ordered the Tipstaff that attended him (who had formerly a Warrant to search for her, and take her into Custody) to take Charge of her, and carry her over to the *King's-Bench*, and Mr. *Turner* asking if he should be committed too, the Chief Justice told him, he might go with her if he would, which he did, and, as it is reported, they lay together that Night in the *Marshal's House*, and she was released out of Prison, by Order of the Court, the last Day of the Term.

On the Morning after the Tryal, being *Friday* the 24*th* of *November*, the Jury that try'd the Cause, having (as is usual in all Causes not Capital try'd at the Barr, where the Court do not sit long enough to take the Verdict) given in a private Verdict the Evening before, at a Judge's Chamber, and being now called over, all appear'd, and being asked if they did abide by the Verdict that they gave the Night before, they answer'd, *Yes*; which was read by the Clerk of the Crown to be, *That all the Defendants were Guilty of the Matters charged in the Information, except* Rebecca Jones, *who was Not Guilty*; which Verdict being Recorded, was commended by the Court and the King's Counsel, and the Jury discharged.

But in the next Vacation, the Matter, as the Report went, was compromised, and so no Judgment was ever pray'd, or entred upon Record, but Mr. *Attorney General* was pleased before the next *Hillary-Term*, to enter a *Nolle Prosequi* as to all the Defendants.

The TRYAL of *Tho. Pilkington*, Esq; *Samuel Shute*, Esq; Sheriffs. *Henry Cornish*, Alderman. *Ford*, Lord *Grey* of *Werk*. Sir *Tho. Player*, Knight, Chamberlain of *London*, *Slingsby Bethel*, Esq; *Francis Jenks*, *John Deagle*, *Richard Freeman*, *Richard Goodenough*, *Robert Key*, *John Wickham*, *Samuel Swinock*, *John Jekyll*, Sen.

May *the* 8*th*. 1683.

The INFORMATION.

London ss. BE it remember'd that *Robert Sawyer* Knight, Attorney General of our Lord the King, who for our said Lord the King in this behalf prosecuteth, cometh into Court in his Proper Person on *Friday* next after Fifteen Days of the *Holy Trinity*, in this same Term, and for our said Lord the King doth give the Court here to understand and be informed, that the Four and Twentieth Day of *June* in the Four and Thirtieth Year of his now Majesty's Reign at the *Guild-hall* of the City of *London*, a certain Court for Assembling the Citizens and Freemen of the City of *London*, called a Common-hall, being Summoned and Called by Sir *John Moore* Knight, then and yet Mayor of the City of *London*, was in a lawful manner held before the said Sir *John Moore* Knight, Mayor of the City aforesaid as well for the due Election of Sheriffs of the City aforesaid, for the Execution of the Office of Sheriff of the said City for one whole Year, next following after the Vigil of the Feast of St. *Michael* then and yet next coming, as for the Election of divers other Officers of the said City. And that then and there in the said Court it was begun to take the Poll of the Electors then and there present for the making known of the Election of the Persons to serve in the Office of Sheriffs of the said City, for the Year aforesaid. And that the said Sir *J. Moore*, Knight, Mayor

Mayor of the ſaid City, afterwards the ſaid 24th Day of *June*, in the 24th Year aforeſaid at *Guild-Hall* of the ſaid City of *London* (to wit) in the Pariſh of St. *Michael Baſſiſhaw*, *London*, in a lawful manner did make and cauſe to be made Proclamation for the adjourning of the ſaid Court ſo as aforeſaid held, and then and there did adjourn the ſaid Court until *Tueſday*, then next following to be held at the *Guild-hall* of the ſaid City of *London*, and then and there after the ſaid Adjournment, ſo as aforeſaid made the ſaid Sir *John Moore* Knight, Mayor of the ſaid City of *London*, did make and cauſe to be made publick Proclamation for the Departure of all Perſons upon the ſaid occaſion there aſſembled: And further the ſaid Attorney General doth give the Court to underſtand and be informed, That *Thomas Pilkington*, late of *London* Eſq; and *Samuel Shute*, late of *London* Eſq; then Sheriffs of the ſaid City of *London*, and *Henry Corniſh* late of *London*, Eſq; *Ford* Lord *Grey* of *Werk*, &c. the ſaid Premiſſes ſufficiently knowing, but being ill diſpoſed Perſons, and deviſing and intending to diſquiet, moleſt and trouble the Peace of our ſaid Lord the King and the common Tranquillity of this Kingdom of *England*, they the ſaid *Thomas Pilkington* and *Samuel Shute* under colour of the Office of Sheriffs of the ſaid City of *London*, and the ſaid *Henry Corniſh*, *Ford* Lord *Grey*, and others afterwards, and after the Adjournment aforeſaid (to wit) the ſaid 24th day of *June*, in the 34th Year aforeſaid, at the Pariſh of St. *Michael Baſſiſhaw*, *London* aforeſaid in the ſaid *Guild-hall*, there with Force and Arms, Riotouſly, Routouſly, Unlawfully, and Seditiouſly, did aſſemble, congregate, and unite themſelves with very many other ill diſpoſed Perſons and Breakers of the Peace of our ſaid Lord the King, to the Number of One Thouſand Perſons, to the ſaid Attorney General of our ſaid Lord the King, as yet unknown, to diſturb the Peace of our ſaid Lord the King, and being ſo aſſembled, congregated, and united, then and there with Force and Arms, &c. Riotouſly, Routouſly, and Unlawfully, in and upon the ſaid Sir *John Moore* Knight, Mayor of the City aforeſaid, in the Peace of God and of our ſaid Lord the King, then and there being, did make an aſſault and affray, and him the ſaid Sir *John Moore* Knight then and there did beat, wound and evil intreat, ſo that of his Life it was greatly deſpaired, and after the Adjournment aforeſaid, and Proclamation ſo as aforeſaid, made by the ſaid Sir *John Moore* Knight, Mayor of the ſaid City, they the ſaid *Thomas Pilkington* and *Samuel Shute*, then and there by colour of their Office of Sheriffs of the ſaid City of *London*, and the ſaid *Henry Corniſh*, *Ford* Lord *Grey*, &c. with divers other Perſons to the ſaid Attorney General of our ſaid Lord the King as yet unknown, unlawfully and ſeditiouſly aiding and aſſiſting the ſaid *Thomas Pilkington* and *Samuel Shute* with Force and Arms, *&c.* Riotouſly, Routouſly, and Unlawfully, did there continue to take the Poll of the Perſons ſo then and there unlawfully Aſſembled, as if the ſaid Perſons had been lawfully Aſſembled for the Election of Sheriffs of the ſaid City; and that the ſaid *Thomas Pilkington*, *Samuel Shute*, *Henry Corniſh*, *&c.* then and there Unlawfully, Tumultuouſly, and Seditiouſly, did affirm, and every one of them did affirm, ſay, and with a loud voice to the ſaid ill diſpoſed Perſons affirm that the ſaid Sir *John Moore* Knight, Mayor of the ſaid City of *London*, did unlawfully and unjuſtly aſſume upon himſelf the Liberty to Adjourn the ſaid Court, which did not belong to him; And that the ſaid *Thomas Pilkington*, *Samuel Shute*, *Henry Corniſh*, &c. then and there, the ſaid unlawful and ill diſpoſed Perſons, ſo as aforeſaid aſſembled and congregated with Force and Arms, Riotouſly, Routouſly, Unlawfully and Seditiouſly, by the ſpace of three hours, to diſturb the Peace of our ſaid Lord the King, and to commit the Riot aforeſaid, did ſtir up, move, perſwade, procure, and then and there by the whole time aforeſaid in *Guild-hall London* aforeſaid, in the Pariſh aforeſaid, great Rumors, Cries, Hollowings, and terrible and unwonted Noiſes, with Force and Arms, *&c.* Riotouſly, Routouſly, Unlawfully, Tumultuouſly and Seditiouſly, did make and cauſe to be made, and did ſtir up, in Contempt of our ſaid Lord the King, and the manifeſt Diſturbance and Violation of his Laws and his Peace, to the great Danger of ſtirring up and moving of a tumult, and the ſpilling of much Blood there, to the great Terror, Trouble and Fear of all His Majeſty's Leige People, Subjects of our ſaid Lord the King, to the ill Example of all others in the like caſe offending; And againſt the Peace of our ſaid Lord the King, his Crown and Dignity, *&c.* Whereupon the ſaid Attorney General of our ſaid Lord the King for our ſaid Lord the King prayeth the Advice of the Court in the Premiſſes, and due Proceſs of Law againſt the ſaid *Thomas Pilkington*, *Samuel Shute*, *Henry Corniſh*, *Ford* Lord *Grey*, &c. in this behalf to be made to anſwer our ſaid Lord the King, of and in the Premiſſes, *&c.*

To which the Defendants Pleaded not Guilty.

On Tueſday *the Eighth Day of* May, *at the Seſſions of* Niſi Prius, *at the* Guild-Hall *of the City of* London, *held there for the County of the ſaid City, before the Right Honourable Sir* Edmond Saunders *Knight, Chief Juſtice of His Majeſties Court of* King's Bench; *an Information was brought at the King's Suit, againſt* Thomas Pilkington *Sheriff*, Samuel Shute *Sheriff*, Henry Corniſh *Alderm.* Ford *Lord* Grey *of* Werk, *Sir* Thomas Player *Kt.* Slingsby Bethel *Eſq;*

Esq; Francis Jenks, John Deagle, Richard Freeman, Richard Goodenough, Robert Key, John Wickham, Samuel Swinock, John Jekyll *Senior*, &c.

The Court being ſate, the *Tryal* proceeded.

CRYER,

YOU *Good Men of* Niſi Prius *ſummoned to appear here this Day between our Soveraign Lord the King, and* Thomas Pilkington, *and others, Defendants: Anſwer to your Names, and ſave your Iſſues.*

The Jury appeared.

Mr. *Sommers.* My Lord, I am to Challenge the Array.

Mr. *Thompſon.* My Lord, I deſire this Challenge may be read.

The Challenge *read in* French.

Sir *Edmond Saunders.* *L. C. J.* Gentlemen, I am ſorry you ſhould have ſo bad an Opinion of me, as to be ſo little a Lawyer not to know this is but a Trifle, and nothing in't. Pray, Gentlemen don't put theſe things upon me.

Mr. *Thompſon.* I deſire it may be read, my Lord.

L. C. J. You would not have done this before another Judge: You would not have done it if Sir *Matthew Hale* had been here.

Mr. *Thompſon.* My Lord, I believe if there had been nothing in it, it would not have been ſign'd.

Sir *Robert Sawyer.* Mr. *At. Gen.* Very few but Mr. *Thompſon* would urge it.

Mr. *Thompſon.* I don't know whether you think ſo, or not, Mr. *Attorney*; but I have a great deal to offer, if you pleaſe to Anſwer it. We offer our *Challenge* in Point of Law.

L. C J. There is no Law in it.

Mr. *Thompſon.* We deſire it may be read in *Engliſh.*

L. C J. Why? Do you think I don't underſtand it? This is only to tickle the People.

The Challenge *read by the Clerk* accordingly.

Mr. Serj. *Jefferies.* Here's a Tale of a Tub indeed!

L. C. J. Ay, It is nothing elſe, and I wonder Lawyers would put ſuch a thing upon me.

Mr. *Thompſon.* My Lord, we deſire this *Challenge* may be allowed.

L. C. J. No, indeed won't I, there is no colour for it; and I am apt to think there are not many Lawyers in *England* would have put ſuch a thing upon me: Becauſe I am willing to hear any thing, and where there is any colour of Law, I am not willing to do amiſs: Therefore you think I am ſo very weak, without you think I was always ſo, and therefore may be ſo at this time. For, pray now conſider, if ſo be the King's Counſel ſhould come and plead this *Challenge*, what is the Conſequence of it? I thought you would have ſaid, that the *Sheriffs* had been a-kin to the King, but you have made it worſe. You do come with a long Tale here of the whole Merits of the Cauſe, and more than yet doth appear; and by this you would have the *Challenge* to be allowed: In ſuch a Caſe a man may come and tell a Tale of the Merits of the Cauſe, and then it muſt be tryed by the *Challenge*. If the Sheriffs do return an Inqueſt for the King, and the Sheriffs do hold of the King a Fee-farm, or have a Penſion or an Annuity from the King, the Book doth ſay, that in ſome Caſes it is a *Challenge*; for though they cannot be challenged as being favourable for the King, yet for thoſe reaſons they may be challenged. But what is here? Here you tell a long Proceſs concerning a Difference between the Mayor and the Sheriffs, and all this matter is wrap'd up altogether; and if all this were true, it is no *Challenge* at all.

Mr. *Thompſon.* We ſhall ſpeak with all ſubmiſſion to your Judgment, my Lord.—— Good Mr. *Attorney*, give me leave.

Mr. *At. Gen.* I move for you.

Mr. *Thompſon.* If you pleaſe you may move for your ſelf, I don't need you to move for me. My Lord, with ſubmiſſion, the Information is not good: My Lord, it is an Information that doth ſet forth that my Lord Mayor had right of Adjourning the Poll, when an Election is to be for Sheriffs. My Lord, if he had not that Right, it can be no Riot according to this Information. My Lord, upon his Adjourning Mr. Sheriff *North* was Choſen: My Lord, if that Adjournment was not according to Law, Mr. Sheriff *North* never was Sheriff of *London*; Then, my Lord, here is the Caſe in this Queſtion of Title, for Mr. *North* doth come in Queſtion, whether he be a legal Sheriff of *London.*

L. C. J. Prove to me now that of Sheriff *North*; Pray what Annuity, Penſion, or Fee-farm hath he as Sheriff of *London*, whereby he is concerned?

Mr. *Thompſon.* My Lord, there are other Reaſons which I ſhall ſhew to you; and the firſt Reaſon, my Lord, in this Caſe, is this; it will appear the Election of Mr. *North* is intereſted in this matter; and if Sir *John Moore* had not an Authority to Adjourn the Poll, Mr. *North* was not choſen duly Sheriff; now if there is a Sheriff choſen in Point of Right, it is a good *Challenge.*

L. C. J. In point of Profit, and not all neither; for he that holds Land *in Capite* of the King, cannot be challenged for all that.

Mr. *Thompſon.* I think, my Lord, this is a common Caſe in our Books, That if in caſe a Sheriff be concerned in point of Title, this is a principal Challenge, becauſe that he is intereſted in that Title, he is no perſon by Law to return a Jury. I don't doubt but your Lordſhip will do that which is right, and according to Law. My Lord, I ſay, where a Sheriff is intereſted in point of Title, he is no Perſon by Law to return a Jury, and this Queſtion will appear plainly upon this Information; for if in caſe

caſe this was not a lawful Adjournment by Sir *John Moore*, this is not a lawful Return—— Gentlemen, my Lord, I know, will hear me, if you have but patience; I always ſpeak and ſtand up for my Clients as I ought to do. If you pleaſe to let me have Liberty, I have my Lord's. If a Sheriff be concerned in point of Title, it is a principal Challenge, and the Sheriff ought not to return the Jury, but the *Coroner*: And my Lord, much more in this Caſe, for that the very Title to the Office of Sheriff is here in Queſtion, and therefore he is no Perſon fit to return this Jury, my Lord. We deſire your Lordſhip's Opinion.

L. C. J. Mr. *Thompſon*, Methinks you have found out an Invention, That the King ſhould never have Power to try it even ſo long as the World ſtands. Say you Sheriff *North* is not a right Sheriff, Who ſhould have been? Why ſay you *Dubois* and *Papillon*, or one, or both of them. Now the King he hath brought his Suit for a Riot.

Mr. Serj. *Jefferies*. And an Aſſault and Battery upon Sir *John Moore*.

Mr. *Thompſon*. That is a Fiction.

L. C. J. The King hath brought his Suit, and brought it to an Iſſue. Why now if ſo be this Challenge ſhould have any thing in it, then the King muſt have challenged *North*, and what muſt he have done then? Why, for *Papillon* and *Dubois*, they are not Sheriffs *in actu*, then ſay you the *Coroner*. Pray Mr. *Thompſon*, If ſo be the King had made the *Venire* either to *Papillon* or *Dubois*, or to the *Coroner*: Whether or no had not the Cauſe been found againſt the King, before one Word had been ſaid actually for him? You ſay the Queſtion is, Whether he be a Sheriff or not? If the King had challenged him, and made the *Venire* to the *Coroner*, for God's ſake, Had not that made an end of the Queſtion?

Mr. Thompſon. No, my Lord, not at all.

L. C. J. No? Then I underſtand nothing.

Mr. Thompſon. My Lord, If the Sheriff appear to be concern'd, it doth not determine the Cauſe.

L. C. J. But it does by your own Opening now. You ſay the Queſtion is, for which you do now challenge the Array, becauſe it is returned by Sir *Dudley North*, ſuppoſed to be one of the Sheriffs, and tell the whole Proceſs, how that in truth it is a Queſtion whether he be a Sheriff or not, and therefore ſay you, or you ſay nothing, that the *Venire* ſhould not go to *North*.

Mr. *Thompſon*. No, my Lord, I pray, good my Lord——

L. C. J. Should it not have gone to *Dudley North*, and then have been challenged for him?

Mr. *Thompſon*. No, I beſeech your Lordſhip, we do not ſay ſo. My Lord, we ſay, That whereas they do charge in the Information, that there was an Aſſembly for the Election of Sheriffs, and that Sir *John Moore* being then Mayor, did lawfully, according to Law adjourn this Aſſembly; and that afterwards the Defendants, *Pilkington* and *Shute*, did continue this Aſſembly, and took a Poll, and ſo they would make this a Riot in the continuance of it. My Lord, we do ſay this, That the Election of Mr. *North* upon this Point doth come in queſtion; and, my Lord, we do ſay, That if that be not a legal Adjournment, then Mr. *North* is not legally Choſen.

L. C. J. Right, now you have told it in more Words.

Mr. *Thompſon*. We ſay, If the Election be intereſted, they are all Parties by Law.

Mr. Serj. *Jefferies*. Who would you have the Proceſs go to?

Mr. *Thompſon*. To the *Coroner*.

L. C. J. Very well upon my word. If he were Sheriff, it cannot go to the *Coroner* you know, and therefore if he were challenged, to go to the *Coroner*——

Mr. *Thompſon*. *Sub judice lis eſt*, my Lord.

Mr. Serj. *Jefferies*. We deſire for the King, that the Challenge may be over-ruled.

L. C. J. Ay, ay.

Mr. Serj. *Jefferies*. I deſire the Jury may be ſworn.

Mr. *Williams*. Certainly if they be impannelled by Perſons that are not Sheriffs, that is a good Challenge, that is admitted by every body; now we have made a Challenge, and that is a good cauſe of Challenge certainly if that were the Cauſe. But now, my Lord, I muſt confeſs what your Lordſhip ſays, it is a difficult matter to challenge any Array, becauſe they are arrayed by a Perſon that hath an Intereſt, or ſome ſuch thing that is a Challenge of the Array, but that is not the Matter in this Caſe. It cannot be denied, If theſe Perſons were not Sheriffs of *London*, that that is a good Cauſe. I take the Reſult of the Challenge to be this: Say we, the principal Queſtion of this Information, the Riot, will depend upon this Queſtion, Whether there were a regular Adjournment or not? There, ſay we, begins the Queſtion of the Riot. If ſo be that my Lord Mayor of *London* that was, had Power to adjourn the Court, and it be admitted a regular Adjournment, certainly the Riot would follow, and what follows then? Then comes on a Queſtion, and it is immediately conſequent upon it, That theſe Gentlemen be actual Sheriffs of *London*, they being actually choſen upon this Adjournment, they are actually Sheriffs: But if really my Lord Mayor had no Power to adjourn, and that Power was in the Sheriffs, that they were actually taking the Poll, and the Poll was for Mr. *Dubois* and Mr. *Papillon*: Then the Queſtion is, If ſo be the Adjournment by my Lord Mayor were not a good Adjournment, then the Poll was a regular Poll taken by the Sheriffs, then conſequently thoſe that were elected upon that were truly choſen, and then it is a right Challenge. Theſe Gentlemen, I muſt confeſs, they are Sheriffs *de facto*, but we know very well there may be Sheriffs *de facto*, and there may be other Sheriffs *de jure*, theſe things are very conſiſtent. If ſo be that Mr. *Papillon* and *Dubois* be duly elected, they are Sheriffs *de jure*, but they want the Formality, for they are not ſworn, and cannot return a Jury. On the other ſide, the Sheriffs are Sheriffs *de facto*, but not legally choſen, and the Riot will depend upon that Queſtion, of the other Perſons that are Sheriffs *de facto*, and not *de jure*. This we ſuggeſt in this, Whether your Lordſhip will receive this Challenge, or whether your Lordſhip will proceed firſt to the tryal of the Cauſe, and let this follow. My Lord, might not there have been ſomething in this caſe upon the Roll at *Weſtminſter*, might there not,

not have been a ſurmiſe to this purpoſe, becauſe there is ſuch a Queſtion upon the Roll? For it appears that the Common Hall was for the Election of Sheriffs, and that it was adjourn'd by the Mayor: And what follow'd? Might there not be ſuch a ſurmiſe, that the *Venire facias* ſhould not go to the Sheriffs, but to the Coroner? Might there not have been ſuch a thing?

L. C. J. My Speech is but bad, let me know what Objection is made, and if I can but retain it in my Memory, I don't queſtion but to give you Satisfaction. If the King had brought an Information againſt Mr. Sheriff *North*, and charged him with a Crime, there is no manner of Queſtion that the King ſhould have challenged as he was a Sheriff, and ſent the *Venire* to the Coroner, or other Officer; here he is not accuſed, nor to be acquitted of any Crime. Gentlemen, I put you upon this, if ſo be that the Sheriff of *London* ſhould get a great deal of Money (but I never underſtood that he got by it) if you prove that he hath got any conſiderable matter by the Office, it would be ſomething in the Caſe, that he ſhould be greedy of the Office. But look ye, on the other ſide, if there be nothing in it one way or another, that there is profit accruing to him by the Office, what can the Law ſay? But here was the Queſtion between, indeed and in truth as you do open it, between the Mayor, Sir *John Moore*, I think, and the Sheriffs that then were, that was the Queſtion between them. Now what is this in Point of Law, that the Sheriffs muſt be challenged? They muſt be challenged, becauſe it is return'd by theſe Sheriffs: You can't ſay the Sheriffs do favour—— the King.

Mr. *Sol. Gen.* My Lord, We trouble your Lordſhip about a Queſtion very unneceſſary: The Sheriff is not concerned in this Queſtion, neither can the Conſequences affect the Sheriff any way.

Sir *Fr. Win.* My Lord, If I don't ſhew that he is concern'd, notwithſtanding what Mr. Solicitor ſays, it is another matter. If this had been upon a common Riot, and not related to the Election of Sheriffs, it would have been harder againſt us. I only offer a Word or two, and ſubmit to your Lordſhip. This Information doth take notice of the Election of Sheriffs, and of an irregularity in diſturbing the late Lord Mayor about adjourning the Poll; I do believe, my Lord, it will not be deny'd, but that in this Cauſe a Riot or no Riot will depend upon the Poll, or the Mayor's adjourning. If that be ſo, that which your Lordſhip is pleaſed to urge, That the Sheriff gets nothing, yet that he hath aſſumed the Office *de facto*, appears by the Return, that is very plain, my Lord, he hath aſſumed it, and did exerciſe it. If it appear to be legal or illegal upon the Adjournment by the Mayor, then it muſt have one of theſe two Conſequences, my Lord, I humbly conceive, till the Shrivalty had been agreed, it would have done very well for Mr. Attorney to let this Riot alone, unleſs he would have made it a common Riot; if he would have been pleaſed to ſtay till the Law had determin'd who had been the right Sheriffs, then *Proceſs* would have gone for the King. And, my Lord, there is another thing under favour, if Mr. Attorney had been pleaſed to proſecute for the King; then ſurely, my Lord, there was a way to lay it ſo that the Proceſs ſhould be return'd by Perſons unintereſted, and not by the Sheriff whoſe Election is in Controverſy: I don't argue out of the Record, but by the Record it ſelf. If in caſe it doth appear ſtill to be under Conſideration; if that be ſo, I do humbly conceive, becauſe that Right of Election of Sheriffs is undetermined, that therefore he might have made the *Proceſs* to the Coroner, if he would have made it before, but it ſhould not be heard before the Election of the Sheriffs, becauſe it will be a Riot, or not a Riot upon that.

L. C. J. Good now, Sir *Francis*, you miſtake, it could not be to the *Coroner*.

Mr. *Sol. Gen.* My Lord, It is but wearying your Lordſhip to no purpoſe.

Mr. *Wallop.* If he be not Sheriff, that Title of his depending upon my Lord Mayor's Adjournment, which is reaſonably ſet forth, it is concerned in the Conſequence of the Cauſe.

Mr. *Attorn. Gen.* If you pleaſe, my Lord, I will anſwer what hath been ſaid. Mr. *Thompſon* did firſt urge according to the Rules of Law, if the Matter that appears upon the Record to be the Thing in queſtion; that if the Sheriff be intereſted in that Matter, that that is a good Cauſe of Challenge, that is a good Rule, and the Law is ſo; but that is nothing to this purpoſe, my Lord, here upon the Record there is nothing in queſtion but a Fine for the King, nothing to be recovered: Where Lands are in queſtion, as in an *Ejectment*, if the Sheriff be Intereſted in that Land, in that caſe that is a good Challenge; but here appears nothing by the Record, here is nothing in queſtion but a Fine for the King; ſo that certainly that Caſe in Point of Law, is nothing to the purpoſe. Then they ſay it appears in the Record by Recital, and in the Information, for that is the Subſtance of all they ſay: It doth appear there, as it is ſaid, That the Mayor did adjourn the Court, and ſo the Queſtion of the Riot will very much ſtand upon the Validity of that Adjournment. But it doth not wholly ſtand upon that, for there are many outragious Actions, Aſſaults of the Mayor, throwing off his Hat, great Clamours; thruſting and preſſing many of the Aldermen; nay, bruiſing them, ſo that this Riot, notwithſtanding the Adjournment, be that as it will, will appear in the upſhot of the Cauſe, to be a Riot notwithſtanding that Queſtion. But in the ſecond Place, the Queſtion of Mr. *North*'s being a Sheriff or not a Sheriff, no ways depends upon this Adjournment, no Pretence of the Title depends upon that, ſo my Lord, they have ſuggeſted a Thing that is foreign to the Record; it depends purely that upon a Cuſtom of the City for my Lord Mayor to elect, not upon the Power of my Lord Mayor's Adjournment; for after that they proceeded on with the former choice of Mr. *Papillon* and Mr. *Dubois*; ſo that whether that Adjournment be a good Adjournment, or no good Adjournment, his Title will depend upon that, whether at the ſecond meeting or no Mr. *Papillon* and the other Gentleman be well choſen, and Mr. *North* not well choſen, ſo that his Title doth not depend upon this Queſtion one way or other. But, my Lord, that which makes this as frivolous a Thing as ever was urged in a Court of Law, my Lord, that it ſhould have been upon Rule before any Direction

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to the Sheriff or Coroner, if they would have had *Proceſs*; they have ſuggeſted matter of Fact wholly out of the Record, matters have been ſuggeſted that it might have been tryed before it came to Direction; now there appears nothing in the Record to bring a Challenge to try the Matter; nay, as they themſelves ſay, it is to try the Merits of the whole Information, that the Information depends upon that Queſtion, Whether the Mayor may Adjourn. It is a great Uſurpation upon the Government of this City, as they have done in other things to the King. My Lord Mayor is the Supreme Magiſtrate here, and the Sheriffs have nothing to do in this Point, and therefore I pray it may be over-ruled, and that the Jury may be ſworn.

Mr. *Thompſon.* We would have, my Lord, the Benefit of a Bill of Exceptions.

Mr. Serj. *Jefferies.* Swear the Jury, ſwear the Jury.

Mr. *Thompſon.* I have another Challenge.

L. C. J. I tell you plainly, I ſee nothing in it for a Bill of Exceptions.

Mr. *Thompſon.* We deſire we may have the Benefit of a Bill of Exceptions. My Lord, if this be the Caſe of trying a Riot, we muſt take what Advantage we can in point of Law.

Mr. Serj. *Jefferies.* We come to counſel the King, as we ought to do by Law.

Mr. *Thompſon.* My Lord, I challenge, on the behalf of my Lord *Grey*, this Jury.

[*Challenge read.*

Seignior Grey.

Mr. *At. Gen.* They call that a *Newgate* Challenge.

Mr. *Wallop.* That was a Challenge taken at the *Old-Baily.*

Mr. *Thompſon.* And over-ruled.

Mr. Serj. *Jefferies.* And I pray it may be ſo here.

L. C. J. I think your Challenge is, that they are not Sheriffs?

Mr. *Thompſon.* My Lord, is the Fact true or falſe? I deſire of theſe Gentlemen, if it be inſufficient in point of Law, let them demur.

Mr. Serj. *Jefferies.* Pray tell me *Robinhood* upon *Greendale* ſtood; and therefore you muſt not demur to it.

Mr. *Thompſon.* If the Challenge be not good, there muſt be a defect in it either in point of Law, or in point of Fact. I deſire, on the behalf of my Lord *Grey*, this Challenge may be allowed.

Mr. Serj. *Jefferies.* And I pray for the King, that it may be over-ruled.

L. C. J. I think you have owned them to be Sheriffs already.

Mr. Serj. *Jefferies.* My Lord *Grey* did own it in his Challenge, becauſe there were no Knights.

L. C. J. We try a great many *Niſi prius* here ſometimes, two or three days after the Term, every Defendant that thinks it goes hard with him, we muſt have a Tryal ſtill, whether the Sheriffs be Sheriffs, or no? This that you have done now, may be done in every Cauſe that we may be trying. Upon your Evidence if you can prove them none, you go a great way.

Mr. *Thompſon.* My Lord, We deſire the Challenge may be allowed, or otherwiſe a Bill of Exceptions. My Lord, we pray a Bill of Exceptions.

Mr. Serj. *Jefferies.* This Diſcourſe is only for Diſcourſe ſake; I pray the Jury may be ſworn.

L. C. J. Ay, ay, ſwear the Jury.

Sir *Benjamin Newland*, &c. ſworn.

Mr. *Thompſon.* We challenge Mr. *Fenſil*, he hath given Evidence in this Cauſe at the Council-Table.

L. C. J. What then?

Mr. *At. Gen.* My Lord, They ſhall have all fair.

L. C. J. Mr. Attorney ſays he wont ſtand upon it.

Mr. *Thompſon.* My Lord, we pray a Bill of Exceptions.

L. C. J. I think many would not have offer'd it beſides you. Shall I go and ſign a Bill of Exceptions, to let all the World know this is ſo, and ſo all the World muſt try whether they be Sheriffs of *London.*

Mr. *Thompſon.* My Lord, don't ſay ſo, for I think all the Counſel in the Court would.

L. C. J. If it doth fall out that in truth they don't happen to be Sheriffs, ſurely you ſhall have all the Advantage that can be for you; but pray don't think that I will put off a Tryal upon every ſuggeſtion that the Sheriffs are not Sheriffs. You ſhall have all that is Law by the Grace of God, and I am not afraid that you or any Man ſhould ſay, I don't do juſtice: I am not bound to gratify every Man's Humour, I am to do according to my Conſcience, and the beſt of my Knowledge, and according to my Oath, and I will do that, and gratify no Man.

Sir *Benjamin Newland*	Jur.	*Henry Wagſtaff*
Sir *John Matthews*		*Barthol. Feriman*
Sir *John Buckworth*		*Thomas Blackmore*
Sir *Thomas Griffith*		*Samuel Newton*
Sir *Edmund Wiſeman*		*William Watton*
Percival Gilburne		*George Villars.*

Cryer.

O yes, O yes, O yes, If any Man can inform my Lord the King's Juſtice, the King's Serjeant, or the King's Attorney, or this Inqueſt now to be taken, &c.

Mr. *Dolbin.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, This is an Information brought by the King againſt *Thomas Pilkington,* &c.

Gentlemen, the Information ſets forth, *That upon the 24th of* June *laſt in* Guild-hall, *there was a Common Hall ſummon'd by Sir* John Moore *Knight, and thereupon held for the Election of Sheriffs for the Year then enſuing the Feaſt of St.* Michael: *And that on the ſame 24th of* June, *Sir* John Moore *then Mayor adjourn'd the Court till the* Tueſday *following by Proclamation. That after the ſaid Adjournment, my Lord Mayor made Proclamation for all Perſons to depart; and that the Defendants intending to diſturb the Peace of the King after the Adjournment aforeſaid, did Unlawfully, with many Perſons unknown, meet together, and Riotouſly aſſault the Lord Mayor. And after the Adjournment by Proclamation, two of the Defendants,* Pilkington *and* Shute, *by colour of their Office as Sheriffs of this City, and the reſt of the Defendants, did continue the Poll, and Unlawfully affirm*

to the People, That Sir John Moore *had no Power to adjourn them. And that they continued this great Tumult three hours, to the Terror of the King's Subjects, and the evil Example of others, and againſt the Peace of our Sovereign Lord the King. To this the Deſendants have pleaded* Not Guilty, *&c.*

Mr. *At. Gen.* This Information, my Lord, is brought for ſettling the Peace in this City, and to ſhew before you all who is the Supreme Magiſtrate under the King in this City; for that, Gentlemen, you ſee, is grown a great Queſtion, Whether my Lord Mayor is not only in the Hall, but in his Chair, the Supreme Magiſtrate?

Gentlemen, I muſt acquaint you, That my Lord Mayor in all times, even before the City had the Election of him, was the King's Lieutenant, and the Supreme Magiſtrate in the City, and no publick Aſſemblies could ever meet together without his Summons, he was the great and chief Director, and this I believe in all your Obſervations that are of the Jury. I can make it evident, that this hath been the conſtant Frame of this Government in the City: For the Sheriffs, Gentlemen, they are no Corporation Officers, they are County Officers, as in all the Counties of *England*, and they are the King's Officers for the Execution of the King's Writs, and the Preſervation of the King's Peace; but the Government of the Corporation is in the Mayor, and not in the Sheriffs. Gentlemen, The Queſtion now ariſing here's about the Election of Sheriffs it's true there were very diſorderly tumultuous Proceedings, my Lord Mayor he comes and doth appoint another day for them, and diſcharges them at that time. We will make appear to you, that it was always his Right in all times both to ſummon a Common Hall, and diſſipate it, and appoint them another day, or to diſſolve them, as the Mayor did ſee Cauſe. The Mayor having according to the ancient manner adjourned this Court, the Sheriffs they proceed, do not only refuſe to obey, but they proceed, and make Proclamation, that it is not in the Power of the Mayor, taking upon them that which never any Sheriffs did in any time, they make Proclamation contrary to what the Mayor had done, and continue the Poll, and proceed and proclaim the Mayor had uſurped that Power which was theirs, tho' afterwards they transfer'd the Supreme Power to the Livery Men; but I think no Age will ſuffer that the Supreme Power ſhould be in the Liverymen, that are expreſsly appointed to act by a Common Council, which is indeed the Repreſentative of the whole City. But this, Gentlemen, being done by the Sheriffs having uſurped the Power of the Mayor, they did proceed in a riotous manner, when the Mayor attempted to go out of the Hall they ſtruck him, ſtruck his Hat off, and preſſed ſeveral of the Aldermen, the Evidence will make out in what an outragious manner it was carried on. If the others had made oppoſition, how ſoon had all been in Confuſion upon this Uſurpation, that the Sheriffs had ſet up for themſelves, that they are the Delegates of the People, and muſt appear to be the Supreme Magiſtrates of the City of *London*, I think the Citizens themſelves will never endure, that thoſe that are but County Officers, ſhould ever invade the Government of the Corporation. Gentlemen, We will ſhew you the Particulars of this, and you have nothing to inquire after, but whether they are Guilty of the Riot or no.

Mr. *Sol. Gen.* My Lord, We will call our Witneſſes, and prove our Caſe by theſe ſteps. For the Queſtion that whether or no the Defendants in the Information were Guilty of a Riot, in continuing the Aſſembly after my Lord Mayor had adjourn'd them, we will prove it by theſe ſteps, that it is in the Power of the Lord Mayor to call a Common Hall, and adjourn the Common Hall; That, my Lord, when the Common Hall was aſſembled for the purpoſe of electing Sheriffs, that he did adjourn the Common Hall, and that contrary to his Adjournment the Sheriffs continued it, declaring my Lord Mayor had no Right ſo to do. And that afterwards my Lord Mayor commanded them to depart, and they continued their Aſſembly there in a very riotous manner, and as my Lord Mayor came down they offer'd Inſolencies to his Perſon, and they continued the Aſſembly there in a riotous manner, and commended the Sheriffs that did aſſert their Right, following them in a riotous manner into *Cheapſide*, crying out in a factious manner, *God bleſs the Proteſtant Sheriffs.*

Mr. Serj. *Jefferies.* My Lord, We would begin with our Witneſſes; but for the Gentlemen of the Jury, which I think are Men that belong to the City, and that the thing may be very intelligible, I beg leave to acquaint your Lordſhip with the methods that have always been proceeded in, in Choices of this nature. My Lord, We will make it appear, and I think it will not be doubted by any Man that knows the City of *London*, that Common Halls are always ſummon'd to appear by the intimation of the Mayor, of the Mayor himſelf at any time when he finds an occaſion, either for the aſſembling of a Common-Council, or the aſſembling a Common Hall, *&c.* Precepts are iſſued, they are Words that you, Gentlemen, do underſtand very well, to ſummon a Common Hall from time to time. It is very true, tho' they do uſually make Summons for *Midſummer-day*, yet *Midſummer-day* being a publick and notorious day for the Choice of ſome particular Perſons, they are not ſo continually exact in Summons, for they do preſume that every body takes notice of the day. But I am to give your Lordſhip an account, whereas in the Record there is only notice taken concerning the Sheriffs on *Midſummer-day*, it is notoriouſly known to all Gentlemen that are Inhabitants in *London*, there is a Choice of Chamberlain, and Auditors of the Bridge-Houſe and Chamber-Accounts down to Ale-conners, and that the Sheriffs of *London*, *quâ* Sheriffs of *London*, are no more in the Caſe than any private Man is. I do take notice of this, to give you an account that as ſoon as theſe Officers are diſpatched, I my ſelf had the Honour to ſerve the City ſome time, and know it very well, therefore I take the Liberty to explain it to ſome of theſe Gentlemen that are Foreigners. My Lord, as ſoon as ever this is done, (as it was frequent before People were ſo ambitious to come into the Office of Sheriffs, as they have been within two or three Years; for it was not known, till of late, that People were fond of the Office, there is a term they uſe, *To go a Birding*, as they call it, they did not ſeek for the Office as they have done of late) when there was any perſon came

off

off from ſerving, that is, paid a Fine of 400 *l.* for coming off, then the uſual method was to call another Common Hall; for they never made application to Mr. Sheriff, *Good Mr. Sheriff let us have a Common Hall*: But the common way was in time of Vacation (for in *Auguſt* there are no ſuch things as Courts of Aldermen held, Courts are not then held, except the Sheriffs Court) then to go to my Lord Mayor's houſe, and he appoints them to come to a Common Hall, a meeting for to chuſe ſuch and ſuch: He orders the Sword-bearer, or other Officer that is attendant upon his perſon in his houſe, to ſend forth Summons in order to ſuch a thing as the aſſembling a Common Hall, and there may be ſometimes but one Sheriff there; nay, I have known it ſometimes when there hath been never a Sheriff, and yet they have not thought they have wanted a Judge of that Aſſembly; but, my Lord, when all the matter is over, and perſons are declared to be choſen into this or that, or the other Office in the Common Hall, then an Officer of the City; not an Officer of the Sheriffs, but an Officer which is called by the name of the *Common Cryer*; he makes Proclamation upon the Huſtings, where my Lord Mayor is Judge, for all Gentlemen to depart for that time, and to give their attendance there at another Summons. And now, my Lord, to make the thing a little more intelligible, there is a difference between the Choice of the County Officers and the Corporation Officers; For at the Election of City Officers, the *Common Serjeant*, the *Common Cryer*, and Town Clerk, are the Officers that attend and manage the Common Hall, where my Lord Mayor is looked upon to be the Superintendent; but at the Election of Parliament Men, the Writ is directed to the Sheriffs, and they interpoſe in all the management, and then the *Common Serjeant* and *Common Cryer* have nothing to do, but at ſuch times the *Secondaries of the Compter*, which are Deputies to the Sheriffs, they come and manage the whole Affair. This I tell you, becauſe I have been pretty well acquainted with the Methods of the City. I do very well remember I had the Honour to ſerve the City of *London* at that time Sir *Robert Clayton* was Lord Mayor, and there was a great occaſion to try a Perſon about the Aſſaſſination of Mr. *Arnold*, and the Queſtion was, whether they ſhould proceed to a Poll or not, becauſe they were to go to the *Seſſions-Houſe* in the *Old Baily*, in order to the trying of that Perſon. That worthy Gentleman being then in the Chair, I had the Honour to ſit by him; ordered the Court to be adjourned for a day or two, becauſe they were to go to the *Seſſions*. There was no asking the Sheriff's Opinion when Sir *Robert Clayton* was *Lord Mayor*, nor there was no ſuch thing then; but now the Caſe was altered, for Sir *John Moore* was *Lord Mayor*. Now, my Lord, Sir *John Moore*, like a good Magiſtrate, endeavouring to preſerve the Priviledges of the Chair, there happened a Controverſie amongſt the Members of the Common Hall, whereby the publick Peace of the Kingdom might have been very much injured, as well as the Peace of the City much diſturbed. To prevent which, Sir *John Moore*, with the advice of his worthy Brethren the Aldermen, came upon the Huſtings, and found they were all in an uproar, and not cool enough for any Debate; for they were wound up to that height of Fury or Madneſs, that they had not a good word to beſtow upon their Magiſtrates, nor upon him whom their chief Magiſtrate did repreſent. For we muſt tell you, when they cried *Pray God bleſs the King*, as is uſual for the Officer upon ſuch Occaſions; many cryed, No, *God bleſs the Sheriffs*, the Proteſtant Sheriffs. Whereupon my Lord Mayor for preſervation of the Peace adjourned the Common Hall, and required the Members to depart and come down off the Huſtings; the Rabble, for by the way a great many of theſe perſons in this *Information*, as Mr. *Goodenough*, and the reſt of them, were not Livery-Men, nor concerned in the Election one way or other, but came there on purpoſe to foment and to raiſe up the Spirits and Malignant Diſpoſitions of a ſort of People that are Enemies to the Government; they came to foment Quarrels, and not maintain Peace. My Lord, when my Lord Mayor came off the Huſtings, they came upon him, had him down upon his Knees, and his Hat off, and if ſome Gentlemen had not come in, they had trod him under feet; ſuch an Indignity was then done to the Lord Mayor of *London*, who, I think I may ſay, deſerved as well from the Government of this City, as any Gentleman that ever preſided in that Office, that before had not been heard. My Lord, We will call our Witneſſes, to prove the manner of the Elections to be as I have opened it, and to prove the matter in the Information.——

Call the *Common Serjeant* and Mr. *Lightfoot*, the *Common Cryer* and the *Sword-bearer*.

Mr. *At. Gen.* Mr. *Lightfoot*, Pray give an account to the Jury and the Court of the manner of Election and chuſing of a Common Hall, and the manner of it.

Mr. *Lightfoot*. My Lord, I have been almoſt 25 Years an Attorney, I always took it that the Serjeant of the Chamber had order to go down to the Clerks or Beadles of the Companies, to ſummon a Common Hall by ſuch a day.

Mr. *At. Gen.* By whoſe Command?

Mr. *Lightfoot*. By my Lord Mayor's.

Mr. *At. Gen.* In all your time did the Sheriffs ever ſummon any?

Mr. *Lightfoot*. O no.

Mr. Serj. *Jefferies*. Pray Mr. *Lightfoot*, thus? When they were met, what was the uſual Method?

Mr. *Lightfoot*. Before the Lord Mayor and Aldermen were ſet, the People walked up and down the Hall till the Lord Mayor did come, but as ſoon as my Lord Mayor came, the *Common Cryer* made Proclamation, *O yes, you good Men of the Livery ſummoned ſuch a day for Election, and ſo draw near, and give your Attendance.*

Mr. *At. Gen.* Whoſe Officer was the *Common Cryer?*

Mr. *Lightfoot*. My *Lord Mayor*'s Officer.

Mr. Serj. *Jefferies*. A Corporation Officer.

Mr. *At. Gen.* Now for the diſſolving them.

Mr. *Lightfoot*. When they have done the buſineſs, Mr. *Town Clerk*, as I take it, takes his direction from the *Lord Mayor*, and he bids the Officer make Proclamation, *You good Men of the Livery, depart hence for this time, and appear at a new Summons.*

Mr. *At. Gen.* Did the *Sheriffs* ever diſſolve them?

Mr.

Mr. *Lightfoot*. Never.

Mr. *At. Gen*. Did the *Common Hall* do it?

Mr. *Lightfoot*. No, there was no ſuch thing.

Mr. *Jones*. Mr. *Lightfoot*, After my *Lord Mayor* had diſmiſs'd the Hall, did you ever hear the *Sheriffs* keep them together?

Mr. *Lightfoot*. All the People went away, till within this three or four Years.

Mr. *Jones*. Since when?

Mr. *Lightfoot*. Since Mr. *Bethel*, about that time.

Mr. Serj. *Jefferies*. Ay, in *Bethel* and *Corniſh's* time, then began the Buſtle.

Mr. *Williams*. You ſay you have been an Attorney 25 Years, I would ask you, in all that time, Mr. *Lightfoot*, in all that time did you ever know the Lord Mayor adjourn the Common Hall to a certain day?

Mr. *Lightfoot*. There was never any occaſion.

Mr. *Thompſon*. Anſwer my Queſtion.

Mr. *Lightfoot*. I never did.

Sir *Fr. Winn*. I would ask you another Queſtion, Mr. *Lightfoot*, Did you ever know before the Election was over, when the Electors were chuſing Sheriffs, or polling or debating it, did you ever know in the middle of it, the Mayor againſt the will of the Sheriffs adjourn it?

Mr. *Lightfoot*. No, no.

Mr. *Sol. Gen*. Did ever the Sheriffs undertake to keep them together before theſe late times?

Mr. *Lightfoot*. No, never.

Mr. *Thompſon*. Pray, Sir, this, Though it is uſual, after the Sheriffs have taken the Poll, to acquaint my Lord Mayor; Did you ever know that the Sheriffs have adjourn'd the Common Hall, without acquainting my Lord Mayor?

Mr. *Lightfoot*. No.

Mr. *Thompſon* I ask you one Queſtion more, Do you remember when there was a Poll between Sir *Thomas Stamp* and another?

Mr. *Lightfoot*. No, I do not charge my Memory with it.

Mr. *Thompſon*. Do you remember when there was a Poll between Sir *Robert Clayton* and Mr. *Kyffen*?

Mr. *Lightfoot*. I was about the Hall.

Mr. Serj. *Jefferies*. Do you remember when there was a Poll between Sir *Simon Lewis* and Mr. *Jenks*? Who did manage that Poll?

Mr. *Com. Serj*. I did.

Mr. *Williams*. Are you upon your Oath?

Com. Serj. Yes, I am.

Mr. *Lightfoot*. When they were gone to the Poll, I went out of the Hall.

Mr. *At. Gen*. Did you ever look upon it that the Sheriffs had any thing more to do than others?

Mr. *Lightfoot*. No.

Mr. *At. Gen*. Who were induced to take the Poll? Was it by the Sheriffs, or the Lord Mayor?

Mr. *Lightfoot*. I have been appointed by my Lord Mayor. I do know that the Sheriffs have taken upon them to appoint a Poll, and then my Lord appointed his Clerks in the Houſe to be aſſiſtant to the Common Serjeant, and the Town-Clerk; I never was but in two Polls, one for Mr. *Box*, and another for my Lord Mayor. One went on with the Poll in one place, and the other in another.

Mr. *At. Gen*. But before that time, Sir.

Mr. *Lightfoot*. I know nothing of that, Sir, I was never concerned before.

Mr. *Holt*. Pray, Sir, Who uſed to manage the Poll before this time?

Sir *Fr. Winn*. Mr. *Lightfoot*, I would ask you a Queſtion, Who managed the Poll before?

Mr. *Lightfoot*. I have been in a Common Hall when they have been chooſing Sheriffs, when ſeveral have fined. And it hath been upon the queſtion when the Hall hath divided, and they have Polled in the Hall.

Sir *Fr. Winn*. Who Polled them?

Mr. *Lightfoot*. The Sheriffs and the Officers ſtood and ſaw them go out, and this is within theſe few Years.

Sir *Fr. Winn*. Mr. *Lightfoot*, I ask you thus, now in all your Obſervations, when there was any Conteſt, who was Sheriff upon the Election and the Diviſions during the time of Election, and before it were at an end, who did manage it, the Sheriffs, or the Lord Mayor?

Mr. *Lightfoot*. When the Court had been proclaimed, and the Recorder had ſpoken to them, my Lord Mayor and the Aldermen withdrew from the Huſtings, and the Sheriffs and other Officers ſtood there with them; then the Commons propoſed who they would have put in nomination, and they were put up; then the Sheriffs have turned back to the Gentlemen upon the Huſtings to ask their Opinions, how are your Opinions concerning the Hands? We do think it goes ſo; then it hath been declared.

Sir *Fr. Winn*. By whom?

Mr. *Lightfoot*. The Common Cryer, or the Common Serjeant.

Sir *Fr. Winn*. You ſay, as ſoon as my Lord Mayor withdrew, during the time of Election, the two Sheriffs managed the Hall.

Mr. *Lightfoot*. In that manner with others.

Sir *Fr. Winn*. Mr. *Lightfoot*, Do you remember who Adjourned the Hall, when Mr. *Bethel* and Mr. *Corniſh* were Choſe?

Mr. *Lightfoot*. I can't tell.

Mr. Serj. *Jefferies*. Mr. *Com. Serj*. Are you ſworn?

Mr. *Com. Serj*. Yes.

Mr. Serj. *Jefferies*. Pray will you tell my Lord and the Jury what you have obſerved in particular, becauſe I mentioned it in the time o Sir *Robert Clayton*; mention how that was.

Mr. *Com. Serj*. My Lord, when the Common Cryer hath made Proclamation, the Lord Mayor and Court of Aldermen being ſet upon the Huſtings, Mr. Recorder makes a Speech; as ſoon as that is done, my Lord Mayor and the Aldermen retire into this Court, leaving the Sheriffs and me, and the reſt of the Officers upon the Huſtings, and I there manage the Election, and when the Election is made, I go up to the Court of Aldermen, and make Report of what hath been done in the Hall. I declare the Election, and I manage the Election, and do it as the Duty of my Place.

Mr. *Williams*. Who manages the Election?

Mr. *Com. Serj*. I manage the Election; I declare what is my opinion of the Election in the Hall; and I come and make Report to my Lord Mayor in this Court; then my Lord Mayor and the Aldermen, and the Recorder come down again. I remember particularly when Sir *Robert Clayton* was Lord Mayor, it was about the Choice of Mr. *Bethel* and Alderman *Corniſh*, and there was a great diſturbance in the Hall; then I came into the Court, and after I had made my Report, I offer'd to give the Paper to the Recorder

corder that then was: Sir *George Jefferies*, He told me that the People would not hear him, and therefore he wou'd not take the Paper. Upon that Sir *Robert Clayton* ſaid to me, Prithee, do thou ſpeak to them, they will hear thee if they will hear any body; for the Hall was in a great Uproar, and they call'd to throw me off the Huſtings, and then I made Anſwer to Sir *Robert Clayton*; Sir, It is not the duty of my Office, and when I do any thing that is not my Office, I ſhall expect particular Directions. Then, ſaith he, you muſt tell them, I muſt Adjourn them till *Monday*, becauſe I go to the *Old Baily* to try the Aſſaſſinates of *Arnold*. Thereupon the Hall was Adjourned, and Proclamation made to depart; and my Lord Mayor attempting to go, was beat back twice or thrice, but at laſt they let him and the Aldermen go, and kept the Sheriffs and me till Evening. At laſt Mr. *Papillon* came up to me, Mr. *Papillon*, ſays I, I am glad to ſee you, you will hear Reaſon, ſays he, why do not you go on with the Poll? I told him, my Lord Mayor had Adjourned the Hall: Says he, I did not hear it before; but now you tell me ſo, I will go out of the Hall: Says I, Sir, you will do very well to tell the Hall ſo; which he did, and ſome went away; and further Adjournments were made by the Direction of my Lord Mayor.

Mr. *At. Gen.* I would ask you a Queſtion or two: Who do you look upon to be the Chief Magiſtrate of the City?

Mr. *Com. Serj.* My Lord Mayor, Sir.

Mr. *At. Gen.* Pray, in all your time till this, was there no Uproar? Did ever any Sheriff undertake to controul the Mayor in the buſineſs of putting Queſtions, or taking Votes?

Mr. *Com. Serj.* Sir, there was never any Diſpute till Mr. Sheriff *Bethel* was upon the Huſtings, and then there was.

Mr. *At. Gen.* As whoſe Officer did you do it?

Mr. *Com. Serj.* My Lord Mayor's, and the City of *London*'s; I have nothing to do with the Sheriffs, for when there is a Writ comes for the Choice of Parliament-men, directed to the Sheriffs, I never do it, but Mr. *Secondary*.

Mr. *At. Gen.* I ſpeak of later Diſturbances.

Mr. *Com. Serj.* The firſt Diſpute about Sheriffs, ſince I was Common Serjeant, was about Mr. *Jenks*, and that Poll was taken by the direction of the Lord Mayor, by the Town Clerk and my ſelf; and our Books ſay, If there be a Diſpute in the Common Hall, it muſt be decided as in the Common Council. It is in *Liber albus*.

Mr. *At. Gen. Liber niger*.

Mr. Serj. *Jefferies*. No, *Liber albus*.

Mr. *At. Gen. Liber albus?* It is *Liber niger*, they turn the white Book into a black Book now.

Sir *Fr. Winn.* At that time, Sir, when my Lord Mayor was willing to go to the *Old Baily*, Did the Sheriffs do any thing farther?

Mr. *Com. Serj.* The Sheriffs did not meddle in the matter.

Mr. Serj. *Jefferies*. Mr. *King*, Pray give my Lord and the Jury an account of what you know of this matter.

Mr. *Peter King*. I have been at a Court of Common Hall 28 Years, my Lord, and have been concerned, I never looked upon the Sheriffs to have any concern there. And I do very well remember, Sir *George Jefferies*, I do remember and know; they did always in ancient times take advice of the Officers by, and they never did eſteem themſelves in thoſe days, to be any more concerned than as the beſt Officers to be preferred before the reſt: When my Lord ſays, Come up, they come in order, the Maſters and Wardens of the Companies.

Mr. *At. Gen.* Who did do the buſineſs upon the Huſtings?

Mr. *King*. All of them, Sir, altogether.

Mr. *At. Gen.* Was there never any difference about the Votes?

Mr. *King*. Sometimes they have ſtood upon it.

Mr. *At. Gen.* When there was a Queſtion made to know who had the moſt, who decided it?

Mr. *King*. They generally asked one another, What do you think, and what do you think? I ſpeak for 20 Years together ſince the King came in.

Mr. *At. Gen.* I hope in God there hath been a King in *England* for 20 Years, tho' perhaps ſome of the Sheriffs that were then in Debate, would have had none.

Mr. *Thompſon*. Mr. *King*, I only deſire to know this of you, becauſe I know you know Queſtions; I deſire, my Lord, to know whether he ſpeaks it to be a matter of Right, or his Opinion; for we know Mr. *King*'s Opinion will go a great way in this matter. Do you ſpeak it as a thing of Right, or as your Conceptions?

Mr. *King*. Sir, It would be a thing very confident in me to determine of the Right, but only as I always eſteem'd it.

Mr. Serj. *Jefferies*. Mr. *King*, I would ask you this Queſtion; Pray do you tell your Belief upon the Obſervation that you have made from time to time of the Practice there?

Mr. *King*. An hundred and a hundred Common Halls I believe I have been at.

Mr. *Thompſon*. That's good ſtore.

Mr. Serj. *Jefferies*. That may be when there are many Fines; when I was Common Serjeant there were 5000 Pounds Fines one Year.

Sir *Fr. Winn.* I deſire you to give your Opinion, you ſay they are all equal that are there.

Mr. *King*. Every Officer in his degree; for if 20 Men go together, he that is beſt ſpeaks firſt.

Mr. *At. Gen.* Were the Sheriffs allowed to be there, or no?

Mr. *King*. The Sheriffs are always bound to attend my Lord Mayor by their Oaths, unleſs they have lawful Excuſe.

Mr. *Jones*. Mr. *King*, Did the Sheriffs ever continue the Aſſembly after it was diſſolved?

Mr. *King*. No, Sir.

Mr. *Jones*. Or could they do it?

Mr. *King*. I can't ſay that.

Mr. *Thompſon*. Did you ever know my Lord Mayor Adjourn the Court till the Hall had done?

Mr. *King*. I can't tell.

Mr. *Thompſon*. I tell you, Sir, Sir *Samuel Starling* did.

Mr. Serj. *Jefferies*. But the Sheriffs could not do it.

Mr. *Thompſon*. Nor he neither, for he paid for it.

Mr. *Holt*. Mr. *King*, I ask this Queſtion; Who declares the Poll in the Hall?

Mr. *King*. The Common Serjeant.

Mr. *Holt*. Who directs him uſually?

Mr. *King*. His Office directs it ſelf.

Mr. *Holt*. I ask if the Sheriffs don't agree, who

who is elected before the Common Serjeant make Proclamation?

Mr. *King*. They always agree, unleſs it be very clear; I have known the Common Serjeant do it ſeveral times without diſputing.

Mr. *Com. Serj*. When Perſons are put in Nomination, and the Hands are held up; I generally ask the People about me, Who have moſt, and particularly the Sheriffs, and ſo make Declaration.

L. C. J. The Officers ask one another, who they think has moſt? That doth not give them the Juriſdiction, that they chuſe Officers without the Lord Mayor or Sheriffs: But, for ought that I ſee, theſe Officers have had more to do about the Choice than the Sheriffs have. Theſe Officers conſult one with another commonly, and conclude which Side have moſt; and then report it to my Lord Mayor.

Mr. Serj. *Jefferies*. Firſt of all, when they put any Queſtion for any Officer in the Common Hall, the uſual way of putting the Queſtion is, *As many of you as would have ſuch a Man to be ſuch an Officer, hold up your Hands:* And if the Election be clear, Proclamation is made preſently: If not, the Common Serjeant asks, *Who they think hath the Majority?* Which being declared, they acquieſce. But ſince Mr. *Bethel* came in, there have been very hot Diſputes in the World; but before his Time there were Attempts made to keep Sheriffs off, but never before to get Sheriffs on. And after the Election is declared below, immediately they go to my Lord Mayor, and report it to him: And then comes down the Mayor and Aldermen to the *Huſtings*, and the Recorder ſays, *We are informed that ſuch and ſuch Perſons have been put in Nomination, and the Election paſſed upon ſuch and ſuch.* And then the Lord Mayor commands the Aſſembly to be diſſolv'd.

Mr. *Wells*. When the common Hall is firſt met together, are not the Lord Mayor and Aldermen generally preſent?

Mr. *Com. Cryer*. At the firſt meeting.

Mr. Serj. *Jefferies*. When they are there ſet, give an Account what Proclamation is there made.

Mr. *At. Gen*. How long have you known it?

Mr. *Com. Cryer*. I have been in this Place almoſt ſeventeen Years; I always come with my Lord Mayor; I do make Proclamation by Order of my Lord Mayor, dictated by the Town-Clerk; and I take the Words from the Town-Clerk, and his Words I ſay; *You good Men of the Livery, ſummoned to appear here this Day, for the Confirmation of ſuch a one choſen by my Lord Mayor, and another fit and able Perſon to be Sheriffs of the City of* London, *and County of* Middleſex *for the Year enſuing, draw near, and give your Attendance.* I never adjourned the Court in my Life, but by Order from my Lord Mayor; nor never diſſolved the Court, but by Order from my Lord Mayor.

Mr. Serj. *Jefferies*. Mr. *Common Cryer*, I would fain know this; When my Lord Mayor is gone, and the Aldermen, during the Election, do you ever diſmiſs the Court before my Lord comes down again; and do not you take the very Words of Diſſolution from the Town-Clerk?

Mr. *Com. Cryer*. I do ſo.

Mr. Serj. *Jefferies*. And what is uſual in your Time when Sheriffs have fined off, who gives Directions for a Common Hall?

Mr. *Com. Cryer*. My Lord Mayor, Sir.

Mr. *At. Gen*. Who is it puts the Queſtion, the Common Serjeant or the Cryer?

Mr. *Com. Cryer*. The Common Serjeant dictates the Words to me, and I never take them from any other; I have taken the Paper into my own Hands, but never but one Year neither, when they were in a Confuſion; the Time when Mr. *Bethel* was choſen there was ſome Difference, I did read the Names that Time, and never but that one Time. I always take the Words from the Common Serjeant; I never put any Vote, but what I have from the Common Serjeant.

Mr. *At. Gen*. Do the Sheriffs put any Vote?

Mr. *Com. Cryer*. Never, Sir.

L. C. J. I do not underſtand him; I think he did mean, when *Bethel* was choſen he put the Queſtion by ſome body elſe.

Mr. Serj. *Jefferies*. No, no, he took the Paper in his Hand. Before he uſed to take Dictates from the Common Serjeant; but there was a Confuſion when *Bethel* was choſen, and then he took the Paper from the Common Serjeant, and read it.

Mr. *Com. Cryer*. He gave the Paper into my Hand.

Mr. *Com. Serj*. My Lord, they made ſuch a noiſe that he could not hear me.

Mr. *Williams*. Mr. *Wells*, how long have you been Common Cryer?

Mr. *Com. Cryer*. About ſeventeen Years.

Mr. *Williams*. In all that time did you ever hear the Lord Mayor adjourn the Court to a certain Day?

Mr. *Com. Cryer*. Yes.

Mr. *Williams*. To a certain Day?

Mr. *Com. Cryer*. My Lord Mayor adjourn'd this Common Hall to a certain Day.

Mr. *Williams*. I ask you upon your Oath again, Did you ever know the Lord Mayor adjourn a Common Hall to a Day certain?

Mr. Serj. *Jefferies*. Do you remember that of Sir *Robert Clayton*'s?

L. C. J. If ſo be they be adjourned, to meet upon a new Summons, if there be occaſion, no queſtion but he may to a certain Day.

Mr. *Williams*. Now we are upon matter of Fact.

Sir *Fr. Winnington*. Did you ever know my Lord Mayor adjourn them before the Election of Sheriffs was over? Here is my Queſtion, obſerve it. When after once my Lord Mayor is gone out of the Hall, when the Election begins, did you ever know my Lord come and diſturb the Election, or adjourn it before it was done?

Mr. *Com. Cryer*. I never knew any thing of it before now.

Mr. *At. Gen*. Mr. *Wells*, do you remember that Inſtance in Sir *Robert Clayton*'s time?

Mr. *Com. Cryer*. No, Sir.

Mr. *At. Gen*. Have not you known my Lord Mayor diſſolve the Court before the Buſineſs hath been done; take up his Sword and be gone?

Mr. *Com. Cryer*. When he hath a mind to adjourn the Court, and declare it, I adjourn it by his Order.

Mr. *At. Gen*. But have you not known him take up his Sword, and be gone before the Election is over?

Mr. *Com. Cryer*. Sir *Robert Clayton* did do that before the Buſineſs was done.

Mr. *Thompſon*. Mr. *Wells*, Do not you remember,

in

in Sir *Samuel Starling*'s Case, that he did adjourn the Hall?

Mr. *Com. Cryer.* He dissolved the Hall.

Mr. *Thompson.* Very well.

Mr. Serj. *Jefferies.* He did dissolve the Hall, and so hath every Lord Mayor since. My Lord, if your Lordship please, I perceive this Gentleman makes a Question, Whether ever there was an Adjournment of a Common Hall before such a time as the Election of Sheriffs was over. I will give you an Answer to that Question, and a very fair one, and a plain one: I say, till the time of *Bethel*, in Sir *Robert Clayton*'s Mayoralty, there was never such a thing as a Poll for Sheriffs.

L. C. J. Silence, that we may hear.

Mr. *Williams.* My Lord, we only ask a Question; we ask a Question, and take our Answer.

Mr. Serj. *Jefferies.* Will you give us leave to go on, Sir?

Mr. *At. Gen.* Sir *William Hooker*, Pray how long is it since you were Sheriff of *London*?

Sir *William Hooker.* About 16 or 17 Years ago.

Mr. *At. Gen.* You have been Sheriff and Lord Mayor of *London*, I would only know, whether you looked upon it as your Right when you were Sheriff?

Sir *William Hooker.* No, nor ever durst presume to think it: In those days it was not thought upon.

Mr. *At. Gen.* When you were Lord Mayor, did you order Summons for Common Halls?

Sir *William Hooker.* Always.

Mr. *At. Gen.* Did you ever use to consult with your Sheriffs when to call a Common Hall?

Sir *William Hooker.* Never, and I think no such thing was ever heard of under the Sun, till of late.

Mr. *Thompson.* Sir *William Hooker*, did you ever adjourn the Court before the Business was done?

Sir *William Hooker.* I never saw any such Occasion, Rebellion was not ripe then.

Mr. *At. Gen.* Sir *William*, Pray thus; Have you ever in a common Council, or Common Hall, known my Lord Mayor rise before the Business was done, and take his Sword?

Sir *William Hooker.* I confess I must own it, That when Things grew to a greater height, I was forced once in this Place to cause the Sword to be taken up and go out, and the Court was dissolved, and durst not go on after I was gone.

Mr. Serj *Jefferies.* Now, my Lord, if your Lordship please, I desire to call the Sword-bearer.

Mr. *Williams.* Sir *William Hooker*, If I may, without Offence ask you, How old are you?

Sir *William Hooker.* Seventy Years of age, Sir.

Mr. *Williams.* You say, you never knew Rebellion ripe?

Sir *William Hooker.* Good Sir, I perceive you are very apt to mistake, I lived in 41 and 42.

Mr. *At. Gen.* Sir *William*, Can you remember the Meeting in 48?

Sir *William Hooker*, Ay, very well.

Mr. *At. Gen.* Then they usurped the very same Power, and an Act of Parliament to confirm it.

Mr. Serj. *Jefferies.* My Lord, I desire Mr. Sword-Bearer may be Sworn.

Sir *Fr. Winnington.* Pray, Sir, in all the time that you have been acquainted with the Customs of *London*, did you ever know when there was an Election for Sheriffs, that the Lord Mayor did interpose or meddle till the Election was over?

Sir *William Hooker.* Sir, of late Years I have not appeared, because of an Infirmity, I cannot be long in *London*; but in all that time I used to appear, I never did observe any such thing.

Sir *Fr. Winnington.* That the Mayor ever meddled?

Sir *William Hooker.* Nay, Sir, that the Sheriffs ever meddled: When I was Sheriff of *London*, I durst not presume to meddle, but left the whole to my Lord Mayor.

Sir *Fr. Winnington.* Did you ever know, when the Election of Sheriffs was in a Common Hall, that the Lord Mayor offered to disturb them till the Election was over?

Sir *William Hooker.* Truly I do not remember any such thing. Sir *Fr. Winnington*, I would give you a full Answer, I do tell you, as it hath been declared; My Lord Mayor and the Aldermen come into the Court, and a Report is made; when this is done, they leave the management of the Affair to others, we come and sit down till it is done.

Sir *Fr. Winnington.* To whom do you leave the Concernment?

Sir *W. Hooker.* To the Officers that it belongs to.

Sir *Fr. Winnington.* Who are those Officers?

Sir *W. Hooker.* I never heard it disputed till just now.

Mr. *Jones.* Sir *W. Hooker*, You have been an ancient Citizen, Do you remember that ever the Sheriffs presumed to hold this Court?

Sir *W. Hooker.* No, never in my life. —You may confound any Man at this rate.

Mr. *Williams.* Pray, Sir, in your time was there a Poll for Sheriffs in *London*?

Sir *W. Hooker.* Truly not as I remember.

Mr. *Williams.* Do you remember any Poll in your time? If you don't remember a Poll, you can't remember who took it.

Mr. *Sol. Gen.* Pray, Sir *William Hooker*, do you ever remember the Sheriffs appointed the Common Serjeant to take the Poll?

Sir *W. Hooker.* Never in my life.

Mr. Serj. *Jefferies.* Mr. Sword Bearer, I won't ask you how old you are; I desire to know how long you have been an Officer in this City?

Mr. *Sword-Bearer.* Three and twenty Years.

Mr. Serj. *Jefferies.* I desire to know in all your time, who ordered Common Halls? Who gave Direction for the summoning Common Halls?

Mr. *Sword-Bearer.* My Lord Mayor always.

Mr. Serj. *Jefferies.* Did my Lord Mayor use to send for the Sheriffs, to know of them when they would be pleased to have a Common Hall?

Mr. *Sword Bearer.* I never knew that the Sheriffs did interpose in calling a Common Hall in my Life.

Mr. Serj. *Jefferies.* Mr. *Sword-Bearer*, at such time as the Business was done, when the Common Cryer had Directions for dissolving the Common Hall, pray who used to give these Directions all along?

Mr. *Sword-Bearer.* It was done by the Town-Clerk and my Lord Mayor's Officers.

Mr. Serj. *Jefferies.* Did ever the Sheriffs continue the Hall after my Lord Mayor had adjourned it?

Mr. *Sword-Bearer.* Truly I know no such thing.

Mr. *Thompſon.* Mr. *Sword-Bearer*, I would ask you one Queſtion; If in caſe the Common Serjeant, or the Common Cryer, or any other Officers do put a Queſtion that the Commons would not have put, who orders them to put the right Queſtion?

Mr. *Sword-Bearer.* I can't ſay any thing to that.

Mr. *At. Gen.* After the Common Serjeant comes up and reports what is done, then what doth my Lord Mayor do?

Mr. *Sword-Bearer.* My *Lord Mayor* and the *Aldermen* go down to the Huſtings, and it is declared by the Recorder, or the Common Serjeant, by the order of my *Lord Mayor.*——I think my *Lord Mayor* went once down to give them ſome ſatisfaction upon a diſpute.

Sir *Fr. Winn.* Mr. *Man*, during the Election did you ever hear them adjourn'd before it was over?

Mr. *Sword-Bearer.* No, Sir, nor never heard any occaſion for it.

Mr. *Williams.* The *Common Serjeant* affirms himſelf to be a Servant to the *Commons*, and not to the *Lord Mayor* and *Aldermen*; have you known a Common Serjeant ſay, he was a Servant to the *Commons*, and not to the *Lord Mayor* and *Aldermen*?

Mr. *Sword-Bearer.* I never was in a Common Hall upon any ſuch diſpute, I am with my Lord Mayor.

Mr. Serj. *Jefferies.* I have known a Recorder reprehended by a very learned Lawyer, for ſaying, *My Maſters the Aldermen.*

Sir *Fr. Winn.* I ask you who hath the management of the Common Hall in the abſence of the Mayor?

Mr. *Sword-Bearer.* I am always here waiting upon my Lord Mayor.

Mr. Serj. *Jefferies.* My Lord, if your Lordſhip pleaſe, we will reſt here as to point of Right: Now, my Lord, in the next place we will come to that which is a more immediate Queſtion before you, and we will prove the manner of it, and the perſons that are guilty; for that is the next ſtep we are to go,——Mr. *Bancroft.*

Mr. *Williams* My Lord, they have laid in the Information, That the Sheriffs are duly Elected for one year next following, from the Eve of St. *Michael*; now prove your Election to be for that year you have laid in your Information.

Mr. *Thompſon.* My Lord, they have certainly in Fact miſtaken their Information. My Lord, They do declare that the Common Hall was held, according to Cuſtom, for the Election of Sheriffs, to hold that Office from the Eve of St. *Michael*, for the year next enſuing: Now, my Lord, that is not ſo in Fact, nor never was, for the Election is for a year to commence on *Michaelmas* Day. They take on the Eve the Office upon them, but they do abſolutely exerciſe the Office for a Year from that time, from the Eve. Now, my Lord, we ſay, that Day is excluded; we are ſure it is a Common Caſe, it is known very well; as in a Leaſe, the *Habendum* from any Date, the Day of the Date is no part of that Leaſe, it is excluſive and no part of the Term, and therefore, my Lord, if they do not prove it as they have laid it, we hope they will be non-ſuited.

Mr. *Sol. Gen.* That is another piece of Law.

Mr. *Holt.* The Eve of *Michaelmas* Day, we make this Objection, and put you to prove it.

Mr. Serj. *Jefferies.* Give us leave to go on: Gentlemen, let us prove what we think fit, and if we have not made it out, then make your Exceptions.

Mr. *Holt.* Mr. Serjeant, I think it is proper to put it now, for if there be no ſuch Election, there can be no ſuch Riot; for they have made it a Riot in a ſpecial manner.

Mr. Serj. *Jefferies.* Mr. *Holt*, under your favour, it is not a time now.

Mr. *At. Gen.* This is the oddeſt way theſe Gentlemen take upon them ſo: I will not prove it; and pray be quiet till I come to my time.

Sir *Fr. Winn.* Pray, Mr. *Attorney*, if we have an Objection to make, if the Court pleaſes we may be heard.

Mr. Serj. *Jefferies.* Certainly it was never known, that when Mr. Attorney exhibited an Information, to tell us how to prove it. Surely, Gentlemen, you will give us leave to go on with our Proof, won't ye?

Mr. *Molloy.* Mr. *Bancroft*, How long have you been a Servant of the City? By whoſe Order was the Hall ſummoned?

Mr. *Bancroft.* By my Lord Mayor's.

Mr. Who hath diſſolved them?

Mr. *Bancroft.* My Lord Mayor.

Mr. Did you ever know the Sheriffs give any Order for the diſſolving of it?

Mr. *Bancroft.* No.

Mr. *Thompſon.* Did you ever know it diſſolved before the buſineſs was done for which they were call'd? Did my Lord Mayor in your time either diſſolve them, or ſend them going, till the Election was over?

Mr. *Bancroft.* I can ſay nothing to that.

Mr. *At. Gen.* Mr. *Bancroft*, I would ask you this, Sir, Did the Sheriffs ever continue the Hall after my Lord Mayor had diſſolved it?

Mr. *Bancroft.* No, I never knew that in my life.

Sir *Fr. Winn.* Mr. *Bancroft*, I would ask you a Queſtion, I don't ask you who calls them, or bids them go home, during the time of the Election did my Lord Mayor ever meddle?

Mr. *Bancroft.* My Lord Mayor withdraws.

Sir *Fr. Winn.* Who are thoſe among the Commons that manage the buſineſs when my Lord Mayor withdraws?

Mr. *Bancroft.* The Sheriffs, and the Common Serjeant, and the Common Cryer.

Sir *Fr. Winn.* Who manages the Election? Who declares the Election? Who declares who is choſen?

Mr. *Bancroft.* When the Election is made below, then the Sheriffs come up, and the Common Serjeant, and the Common Cryer along with them, and acquaint my Lord Mayor, and he goes down, and there doth confirm the Election, and withal, when the work is done he diſſolves the Court.

Mr. *Williams.* Did you ever know a Poll for Sheriffs?

Mr. *Thompſon.* Do you take the Common Serjeant to be an Officer of the Commons of *London*, or an Officer of my Lord Mayor's?

Mr. *Bancroft.* I cannot be certain what he is.

Mr. *Thompſon.* If in caſe the Common Serjeant differ from them in declaring the Poll, is it not uſual for the Common Hall to order him to put it up again?

Mr.

Mr. Serj. *Jefferies.* Who does make a Judgment of the Election, the Common Serjeant, or the Sheriffs?

Mr. *Bancroft.* The Sheriffs.

Mr. Serj. *Jefferies.* Does not the Common Serjeant make Obſervation as well as the Sheriffs?

Mr. *Bancroft.* The Sheriffs give their Opinions in it.

Mr. Serj. *Jefferies.* Now, my Lord, if your Lordſhip pleaſe, if they had done, we would deſire to go on to our Fact, for otherwiſe for ought I perceive, we ſhall be in here till this time to morrow, and they ſay, we muſt not adjourn till the Cauſe is over.——Mr. Common Cryer; heark you, Mr. Common Cryer, were you preſent at *Midſummer* Day when this buſineſs happened? Give my Lord and the Jury an account of the carriage then.

Mr. *Com. Cryer.* I was there at the beginning of the Election, I did make Proclamation, and afterwards there was a Poll demanded, and the Poll was begun, and I went home with my Lord Mayor, afterwards my Lord Mayor came back again, and there was a Hubbub; but about 5 or 6 a Clock, my Lord Mayor came down upon the *Huſtings*, and I adjourn'd the Court till another day; I did adjourn it by his order, according as I uſed to do, and then I went away with my Lord Mayor.

Mr. *At. Gen.* But what uſage had you in going out?

Mr. *Com. Cryer.* I went before my *Lord Mayor*, I was not with him.

Mr. *Williams.* Where was the Adjournment?

Mr. *Com. Cryer.* Upon the Huſtings.

Mr. *Williams.* Were the Sheriffs Polling the People then?

Mr. *Com. Cryer.* I don't know that, Sir.

Mr. *Williams.* Were the Sheriffs near the Huſtings?

Mr. *Com. Cryer.* I don't know, I ſaw them not.

Sir *Fr. Winn.* Upon the Election of them, when my *Lord Mayor* came to adjourn the Court, were the Sheriffs acquainted with it? Where were the Sheriffs?

Mr. *Com. Cryer.* My Lord Mayor ſent to them.

Mr. Serj. *Jefferies.* Mr. *Weſton*, Pray will you tell my Lord and the Jury, what Directions you had from my *Lord Mayor*, and how he was uſed when he came out of the Hall?

Mr. *Weſton.* My *Lord Mayor* ſent me, my Lord, to the Sheriffs under the *Lumbard-Houſe* twice to come up to the Council-Chamber, and they told me: One told me he was upon the King's Buſineſs; and the other ſaid he could not come; and about half an hour after, my Lord, Sheriff *Pilkington* came up to my *Lord Mayor* into the Council-Chamber, and then immediately came down to the Court of Huſtings, and Mr. Common Cryer by my *Lord Mayor's* Order, did adjourn the Court from *Saturday* till *Tueſday* following, and as we were coming out of the Hall, when Mr. Common Cryer had adjourn'd the Court, and ſaid, *God ſave the King*, a great part of the Hall hiſs'd; and, but that there were ſo many honeſt Gentlemen about my Lord, I was afraid my Lord would have come to ſome miſchief; but coming to go into the Porch-yard, I ſaw his Hat off, and I went to catch his Hat, and caught one of his Officers by the Head, that was knocked down, or fell down, that held up his Train. My Lord, the Sword was at that diſtance, farther than it is between your Honour, and where I ſtand, and crouded far away; and when my Lord came out into the Yard; Gentlemen, ſays he, I deſire you would go home to your Lodgings, and commanded them in the *King's Name* to depart: and ſays he to me, Pray go you back, and let the Sheriffs know, and tell them I have adjourn'd the Court to *Tueſday*. Upon my Lord's Command, I went back to let the Sheriffs know, that my Lord had adjourned the Court till *Tueſday*.

Mr. Serj. *Jefferies.* Both of them, both *Shute* and *Pilkington*?

Mr. *Weſton.* No, *Shute*, t'other was by.

Mr. Serj. *Jefferies.* It was in his hearing, was it not?

Mr. *Weſton.* It was in his hearing.

Mr. Serj. *Jefferies.* Did you ſee my *Lord Mayor* down, and his Hat off?

Mr. *Weſton.* I ſaw his Hat off, Sir *George*, but I can't tell how it came off.

Mr. *Williams.* You ſay, you ſaw my Lord's Hat off, can you tell whether my Lord was ſo courteous to take his Hat off or no?

Mr. *Weſton.* I dare ſay, my Lord did not.

Mr. *Williams.* Did he, or no? I ask you upon your Oath?

Mr. *Weſton.* I can't tell that, Sir.

L. C. J. I can't think that thoſe Gentlemen were ſo extraordinary civil to my *Lord Mayor*, that when the *Common Cryer* made Proclamation, *God ſave the King*, that there ſhould be hiſſing; thoſe that hiſſed were not extraordinary civil to my *Lord Mayor*, and I believe you don't think ſo neither.

Mr. *Williams.* I ask you a Queſtion, my *Lord Mayor's* Hat was off——

L. C. J. Ay, and it muſt be ſuppoſed it was to Complement thoſe fine men that hiſs'd at *God ſave the King*.

Mr. Serj. *Jefferies.* My Lord, if your Lordſhip pleaſes, I would deſire to know what account any of them can give of the opinion they had of the King, to be ſure they had a great opinion of his Repreſentative: But my *Lord Mayor* I find was ſo extraordinary civil, that to this Rabble he muſt not only pull off his Hat, but fling his Hat on the ground to them.

Mr. *Thompſon.* I ask you whether you know that any of the Defendants in this Information did throw my *Lord Mayor's* Hat off, or no?

Mr. *Weſton.* I can't ſay that.

Mr. Serj. *Jefferies.* It is not a farthing matter.

Sir *Fr. Winn.* Here is a mighty Riot upon the Hat.

Mr. *Weſton.* Now I deſired them to keep back; my *Lord Mayor's* Friends did preſs back as much as they could, to preſerve my *Lord Mayor*; they preſt more forward, as the other kept back, and I deſired them to forbear; nay, commanded them in the *King's Name*, and upon their Peril, and took my Cane to ſtrike at ſome of them.

Mr. *Williams.* Did you?

Mr. Serj. *Jefferies.* He ſerved them well enough.

L. C. J. He did ſo. Do you think a Magiſtrate is to be crouded and preſt upon?

Mr. *Weſton.* I ſtruck at them, and ſaid, Gentlemen, keep back, and entreated them and commanded them, and all would not do.

Mr. Serj. *Jefferies.* I would only ſay this, Mr. *Com Serjeant*; What did you hear when Proclamation was made to depart?

Mr. *Com. Serj.* My Lord, I was not in the Hall when Proclamation was made, but I heard them cry out, *No God bleſs the King*; and I heard them cry out, *Down with the Sword*; *No Lord Mayor, no King.*

Mr. *Williams.* Can you name any Perſon that ſaid this?

Mr. *Com. Serj.* My Lord, I laid hold on one Man that cryed, *No God ſave the King*; *No Lord Mayor*, and the Rabble got him from me, one that I heard ſay ſo.

Mr. *Williams.* Mr. Common Serjeant, you ſay, you heard this; can you name any Perſon?

Mr. *Com. Serj.* I tell you I caught hold of him, and the Rabble got him from me.

Mr. *Williams.* Can you name any one?

Mr. *Com. Serj* I tell you I cannot.

Mr. Serj. *Jefferies.* My Lord, I hope that will not much prevail in this Place, but I hope it doth juſtify my Lord Mayor, for endeavouring to diſperſe the Rabble that came together to that height when the King was *prayed for*, to cry out, *No King, No Lord Mayor.* And we don't give this in Evidence againſt any one Perſon, for it was done in a tumultuous manner; but they were ſo fond of this Man, as that they reſcued him from him; and to fix it upon them, we will prove they were every one of them concerned in the Riot. ——Mr. *Craddock*, What account can you give of this matter?

Mr. *Craddock.* I was ſtanding at the Place where they Poll'd, and my Lord Mayor was coming towards it to proteſt againſt their manner of proceeding; and Sheriff *Bethel* came to me, and ſaid, *Reſiſt him*, (I think) *he hath nothing to do here.*

Mr. Serj. *Jefferies.* That was *Bethel, Slingsby Bethel.*

Mr. *Craddock.* It was either *oppoſe*, or *reſiſt him.*

Mr. *Sol. Gen.* He ſays, he thinks he ſaid, *Reſiſt him*; but he is ſure it was either *Oppoſe*, or *Reſiſt him.*

Mr. Serj. *Jefferies.* Did you ſee Mr. *Jenks* there?

Mr. *Craddock.* I can't ſay I did: I ſaw Mr. *Jenks* juſt as my Lord Mayor came down, not after.

Mr. Serj. *Jefferies.* Did you ſee Mr. *John Deagle* there?

Mr. *Craddock.* I did not ſee Mr. *Deagle.*

Mr. *At. Gen.* How did they uſe my Lord Mayor?

Mr. *Craddock.* I was not very near my Lord; my Lord, I ſtood at the Place where the Poll was taking.

Mr. *Thompſon.* Mr. *Craddock*, We deſire to ask you this Queſtion, that you ſpeak particularly to Mr. *Bethel*, Was it before my Lord Mayor had adjourn'd the Poll, or after?

Mr. *Craddock.* It was juſt as my Lord Mayor came to proteſt againſt the manner of Polling.

Mr. *Thompſon.* Was the Poll adjourn'd before or after?

Mr. *Craddock.* It was after.

Mr. *Williams.* Mr. *Bethel*, you ſay, he ſaid, *Oppoſe*, or *Reſiſt*; did he ſay it before the Poll was adjourn'd?

Mr. *Craddock.* Yes, Sir, it was before.

Mr. *Williams.* Can you ſay what the Words were?

Mr. *Craddock.* It was either *Oppoſe*, or *Reſiſt, he hath no Authority here.*

Mr. Serj. *Jefferies.* Which is *George Reeves*? Mr. *Reeves*, Pray will you tell us what you did obſerve done at this time by Mr. *Pilkington*, or Mr. *Shute*, or any Perſon elſe?

Mr. *Reeves.* I came about 4 or 5 a Clock to the Polling-place where the Coaches uſe to ſtand, and I ſaw the Sword up, I ſuppoſe my Lord Mayor was there, and came to ſtop their Proceedings in Polling; and there was a great Conteſt among them; ſome ſaying, *He had nothing to do there*: *He hath no more to do than I*, ſays one; another cryed, *Stop the Sword, ſtop the Sword*, and I laid hold of him, and got him a little way, and made account to have carried him to the Sheriffs, and the Lord Mayor, but ſome body got him away.

Mr. Serj. *Jefferies.* What did you obſerve *Shute* and *Pilkington* do?

Mr. *Reeves.* They encouraged the People to Poll.

Mr. *Jones.* After my Lord Mayor was gone?

Mr. *Reeves.* Yes.

Mr. *Jones.* Pray you, Sir, did you obſerve either Mr. *Shute*, or Mr. *Pilkington* encourage the People to Hollow or Shout, or thoſe things?

Mr. *Reeves.* No, Sir.

L. C. J. Hark you Friend *Reeves*, heark you; How do you know that *Pilkington* or *Shute* were Polling? Are you ſure they were Polling after my Lord was gone?

Mr. *Reeves.* They were at the Polling-places, and they did not go away a great while after that.

L. C. J. From the People that were about them?

Mr. *Reeves.* No.

Sir *Fr. Winn.* We agree it, in Fact it was ſo.

Mr. *At. Gen. Richard Fletcher*, Pray will you give the Court an account of what they did.

Mr. Serj. *Jefferies John Hill*, What did you obſerve there?

Mr. *Hill.* About 5 a Clock, my Lord Mayor came to the Hall, there was with him then Sir *James Edwards*, and Sir *William Prichard*, now Lord Mayor, to the beſt of my memory; and he told them he diſliked their Polling any more; and there came a tall black Man; ſays he, *Mr.* Sheriff, *Go on, it is your Buſineſs, we will ſtand by you*; about a quarter of an Hour after my Lord came out of the Hall to the great Croud, ſome of the People Hiſſing, and ſome making a noiſe; and one came to the Sheriffs, and, ſays he, *Gentlemen, Why do not you make Proclamation with O Yes*? And they continued there till towards 8 a Clock.

Mr. Serj. *Jefferies.* Did you hear no Officer adjourn the Court?

Mr. *Hill.* My Lord Mayor went home, I ſaw him within Doors, and I came back again.

Mr. *At. Gen.* Was there no Proclamation made afterwards?

Mr. *Hill.* By ſome of the Officers, but I did not take particular notice.

Mr. *At. Gen.* Who did you ſee here after you went home with my Lord Mayor, and came back again?

Mr. *Hill.* I ſaw here Mr. *Robert Key* for one, and I ſaw Mr. *Goodenough* come in between 8 and 9 here in the Hall, and my Lord *Grey* came in, and ſeveral other Gentlemen.

L. C. J. What did they do when they came?

Mr. Serj. *Jefferies.* Hark you, *Hill*, Was my Lord

Lord *Grey* and Mr. *Goodenough*, and Mr. *Key*, were they among the People?

Mr. *Hill.* After the Sheriffs came up, they went into the *Orphan*'s Court, Mr. *Goodenough* came in and out, and my Lord *Grey* went in to them.

Mr. Serj. *Jefferies.* Did they appear among the People up and down in the Hall?

Mr. *Hill.* They went thro' the Hall to and fro.

Sir *Fr. Winn.* What was the Christian Name of that *Goodenough*?

Mr. *Hill.* I know him, he that was Under-Sheriff last Year: I know him well enough, and he knows me, yes, that is Mr. *Goodenough.*

Lord *Grey.* I desire to ask this Witness a Question, my Lord.

L. C. J. Let your Counsel ask, my Lord.

Mr. Serj. *Jefferies.* I desire to know another Question; Did you see Mr. *Cornish*?

Mr. *Hill.* I saw Mr. Alderman *Cornish* walk in the Hall, but I can't tell whether he went into the Room, or no. After my Lord was gone, he did come up into the Mayor's Court, and came thorough among the People.

Mr. *Thompson. Hill*, you speak of my Lord *Grey*; upon your Oath did you see my Lord *Grey* walk to and fro in the Hall, or only came thorough?

Mr. *Hill.* My Lord *Grey* came in at that Gate, and went thorough the Hall, and went in to the Sheriffs.

Mr. *Williams.* I would ask you this upon your Oath, Did you see him do any Thing more?

Mr. *Hill.* No, I was there to discharge my Office.

Lord *Grey.* My Lord, I own my being there; but only desire to ask a Question that will clear this matter.

Mr. *Hill.* I saw my Lord *Grey* come up those Stairs, and he went into the *Orphan*'s Court.

Mr. Serj. *Jefferies.* How long might that be after the Poll?

Mr. *Hill.* After the Sheriffs came up, I believe it might be half an Hour, or a quarter of an Hour, near an Hour.

Mr. *Williams.* Did you see my Lord *Grey* do any thing more than walk?

Mr. *Hill.* I saw him come to the *Orphan*'s Court, and they would not open the Door at first; but they said, it is my Lord *Grey*, and then they let him in.

L. C. J. Your own Counsel is asking, my Lord; I am willing you should ask a Question if your own Counsel will let you. Gentlemen, my Lord would ask a Question himself, and you won't let him.

Lord *Grey.* My Lord, Though I do not know this Gentleman at all, yet I will venture to ask him a Question: Pray Sir, did you see me speak to any one Man?

Mr. *Hill.* I have answered that already, I say not.

Lord *Grey.* Were the Books brought from the Polling-place by the Sheriffs before I came, before that I went in there? ——My Lord, I was there, and shall give you an account of it.

L. C. J. It had been better, my Lord, if you had kept away.

Mr. Serj. *Jefferies. Fletcher*, Pray will you tell my Lord and the Jury what you observed that Day here after my Lord Mayor was gone and had adjourned the Court?

Mr. *Fletcher.* On the 24th of *June* I was here by order of Sheriff *Shute*, after my Lord Mayor had adjourned the Court, and it was to call all Men that were to Poll to come forward, for the Books were to be shut up, and I went away immediately, I was very hot and went away to the Three-Tun Tavern.

Mr. Serj. *Jefferies.* Did you see Mr. *Shute* there?

Mr. *Fletcher.* Mr. *Pilkington* was there and Mr. *Shute* too.

Mr. Serj. *Jefferies.* Can you name any body else?

Mr. *Fletcher* No, I can name no body else.

Mr. Serj *Jefferies.* What did Mr. *Shute* say?

Mr. *Fletcher.* He ordered me to make Proclamation for all Men, them that had a Right to Poll, to come and Poll, for the Books were to be shut up.

Mr. Serj. *Jefferies.* Captain *Clark*, Pray will you give an account of what you observed?

Capt. *Clark.* I came down into the Hall, and I did hear a whispering, whereupon I went to guard my Lord Mayor, my Lord Mayor came down upon the *Hustings*, and Proclamation was made for the Adjournment of the Court; whereupon when Proclamation, *God save the King*, was made, an hundred, &c. I believe more, hist at that, I laid hold of one of them, *No King's-man, no Sword's-man*, cry'd they; *Sirrah, you are a Rascal and a Traytor in your Heart*, said I, and laid fast hold on him; but there was a very great crowd, and says one or two, *For God's sake Captain* Clark, *do you guard my Lord*; There was Mr. *Weston* and Major *Kelsey*; *My Lord*, said they, *is in danger*; said I, *Gentlemen, keep by him, or go before, I will be in your Rear-Guard.* My Lord Mayor was down upon his Knee, I can't tell how he came down, *Press on, Press on*, this was the Cry, and *God save the Sheriffs.* After coming down the Steps, I pressed as near as I could to my Lord Mayor, to keep them off; *Now*, said I, *this is the time to keep the Rabble off, now face about*; I had my Sword in my hand, and with the pommel of my Sword kept them off; *Before God*, said I, *I will keep you off*; and so I waited on my Lord home, and went and drank a glass of Sack. About an hour or two hours afterwards I came down to the Hall and found the People shouting, *God save the Sheriffs, God save the Sheriffs: What nothing*, said I, *of my Lord Mayor? But*, said I, *this is not a place to quarrel in, let us not quarrel together.* I saw the Sheriffs *Pilkington* and *Shute* were concerned in carrying on the Poll, and this they continued to do for some time, at last, *I am weary of the Hall*, said I, *I will go home*; and this was between 8 and 9 a Clock.

Mr. Serj. *Jefferies.* Can you remember any body else besides the Sheriffs?

Capt. *Clark.* No, Sir, I cannot.

Mr. Serj. *Jefferies.* Can you remember Sir *Thomas Player*?

Capt. *Clark.* No, I can't.

Mr. Serj. *Jefferies.* Captain *Clark*, Did you know never a one of them that cryed out so?

Capt. *Clark.* No, my Lord, I was before Sir *Robert Clayton.*

Mr. Serj. *Jefferies.* Major *Kelsey*, Pray will you give my Lord and the Jury an Account of what you saw on *Midsummer* day?

Major *Kelsey.* My Lord, when my Lord came out of the Court I went after, and some cryed,

Stop

Stop him, ſtop him; but I got between them, and ſome of my Lord's Friends kept them off; but when we came juſt to the going out, they gave a ſhout, and I ſaw my Lord Mayor's Hat upon his Back, and I can't tell whether he touched the Ground with his Hand, but I was e'en almoſt down; ſaid I, *Gentlemen, do you intend to murder my Lord Mayor?*

Mr. Serj. *Jefferies.* Who did you ſee there?

Major *Kelſey.* Indeed, Sir, I was almoſt down, and did not ſee their Faces.

Mr. Serj. *Jefferies.* Mr. *Trice Hammon*, I would only ask you, Who did you ſee, who did you obſerve to be there?

Mr. *Hammon.* About 9 a Clock at Night, or ſomething before, I ſtood at the Door that leads to the * *Common-Pleas*, and there came in Alderman *Corniſh* and *Goodenough*, and Old *Key*, an old white-hair'd Man, and by and by my Maſter Sheriff *Shute* came out and told me, *I ſhall give you all Sasisfaction by and by; God bleſs you*, Mr. *Sheriff*, ſaid I; and he went again, and there I ſtaid till they came out, and then he went upon the *Huſtings*, and I went along with him when he came out.

* The ſame place which before was called the *Orphan's* Court.

Mr. Serj. *Jefferies.* Who went with him out to go to the *Huſtings?*

Mr. *Hammon.* Sir *William Gulſton*, and ſeveral other Men, there is never a Name in the Indictment more.

Mr. Serj. *Jefferies.* None of them that are in the Indictment? Name them.

Mr. *Hammon.* I have named them.

Mr. Serj. *Jefferies.* Prithee name them.

Mr. *Hammon.* Mr. Alderman *Corniſh*, both the Sheriffs, my Lord *Grey*, Mr. *Goodenough*, and old Mr. *Key*.

Mr. *Thompſon.* Which *Goodenough?*

Mr. *Hammon.* That Mr. *Goodenough* that ſtands there.

Mr. Serj. *Jefferies.* There is ſuch a noiſe that I did not very well hear that Word.

Mr. *Hammon. Goodenough*, not that *Goodenough* that looks upon me, but he that ſtands behind.

Mr. Serj. *Jefferies.* He falls behind now, but he ran up and down then, and Alderman *Corniſh* was there too.

Mr. *Jones.* You Witneſs, you have named all theſe men, what did *Shute* do, or what did he ſay?

Mr. *Hammon.* When he came upon the *Huſtings*, he made Proclamation himſelf, becauſe one or two refuſed it, he did it himſelf; and after a while he adjourned the Court upon the *Huſtings*; this was on *Midſummer* day.

Mr. *Jones.* What did he ſay?

Mr. *Hammon.* As the Common Cryer uſually ſays at ſuch times.

Mr. *Thompſon.* You ſay you ſaw Mr. *Goodenough*, and you ſaw my Lord *Grey*, upon your Oath, can you ſay they did any thing, or was any thing done in abuſe to my Lord Mayor?

Mr. *Hammon.* They did not tell me, my Lord, what they did.

Mr. *Thompſon.* I ask you what did they do?

L. C. J. Mighty buſie they were.

Mr. *Thompſon.* How long was it after my Lord Mayor adjourned the Court?

Mr. *Hammon.* About two Hours.

Mr. Serj. *Jefferies.* So much the worſe.

L. C. J. You muſt underſtand it was ſome time before Mr. Sheriff had made his Adjournment, they were buſie till that time.

Mr. Serj. *Jefferies.* My Lord, If your Lordſhip pleaſes, I do agree with Mr. *Thompſon*, that the Jury ſhould remember that this was two Hours after my Lord Mayor had adjourned the Court.

Lord *Grey.* I deſire, my Lord, I may ask him ſome Queſtions. You ſay you ſaw me go to the Council-Chamber, at what time, and who went with me?

Mr. *Hammon.* A little before Candle-light.

Lord *Grey.* You ſay all the Company went out with the Sheriffs, and went away.

Mr. *Hammon.* My Lord, I did not ſay you came out.

Mr. *At. Gen.* My Lord was of the Upper Houſe.

Mr. *Thompſon.* Yes, and may be there again.

Lord *Grey.* I hope I ſhall be there, Mr. *Attorney*.

Mr. *At. Gen.* It had better you had been ſo then, my Lord.

Lord *Grey.* It will be the worſe for you, I ſhan't lie Perdue for you.

Mr. *At. Gen.* If you threaten me, my Lord, I ſhall take notice of it. My Lord, I have done you a Kindneſs, but if you come under my Hands again, I ſhall not do it.

L. C. J. They would not have it ſaid, *God ſave the King*, and my Lord you were with ſome of thoſe that abuſed him.

Lord *Grey.* After it was over, my Lord.

Mr. *At. Gen.* You were not within your Duty here.

Lord *Grey.* My Lord, it was after the Poll was cloſed.

Mr. Serj. *Jefferies.* My Lord, I deſire if you pleaſe, what is uſual in all Cauſes, that we might go on without any interruption. Let us go on for the King, and then make all the defence you can. Don't think either to hiſs or threaten us out of our Cauſe. Mr. *Higgins*, give my Lord and the Jury an account of what you ſaw or heard.

Mr. *Higgins.* My Lord, I attended with ſeveral of our Company by my Lord Mayor's Coach to *Guild-hall*, and was in the Council-Chamber, and he ſent for the Sheriff, after that he went away; and when *God ſave the King* was ſaid, ſaid they, *God ſave the Proteſtant Sheriffs.*

Mr. Serj. *Jefferies.* I deſire to know, Mr. *Higgins*, this, what they ſaid?

Mr. *Higgins.* They cryed, *Down with the Sword.*

Mr. *Thompſon.* Mr. *Attorney* is making a Speech to us, I don't know what he hath ſaid.

Mr. Serj. *Jefferies.* I don't think Mr. *Attorney* thinks you worth a Speech. Mr. *Higgins*, I deſire to ask you a Queſtion, I ask you this Queſtion upon your Oath, after the Adjournment of the Court, and after this very inſolent behaviour of ſome of the Rabble that were there, for I can call them no better, who did you ſee there?

Mr. *Higgins.* After I went home, I went to ſee my Lord ſafe home, and came back again, I ſaw one *Freeman* that they call the *Proteſtant Cheeſemonger*, calling, *To poll, to poll.*

Mr. Serj. *Jefferies.* Pray who elſe did you ſee?

Mr. *Higgins.* I ſaw Mr. Alderman *Corniſh* come up towards the Sheriffs, *Gentlemen*, ſaid he, *You are doing right.*

Mr. Serj. *Jefferies.* Did you hear Mr. Alderman *Corniſh* ſay ſo? What this Gentleman? Do you know him?

Mr. *Hig-*

Mr. *Higgins.* Says he to Sheriff *Shute*, You ſhall have all right done to you.

Mr. Serj. *Jefferies.* Who elſe did you ſee there?

Mr. *Higgins.* I ſaw Mr. *Swinock.*

Mr. Serj. *Jefferies.* Did you ſee Mr. *Key*, did you ſee Mr. *Pilkington?*

Mr. *Higgins.* I did not ſee Mr. *Pilkington*, I ſaw *Shute.*

Mr. Serj. *Jefferies.* Did you ſee Mr. *Jekyl?*

Mr. *Higgins.* Yes.

Mr. Serj. *Jefferies.* Which of them do you mean?

Mr. *Higgins.* The Elder man

Mr. Serj. *Jefferies.* There is *John Jekyl* the Elder, Gentlemen, and *John Jekyl* the Younger.

Mr. *Higgins.* I was diſputing with a Fellow that his Toes came out of his Shooes, and had a green Apron, ſaid I, *Are you a Livery man? Yes, I am*, ſaid he. *Surely*, ſaid I, *they don't uſe to make ſuch as you are Livery Men.* Says Mr. *Jekyl*, *He may be as good a man as you for ought I know.* That was about half an hour after my Lord Mayor went home.

Mr. Serj. *Jefferies.* What time was the Adjournment?

Mr. *Higgins.* About 5 or 6. I was ſpeaking ſomething, *You are all in a Riot. This is no Riot*, ſays Mr. *Swinnock* to me; I can never meet you but you are railing againſt the King's Evidence.

L. C. J. The King's Evidence, what was that?

Mr. *Williams.* What was done by Mr. *Jekyl?*

Mr. *Higgins.* He was talking among the People.

Mr. Serj. *Jefferies.* He did encourage among the reſt.

Mr. *Williams.* You are in a Paſſion now.

Mr. Serj. *Jefferies.* No Sir, I am not.

Mr. *Higgins.* He ſeconded Mr. *Corniſh* when he ſaid, *Inſiſt upon your Rights.*

Mr. Serj. *Jefferies.* Who did ſo?

Mr. *Higgins. Freeman*, my Lord, that they call the *Proteſtant Cheeſemonger.*

Mr. *Williams.* A very pretty word indeed.

Mr. Serj. *Jefferies.* Ay, ſo it is, he is ſo called, you will give us leave to hear what the Witneſſes ſpeak.

Mr. *Williams.* Another Epithet would do a great deal better.

Mr. Serj. *Jefferies. William Bell*, what was done upon the Spot? Was there any hurt?

Mr. *Williams.* Do you ſay upon your Oath, that Gentleman was there?

Mr. *Higgins.* I have ſeen him in the Balcony.

Mr. Serj. *Jefferies.* He ſays, he uſes to be there upon publick days in the Coffee-houſe.—— *Bell*, I would deſire to know of you, whether you are able to give an account after my Lord Mayor's Adjournment, who was there; name as many perſons as you can?

Mr. *Bell.* Mr. *Bethel*, and I ſaw Mr. *Corniſh* go through the little Gate into the Yard.

Mr. Serj. *Jefferies.* Who elſe?

Mr. *Bell.* That is all, Sir Sheriff *Pilkington* delivered two Poll-Books into my hand.

Mr. *At. Gen.* Mr. *Vavaſor*, will you tell my Lord and the Jury what you ſaw?

Mr. *Vavaſor.* It happen'd thus, Mr. *Hammon* had taken a man upon execution, who was Bail for a Client of mine who had paid the moneys long before; upon that I came to know who imployed him, and coming here, I found Mr. *Hammon* in that place, and the crowd was ſo great, *Don't go back again*, ſaid he, *for you will go near to be abuſed.* Whilſt I ſtaid there, I asked him what was the meaning; Says he, *In this Room are the Sheriffs and ſome others caſting up the Poll*; and whilſt I ſtaid, there came in Mr. *Good-enough* to and fro from them, and before they would admit any, they would know their names; there was Mr. *Key*, my Lord *Grey*, and Sir *William Gulſton.*

Mr. *At. Gen.* What afterwards?

Mr. *Vavaſor.* Yes, Mr. *Corniſh* was there, he and Sheriff *Shute* came out together, and they went upon thoſe Stairs under the Clock.

Mr. *At. Gen.* Who came out with Sheriff *Shute?*

Mr. *Vavaſor. Corniſh.*

Mr. *Williams.* What *Corniſh?*

Mr. *Vavaſor.* Alderman *Corniſh.*

Mr. *Williams.* Very mannerly.

Mr. Serj. *Jefferies.* His name was *Corniſh* before he was an Alderman.

Mr. *Vavaſor.* And Sheriff *Shute* told the People, *If they would ſtay a little time, he would give them Satisfaction.* Upon that, Mr. *Corniſh* went through the Company, and when they came to the Huſtings, Mr. *Shute* ordered Proclamation to be made, and told them, *Whereas my Lord Mayor had taken upon him to adjourn at 9 a Clock, We the Sheriffs of* London *and* Middleſex, *being the proper Officers, do adjourn it to* Tueſday *at 9 of the Clock.* Upon that an Antient Gentleman deſired they might proclaim the Election. Then ſays *Shute*, that *I can't do it now, for we have taken very good Counſel for what we do.* Had it not been for Mr. *Hammon*, I had been, I believe, trod under foot ſufficiently.

Mr. Serj. *Jefferies.* Mr. *Denham*, who did you ſee?

Mr. *Denham.* I ſaw Sir *Thomas Player*, and Mr. *Jenks.*

Mr. Serj. *Jefferies.* Where did you ſee them pray?

Mr. *Denham.* In the Yard. I went home with my Lord Mayor, and then I ſaw them. I had a kind of a glance, but I can't ſwear poſitively to *Mr. Jekyl.*

Mr. Serj. *Jefferies.* Sir *Thomas Player* and Mr. *Jenks*, what did you ſee them do?

Sir *Fr. Winn.* Heark you, Friend, where was it you ſaw them?

Mr. *Denham.* In the Yard.

Sir *Fr. Winn.* What did you ſee them do?

Mr. *Denham.* Nothing at all.

Mr. Serj. *Jefferies.* How many People might be there then? Two or three hundred?

Mr. *Denham.* Above a Thouſand.

Mr. *Williams.* What did you hear Sir *Thomas Player* ſay?

Mr. *Denham.* Nothing.

Mr. *Williams.* How far was he from his own Door?

Mr. *Denham.* On t'other ſide the Hall.

Mr. *Williams.* A mighty way indeed, a mighty thing. What ſaid Mr. *Jenks?*

Mr. Denham. I can't ſay, Sir, that I heard him ſpeak a word, only in the Tumult.

Sir. *Fr. Winn.* Friend, I ask you this, I think I heard you ſay, you ſaw Sir *Thomas Player* and Mr. *Jenks* in the Yard; but you did not ſee them do any thing at all?

Mr.

Mr. *Denham*. No.

Mr. Serj. *Jefferies*. Pray, Mr. *Farrington*, will you tell my Lord and the Jury what you ſaw after my Lord Mayor had adjourned the Court?

Mr. *Farrington*. I ſaw there Sheriff *Pilkington*, *Shute*, Sir *Thomas Player*, Mr. *Wickham* the Scrivener in *Loathbury*, Mr. *Jenks*, *Babington*, one *Jennings* an Upholſterer.

L. C. J. Sir *Thomas Player* you ſay in the firſt place?

Mr. *Farrington*. Yes, and *Wickham*, my Lord, a Scrivener in *Loathbury*.

L. C. J. Who then?

Mr. *Farrington*. Sheriff *Pilkington* and *Shute*, and Mr. *Corniſh*, Alderman *Corniſh*.

Mr. Serj. *Jefferies*. Did you ſee one *Deagle* there?

Mr. *Farrington*. No, Sir.

Mr. Serj. *Jefferies*. *Wickham* you ſaw there?

Mr. *Farrington*. Ay, Sir, I know him very well.

Mr. *Thompſon*. What is *Wickham*'s Chriſtian Name?

Mr. Serj. *Jefferies*. *John Wickham*, he goes by that Name, it may be he was not Chriſten'd. Was *Jenks* there, do you know him?

Mr. *Farrington*. The Linnen-draper?

Mr. Serj *Jefferies*. Ay, very well, he goes by the Name of *Francis Jenks*. Did you ſee *Jekyl* there?

Mr. *Farrington*. I don't know the Name, I ſaw a great many I knew by ſight, but not their Names.

Mr. *Holt*. What did theſe Gentlemen do?

Mr. *Farrington*. I'll tell you, Sir, there was Sheriff *Pilkington* and Sheriff *Shute*, I went in where they were taking the Poll; ſaid I, *Gentlemen, my Lord Mayor hath adjourned the Court, what do you do here? I ſuppoſe it lies in my Lord Mayor's Power; if it lies in him to call, certainly he muſt diſſolve.*

Mr. *Williams*. You argued thus?

Mr. Serj. *Jefferies*. Pray give us leave to go on.

Mr. *Farrington*. There was Mr. *Wickham*, and ſays he, *My Lord Mayor hath nothing to do here, neither will we be ruled by any of your Tory Lord Mayors. This is not the firſt Aſperſion*, ſaid I, *that you have caſt upon a Gentleman that loves the Church and the Government eſtabliſhed by Law*; and they fell about me, and had it not been for Mr. *Fletcher* and Mr. *Hill*, I believe they had done me a miſchief; for they trod upon my Toes; who did it I can't tell.

Mr. Serj *Jefferies*. But you ſay Sir *Thomas Player* and *Pilkington* and Alderman *Corniſh* were amongſt them?

Mr. *Farrington*. Yes, Sir.

Mr. Serj. *Jefferies*. That's enough —— Pray Mr. *Cartwright*, will you tell my Lord and the Jury what you obſerved there, and who was there.

Mr. *Cartwright*. I know the Names of no Perſons that were there, all that I can ſay was this. As ſoon as my Lord Mayor adjourned the Court upon the *Huſtings*, he came down, and going out of the Hall, he had like to have been thrown down, had it not been for Mr. *Shaw*; and going to ſave my Lord Mayor, I wrenched my Back, and I ſpit Blood for ſeven Days after.

Mr. Serj. *Jefferies*. Tell that, Mr. *Cartwright*, over again.

Mr. *Cartwright*. My Back was wrenched in ſaving my Lord Mayor, and I ſpit Blood ſeven Days after.

Mr. Serj. *Jefferies*. Endeavouring to ſave my Lord Mayor his Back was ſo wrenched that he ſpit Blood ſix or ſeven Days after. Hark you, Mr. *Cartwright*, ever ſince that time have you found any Indiſpoſition?

Mr. *Cartwright*. I have not been my own man ſince.

Mr. *Williams*. He took a Surfeit.

Mr. Serj. *Jefferies*. He took a Surfeit of ill Company I am ſure.

Mr. *Sol. Gen*. Mr. *Shaw*, give my Lord and the Jury an account of what you know.

Mr. *Shaw*. My Lord, my Lord Mayor ſent to the Sheriffs, and ordered them to forbear Polling and come up to the Chamber, and ſent two or three times; but they denied coming to him, and went on and ordered the Common Cryer to make Proclamation for them to depart; and if they ſtaid, that he would look upon them as Rioters; and there was hiſſing and a great deal of crowd, and there was Sir *James Edwards* in the Court, they hunched him with their Elbows, and as his Lordſhip came down, going down the Steps there was ſuch a crowd, that if I had not catched his Lordſhip in my Arms he had fallen upon his Forehead, and his Hat was off.

L. C. J. Who did you ſee ſo misbehave themſelves?

Mr. *Shaw*. My Lord, I can't tell.

Mr. Serj. *Jefferies*. I think we have now proved it againſt every body we deſign, ſave only againſt Mr. *Deagle*, for we do not now proceed againſt *Dorman Newman* and *Benjamin Alſop*. Now, my Lord, we will only prove againſt *John Deagle*, and then we ſhall have done. Mr. *Kemp*, will you tell my Lord and the Jury who you ſaw here. Did you obſerve any Particulars after the Court was adjourned?

Mr. *Kemp*. I don't remember I obſerved any one Man.

Mr. Serj. *Jefferies*. You don't? Had you any Diſcourſe with Mr. *Deagle* at any time?

Mr. *Kemp*. Yes, I had.

Mr. Serj. *Jefferies*. What did he tell you?

Mr. *Kemp*. He did confeſs he was there about 7 a Clock at Night.

Mr. Serj. *Jefferies*. He did own he was amongſt them?

Mr. *Kemp*. Yes, with Alderman *Corniſh*.

Mr. Serj. *Jefferies*. What ſay you, Mr. *Rigby*?

Mr. *Rigby*. I ſaw him about 7 a Clock.

Mr. Serj. *Jefferies*. Was he in the Crowd?

Mr. *Rigby*. Yes, amongſt the People.

Mr. Serj *Jefferies*. Here is all now, Gentlemen, but *Dorman Newman*, and *Benjamin Alſop*, and we don't go againſt them now. After they had done this, and hiſs'd at the King, and cried, *No King, no Lord Mayor*, what Acclamations went theſe People off with?

Mr. *Hammon*. When the Court was broke up by the Sheriffs, they cryed, *God ſave our true Proteſtant Sheriffs*, and in that manner they followed us.

Mr. Serj. *Jefferies*. What ſay you?

Mr. *Hammon*. They hollowed us home, Sir, as far as *Fiſhmongers-Hall*.

Mr. Serj. *Jefferies*. They began with a Hiſs, and ended with a Hollow.

Mr. *Wil-*

Mr. *Williams*. Gentlemen, I am Counsel for the Defendants, and, my Lord, the question is under favour, Whether these Persons taken for Defendants, whether they be guilty of this Riot, as it is laid in the Information, We are now upon a special Case, and the question is, Whether Guilty, or not Guilty. My Lord, In the first place for the Cries, what the Cry was, hath been too often mentioned; for those Cries, there is nothing at all fix'd upon any Person that is Defendant; all that is charged upon us, is, That we were in the Hall it seems, and because there was this Noise heard, therefore we must be guilty. In this Crowd where we are, I hear hissing, especially at t'other and of the Hall, which of us are concerned in it, is a hard matter to judge; it is a hard matter, and it were very well, and it had been very happy, if some of those Persons had been apprehended for their hissing. I won't say, Gentlemen, that either one Party or t'other in the Contest made the Noise of hissing, but there is nothing of it fix'd upon any of us. Our Case is this, my Lord, with favour, When we have stated our Case and proved it, we are very innocent, and not guilty of the Riot. In some measure it hath been stated on the other side. They say in the Information, that the Lord Mayor called a Common Hall; we don't dispute that matter, we agree it, that the Lord Mayor of *London* is the King's Lieutenant; but to make such an Inference. That because the Lord Mayor is the King's Lieutenant in the City *London*, that he must execute all the Offices in the City, is of no credit in the World; so that they are mistaken in that. Men are bounded in their Offices. The Lord Mayor does not execute all the Offices in the City tho' he be Lord Mayor. The question between us is this, Whether the Sheriffs, in this Case, did more than their Office as Sheriffs of the City of *London*. There is a Superiority due to the Lord Mayor. Another thing we agree with them, we agree it is in the Lord Mayor only to call these Common Halls, and as Mr. Serjeant *Jefferies*, that hath been in a good Office in the City, he agrees it himself, and it is apparent, there are some fix'd Days for Election; but yet tho' there be fix'd Days for Election, yet there must be that Formality of a Summons from the Lord Mayor to the City to meet in order to the Election of Sheriffs for the City of *London* and other Officers, that we do agree that my Lord Mayor hath the Power of calling Common Halls, and he is the proper Officer. We agree also, Gentlemen, that when the Business is done, for there is nothing in vain in Nature, and there is nothing in Government that should be in vain, when the Business is done, my Lord Mayor is to bid the Company *Fare them well*, which you may call discharging the Common Hall; we agree that to be commonly and usually done by my Lord Mayor. But herein we differ, which we are to try, the Right of the Office of Sheriffs being the Question, it is a Question of Right, and I don't see the Government is concerned one way or other.

L. C. J. Upon my word I do see it, and surely you must be blind, or else you would see it too, when a Company is got together, *No God save the King, no King, no Lord Mayor*.

Mr. *Williams*. My Lord, I thought I had opened it plainly, I speak before a great many People, I desire, my Lord, this may be very well heard. I thought I had said very well, from all these Noises and Cries we are all innocent, we justify nothing of it, only we would have been glad if they had apprehended any Man that made that Noise; it had been a very happy thing if one of them, or all of them had been Defendants to be tryed. My Clients are Defendants, they are innocent and unconcern'd, it is a Crime committed by some where these Gentlemen were by, but they are innocent; we hear hissing at t'other end of the Room, it was an ill thing, and of a Treasonable Complexion; but for these Gentlemen they are unconcern'd. The Question between the Lord Mayor and the Sheriffs of the City, is a Question of Right between the Mayor and Sheriffs, Whether it be the Prerogative of the Mayor, or the Right of the Sheriffs? And I say, under correction again, this Question, Whether the Lord Mayor of *London* may adjourn the Common Hall to a certain Day, is a Question of Right, Whether he can do it or the Sheriffs; And I don't see what Consequence it can have upon the Government. The Lord Mayor is the King's Deputy, the Sheriffs they are the King's Officers, and the Question is, Whether it be in the Lord Mayor or the Sheriffs of *London* to adjourn it? They are very good Subjects, I am sure this very Year they are so; therefore I wonder at these Gentlemen of the King's Counsel, that will meddle with the Government, and say the Government is concerned in this; I appeal to any Man if there be any more Concern in this; I say this, here was a Common Hall call'd, grounded upon Custom in the City of *London*, and here is a single Question, Whether these Sheriffs did any more than their Duty, whether they were guilty of a Riot in continuing this Poll: Gentlemen, this is the method we shall take. First of all, it is not proved, that ever the Lord Mayor before this time did ever attempt to adjourn a Common Hall to any certain time; all the Witnesses that were call'd, that pretend to be knowing in the Customs of *London*, the Common Serjeant himself, he does not pretend that it was adjourn'd to a Day.

Mr. Serj. *Jefferies*. You mistake. Sir *Robert Clayton* did from *Saturday* to *Monday*.

L. C. J. What need if there had been no President; if so be an Assembly of People are met about Business, and they can't make an end of it in a reasonable time, must they be kept all Night till they have? What Argument will you make of it? If a Man may call and dissolve, do you think if there be occasion, but, by the Law it self, that he may adjourn to a convenient Hour?

Mr. *Williams*. That will be a Question between us. My Lord, what I say certainly of Fact carries something in it.

L. C. J. Not at all.

Mr. *Williams*. Then, my Lord, I have done.

L. C. J. Give us leave to understand something, Sir.

Sir *Fr. Winn*. My Lord, by your Lordship's favour——

L. C. J. I spake to Mr. *Williams*, and he takes it so heinously at my hand that Facts signify nothing; I do again say it, The Fact signifies nothing. For I tell you again as Law, it is not denied the Lord Mayor may call, he may

diſſolve; then I ſay by Law without Fact, by Cuſtom, he that can both call and diſſolve, may adjourn to a convenient time. Do not Judges of Aſſize in all the Counties of *England* do it, when a Cauſe is appointed to be tryed in ſuch a County ſuch a Day, and it may be it is tryed three Days after; and yet I pray find me the Statute or Commiſſion, or find me one thing or another beſides the very Law it ſelf, that doth give them leave to adjourn from time to time.

Mr. *Williams*. My Lord, there is a mighty difference, but I am only upon Fact, theſe Gentlemen will agree it was never practiſed before Sir *Robert Clayton*'s time, what the Conſequence in Law will be, that is in your Lordſhip's Breaſt, I am now ſpeaking upon the Evidence that this hath not been practiſed. What the Law is, for that we are to have your Judgment, which I humbly crave, I will be judged by Gentlemen that are my *Seniors* and better read in this matter; but, my Lord, a Man may have a Power of calling and diſſolving, and not of adjourning, it may be ſo. But, my Lord, admitting it to be ſo for this time, yet, my Lord, whether we are guilty of a Riot, take the Circumſtances of our Caſe. Whether the Right of adjourning be in the Sheriffs, yea, or nay, it is a Queſtion of Right, and I had rather apply my ſelf to your Lordſhip, than to the Jury. If there were a Queſtion of Right between the Lord Mayor and the Sheriffs, it may be admitted by our Counſel that it was his Right to adjourn the Court, and probably the Sheriffs might be in the wrong, and the Lord Mayor in the right. The Lord Mayor adjourns the Court, and they continue it, they go on with the Poll, and go on with the Execution of their Office as they apprehended, if they were ſtill for their Right, I hope your Lordſhip will not make this a Riot. My Lord, for the Circumſtances that followed, the Noiſe that was made, which I don't love to mention, if, I ſay, they were guilty of this, I am ſilent; but if they did no more, as I hear no more proved upon them, than continuing the Poll, then, I ſay, it will be very hard to make them guilty of the Riot. And another thing is this, my Lord, we all know, if there were a thouſand Electors, any Man knows, that when there is a Queſtion upon an Election, it is impoſſible ſuch a thing ſhall be carried on but there will be reviling, ill Language, and the like; and to turn all theſe things to a Riot, a thing ſo common from the beginning of Elections to this time, if there be Diviſion and Polling, there will be ſomething you may turn to a Riot. But I ſay this, they have not inſtanced in any one Defendant, that he was guilty of any one particular Act that amounted to a Riot in it ſelf, they have not inſtanced in one. They ſay of Alderman *Corniſh*, That he was of the ſame Opinion with the Sheriffs, that they did inſiſt upon the Rights of the City, he took it to be the Right of the Sheriffs; *And*, ſays one of them, *I will ſtand upon it, Bethel* that had been Sheriff. Now we will call our Witneſſes, we will prove what hath been the conſtant Practice in the City, we will prove the Methods of Adjournment; and, my Lord, this is to be ſaid which your Lordſhip will obſerve, That the Sheriffs adjourned the Court to the very ſame time with my Lord Mayor; ſo that it was no more than to bring the matter to an Iſſue in this Caſe.

Sir *Fr. Winn*. Spare me a word in this Caſe, my Lord. There is no Evidence produced againſt *Trenchard*, nor againſt *Jekyl* the Younger, nor againſt *Biſield*, nor Of theſe there is no queſtion but they are as if they were out of the Information, I muſt beg leave for a word or two as to thoſe Defendants, that they have offered ſome Evidence againſt. The queſtion is now before your Lordſhip, Whether they are guilty of a Riot or no? My Lord, for ought I ſee, it will ſtand upon a nicety of Judgment; yet if there be not matter enough, Gentlemen, to make the Defendants guilty of a Riot, then it will clear the Defendants. My Lord, as to thoſe Words, that really were Words that ought to be inquired into, who they were that ſpoke them in relation to His Majeſty; I think it was a very ill thing of thoſe Men that ſaw them, that they would not neglect all manner of Buſineſs to ſeize them, I think it was a Duty to fix upon them; but, my Lord, there is no Evidence to put it upon any of the Defendants. My Lord, that being pared off, now the Queſtion is, That the meeting together was lawful, that is agreed; then when they came together, my Lord, I do think that if we do rely upon the Evidence, it will be a mighty hard thing to make this a Riot, ſetting aſide thoſe villainous Words that were ſpoken, which cannot relate to the Defendants. Suppoſe, my Lord, that among the Electors, the whole Common Hall of the City, there doth a Diſpute ariſe before the Election is over concerning the Adjournment of the Sheriffs or the Lord Mayor, ſome Men are of one Opinion, ſome are of another; and their Evidence, Mr. *Peter King* and another, Attorneys, I asked the Queſtion ſeveral times, *Did the Lord Mayor of* London, *ever interpoſe or concern himſelf in adjourning the Hall, till the Election was quite finiſhed?* and they ſaid *No:* Then, my Lord, I muſt ſay it as to theſe particular Defendants, in ſuch a concourſe of People as was met there, it is as ſlender a Proof of a Riot as ever was, and intimates that the Citizens of *London*, they that happen not to be the greater number, they that loſe the Election, may be found guilty of a Riot in chooſing other Officers as well as in the Buſineſs of Sheriffs; which being ſo tender a Point, I think it will be a very ſevere Expoſition, my Lord, to make this a Riot. But now for the Matter, we will call to your Lordſhip ſeveral Witneſſes, Men that have been Magiſtrates in the City, that it was always looked upon, that my Lord Mayor, as he is the Principal Magiſtrate, he gives notice for Common Halls; and when the ſeveral Electors are met, and the Buſineſs is over, he directs them to go home, and diſſolves them; but my Lord Mayor meddles not in every little Adminiſtration of the Election of Officers, but leaves them to inferior Officers, the Sheriffs and others, that is their Duty, my Lord, with ſubmiſſion, they Poll them and ſend them home during the Election, therefore by Law they do this; for, my Lord, the Cuſtom of a City, and the Cuſtom of a Place, is the Law of the Place; and if the Cuſtom of the Place hath been, that the Sheriffs have been the Perſons that have managed it, it is their Right; but the Common Serjeant he ſays he hath the ſole Management of it;

Then

Then if it be as Mr. Common Serjeant ſays, if that muſt go, upon my Word, Gentlemen, your Privileges are reduced to a little compaſs.

L. C. J. They did confer one with another who they took to have the moſt Voices, and ſo reported it, not that he did claim any thing in his own right, but as an Officer of the City. Now it is plain, and I think there is no inconveniency falls upon it, if an Officer acquaints my Lord Mayor, according to the beſt of our Judgment, we think ſuch a man hath the moſt Voices, that does not give him a Right for him to make an Officer, not at all.

Sir *Fr. Winnington.* I ſay what he ſaid in his Evidence, but one of the Attorneys ſwears that they have all equal Power, I wonder then who ſhould make an end of the Buſineſs. My Lord, we will call to your Lordſhip Ancient Citizens, that have been frequent at Elections, to give you an Account that the Sheriffs always had the management, that my Lord Mayor never concerned himſelf, till he had notice it was determined; and if that be ſo, and the Practice hath been ſo, then I don't ſee, under favour, my Lord, how they will make this a Riot; that is the Caſe.

Mr. *Thompſon.* Sir *Robert Clayton*, will you pleaſe to tell my Lord and the Jury in what manner the Election of Sheriffs hath been, and how the Mayors have uſually left it to the Sheriffs in that caſe.

Sir *Robert Clayton.* My Lord, I have never heard this Matter hath been in queſtion till of late, ſo I cannot declare much upon my own Knowledge, how the Truth of Fact is or ſhould be, I can only ſay this, what the Practice hath been. When I came to the Chair I did endeavour to know my Duty and to do it. The firſt time I had occaſion to take notice of this matter was in the Year of my Mayoralty, I did then, according to Cuſtom, ſummon a Common-Hall, when I had ſummon'd it, there was a Perſon preſented to the Hall I had drank to; the Hall did refuſe him, and there was a great noiſe and hubbub upon it, and we found a way to accommodate that matter, and left them to chuſe two Sheriffs for themſelves. I retired into this Court together with my Brethren and Mr. Recorder that was then: We ſent for the Sheriffs up to examine the matter, they told us that they could not agree the thing, there were 4 Perſons in Nomination, but they had granted a Poll. After this we went down into the Hall, of that Mr. Common Serjeant hath given ſome Account, and Mr. Serjeant *Jefferies*, I ſhall to the beſt of my Memory give the beſt Account I can of it, I ſhall only tell you what I did underſtand to be my Duty, I do not determine what the Practice was, but what I underſtood to be my Duty. When we came down into the Common-Hall to declare how the Matter ſtood, and that a Poll was agreed upon and granted, we would have adjourned the Court to a longer time, but the People cryed out to go to the Poll preſently. I was, as you have been told by Mr. Common Serjeant, to go to the Tryal of one *Giles* upon the Aſſaſſination of *Arnold*, to the *Old Baily*. I did twice or thrice attempt to get down out of the Hall through the crowd, and was repuls'd, the croud was ſo great I could not get through, but was fain to retire back again to the *Huſtings* as I remember two or three times. There might be ſome ſuch Diſcourſe as Mr. Common Serjeant hath ſaid, but thus far I can remember, that I did both my ſelf and the Common Serjeant ſignify to them the Buſineſs I was about, and ſo many Aldermen as made up a Bench together with Mr. Recorder, to manage that Buſineſs, muſt go, and that I would leave the Sheriffs to manage the Poll, which I thought was their Duty.

Mr. *Thompſon.* Did you take it to be their Right?

Sir *Robert Clayton.* I did not apprehend it to be my Right then.

Mr. *Thompſon.* And therefore you left it to the Sheriffs as their Right?

Sir *Robert Clayton.* I left it to the Sheriffs to manage the ſame.

Mr. *Williams.* Sir *Robert Clayton*, I ſuppoſe when you were Lord Mayor you were as much for the honour of the Chair as any man, you would not have quitted the right of the Chair?

Sir *R. Clayton.* I did not, there was a Tryal of me in that caſe.

Mr. *Williams.* Now Sir, for adjourning the Poll, did you know any ſuch Queſtion whether a Poll was to be adjourn'd upon the Election of any Sheriffs?

Sir *R. Clayton.* There hath been a great noiſe about Adjournments of late. That Poll was the moſt litigious of any that I know we have had before or ſince, that was adjourn'd for ſeveral days.

Mr. *Williams.* Who adjourn'd that Poll?

Sir *R. Clayton.* The Sheriffs did adjourn it, I think, Gentlemen, I do think the Sheriffs did adjourn it, I was not preſent.

Mr *At. Gen.* Sir *Robert*, Don't ſerve the Court thus.

Mr. *Williams.* Don't brow-beat our Witneſſes, Gentlemen. I know, Mr. *Attorney*, you are an Example of fair practice: We are examining our Witneſſes.

Sir *R. Clayton.* Pray, my Lord, let me explain my ſelf, I ſhall let Mr. Attorney General underſtand me. I did never appear at *Guild hall*, unleſs upon the account of a Court of Aldermen, I did never appear at *Guild-hall*, but the firſt day we had Conſultations here in this Court about the Adjournment, and upon the *Huſtings* about going about the Buſineſs we intended, and the Hall was very intent upon the Poll; I twice attempted to go out, and could not get out, whereupon we were fain to acquaint the Hall as well as we could for the noiſe, of the Buſineſs we were to go about, and they let me go. I left behind the Sheriffs and the Common Serjeant; how long they ſtayed I can't tell, I can upon my own Knowledge give no account of them. I was not conſulted to the beſt of my Knowledge afterwards, nor did give any particular Directions for Adjournment. I did not do it, for this Reaſon, I did not look upon it to be in my Power: If I had ſuch a Power, I did not underſtand it.

Mr. *Williams.* Sir *Robert*, how many days do you think that Poll continued?

Sir *R. Clayton.* About ſix days.

Mr. *Williams.* Of thoſe ſix how many days were you preſent?

Sir. *R. Clayton.* I did not underſtand it to be my Duty, and ſo did not look after it.

Mr. *Thompſon.* Sir *Robert Clayton*, I deſire to ask you a Queſtion, as to this matter you have

given in evidence; do you give it to the beſt of your remembrance, or poſitively?

Sir *R. Clayton.* I tell you I ſpeak to the beſt of my remembrance every thing that I ſay.

Mr. *At. Gen.* Sir *Robert Clayton,* I beg your favour, to the beſt of your remembrance is no evidence, it is ſo lately, if you pleaſe, Sir *Robert,* you are to give evidence of a thing about three Years ago. I ask you upon your Oath who were your Sheriffs?

Sir *R. Clayton.* Sir *Jonathan Raymond,* and Sir *Simon Lewis.*

Mr. *At. Gen.* I would ask you then a plain Queſtion, Sir *Robert,* becauſe you come in with your remembrance; did you give expreſs direction to the Common Serjeant or the Sheriffs to adjourn, upon your Oath?

Sir *R. Clayton.* I muſt, Mr. Attorney General, by your favour, take in my remembrance.

Mr. *At. Gen.* Then you are no Evidence. Sir *Robert,* did you give Directions or not, upon your Oath?

Sir *R. Clayton.* I can't ſay it was given.

Mr. *At. Gen.* Did you, or did you not?

Sir. *R. Clayton.* My Lord, I hope I have ſpoke *Engliſh* in the caſe, we did diſcourſe of the Adjournment in this Court, I believe it was diſcours'd below; but as I ſaid, I was engaged to go to the *Old Bailey,* and I would leave that matter to the Sheriffs, whoſe proper Buſineſs I underſtood it to be.

Mr. *At. Gen.* I asked you, Sir *Robert,* one of the plaineſt queſtions that ever was asked; I ask you whether you gave the Sheriffs or the Common Serjeant expreſs Order to adjourn?

Sir *R. Clayton.* I believe I did not.

Mr. *At Gen.* Did the Sheriffs tell you they had a Right then?

Sir *R. Clayton.* There was no diſpute who had the Right.

Mr. Serj *Jefferies.* Sir *R. Clayton,* if you pleaſe, I would ask you a Queſtion or two. Do you remember that the Court was adjourn'd while you were there or not? Do you underſtand the Queſtion, Sir *Robert?* Do you remember the Common Hall was adjourned while you were there?

Sir *R. Clayton.* Yes, Sir, if you give me leave to explain my ſelf, I think the Common-Hall was adjourn'd; it was declared, but there was ſuch a noiſe in the Hall that the People could not hear it.

Mr. Serj. *Jefferies.* But there was a ſort of Declaration made by your ſelf, you did make an Adjournment; but the noiſe was ſuch that the People did not hear: And if you remember, there was a Perſon affronted one of the Sheriffs, and I committed him to Cuſtody upon it.

Sir *R. Clayton.* We deſired to adjourn for an hour or two, that we might go and refreſh our ſelves.

Mr. Serj. *Jefferies.* Then you remember there was an Adjournment: I ask you whether it was appointed to be made by you or the Sheriffs?

Sir. *R. Clayton.* Truly I believe it was appointed by me.

Mr. Serj. *Jefferies.* Sir *Robert,* by asking a Queſtion or two, Sir *Robert,* I know I ſhall bring ſome things to your remembrance.

Sir *R. Clayton.* My Lord, I don't know I have given any great occaſion of Laughter to my Brethren; theſe Adjournments have been very common with us, and I might agree to it or order it, or direct it, but one of them I believe I did, or two of them.

Mr. Serj. *Jefferies.* Sir *Robert,* I would only have a Queſtion or two asked, and I know by asking a queſtion or two I ſhall bring things to your Memory, which I am ſure you cannot eaſily forget: Were there Directions given for Proclamation to be made for all Parties to depart in the King's Name?

Sir *R. Clayton.* I believe there might.

Mr. Serj. *Jefferies.* The next queſtion is, Whether the Sheriffs ordered that Proclamation to be made for all Parties to depart?

Sir *R. Clayton.* If it were done while I was preſent, I make no doubt in the Caſe, but I did direct it, I make no queſtion of that.

Mr. Serj. *Jefferies.* Very well now, Sir *Robert Clayton,* we are got to an Adjournment to a time by your direction, and Proclamation by your direction. Now I will ask another queſtion upon your Oath; Was not you in the Common-Hall, and gave Order for an Adjournment till *Monday* following, for I remember that day to be *Saturday?*

Sir *R. Clayton.* Truly I do not remember that.

Mr. Serj. *Jefferies.* You do not? Sir *Robert,* you know very well, that the Sheriffs of *London,* when the Lord Mayor and Aldermen come back to the *Huſtings,* the Sheriffs ſit remote, one on the right hand, and the other on the left, furtheſt from Lord the Mayor, ſo that all the Aldermen ſit nearer to the Lord Mayor than the Sheriffs do; did you mind that the Sheriffs came to you to ſpeak to you any thing of an Adjournment?

Sir *R. Clayton.* I never ſaw it.

Mr. *Jones.* I would ask you a Queſtion or two, You know this Gentleman, don't you? [*Pointing to the Common Serjeant.*

Sir *R. Clayton.* Yes.

Mr. *Jones.* Did he attend the Court at that time?

Sir *R. Clayton.* Yes.

Mr. *Jones.* Sir *Robert,* I ask you a fair Queſtion, did you lay any command on him to adjourn the Hall at that time from *Saturday* till *Monday.*

Sir *R. Clayton.* Pray, my Lord, give me leave to anſwer Mr. *Jones* in my own way.

Mr. *Jones.* My Lord, I'm in your Judgment, it is a fair queſtion within his own Recognizance lately done, he ought to anſwer poſitively, Yes or No.

Sir *R. Clayton.* Am not I upon my Oath, can you tell me what I can ſay?

Mr. *Jones.* Ay or No. Any honeſt man would do it.

Sir *Fr. Winnington.* All Witneſſes anſwer their own way, don't they?

Mr. *Jones.* Let him anſwer then his own way.

Mr. *At. Gen.* My Lord, you know there is a Rule in Chancery, if it be a matter within ſeven years, if it be not anſwered poſitively, it is no anſwer; if one asks a Witneſs a queſtion that lies within a little while, if he will not anſwer either affirmatively or negatively, he is no Witneſs.

L. C. J. I can't tell, Mr. Attorney.

Mr. *Jones.* Will you anſwer or no, Sir *Robert Clayton,* whether you commanded the Common-Serjeant to go and adjourn the Hall or no?

Sir *R. Clayton.* I don't remember that I did.

Mr. *Jones.* Then I only ask you this further queſtion, Whether Mr. Common Serjeant did not tell you

you that it was not his proper buſineſs to do it, and that unleſs you would lay expreſs Commands upon him, and put the very Words in his Mouth, he did deſire to be excuſed, and did he not ſtand there?

[*Pointing to the Bar.*

Sir *R. Clayton.* I have heard, Sir, what Mr. Common Serjeant did ſay, and I cannot charge my memory with it, but I have that charity for Mr. Common Serjeant to believe there might be diſcourſe to that purpoſe.

Sir *Fr. Winnington.* Mr. *Love*, in all your Experience what do you remember?

Mr. *Williams.* How long have you known *Guild-Hall* and Elections?

Mr. *Love.* I ſuppoſe, my Lord, theſe Gentlemen don't expect I ſhould ſay any thing that was done that day; but, my Lord, all that I ſuppoſe you expect from me is what I did obſerve to be the Practice of the City; to the beſt of my remembrance I ſhall give you an account. My Lord, about 22 years ago, I did obſerve the Practice to be this, when I was call'd into this Office of Sheriff, I took it as a thing for granted, that it was the Sheriff's Office to manage the Common Hall, that I did, as my Lord Mayor's was to have a Sword born before him; I have received it by tradition from all before me, and my own experience. My Lord, I remember when we came to chuſe Sheriffs upon *Midſummer* day, after the Lord Mayor and Aldermen had been there, my Lord Mayor ſaid to me and my Brother Sheriff: Gentlemen, look to your Office, we accordingly went to it and choſe two Sheriffs, one Gentleman that had been drank to by my Lord Mayor, I think it was Alderman but notwithſtanding that drinking to him, we took no notice of that as a Ceremony, he was put in nomination among others, and being a ſenior ſitting Alderman, we returned him; otherwiſe, my Lord, I aſſure you I would not have returned him notwithſtanding the drinking. After once that the Lord Mayor and Aldermen withdrew to go to the Council-Chamber, they ſaid to us, Now Gentlemen, look to your Office.

Mr. *Thompſon.* What was your Office?

Mr. *Love.* To chuſe Sheriffs.

Mr. *Thompſon.* Did my Lord Mayor meddle with the election, or left it to the Sheriffs?

Mr. *Love.* Left it to the Sheriffs.

Mr. *Williams.* What was your opinion, Sir, was it in the Lord Mayor to take the Poll, or the Sheriffs?

Mr. *Love.* Truly Sir, I am not a competent Judge of whoſe right it was, but if my Lord Mayor had gone about to meddle in it, I ſhould have prayed my Lord Mayor to meddle in his own Office, and let me alone with mine.

Mr. *Attorney.* Yes, Mr. *Love*, you were then the Tribunes of the People.

Sir *Fr. Winn.* Here are ſome ſay the Common Serjeant and the Common Cryer have a power, nay, the whole power of ordering the Hall during the Election. What is the Office of the Common Serjeant there?

Mr. *Love.* Truly, Sir, I look upon the Common Serjeant and the Common Cryer as Perſons left to aſſiſt us, becauſe they could not put us to the trouble of crying *O Yes* our ſelves; and if any Common Serjeant or Common Cryer had durſt to put a queſtion without my direction, I would have known whether he could or no.

Sir *Fr. Winn.* Mr. *Love*, Was it ever diſcours'd to you when you were Sheriff, or before or ſince, that ever my Lord Mayor did interpoſe before the Election was over?

Mr. *Love.* Since I was diſcharged of being a Magiſtrate, I never was at a Common Hall ſince. I have ſpent my Money for the City's ſervice, but never got a penny by them; I never heard that ever the Lord Mayor till theſe late times interpoſed, but that the Sheriffs managed the whole buſineſs of chuſing Sheriffs.

Mr. *At. Gen.* Mr. *Love*, I deſire to have a word with you, you ſpeak of the time of your reign, I would ask you a plain queſtion, was it before the King came in?

Mr. *Love.* It was that year the King came in.

Mr. *At. Gen.* Was you choſen before?

Mr. *Love.* Yes, I was.

Mr. *At. Gen.* Do you remember an Act of Parliament in 48, then in force, of ſhutting out my Lord Mayor?

Mr. Serj. *Jefferies.* I would ask him a queſtion or two. Hark you, Mr. *Love*, Let me ask you a queſtion or two.

Mr. *Love.* Sir *George*, I would give Mr. *Attorney* an anſwer.

L. C. J. What would you make of it? If you ask him of an Act of Parliament it is ſomething.

Mr. *At. Gen.* You ſpeak of a time when my Lord Mayor had no more to do with it than I had. There was an Ordinance of Parliament, did you never ſee that?

Mr. *Love.* To the beſt of my remembrance I never ſaw it in my life.

Mr. *At. Gen.* Nor heard of ſuch a thing?

Mr. Serj. *Jefferies.* Hark you, Mr. *Love*, I perceive you would have diſputed with my Lord Mayor, who was the Lord Mayor that you talk of?

Mr. *Love.* Sir *Thomas Allen.*

Mr. Serj. *Jefferies.* Now I would deſire to know whether you remember the City before the King came in?

Mr. *Love.* For a little while.

Mr. Serj. *Jefferies.* Do you remember any thing of that cuſtom of the Lord Mayor's drinking to Sheriffs, was not that uſed before the King came in?

Mr. *Love.* A long time.

Mr. Serj. *Jefferies.* It is well enough; a long time.

Mr. *Williams.* My Lord, we have ſeven or eight more to the ſame purpoſe, but we are ſatisfied with theſe Gentlemen: We will prove if there was any thing like a Riot, we will prove my Lord Mayor and thoſe that were with him were the Authors of it.

L. C. J. When multitudes of People are gather'd together upon a lawful occaſion, ſuppoſing that they had a Right to be there, I do ſay that in that caſe it would be much a mitigation of the fine, ſo for this ſame Riot; but on the other ſide you muſt know, that theſe men that do it, it doth not excuſe them, for *ignorantia juris* is not an excuſe. It is true, if they had had a lawful occaſion to continue to do it, but in truth they had not, that will excuſe them *à tanto*, but *non à toto.*

Mr. *Holt.* My Lord, I beg to put in this caſe, there is a great deal of difference where a Perſon does claim a right to himſelf, and does an extravagant action. Now my Lord theſe Perſons did

did claim a Right to themſelves to continue the Common Hall, and that it was not in my Lord Mayor's Power to adjourn it without them: Now, my Lord, they claimed this Right, if they uſed no Violence, that is excuſable. If I ſhould claim a Right to another Man's Eſtate, tho' I have no Title, and ſay I have a Right, and give it out in Speeches, no Action lies againſt me; but if I do an extravagant Action, and ſay another Man hath a Title, there lies an Action againſt me.

L. C. J. Now go to your Fact.

Sir *Fr. Winn.* My Lord put a Point to us, and we need not call more Witneſſes.

L. C. J. I don't ſpeak to hinder you from calling your Witneſſes.

Sir *Fr. Winn.* I put this caſe, we undertake to prove that it was always looked upon, that it was the Right of the Sheriffs: Suppoſe, my Lord, upon the Diſpute it ſhould be found that the Opinion of the Jury ſhould be otherwiſe, will this turn to an illegal Act?

L. C. J. Call your Witneſſes.

Mr. *Wallop.* I beſeech your Lordſhip I may put one caſe in this Point, in a Point of Right if they have a probable Cauſe to inſiſt upon it. Suppoſe I ſend 40 Men to a Wood, and take a Carr or a Team, if they be a competent number to cut down Wood, if we are miſtaken in the Title, that is no Riot. *Lambert* puts the Caſe.

L. C. J. But what if I had ſent a great many Men to cut down the whole Wood?

Mr. *Williams.* We will call ſome Witneſſes that will take us off from the Riot thus, if ſo be we can excuſe our ſelves of the Diſorder, and put it upon my Lord Mayor, then we are innocent.

L. C. J. Very well if you do that.

Mr. Mr. *Sibley*, Are you acquainted with the manner of the Election of Sheriffs, how long have you known it?

Mr. *Sibley.* I have been of the Livery ever ſince 39, in all my time, I ſpeak, Gentlemen, to the beſt of my remembrance, it hath been the Cuſtom in all my time, except here of late, that the Sheriffs of *London* have had the management of the Election.

Mr. Did my Lord Mayor ever interpoſe till the Election was over?

Mr. *Sibley.* I never knew my Lord Mayor interpoſe till lately.

Sir *Fr. Winn.* Did you ever hear my Lord Mayor pretend to it till of late?

Mr. *Sibley.* No, my Lord.

Sir *Fr. Winn.* Did the Mayor uſe to be preſent at any Election during the Election?

Mr. *Sibley.* I have been moſt commonly there.

Sir *Fr. Winn.* But the Mayor, would the Mayor be there?

Mr. *Sibley.* The Mayor and Aldermen went off the Bench.

Sir *Fr. Winn.* Who managed the Elections?

Mr. *Sibley.* The Sheriffs.

Sir *Fr. Winn.* Were the Common Serjeant and the Common Cryer there?

Mr. *Sibley.* The Common Serjeant and the Common Cryer are always there.

L. C. J. I pray thus, you have known the City it ſeems a great while, I would ask you this, pray who did call the Aſſembly that was to chuſe the Sheriffs, did the Sheriffs or the Lord Mayor?

Mr. *Sibley.* We commonly received the Tickets by the Officers of the Companies.

L. C. J. Did the Officers of the Companies ſummon the Aſſembly? Hark you, pray Sir, recollect your ſelf, Do you take it that the Officers, the Beadles it may be of the ſeveral Companies, did they ſummon the Livery-men, and ſo a Common Hall was call'd together, was it ſo in your time?

Mr. *Sibley.* It hath been commonly ſo, we have received Tickets from the Beadle of the Company.

L. C. J. And my Lord Mayor had nothing to do with it then?

Mr. *Sibley.* What Order the Maſters and Wardens had from my Lord Mayor, I never inquired into that.

L. C. J. When the Hall was diſſolved, who ordered Proclamation to be made, the Sheriffs or the Lord Mayor?

Mr. *Sibley.* My Lord Mayor hath not uſed to be there.

Mr. *Thompſon.* When they had done, they went away. He won't trouble your Lordſhip.

L. C. J. Pray, had my Lord any hand in ſummoning, did he direct the ſummoning of them?

Mr. *Sibley.* It is more than I know.

L. C. J. You bring a Witneſs that knows nothing of the matter.

Mr. Serj. *Jefferies.* Mr. Deputy *Sibley.* Give me leave to ask Mr. *Sibley* a Queſtion or two, I ſhall ſet him to rights preſently. Mr. *Sibley*, If I be not miſtaken you are one of the Company of *Tallow-Chandlers*, and you have been Maſter of the Company, and you have been Warden of the Company. You very well know what Directions are given to the Beadle are generally by the Maſter or Wardens: Pray, upon your Oath, when you were Maſter or Warden, was there ever any Precept ſent to you to ſummon a Common Hall?

Mr. *Sibley.* Indeed I don't remember that, Sir.

Mr. *Thompſon.* If your Lordſhip pleaſe, we have done with our Evidence, I would beg your Lordſhip's Opinion in it.

Sir *Fr. Winn.* We do admit, my Lord Mayor ſummons the Court.

L. C. J. But you bring a Witneſs that knows nothing in the world of it, but yet you would have it taken for Goſpel, that the Sheriffs had all the Management before that time forty Years together, till now very lately. But when he comes to be asked how is this Aſſembly or Common Hall call'd together, alas! he knows no more of that than one in *Utopia.*

Mr. *Thompſon.* My Lord, we have ſeveral other Witneſſes, but we will call no more.

Mr. *At. Gen.* If you have no more, we will call two or three more.

Mr. *Thompſon.* We have ſome to prove that my Lord *Grey* came to ſpeak with Sir *William Gulſton*, and went away again, and we deſire to call Sir *Thomas Armſtrong.*

Sir *Fr. Winn.* My Lord, if your Lordſhip pleaſes, thus, there will be it ſeems ſome particular Defences made. Your Lordſhip hath heard their Evidence, and what we have ſaid; we deſire to call two or three Witneſſes to another Head. Your Lordſhip hath heard there was ſome Rudeneſs by ſome of the People, but who they were it doth not appear. We will call two or three Witneſſes of the Behaviour of thoſe Men

and

and Company that came with my Lord Mayor, that whatſoever diſturbance was made, they were the chief men that made the diſturbance, and my Lord Mayor could not help it, nor we neither.

L. C. J. Sir *Francis*, I believe thoſe men that would not have *God ſave the King*, my Lord Mayor could not hinder them, but will you undertake to prove that thoſe that came with my Lord Mayor, that they were the men.

Sir *Fr. Winn.* They were with them, my Lord.

Mr. Serj. *Jefferies.* They were with them that cryed *God bleſs the Proteſtant Sheriffs.*

Mr. *Sibley.* My Lord, I deſire to explain my ſelf to what I ſaid; It is ſeveral years ago ſince I was Maſter of the Company, I do not remember, but I believe the Summons was directed from my Lord Mayor.

Mr. *Freak.* Mr. *Winſtanley*, what account can you give to my Lord and the Jury?

Mr. *Winſtanley.* I have lived near the Hall, and I often came in, but I was not a Livery-man upon that Poll, that was between Mr. *Kiffen* and Sir *Robert Clayton*; the Sheriffs managed it.

Mr. *Freak.* Who managed it?

Mr. *Winſtanley.* The Sheriffs.

Mr. *Freak.* Who declared?

Mr. *Winſtanley.* The Sheriffs.

Mr. *Freak.* Did the Mayor come down to declare the Election?

Mr. *Winſtanley.* The Mayor came down after the Poll, but the Sheriffs took the Poll.

Mr. *Freak.* Who was then Mayor?

Mr. *Winſtanley.* Sir *James Edmards* was Sheriff, and Sir *John Smith.*

Mr. *Freak.* Who was Mayor?

Mr. Serj. *Jefferies.* It was Sir *Samuel Starling.*

Mr. *Freak.* Who put the Queſtion upon the Huſtings?

Mr. *Winſtanley.* I can't tell.

Mr. *Freak.* What did you hear the Sheriffs ſay, or ſee them do?

Mr. *Winſtanley.* The Sheriffs preſently granted a Poll, and parted one to one door, and the other to t'other.

Mr. *Freak.* And who took the Poll?

Mr. *Winſtanley.* The Sheriffs took it.

Mr. *Freak.* Who declared the Election?

Mr. *Winſtanley.* The Sheriffs.

Mr. *Freak.* Who were Sheriffs then?

Mr. *Winſtanley.* Sir *James Edwards* and Sir *John Smith.*

Mr. Serj. *Jefferies.* Mr. *Winſtanley*, I would ask you this queſtion, do you take it upon your Oath that the Sheriffs declared the Election?

Mr. *Winſtanley.* I declare upon my Oath that the Sheriffs took the Poll.

Mr. Serj. *Jefferies.* Mr. *Winſtanley*, You may gueſs pretty well what I mean by this. Firſt of all, I ask you, Did the Sheriffs put the Queſtion?

Mr. *Winſtanley.* The Sheriffs took the Poll, Sir.

Mr. Serj. *Jefferies.* Nay anſwer my Queſtion, did the Sheriffs put the Queſtion, or did any body elſe?

Mr. *Winſtanley.* Truly, Sir, I have forgot, you were there.

Mr. Serj. *Jefferies.* I know I was, Sir: I know very well; I ask you upon your Oath, who was it that declared the Election afterwards? Upon your Oath.

Mr. *Winſtanley.* Truly, Sir *George*, I don't remember.

Mr. Serj. *Jefferies.* Mr. *Winſtanley*, one went out at one door you ſay, and t'other went out at t'other, you ſay; now I ſay who took notice, and told the names of thoſe that went out at one door and t'other?

Mr. *Winſtanley.* The two Sheriffs.

Mr. Serj. *Jefferies.* Who elſe?

Mr. *Winſtanley.* I can't tell.

Mr. Serj. *Jefferies.* Do you remember me there at the great Door, when they poll'd and went out, do you remember who told them?

Mr. *Winſtanley.* No truly.

Mr. Serj. *Jefferies.* Pray, do you remember when one Mr. *Broom* a Wax-chandler was choſen Ale conner?

Mr. *Winſtanley.* I was in the Hall, but I do not charge my Memory with it.

Mr. *Sol. Gen.* Hark you, Mr. *Winſtanley*, who is it grants the Poll when it is demanded?

Mr. *Winſtanley.* I do remember very well Sir *George Jefferies* was in the Hall, they demanded a Poll, and ſo went out.

Mr. *Sol. Gen.* Who granted it?

Mr. *Winſtanley.* The two Sheriffs.

Mr. Serj. *Jefferies.* I will put you a Caſe nearer home, Mr. *Winſtanley*: You remember when Sir *Thomas Player* was choſen *Chamberlain*, when the Queſtion was put, Who ſhould be *Chamberlain*, between him and a Gentleman I ſee not far from me, who do you remember managed the Poll then?

Mr. *Winſtanley.* There was no need Sir *George.*

L. C. J. What do you mean to do with theſe little Witneſſes? You call Witneſſes that know nothing of the matter, or nothing to the purpoſe.

Mr. Serj. *Jefferies.* My Lord, Let me ask him but one Queſtion more, I know he hath been a very great Evidence in this Caſe, I remember when that Gentleman was in for *Bridge-Maſter*, Who was the Poll demanded of at that time?

Mr. *Winſtanley.* Truly, Sir, I think it was demanded of the Court.

Mr. Serj. *Jefferies.* Of the Court?

Mr. *Winſtanley.* Uſually upon other Days my Lord Mayor and the Court come down, but upon *Midſummer-day* they go up.

Mr. Serj. *Jefferies.* But I ask you of whom the Poll was demanded at that time?

Mr. *Winſtanley.* I don't remember it I'le aſſure you.

L. C. J. You told us that point would be granted, and you would not ſtand upon it.

Mr. *Williams.* My Lord, Where there are ſo many men, there may be many Minds, I would have your Lordſhip and the Jury hear them.

Mr. *Jones.* The Government is concerned, Mr. *Williams.*

Mr. Serj. *Jefferies.* This is not a matter of Mirth I'll aſſure you, it reaches the Government.

Mr. *Williams.* My Lord Mayor hath the power of adjourning the Hall, but not till the Buſineſs is done.

Mr. *Thompſon.* My Lord, I would put you a Caſe *——Sure, Mr. *Jones* I ought to be heard. If my Lord Mayor hath power to call a Common Hall, he hath not to adjourn it before the Buſineſs is done.

* *Here Mr. Jones offered to interrupt him.*

L. C. J. If a Writ come to the Sheriffs to chooſe

chuſe Parliament-men, then the Sheriffs have it, but this is my Lord Mayor's Office, he hath Power to diſſolve and adjourn.

Mr. *Thompſon.* I ſpeak to this Caſe, my Lord, I will ſhew your Lordſhip an Inſtance where it cannot be done. My Lord Mayor hath Power to call here, and he hath Power to diſſolve, ſay they: My Lord, it cannot be, with ſubmiſſion, in all Caſes. He hath Power to call an Aſſembly when there is a Mayor to be choſen, and the Citizens have a Privilege to move their Mayor or continue him, now if it were in the Power of the Mayor, and there ſhould happen a queſtion who they were? For, in a great number of Electors, if it were in his power to adjourn from time to time, he muſt continue Mayor.

L. C. J. It is plain he may do it for all your Objection. You know it was agreed by all ſides that Sir *Samuel Starling* the Lord Mayor, had well diſſolved the Aſſembly, that is, in point of Law, and they could not ſay the Aſſembly was in being, yet afterwards there was an Action brought againſt him, and there they laid how that maliciouſly, and to the intent that he who was choſen into the Place of *Bridge-Maſter* to which he was duly Elected, ſhould be ſet aſide, he goes and diſſolves the Aſſembly, and denied to grant him a Poll, which they ought to have had, yet for all that the Aſſembly was well diſſolved.

Mr. Serj. *Jefferies.* Conclude, Gentlemen, conclude.

Mr. *Thompſon.* That which I have to ſay is a Point of Law.

Mr. Serj. *Jefferies.* Sir *Fr. Winnington*, If you deſign to conclude, I tell you beforehand, I would not interrupt you, we will call a Witneſs or two.

Sir *Fr. Winnington.* My Lord, becauſe we would make an end, I will call two of thoſe men that came with my Lord Mayor, to ſhew that if there was any rudeneſs, thoſe very People that came with my Lord Mayor, were the Cauſe of it.

Mr. *Sol. Gen.* That they that came with my Lord Mayor, cauſed them to ſtay after my Lord was gone.

Mr. *Thompſon.* Mr. *Jackſon*, Pray can you remember whether any of the Defendants here were concerned in any Affront to my Lord Mayor, or who it was that my Lord Mayor received an Affront from?

Mr. *Jackſon.* I did obſerve my Lord as he went out of the Hall, I took my Back and ſet it againſt the Crowd, and had my Face towards my Lord Mayor, and I was crowded ſo that I could ſcarce ſee my ſelf one way or other, but got off the ſteps at laſt, and went home with my Lord Mayor.

Mr. *Thompſon.* Can you ſay who ſtruck off the Hat?

Mr. *Sol. Gen.* Where do you live, pray?

Mr. *Jackſon.* I live at *Charing-croſs.*

Mr. *Sol. Gen.* With whom?

Mr. *Jackſon.* With my ſelf, Sir.

Sir *Fr. Winnington.* What is your Name?

Mr. Serj. *Jefferies.* Don't you know the Sword-bearer of *Briſtol*, Sir *Francis?*

Mr. *Thompſon.* Mr. *Roe*, were you here when my Lord Mayor was crowded? Who offered any affront?

Mr. *Williams.* Pray will you give my Lord and the Jury an account of what you heard, and where the diſorder began.

Mr. *Roe.* My Lord, I was in *Cheapſide*, and I heard a great noiſe of huzzaing, and a terrible noiſe indeed, and I met with a Fellow running, my Lord, and I ſtopt the Fellow, What is the matter? Nothing ſaid he, but an old Fellow riding *Skimmington* and *Skeleton*, and in the Street I ſaw a matter of an Hundred with their Hats upon Sticks, crying, Damn the *Whigs*; ſaid I, *Gentlemen, What's the matter?* ſaid they, *The Work is done to ſtop the Poll*, and that is all.

L. C. J. Hark you, were you in *Guild-Hall?*

Mr. *Roe.* I followed them a little way down the Street.

L. C. J. Hark you, did you ſee my Lord Mayor's Hat down upon the ground, and was he like to be thrown down, did you ſee that?

Mr. *Roe.* No, I ſaw nothing of that, I heard ſuch a noiſe I was glad I had got rid of them.

Mr. *Williams.* My Lord, we have no more to ſay in the general, all that I have to ſay now is for my Lord *Grey.* The Evidence againſt my Lord *Grey* was that he was here, now, my Lord, we have Witneſſes more particularly to defend my Lord *Grey.*

Mr. *At. Gen.* We ſhall call a Witneſs or two to clear what that Gentleman ſaid when Sir *Robert Clayton* was Mayor.

Mr. Serj. *Jefferies.* Pray, Gentlemen, let us have a little Patience. Pray, my Lord, if your Lordſhip pleaſe——Here is ſuch a horrid noiſe—Upon all the matter I don't perceive but Sir *Robert Clayton* does himſelf believe Proclamation was made by him, he does believe the Adjournment was made by him, but as to the Adjournment to *Monday*, he is not certain of that. But if your Lordſhip pleaſes, we have here both the Sheriffs, Sir *Jonathan Raymond* and Sir *Simon Lewis*, that will ſhew the Court whether there was any ſuch thing.

Mr. *At. Gen.* Before *Bethel* came out of the North, no Sheriff ever pretended to it.

Mr. Serj. *Jefferies.* Pray, Sir *Simon Lewis*, I deſire you would ſatisfy my Lord and the Jury concerning the Adjournment when you went to the Seſſions-Houſe in the *Old Baily*: Did you order the Adjournment of the Poll, or my Lord Mayor?

Sir *Simon Lewis.* We came and waited upon my Lord Mayor here, and told him they demanded a Poll without, we took his Directions, and my Lord Mayor did adjourn the Court, by reaſon that the Aſſaſſinators of *Arnold* were to be Try'd, and by reaſon of that it was adjourn'd till *Monday*, and my Lord Mayor and the Aldermen went thither, but indeed we were left as Priſoners, and I received a blow on my Breaſt.

Mr. *At. Gen.* Sir *Jonathan Raymond*, Did you pretend to have the Power then of adjourning the Court?

Sir *Jon. Raymond.* My Lord did adjourn the Court becauſe of that Tryal, and then afterwards we went upon our Poll, we were ſeveral days upon it, we only appointed from Day to Day till we had made an end, and when we had made an end we declared it to my Lord Mayor and the Court of Aldermen, and my Lord Mayor and the Court of Aldermen came upon the Huſtings, and declared who it fell upon.

Mr. *At.*

Mr. *At. Gen.* Sir *James Smith*, When you were Sheriff did you pretend to have any such power?

Mr. *Serj. Jefferies.* Upon your Oath, Did you pretend to have a power of adjourning Common Halls?

Sir *J. Smith.* No, Sir, we were Sheriffs immediately after Sir *Robert Clayton*, I never heard it queſtioned but my Lord Mayor had the right of it.

Sir *F. Winn.* Sir *Jonathan Raymond*, I think you ſay the Sheriffs did adjourn from day to day at that time?

Sir *J. Raymond.* We could not make an end of Polling, and we did appoint from day to day till we had made an end of Polling.

Mr. *Com. Serj.* My Lord, I will give your Lordſhip an account of that whole Day's proceedings; we came to the Hall, and after Mr. *Recorder*, Sir *George Jefferies* had attempted to ſpeak to the Hall, for they were in ſuch a tumult they would not ſuffer him to ſpeak, my Lord Mayor withdrew, there was a very great clamour and noiſe, but at laſt the Queſtion was put, and I came up with the Sheriffs hither and acquainted my Lord, that Mr. *Bethel* and Alderman *Corniſh* had the moſt hands, and that there was a Poll demanded between Mr. *Box* and Mr. *Nicholſon*, and Mr. *Bethel*, and Mr. *Corniſh*, then the diſpute lay as between *Box* and *Nicholſon* and Alderman *Corniſh* and Mr. *Bethel*, I acquainted my Lord Mayor that was, Sir *Robert Clayton*, that Mr. *Recorder* ſaid he would not go down to make Declaration, they would not hear him; upon that Sir *Robert Clayton* took a Paper and gave it me, with theſe very words, (it is the greateſt tumult I was ever in, in all my life, and I have ſome reaſon to remember it) Prithee, ſays he, do you make Declaration to them, for if they will hear any body they will hear thee: Sir, ſays I, becauſe it is not the Duty of my Office I deſire your particular direction; then, ſays he, tell them I muſt adjourn it till *Monday*, becauſe I muſt go to the *Old Baily*, to try the Aſſaſſinates of *Arnold*, whereupon the Hall was adjourn'd, and in a great tumult, and my Lord Mayor attempting to go out, he was beat back twice or three times, he ſpake ſomething to them, and they went away, leaving me and the Sheriffs upon the Huſtings, and there they kept us Priſoners till ſix or ſeven a Clock at night. On *Monday* when we came to Poll again by his direction, I went to his Houſe, and he gave me direction to go with the Sheriffs to adjourn it, afterwards there was a Court of Aldermen purpoſely call'd, and upon their direction I took the Poll and kept it, and every Adjournment was made by his particular direction to me.

Sir *Robert Clayton.* Gentlemen, I do deſire I may explain my ſelf, becauſe I was imperfectly heard, ſome part of the ſtory that Mr. *Common Serjeant* does ſay, I do remember, and will tell you what I do remember of it. I remember the coming up, and I remember that Mr. *Recorder* was not willing to go down there was ſuch a hubbub, I remember that very well. The particular words I ſaid to him I cannot charge my memory with; we had diſcours'd. I remember the Adjournment, and we diſcours'd of the Adjournment below, we made Proclamation, but the Noiſe was ſo great they could not hear, and upon my attempting to go out, I was beaten back twice or thrice, and then we were fain to let them know the buſineſs we went about as well as we could, and then they let me go, and I left the Sheriffs with them to agree of the manner and methods of Polling. There were ſeveral Adjournments made afterwards, I can't charge my ſelf with it, I might be particularly conſulted, but for the particular times of Adjournment, I did not think my ſelf concerned in point of reputation, if I thought I had been blameable I ſhould have concerned my ſelf to have given more particular directions.

Mr. *Thompſon.* If your Lordſhip pleaſe, I have but this, admitting the Right to be in the Lord-Mayor——

L. C. J. Do you make a doubt of it now?

Mr. *Thompſon.* Admitting it, thoſe Gentlemen that came to continue the Poll, it is a Queſtion whether they can be guilty of the Riot or not.

Mr. *W.*——There are ſome three or four of the Defendants that have a particular caſe, that ſtands by themſelves, and it reſts upon this point, whether my Lord Mayor hath this power or not. For ſo much of the evidence as concerns any noiſe or hiſſing, or any thing of that, that relates to the time of Adjournment, for it was done at the time of the Adjournment. As for Mr. *Corniſh*, Mr. *Goodenough*, my Lord *Grey* and one or two more, they did not come till within ſome three hours after that, ſo that they cannot be engaged in the noiſe or that.

L. C. J. It is no matter, they came time enough.

Mr. *Williams.* We have done my Lord, with the general evidence, we have ſomething to ſay in defence of my Lord *Grey*, all the evidence againſt my Lord *Grey* is this, that he was here about ſeven a Clock at night. For that, Gentlemen, we ſay this, that my Lord *Grey* had ſome buſineſs here, and my Lord's buſineſs was this, my Lord *Grey* was here about the ſale of a Mannor in *Eſſex* with Sir *William Gulſton*, my Lord, they had appointed this very Day for that buſineſs, it was my Lord's intereſt mightily to purſue it, and Sir *William* happened to be at Sir *Thomas Player*'s, and knowing this to be an Election Day, my Lord dined that Day at an eating Houſe in the *Hay-Market*, and afterwards came to *Peter*'s Coffee-Houſe in *Covent Garden*, and ſtaid there till between four and five a Clock in the Afternoon, when he thought the heat would be over, and then he came to make enquiry after Sir *William*, and took up in *Bruen*'s Coffee-Houſe about five or ſix a Clock, there he continued quiet in the Houſe till all the noiſe was over, then he ſent to enquire for Sir *Will. Gulſton*, and hearing he was at Sir *Thomas Player*'s, he and Sir *William* went to a Tavern, and there they treated and finiſhed the affair. My Lord we will prove it; Call Mr. *Ireton.*

Mr. *Ireton.* My Lord, I know that at this very time my Lord *Grey* was treating with Sir *Will. Gulſton* about the Mannor of *Corſfield* in *Eſſex*, and my Lord *Grey* and Sir *Will. Gulſton* had appointed to meet that night at t'other end of the Town, if the Poll were ended. In the evening I met my Lord *Grey* who told me he had been with Sir *Will. Gulſton* in *London*, and had diſpatched the buſineſs.

L. C. J. Did my Lord tell you ſo?

Lord *Grey.* He treated for me, my Lord, with him.

L. C. J. Pray for God's ſake, you muſt lay your Matter a little cloſer together, if he was to treat about the Purchaſe of a Mannor, Was there no convenient place for Company to treat about it but while they were caſting up the Poll-Books with the Sheriffs and *Goodenough*? Was that place fit?

Mr. *Holt*. My Lord had appointed to ſpeak with Sir *William Gulſton* that day in *Covent-garden* if the Poll had been over, but not finding him there, came into the City.

Lord *Grey*. That Gentleman went between Sir *William Gulſton* and I.

L. C. J. Where were you to meet?

Lord *Grey*. At the *Roſe* Tavern in *Covent-garden*.

L. C. J. What made you here then?

Lord *Grey*. Not finding him there I came hither, and ſpake with Sir *William Gulſton* in that very Room. The Poll was over and the Company gone.

Mr. *Williams*. Mr. *Ireton*, Do you know there was any Treaty between my Lord *Grey* and Sir *William Gulſton* about the Sale of any Land?

Mr. *Ireton*. Yes, Sir, I do.

Mr. *Williams*. When was that Treaty?

Mr. *Ireton*. About a Twelve-month ſince.

Mr. *Williams*. Do you know they had any Diſcourſe about it?

Mr. *Ireton*. Sir, they had, I think it was *Mid-ſummer-day*, the Day the Election of Sheriffs was.

Mr. *Williams*. Were they about that Treaty that Day?

Mr. *Ireton*. That Day, my Lord.

Mr. *Williams*. Where was the Treaty?

Mr. *Ireton*. In Sir *Thomas Player*'s Houſe.

Mr. *Williams*. What time of the Day?

Mr. *Ireton*. About Twelve a Clock.

Mr. *Williams*. Where went my Lord afterwards?

Mr. *Ireton*. My Lord went to Dinner, as he told me in the *Hay-market*.

Mr. *Williams*. Did you know of any Appointment to meet again?

Mr. *Ireton*. I was informed ſo, but cannot poſitively tell.

Mr. *Williams*. Sir *Thomas Armſtrong*, Pray, Sir, will you give an account where my Lord was that Day?

Sir *Tho. Armſtrong*. I came up this way about ſix a Clock, and was in a Coffee-houſe by *Guild-hall*.

Mr. *Williams*. Do you know any thing about that Treaty?

Sir *Tho. Armſtrong*. I ſaw them together that Night. I ſaw them together at Sir *Thomas Player*'s about Twelve a Clock, and again at Eight.

Mr. *Williams*. Do you know any thing of treating about this Land in *Eſſex*?

Sir *Tho. Armſtrong*. No, I do not.

Mr. *At. Gen*. You did not ſee them in the Chamber?

Sir *Tho. Armſtrong*. Does any body ſay I did.

Lord *Grey*. My Lord, I will give you an account of it.

Mr. *Williams*. My Lord, Mr. *Ireton* tells you this, my Lord *Grey* and Sir *William Gulſton* were in Treaty about buying theſe Lands that very Morning together, ſays Sir *Thomas Armſtrong* about Noon, afterwards my Lord went to the *Hay-market* and ſtaid there till Evening, and my Lord and Sir *William* were together again at Night. My Lord, this Caſe will depend upon your Lordſhip's Directions. It is very plain that my Lord Mayor of *London* hath the ſummoning the Common Hall, and when the Buſineſs is done he hath the diſcharging them. My Lord, if it be true what Mr. *Love* and others ſay, they tell you that in all their time, their Opinion is ſo, that it belonged to the Sheriffs and not to the Lord Mayor, what may be the Conſequence, lies in your Lordſhip's Opinion. Now for the Conſequence of it, if it were no more than a Matter of Opinion and Right, and the Sheriffs inſiſt upon it: Are theſe Defendants and the Sheriffs guilty of theſe Outrages? For there is nothing proved upon them. This don't make them guilty of any thing more than a bare continuing the Poll. Therefore, my Lord, I muſt ſubmit to your Direction how far the Jury will find us or any of us guilty of a Riot in this Caſe.

Sir *Fr. Winn*. My Lord, we agree they did continue the Poll, and the Defendants did apprehend it was lawful for them ſo to do, if the Jury ſhould think they did miſapprehend what was the ancient Uſage of the City, if your Lordſhip ſhould be of Opinion that by Law the Lord Mayor ought to do it; yet I do ſay, it being ſo probable a Caſe, their inſiſting upon it will not make it a Riot: Your Lordſhip will be pleaſed, I hope, to take notice of it, if they find the Mayor hath Power to adjourn it.

Mr. *Wallop*. I humbly conceive, that the Information does in truth deſtroy it ſelf, for it is agreed on all hands as the Information ſets forth, that they came together upon very lawful Occaſions, and the Information ſets forth, that by colour of their Office they did as if they were lawfully aſſembled. Now, my Lord, they have overthrown the Definition of a Riot, for a Riot is when three or more are come together to do an unlawful Act, and they do it. So that it is a very hard matter to make this a Riot.

L. C. J. Does not this Matter appear upon Record?

Mr. *Holt*. No, no, my Lord, it don't.

Mr. *Wallop*. If Men do lawfully meet together, if by chance they fall together by the Ears, and commit many Miſdemeanors, this can never be a Riot. But, ſay they, here was an Adjournment, a Command by my Lord Mayor to adjourn the Court, and they continue after Adjournment: Now, my Lord, the Queſtion is, Whether he had Power to adjourn it or no, the Citizens did inſiſt upon it that he had no Power. Now, Gentlemen of the Jury, if you find in your Conſcience that the Citizens had a probable Cauſe, and they inſiſt upon it, this can never be a Riot.

Mr. *Holt*. It doth appear that they were lawfully aſſembled together. And for the throwing off my Lord Mayor's Hat, ſuppoſe that my Lord Mayor hath a Power for to adjourn the Court, yet, my Lord, it muſt be agreed, that thoſe that come thither muſt have a convenient time to depart, for my Lord Mayor, as ſoon as ever he had adjourn'd the Court, he went away, and all the Hall could not go of a ſudden, but muſt have a convenient time to go, ſome followed him immediately, and the other Gentlemen that ſtaid behind, not at all conſenting

ſenting to that rude Action about my Lord Mayor, cannot be guilty, for there is no Proof of any Miſcarriage committed by any of theſe Defendants, it may be there was ſome Diſcourſe concerning the Power of my Lord Mayor. I only mind your Lordſhip of Sir *Robert Atkins* Caſe, a late Caſe in the *King's-Bench*, there can be no Aſſembly to chooſe an *Alderman*, as in that Caſe, unleſs the Mayor was there, the Aſſembly was held, and yet, Gentlemen, becauſe it was not done in a tumultuous manner, but with a good Intent, it was held that Sir *Robert Atkins* was not guilty of a Riot. There muſt be an evil Intention to do ſome miſchief.

Mr. —— *Turner* brought his Action againſt Sir *Samuel Starling* for diſſolving the Hall: And, my Lord, that being in the Caſe of the Election of a *Bridgemaſter*, ſurely there is a parallel Reaſon for the Sheriffs.

L. C. J. That Caſe is againſt them.

Mr. —— No, my Lord.

L. C. J. There the Lord Mayor had a Power by Law to diſſolve the Aſſembly, tho' in truth he ſhould not have done it.

Mr. *Sol. Gen.* The Action was brought for denying a Poll, my Lord.

Mr. *Thompſon.* It is laid in that Declaration, that it is the Cuſtom of the City, that my Lord Mayor cannot diſſolve.

Mr. *At. Gen.* May it pleaſe your Lordſhip and you Gentlemen of the Jury, you have now heard all the Evidence*——

* *The Counſel clamour'd.*

L. C. J. Gentlemen, you ſhall not over-rule me ſo, becauſe I am willing to hear every body, therefore you impoſe upon me. You ſhall have Law by the Grace of God as far as I am able.

Mr. *At. Gen.* We have now done with the Evidence on both ſides and you do now ſee the Right of the Lord Mayor, notwithſtanding all the vulgar and popular Diſcourſes, is aſſerted; it appears now upon full Evidence, they themſelves do not contradict it, that my Lord Mayor is the Supreme Magiſtrate of this City, both for calling all your Aſſemblies and for diſſolving them, they wont pretend againſt this, but indeed they make a Queſtion whether my Lord Mayor can adjourn or no. Neceſſity of Affairs requires it ſometimes, if there be ſuch a Tumult, ſuch an Interruption, that they cannot proceed orderly, or if the Matter be ſo long that they can't determine it in one Day, there is a Neceſſity that there muſt be an Adjournment to another time, and they give you no Inſtances, Gentlemen, that ever the Sheriffs in any Age did attempt it, never any Sheriff made an Adjournment of his own accord. Mr. *Love* he gives no Inſtance of an Adjournment, he only tells you of his Supremacy at that time when my Lord Mayor had nothing to do with it, and, Gentlemen, at that time you muſt remember when he was Elected, the Law was otherwiſe when Mr. *Love* was Elected, then the Sheriffs were the Tribunes of the People, and they had ſhut my Lord Mayor quite out of their Common Hall, and declared that he had no Power to diſſolve or adjourn them. The next Inſtance is that of Sir *Robert Clayton*'s, and how do they make that out? Sir *Robert Clayton* ſwears only upon his Memory, and what is that? He remembers juſt nothing. He does think the Common Serjeant does ſpeak Truth in ſome things, but he can't remember other things. But we prove not only an Adjournment from *Saturday* to *Monday*, but other Adjournments by ſpecial Direction from Sir *Robert Clayton*. So that whatever Mr. *Love* did fanſy of the Authority of Sheriffs, to tell my Lord Mayor he had nothing to do therewith, yet that my Lord Mayor is certainly the Chief Magiſtrate, we have proved all along to this preſent time, till within theſe two or three Years, and when ever there was an Adjournment we have proved it to you that it was by my Lord Mayor. So that it is nothing like the Caſe, put by the Gentlemen on the other ſide, there was never any ſhadow of pretence for Right. Whoever knows *London*, muſt know the Sheriffs of *London* are not Officers of this Corporation as Sheriffs, but they are the King's Officers of the County granted to be choſen by the Citizens: They are in their particular Caſes Judges, for chooſing Parliament-men, but in no Corporation-Act whatſoever: So that, Gentlemen, you ſee there is no Pretence for that: But admit there were, what is it like the Caſe when a Man lays Claim to a Wood, and he ſends three or four Perſons, or half a dozen Perſons to cut it down? Yet, Mr. *Wallop*, notwithſtanding your Authority, tho' that be not a Riot, it is a Rout, where you will ſend ſuch a number to raiſe Terror in the King's People, and they will continue together after they are commanded to depart by a Magiſtrate. But it is a different thing where Men will concern themſelves in a Matter of publick Government, as if any Man ſhould pretend he hath the King's Commiſſion to take your Lordſhip off the Bench.

So that here is quite a different thing, this relates immediately to the Government, here the publick Peace of the City is in danger, and if my Lord Mayor had been a Perſon of great Spirit, and had preſently raiſed others to have ſuppreſs'd this Riot, then the City had been in a fine Condition, by theſe People that would have *No God bleſs the King*, but *God bleſs the Sheriffs*. There is no Pretence of Right can juſtify ſuch a thing. Now, my Lord, for a Riot, this muſt be acknowledged to be, for many to meet together to do an unlawful thing, is a Riot.

Mr. *Wallop.* And do it.

Mr. *At. Gen.* And do it, I put in that too, Sir. The Meeting here is lawful, and it is as certain that my Lord Mayor hath Power to adjourn, that is a Conſequence of Law, if the Adjournment be neceſſary, and he is the only Judge of Adjournment, and when he hath adjourn'd, I do ſay the continuing Perſons together to do that, which if they had ſummon'd them to do, had been unlawful, is as much an unlawful thing and a Riot as that. I would fain know if the Sheriffs had ſummon'd all the Citizens together to meet to chooſe Sheriffs, or any others, would any Man queſtion but this is an unlawful Act, a Subverſion of the Ancient Government of the City, the Uſurping an Authority in the City contrary to the King's Grant and the Charter. And after they are adjourn'd, if they will make Proclamation and order the People to ſtay and go on with the Poll, is not that the ſame thing in Point of Law? Surely no Man almoſt of common Senſe but will ſay it is the ſame thing. In the Caſe that Mr. *Wallop* puts, if there be any Diſorders committed precedent to the Magiſtrate's diſſolving the Society; that will not

amount to a Riot, but if the Magiſtrate comes and makes Proclamation for them to depart, and they ſtay after, it makes a Riot, if they continue ſtill together, it is a Rout and an unlawful Aſſembly. But they ſay there is no Proof that theſe Gentlemen that are in the Information, are guilty of the Riot; they are all Parties to the Riot, the very being there and giving countenance to it, is an unlawful thing. Pray Gentlemen, If Ten men ſhould go to rob a Houſe, and one ſtands off at a diſtance, is not the Tenth man guilty of the Burglary? If there be a many perſons together, and Three only do an unlawful Act, and the others give protection, for number is always a protection, are not all theſe Gentlemen guilty? And therefore, Gentlemen, it is hoped you will ſettle the City by deſtroying this pretence, which hath been fluttering in the Air, but hath no ground for it.

L. C. J. Gentlemen of the Jury, this is an Information againſt ſeveral for a Riot, and it ſets forth that there was a Common Hall that was call'd by the Lord Mayor for chooſing ſeveral Officers, and that afterwards the Lord Mayor did diſſolve that Aſſembly, and yet notwithſtanding the Defendants, (ſo many as by and by I ſhall name to you that they have given evidence againſt,) they kept together and committed a Riot, it is ſaid ſo particularly in the Information. For the matter in fact that hath been altercated between them, the Queſtion is, whether the Lord Mayor for the time being hath power in himſelf to call an Aſſembly and to diſſolve it, and truly as to this point, even the Counſel for the Defendants did one while grant it, but another while did bring Witneſs that did know nothing of the matter, I muſt needs ſays. But for ought I ſee, even until this very time, the Lord Mayor did call the Aſſembly, and he did diſſolve it, and that they did ſeem to grant even at the beginning of the Cauſe: But then they make a diſtinction, but he could not adjourn it to a certain time. That was a very weak thing, to ſay, that if the Lord Mayor may call and diſſolve the Hall, that he cannot adjourn it to a convenient hour. Suppoſe now the buſineſs to be done was not diſpatched ſooner than this time a Night, ſo that upon the matter they muſt be either adjourn'd till to Morrow, or kept in the Hall all Night; does any man think that that Magiſtrate that hath power to call and diſſolve, hath not power to adjourn? There is no Man doubts of it in Fact or Law, and that it was ſo, Sir *Robert Clayton* did that very thing; if there had been no Precedent, it had been all one. But they make a great deal of buſineſs of it, how that the Sheriffs were the men, and that the Lord Mayor was no body, and that ſhews it was ſomewhat of the Common-wealth's Seed that was like to grow up among the good Corn.—— Pray Gentlemen, that is a very undecent thing, you put an Indignity upon the King, for you ought not to do it if you knew your Duty: Pray Gentlemen, forbear it, it does not become a Court of Juſtice.

Here the People hum'd and interrupted my Lord.

I will tell you, when things were topſie-turvie I can't tell what was done, and I would be loth to have it raked up now. They might as well (as I perceive they have at another time ſaid) have ſaid, that the power of diſſolving and adjourning might have been in the Livery-men, all People, every body, and ſo then if they had been together by the Ears, I don't know who muſt have parted them, that is the truth of it. But I think their own Counſel are very well ſatisfied both in Fact and Law, that the Lord Mayor for the time being, hath this power of calling diſſolving and adjourning the Aſſembly. Then there is another thing that is to be conſidered, and that is this, the Defendants they ſay, We did miſtake the Law, it was only a miſtake of the Law and nothing elſe, and we did do all to a good intent, and therefore it muſt not be a Riot. To give you ſome ſatisfaction in that: Firſt, I muſt tell you that a man muſt not excuſe himſelf of a Crime, by ſaying he was Ignorant of the Law, for if ſo be that turn to an Excuſe, it is impoſſible to convict any man, if ſo be he muſt be excuſed becauſe he did not know the Law, then no man will be found guilty. But if it appear that the Defendants did verily believe that the Law was for them, that may be conſidered in another place, if ſo be that they were really Ignorant, the Fine, it may be, may be the leſs, but it won't excuſe them from all. But truly, in the next place, you muſt conſider, whether or no theſe Gentlemen were Ignorant, or whether or no they did not in a tumultuary way make a Riot to ſet up a Magiſtracy by the Power of the People. For I muſt tell you, I have not heard by the Defendants, and I will appeal to your memory, I have not heard before this time that ever the Sheriffs did quarrel with the Mayor, or continue a Common Hall after the Mayor had adjourn'd it. As for theſe Gentlemen they could not be Ignorant of it, becauſe the daily Practice before their Eyes was for the Mayor to do it. But this was a new notion got into their heads, tho' it was otherwiſe before, it muſt be ſo now, and one ſaid they would have no Tory Mayor to be Mayor, thus the King ſhould have ſomething to do to ſupport the Mayor by his power for ought I know. Now Gentlemen, for the Parties that are accuſed to be in it, there is *T. Pilkington*, *Samuel Shute*, *Henry Corniſh*, Lord *Grey*, Sir *Thomas Player*, *Slingsby Bethel*, *Francis Jenks*, *John Deagle*, *Richard Freeman*, *Richard Goodenough*, *Robert Key*, *John Wickham*, *Samuel Swinock*, and *John Jekyl* the Elder, ſome Witneſſes are to ſome, and others to others, but ſome of them have ſeven or eight Witneſſes. There is *Pilkington* and *Shute* and *Corniſh*, theſe had a great many Witneſſes againſt them, others have two. Firſt, for the Sheriffs, and Mr. *Corniſh* that had been Sheriff but two years before, they kept them together after my Lord Mayor was gone, and to ſee what People they were, No, *not God bleſs the King*, no, no, *but the Proteſtant Sheriffs*; ſo that in truth the King muſt be put out of his Throne, to put theſe two Sheriffs in it. It is not proved that either of theſe did ſay ſo, nor the others neither, but they were thoſe that clung to them, and they would help them, and they would ſet them to rights, and I know not what; and there is no other way to know in this caſe what they were, but by theſe they kept Company with, and it may be, I would be loth to ſay ill, it may be it was in order to dethrone the King as far as they could; for my Lord Mayor, when truly he had adjourn'd the Hall and was going home, he had like to be trod under foot himſelf, his Hat was down, and that was the great reſpect they gave to his Majeſties

Lieu-

Lieutenant in the City. It is true it cannot be ſaid who it was, but thoſe were the People that would have *No God ſave the King*, and thoſe the Mayor had nothing to do with. The Sheriffs they would go on to Poll, and caſt up their Books, and would make a Diſquiſition who had moſt Hands and the like, 3 Hours after my Lord Mayor was gone, there were ſo many that did countenance and foment this ſort of Proceedings. There is a ſhrewd Act that was made ſince His Majeſty came in, that the Villany of ſome Men might be ſtopt, thirteenth, fourteenth of the King, that for Words in ſome Caſes makes High Treaſons, it is well His Majeſty does not take any ſevere Proſecution, but I can tell you, I would not have Men preſume upon it. It can't be ſaid you or you ſaid ſo, yet they kept them together, they were they that kept all this Rabble three Hours together; the Lord Mayor does adjourn the Court, and they muſt have ſome time to be gone, and thereupon would perſwade us they could not get away in three Hours, they ask for a Poll, and caſt up the Scrutiny, and I know not what. There are ſome, and that is my Lord *Grey* and Mr. *Goodenough*, how theſe two ſhould come there I know not, they had nothing to do here, and therefore I doubt it will be worſe upon them than upon the reſt, for they had nothing to do here, they muſt come to ſet the Citizens together by the ears. My Lord *Grey*, he ſays, and hath called ſome Witneſſes, that he had buſineſs with Sir *William Gulſton*, about the Sale of *Corſfield* in *Eſſex*, but I do not ſee any of his Witneſſes that do ſay he came to ſpeak with Sir *William Gulſton* here, he came here to ſee how the Poll went. But, look you, Gentlemen, he hath given ſome ſort of Evidence, and the Counſel did open it very fairly, but the Evidence did not come fully. If you think he did only come upon real Occaſions to Sir *William Gulſton*, only to ſpeak to him about that buſineſs, and concern'd himſelf no otherwiſe, then you will do well to find him Not Guilty, if you do not, you muſt find him likewiſe as well as the reſt, for *Goodenough* he was here to promote the Matter. There is one, and truly he ſaid, that for his part, as the reſt would have *No God bleſs the King*, ſo truly he would have *No Tory Mayor*. And all this Flame, I muſt tell you, took Fire from this Spark, that the Sheriffs might do what they thought fit about chooſing Officers. Gentlemen, it hath been a long Tryal, and it may be I have not taken it well, my Memory is bad and I am but weak, I don't queſtion but your Memories are better than mine, conſider your Verdict, and find ſo many as you ſhall think fit.

The Jury withdrew, and in ſome time returned.

Are you all agreed of your Verdict?

Jury. Yes.

Who ſhall ſpeak for you?

Jury. The Foreman.

Do you find the Defendants guilty of the Treſpaſs and Riot? *&c.*

Foreman. We find them All guilty in that Paper.

This is your Verdict?

Jury. Yes.

T. Pilkington, *S. Shute*, *H. Corniſh*, Lord *Grey*, Sir *Thomas Player*, *S. Bethel*, *F. Jenks*, *J. Deagle*, *R. Freeman*, *R. Goodenough*, *R. Key*, *J. Wickham*, *S. Swinock*, and *John Jekyl* the Elder are guilty.

You ſay they are all guilty? *&c.*

Jury. Yes.

The Proceedings and Judgments againſt the RIOTERS; *viz.*

Thomas Pilkington, Eſq;	*John Deagle*,
Samuel Shute, Eſq;	*Richard Goodenough*,
Henry Corniſh, Alderman,	*Richard Freeman*,
Ford Lord *Grey* of *Werk*,	*John Wickham*,
Slingsby Bethel, Eſq;	*Robert Key*,
Sir *Thomas Player*, Knight.	*Samuel Swinock*, and
Francis Jenks.	*John Jekyl* Senior.

Who were Fined at the King's-Bench *Court at* Weſtminſter *on the 26th of this Inſtant* June, 1683. *for a Riot and Battery committed by them upon the Perſon of the late Lord Mayor*, &c. *in* Guild-hall, *at the Election of Sheriffs, containing what remarkably occurred in the Debates admitted upon paſſing Judgment of Fine. As alſo the Fining of one Mr.* Turne, *for making a Riot upon the Mayor of* Rye *in the County of* Suſſex.

ON the 8th Day of *May* laſt, the Parties above mention'd were Tryed at the *Guild-Hall* of the City of *London*, upon an Information in the Crown for riotouſly, routouſly and unlawfully oppoſing the Proceedings in *Guild-hall* on *Midſummer-day* laſt, upon the Election of Sheriffs to ſerve for the City of *London* and County of *Middleſex*, and aſſaulting Sir *John Moore*, then Lord Mayor, *&c.* which being by divers Witneſſes made apparent, and they by the Jury after ſome ſhort Conſideration found Guilty, Mr. Attorney General, on the 15th of *June*, *Anno* 1683. moved in the Court of *King's-Bench* at *Weſtminſter*, that Judgment might be awarded againſt them upon their former Conviction, in order to their being Fined for the Riot, *&c.* But the Lord Chief Juſtice *Saunders*, and Mr. Juſtice *Raymond*, by reaſon of their Indiſpoſitions, being neither of them on the Bench, Mr. Juſtice *Jones*, with the Conſent of Mr. Attorney General, referred it to the 19th Inſtant, when Mr. Attorney again moved for Judgment, alledging the Heinouſneſs of the Crime, *viz.* That it was an open Affront to Juſtice and Magiſtracy, and might prove an evil Precedent if it ſhould eſcape unpuniſh'd, which he prayed it might not do, but that ſince they had been fairly Convicted, the Court, in purſuance thereof, would award ſuch Fines as might deter others from the like Attempts, *&c.* Upon this Motion Mr. *Williams*, of Counſel for the Defendants, moved, That ſeeing there had firſt a *Venire* been directed to Mr. *Pilkington* and Mr. *Shute*, late Sheriffs of *London*, and afterward an *Alias Venire* to the preſent Sheriffs, and yet that in the Information all the Defendants were joined, tho', as he ſuggeſted, that at the time of the firſt *Venire* ſome of them were not made known, and that ſince Mr. *Pilkington*, Mr. *Shute*, *&c.* had appeared upon the firſt, and many of the

the others not till the ſecond; he humbly prayed that an Error might be thereon aſſigned.

To which the King's Counſel reply'd, That if any Prejudice was ſuſtained in the methods and manner of Proceeding to the Tryal of the Perſons convicted of the Riot and Battery, it was ſuſtained on the Part of the King; and ſeeing he was willing to diſpenſe with it, that not in the leaſt affected the Defendants, unleſs in redounding to their Advantage, for that they had a Legal Tryal, all of them pleading Not Guilty, and putting themſelves upon their Country, to try the Iſſue between the King and them, which Country had found them guilty of the Offences before mentioned, and that now nothing remained but the Judgment of the Court in awarding their Fines, *&c.*

To this it was alledged, That ſeeing they were aſſembled in *Guild-hall* upon a Lawful Occaſion, they could not be guilty of a Riot, or the like Miſdemeanor, the Legality of their firſt Aſſembling not admitting thereof: But this Allegation was over-ruled by many Demonſtrations, plainly making it appear, that altho' an Aſſembly be never ſo Legally Convened, yet if they tumult or break the Peace, the Legality of the Aſſembly cannot bear them out: And moreover, that when the Lord Mayor had adjourned the Poll, the Aſſembly was no longer a Lawful Aſſembly, but ought immediately to have departed to their reſpective Habitations, which the Defendants not only delayed to do, but in Contempt of Authority, continued the Poll, and in a riotous manner Aſſaulted the Perſon of the Mayor. And that for Inference, If a Congregation be aſſembled at a Church to hear Divine Service, which in it ſelf is lawful; yet if Blows happen, or a riotous or diſorderly Tumult is made, the Legality of the Meeting ſhall in no wiſe excuſe the Authors of ſuch Diſorders from the Penalties of the Law, *&c.* of which Opinion were not only the Counſel for the King, but the Judges likewiſe.

Theſe, and ſuch like, being the Arguments of this Day, Mr. Juſtice *Jones* being indiſpoſed, and Mr. Juſtice *Raymond* not coming upon the Bench, the paſſing Sentence was deferred till *Friday* the 22d Inſtant, and from thence till *Monday* the 25th Inſtant, at what time Mr. Juſtice *Jones* being indiſpoſed, it was put off till this preſent *Tueſday*, being the 26th of *June*; when as Mr. Attorney moved for Judgment, requiring that the Parties found Guilty upon the Information, might be Fined, and was ſeconded by Mr. Serj. *Jefferies*, both of them praying that they might have good Fines ſet on them, as an Example to deter others from the like Attempts; as alſo did Mr. *Jones*, of Counſel for the King, when on the other ſide Sir *Francis Winnington*, Mr. *Williams*, Mr. *Wallop*, Mr. *Pollexfen*, Mr. *Thompſon*, and Mr. *Holt*, of Counſel for the Defendants, urged many Arguments for the Extenuation of the Fines, ſeeing they were at the Mercy of the Court, alledging, that the Defendants did that of which they were convicted rather out of Ignorance than Malice, or any Deſign they had to injure or affront the Government, as not being then capable to determine, whether the Right to adjourn the Common Hall lay in the Lord Mayor or Sheriffs. But after the Arguments on both ſides had been heard, Mr. Juſtice *Jones* proceeded to declare the Heinouſneſs of the Fact, and what an evil Precedent it might prove if it ſhould paſs unpuniſhed; and after ſome Conference with Mr. Juſtice *Withens*, he proceeded to award their Fines as followeth.

On *Thomas Pilkington*, Eſq; by reaſon of his being a Priſoner, only 500 *l.* *S. Shute*, Eſq; 1000 Marks, *Ford* Lord *Grey* of *Werk* 1000 Marks, Sir *Tho. Player*, Kt. 500 Marks, *Slingsby Bethel*, Eſq; 1000 Marks, *H. Corniſh* 1000 Marks, *Francis Jenks* 300 Marks, *R. Freeman* 300 Marks, *R. Goodenough* 500 Marks, *John Deagle* 400 Marks, *Robert Key* 100 Marks, *John Wickham* 100 Marks, *S. Swinock* 500 Marks, and on *John Jekyl* Senior 200 Marks; all of them appearing in Court except the Lord *Grey*, Mr. *Key*, and Mr. *Goodenough*, and according as they appeared to be of Ability, ſo were their Fines regulated.

In the Court of *King's-Bench* this Day likewiſe one Mr. *Turne* of *Rye*, in the County of *Suſſex*, was Fined 200 Marks, for making a Riot upon the Mayor of the ſaid Town, and two of the Town Officers Fined 20 Marks apiece, for aſſiſting him therein, and ſtrictly commanded to deliver the Inſigns of the Mayoralty, which he had ſeized into his Hands, under pretence that himſelf had been Elected Mayor of the ſaid Corporation.

To the KING's moſt Excellent MAJESTY.

The humble Petition of Sir Thomas Pilkington, *Kt. Lord Mayor of* London, Slingsby Bethel, *Eſq;* Samuel Swinock, John Deagle, Richard Freeman, John Jekyl, John Key, *and* John Wickham, *in behalf of themſelves, and of the reſpective Executors and Adminiſtrators of Sir* Thomas Player, *Kt. deceaſed,* Henry Corniſh, *Eſq; deceaſed,* Samuel Shute, *Eſq; deceaſed, and of* Francis Jenks *deceaſed,*

SHEWETH,

THAT your Petitioners and the ſaid deceaſed Perſons were in the Year 1682, and 1683, by the Contrivance and Confederacy of Sir *John Moore*, Kt. Sir *Dudley North*, Kt. Sir *Peter Rich*, Kt. Sir *Edmond Saunders*, Kt. late Chief Juſtice of the *King's-Bench*, and ſome others, proſecuted and convicted for a Riot; the Fact objected againſt them being no other in truth, than the peaceable doing their Duties as Citizens of *London* and *Engliſhmen*, in Election of Sheriffs for the ſaid City and County of *Middleſex*.

That in the Proceedings upon the ſaid pretended Riot, many notorious Violations of the Law were committed, and your Petitioners denied Common Juſtice by the Combination and Confederacy of the Perſons laſt abovenamed, and others; inſomuch that your Petitioners, and the ſaid deceaſed Defendants were, by Judgment of the Court of *King's-Bench* in *Trinity Term* 1683, Unreaſonably Fined 4100 *l.* and were, by Impriſonment and otherwiſe, forced to pay the ſame; which Sum of 4100 *l.* was long ſince paid into the *Exchequer*.

That at your Petitioners Proſecution, the ſaid Judgment was Reverſed the laſt Parliament

ment as Erroneous, whereby your Majesty stands by Law liable to make Restitution of the said Sum of 4100 *l.* as your Petitioners are advised.

Now forasmuch as your Majesty's Generous Undertaking in coming into this Kingdom, tended only for the Vindicating and Establishing our Religion, Laws and Liberties, and for Relieving the Oppressed; and for that it is agreeable to Equity, that such as did the Wrong should make the Restitution; And your Petitioners hoping the Parliament now Assembled will take the whole Matter into their Consideration, and pass a Bill for Relief of your Petitioners out of the Confederates Estates, and not leave them to be satisfied by your Majesty.

Your Petitioners therefore humbly beseech your Majesty, That the said Confederates, the Prosecutors of your Petitioners, and the Judges, and Others concerned therein, may be Excepted in the Act of Grace, *intended by your Majesty, as to All they did in relation to the Prosecution and Judgment upon the pretended* Riot *above specified.*

And your Petitioners shall always pray, *&c.*

The Tryal *of Captain* Thomas Walcot.

THurſday *July* 12. 1683. at the *Sessions-House* in the *Old Bailey*, *London*: The Court being met, and Proclamation made for Attendance, the Proceedings were as follows.

Thomas Walcot being set to the Bar, and after having held up his Hand, the Indictment was read as follows.

London. *The Jurors for our Sovereign Lord the King, upon their Oaths Present, That* Thomas Walcot, *late of* London *Gentleman, as a false Traitor against the most Illustrious and Excellent Prince, our Sovereign Lord* Charles *II, by the Grace of God, of* England, Scotland, France *and* Ireland *King, his natural Lord, not having the Fear of God in his Heart; nor weighing the Duty of his Allegiance, but being moved and seduced by the Instigation of the Devil, and the true Duty, and natural Obedience, which True and Faithful Subjects of our Sovereign Lord the King, towards him our said Lord the King, do bear, and of right ought to bear, wholly withdrawing, and with his whole Strength intending the Peace and common Tranquillity of this Kingdom of* England *to disturb, and War and Rebellion against our said Lord the King to move and stir up, and the Government of our said Lord the King within this Kingdom of* England *to subvert, and our said Lord the King from his Title, Honour and Kingly Name of the Imperial Crown of this his Kingdom of* England *to put down and deprive, and our said Lord the King to Death and final Destruction to bring and put, the second Day of* March, *in the Year of the Reign of our Sovereign Lord* Charles *II, King of* England, *&c. the Five and Thirtieth, and divers other Days and Times, as well before as after, at the Parish of St.* Michael Bassishaw, *in the Ward of* Bassishaw, London, *aforesaid, Maliciously and Traiterously with divers other Traitors, to the Jurors aforesaid unknown, did Conspire, Compass, Imagine and Intend our said Lord the King, his Supreme Lord, not only of his Kingly State, Title, Power and Government of this his Kingdom of* England *to deprive and throw down, but also our said Lord the King to kill and to Death to bring and put, and the ancient Government of this his Kingdom of* England *to change, alter and wholly to subvert, and a miserable Slaughter amongst the Subjects of our said Lord the King through his whole Kingdom of* England *to cause and procure, and Insurrection and Rebellion against our said Lord the King to move, and stir up within this Kingdom of* England; *And to fulfil and perfect the said most horrible Treasons, and traiterous Compassings, Imaginations and Purposes aforesaid, the said* Thomas Walcot *as a false Traitor, then and there, and divers other Days and Times, as well before as after, Maliciously, Traiterously and Advisedly did assemble, meet together and consult with the aforesaid other Traitors, to the Jurors aforesaid unknown, and with them did treat of and for the executing and perfecting their Treasons, Compassings, Imaginations and Purposes aforesaid; and that the said* Thomas Walcot *as a false Traitor, Maliciously, Traiterously and Advisedly, then and there, and divers other Days and Times, as well before as after, did take upon himself, and to the aforesaid other Traitors did promise to be aiding and assisting in the execution of the Treasons and traiterous Compassings, Imaginations and Purposes aforesaid; and in providing Armour and Armed Men to fulfil and perfect the said Treasons and traiterous Compassings, Imaginations and Purposes aforesaid. And the said most wicked Treasons, and traiterous Compassings, Imaginations and Purposes aforesaid to fulfil and bring to pass, he the said* Thomas Walcot *as a false Traitor, Maliciously, Traiterously and Advisedly, then and there did procure and prepare Arms, to wit, Blunderbusses, Carbines and Pistols, against the Duty of his Allegiance, against the Peace of our Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statutes in that Case made and provided,* &c.

Cl. of Cr. What say'st thou, *Thomas Walcot*, Art thou Guilty of this High Treason, whereof thou standest Indicted, or Not Guilty?

Capt. *Walcot.* Not Guilty.

Cl. of Cr. Culprit. How wilt thou be tryed?

Capt. *Walcot* By God and my Country.

Cl. of Cr. God send thee a good Deliverance.

Then were William Hone, John Rouse *and* William Blague *arraign'd, who pleaded* Not Guilty *to their Indictments, and the Court adjourn'd till the Afternoon. When* Thomas Walcot

Walcot *being again brought to the Bar, after ſome exceptions, the following* Jury *was impannel'd.*

Nicholas Charlton, *Chriſtopher Pitts*, *Robert Beddingfield*, *John Pelling*, *William Windbury*, *Thomas Seaton*, Jur'. *William Rutland*, *Thomas Short*, *Theophilus Man*, *John Genew*, *John Short*, *Thomas Nicholas*.

Cryer. O yes, If any one can inform my Lords the King's Juſtices, *&c.*

Sir Edmond Saunders. *L. C. J.* Mr. *Sheriffs*, This is an extraordinary Caſe, it is reaſonable the Evidence ſhould be well heard: I require you both to keep the Court quiet.——Mr. *Tanner*, ſwear the King's Evidence one at a time.

Clerk. Thomas Walcot, Hold up thy hand. You of the Jury look upon the Priſoner, and hearken to his Charge: He ſtands Indicted by the name of *Thomas Walcot*, Gent. *prout* in the Indictment before *mutatis mutandis*. Upon this Indictment he hath been arraigned, and thereunto pleaded Not Guilty, and for his Tryal put himſelf upon his Country; which Country you are. Your Charge is to enquire, *&c.*

Mr. *North.* May it pleaſe your Lordſhip, and you that are ſworn, the Priſoner ſtands charged, That he being a falſe Traytor to the King, and intending to raiſe War and Rebellion againſt the King, and to bring his Majeſty to an untimely death, did on the ſecond of *March* in the five and thirtieth year of the King, at the Pariſh of St. *Michael Baſſiſhaw*, meet with other Traytors like himſelf, and there conſpired to bring theſe Treaſons to effect; and accordingly promiſed to be aiding and aſſiſting to provide Arms for it; and did actually provide ſeveral Arms, as Carbines, Blunderbuſſes and Piſtols for the perpetrating this Treaſon. This is the Charge, to which he ſays he is Not Guilty. We will call our Witneſſes and prove it, and then you are to find it.

Sir Robert Sawyer. Mr. *At. Gen.* Gentlemen of the Jury, the Priſoner at the Bar is accuſed of the higheſt of Crimes, High Treaſon againſt his Sovereign Lord, in compaſſing the Murder of the King, in raiſing Rebellion within this Kingdom, to the overthrowing of the beſt conſtituted, and the moſt excellent Government in the World. Gentlemen, he does not ſtand alone; and therefore he is charged in the Indictment with a Conſpiracy with many others; I am heartily ſorry to ſay there are many; indeed there is hardly any Kingdom or Nation, wherein there are not diſcontented perſons, whoſe narrow Fortunes or malevolent Spirits render them uneaſie in that condition God Almighty hath put them; but to find Men that pretend to be Chriſtians, or to have any thing of Virtue, and under the beſt of Governments, that indeed is a matter of wonder; and indeed it caſts ſo great a Stain and Reproach upon the Proteſtant Name, that it is not to be wiped off, but by the ſevereſt Juſtice of the Kingdom. Gentlemen, this deſign was for a general Riſing, and at the ſame time to aſſaſſinate the King and the Duke of *York*: This is the deſign which the whole courſe of our Evidence will open to you, and lies ſo naked, that I hope no *Engliſhman* that lives, but will ſee through theſe men, that have made ſuch a Noiſe and Tumult in theſe latter days. This deſign to aſſaſſinate the King, and the Riſing, was deſigned to be in *October* laſt, upon the King's Return from *New-Market*; and at that time there was a Noble Lord, that is gone now to his own place, as will appear by the Evidence, that furniſhed them with conſiderable ſums of Money, for the providing Men and Arms for the aſſaſſinating the King at that time, but the Aſſaſſinates were not then ready, as God appointed they ſhould not be ready; and ſo at that time they were diſappointed. Then the general Riſing was put off till Queen *Elizabeth*'s day, which will open your eyes, to ſee upon what grounds the Tumultuous Meetings were encouraged in the City, to the terror of all honeſt Men: But that Riſing was alſo diſappointed, becauſe ſome of the Conſpirators were not ready with their Men in the Countrey: And then, Gentlemen, though it was preſs'd on by the Perſon I mentioned, he then thought it high time to leave theſe Confederates to themſelves. Gentlemen, after this we ſhall trace them in their ſeveral Meetings and Conſultations; for there was a time, that they ſtruggled with themſelves, which ſhould be effected firſt, whether they ſhould firſt kill the King and the Duke; or whether they ſhould firſt riſe, and proſecute him in an open Rebellion, and deſtroy him that way. And the courſe of our evidence will ſhew, how ingenious theſe Men were, for it appears, there were men of great Ingenuity and Courage, as appears by the Priſoner at the Bar; and they would diſcourſe of theſe Matters in Phraſes, that Common Perſons ſhould not underſtand them.—

Capt. *Walcot.* I do not underſtand you.

Mr. *At. Gen.* I ſpeak as loud as I can. At their meetings, for cutting off the King, that *was the executing of a Bargain and Sale*; and *a ſhort Conveyance*, to come to their End. The raiſing of a War, that was under the Notion, and ſo to be diſcours'd of, of *executing a Leaſe and Releaſe, to work both upon the Poſſeſſion and upon the Reverſion*: And under theſe myſtical terms they diſcours'd of all theſe Subjects, when they were in publick Places.

Capt. *Walcot.* I do not hear.

Mr. *At. Gen.* You will hear the Witneſſes, and that will concern you more. Then Gentlemen, in theſe ſeveral meetings they contrived to allot every man his part, ſome were to provide Arms, others were to provide Men to do the Execution, which was laſt reſolved upon to be at the *Rye*, upon the King's laſt return from *New-Market*. Gentlemen, in all theſe Parts, which I hope to prove, the Priſoner will appear to have a principal Part in them all: In all the Conſultations and Adviſings for the raiſing Men, wherein he was to be a Principal Commander, according to the Skill he hath; but for the Aſſaſſination at the *Rye*, *Rumbold* was to conduct the Men hired for that Purpoſe. Gentlemen, accordingly the time was appointed for his Majeſty to come, and the Aſſaſſinates to meet him there: But it pleaſed God, that that was diſappointed by a miraculous Fire, for ſo all *Engliſhmen* may call it; and whereas they were to go down on *Fryday* to *Rumbold*'s Houſe, and the King to come up on *Saturday*, the Fire brought him to Town on *Tueſday*: But notwithſtanding this great Providence to divert them, *Rumbold* and others of the Confederates, reſolved to go

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on with it ſtill; and ſeveral places were appointed, and ſeveral Officers appointed to view thoſe places, either between *Hampton-Court* and *Windſor*, or elſe to do it at the *Play-houſe*, or upon the King's Paſſage from the *Play-houſe* by *Bedford-wall* at *Covent-garden*; but if theſe ſhould fail, they were reſolved to do it at the *Bull-feaſt*. Gentlemen, they went further; they provided Arms; which very Arms opportunely fell into our Hands: We ſeiſed thoſe very Arms that were bought for that purpoſe to kill the King and the Duke. We ſhall go through with it; I will name you the material Places of their Meetings, that ſo you may underſtand the Witneſſes; the *Green-Dragon* Tavern on *Snow hill*, the *Salutation* Tavern in *Lombard-ſtreet*, the *Angel* Tavern near the *Exchange*, and Mr. *Weſt*'s Chamber in the *Middle-Temple*; theſe were ſome of the principal Places, tho' they had ſeveral other Places, wherein all theſe Matters were conſulted and tranſacted. They had prepared a new Model of Government, and they were for overturning all, as all theſe Politicians do; tho' they had a moſt excellent Government, yet they had a better in their own Brains; or, at leaſt, their Share would be greater in it, as all Rebels have a Proſpect of. Gentlemen, for the other Parts, we ſhall have leſs occaſion to give Evidence of now, for every one had their particular Part; ſome for the great Deſign of the Riſing, ſome for the killing of the King, whereof that Gentleman, the Priſoner, was one; and there were other Parts aſſign'd to others, for taking and ſurprizing the *Tower*. We will call our Witneſſes, and prove all that we have opened, and make it as clear to you as the Sun ſhines: Such a prodigious Villany nothing but a Firebrand from Hell could kindle in Men's Minds, to kill the beſt of Kings, and to deſtroy the beſt Frame of Government. Gentlemen, I do not queſtion your Juſtice, but that this Man ſhall pay what is due to the Juſtice of the Kingdom.

Mr. Serj. *Jefferies*. My Lord, I only deſire to give an account of the Method of our Evidence.

Capt. *Walcot*. My Lord, I deſire I may have the favour of Pen and Ink.

L. C. J. That you ſhall have.

Mr. Serj. *Jefferies*. My Lord, and you Gentlemen of the Jury, Mr. Attorney hath already given you an account of the Deſign that was to be put in execution by a parcel of evil Men, whereof the Priſoner at the Bar we charge to be one. We ſhall not detain you longer with opening the Matter, but beg the favour of the Court, that we may acquaint you a little with the Method we intend to follow in calling our Evidence for the King againſt the Priſoner at the Bar. In the firſt place, my Lord, we will call our Witneſſes, to give your Lordſhip and the Jury Satisfaction, That there was a Deſign in general, and that that Deſign was firſt intended to be a general Riſing over all the Kingdom; in which Deſign the Priſoner at the Bar had a very conſiderable Share; and was looked upon to be a very proper and fit Perſon for the Managery of that Part of the Deſign: For other Meetings, and at what Places, Mr. Attorney hath already opened to you. We will then come to more particular Agreements that were between them, in order to the carrying on this admirable good Work, as it hath been truly ſtated, for the Deſtruction of the beſt and moſt merciful of Kings, and for the Deſtruction of the beſt of Religions, the Religion of the Church of *England*. I take notice of it, becauſe all Men may know, The moſt of theſe Perſons, nay, All of them, concerned in this helliſh Conſpiracy, were Diſſenters from the Church of *England*.

And the better to effect this horrid Villany (I am ſure I want Words, and ſo does any Man elſe, to expreſs the Baſeneſs of theſe Crimes) the better to effect this thing, the way it was to be done, was by taking off the King, and by taking off his Brother too. At length, after ſeveral Debates and ſome Propoſals made between theſe Perſons, they came to a Determination and an actual Reſolution to take off the King and his Royal Brother. My Lord, we will prove generally, that this was the Intent of the Deſign or the Plot in general. My Lord, we will then give you an account, That they enter'd into ſeveral Conſultations for a new Model and Frame of Government; for they intended to ſet up the People, and they had even fix'd a certain Superiority, and reſolved as all People of their Principles have a mind, according to their ſeveral Inclinations to fix the Power in the People; Gentlemen, an old Tenet that brought the King's Father to that untimely and horrid End, by fixing the Power in the People. Theſe Gentlemen had a mind to inſinuate and engage the People, by fixing the Power in them, and ſaying, that publick Proclamations were to be made. And after this horrid and barbarous Murder, intended upon the King and the Duke, there were Declarations to be made in the Names of ſuch and ſuch Lords, and the Aſſociating Members of the laſt Houſe of Commons, theſe were the Perſons thought fit in whoſe Hands the Power of the whole Kingdom ſhould be lodged. Gentlemen, after we have given you an account of the ſeveral Meetings, then we will come to the Priſoner at the Bar, and prove againſt him, That he had not only an Hand in the firſt Part of the Plot, about the Riſing, but he was alſo to be one of thoſe Villains that were to murder the King: I cannot expreſs my ſelf in more moderate Terms, and I am ſure no Man can blame me that hears the Proof. Gentlemen, when we have thus given you this Evidence, I hope we ſhall ſatisfy the Court, and all Mankind, That Perſons that have been thus guilty, under pretence of Religion, or under any other pretence whatſoever, are fit Objects of the Severity of human Laws. If we prove againſt the Priſoner at the Bar, That he had an Hand in this horrid Conſpiracy, I make no doubt but you will ſhew your ſelves to be Engliſhmen, loyal Men, and overtake all Men that thirſt after the King's Blood.

Mr. *Sol. Gen.* Gentlemen, we will call our Witneſſes, and as no Man can doubt, but the Murder of the King, that vile Deſign, would have been ſeconded by a Power to back that horrid Villany; ſo we ſhall ſhew you, That this Gentleman was concerned in both Parts, in the immediate Aſſaſſination of the King, and the Raiſing of Arms. We need not go about to give you an Hiſtory of the thing any other way than in applying it to this Perſon, for there is no Part of this Conſpiracy he can clear himſelf from, and all the Evidence that ſpeak

of this Deſign, ſpeak of this Man as a chief Actor in it.

Mr. *At. Gen.* Call Col. *Rumſey.*

[*Who was ſworn.*

Mr. *Sol. Gen.* Col. *Rumſey*, Pray give my Lord and the Jury an account what you know of the Priſoner at the Bar, whether he were concerned, either in relation to the Murder of the King, or the raiſing Arms?

L. C. J. Mr. *Rumſey*, raiſe your Voice ſo audibly that you may be heard.

Col. *Rumſey.* The firſt Meeting I had with this Gentleman, was at Mr. *Weſt*'s Chamber.

Mr. *At. Gen.* Before you begin to tell of your Meeting, give an account of any Riſing that you heard of.

Col. *Rumſey.* Sir, about the latter End of *October*, or the Beginning of *November*, I was with my Lord *Shaftsbury* late at Night, and he told me, That the Duke of *Monmouth*, my Lord *Ruſſel*, my Lord *Grey* and Sir *Thomas Armſtrong*, were at one Mr. *Shepherd*'s Houſe near *Lumbard-ſtreet*. He deſired me to go to know what they had done about the raiſing Arms at *Taunton*. I did go, and Mr. *Shepherd* carried me up to them, and they told me, That Mr. *Trenchard* had failed them about the Men, and they could proceed no further at that time.

L. C. J. What *Shepherd* was this?

Col. *Rumſey.* Mr. *Shepherd* the Merchant near *Lumbard-ſtreet*, one Mr. *Thomas Shepherd*. And ſo I came to my Lord the next Day and told him of it; and then he made his Preparation to be gone for *Holland*.

L. C. J. What Diſcourſe had you with my Lord *Shaftsbury* thereupon? What did he ſay? What made you believe he made Preparation to be gone?

Col. *Rumſey.* My Lord, he ſaid there was no Dependance upon thoſe Gentlemen that met, and he would leave *England*. After that, a Fortnight or three Weeks, there was a Meeting one Day at Mr. *Weſt*'s Chamber, and there was Mr. *Weſt*, and Mr. *Goodenough*, and Mr. *Wade*, and ſome body elſe there was, but I cannot remember his Name, Captain *Walcot* was in *Holland* then. There it was propoſed, nothing was to be done by a general Riſing; but there was no ſurer way than to take off the King and the Duke; and that to that intent and purpoſe, they could not carry it on without Mr. *Ferguſon*; and ſo he was writ for into *Holland*; and he came out of *Holland* upon that Letter, and Captain *Walcot* with him. After Mr. *Ferguſon*'s coming back from *Holland*, there was very ſuddenly a Meeting again, and then it was concluded, that nothing was to be effected without taking off the King and the Duke, or to that purpoſe. Mr. *Ferguſon* was not at that Meeting. There were two or three Meetings before Captain *Walcot* was there, to find out Men, and they could not find out a number of Men, without which Mr. *Rumbold* would not undertake it. So about three or four Meetings after Captain *Walcot* came, and he was reſolved at laſt to join in the matter; but he would not have an hand in attacking the Coach, but he would command a Party that ſhould charge the Guards.

L. C. J. What did he ſay?

Col. *Rumſey.* He would not meddle with the King in the Coach, but he would command a Party that ſhould charge the Guards that came along with him.

Mr. *At. Gen.* After what manner was it ſettled that it ſhould be done?

Col. *Rumſey.* There were ſeveral Parties; one ſmall Party was to have killed the Poſtillion, another to kill the Horſes, and Mr. *Rumbold* with a certain Number to ſeiſe the Coach, and Capt. *Walcot* the Guards.

Mr. *At. Gen.* Where was it to be done?

Col. *Rumſey.* At Mr. *Rumbold*'s Houſe.

L. C. J. Where is that?

Col. *Rumſey.* Near *Hodſdon*.

L. C. J. For what purpoſe was Mr. *Rumbold* and thoſe other Men to attack the Coach?

Col. *Rumſey.* To murder the King and the Duke.

L. C. J. How was it deſign'd to be done, by Piſtol, or how?

Col. *Rumſey.* By Blunderbuſſes, and if they miſs'd, then Swords.

Mr. *At. Gen.* Did they give any Directions about preparing Arms?

Col. *Rumſey.* When that time fail'd, after the Fire fell out at *New-Market*.

L. C. J. When was this to be done?

Col. *Rumſey.* When the King returned from *New-Market*.

L. C. J. About what time?

Col. *Rumſey.* The *Saturday* before *Eaſter*.

L. C. J. I don't ask you the Day; but was it when the King was laſt at *New-Market*, or before?

Col. *Rumſey.* Laſt at *New-Market*.

L. C. J. When he was laſt at *New-Market*, in his Return from thence?

Col. *Rumſey.* In his Return from thence.

L. C. J. Whereabouts?

Col. *Rumſey.* At *Rumbold*'s Houſe which is near *Hodſdon*.

L. C. J. In *Hertfordſhire*?

Col. *Rumſey.* In *Hertfordſhire*.

L. C J. And you ſay, thoſe Methods were chalked out by them, that *Rumbold* and ſome others were to attack the Coach, others to kill the Poſtillion, others to kill the Horſes; and this Gentleman with a commanded Party was to fall upon the Guards? You ſay this?

Col. *Rumſey.* Yes, my Lord.

Capt. *Walcot.* I would beg leave, my Lord——

L. C. J. Stay, Captain *Walcot*, You ſhall have leave to ask him any thing by and by; but you muſt firſt let the King's Counſel have done with him.

Mr. *At. Gen.* I would ask you what you know of a Deſign at any other time?

Col. *Rumſey.* I do know nothing, I heard by Mr. *Weſt*, but I knew nothing before.

L. C. J. Mr. *Rumſey*, About what time was this Reſolution taken up, as near as you can? I ask neither the Day nor the Week, but about what Month?

Col. *Rumſey.* The beginning of it was in *February*.

L. C. J. Laſt *February*?

Col. *Rumſey.* Laſt *February*. Mr. *Ferguſon* and Capt. *Walcot* came to this Town upon *Aſh-Wedneſday*.

Mr. Serj. *Jefferies.* What other Meetings were you at, Sir?

Col. *Rumſey.* This was the firſt, when the Priſoner at the Bar came in. The firſt time was

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at Mr. *West*'s Chamber, where he came: There it was considered and debated.

Mr. Serj. *Jefferies*. Very well, you say that was the first time Capt. *Walcot* came in.

Col. *Rumsey*. It was at Mr. *West*'s Chamber: This was before the King came from *New-Market*, that they were to do this, and the Number of Men could not be got ready; so there were several Meetings afterward at Mr. *West*'s Chamber, to consult whether they could raise the Number they resolved upon; and there were Notes brought by Mr. *Goodenough* and Mr. *Rumbold* of many Names, I cannot say who else brought Notes of the Mens Names, to see that they might not be deceived in the Number; and at that time Capt. *Walcot* was there, and did undertake to go to Mr. *Rumbold*'s House, and I think did go down to the very place.

L. C. J. Look you, Sir, Was there any Number of Men insisted upon for doing this Villany?

Col. *Rumsey*. Capt. *Rumbold* did insist upon 50 Men.

L. C. J. But Capt. *Walcot*, How many was he to have?

Col. *Rumsey*. It was not divided to a perfect Number.

Mr. Serj. *Jefferies*. What other Meetings were you at with Captain *Walcot*?

Col. *Rumsey*. I was at the *Salutation* with him, and the *Green-Dragon* with him.

Mr. Serj. *Jefferies*. Where is that?

Col. *Rumsey*. The *Green-Dragon* is upon *Snow-Hill*.

Mr Serj. *Jefferies*. Where is the *Salutation*?

Col. *Rumsey*. In *Lombard-street*.

Mr. Serj. *Jefferies*. Now tell what Discourses you had there.

Col. *Rumsey*. That was about dividing the City into 20 Parts, to see how many Men could be raised out of every Part, and they were to be divided into Fifteenths, and every Man to lead a Fifteenth, that they might not be at a Loss.

Mr. *At. Gen.* Who was intrusted with this to do it?

Col. *Rumsey*. Mr. *Goodenough*, Mr. *West*, and Mr. *Wade*.

Mr. *At. Gen.* What account did they give of what they had done?

Col. *Rumsey*. Mr. *Goodenough* gave an account of 7 Parts of the 20, and said out of them would be raised 2900 Men, and made an Estimate that the other 13 would not raise above as many more, for those were the most considerable Parts, as *Wapping* and *Southwark*.

Mr. Serj. *Jefferies*. Mr. *Rumsey*, Pray what Consultation had you afterward, and what was done after?

L. C J. Pray let us go on a little *gradatim*, What was the reason that this was not effected when the King returned from *New-Market*?

Col. *Rumsey*. The Fire happened, and brought the King sooner from *New-Market* than the Men could be got ready.

L. C. J. Was there a Day appointed for the doing this? Had you a Prospect when the King would return?

Col. *Rumsey*. Yes, it was commonly talked that it would be the *Saturday* before *Easter*, but he came on the *Tuesday* before.

L. C. J. Then give us an account how that Design was disappointed at that time.

Col. *Rumsey*. The Fire happened in *New-Market*, and they were all in Confusion, and could not get their Men ready by *Tuesday*; the News came upon *Friday* to Town.

L. C. J. Of the Fire?

Col. *Rumsey*. Of the Fire, and there was a Meeting. Mr. *Ferguson* lodged then in *Covent-Garden*, and sent to several to come to him, to see if Men could be got together against *Tuesday*, when the King was to come in, and it could not be done, and it was laid aside for that time.

Mr. *At. Gen.* Upon that, what Resolution was taken?

Col. *Rumsey*. Then they had a Meeting, and *Ferguson* was not there, there was Capt. *Walcot*, Mr. *West*, and Mr. *Goodenough*; this was immediately after this Disappointment: I am not certain whether it was in Mr. *West*'s Chamber; and that there might no Accident happen afterwards to hinder it, it was resolv'd that Money should be rais'd for the buying of Arms, and Mr. *Ferguson* undertook to raise Money to buy Arms, and Mr. *West* did undertake to provide them.

Mr. *At. Gen.* Who undertook to provide Men?

Col. *Rumsey*. Mr. *Goodenough*, and Mr. *Rumbold*.

L. C. J. Look you, Colonel *Rumsey*, after this Disappointment, when this next Meeting was, had you any further Design upon the King then?

Col. *Rumsey*. Yes, my Lord.

L. C. J. Give us some account of that.

Col. *Rumsey*. It was to be done a coming from *Windsor* to *London*, or from *Windsor* to *Hampton-Court*, or the *Play-house*, and therefore that Arms should be ready against any Opportunity that should happen, let it be what it would; and Mr. *West* did undertake to provide Arms, and he told me he bought them, and did not get his Money in six or seven Weeks after; a Day or two after going to *Ferguson*, he told him now he might have his Money, if he would send a Note to Major *Wildman*; but after he was told, that Major *Wildman* would not pay it by Note, but he must send Mr. *Rumbold* to him for it, for he would trust no body else but him. And so Mr. *West* did send Mr. *Rumbold*, and he was there at his House by six a Clock in the Morning, but he was gone out of Town an Hour before, so Mr. *West* went to Mr. *Ferguson*, and he then told him that he should have Money in two or three Days, if he would come to him, and Mr. *West* did go to him, and he paid him an hundred Pound.

Mr. *At. Gen.* Was there any Provision made for a Rising now again?

Col. *Rumsey*. Yes, this general Rising, by this Division of the City, was intended to be ready against the first opportunity that happened.

Mr. *At. Gen.* Before this Discovery, did you keep up these Meetings?

Mr. *Sol. Gen.* When was your last time?

Col. *Rumsey*. My Lord, I think it was the very *Thursday* before the Discovery; but then on *Friday* or *Saturday* we had inklings that this was discovered, and did meet at the *George* upon *Ludgate-Hill*.

L. C. J. Who met then?

Col. *Rumsey*. I think it was the very *Thursday* before; I am not very certain, we met at the *Salutation* in *Lombard-street*, and there was Cap-

tain *Walcot*, Mr. *Weſt*, Mr. *Wade*, the two *Goodenoughs*, and Mr. *Neltbrop*, and my ſelf.

Mr. *At. Gen.* What did it come to, pray what was your Diſcourſe then and Reſolution?

Col. *Rumſey.* The Reſolution was ſtill to carry it on. We went thither to know of Mr. *Goodenough*, what was done about the other thirteen parts, he told us he had no account, but he ſaid, he thought he ſhould have a meeting on *Saturday* in the Afternoon at *Ludgate-Hill*, at the *George*, to have his Anſwer, but the Diſcovery coming, there did only meet Mr. *Norton*, Mr. *Bourn*; there was another, I don't know who the other was, there was a fourth.

Mr. *At. Gen.* Mr. *Rumſey*, Pray after the Diſcovery, What did you reſolve upon? What meetings had you upon your flight?

Col. *Rumſey.* We met at Capt. *Tracy's*.

Mr. *At. Gen.* What day was that?

Col. *Rumſey.* That was upon the *Monday* after the Diſcovery.

Mr. Serj. *Jefferies.* Who was there?

Col. *Rumſey.* There was Capt. *Walcot*, Mr. *Weſt*, Mr. *Wade*, Mr. *Neltbrop*, the two *Goodenoughs*, and Mr. *Ferguſon*.

Mr. *At. Gen.* What did you diſcourſe of there?

Col. *Rumſey.* There was exclaiming againſt Mr. *Keeling*, and taking reſolutions to be gone.

L. C. J. Mr. *Keeling*! What was *Keeling*?

Col. *Rumſey.* Mr. *Keeling* was he that made the Diſcovery.

Mr. Serj. *Jefferies.* Have you ever been in *Keeling's* Company?

Col. *Rumſey.* I was that time we met at the *Salutation*, he came in there for a quarter of an hour.

L. C. J. Look you, Sir, Do you know Capt. *Walcot*? Are you ſure it is that Gentleman at the Bar?

Col. *Rumſey*, Yes, my Lord.

L. C. J. Hath he owned always the Name of *Walcot*?

Col. *Rumſey*, Yes, my Lord.

L. C. J. What did he ſay to Mr. *Keeling*, when he came to the *Salutation*?

Col. *Rumſey.* There was in that very day's *Gazette*, a Report of a Riſing at *Cologne*, and one *Gulick* that headed them, and ſaid Mr. *Weſt* to *Keeling*, he ſhould be our *Gulick*.

Mr. *At. Gen.* Pray how did he interpret it at that time?

Col. *Rumſey.* Mr. *Weſt* ſaid that *Gulick* was *Keeling*, *Gu* was *Keel*, and *lick* was *ing*.

Mr. Serj. *Jefferies.* A Quirk upon his Name.

Mr. *At. Gen.* When you reſolved to flie, had you any diſcourſe of making a Stand, and fighting the Government then?

Col. *Rumſey.* Not that I know of, I was not all the time with them.

L. C. J. Look you, Colonel *Rumſey*, let me ask you this, What was *Keeling* to do? Was there any Poſt aſſigned to *Keeling* in this?

Col. *Rumſey.* I never ſaw him before.

L. C. J. How long was it before the Diſcovery that you did ſee him?

Col. *Rumſey.* The *Thurſday* before.

L. C. J. At the *Salutation-Tavern*?

Col. *Rumſey.* Yes, He was there call'd *Gulick*.

Mr. Serj. *Jefferies.* If Capt. *Walcot* will ask him any Queſtions, he may.

L. C. J. Look you, Mr. *Walcot*, Now you may ask Col. *Rumſey*; tell me what Queſtions you would have asked, and I will ask him.

Capt. *Walcot.* I deſire Colonel *Rumſey* may be asked, Whether I ever met at Mr. *Weſt's* Chamber, till after his Majeſty's return from *New-Market*?

L. C. J. Look you, Sir, you hear the Queſtion; it is, Whether ever Mr. *Walcot* met with Mr. *Weſt*, till after the King's Return from *New-Market*?

Col. *Rumſey.* Till after?

L. C. J. Till after the King's Return.

Col. *Rumſey.* Yes, Sir.

Capt. *Walcot.* My Lord, I have ſufficient Evidence againſt that.

Mr. Serj. *Jefferies.* I think that he was to undertake the Guards, that was before the King came from *New-Market*.

L. C. J. He hath given this Evidence, He was there, and he would not attack the Coach; he would not meddle with the King, but he would fall upon the Guards.

Capt. *Walcot.* Shall I ſpeak a word, my Lord?

L. C. J. Look you, I will tell you, you ſhall have your Anſwers to theſe things, you have Pen, Ink, and Paper.

Capt. *Walcot.* But I have a bad memory, and I am afraid I ſhall forget this very thing.

Mr. Serj. *Jefferies.* I hope the Jury will not forget it.

L. C. J. Look you, Mr. *Walcot*, we muſt not admit you to break in upon the King's Evidence, when that is heard, you ſhall have your liberty to make your Anſwer to any thing, and call any Witneſs.

Col. *Rumſey.* My Lord, I will give one Inſtance more: There was one meeting at the *Five Bells* in the *Strand*, where there was only *Ferguſon*, Captain *Rumbold*, Mr. *Weſt*, *Goodenough*, and my ſelf; And Mr. *Ferguſon* told us that Night, that Captain *Walcot* would come the next meeting we had at Mr. *Weſt's* Chamber.

L. C. J. Then Captain *Walcot* was not with you at the *Five Bells*?

Col. *Rumſey.* Mr. *Ferguſon* told us he would come in the next time at Mr. *Weſt's* Chamber, and there he did come.

L. C. J. And that was before the King went to *New-Market*. Pray, Sir, anſwer this, Was this before the King went to *New-Market*, or not?

Col. *Rumſey.* No, my Lord, this was when he was at *New-Market*; for the King was at *New-Market* when he and Mr. *Ferguſon* came from *Holland*, the King was then at *New-Market*.

Mr. Serj. *Jefferies.* Now we will call Mr. *Keeling*. [*Who was ſworn.*

Mr. *At. Gen.* Pray will you acquaint my Lord, and the Jury, what you know of theſe Conſpiracies, and touching this Man.

Mr. *Keeling.* Some time, my Lord, before the King went to *New-Market*, I was at the *Sun-Tavern*, and in company with *Richard Rumbold*. *Richard Goodenough*, and ſome others; *Goodenough* calls me forth of the Room, and asked me what Men I could procure? I asked him, For what purpoſe? He ſaid, To go down towards *New-Market*. I asked, For what end? He ſaid, To kill the King, and the Duke of *York*. I told him, I thought none. Before the King came from *New-Market*, he renewed his Queſtion to me again ſeveral times: I had in the *interim* ſome diſcourſe with *Burton* and *Thompſon*; *Burton* told me, That *Barber* would be concern'd; and he alſo told me, *Thompſon* would. The *Saturday* after the Fire happened at *New-Market*, *Rumbold* came down to my Houſe, or the *Friday*, the day that the

the News was of the Fire, the day that he commonly came to Town, he came to my Houſe; it was on the *Friday*, to ſee thoſe Men I could procure, and he deſired to ſee them on the morrow, which was the *Saturday* before the King returned; the *Saturday* after the Fire, I went into *London*, and met Mr. *Rumbold* that day at the *Exchange*, and he then put me in mind of the matter again. I did go to *Burton*, and *Thompſon*, and *Barber*, the place appointed on *Saturday* was the *Mitre-Tavern* at the corner of *Duke's-place* within *Aldgate*. He did meet there, where there was ſome Diſcourſe happened tending to that Matter by *Rumbold*; the Subſtance of which was, Whether they were willing to go down? I think he call'd the Place by the Name of, *The Rye*, that is his Houſe; there being, ſays he, no greater Conveniency than in that, I believe ſcarce in *England*, for the executing ſuch a Deſign, being an Houſe very intire to it ſelf, and very remote from Neighbours, beſides the Advantage that belongs to it of a Court or Wall. And, among other Diſcourſe, this was an Argument to prevail with thoſe perſons: For ſaith he, it will be a keeping one of the Commandments, to kill the King, and the Duke of *York*, for, ſays he, if that be not done, there will be otherwiſe a great deal of Bloodſhed committed. He alſo told us the way that he deſign'd to effect this at his Houſe; That he had a conveniency for our Horſes; and that there would be ſo many appointed to ſhoot at the Poſtilion and the Horſes; and that there would be ſo many appointed at the Coach, and ſo many Men to attack the Guards: And if there was a Failure in ſhooting the Coach-Horſes, that then there ſhould be Men in the habit of Country-men, with a Cart in the Lane, and they ſhould run this Cart athwart the Lane, and ſo ſtop the Coach. I believe there might be ſome other Particulars, which, at preſent, I do not remember. From thence we went to the *Exchange*, and there we met in the Afternoon at the *Dolphin-Tavern* in *Bartholomew-Lane*, there was *Rumbold*, *Weſt*, *Goodenough*, and *Hone* the Joyner. And after we had been there a little, *Weſt* asked *Rumbold*, Whether he heard the King would come home that Night? He ſaid, Yes, he heard ſo; but ſaid *Weſt*, I believe he won't come till *Monday*, and I hope he won't come till *Saturday*, for that was the day appointed to go down to the *Rye*, to meet the King, and the Duke of *York*. Said, *Rumbold*, I hope they will not come till then: But, ſaid *Weſt*, if they do come, How many *Swan-quills* muſt you have? How many *Gooſe-quills*? And how many *Crow-quills* with *Sand* and *Ink*, muſt you have? Said they, *Six Swan quills*, *Twenty Gooſe-quills*, and *Twenty or thirty Crow-quills*.

L. C. J. Explain that.

Mr. *Keeling*. I am coming to it. I asked *Weſt* or *Rumbold*, or both of them, what they intended by it? They told me Swan-quills were Blunderbuſſes, Gooſe-quills, Muſquets, and Crow-quills were Piſtols, Sand and Ink, Powder and Bullet. This is all my Lord as I remember in general as to the Deſign.

L. C. J. What can you ſay concerning the Priſoner at the Bar?

Mr. *Keeling*. I was at the *Salutation-Tavern* and Captain *Walcot* was there, and when I came in, there was ſome perſon called me *Culing*, and I a little ſtranged at it, not knowing the meaning; ſays I, Gentlemen, What do you deſign by it? Says one, here's a good health to our Engliſh *Culing*; ſays *Weſt*, *Culing* in Dutch is *Keeling* in Engliſh, and ſays Mr. *Weſt*, I hope to ſee Mr. *Keeling* at the head of as good an Army in *Wapping*, as *Culing* is at *Collen*. I ſuppoſe Captain *Walcot* remembers it very well. I can ſay no more, Sir, to the Priſoner at the Bar; I remember not to have ſeen him any other time upon this Deſign.

Mr. Serj. *Jefferies*. Would the Priſoner at the Bar ask him any queſtions?

Capt. *Walcot*. My Lord, I don't remember any ſuch thing. If you pleaſe my Lord, to ask him, whether I call'd him *Culing*, or ſaid any thing more or leſs to him.

Mr. *Keeling*. I don't ſay you did, but you were by, that I ſay.

Mr. Serj. *Jefferies*. I think, Mr. *Keeling*, you were the Perſon that made the diſcovery; give an account of it for the Satisfaction of the World.

L. C. J. Upon what occaſion did you reveal this?

Mr. *Keeling*. If your Lordſhip pleaſe I will give you an account. There was ſomething happened before that time. Some time before this thing was diſcovered, *Goodenough* came down to my houſe, and I went with him to drink a diſh of Coffee, and there was in company with him *Richard Rumbold*, and his Brother *William*, that I believe Mr. *Walcot* knows; and when we were by our ſelves, he pulls out ſome Papers out of his Pocket, and gave me one; I asked him what he meant, he told me he had divided the City and Suburbs into twenty parts, and there were three diviſions; and ſays he, you know the perſons better than I, and who you can truſt with it; one is for your ſelf, and I would have you take to your aſſiſtance nine or ten men, more or leſs, that you may communicate it ſafely to, and they were to go to ſeveral Perſons, and ask them, ſuppoſing that the Papiſts ſhould riſe, or that there ſhould be a general Inſurrection, or a *French* Invaſion, Are you in a poſture of defence? This was all we were to communicate of the matter to them, and this was to feel them, and ſee how many men they could raiſe. And he told me there was a deſign to kill the King and the Duke, which was deſigned to be done at the Bull-feaſt, for Mr. *Weſt* had told me it was to be done between *Windſor* and *Hampton-Court*. I asked him if that Deſign went on, and he ſaid, no; for the Duke of *York* ſeldom came with the King from *Windſor* to *Hampton-Court*, but it was to be at the Bull-Feaſt. And ſays he, theſe men are to be in a readineſs, and it's deſigned that the thing ſhould be laid upon the Papiſts, as a Branch of the Popiſh Plot. He alſo told me, there was one drawing a Declaration, which would relieve poor people of that which ſeemed moſt burthenſome to them, which was the Chimney-money, and then the Common People would fall in with them more readily.

Mr. *At. Gen.* How came you to diſcover it?

Mr. *Keeling*. I will tell you, Sir, I was troubled in my mind about it, and do declare that was the only Reaſon; I thought I did very ill in not diſcovering it, and I had no peace nor ſatisfaction, nor content, nor did I mind my buſineſs, nor could I take that reſt that at other times I did, and that was the moving Cauſe, and no other: I thought if it were a ſin in *David* to cut off the hem of *Saul*'s Garment, it was a ſin in me much more to kill my King.

L. C. J. Was there any Poſt in this Caſe aſſign'd to you? Was it requir'd of you to do any thing your ſelf, more than to raiſe thoſe Men, and know whether they were in a readineſs? Were you deſign'd to go down to *Rumbold*'s Houſe? Tell what part you were to act.

Mr. *Keeling*. In the firſt place, I was to raiſe ſome men, but I thought they looked upon me for one to go down my ſelf with thoſe men I raiſed; but I remember not that I was asked the Queſtion.

L. C. J. Were any of thoſe Men to go down?

Mr. *Keeling*. Thoſe three I named were to go down, *Burton*, *Thompſon*, and *Barber*.

Mr. *At. Gen.* Call Mr. *Bourn*.

L. C. J. Tell us the manner of your revealing and diſcovering this, who you diſcovered it to?

Mr. *Keeling*. I revealed it to one Mr. *Peckham*.

L. C. J. Who did he bring you to?

Mr. *Keeling*. To my Lord *Dartmouth*.

L. C. J. And ſo you did diſcover the whole buſineſs to him?

Mr. *Keeling*. I had offered to diſcover it to another Man before, but I thought he was careleſs, ſo I did not tell him poſitively what I thought to tell him, becauſe I ſaw he ſlighted the matter; He was a Miniſter of the Church of *England*. Then I went to Mr. *Peckham*, knowing he was intimate at Court, and from thence to my Lord *Dartmouth*, and then I was carried to Mr. Secretary *Jenkins*.

Mr. *At. Gen.* Was there no deſign to take off the Mayor or the Sheriffs in particular?

Mr. *Keeling*. I will tell you, *Goodenough* did tell me, That the Deſign was to ſecure the Lord Mayor, and the Sheriffs, and he told me, they had a deſign to ſecure the *Tower*.

Mr. *At. Gen.* Were you employed to arreſt my Lord Mayor?

Mr. *Keeling*. I did arreſt my Lord Mayor.

L. C. J. What are you? How came you to arreſt my Lord Mayor? What are you by Profeſſion?

Mr. *Keeling*. A White Salter, or Oyl-man.

L. C. J. How came you to arreſt my Lord Mayor?

Mr. *Keeling*. I was put upon it by *Goodenough*, and thoſe men.

L. C. J. As a ſpecial Bailiff?

Mr. *At. Gen.* He was as a ſpecial Bailiff.

Mr. *Keeling*. Under the Coroner.

Mr. Serj. *Jefferies*. A ſpecial Bailiff under a ſpecial Coroner.

Mr. *Bar. Street*. Was this Coroner at any time at any of your meetings?

Mr. *Keeling*. No, my Lord.

Mr. *Bar. Street*. I am glad he was not.

L. C. J. What ſay you, Capt. *Walcot*?

Capt. *Walcot*. My Lord, I have nothing to ſay.

Mr. *Sol. Gen.* Call *Zachary Bourn*.

[*Who was ſworn.*

Mr. *At. Gen.* Pray will you recollect your ſelf, and tell what knowledge you have of the Priſoner, what meetings you had, and what was agreed.

L. C. J. Raiſe your voice a little.

Mr. *Bourn*. The occaſion of my knowing Capt. *Walcot* was Mr. *Ferguſon*'s lodging at my houſe, Capt. *Walcot* uſed to come thither, but it was ſome time before I changed any words with him.

Mr. *At. Gen.* Speak aloud, Mr. *Bourn*.

Mr. *Bourn*. Mr. *Wade* came preſently after I came to Town from the *Wells*, and ſaid, I muſt needs meet in ſuch a place, it was at the *Dragon* upon *Snow-Hill*, where we met ſeveral others beſides Capt. *Walcot*; the buſineſs was a deſign to raiſe men, and divide the City into twenty Diviſions, in order to the ſecuring of his Majeſty and the Duke of *York*, and ſetting up the Duke of *Monmouth*.

L. C. J. Was it ſecuring, or killing?

Mr. *Bourn*. It was not killing, I think, we never expreſſed it killing at thoſe meetings. I think every time I met them Captain *Walcot* was there. Once I was at the *Salutation* in *Lumbard-ſtreet*.

L. C. J. What was the reſult of your meetings?

Mr. *Bourn*. To make all expedition imaginable.

L. C. J. Was it diſcours'd how, or in what manner thoſe Perſons were to be raiſed? Don't refer your ſelf to the Evidence that went before, but tell it your ſelf.

Mr. *Bourn*. The City was to be divided into twenty Diviſions, and to raiſe as many men as they could out of them, but they were not to tell the direct buſineſs, but if there ſhould be occaſion, or the Papiſts ſhould riſe, they might know their ſtrength, and what they were able to do.

Mr. *At. Gen.* This was their Pretence, becauſe it ſhould not be told thoſe Men.

L. C. J. Did Mr. *Goodenough* bring any account of it?

Mr. *Bourn*. Mr. *Goodenough* brought an account of about four thouſand; three I think it was, or very near, out of thoſe Diviſions he had an account of.

L. C. J. Was Captain *Walcot* there at that time?

Mr. *Bourn*. Yes.

Mr. Serj. *Jefferies*. When the Diſcourſe was about ſecuring the King and the Duke, was Captain *Walcot* there?

Mr *Bourn*. Yes.

L. C. J. Did you hear what Parties were deſign'd to be in this Act?

Mr. *Bourn*. They were not come to that.

L. C. J. Did you break off from them before that?

Mr. *Bourn* No, the Diſcovery prevented it?

L. C. J. When was your firſt meeting? About what time?

Mr. *Bourn*. About ten days before the Diſcovery was made.

L. C. J. Was Mr. *Weſt* at any of your Conſults?

Mr. *Bourn*. Yes, at ſome of them, and Captain *Walcot* was as three of them, if not at all, I think.

L. C. J. What was to be done?

Mr. *Bourn*. They were to have ſeized my Lord Mayor and the two Sheriffs, and ſome of the Aldermen, and the chief Miniſters of State about Town.

Mr. *Bar. Street*. Was there any body deſigned for that particular buſineſs?

Mr. *Bourn*. No, not then, it was not come to that.

Mr. *At. Gen.* Was there any thing about my Lord Keeper?

Mr. *Bourn*. Yes, Mr *Weſt* did ſay to me, it ſhould be my buſineſs to ſecure my Lord Keeper; I told him, I did not care to meddle with

any

any of my Neighbours. He ſaid he would call him to account with all his heart, he would put him in mind of *Colledge*.

Mr. *At. Gen.* Pray were you imployed to ſpeak with any of the Nonconformiſt Miniſters about it?

Mr. *Bourn.* I would have ſpoke to two of them, and Mr. *Weſt* was unwilling, for he ſaid, the Miniſters had deſtroyed all deſigns ever ſince *Conſtantine's* time, and he would have nothing to do with them now.

Mr. *At. Gen.* When was your laſt meeting, before the Diſcovery, that you were at?

Mr. *Bourn.* The Saturday before the Diſcovery, we met at Captain *Tracy's*, and that evening we had ſome intimation that there was a Diſcovery made. And I went again on Monday morning.

Mr. *At. Gen.* Who was there?

Mr. *Bourn.* Captain *Walcot*, Mr. *Ferguſon*, Mr. *Goodenough*, Mr. *Weſt*, Mr. *Norton*, and my ſelf, one Captain *Pottle* came in, but he did not ſtay.

Mr. *At. Gen.* Colonel *Rumſey* was there too, was not he?

Mr. *Bourn.* Yes, Sir.

L. C. J. And what did you reſolve upon then?

Mr. *Bourn.* Truly they reſolved upon nothing, I left them upon the debate of killing Mr. *Keeling*.

Mr. *At. Gen.* Why would they kill him? Was that debated among them?

Mr. *Bourn.* Yes, becauſe he made the Diſcovery.

Mr. *At. Gen.* Did you hear them talk of ſtanding to it with Swords in their hands?

Mr. *Bourn.* Yes, rather than be hang'd, they thought that was the better way, and to have *Keeling* diſpatched out of the World.

L. C. J. Look you, Sir, did any of them talk of ſecuring themſelves?

Mr. *Bourn.* The next morning I went again, and they were all gone but Mr. *Weſt*, they had all ſecured themſelves.

L. C. J. Was the Priſoner at the Bar there at that time, when they conſulted about killing Mr. *Keeling*? Was he there at that meeting on *Monday* morning?

Mr. *Bourn.* He was there at Captain *Tracy's*, he was there I think all the while, while I was there, for I was not there all the time.

L. C. J. (To *Walcot.*) Now, Sir, what Queſtion would you have?

Capt. *Walcot.* My Lord, if you pleaſe, I would ask whether he ever heard me ſay any thing, more or leſs, of aſſaſſinating the King?

L. C. J. In the firſt place, did you hear any thing in general of aſſaſſinating the King?

Mr. *Bourn.* I did hear of it, my Lord, when the thing was over. And as to his queſtion, I did never hear him diſcourſe of that matter. I underſtood the deſign was prevented.

L. C. J. Who did you underſtand that from?

Mr. *Bourn.* From one Mr. *Row*, and Mr. *Ferguſon*.

Mr. *At. Gen.* Pray in all your meetings, was there no diſcourſe of killing the King and the Duke?

Mr. *Bourn.* Very little.

Mr. Serj. *Jefferies.* The diſcourſe was about ſecuring the King while *Walcot* was there?

Mr. *Bourn.* There was ſuch diſcourſe in ſeveral meetings. It was ſaid it would be well if they were off, and the diſcourſe was about Lopping.

Mr. *At. Gen.* Pray tell my Lord, what diſcourſe you had of Lopping and the general Point.

Mr. *Bourn.* They ſaid, there was no way like Lopping them.

Mr. *At. Gen.* What was underſtood by that?

Mr. *Bourn.* The taking off the King and the Duke of *York*.

L. C. J. Was that the uſual phraſe among you to ſignifie that?

Mr. *Bourn.* Yes, my Lord.

L. C. J. Was he there?

Mr. *Bourn.* I have heard it ſeveral times, and I ſuppoſe he was at the hearing of it.

L. C. J. (To *Walcot.*) Look you Sir, he ſpeaks of the time of diſcourſe, of ſecuring the King, and ſays you were there then.

Capt. *Walcot.* I had no hand in it.

Mr. *At. Gen.* We will nail it home upon you, we will call Mr. *Weſt*. [*Who was ſworn.*

Mr. Serj. *Jefferies.* Come, Mr. *Weſt*, do you tell my Lord and the Jury the whole Story.

Mr. *Weſt.* My Lord, I came acquainted with the Priſoner at the Bar laſt Summer-Vacation, by the knowledge of one *Wilcocks*, who, I ſuppoſe, return'd his Money out of *Ireland*, I heard a very fair Character of him, and he, I ſuppoſe, met with ſuch an one of me, which did incline us both to an Intimacy, and to talk freely with one another. About the middle of *October*, I obſerv'd a general Diſcontent in the City, and was afraid there was ſome Deſign in hand, and was very inquiſitive to know it: I was unwilling to be involved and ſurprized into a ſudden Ruin, and ſo thought fit to inquire of them that were moſt likely to be concerned. I took Capt. *Walcot* for one, being inform'd that my Lord *Shaftsbury* had ſent for him out of *Ireland*; and Capt. *Walcot* told me, that my Lord was alſo ſending for ſome *Scottiſh* Gentlemen, on occaſion of *Carolina*; but that he was very cool in *Carolina* buſineſs, and that that was but a Pretence. My Lord, one morning Capt. *Walcot* came to my Chamber, and we diſcours'd concerning the Election of Sheriffs carried on in the City, contrary, as we thought, to the Juſtice of it: Says he, Will the People do nothing to ſecure themſelves? With that he told me a Secret, and ſaid there was a Deſign of an Inſurrection to be made within three Weeks or a Month, that would make us free, or worſe. I told him, I thought it was a certain way to bring us in a worſe condition, and that it was very full of hazards. He told me then, he did not know whether he ſhould be concerned: But a little while after he told me, my Lord *Shaftsbury* was engag'd in ſuch a Deſign, and he had engag'd him in it, and he told me, he had an expectation of being a Colonel of Horſe, and ask'd me, If I would have any Command under him? I told him, I knew ſome Gentlemen of the *Temple* that I might engage in it, but told him, I had not a Conſtitution to bear the Toils of War. My Lord, he told me then, That my Lord *Shaftsbury*, to the beſt of my remembrance, had another Deſign upon the King and the Duke, as they came from *New-Market* in *October* laſt, but he told me he abhorr'd any ſuch thing, it was ungenerous, and he would not be concern'd in it, but only in a general Inſurrection. But this he did tell me, I think, before the thing was to be executed; I imparted it to no Body, till after the time of both was paſt: But in the diſcourſe of the Inſurrection,

he

he told me, I ſhould lend him a Suit of Silk Armour, which I bought about four or five Years ago, when the Popiſh Plot broke out, and he would have had me kept that, and uſed it my ſelf, which I did decline. Then he told me, he had very good Swords in *Ireland*, but he wanted them here. Says he, I am a Man that am obſerved, becauſe I have a Correſpondence with my Lord *Shaftsbury*, and asked me, if I would provide him a good ſtiff Tuck? I told him I would, and I did beſpeak one; but before it was done, the Deſign was laid aſide, and the Tuck was left upon my Hands. I came to underſtand that the Deſign was put off, by means of Mr. *Trenchard*, who had diſcours'd about a Fortnight before of great Forces he could raiſe in the *Weſt*, and the Duke of *Monmouth* ſent for him, but his Heart fail'd him, and he could not raiſe any Men; upon which, my Lord *Grey* called him Coxcomb. This was about the 19th of *November*.

Mr. *At. Gen.* What time of *November*?

Mr. *Weſt.* The 19th.

Mr. *At. Gen.* But upon what Day?

Mr. *Weſt.* Queen *Elizabeth*'s Day.

Mr. *At. Gen.* No, Sir, that is the 17th.

Mr. *Weſt.* Now after this I underſtood by Capt. *Walcot*, that Mr. *Ferguſon* had the Management and Conduct of the Aſſaſſination in *October*, and that he likewiſe was acquainted with the Inſurrection, and was a great Man in it. I met with Mr. *Ferguſon*, and fell into diſcourſe with him, and he treated me, as he always did, with a long Story of the Miſeries of *Scotland*, and that the People were all in Slavery and Bondage, and would be ſo here if they did not free themſelves; and, ſays he, there are two ways thought upon for it, one is by a general Inſurrection, and that is gone off; the other is a much more compendious way, by killing the King and the Duke of *York*. My Lord, I told him, I thought the firſt way was a very dangerous way, that the People were in no ſort of Capacity to carry it on, that the Government had the Navy and the Militia, and this would at the beſt entail a long War. He told me he thought the other was the beſt way, and we went to a Tavern, where Col. *Rumſey*, and one *Row*, and he and I went divers times. They propoſed to meet at my Chamber as a Place of Privacy and little Obſervation. My Lord, when they came to my Chamber, Mr. *Ferguſon* propoſed ſeveral ways of doing it. One way was as the King and Duke had their private Viſits in St. *James*'s, where it was an eaſy thing for Sword-men to kill them. There is one thing I have omitted, and that was after the Deſign of *October* had miſcarried, I think, to the beſt of my Remembrance, Capt. *Walcot* told me, there was another Deſign of attacking the King and the Duke at my Lord Mayor's Feaſt in the Hall, or in their Return home, in *Paul*'s *Church-yard*, or at *Ludgate*; and Mr. *Ferguſon* did likewiſe tell me the ſame thing, but the King not dining there, the thing was wholly diſappointed. Another way that he propoſed was, that they ſhould do it as the King and the Duke went down the River, they ſhould lie behind ſome ſmall Ships within a Hoy, or ſome ſuch thing, and ſo over-run their Barge; and if that fail'd, they ſhould break a Plank with their Blunderbuſſes, and ſo ſink them. Another way was at the *Play-houſe*, and that was to be done in this manner; there ſhould be 40 or 50 Men got into the Pit with Pocket-Blunderbuſſes, or Hand-Blunderbuſſes, and Piſtols and Swords; and when the Muſick ſtruck up between the Acts, they ſhould fire upon the Box; but this they thought was hazardous, and therefore they thought it better to do it as he came back, and pitched upon *Covent-Garden* under *Bedford-Garden* Wall, becauſe there was a Conveniency for a great many Men to walk in the *Piazza*, and there might be another parcel of Men planted at *Covent-Garden* Church-Porch, and within the Rails where Horſes could not come; and while the Men within the Rails fired, the Men in the *Piazza* might engage the Guards, and they in the Church-Porch to come down and ſecure them from eſcaping.

Mr. *Sol. Gen.* When was this time?

Mr. *Weſt.* I think it was before Mr. *Ferguſon* went for *Holland*. And, my Lord, there was another thing propos'd: I think it was Colonel *Rumſey* did ſay, He wonder'd that the Lords and great Men that were ſo fond of the thing, did not raiſe a Purſe, and buy ſome body an Office, who ſhould rail againſt the Duke of *Monmouth*, and the *Whigs*, and by that means get himſelf an opportunity of Acceſs to the King's Perſon. My Lord, after theſe Diſcourſes, when my Lord *Shaftsbury* retir'd to *Holland*, Mr. *Ferguſon* thought fit to do ſo too: He was afraid of a Book that he had printed, and away he went, and Captain *Walcot* with him. In the mean time I met Col. *Rumſey* ſeveral times, and ſeveral things were offer'd, but nothing reſolv'd upon. A little after *Chriſtmas* we met at the *Salutation* Tavern in *Lumbard-ſtreet*, and there it was agreed we ſhould ſend for Mr. *Ferguſon*, and there I writ a canting Letter, that he would come over for his Health, for he was the only Man that could manage the Affair. When he came over, there was one Meeting at the *Five-Bells*, but I came in juſt as they were coming away, and cannot ſay what paſs'd there. After that they came ſeveral times to my Chamber, and there Mr. *Ferguſon*, Mr. *Goodenough*, and Mr. *Rumbold*, undertook to provide the Men.

L. C. J. The Men, for what?

Mr. *Weſt.* The Men for the Aſſaſſination: That I was not concern'd in, either in Perſon or Purſe, or to procure any body for it. And they did agree to do it in the going to or from *New-Market*, and thereupon were ſeveral Debates, Whether it ſhould be done at their Going, or Coming-back. Againſt doing it Going-down, it was objected, That the Guards were left here and there, and they went together, but very often they return apart, and therefore it was not the ſafeſt way Going-down; and nothing alſo being prepar'd, ſo it was reſolv'd to be done Coming-back. Then it was conſider'd what Arms ſhould be provided: Mr. *Rumbold* was the Man to manage that Matter, and was to procure ſome Blunderbuſſes, ſome Carbines, and ſome Piſtols; but there was nothing to be prepar'd as I know of by other Perſons, but every Man was to provide himſelf. Several Meetings there were, they brought their Notes, and confer'd together about the Men, but I remember no Names, but *Keeling* and *Burton*: And Mr. *Goodenough* ſaid, he had ſpoke to one *Hone* a Joyner; and, I think, he ſpake of one *Manning*, and theſe are all the Names I can remember. After they had confer'd their Notes,

Notes, I ask'd Mr. *Ferguſon*, What Proviſions of Money he had made? Says he, I ſhall have Money when the Men are provided, but not till then: For, ſaid he, the laſt time there was ſome Money rais'd, and put into a Man's Hand, who never returned it, but ſince I underſtand it was paid to Mr. *Goodenough*. And Mr. *Ferguſon* ſaid, Mr. *Goodenough* call'd him Fool, for returning ſome Money he had, and not keeping it for his own Uſe; and my Lord *Shaftsbury* had often complain'd of that Injuſtice done him: The Colonel ſaid, Mr. *Charlton* ſhould pay the Money. There was a further Debate, How theſe Arms would be got down to Mr. *Rumbold*'s: It was propoſed, to ſend them down by *Smithfield* Carts in Cheſts. Others, to ſend them down by truſty Watermen, who were to cover them with Oyſters. Others, that the Men ſhould carry them; but no Reſolution taken: Then it was conſider'd, how they ſhould get off. The next thing was, how they ſhould execute this; and it was propos'd, That one Party was to fall upon the Coach-Horſes, a ſecond upon the Coach, a third upon the Guards: Captain *Walcot* would not undertake any thing but the Guards.

Capt. *Walcot*. What do you ſay, Sir?

Mr. *Weſt*. Sir, I do ſay, you were at my Chamber, and did ſay, you were to command that Party of Horſe that were to attack the Guards. It was to be done at *Rumbold*'s Houſe; they were to lie there *Perdue*, till the King juſt came down upon them.

Mr. Serj. *Jefferies*. At the time of the Aſſaſſination?

Mr. *Weſt*. Yes, Sir.

Mr. *At. Gen*. Where were theſe Arms to be carried?

Mr. *Weſt*. To *Rumbold*'s Houſe; I did not ſee it: But he ſaid he could keep them all private, where no body could ſee them till the time of the Execution. And that there was a Gate they were to paſs through, that he could ſhut upon the Horſe-Guards, that they ſhould not be able to come in for their Relief. Mr. *Rumbold* ſaid, he would bring them off; and ſaid, he thought it dangerous for them to go the Road-way, but he would bring them over the Meadows, and come in by *Hackney-Marſh*: But the way which the Priſoner did moſt approve of, was, That they ſhould retire within his Wall, there keep till Night, being a Place they could defend againſt any Force for a Day's time.

Mr. *At. Gen*. Where was this Reſolution taken?

Mr. *Weſt*. This Reſolution was taken at my Chamber. My Lord, As to the Attempt, when they deſign'd to make it upon the King's coming from the *Play-houſe*, one Mr. *Row* ſaid, he had diſcours'd with one *Gibbons*, that was the Duke of *Monmouth*'s Servant, about it, and ask'd him, if any of their Family knew of it? Yes, ſays he, they all know of it, but they will not be ſeen in't; and ſaid, that he ſhew'd him the place. My Lord, in one of the Diſcourſes I had before Mr. *Ferguſon* went for *Holland*, I had a mind to be rid of the thing, but I did not know how; ſo I created Difficulties, and ſaid, I ſuppoſe the Duke of *Monmouth* is to get moſt by it, what Security will you have you ſhall not be hang'd when the thing is done? He is bound, ſaid I, in Honour to hang us all, and make Inquiſition for this Blood, otherwiſe they will ſay he is a Party. Says he, what if I get it under his Hand? But, ſaid I, engage his Servants, and that will ſtick upon him. There is one thing I have omitted, which was in the firſt Diſcourſe with Captain *Walcot* about the Inſurrection of *November*; he told me that my Lord *Shaftsbury* was preparing a Declaration to be publiſhed, in caſe of an Aſſaſſination or Inſurrection, and he ask'd me if I would undertake to do one too? For, ſays he, I would have ſeveral People draw it to pick one good one out of all. And he told me he had made ſome Collections towards it, and ſhew'd me a Paper which was a Collection of all the Paſſages in the Three Kings Reigns, King *James*, *Charles* I. and this King's, that he call'd Attempts to introduce Arbitrary Government and Popery; and concluded, taxing them with ſome perſonal Vices, and that the Government was diſſolved, and they were free to ſettle another Government: Theſe, I perceiv'd, were the Topicks my Lord *Shaftsbury* laid weight upon. I told him that this did require an exact Knowledge of the Hiſtory of thoſe Times, and I would not undertake a thing to which I was not competent, and ſo he deſir'd me to burn the Paper, which I did: But for any other Declaration, my Lord *Shaftsbury* kept his Paper to himſelf, and I never did ſee it, tho' I deſir'd it.

Mr. Serj. *Jefferies*. Can you remember in whoſe Name the Declaration was to run?

Mr. *Weſt*. No, I do not remember that.

Mr. *At. Gen*. After the Diſappointment, what Meetings had you?

Mr. *Weſt*. Sir, I will tell you, when the News of the Fire came, they adjourned to my Chamber, and there conſidered what they ſhould do; they were in no readineſs, nor had any Horſes; nay, I believe the thing could not have been effected if the Fire had not happened, and I was very glad it could not; but for that, I am in the Charity of the Court. They did endeavour to put things in a poſture, to ſee if it could be done another Day; I think they met on *Thurſday* Night, and *Friday* Night; but they ſaid, the King would be at home the next Day, and the thing was laid aſide. My Lord, a Day, I think, or two after, I went into the City, and went to the *Dolphin* Tavern, where I met with Colonel *Rumſey*, and this Mr. *Keeling* came in; he was there talking of Blunderbuſſes and Piſtols in downright Engliſh: I told him, it was a fooliſh thing to talk ſo before Drawers, and that was the occaſion of calling them by the Names of *Swan quills*, *Gooſe-quills*, and *Crow-quills*. After this thing we met the next Week, not at my Chamber, Colonel *Rumſey* was miſtaken in that, but at the *George* and *Vulture*: There was Capt. *Walcot*, Mr. *Goodenough*, Mr. *Ferguſon*, one *Norton*, and one *Ayliff*: They diſcours'd of the late Diſappointment; and that one reaſon was, they had not Arms in readineſs. Then they agreed, That Arms ſhould be bought, and the Number was ten Blunderbuſſes, that ſhould be twenty or two and twenty Inches in the Barrel. Thirty Carbines, eighteen Inches. And thirty Caſes of Piſtols to be fourteen Inches. My Lord, It was put upon me to provide them, for this reaſon, becauſe I was ſerviceable to them no other way, and could have a pretence for buying them

them becauſe I had a Plantation in *America*; but Mr. *Ferguſon* was to pay the Money. My Lord, I did beſpeak the Arms, and paid for them with my own Money, and was not paid again a great while; Mr. *Ferguſon* diſappointed me; but at laſt told me, if I would ſend to Major *Wildman*, he would pay me. But he told me before that, one Mr. *Charlton* when he came to Town would pay me, but I had none of him. So I told him, I bought thoſe Arms upon a pretence I intended to uſe them, and had ſpoke to a Sea-Captain to carry them off to a Plantation where I had a Concern my ſelf. After that, Mr. *Ferguſon* ſent to me to take my Money, ſo I came to him; and found with him Mr. *Charlton* and another Gentleman, whom I could not diſtinguiſh becauſe it was duskiſh; Mr. *Charlton* went down, and then ſays Mr. *Ferguſon*, I have your Money for you; and he paid me in fourſcore and thirteen Guineas, which was ſomething more than the Arms coſt; and ſaid, He had not the Money above half an hour in his hands; by which I did gueſs, it was Mr. *Charlton*'s Money. Another thing was, at laſt meeting with Mr. *Ferguſon*, he did ſay, There was a Man employ'd to ſee what conveniency there would be for an Aſſaſſination between *Windſor* and *Hampton-Court*; but that was never reported, and ſo laid aſide. That is all I can ſay concerning the Aſſaſſination; but I believe they did intend to carry it on; for Col. *Rumſey* did tell me, He ſaw the Hearts of all the Great Men were upon it; and it would be convenient to have an Army to back it. But in caſe this Aſſaſſination had gone on, theſe things were to be done. It was deſign'd, the Lord Mayor and the Sheriffs ſhould be kill'd, and as many of the Lieutenancy as they could get; and the Principal Miniſters of State, my Lord *Hallifax*, and my Lord *Rocheſter* that now is, and my Lord Keeper, for which they gave this Reaſon, becauſe he had the Great Seal; and my Lord *Rocheſter*, as like to ſtand by the Duke's Intereſt; and my Lord *Hallifax*, as being one that had profeſs'd himſelf of the Party before, and turn'd from the Right Side, and had put the Court upon that which otherwiſe they would never have acted, nor had the Courage to have done. As for my Lord Keeper, They ſaid, they would hang him for the Murder of *Colledge*, and upon the ſame Poſt *Colledge* had hung. Sir *John Moore* was to be kill'd, and to be hung up in *Guild-Hall*, as a Betrayer of the Rights and Liberties of the City: And your Lordſhips to be flea'd, and ſtuff'd, and hung up in *Weſtminſter-Hall*, and a great many of the Penſional Parliament hang'd up, as Betrayers of the Rights of the People.

L. C. J. How was this to be done? To flea them, and ſtuff them?

Mr. *Weſt*. Yes, I underſtood it ſo.

Mr. *At. Gen.* At theſe Diſcourſes was this Gentleman preſent?

Mr. *Weſt*. He was not at my Chamber ſo often as the reſt; he came not there till towards the latter end; but he was there ſometimes when theſe things was diſcours'd of.

L. C. J. But you ſay, he did at laſt undertake to fight the Guards?

Mr. *Weſt*. Yes, Upon the News of the Fire, ſays he, I believe God ſhews his Diſapprobation of the thing. Says Mr. *Ferguſon*, I believe he reſerves them for worſe Puniſhment. Mr. *Walcot* ſaid, He deſired to have his Name conceal'd. Why, ſays *Ferguſon*, why ſhould you be aſhamed, it is a glorious Action, and ſuch an Action as I hope to ſee publickly gratified by the Parliament; and queſtion not, but you will be fam'd for it, and Statues erected for you, with the Title of *Liberatores Patriæ*.

Mr. Serj. *Jefferies*. What is this *Ferguſon*?

Mr. *Weſt*. He is an Independent Parſon.

Mr. Serj. *Jefferies*. He preached excellent Goſpel.

Mr. *Weſt*. Says he, I have told ſome Non-Conformiſts, and they deſired me to forbear; but, ſays he, they are ſilly People, that do not know how to diſtinguiſh between killing a Prince for Difference in Opinion about Religion, and deſtroying a Tyrant, for Preſervation of the Rights and Liberties of the People. He ſaid, it was an Action that would make all the Princes in the World tremble, and teach them to uſe their Subjects kindly. My Lord, they did deſign, at the ſame time when the Mayor and Sheriffs were to be kill'd, that Mr. *Papillon*, and Mr. *Dubois*, ſhould be forced to take the Office of Sheriffs upon them; and if they would not take it, they would uſe them as they did the other; And that Sir *Thomas Gold*, or Sir *John Shorter*, or Alderman *Corniſh*, ſhould be ſet up for Lord Mayor; but rather Alderman *Corniſh*, as the fitter Perſon. I asked them further, what they would do with the King's Natural Sons? Says he, They are good luſty Lads, I think we had as good keep them for Porters and Watermen; and for my Lady *Ann*, they had as good marry her to ſome Country Gentleman for a Breed to keep out Foreign Pretences.

Mr. Serj. *Jefferies*. I perceive they left nothing unconſidered.

Mr. *At. Gen.* Mr. *Weſt*, To repeat all their Paſſages would fill a Volume; but as to the Continuation of the Riſing, and whether it was continued?

Mr. *Weſt*. I have a great many Particulars, but have them not in method.

Mr. *Sol. Gen.* Anſwer Queſtions then.

Mr. *Weſt*. When Mr. *Rumbold* came to Town, he ſaid, he ſaw the King come by but with ſix Guards, and believed he could have done it with ſix Men, if he had been provided with Arms. This is all I can ſay, except ſome little Diſcourſe which I have not time to reduce into method. About *Chriſtmas*, Colonel *Rumſey* told me, there was a Deſign carrying on among the Lords, and great Men, by whom I always underſtood, the Duke of *Monmouth*, my Lord *Ruſſel*, my Lord *Grey*, Lord *Howard*, Colonel *Sidney*, Major *Wildman*, Mr. *Hambden*, for an Inſurrection; and that this was deſigned to be done about *March*. Colonel *Rumſey* and I were diſcourſing of it; and Colonel *Rumſey* thought it fit to draw up ſome things, that we ſhould require of them to do for the People; and a Paper was drawn up, but my Lord *Ruſſel* ſaid, they were rejected, and all ſhould be left to the Parliament. And Colonel *Rumſey* ſaid, The Duke was inclin'd to gratify the Parliament, but the Lords about him were for Great Places, and they would ſuffer him to do nothing.

Mr. Serj. *Jefferies*. Now tell us about *Culing*.

Mr. *Weſt*. I dined at a Tavern with Colonel *Rumſey*, Mr. *Wade*, Mr. *Nelthrop*, Mr. *Goodenough*, Capt. *Walcot*, and Mr. *Norton*.

Mr. Serj.

Mr. Serj. *Jefferies.* What was your Diſcourſe there about?

Mr. *Weſt.* There was no Diſcourſe that had any particular Point.

Mr. *Sollicitor.* Was there nothing of Diviſion of the City?

Mr. *Weſt.* Sir, *Goodenough* gave ſome general Account, but nothing was done upon it; while we were there in came Mr. *Keeling* to ſpeak with Mr. *Goodenough*, and Mr. *Nelthrop*; and in the *Gazette* that day was an Account of the Inſurrection at *Collen*, and Mr. *Nelthrop* when he came in, called this Man, *Culing*. What is that, what do you mean? ſays he. I was then writing a Letter, and told him, *Culing* in *Dutch*, was the ſame as *Keeling* in *Engliſh*. Mr. *Nelthrop* took me aſide, ſays he, What will you ſay, if I, and ſome Friends of mine, deliver the City, and ſave the Charter, and no body ſhall know of it till it be done? But ſays he, ſhall not I be Hang'd for it? Said I, Take heed what you do, no body will be Hang'd for any good thing, as to the Delivering of the City. There was a Treaty between the *Scots*, and our Perſons of Quality here, and Col. *Sidney* and Major *Wildman*, had the management of it, as I underſtood. At laſt, they came down to ſome Terms: They would have had 10000 *l.* to buy Arms, and came down at laſt to 5000 *l.* and the Earl of *Argyle* was to Head them: But when Mr. *Ferguſon* paid me for the Arms, he told me, The *Scots* buſineſs was quite off, and *Wildman* and *Sidney* had done ill with the *Scots*; for after they had kept them, and treated with them two or three months, they broke off becauſe the *Scots* would not declare for a Common-wealth the firſt hour, and Extirpating of Monarchy, and the Family of the *Stuarts*; and that the *Scots* Anſwer was, That would be to deſtroy all their Intereſt among the Lords. and Providence might order it ſo, as to bring it to a Common-wealth; but that was a buſineſs of time. When this broke off, Mr. *Ferguſon* told me, That the Duke of *Monmouth* was willing to ſpeak with me, and *Goodenough*, and ſome others. I told him, I never had, nor was willing to ſpeak with him. Then he ſaid, Sir *Thomas Armſtrong* would; I told him, I was not willing to ſpeak with him neither: Mr. *Goodenough* I believe did ſpeak with Sir *Thomas Armſtrong*. We met at *Richard*'s Coffee-houſe, and adjourn'd to the *young Devil-Tavern*, there was Capt. *Walcot*, Col. *Rumſey*, Mr. *Wade*, Mr. *Goodenough* and my ſelf, and one *Holloway* a Merchant at *Briſtol*. Mr. *Holloway* did propoſe, ſince the *Scotch* buſineſs was broke off, that they ſhould try what Forces they could raiſe here. And Mr. *Ferguſon* did ſay, if three thouſand men could be had, he believed the Duke of *Monmouth* and my Lord *Ruſſel* would appear in the head of them. They were to divide the City into 20 parts, each 20*th* part into 14*ths* and 15*ths*, and to divide it into Streets and Lanes; one Principal man was to have a 20*th* part, and to have men under him, and that they ſhould not interfere with one another, they bought a great *Map* of the City of *London*. My Lord, I did not read one line in it, but Mr. *Goodenough* being a man of publick acquaintance by reaſon of his Office, did undertake it. I think he did propoſe Mr. *Bourn* for one, and one Mr. *Grains* for another, and ſaid, he would ſpeak with Mr. *Keeling*. We had ſeveral meetings after this, and Mr. *Goodenough* did report that there were 1300 men out of two of the Hamlets. My Lord, I ſtood here while Mr. *Bourn* gave his Evidence; but I ſuppoſe he hath a little forgot himſelf, for he told me he had ſpoken to one Parſon *Lobb*, and he ſaid to him he would try what his Congregation could do; that he had two in *New-priſon*, and he would ſet them out to ſee what they could do; that they were poor men, but zealous in their way. I think Mr. *Bourn* hath forgot himſelf, for he did mention that he had ſpoken to Parſon *Lobb*.

Mr. Serj. *Jefferies.* Then Parſon *Lobb* was in; there was another Parſon in.

Mr. *Weſt.* Yes, and he mentioned *Lobb*'s Pound.

Mr. *At. Gen.* The Priſoner was at thoſe ſeveral meetings, was he not?

Mr. *Weſt.* Yes, and did ſhew himſelf ready to act his part. About a fortnight before the Diſcovery brake out, Mr. *Rumbold* told me they had a great jealouſie Mr. *Keeling* would diſcover all the buſineſs; that Mr. *Keeling*'s Wife and Mother cryed mightily, and charged him for neglecting his buſineſs, and ſaid they were afraid he would do a great deal of miſchief to honeſt people, for he had replied to them, he would not want money, and he would be hanged for no body; upon which *Rumbold* told me, if I were ſure of this, ſays he, I would diſpatch him, I would get him into the Countrey and kill him; but ſays he, I will not kill an innocent man; if I thought the thing was not ſo, I would not kill him for all the World. Mr. *Keeling* told him he had an Overture from one *Shoot*, of fourſcore Pounds a year.

Mr. *At. Gen.* After you had notice of the Diſcovery, did you meet?

Mr *Weſt.* The Saturday before the Diſcovery, I dined with Mr. *Rumbold*, and he took Mr. *Keeling* along with him; ſays he, We won't diſcourage him too much, it may be 'tis not ſo; Mr. *Keeling* told him he never wanted money ſo much in his life; Mr. *Rumbold* and one *Gale* that was to be one of the Aſſaſſinates, contriv'd to help *Keeling* to money, and lent him 100 *l.* Upon the *Sunday*, I had notice the thing was diſcovered, and that *Keeling* had accuſed me, and Mr *Goodenough*, and Mr. *Nelthrop*. On the *Monday* morning early I thought fit to retire; but we did agree to meet at Captain *Walcot*'s lodging. My Lord, I came thither pretty early, and all the people came afterwards that had agreed to come thither, but they deſign'd to go beyond Sea. I had no mind to go; they had hired a Boat, and gave 5 *l.* in earneſt, but the next morning it was ſaid the Meſſengers were abroad, and that it was believed the River was beſet, and there was no getting away; then every man ſhifted for himſelf, and I ſhifted by the means of Mr. *Bourn*, who, I thank him, helped me to a conveniency for two or three days. When we were all retired, they got Mr. *Keeling* in the City, and *Rumbold* diſcourſed him in the preſence of ſeveral people, where he wiſhed a great many imprecations upon himſelf if he had diſcovered. I told them I did not underſtand him; for if he had made a Diſcovery, it was a fine way to catch People in. Then there was a diſcourſe of killing him; they propoſed to him to go out of Town; he refuſed them, but ſaid, he would go in a few days: That night they followed him, and upon tracing of him, they found he had called out his Brother, and that he and his Brother were gone to the Secretary's, and then it was taken for granted, that Diſcovery was made,

and every man muſt ſhift for himſelf. Had not *Keeling* deceived them at that meeting at the Tavern, by the Proteſtations he made, ſome body had killed him there. Then Mr. *Wade* ſaid, if the Duke of *Monmouth* would go into the *Weſt*, we might try a puſh for it, and the Priſoner at the Bar ſaid, I am ſatisfied God will deliver the Nation, though he does not approve of the preſent Inſtruments.

L. C. J. Have you done as to this Gentleman at the Bar?

Capt. *Walcot*. When was it that I ſhould ſay theſe words? Then I deſire your Lordſhip would ask him, how many months ago it was he ſays I gave him the Paper?

Mr. *Weſt*. It was in *October*.

Capt. *Walcot*. Then whether I did not then lye ill of the *Gout*?

Mr. *Weſt*. Not at that time, my Lord. This that I ſay of the Paper was given me at my Chamber, and then I think he was pretty well.

Capt. *Walcot*. My Lord, I am not ſo natural a Fool to think, for me to charge the Guards, when another man kills the King, but I am as Guilty as he that kills him.

L. C. J. No doubt of it.

Mr. *Weſt*. Capt. *Walcot*, I would not take away your life to ſave my own; but I do take it upon me, that you did agree to Command, or be one of thoſe that were to fight the Guards.

L. C. J. What was the Reaſon he would not kill the King?

Mr. Weſt. He ſays it was a baſe thing that way, being a naked perſon, and he would not do it.

L. C. J. So the point is the ſame, but only you diſtinguiſhed in the point of your miſtaken honour, and thought to kill the King was not ſo honourable a point, as to fight his Guards.

Capt. *Walcot*. There is no difference between the one and the other, to do one and the other is the ſame thing.

L. C. J. Your Judgment is now rectified; but what ſay you to the Matter? For now you hear what is faſtened upon you, that is, ſeveral Conſults about the ſecuring or killing the King; and your advice was to kill him, and you did go down to *Rumbold*'s houſe, to view the place where it might be done the moſt ſecurely; and you did undertake, as ſeveral Witneſſes ſay, not only Mr. *Weſt*, but Col. *Rumſey* and another of them (*Bourn*, I think it was) That you would fight the Guards, if you might have a conſiderable number of men.

Capt. *Walcot*. My Lord, If ever I was at Mr. *Rumbold*'s houſe, unleſs it was when I travelled from *York* by *Norwich* and came to *London*; if ever I was there ſince, then I am Guilty of all the Roguery imaginable.

Mr. *Weſt*. I never heard, my Lord, Mr. *Rumbold* ſay he was there, but Col. *Rumſey* told me ſo.

Col. *Rumſey*. My Lord, he bought an Horſe, and he ſaid, he did intend to go down; and indeed to the beſt of my remembrance, he did ſay he was down; but I am not certain: But he did buy an Horſe that coſt him, I think, twenty pounds.

L. C. J. For that purpoſe?

Col. *Rumſey*. Yes.

L. C. J. Now you hear, this is a little more particular than the other; Col. *Rumſey* did ſay before, that you did agree to go down, and as he believes, you did go down.

Col. *Rumſey*. I believe Mr. *Weſt* may remember he bought an Horſe for that purpoſe.

Mr. *Weſt*. I remember he bought an Horſe for ſervice; but I can't ſay it was to go down thither.

L. C. J. It does import you tell us upon what account you met ſo often, and what was your meaning in hearing theſe things, and conſulting of them, and what your raiſing of men was for, and the Declaration written for the People, to pleaſe the People when this Aſſaſſination was over.

Capt. *Walcot*. The Declaration, *Mr. Weſt* ſays, was in *October* laſt.

Mr. *Weſt*. I take it to be ſo, My Lord, to the beſt of my remembrance, there was this paſſage; ſays he, I believe in a month or three weeks you will be better or worſe, ſo that I meaſure it by that.

Capt. *Walcot*. My Lord, Mr. *Weſt* does tell your Lordſhip a very long ſtory, and ſometimes he names one Gentleman, and ſometimes another. I am very fearful the *Jury* will be very apt to apply all to me, who was the man leaſt concerned; for I had the *Gout* for ſeveral weeks together, and Mr. *Weſt* came ſeveral times to my own Lodging to ſee me: And for that of Aſſaſſinating the King it never entered into my thoughts more or leſs; but here are four Gentlemen, who by their own Confeſſion are ſufficiently culpable; they, to wipe off their own ſtains, are reſolved to Swear me out of Life.

L. C. J. What made you among them?

Mr. *Weſt*. I do take it upon me, he was there three or four times.

Capt. *Walcot*. I did not ſtir for three weeks or a month. I came to Town on *Aſh-wedneſday*, and then fell ill of the *Gout*, and that continued for divers weeks; for a month's time that the King was at *New-Market*, I am confident, I was not out of my Chamber, unleſs I made a ſhift to ſcramble to *Stepney*, and dipp'd my foot in every Well of water I came by.

Mr. *Weſt*. My Lord, I do remember this paſſage, That he was afraid he ſhould not be able to draw on his Boot, becauſe he had the *Gout*.

Capt. *Walcot*. I deſire to know, my Lord, when is the time Mr. *Weſt* ſpeaks of, that I gave an account of killing the King at my Lord Mayor's Feaſt?

Mr. *Weſt*. I do not charge you poſitively with it; but I had it from you or Mr. *Ferguſon*, but I muſt do the Priſoner juſtice, he ſaid, he would be no way concerned in it.

Mr. *At. Gen.* Pray ſwear Mr. *Blaithwait*.

[*Which was done.*

Mr. *Blaithwait*, pray tell my Lord and the Jury, whether Capt. *Walcot* owned that to be his hand.

A Letter being then produced from Captain Walcot *to Mr. Secretary* Jenkins.

Mr. *Blaithwait*. My Lord, I remember when Captain *Walcot* was Examined before the King, he did own this to be his Hand.

Mr. Serj. *Jefferies*. Give it in.

Cl. of Cr. Honoured Sir, *July* 5*th*. 83.——

L. C. J. Who is it directed to?

Cl. of Cr. There is no Direction.

Mr. *Blaithwait*. It was directed to Mr. Secretary *Jenkins*, as I find by the Minutes I then took of it.

L. C. J. Here is the Cover it ſeems.

Cl. of Cr. To the Right Honourable Sir *Leoline Jenkins*, &c.

Honoured Sir,

I *Being in the Countrey, and to my great trouble ſeeing my ſelf in his Majeſties Proclamation, I came laſt Night to Town, reſolving to lay my ſelf at his Majeſties Feet, let him do with me what he pleaſeth; This is the firſt Crime I have been Guilty of, ſince His Majeſties Reſtauration, and too ſoon by much now: If His Majeſty thinks my Death will do him more good than my Life, God's Will, and His be done. Until I ſent your Honour this Letter, my Life was in my own power, but now it is in the King's; to whom I do moſt humbly propoſe, That if his Majeſty deſires it, I will diſcover to him all that I know relating to* England, Scotland, *or* Ireland; *which I ſuppoſe may be ſomething more than the Original Diſcoverer was able to acquaint his Majeſty with; eſpecially as to* Ireland: *There is not any thing his Majeſty ſhall think fit to ask me, but I will anſwer Him the Truth, as pertinently and as fully as I can. My Intimacy with a* Scotch *Miniſter, through whoſe Hands much of the Buſineſs went, I judge occaſioned my knowing very much: And I do further humbly propoſe, That if his Majeſty thinks it adviſable, I will follow thoſe Lords and Gentlemen that are fled into* Holland, *as if I fled thither, and had made my Eſcape alſo, and will acquaint the King, if I can find it out, what Meaſures they reſolve of taking next: I do aſſure his Majeſty, the Buſineſs is laid very broad, or I am miſinformed. And I am ſure as to that particular, if my being with his Majeſty, and your Honour, be not diſcovered, I ſhall be ten times abler to ſerve him, than either Mr.* Freeman, *or Mr.* Carr; *for they will truſt neither of them. There's ſcarce any thing done at Court, but is immediately talk'd all the Town over; therefore if his Majeſty thinks what I have preſumed to propoſe, adviſable, I do then further moſt humbly propoſe, That my waiting upon his Majeſty may be ſome time within Night, that your Honour will acquaint me the Time and Place where I may wait upon you, in order to it; that it may be within Night alſo, and that no body may be by, but his Majeſty, and your Honour; And if his Majeſty pleaſeth to pardon my Offences for the time paſt, he ſhall find I will approve my ſelf very Loyal for the future; if not, I reſolve to give his Majeſty no further trouble, but to lye at his Mercy, let him do with me what he pleaſeth. I purpoſe to ſpend much of this Day in* Weſtminſter-Hall, *at leaſt from two of the Clock to four. I beg your Pardon I ſend your Honour this by a Porter: I aſſure your Honour, it was for no other reaſon, but becauſe I would not have a Third Perſon privy to it; and that I might have the better Opportunity to make good my Word to his Majeſty, and to approve my ſelf*

Your Honour's moſt humble Servant,

THO. WALCOT.

Mr. *At. Gen.* Swear Capt. *Richardſon.*

[*Which was done.*

Capt. *Richardſon.* My Lord, On *Sunday* at Night, Mr. *Walcot* deſired to ſpeak with me, and he ſeemed very deſirable to wait upon his Majeſty, and unboſom himſelf to the King; Mr. *Attorney* ſaid, I ſhould give him Notice, to prepare for his Tryal, which I did, and told him, he ſhould want nothing to prepare himſelf for his Tryal. Yeſterday morning his Son came, and I ſent my Clerk to ſtand between them, and he had prepared this little Paper tyed cloſe with a Thread, which my Man told me he did intend to give his Son; and he deſired me, ſince I had diſcovered it, I would make no uſe of it. The Letter was to Capt. *Tracy*, that I was his Landlord, to ſpeak to Col. *Rumſey*, that he would be tender of him, and tell him he had ground enough to ſerve the King upon other men: And alſo to ſpeak to Mrs. *Weſt*, to deſire the ſame thing of her Husband. The laſt Words of the Note were, *If you cannot be private, leave the Iſſue to God.*

L. C. J. Mr. *Walcot*, Have you any thing to ſay for your ſelf, againſt this plain Evidence?

Capt. *Walcot.* My Lord, They have taken a great deal of pains, and made long Speeches, though very little of them relating to me, tho' too much. Col. *Rumſey* tells your Lordſhip of a Deſign they had to Aſſaſſinate the King, and carrying on a War, or ſomething like it, when I was out of the Kingdom: That at Mr. *Shepherd*'s Houſe they drew up a Declaration; and that upon Mr. *Trenchard*'s ſaying, Things were not ready. This was before I came into *England*, and he ſays, this was agreed at Mr. *Weſt*'s Chamber before I came out of *Holland*, that *Rumbold* undertook it. Then he ſays, that after I came over, I undertook to Charge the Guards while the King was Killing. My Lord, that was a very improbable thing, for I look upon it, there is no difference between killing the King, and ſecuring his Guards: Theſe Gentlemen, by what they have ſaid, do ſufficiently convince the Court, and all that hear them, that they are ſufficiently dipp'd themſelves. Here they combine to take away my Life, to ſave their own. Then they tell you, that Mr. *Goodenough*, and Mr. *Rumbold* brought Notes about men that were to Aſſaſſinate the King; but they do not tell your Lordſhip I was privy to any of theſe Notes; nor that I knew any of them. It's in it ſelf very improbable, that I would engage in ſo deſperate an undertaking, with men I never ſaw, nor heard of in my Life. Then he tells you, that Mr. *Ferguſon* had been at a place where I was, and there they inquired what Mr. *Goodenough* had done; and withal, they told you, they met at my Lodging; now that their meeting at my Lodging, was by Col. *Rumſey*'s appointment, I knew nothing of it. Moſt of theſe meetings were by Col. *Rumſey*'s appointment, or Mr. *Weſt*'s: I accidentally came amongſt them ſometimes, but all my buſineſs was only to hear News; nothing was agitated concerning killing the King, or Levying of War, more or leſs, as I know of. I muſt confeſs, I did hear that there was a Deſign by a great many Lords and Gentlemen, and others, for aſſerting of their Liberties and Properties; but I was never in any Conſultation with them, or any Meſſage to them, nor I never ſaw one of theſe Lords, that I know of, that are ſaid to be concerned. Therefore I ſay, 'tis very improbable I ſhould be ſo far concerned, as they ſeem to repreſent it; they met at the *Five-Bells*, they allow themſelves I was not at that meeting. For Mr. *Keeling*, he does not at all Charge me. What I ſaid to Mr. *Weſt*, relating to the buſineſs he talks of in *October* laſt, that, my Lord, is out of doors in point of time; I pray God forgive him for what he has ſaid, I can't ſay more than I have.

L. C. J.

L. C. J. Pray where do you live? Where is your Habitation?

Capt. *Walcot.* My Habitation is in *Ireland*, my Lord.

L. C. J. Pray, what do you here?

Capt. *Walcot.* I was invited by my Lord *Shaftsbury* to go Governor to *Carolina.*

L. C. J. That Deſign was a great while ago fruſtrated.

Capt. *Walcot.* My Lord, it was ſome while before I came over, and ſo my Lord gave his Commiſſion to another. But being in *England*, my Lord *Shaftsbury* invited me to go to *Holland* with him, which I did; and when he died, I came to *London*; I had not been here a Fortnight, but I fell ill of the *Gout*, and that continued three Months: Another thing was, my Son was here, and I deſign'd to marry him, and make Proviſion for my younger Children; my Lord, I have a competent Eſtate, I hope it is no great Crime for a Man of an Eſtate to be here.

L. C. J. You confeſs, you heard ſome Diſcourſe of theſe things; what made you to frequent their Company, when you heard theſe things?

Capt. *Walcot.* It was my Folly to do it.

L. C. J. Ay, but you are to underſtand, that Folly in theſe Caſes is Treaſon.

Capt. *Walcot.* I conceive, my Lord, 'tis only Miſpriſion of Treaſon. I did hear of a great deal that theſe Gentlemen have ſaid, and that there would be an Inſurrection; but I had no Hand, directly or indirectly in it; nor did it enter into my Thoughts, either directly or indirectly, the Death of the King. When ſome Gentlemen have talked to me of it, I abominated it, and told them, it was a ſcandalous thing, a Reproach to the Proteſtant Religion: For my part, I had Children would bear the Reproach of it, and I would have no Hand in it.

L. C. J. Look you, Captain *Walcot*, That you did deny to do the Fact, to Aſſaſſinate the King, that is very true, they ſay ſo, that you did always deny it, for you ſtood upon this point of Gallantry, a naked Man you would not Aſſaſſinate. And then you talk of Miſpriſion of Treaſon: For a Man to hear of Treaſon accidentally, or occaſionally, and conceal it, is but Miſpriſion; but if a Man will be at a Conſult where Treaſon is hatched, and will then conceal it, he is guilty of Treaſon therein; therefore do not miſtake your Caſe. So that your Point of Law fails you, and every thing fails you in this Caſe. It appears plainly by them, That you were not only privy to the Conſult as an Auditor, but as an Actor; you choſe your Poſt, and upon this point of Gallantry you would venture your ſelf, not upon a naked Man, but upon Perſons that would oppoſe you.

Capt. *Walcot.* Certainly no Man that knows me, would take me for ſuch a very Fool, that I would kill the King's Guards; as if I were not ſenſible, that was equal Treaſon with the other.

Mr. *At. Gen.* Ill Men are always Fools.

Capt. *Walcot.* 'Tis clear they have laid their Heads together, they have contrived to take away my Life to ſave their own; 'tis plain enough.

L. C. J. There is nothing more reaſonable, nothing more juſt in the World, than to make uſe of ſome Traitors to diſcover and convict the others, elſe would Treaſon be hatched ſecurely. There's no body capable (where Treaſon does not take effect) of making an Evidence in ſuch a Caſe, but ſome of you that are Conſpirators. You do not publiſh it at the *Market-Croſs.* And if you could gain but this Point, That none that are concern'd with you in the Conſpiracy ſhould be Witneſſes, it would be the ſecureſt thing in the World to hatch Treaſon. For you would be upon this Point, Either it ſhall take effect, and then 'tis too late; or if it do not, and the Conſpirators are not to be believed, then I am ſecure, no body in the World can convict me.

Juror. We deſire he may be asked what he ſays to the Letter.

L. C. J. Well, what ſay you to it? You have made Propoſals you will diſcover others, and you will give intimation to the King of the Meaſures the reſt of the Conſpirators were taking in *Ireland* and other places; upon what Deſign did you write that? And what induced you to it?

Capt. *Walcot.* My Lord, I have told your Lordſhip, that I have heard a great many Diſcourſes relating to that thing, and heard it moſtly by Mr. *Ferguſon*, with whom I had a very great Intimacy, and I did according to my Promiſe give that account of it; but if His Majeſty would not believe me, I can't help it; but the King was not pleaſed with me, becauſe I could not deſcend to Particulars. And I could not, becauſe I never had been in their Company, nor knew nothing but what I had once by a private Hand; I dealt ingenuouſly and truly with the King, and told him what I knew.

L. C. J. Pray obſerve the Contents of your Letter. You made this Propoſal, That you being in the Proclamation, you were one of the fitteſt Men to underſtand and ſpell out the Meaſures of the other Perſons. By this it is plain, you took your ſelf to have an Intimacy, and ſome Intrigue with the other Perſons that you thought were Impeached. Your Letter does import that you had ſuch an Intereſt with thoſe Perſons, that they would have communicated their Counſels to you.

Capt *Walcot.* My Lord, I never ſpake but with Mr. *Ferguſon*, who was a Man they did much confide in; and I knew very well that by my Intereſt in Mr. *Ferguſon*, I ſhould have an Intereſt in the reſt. But truly, whether the Duke of *Monmouth* be there, or not, I know not. I do not know him if I meet him, I was never at any Conſult, never at any of theſe Debates.

L. C. J. What did you mean by this? That this was your firſt Crime? You knew what you was charged with, it was for High-Treaſon.

Capt. *Walcot.* My Lord, 'Tis my firſt Crime. My Lord, I have heard there was an Inſurrection intended, I have heard of the Perſons that were to carry it on; I did look upon this as a Miſpriſion of Treaſon; but that I ever acted in it, or intended it, I utterly deny.

L. C. J. The laſt Queſtion is, Whether you have any Witneſſes?

Capt. *Walcot.* I have only a young Man or two, if he be here, to prove the time that I was ill of the *Gout*, and therefore it is improbable I ſhould be ſo far concerned.

L. C. J.

L. C. J. I muſt tell you before-hand, that an Argument from the Topick of Probability, will do you but little Service when there is poſitive Evidence againſt you. This it will import you to make a little Anſwer to, if you can, What you meant by your application to Colonel *Rumſey*, deſiring Captain *Tracy* to ſpeak to him and Mr. *Weſt*: What do you mean by that?

Capt. *Walcot*. My Lord, Would not any Man in my Circumſtances deſire a Man to deal tenderly with him?

L. C. J. Well, is this young Man come in? Come, Sir, what have you to ſay on the behalf of the Priſoner at the Bar? Or will you ask him any Queſtions?

Capt. *Walcot*. Only about what time I fell ill of the *Gout*, and how long I continued ſo?

L. C. J. Do you know about what time he fell ill of the *Gout*, and how long it continued?

Wit. My Lord, I can't remember certainly the time, but I believe it was about three Months; I can't tell certainly when it began.

Capt. *Walcot*. My Lord, It is very improbable, that when I was not able to put a Shoe on, nor wear a Boot, I ſhould engage in ſo hazardous and deſperate an Undertaking.

L. C. J. Have you done, Sir?

Capt. *Walcot*. Yes, my Lord.

Mr. *Sol. Gen.* May it pleaſe your Lordſhip ——

Capt. *Walcot*. The Jury will take notice, here are four Men to ſave their own Lives ſwear me out of mine.

Mr. *Sol. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, The Evidence you have heard has been very long, and I obſerve that Captain *Walcot* has complained of it; it has been delivered moſtly in general terms, and is afraid you ſhould not apprehend it aright, to ſee thoſe parts wherein he is concerned, but miſtake what is ſaid in general to be ſpoken againſt him; I will therefore do him the juſtice as to recapitulate that part of the Evidence that does immediately concern himſelf. It has been very full, and given by every one of the four Witneſſes that have been produced againſt him, beſides the Letter under his own Hand, which is twice as many more.

The firſt Witneſs I ſhall remind you of, is Mr. *Weſt*, tho' not produced firſt, yet becauſe his Evidence goes further backward; his Acquaintance began with him in laſt Summer-Vacation, he became ſoon intimate with him, and Captain *Walcot* did unboſom himſelf, and tell him that there was a Deſign to make an Inſurrection; that it was my Lord *Shaftsbury*'s Deſign that he was to be an Officer, I think he ſaid a Colonel of Horſe; he invited Mr. *Weſt* to partake with him in that Deſign, and did propoſe to him the Advantage of a Command in the Army; but he not being qualified, declin'd it. He tells you further, that he did acquaint him there was a Deſign to aſſaſſinate the King; and 'tis eaſy enough to be believed; if there was one deſigned, the other was too. And you ſee all along the only Diſpute was, whether the Aſſaſſination ſhould be firſt, or follow; for to raiſe Arms againſt the King is directly to aſſaſſinate the King; for it cannot end any other way with Security to thoſe that raiſed it. He told Mr. *Weſt* he would not be concerned directly in the Aſſaſſination, but in the Inſurrection he would; he was perſwaded to come in; this was laſt *October* diſcourſed with Mr. *Weſt*, they were to riſe in *November*. Then Col. *Rumſey* comes in, and he tells you that there was a Deſign to riſe in *November*. The Lord *Shaftsbury* ſent him to Perſons concern'd in the Conſpiracy to know in what Readineſs it was; but they being diſappointed of Men, whom they expected to riſe in the Country they did defer it at that time; at which my Lord *Shaftsbury* being concerned, went into *Holland*, and I think the Priſoner himſelf hath told you he went with him. The Deſign was not then laid aſide, but ſtill carried on, the moſt material Man, Mr. *Ferguſon*, being in *Holland*, there was ſome little ſtop put to it, that is, to the ſwift Progreſs of it; and therefore he was ſent for over to manage it, as being the only Man, in whom all Perſons had confidence. When he comes over, he brings Captain *Walcot* along with him, Mr. *Ferguſon* meets at Mr. *Weſt*'s Chamber, this Mr. *Weſt* and Col. *Rumſey* give an account of, they both ſwear it. Several Meetings there were, in which Capt. *Walcot* was not, and poſſibly at thoſe times he might be ſick of the *Gout*, and that might occaſion his not being there. But afterwards both tell you that Capt. *Walcot* did meet at Mr. *Weſt*'s Chamber, and there was debated particularly the Aſſaſſination of the King; and it was agreed to be at *Rumbold*'s Houſe called the *Rye*, looking upon it as a very convenient place; as thoſe that know it ſay; there being a narrow Paſſage that it was eaſy to aſſault, and hard for Perſons to eſcape, and with 40 or 50 Men, thereabouts; it was a Deſign very likely to have ſucceeded. Capt. *Walcot*'s ſhare in this, was not directly the Aſſaſſination of the King, that he would not be concerned in, being a Soldier, it was beneath him to do that; but his Part was to fight the Guards, he looked upon that as the more honourable Employment; Men that were armed to engage them. This is proved both by Mr. *Weſt* and Col. *Rumſey*.

In the next place, Gentlemen, when this did not ſucceed, but was prevented by the great Providence of God Almighty, as you have heard, they carry on the Deſign ſtill, and take it into their Councils, and reſolved to carry it on, either at *Windſor*, or in his Paſſage from *Windſor* to *Hampton-Court*; but no place was certainly fixed upon; and I think the latter Reſolution was, that it ſhould be done at the *Bull-Feaſt*, an Entertainment that was deſigned here in the Fields. Now, Gentlemen, while this was carrying on, it was neceſſary to carry on the other Part too, that is, the Inſurrection; and that Captain *Walcot* is all along concerned in. He is preſent at the Meetings in the Taverns, where they diſcourſed concerning Men to ſecure the King. This is Mr. *Bourn*'s Evidence, That at the *Dragon* Tavern on *Snow-hill*, there they met to conſult to ſecure the King and the Duke. That he was preſent at the Meeting in *London*, this is ſworn by all, by Col. *Rumſey*, Mr. *Weſt*, and Mr. *Bourn*, where *Goodenough* was to give an account what Succeſs he had in the Liſt made of dividing the City in ſeveral Parts, and raiſing Men out of every Diviſion, and Capt. *Walcot* met for to know what Progreſs they had made in it. Gentlemen, every one of theſe are Overt-acts, to declare his Intention to kill the King, and are all High-Treaſon.

The

The Gentleman at the Bar cannot attempt to mitigate his Offence, by saying he would not directly assassinate the King, but would be the man to assist in raising Arms; this makes him equally Guilty. To conspire to raise Arms against the King, certainly that is as great a Declaration of his Imagination of his heart to kill the King, as any thing in the World. And this being proved upon him, there is no room for any Objections for him to make; some he hath made, not worth the mention; but because they are those he thinks to put his Life upon, I will take notice of them to you.

He says the Witnesses are not to be credited, because they have been concerned in the same Conspiracy.

Gentlemen, Because they have been concerned, therefore they are to be believed; for who should know this, but those that were so concerned? I think, Gentlemen, There is no good man, no honest man would desire a better Evidence, for better Evidence could not have been had, unless the thing had taken success, and I am sure that is far from the heart of any man that has the heart of a Christian, to wish. Does he pretend to intrap these Witnesses in any Contradictions? Does he pretend to say these Witnesses have consulted together to make up this story to accuse him for his Life? There is nothing pretended of it, but on the contrary he owns he met these men; but the end of his going there, was only to hear News. I thought that had not been the proper place to hear News in; certainly no man that comes there, would have been admitted meerly for Curiosity; certainly he must bring a mind to accompany them in all their Villany; but his own Confession you have for that. I think he hath hardly confidence to deny, but he was at several Consults for raising Arms at Mr. *West*'s Chamber. You were when *Goodenough* gave an account, at the *Green-Dragon* Tavern. You were where Discourses were of raising Arms to secure the King, and nothing he has said, Gentlemen, to clear himself.

Gentlemen, Here is that above all Evidence; here is almost the Confession of the Prisoner, the Letter of his own Hand. That Letter (when he sees his Name in the Proclamation) acknowledges it is his first Crime, he says; What was that Crime? He was proclaim'd as a Traytor: He says in his Letter, that his Life was at the King's Mercy, that if his Death would do the King more Service than his Life, God's Will be done. That if his Majesty would admit him to come in, and use Mercy, he would tell all he knew concerning *England*, *Scotland*, and *Ireland*, which he thought would be more material than any thing that another Discoverer could tell. This shews he hath a deeper hand than any of these Men that have given this Evidence. You see they accuse themselves, they confess this, and 'tis a great Mercy they have so done, for all your Lives and Liberties in the Person of the King are preserved; and God be thanked, that you are here this day to sit in Judgment upon that would have deprived you of them.

L. C. J. Look you, Gentlemen of the Jury; Here is the Prisoner at the Bar indicted of High-Treason, and 'tis for conspiring the Death of the King, and for endeavouring to raise Arms within his Kingdom against him. You hear he denies himself to be Guilty; you have heard the Evidence, and this does plainly appear upon what you have heard, that there was a dangerous and desperate Plot upon the King, to have destroyed him, that is most certainly plain, the Prisoner himself confessed it, that there were several Consults and Meetings concerning it; and that this had a great Progress from time to time, for near half a year, is very plain; that he was at many Consults is very certain; that there was a Design to raise an Insurrection and War within this Nation, is as plain by them all; it was designed the last Winter to have done it. The Witnesses (who are certainly the Persons most capable of giving Evidence) tell you there were several times appointed, and still they were by one Providence or another disappointed. All of them tell you, there was a Design to kill the King and Duke at the *Rye* in *Hertfordshire*, as they came from *New-Market*: This is very plain too, that this Gentleman at the Bar knew of this; this he himself confesses, that he was at several of the Consults; and this he excuses it by, that that was Misprision of Treason, if he did not undertake to do any thing. As to that, Gentlemen, we do tell you, the Law is, that those that are at a Consult for the killing the King, or doing of a Traiterous Act, that is in them High-Treason, his being at the consulting of it. 'Tis true, it would excuse and mitigate the Fact, if they should come afterwards and discover it, it might intitle them to the King's Mercy; but to be at a Consult upon a treasonable Design, to meet for that purpose to hear the Plot laid, and a Design to take away the King's Life, or to raise Arms against him, and to say nothing of this, this is downright Treason, and 'tis not Misprision of Treason; his Law that he relies upon, fails him there. 'Tis very plain by his own Words, he heard of this Conspiracy, and he kept it secret, and says nothing of it; and this he says is his Crime that he mentioned to the King; so he would mitigate it by saying, 'tis but Misprision of Treason. But without doubt, the Meeting at several times upon this Design, if he had promised and undertaken nothing in it, his keeping of it private, as he has done, makes him guilty of High-Treason; so that out of his own Words 'tis plain that he is Guilty.

But then, consider what two Witnesses positively prove upon him: They prove, that he did there deny to be any of them that should assassinate the King, thus says Col. *Rumsey*, and thus says Mr. *West*; but he would be one of them that should fight the Guards, and he did undertake to fight the Guards, as both of them positively swear. This is done with Circumstances of Overt-acts too, as the providing of Horses, and a Tuck was to be prepared in order to it, and a Tuck he did prepare; whether he did go down, that is a little dark, but he did agree to go down.

Gentlemen, 'Tis plain by what Mr. *West* said of him, that he had a Design formerly in my Lord *Shaftsbury*'s time to have raised War; he had undertaken to be a Colonel of Horse under my Lord *Shaftsbury*, and he offered Mr. *West* to be one of his Officers under him. This is a Design to raise War against the King, and declares it sufficiently. That which makes the Evidence further plainly and greatly clear, is a Letter whereby he does submit to the King's Mercy,

Mercy, but propoſes that himſelf is abler to inſtruct the King in theſe matters, than any of thoſe that had made former Diſcoveries; and therefore if his Majeſty ſhould think fit, he would make him a full Diſcovery, not only of things in this Kingdom, but of the Tranſactions with other Kingdoms, that is, *Scotland* and *Ireland*, in which he takes himſelf to be more capable of diſcovering to the King than any body elſe, becauſe he was concerned with the Agents there; which ſhews this Plot hath gone a great way; this Deſign hath gone into other of the King's Dominions, and it is to be feared, 'tis larger than the King knows. 'Tis time to nip theſe Treaſons when they are gone ſo far; certainly a more barbarous Deſign was never thought of by Mankind. We have had certainly as many Ingagements to the King, as any Subjects ever had to any Prince whatſoever; he has done as many Acts of Grace, we have lived as peaceably, as any People under a Prince can ever expect to do; he hath ſhewed himſelf with as much Kindneſs, with as much Lenity, even to his very Enemies, as any Prince that ever we read of; the Preſervation of our Religion, and the Laws of the Kingdom, our Laws and Liberties, and all our Happineſs depend as much upon his Life, as they ever did upon the Life of any Prince, or ever can do; ſo that we ought all to be concerned, even to the laſt drop of our Blood, to preſerve him: But how this miſchievous Deſign ſhould enter into the Hearts of Men, to undertake to kill him in ſuch villanous and barbarous a manner as this, may juſtly make us aſtoniſhed.

Gentlemen, You hear your Evidence, you have a very ſtrong Evidence in this Caſe, and ſtronger, I think, than could be expected in the Caſe of Treaſon.

The Jury went out for about half a quarter of an Hour, and returned, and brought the Priſoner in, Guilty.

The TRYAL *of* William Hone.

On Thurſday, July 12. William Hone *being ſet to the Bar, and after having held up his Hand, the following Indictment was read.*

London. THE *Jurors for our Sovereign Lord the King, upon their Oaths preſent, That* William Hone *late of* London, *Labourer, with other falſe Traitors, as a falſe Traitor againſt the moſt Illuſtrious and Excellent Prince, our Sovereign Lord* Charles *II, by the Grace of God, of* England, Scotland, France *and* Ireland *King, his natural Lord, not having the Fear of God in his Heart; nor weighing the Duty of his Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, and the true Duty, and natural Obedience, which True and Faithful Subjects of our Sovereign Lord the King, towards him our ſaid Lord the King do bear, and of right ought to bear, wholly withdrawing; and with his whole Strength intending the Peace and common Tranquillity of this Kingdom of* England *to diſturb, and War and Rebellion againſt our ſaid Lord the King to move and ſtir up; and the Government of our ſaid Lord the King within this Kingdom of* England *to ſubvert, and our ſaid Lord the King from his Title, Honour and Kingly Name of the Imperial Crown of this his Kingdom of* England *to put down and deprive; and our ſaid Lord the King to Death and final Deſtruction to bring and put, the ſecond Day of* March, *in the Year of the Reign of our Sovereign Lord* Charles *II, King of* England, *&c. the Five and Thirtieth, and divers other Days and Times, as well before as after, at the Pariſh of St.* Michael Baſſiſhaw, *in the Ward of* Baſſiſhaw, London, *aforeſaid, Maliciouſly and Traiterouſly with divers other Traitors, to the Jurors aforeſaid unknown, he did Conſpire, Compaſs, Imagine and Intend our ſaid Lord the King, his Supreme Lord, not only of his Kingly State, Title, Power and Government of this his Kingdom of* England *to deprive and throw down; but alſo our ſaid Lord the King to kill, and to Death to bring and put; and the ancient Government of this his Kingdom of* England *to change, alter and wholly to ſubvert, and a miſerable Slaughter amongſt the Subjects of our ſaid Lord the King through the whole Kingdom of* England *to cauſe and procure, and Inſurrection and Rebellion againſt our ſaid Lord the King to move, and ſtir up within this Kingdom of* England; *And to fulfil and perfect the ſaid moſt horrible Treaſons, and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid, He the ſaid* William Hone, *and many other Traitors, as a falſe Traitor, then and there, and divers other Days and Times, as well before as after, Maliciouſly, Traiterouſly and Adviſedly, he did aſſemble, meet together, and conſult with divers other Evil-diſpoſed and Diſcontented Subjects of our ſaid Lord the King, to the Jurors as yet unknown, and had diſcourſe, and did treat of, and for the executing and fulfilling their Treaſons, and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid; and that the ſaid* William Hone, *(together with many other Traitors) as a falſe Traitor, Maliciouſly, Traiterouſly and Adviſedly, then and there, and divers other Days and Times, as well before as after, did take upon himſelf, and promiſe to be aiding and aſſiſting in the execution of the Treaſons and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid; and in providing of Arms and Men Armed to fulfil and perfect the ſaid Treaſons, traiterous Compaſſings, Ima-*

Imaginations, and Purpoſes aforeſaid. And to fulfil and bring to paſs the ſaid moſt horrid Treaſons, and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid, He the ſaid William Hone (*with many other falſe Traitors*) *as a falſe Traitor, Maliciouſly, Traiterouſly and Adviſedly, then and there, did procure and prepare Arms, to wit, Blunderbuſſes, Carbines and Piſtols, againſt the Duty of his Allegiance, againſt the Peace of our Sovereign Lord the King,* &c. *And againſt the Form of the Statutes,* &c.

Cl. of Cr. How ſayeſt thou, *William Hone*, Art thou Guilty of this High-Treaſon whereof thou ſtandeſt Indicted, or not Guilty?

Hone. In ſome meaſure I am Guilty.

Capt. *Richardſon.* You muſt ſay, Guilty, or Not Guilty.

Sir *Edmond Saunders.* *L. C. J.* You muſt plead to this, and the way is to confeſs all, or deny all.

Hone. I know nothing of the Arms.

L. C. J. Are you Guilty of the Treaſon, in conſpiring the Death of the King, and providing of Arms for that purpoſe?

Hone. I never provided Arms, I am Guilty of the Conſpiracy.

L. C. J. We can take notice of none of theſe odd kind of Words you talk of, but either plainly, Guilty, or not Guilty.

Hone. My Lord, I can truly ſay I am not Guilty, for I know nothing of it.

L. C. J. If you ſay ſo, you ſay as much as is required of you at preſent.

Hone. In that underſtanding of it, I am not Guilty.

L. C. J. Well, He ſays he is not Guilty.

Cl. of Cr. Culprit. How wilt thou be tryed?

Hone. By God and my Country.

Cl. of Cr. God ſend thee a good Deliverance.

Friday, July *the* 13*th. in the Morning, the Court being ſet, and Proclamation made.*

Sir *Robert Sawyer.* Mr. *At. Gen.* Set *William Hone* to the Bar.

Cl. of Cr. You the Priſoner at the Bar, hold up your Hand.

Hone. I deſire I may retract my Plea, I would plead Guilty.

L. C. J. Do you confeſs the Indictment?

Hone. Yes, my Lord.

L. C. J. That is, That you did conſpire the Death of the King, and in order to that, that you did provide your ſelf with Arms to do this wicked Act.

Hone. I never did that, my Lord, I never provided any Arms.

L. C. J. What were you to have done?

Hone. That Depoſition I gave before Sir *William Turner* is true.

L. C. J. Tell us what you were to have done in this bloody Matter.

Hone. I was asked by one Mr. *Richard Goodenough* to go along with him, and I asked him whither, and he would not tell me, but I underſtood it was to kill the King and Duke of *York*, but he did not tell me the Place.

Mr. Serj. *Jefferies.* He does not confeſs fully, we deſire to try him.

L. C. J. Look you, you have pleaded not Guilty to this Indictment, the King is willing, that if you be not Guilty you ſhall not be condemned; and therefore he does deſire and command the Evidence againſt you ſhould be publickly given, that all Perſons may ſee, that you are not without Cauſe brought to Tryal, therefore ſwear the Jury.

The Priſoner challenged none, but the Jury that were ſworn were,

Nicholas Charlton,		*William Rutland,*
Chriſtopher Pitts,		*Thomas Short,*
Robert Beddingfield,		*Theophilus Man,*
John Pelling,	Jur'	*John Genew,*
William Windbury,		*John Short,*
Thomas Seaton,		*Thomas Nicholas.*

Then Proclamation for Information, and for thoſe that were bound by Recognizance to appear, was made.

Cl. of Cr. William Hone, Hold up thy Hand (*which he did.*) You Gentlemen of the Jury that are ſworn, look upon the Priſoner, and hearken to his Cauſe, he ſtands indicted by the name of *William Hone*, &c. *prout antea*, in the Indictment, *mutatis mutandis*; upon this Indictment he hath been arraigned, and hath thereunto pleaded, not Guilty, and for his Tryal, *&c.*

Mr. *Jones.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, the Priſoner ſtands indicted for the moſt horrid Treaſon that ever was endeavoured to be committed in this Kingdom, for Traiterouſly conſpiring to kill the King, and conſulting how and in what manner it ſhould be done, and for preparing Arms for the doing of it; we ſhall prove this to you, and then I hope you will find him Guilty.

Mr. *At. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury; the Part the Priſoner at the Bar was to act in this Treaſon, was the killing of the King; he was one of the Perſons that were to be aſſiſting in aſſaſſinating the King's Perſon. We will not trouble you with the large Evidence of the Riſing, as we did Yeſterday; but we will prove theſe things upon him, that he undertook to do it, that he was concerned with the reſt of the Confederates: We ſhall ſhew you this is not a new thing, but he hath been an old Rebel; for this hath not been a new Project, but hath been acting ſeveral Years. Five Years ago, when the King attended my Lord Mayor's Show, he undertook to kill him off of *Bow*-Church: We ſhall call our Witneſſes, and prove it fully upon him. Mr. *Keeling*, and Mr. *Weſt*.

Mr. Joſias Keeling *ſworn.*

Mr. *At. Gen.* Do you tell my Lord and the Jury, what you know of this Priſoner at the Bar.

Mr. *Keeling.* The firſt time I ſaw him was at the *Dolphin* Tavern, when the Arms were agreed upon, he was there then.

Mr. *At. Gen.* Who was there then?

Mr. *Keeling.* Mr. *Weſt*, Mr. *Goodenough*, and him I remember particularly, and ſome others, whom I do not at preſent remember, and ſince that he hath taken notice of me.

Mr. *At. Gen.* Was Mr. *Rumbold* there at that time?

Mr. *Keeling.* Yes.

Mr. *At. Gen.* Pray at that Meeting tell the Jury what Diſcourſe you had, for many of theſe Gen-

Gentlemen are not the ſame that were on the Jury yeſterday.

Mr. *Keeling*. It was diſcourſed then of the King's coming home from *New-Market* the *Saturday* after the Fire. Mr. *Weſt* told Mr. *Rumbold*, he heard the King would come home that Day, but, ſays he, I don't believe it; ſays *Rumbold*, I hear he will come home on ſays Mr. *Weſt*, I hear ſo too. They ſaid, they hoped they would not come home on *Monday*. Says Mr. *Weſt* to Mr. *Rumbold* then, How many *Swan-quills*, *Gooſe-quills* and *Crow-quills*, and how much Sand and Ink muſt we have? I think the Priſoner at the Bar muſt needs remember it as well as I. It was agreed by Mr. *Rumbold*, I think I am exact in the Number, and he was by and heard all the Diſcourſe.

Mr. *At. Gen.* What did they mean by this?

Mr. *Keeling*. By *Swan-quills*, they meant Blunderbuſſes; by *Gooſe-quills*, Muskets; and by *Crow-quills*, Piſtols; and by *Sand* and *Ink*, Powder and Bullet. He took Acquaintance with me after that Meeting; (for I never ſaw him, as I know of, before) and after ſome time he told me, he was one of them that was to go down to the *Rye* to aſſaſſinate the King. And ſince that, at a Coffee houſe in *Swithin*'s Alley, he told me, It would never be well, till the Blackbird and the Goldfinch were knocked on the Head; they being Terms I did not underſtand, I asked him what he meant, he ſaid the King and Duke of *York*.

Mr. Serj. *Jefferies*. You are ſure that is the Man?

Mr. *Keeling*. I am ſure that is the Man; *William Hone*.

Mr. Serj. *Jefferies*. What, is that the Man, that talked of the Blackbird and Goldfinch?

Mr. *Keeling*. I am ſure that is the Man.

Mr. *At. Gen.* Now ſwear Mr. *Weſt*.

Mr. Serj. *Jefferies*. If Mr. *Hone* has a mind to ask him any Queſtions, he may.

Hone. My Lord, This I deny: As to the Blackbird, I own it; as to the Goldfinch, I never heard a word of it till this time.

Mr. Serj. *Jefferies*. You had only a Deſign upon the Blackbird then.

Mr. Weſt *ſworn.*

Mr. *At. Gen.* Tell the Court what you know of the Meeting at the *Dolphin* Tavern.

Mr. *Weſt*. I was there, and Mr. *Keeling* came in. There were ſeveral things ſaid of *Swan-quills*, *Gooſe-quills*, and *Crow-quills*, but this Man did not come in till this Diſcourſe was over, and I am ſure I did not ſpeak of any thing of this nature before this Man in my Life. But Mr. *Goodenough* did undertake to provide the Men, and Mr. *Goodenough* ſaid, he would try him, if he would make an Attempt upon the Duke without the King. And I asked him, whether he had ſeen Mr. *Goodenough*? He told me he had; Says he, he ſpoke to me about a little Job for the Duke. Mr. *Goodenough* ſaid, he had ſpoke to him fully about the thing. And I ſaw him often in the Company of *Mannius*, that was deſigned to be another of the Aſſaſſinates. He was at my Chamber once; ſays he, Maſter, ſhall we do nothing? I think he uſed theſe Words, That if the Duke of *Monmouth* would be true, and appear, he could bring fifty or ſixty honeſt Men of t'other ſide the Water, to do the buſineſs: I asked him what buſineſs? Says he, either a brisk Puſh (that I took for an Inſurrection for the two Brothers: Says I, what Brothers do you mean? Says he, the Captain and Lieutenant; thoſe were the two Terms they uſed ſince the *Van-herring* was Printed. I think he was a pretty honeſt Fellow before this time; he was deluded by *Goodenough*, I think, in the thing.

L. C. J. (*To Mr.* Weſt.) Do you come to juſtify theſe things?

Mr. *Weſt*. My Lord, He hath been deluded baſely, and I am ſorry for the poor Fellow.

L. C. J. It is a very unuſual thing, for one in your Condition to uſe ſuch Expreſſions in ſuch a Caſe.

Mr. Serj. *Jefferies*. Mr. *Weſt*, You have been deluded.

Mr. *At. Gen.* Captain *Richardſon*, and Sir *Nicholas Butler*.

Mr. Serj. *Jefferies*. I find he is not worthy of the Mercy the King hath ſhewed him.

Mr. *Weſt*. It was a Word I put from me unawares.

Mr. Serj. *Jefferies*. My Lord, We will give you an account of a Deſign this Man had long ago to kill the King.

Sir Nicholas Butler *ſworn.*

Sir *Nicholas Butler*. My Lord, I know the Priſoner at the Bar very well. I have known him many Years, I have always known him guilty of Plotting and Contriving, and ready upon all occaſions to embrace any thing for theſe Purpoſes laid to his Charge. Particularly, when Sir *Francis Chaplain* was Lord Mayor, his Majeſty and the Duke ſtood at Mr. *Waldoe*'s Houſe, by reaſon of the *Angel* Houſe being ſhaken. And he came to my Houſe; and told me, he would diſcourſe me upon ſome private Matter; I called him into a Cloſet, and he told me, they had a fair opportunity to take off the King and the Duke at once; I told him, that would do very well, but how will you do it? Says he, we will do it with Croſs bows, we are to be half a dozen, and we will go into the Steeple, where there is a Window juſt oppoſite to the Balcony, and a great deal of Diſcourſe we had to this purpoſe. My Intent was to divert them from this Deſign, and told him how impoſſible it was they ſhould eſcape the Foot-Guards, and Horſe-Guards, and multitude of People: And if he did not do the Buſineſs effectually, he would be undone, and all the Party. I reſted ſatisfied he would have deſiſted upon this. But I knew the Principles of theſe Fifth Monarchy-Men, and their Aſſociates, and thought it not ſafe to truſt to his bare Say-ſo, that he would deſiſt, but I went to the King and the Duke of *York*, into my Lord Chamberlain's Chamber, where they came to me, and I gave them this account, and deſired them to ſet ſome to watch the place; and to ſearch if any were got into the Steeple before they came; and there was one *Horſal* appointed, that did accordingly watch them, but none came: Upon which ſome Goodwillers to it, have reported that it was a Shambuſineſs, but I think that was not well done. But the thing was real, and when he was examined before the King in the Secretary's

Office, he did confeſs all theſe things that I charged him with.

Mr. *At. Gen.* Sir *Nicholas Butler*, Had you any Diſcourſe of killing the King at this time?

Sir *Nicholas Butler.* No; at laſt they did underſtand I kept a Correſpondence at Court, and then they would tell me no more.

Mr. *At. Gen.* Since he was taken, what did he ſay about this matter?

Sir *Nicholas Butler.* About this matter he did acquaint divers, he was one that was to kill the King and the Duke.

Captain Richardſon *ſworn.*

Capt. *Richardſon.* Sir *Nicholas Butler* asked him in my Preſence (I went along with Sir *Nicholas* when he examined him) as to this thing, how he was concerned? He ſaid Mr. *Goodenough* came to him, and told him he wanted Labourers; he asked him, for what? At laſt he did confeſs that Mr. *Goodenough* did tell him, it was to kill the King and the Duke of *York*; he did confeſs that he did agree to it, and that he would be one of them. He did likewiſe ſay, That after, at another Meeting, he was for killing the King, and ſaving the Duke; but *Goodenough* was for both.

Sir *Nicholas Butler.* He ſaid he was to have 20 *l.*

Capt. *Richardſon.* He ſaid, he did not deſire to ſtir, and *Goodenough* told him he ſhould have 20 *l.* to buy him Horſe and Armour: And told us the Buſineſs of the *Rye*, the Place he did not know, but ſaid, it was the Place where the King was to be murdered. This is the Subſtance of the Examination taken.

Mr. Serj. *Jefferies.* Tho' the Priſoner at the Bar did partly make a Confeſſion, yet for the Satisfaction of the World, my Lord gave us leave to call our Witneſſes.

Capt. *Richardſon.* That which Sir *Nicholas* ſays about the Croſs-bows, he did own, but———

L. C. J. What ſay you to this treaſonable Deſign of yours, in undertaking to kill the King, in hiring your ſelf out to be one of the Perſons that ſhould have executed this traiterous Deſign, this horrid Murder, to have killed the King at the *Rye*?

Hone. I ſay, I did not know the Place where, nor when, at the time it was propoſed about the *Rye*.

L. C. J. But what do you ſay as to the undertaking to kill the King? The other is but a Circumſtance, this is the material Point.

Hone. My Lord, I was drawn into it by Mr. *Richard Goodenough.*

L. C. J. You hear what Sir *Nicholas Butler* ſays of the Croſs-bows you deſigned to kill the King with, what ſay you to that?

Hone. I ſay, there was a Perſon told me of ſuch a thing; and I told Sir *Nicholas* immediately of it. The Perſon that told me was a Shopkeeper, and I don't know him.

Sir *Nicholas Butler.* You named three Perſons to the King, that were Confederates with you, but you came to me of your ſelf.

L. C. J. Look you, your ſelf was one of the wicked Undertakers in that traiterous Deſign.

Hone. No, I did never deſign it, but I was told it.

L. C. J. Ay, That your ſelf and ſome other good Fellows were engaged in the Deſign.

Hone. I was not engaged, only as I was told by a Fellow, that there was a Shop-keeper lived hard by that would do ſuch a thing, and I immediately told Sir *Nicholas Butler.*

L. C. J. Come, 'tis in vain for you to mince the matter, for here is a full Evidence againſt you: The beſt you can do for your Advantage now, is to conſider well with your ſelf, and repent of this wicked Deſign. What Religion do you profeſs?

Hone. Religion, my Lord?

L. C. J. Ay, Any or none?

Hone. My Lord, I hear ſeveral ſorts of Men, ſometimes Baptiſts, ſometimes Independants, and ſometimes the Presbyterians.

L. C. J. But regard none. Look you, Gentlemen of the Jury, you hear a plain Caſe of a barbarous Murder deſigned upon the King, one of the horrideſt Treaſons that hath been heard of in the World, to have ſhot the King and the Duke of *York* in their Coaches, as they were coming upon the Road. You have had full Evidence of this Man's being One of them; and therefore I am of opinion that you muſt find him Guilty.

So the Jury brought the Priſoner in, Guilty, without going out of Court.

THE

THE TRYAL OF The LORD *RUSSEL.*

July 13. 1683. *My Lord* Ruſſel *was ſet to the Bar, within the Bar.*

Cl. of Cr. *William Ruſſel*, hold up thy Hand (*which he did*) Then this Indictment was read, which is as followeth.

London. *The Jurors of our Sovereign Lord the King, upon their Oaths preſent, That* William Ruſſel *late of* London, *Eſq*; *together with other falſe Traitors, as a falſe Traitor againſt the moſt Illuſtrious and Excellent Prince, our Sovereign Lord* Charles *II, by the Grace of God, of* England, Scotland, France *and* Ireland *King, his natural Lord, not having the Fear of God in his Heart; nor weighing the Duty of his Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, and the true Duty, and natural Obedience, which True and Faithful Subjects of our Sovereign Lord the King, towards him our ſaid Lord the King do bear, and of right ought to bear, wholly withdrawing; and with his whole Strength intending the Peace and common Tranquillity of this Kingdom of* England *to diſturb, and War and Rebellion againſt our ſaid Lord the King to move and ſtir up; and the Government of our ſaid Lord the King within this Kingdom of* England *to ſubvert, and our ſaid Lord the King from his Title, Honour and Kingly Name of the Imperial Crown of this his Kingdom of* England *to put down and deprive; and our ſaid Lord the King to Death and final Deſtruction to bring and put, the ſecond Day of* November, *in the Year of the Reign of our Sovereign Lord* Charles *II, King of* England, *&c. the Four and Thirtieth, and divers other Days and Times, as well before as after, at the Pariſh of St.* Michael Baſſiſhaw, *in the Ward of* Baſſiſhaw, London, *aforeſaid, Maliciouſly and Traiterouſly with divers other Traitors, to the Jurors aforeſaid unknown, he did Conſpire, Compaſs, Imagine and Intend our ſaid Lord the King, his Supreme Lord, not only of his Kingly State, Title, Power and Government of this his Kingdom of* England *to deprive and throw down; but alſo our ſaid Lord the King to kill, and to Death to bring and put; and the ancient Government of this his Kingdom of* England *to change, alter and wholly to ſubvert, and a miſerable Slaughter amongſt the Subjects of our ſaid Lord the King through his whole Kingdom of* England *to cauſe and procure, and Inſurrection and Rebellion againſt our ſaid Lord the King to move, procure, and ſtir up within this Kingdom of* England; *And to fulfil and perfect the ſaid moſt horrible Treaſons, and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid, He the ſaid* William Ruſſel, *together with other falſe Traitors, as a falſe Traitor, then and there, and divers other Days and Times, as well before as after, Maliciouſly, Traiterouſly and Adviſedly, between themſelves, and with divers other Traitors, to the Jurors aforeſaid unknown, they did meet together, conſult, agree, and conclude, and every of them, then and there, did conſult, agree and conclude, Inſurrection and Rebellion againſt our Sovereign Lord the King, within this Kingdom of* England, *to move and ſtir up; and the Guards for the Preſervation of the Perſon of our ſaid Lord the King, to ſeize and deſtroy, againſt the Duty of his Allegiance, againſt the Peace, &c. And alſo againſt the Form of the Statutes, &c.*

Cl. of Cr. How ſay'ſt thou, Art thou Guilty, or not Guilty?

Lord *Ruſſel.* My Lord, May I not have a Copy of the Matter of Fact laid againſt me, that I may know what to anſwer to it?

Sir *Edmond Saunders.*

L. C. J. My Lord, We can grant you nothing till you have pleaded. Therefore that which is put to you now is, Whether you ſay you are Guilty, or not Guilty?

L. *Ruſſel.* My Lord, I am not Guilty.

Cl. of Cr. Culprit. How wilt thou be tryed?

L. *Ruſſel.* By God and my Country.

Cl. of Cr. God ſend thee a good Deliverance.

L. *Ruſſel.* My Lord, I thought a Priſoner had never been arraigned and tryed at the ſame time, I have been a cloſe Priſoner.

L. C. J. For Crimes of this nature, my Lord, we do it continually.

L. *Ruſſel.* It is hard, my Lord.

Mr. *At. Gen.* My Lord hath no reaſon to complain for want of notice, for ſince *Monday* ſeven-night he had notice of his Tryal, and the matters alledged againſt him he had notice of, for Queſtions were put to him about this matter, he hath been very fairly dealt with, he hath had the liberty of Counſel to adviſe him; there hath been no ſort of Liberty denied him, which becomes any Subject to have in this Condition.

L. C. J.

L. C. J. My Lord, I do not know whether you hear Mr. *Attorney*. He ſays, your Lordſhip hath had a great deal of Favour ſhewn you already, in that you have been acquainted with the Crimes for which you are now indicted, that you have had a great deal of warning given you, that you have had the Liberty of Counſel, which hath not been known granted to any under your Lordſhip's Circumſtances. He ſays, he doubts not but your Lordſhip is prepared for your Defence, becauſe you have had ſo much knowledge, and warning of the Time and Matter for which you were to be called in queſtion.

L. *Ruſſel.* My Lord, I am much to ſeek, I only heard ſome general Queſtions, and I have Witneſſes, that I believe are not yet in Town, nor will be, I believe till Night; I think it very hard I can't have one day more.

Mr. *At. Gen.* Monday ſeven-night your Lordſhip had notice.

L. *Ruſſel.* I did not know the matter I was charged with.

Mr. *At. Gen.* Yes certainly, for I was with you my ſelf, my Lord; and thoſe Queſtions you were examined upon, were a Favour to you, that you might know what the matter was you were accuſed of.

L. C. J. My Lord, without the King's Conſent we can't put off the Tryal; if the King's Counſel think not fit to put it off, we can't grant your Lordſhip's Requeſt in this Caſe.

L. *Ruſſel.* I would deſire a Copy of the Pannel of the Jury, that I might conſider of it; for how elſe can I make any juſt Challenge? I thought the Law had been very favourable to Men upon their Lives; and therefore it had allowed People to have ſome little notice.

L. C. J. Hath not your Lordſhip had a Copy of the Pannel? I think your Lordſhip was allowed one. We gave order your Lordſhip ſhould have a Copy of the Pannel.

Mr. *At. Gen.* We did indulge him ſo far, that he might have a Note of all the Men returned.

L. *Ruſſel.* I never had a Copy of the Pannel.

L. C. J. It was the fault of your Lordſhip's Servants then; for I gave order for it my ſelf. 'Tis ſuch a Favour, that in regard a Man's Life lies at ſtake, we never did deny it, to my Knowledge. And therefore in this Caſe I gave order to the Secondary to deliver a Copy. I know the King did not deſign to be hard upon my Lord in his Tryal, but that he ſhould have as fair a Tryal as ever any Noble Perſon had.

L. *Ruſſel.* I Pray I may have a Copy then.

Mr. Serj. *Jefferies.* If my Lord had ſent his Agents, and it had been refuſed, there had been ſomething in it.

Mr. *At. Gen.* Secondary *Normanſel* was with me, and I gave him my Allowance, though it was not his Right.

L. C. J. That my Lord may not be ſurpriſed, what think you of giving my Lord time till the Afternoon, and try ſome of the reſt in the mean time?

Mr. *At. Gen.* Truly, my Lord, if I could imagine it were poſſible for my Lord to have any Witneſſes, I ſhould not be againſt it.

L. *Ruſſel.* 'Tis very hard.

Mr. *At. Gen.* Do not ſay ſo, the King does not deal hardly with you, but I am afraid it will appear you would have dealt more hardly with the King: You would not have given the King an hour's notice for ſaving his Life.

Secondary *Trotman.* I gave my Brother *Normanſel* a Copy of the Pannel on my ſide, and hear that my Brother *Normanſel* hath ſaid that he delivered a Copy. Then Secondary *Normanſel* was ſent for, and the Court ſtaid for him ſome time.

Mr. *Atwood.* My Lord, a Gentleman told me, he did not know whether it was fit till he had conſulted the *Attorney General*; afterwards I had a Copy as it ſtood then, not as it is now.

Mr. *At. Gen.* I deſire my Lord may be asked who he ſent for it?

L. *Ruſſel.* I did not ſend for it; I inquired, and they ſaid it would be refuſed.

Mr. *Atwood.* No, the Gentleman had it with the fair Perriwig.

L. C. J. It was delivered to your Servant, or Agent, what did you do with it?

L. *Ruſſel's Gent.* Sir, The Gentleman gave me out of a Book ſome Names.

Mr. Serj. *Jefferies.* What did you do with them?

L. *Ruſſel's Gent.* I writ them down, they were not perfect, I did not know what they were.

L. C. J. Sir, You were to blame, not to deliver it to my Lord.

L. *Ruſſel's Gent.* I was not bound to deliver an imperfect thing to my Lord.

L. C J. Sir, You ſhould have conſulted your Lord's advantage, ſo as to have delivered any thing for his good.

L. *Ruſſel's Gent.* My Lord was in the *Tower*, I was not admitted to my Lord.

Mr. *At. Gen.* Did you give it to my Lady?

L. *Ruſſel's Gent.* Yes, thoſe Names I had, my Lady had.

Mr. Serj. *Jefferies.* How long ago was it?

Mr. *Atwood.* *Tueſday* or *Wedneſday* laſt.

L. C. J. (*To Lord* Ruſſel's *Servant.*) Look you, Sir, when had you this?

L. *Ruſſel.* I had no Pannel, I will aſſure you, delivered me; I had ſome Names of People that they ſaid were uſually on Juries.

L. C. J. They were the Names of the Jury.

L. *Ruſſel.* They were only the Names of them that were like to be of the Jury, no other Pannel came to me.

L. C. J. My Lord, There can be no other Copy given, but the ſame that was delivered; for your Lordſhip does know in this caſe, any Perſon accuſed, as your Lordſhip is, may challenge 35; and therefore there is a Return generally of 3 ſcore, or 4 ſcore, and theſe are returned in caſe of your Lordſhip's Challenge. When you have challenged ſo many as you pleaſe, then the 12 Men that ſtand after your Challenge are to be of the Jury: And therefore this is not like a Pannel made up by the Sheriff, in ordinary Cauſes, between Man and Man; there they make a formal Pannel, from which they cannot depart, when that is once returned; but here in Criminal Caſes, becauſe of the Challenge, they return either 60 or 80: And I preſume your Lordſhip was attended with the Names delivered.

Mr. Serj. *Jefferies.* How many Names were delivered?

Mr. *Atwood.* Above 100.

L. *Ruſſel.* I had nothing of a Pannel delivered to me, but ſome Names.

L. C. J.

L. C. J. There was never any formal Pannel delivered to any Perſon Accuſed: The Copy of it is in Paper always.

L. *Ruſſel.* How can I know who to challenge?

L. C. J. My Lord, the Copy of it is in your hands; your Lordſhip hath been deceived in this, by not underſtanding the true nature of theſe things: If we were to give you a new one, we could give you but ſuch an one.

L. *Ruſſel.* I had no Paper from the true Officer.

L. C. J. No, but from your Servant.

Mr. *At. Gen.* My Lord, you will have cauſe to complain, if they are not the ſame men we now ſhall call.

L. C. J. My Lord, that Paper will guide your Lordſhip in your Challenges.

L. *Ruſſel.* My Lord, I did not mind it, I put it away. My Lord, with your Favour, I muſt needs inſiſt upon having a Pannel, and that you will put it off till the Afternoon; I have a Witneſs that is not in Town. My Counſel told me it was never done, or very ſeldom, Arraigning and Trying at the ſame time, except in caſe of Common Malefactors.

L. C. J. Mr. *Attorney*, Why may not this Tryal be reſpited till the Afternoon?

Mr. *At. Gen.* Pray call the Jury.

L. C. J. My Lord, the King's Counſel think it not reaſonable to put off the Tryal longer, and we can't put it off without their conſent in this Caſe.

L. *Ruſſel.* My Lord, 'Tis hard, I thought the Law had allowed a pretty deal of favour to a Man when he came upon his Life. How can I know to except againſt Men, that I never heard or ſaw one of them?

Cl. of Cr. You the Priſoner at the Bar; thoſe good Men that have been now called, and here appear, are to paſs between you and our Sovereign Lord the King, upon your Life or Death, if you challenge any of them, you muſt ſpeak as they come to the Book to be Sworn, before they are Sworn.

L. *Ruſſel.* My Lord, May not I have the uſe of Pen, Ink, and Paper?

Court. Yes, my Lord,

L. *Ruſſel.* My Lord, May I not make uſe of any Papers I have?

L. C. J. Yes, by all means.

L. *Ruſſel.* May I have ſome body write to help my memory?

Mr. *At. Gen.* Yes, a Servant.

L. C. J. Any of your Servants ſhall aſſiſt you in writing any thing you pleaſe for you.

L. *Ruſſel.* My Wife is here, my Lord, to do it.

L. C. J. If my Lady pleaſe to give her ſelf the trouble.

Mr. *At. Gen.* My Lord, you may have two perſons to write for you if you pleaſe.

L. *Ruſſel.* My Lord, here hath been a name read, that I never ſaw in the Liſt of the Jury I had, I heard Sir *Andrew Foſter* called.

L. C. J. He is not called to be of the Jury.

Cl. of Cr. Call *John Martin.* [*He appears.*

L. *Ruſſel.* Are you a Freeholder of 40 *s.* a year? I hope none are allowed in the Pannel, but thoſe that have Freeholds.

L. C. J. There is no Pannel made in *London* by Freeholders, we have very few Freeholders capable of being impannel'd, becauſe the Eſtates of the City belong much to the Nobility and Gentlemen that live abroad, and to Corporations: Therefore in the City of *London* the Challenge of Freeholders is excepted.

L. *Ruſſel.* My Lord, I thought it had been always ſo, and the Law had been clear in that Caſe throughout *England*, that no Man ought to be Tryed for his life, but by thoſe that have Freeholds. My Lord, I remember I read the Statute of 2 *H.* 5. where 'tis poſitive that no Perſons ſhall be Judged in Caſe of Life and Death but by thoſe that have 40 *s.* a year.

L. C. J. My Lord, that Statute extends not to this Caſe. Read the Statute.

Cl. of *Cr. Whereas Perjury is much uſed in the City of* London *upon Perſons, &c.*

L. C. J. Is this the Statute your Lordſhip has read?

L. *Ruſſel.* This is not in the caſe of Life and Death.

L. C. J. It is not, my Lord.

L. *Ruſſel.* That that I read is poſitive. And if your Lordſhip will not allow of it, I deſire my Counſel may come and argue it, for 'tis a matter of Law, and I can't argue it, whether the Jury are not to be Freeholders.

Mr. Serj. *Jefferies.* There is nothing mentioned in that Statute with relation to the City of *London* indeed, but the neceſſity of the thing requires it.

Mr. *At. Gen.* It will not be material, 'tis a collateral point, for moſt of the Jury have Freeholds.

L. C. J. Do you allow the Exception?

Mr. *At. Gen.* No, my Lord.

L. C. J. Therefore we muſt, if my Lord ſtand upon it, hear his Counſel. My Lord, we will hear your Counſel; what Counſel do you deſire, my Lord?

L. *Ruſſel.* The Counſel that were allotted me.

L. C. J. No, you muſt have Counſel aſſign'd by us. The Counſel that was aſſign'd elſewhere ſignifies nothing.

L. *Ruſſel.* Mr. *Pollexfen*, Mr. *Holt*, and Mr. *Ward.*

The ſaid Perſons were called, and came into Court.

L. C. J. (*To the Counſel.*) Gentlemen, my Lord here deſires Counſel, You are here aſſigned as Counſel for my Lord *Ruſſel* that is at the Bar, 'tis concerning a thing wherein he doubts the Law, he would except to the Jury upon this account, to the Poll, becauſe they have not Freehold within the City of *London*, and he deſires you may be aſſign'd his Counſel to make it out that this is a Cauſe of Challenge.

Mr. *At. Gen.* 'Tis a Caſe of Treaſon, Mr. *Pollexfen.*

Mr. *Ward.* We take it ſo.

Mr. *Pollex.* My Lord, Perhaps if we had more Conſideration of it we ſhould ſpeak more, but if your Lordſhip pleaſes to hear us what we can ſay; firſt we take it with ſubmiſſion, at Common Law, a Free-hold was neceſſary to make a Man a Juryman. But that which falls out in this caſe, is the Statute of 2 *H.* 5. *c.* 3. which Statute I ſuppoſe is here in Court. That Statute ſays this (if you pleaſe I will quote the ſubſtance of it) That none ſhall be admitted to paſs upon any Inqueſt upon the Tryal of the Death of a Man, except he have Lands and Tenements of the yearly value of 40 *s.* Now we are here I think within the words of the Statute, and I take it to be no Queſtion at all, were we not in a City and Coun-

County. I think this would be no Queſtion upon any Tryal in any County at large. The Statute does not make any Exception or Diſtinguiſhment between Cities and Counties at large, but the Words are general, as I have opened them. My Lord, the Statute does alſo provide in Caſes of Freehold or 40 Marks. Now, my Lord, to prove this Statute extends to *London*, tho' a City and County, there are other Statutes that have been made ſubſequent, make it plain that it does ſo extend. But before I ſpeak to them, there is 1 *Inſt. Fo.* 157. that takes notice of this Statute, and ſpeaks it generally, that the Freehold ought to be in the ſame County, nor do I remember to have ſeen any Book that diſtinguiſhes between Counties at large and Cities and Counties. But Statutes that have been made concerning Cities and Counties are a plain Declaration that this is meant of Juries both in Cities and Counties. I will mention the Statute 7 *H.* 7. *c.* 5. The Subſtance of the Statute is this, It takes notice that there were Challenges in *London* for that they had not 40 *s. per Ann.* and that this Challenge was to be made in the Wards, which are the ſame with Hundreds in the Counties, ſo this Statute is made to take away the Challenge of 40 *s.* Freehold. This Statute of 7 *H.* 7. that takes away the Challenge in *London* for not having 40 *s.* is, with ſubmiſſion, a ſtrong Evidence and Authority that it was before that time a good Challenge, for otherwiſe to what end ſhould they make a Statute to take away the Challenge, unleſs it were before a good Cauſe of Challenge? In the next place, 4 *H.* 8. *c.* 3. that extends to Civil Cauſes in *London*, and ſays, that the *London* Jurors ſhall (but provides only for *London* in Civil Cauſes) be admitted in Civil Cauſes, that have Goods to the Value of 100 Marks. My Lord, if that firſt Statute or the Common Law had not extended to require Freeholds in *London*, then there would have been no need of this Statute that was made to enable Men to be Jurors that had Goods to the Value of 100 Marks. So that we take it to be good Authority, that by the Common Law Freehold was required in all Civil Cauſes. Then there is another Statute 23 *H.* 8. *c.* 13. and that will be a ſtrong Evidence to ſhew what the Law is: For the Statute ſays, in Cities and Burroughs, in Tryals of Murder and Felony, if a Freeman of the City of *London* is to be tryed, the Freemen ſhall be upon the Jury, tho' they have not Freehold, and then there is a *Proviſo*, that for Knights and Eſquires that are out of the Burrough, tho' they are arraigned in the Burrough, that extends not to them, tho' in Caſes of Murder and Felony. As for this Statute we take this Senſe of it, firſt, That it does not extend to Treaſons, for when it only names Murders and Felonies, that makes no Alteration as to Treaſon, therefore that ſtands as before: But if there be any Alteration that extends only to Freemen and Burgeſſes that are to be Tryed, but not to Knights and Eſquires, ſo that if we were in a Caſe of Felony and Murder, I think we are not concerned in this Statute, for we are no Freeman nor Burgeſs, but we are an Eſquire, and therefore ought to be tryed by Freeholders: So that for the Law we rely upon theſe Statutes, that we have looked upon as ſtrong Evidence, that there ought to be in the Tryal of the Life of Man, eſpecially for Treaſon, Freeholders. Firſt, If it were in Civil Cauſes, if this Qualification be not in Jurymen, then an Attaint would lye; the Penalty in an Attaint is, that their Houſes ſhould be pulled down, *&c.* This is provided by the Law, to the intent the Jury may be careful to go according to their Evidence. 'Tis true, no Attaint does lie in Criminal Cauſes, but if ſo be in Civil Cauſes there be required Freeholders, and an Attaint lies if there be not, 'tis not reaſonable to think but there ſhould be as great regard to the Life of a Man as to his Eſtate. Next, my Lord, I do not know any Law that ſets any kind of Qualification but this of Freehold, ſo that be the Perſons of what condition or nature ſoever (ſuppoſing they be not outlawed) yet theſe Perſons, if this Law be not in effect, may then ſerve, and be put upon the Life of a Man. Theſe are the Reaſons, my Lord, for which we apprehend they ought to be Freeholders.

Mr. *Holt.* My Lord, I would deſire one Word of the ſame ſide: We inſiſt in this Caſe upon theſe two things; Firſt, we conceive by the Common Law, every Jury-man ought to have a Freehold, we have good Authority for it, *Coke's Firſt Inſtitutes*, but if that were not ſo, I think the Statute Mr. *Pollexfen* hath firſt mentioned, 2 *Hen.* 5. *c* 3. to be expreſs in this point. My Lord, the Statute in the Preamble does recite all the miſchiefs, it ſays great miſchiefs enſued by Juries that were made up of Perſons that had not Eſtates ſufficient; In what? As well in the Caſe of the Death of a Man, as in the Caſe of Freehold between Party and Party: The Statute reciting this miſchief, does in expreſs Words provide two Remedies for the ſame in theſe Caſes: Firſt on the Life and Death of a Man, the Jury or Inqueſt to be taken, ſhall have 40 *s. per Ann.* and ſo between Party and Party 40 Marks, ſo that this being the Tryal of the Death of a Man, it is interpreted by *Stamford* 162 *a.* That is, In all Caſes where a Man is arraigned for his Life, that is within the expreſs Words of the Statute. Beſides this Expoſition that hath been put upon the Statute, my Lord, it does ſeem that the Judgment of ſeveral Parliaments hath been accordingly in ſeveral Times and Ages. My Lord, to inſtance in one Statute that hath not been mentioned, and that is the 33 of *H.* 8. *c.* 23. That does give the King Power to award Commiſſions of *Oyer* and *Terminer*, for Tryals in any County of *England*: And that (ſays the Statute) in ſuch Caſes no Challenge to the Shire or Hundred ſhall be allowed; that is, you ſhall not challenge the Jury in ſuch a Caſe, becauſe they have not Freehold, are not of the County where the Treaſon was committed; but that upon the Tryal Challenge, for lack of Freehold of 40 *s.* a Year, ſhall be allowed, tho' it alters the manner of trying Treaſon by the Common Law; ſo that, my Lord, here is the Opinion of that very Parliament; that tho' it took away the uſual method of Tryals; yet it ſaves the Priſoner's Challenge for want of Freehold. Now indeed that Statute is repealed; but I mention it as to the *Proviſo*, that it ſhews the Judgment of that Parliament at that time: My Lord, thoſe other Statutes that have been made to regulate Cities and Towns Corporate, why were they made? 33 *H.* 8. That no Freehold

ſhould

ſhould be allowed, that ſhews that 2 *H.* 5. did extend to theſe Caſes. But, my Lord, theſe Statutes that ſhew the Judgment of the Parliament ſufficient to our purpoſe, do not extend to this Caſe; the Statute goes only to Murders and Felonies, but not to Treaſons: And we are in the Caſe of a Penal Statute, and concerning the Life and Death of a Man, which ought to be taken ſtrictly, it ouſts the Priſoner of a Benefit; and by parity of Reaſon, if Treaſon be not mentioned, your Lordſhip can't by Equity extend it to it, when it only mentions inferiour Offences, and takes away the Benefit in lower Caſes: Like the Caſe of the Biſhop of *Wincheſter*, where the Statute ſet down Dean and Chapters, and other Eccleſiaſtical Perſons, it ſhall not extend to Biſhops, becauſe it begins with Perſons of an inferior Nature: No more ſhall Murder and Felony extend to Treaſon. But further the Statute only concerns Freemen, for there is an expreſs *Proviſo* in the Caſe: For in caſe any Knight or Eſquire come to be tryed in the Place, he has his Benefit as before. My Lord, we are in this Caſe, as in the Caſe not mentioned in the Statute, we are not a Freeman of *London*. My Lord, there is another thing 7 *H.* 7. *c.* 5. Why there was not only requiſite at the Common Law, that the Jurors had ſufficient Freehold, but it was required it ſhould be in the Hundred; and Freehold in the Wards in the City is the ſame with Freehold in the Hundreds in the Country: So that the want of Freehold in the Hundred, was a good Cauſe of Challenge. So that I think it will hardly be denied, but that a Jury that paſſes upon the Life of a Man, ought by the Law, by the Statute, and by the Judgment of the Parliament, to have Freehold. Where is there then any Statute whatſoever that makes a difference in this Caſe, between *London* and other Counties? We are in the Caſe of Treaſon, we have taken our Exceptions, and on behalf of the Priſoner at the Bar we pray the Challenge may be allowed.

Mr. *Ward*. My Lord, I ſhall be ſhort, becauſe Mr. *Pollexfen* has obſerved theſe things ſo particularly already. I obſerve the Statute of *H.* 5. is a general Statute, and extends throughout the Realm: Now when the thing is thus general, there is no room to except Particulars. And in this Caſe 'tis within the very Words of the Law, if the Words be ſo generally penned in the Negative, then we conceive there is no Conſtruction to be made upon them, unleſs ſome ſubſequent Parliament alter it. *Coke's Inſtitutes* 157. where 'tis ſaid in Treaſon as well as any thing elſe, upon *H.* 5. there ſhall be Freeholds. If they have provided in Civil and other Criminal Cauſes, it were ſtrange that this ſhould be *Caſus omiſſus*, but there is no Conſtruction againſt a Negative Law. For the Parliament taking care of the City of *London* (as the ſubſequent Statutes ſay) that he that hath 100 Marks ſhall paſs in Civil Cauſes, and then it ſays in Murders and Felonies, and that only confined to the Freemen of the Place, does ſufficiently explain the Law, where 'tis not altered by any ſubſequent Act, therefore I deſire the Challenge may be admitted.

Mr. *At. Gen.* My Lord, Theſe Gentlemen's Foundation is not good, for they prove it not by any Books, that at Common Law it was requiſite for a Jury-man to have Freehold. My Lord, I deny their Foundation, there is no ſuch Law, and at this day in all Criminal Caſes where the Statute does not direct it, as for Riots and other Informations for Miſdemeanor, there is no Law reſtrains them, and they may be tryed by any Men they have no Exception againſt. Then 2 *H.* 5. ſays, None ſhall be admitted to paſs upon the Death of a Man, (I take it to extend to all Capital Matters, tho' it is pretty oddly expreſſed; for when a Man is accuſed of other Felonies and High-Treaſons, 'tis of the Death of a Man) unleſs he have Lands or Tenements, of the yearly Value of 40 *s.* But I will take it as theſe Gentlemen do at this time, it not being ſo at Common Law, nor in other Criminal Caſes, but what are provided for by the Statute: As to other Matters of Felony and Murder, no doubt there theſe Challenges are to be taken upon the Statute, but not for Treaſon, becauſe the Statute of Queen *Mary* does expreſly repeal that Statute; and no Statute ſince takes away the Force of that of Queen *Mary*; that all Tryals for Treaſon ſhall be as at the Common Law; and according to this the conſtant Practice in all Cities (not only *London*) where Perſons have been indicted for High-Treaſon, hath been. There was never any ſuch thing pretended: Moſt of theſe Gentlemen have Freeholds, but we would not have this Point loſt to the City of *London*; ſo that the Statute they ſpeak of, and the Interpretations of the ſeveral other Statutes too, are to no purpoſe; for we ſay by Common Law, all Cauſes might be tryed by any Perſons, againſt whom there was not ſufficient Cauſe of Challenge; and the Common Law is by that Statute reſtored in this Point.

Mr. *Sol. Gen.* My Lord, I have little to ſay, Mr. Attorney hath given a true Anſwer to it, the Foundation does fail them. It was not neceſſary at Common Law, for a Jury-man to have Freehold: But then they muſt ſhew you, my Lord, it is altered and made neceſſary. The Statute of *H.* 5. does not ſeem to extend to Treaſon, but if it did, 'tis now out of doors, by that of Queen *Mary*, whereby all Tryals of Treaſon are reduced to the Common Law. This is that we anſwer, they fail in their Foundation, they do not make it out, that it was neceſſary for a Jury-man at Common Law to have Freehold.

Mr. Serj. *Jefferies*. My Lord, I confeſs they have cited ſeveral Acts of Parliament, and upon them lay their Foundation, and draw Inferences from them: But they will find, that in ſeveral Acts of Parliament which they have quoted, there is a particular regard had for the Preſervation of the conſtant Uſage and Cuſtoms for Tryals within the City of *London*. That notwithſtanding ſeveral Acts of Parliament have in other places aſcertained the Value of Jurors; yet they had ſtill an Eye that the City of *London* ſhould continue in its Uſages. I think it will be neceſſary to put you in mind of the Caſe of the City of *Worceſter*. It would be very hard, ſay they, becauſe an Attaint does not lie in Criminal Matters; if you intend by that to have People of Ability, 'tis well known, that the ableſt People in the City of *London*, have ſcarce any Freehold in it; for that moſt of the Inheritances of the City of *London* remain in the Nobility and in Corporations. Now in the Caſe of my Lord *Ruſſel*, he hath a peremptory

remptory Challenge to 35, and I think I may adventure to ſay, there can ſcarce be 35 more that can call themſelves Freeholders in *London*; conſider the Conſequence then, Treaſon ſhould be committed in the City of *London*, and there would not be enow in the City of *London* to try it. In the Caſe of the *Quo Warranto* brought againſt the City of *Worceſter*, to know by what Warrant ſeveral took upon them the Offices of Aldermen; the Gentlemen at the Bar objected that it was reaſonable that no Freehold ſhould be determined, but by Freeholders. But the Judges of the *King's-Bench*, (the Court being full) for the neceſſity of the thing, leſt there might not be ſufficient Freeholders in the City, having ſent one of the Judges of that Court to your Lordſhips of the *Common Pleas*, for that Reaſon did agree the Challenge was not good. I know theſe Gentlemen will pleaſe to remember the Caſe; ſo that I ſay, as in one Caſe we ought to be tender of the Life of the Priſoner, ſo we ought ſurely to be tender of the Life of the King, otherwiſe it may ſo happen that the King's Life may be encompaſſed, and Treaſon committed in the City, and there would be no way in the World to try it: Therefore we pray for the King the Challenge may be over-ruled.

Mr. *North*. My Lord, It is the Practice to make the *Venire facias*, without mentioning Freehold, for it does not command that they return ſo many Men that have Freehold, but *probos & legales homines de viſineto*; therefore at the Common Law, thoſe were good Inqueſts to try any Man that were not excommunicated nor under any Out-law. 'Tis true, there are Statutes that ſay, all Jury-men ſhall have Freehold; but we ſay theſe Statutes do not extend to the City of *London*, but that it is governed by its own Cuſtoms; and we ſay it is the Cuſtom that Citizens of Ability have been returned, that have no Freehold. But granting what we do not, by way of ſuppoſal, my Lord, it does not extend to this Caſe, becauſe Tryals are to be according to the Uſe at Common Law, by the Statute of Queen *Mary*, which does ſet them at large again; and that is the Reaſon the Priſoner, in this Caſe, hath his Challenge for 35, and is in other Caſes reſtrained to 20; ſo that we ſay, theſe Men of Ability are good, and there is no Statute affects them.

L. C. J. Mr. *Pollexfen*, Do you find any Judgment, that in Caſes of Treaſon by Common Law, they might except for want of Freehold? Have you any Reſolution in the Caſe?

Mr. *Pollexf.* I think there are Books that ſay, at Common Law there muſt be Freehold.

L. C. J. What, in Treaſon?

Mr. *Pollexf.* No, my Lord.

L. C. J. Unleſs you ſpeak of Treaſon, you do not ſpeak *ad Idem*. For I do take it that in Caſes of Treaſon, or in Caſes of Felony, at the Common Law, they had no liberty to except to Jurors, that they had not any Freehold, but that at the Common Law any good and lawful Men might paſs. Then take as introductive of a new Law the Statute of *H.* 5. I am of the mind that this Statute of *H.* 5. peradventure may extend to Treaſons and Felonies; but when the Statute of Queen *Mary* comes and ſays, all Tryals ſhall be by ſuch Evidence, and in ſuch manner, as by Common Law they ought to have been, I do not ſee how it is poſſible to make an Objection afterwards of this nature. For, admitting this Act of Parliament of *H.* 5. had altered the Common Law, and given a Challenge, why then when the Statute of Queen *Mary* comes and ſets all Tryals at large in the Caſe of Treaſons, then certainly the Challenge is gone again, and I doubt you will not find one Exception in this Caſe, ever ſince that Statute concerning the Jury's Freehold in Caſes of Treaſon, but it hath generally paſſed otherwiſe, and there hath not been any ever excepted; I doubt it will be a very hard thing to maintain ſuch a Challenge now. Here are my Lords and Brothers will be pleaſed to deliver their Opinions. It is a Buſineſs of great Conſequence, not only for this Noble Perſon at the Bar, but for all other Perſons.

L. C. Bar. I agree with your Lordſhip perfectly, but if the Counſel had laid a right Foundation that it had been ſo at Common Law, there had been much ſaid; But I take it at Common Law there was no Challenge for want of Freehold, and I am induced to think ſo, for otherwiſe what needed the Statute of *H.* 5. been made? But whether it extend to Treaſon or no, I am not ſo clear. And if it did, it's wiped off again by that of Queen *Mary*, which reduces all to the Common Law Tryal.

Mr. *J. Windham*. I am of the ſame Opinion: I conceive at Common Law, lack of Freehold no good Cauſe of Challenge. 'Tis true, that Challenge is given in ſome Caſes by Act of Parliament, yet I doubt whether it extend to a thing of ſo high nature as Treaſon, for other Statutes have not mentioned any thing of Treaſon. But ſuppoſe 2 *H.* 5. did extend to it, yet it is very plain, the Statute of 1 and 2 Queen *Mary* hath ſet all at large again, they are to be good and lawful Men, and I do not find that any thing of the Lawfulneſs muſt be the Freehold. And therefore, I conceive this is no juſt Exception in this Caſe.

Mr. *J. Jones*. My Lord, I am of the ſame Opinion: I am of Opinion that the Common Law did not require Freehold to be a good Cauſe of Challenge, in the Caſe of Treaſon, and the rather, Becauſe at the Common Law, a Man that was indicted of High-Treaſon had liberty to challenge, peremptorily, to the Number of 35 Perſons. My Lord, if the Common Law be altered by the Statute of *H.* 5. yet I take it, that the Statute of 1 and 2 *Ph.* and *M.* does reſtore the Common Law in this particular Point. For whereas there was a Statute of *H.* 8. to reſtrain the Priſoner to the Number of 20 for his Challenge, now the Statute reſtoring it to Common Law, the Priſoner hath his Challenge to 35, as he had before that Statute of *H.* 8. So I take it, the King ſhall have his Privilege alſo to try a Priſoner for Treaſon, by Perſons that have not Freehold.

Mr. *J. Charlton*. I am of the ſame Opinion. And truly the rather, becauſe no Preſident hath been offered of any ſuch Challenge before, and many Men have ſuffered, and ſure if it could have been, many would have made uſe of it.

Mr. *J. Levins*. I am of Opinion 'tis not to be allowed. I do not think my ſelf driven to the neceſſity to determine now, whether Freehold

hold was a good Challenge at Common Law in point of Treaſon. I think the Statute of *Ph.* and *M.* hath reſtored the Tryals to the Common Law. What was the Common Law? The Common Law is the Cuſtom of *England*, which is other in Cities than in Counties, and the Cuſtom of *London* is part of that Common Law. So, tho' it be a Cauſe of Challenge in a County at large, yet it is not a Cauſe of Challenge in Cities, where Freeholders are not to be found. Now that which ſatisfies me is, That this Cuſtom is reſtored by the Statute of *Ph.* and *Mary* becauſe never ſuch a Challenge hath been. And it is known when 20 were tryed for Treaſon together in this very place, and one of them a notable cunning Lawyer, and if ſuch a Challenge were to have been allowed, no doubt he would have made uſe of it, but the Challenge was not taken, and if he had made ſuch a Challenge, and it had been allowed, perhaps he could not have been tryed: That was *Cook*. I have heard ſeveral Perſons tryed for Treaſon my ſelf, and never heard it taken. Therefore I am of Opinion, that before any Statute was made in this Caſe, it was the Cuſtom in *London* to try without Freeholds, and ſince by the Statute of Queen *Mary* 'tis reſtored.

Mr. *Bar. Street.* I think there was no ſuch Challenge at Common Law. The Jury were only to be *probos & legales homines*, and no more, till the Statute made it ſo, but there is a particular Reſervation for Corporations. And certainly, if this ſhould be admitted to be a good Challenge, tho' it were between Party and Party, there would be in ſome Corporations a perfect Failure of Juſtice. So that without doubt at Common Law there was no ſuch Challenge. As for the Statute of *H.* 5. 'tis gone by that of Queen *Mary*. If this were admitted within *London*, nothing would be more miſchievous to this Corporation. Methinks we have been very nice in this matter, when the Life of the King is at ſtake, and all the Cuſtoms and Privileges of the City of *London* ſeem to be levelled at in this point. I am of the Opinion with the reſt of the Judges, that this Challenge ought to be over-ruled.

J. Withins. I am of the ſame Opinion.

L. C. J. My Lord, the Court is of Opinion, upon hearing your Counſel, and the King's, that it is no good Challenge to a Jury in a Caſe of Treaſon, that he has not Freehold within the City. But I muſt tell your Lordſhip withal, That your Lordſhip has nothing of Hardſhip in this Caſe, for notwithſtanding that, I muſt tell you, you will have as good a Jury, and better than you ſhould have had in a County of 4 *l.* or 40 *s.* a year Freeholders. The Reaſon of the Law for Freeholds is, That no ſlight Perſons ſhould be put upon a Jury, where the Life of a Man or his Eſtate comes in queſtion, but in the City the Perſons that are impannelled are Men of Quality and Subſtance, Men that have a great deal to loſe. And therefore your Lordſhip hath the ſame in Subſtance, as if a Challenge was allowed of Freehold. It will be no kind of Prejudice to your Lordſhip in this Caſe. Therefore, if you pleaſe, apply your ſelf as the Jury is called, and make your Exceptions, if you ſhall make any.

L. C. J. Mr. *Pollexfen*, You ſhall have liberty to ſtay any where here, if you pleaſe.

Counſel. Here is ſuch a great Crowd, my Lord, we have no room.

Then the Jury-men were called, and after the Lord Ruſſel *had challenged One and Thirty of them, the Jury ſworn were as follows.*

John Martin	Jur'	*William Butler*
William Rouſe		*James Pickering*
Jervas Seaton		*Thomas Jeve.*
William Faſhion		*Hugh Noden*
Thomas Short		*Robert Brough*
George Torriano		*Thomas Omeby.*

Then was made Proclamation for Information.

Cl. of Cr. William Ruſſel Eſq; hold up thy Hand, (*which he did.*) You of the Jury look upon the Priſoner, and hearken to his Cauſe. He ſtands Indicted, by the Name of ——— *prout* before in the Indictment. Upon this Indictment he hath been arraigned, and thereunto pleaded Not Guilty, and for his Tryal hath put himſelf upon his Country, which Country you are: Your Charge is to inquire whether he be Guilty of this High Treaſon whereof he ſtands Indicted, or Not Guilty: If you find him Guilty, you ſhall inquire, *&c.*

Mr. *North.* May it pleaſe your Lordſhip, and you that are ſworn, The Priſoner at the Bar ſtands charged in this Indictment with no leſs than the conſpiring the Death of the King's Majeſty, and that in order to the ſame, he did, with other Traitors named in the Indictment, and others not known, *November* 2. in the 34th Year of this King, in the Pariſh of *Baſſiſhaw*, within the City of *London*, meet and conſpire together to bring our Sovereign Lord the King to Death, to raiſe War and Rebellion againſt him, and to maſſacre his Subjects. And in order to compaſs theſe wicked Deſigns, there being aſſembled, did conclude to ſeize the King's Guards, and His Majeſty's Perſon. This is the Charge, the Defendant ſays he is not Guilty, if we prove it upon him, it will be your Duty to find it.

Mr. *At. Gen.* My Lord, and you Gentlemen of the Jury, moſt of our Evidence againſt this Honourable Perſon at the Bar is to this purpoſe. This Perſon, the Duke of *Monmouth*, my Lord *Grey*, Sir *Thomas Armſtrong*, and Mr. *Ferguſon*, they were the Council of State, as I may call them, to give forth Directions for the general Riſing that hath appeared was to have been within this Kingdom. The Riſing was of great Concern and Expence, and muſt be managed by Perſons of Intereſt, Prudence, and great Secrecy. Theſe Gentlemen had frequent Meetings in *October* and *November* laſt, (for then, you may refreſh your Memories again, was the general Riſing to be) and there they did conſult how to manage the Riſing, they conſulted how to ſeize the King's Guards; And this Noble Perſon being mixed with theſe others, eſpecially with *Ferguſon*, who with others of an inferior Rank was alſo engaged in a Cabal for managing worſer things (tho' this is bad enough;) at ſeveral Meetings they receive Meſſages from my Lord *Shaftsbury* touching the Riſing. They being looked upon as the Perſons that were to

conclude and ſettle the time and all circumſtances about it.

We ſhall make it appear to you in the courſe of our Evidence, that thoſe Underlings (for this was the great Conſult, and moved all the other Wheels) who managed the Aſſaſſination, did take notice that theſe Lords and Gentlemen of Quality were to manage and ſteer the whole buſineſs of the Riſing. It ſeems theſe Gentlemen could not give the Earl of *Shaftsbury* ſatisfaction to his mind, for he preſſed them to keep their day, which was the *17th* of *November* laſt; but the honourable perſon at the Bar, and the reſt, made him this anſwer, That Mr. *Trenchard* had failed them, for that he had promiſed to have 1000 Foot and 2 or 300 Horſe at four hour's warning, but now it was come to paſs, he could not perform it, that ſome Perſons in the *Weſt* would not joyn with them, and therefore at this time they could not proceed, and therefore they muſt defer the day. And as a Counſel, they ſent my Lord *Shaftsbury* word, he muſt be contented, they had otherwiſe reſolved, and thereupon my Lord *Shaftsbury* went away, and Mr. *Ferguſon* with him.

To carry on this practice, they took others into their Council, Sir *Thomas Armſtrong* was left out, and there falling that ſcandalous Report upon my Lord *Grey*, he was to be left out, and then there was to be a new Council of Six, whereas the inferior Council to manage the Aſſaſſination was Seven. At this Council there was this honourable Perſon at the Bar, the Duke of *Monmouth*, my Lord *Howard*, and another honourable Perſon, who I am ſorry to name upon this account, who hath this morning prevented the hand of Juſtice upon himſelf, my Lord of *Eſſex*, and Colonel *Sidney*, and Mr. *Hambden*: Theſe ſix had their frequent Conſults at this honourable Perſon's Houſe; for they had excluded Sir *Thomas Armſtrong*, and my Lord *Grey*, for theſe Gentlemen would have the Face of Religion, and my Lord *Grey* was in their eſteem ſo ſcandalous, that they thought that would not prevail with the people, if he was of the Council. There they debated how they ſhould make this Riſing, after ſeveral Conſultations they came to this Reſolution: That before they did fall upon this Riſing, they ſhould have an exact account both of the Time and Method of the *Scotch* Riſing; and thereupon a Meſſenger was ſent on purpoſe by Colonel *Sidney*, viz. *Aaron Smith*, to invite *Scotch* Commiſſioners to treat with theſe Noble Lords. Purſuant to this, juſt before the Plot brake out, ſeveral from *Scotland* came to treat with them how to manage the work; 30000 *l.* was demanded by the *Scots*, in order that they ſhould be ready in *Scotland*; then they fell to 10000, and at laſt (for the *Scots* love Money) they fell to 5000, which they would take and run all hazards, but they not coming to their Terms, that broke off that Week the Plot was diſcovered.

Gentlemen, if we prove all theſe Inſtances, beſides we ſhall call ſome to ſhew you that all the inferior Party ſtill looked upon theſe to be the Heads; and tho' they kept it ſecret, God hath ſuffered it to come to light, with as plain an Evidence as ever was heard.

Mr. Serj. *Jefferies*. I will not take up any of your Lordſhip's time; we will call our Witneſſes to prove the Fact Mr. *Attorney* hath opened. Swear Colonel *Rumſey*. (*Which was done.*) Pray Colonel *Rumſey* will you give my Lord and the Jury an Account, from the beginning to the end, of the ſeveral Meetings that were, and what were the Debates of thoſe Meetings.

Col. *Rumſey* My Lord, I was at my Lord *Shaftsbury*'s Lodging, where he lay, down by *Wapping* about the latter end of *October*, or the beginning of *November*, and he told me there was met at one Mr. *Sheppard*'s houſe the Duke of *Monmouth*, my Lord *Ruſſel*, my Lord *Grey*, Sir *Thomas Armſtrong*, and Mr. *Ferguſon*, and he deſired me to ſpeak to them to know what reſolution they were come to about the Riſing of *Taunton*: I did go there accordingly, and call for Mr. *Sheppard*, and he carried me up where they were, and the Anſwer that was there made me was, That Mr. *Trenchard* had failed them, and there would be no more done in the matter at that time.

Mr. *At. Gen.* Tell the whole paſſage.

Col. *Rumſey*. I did ſay my Lord *Shaftsbury* had ſent me to know what reſolution they had taken about the Riſing of *Taunton*. They made me this anſwer, That Mr. *Trenchard* had failed them, that he had promiſed 1000 Foot and 300 Horſe, but when he came to perform it, he could not. He thought the people would not meddle, unleſs they had ſome time to make proviſion for their Families.

L. C. J. Who had you this Meſſage from?

Col. *Rumſey*. Mr. *Ferguſon* did ſpeak moſt of it.

L. C. J. Who ſent this Meſſage back?

Col. *Rumſey*. Mr. *Ferguſon* made the Anſwer, my Lord *Ruſſel* and the Duke of *Monmouth* were preſent, and I think my Lord *Grey* did ſay ſomething to the ſame purpoſe.

Mr. *At. Gen.* Pray how often were you with them at that houſe?

Col. *Rumſey*. I do not know, I was there more than once, I was there either another time, or elſe I heard Mr. *Ferguſon* make a Report of another Meeting to my Lord *Shaftsbury*.

Mr. Serj. *Jefferies*. Was my Lord *Ruſſel* in the Room when this Debate was?

Col. *Rumſey*. Yes, my Lord.

Mr. *At. Gen.* What did they ſay further?

Col. *Rumſey*. That was all at that time, that I remember.

Mr. *At. Gen.* Was there nothing of my Lord *Shaftsbury* to be contented?

Col. *Rumſey*. Yes, That my Lord *Shaftsbury* muſt be contented; and upon that he took his Reſolution to be gone.

L. C. J. Did you hear any ſuch Reſolution from him?

Col. *Rumſey*. Yes, my Lord.

Mr. *At. Gen.* Did you know of their meeting there, or was it by my Lord *Shaftsbury*'s direction?

Col. *Rumſey*. No, but my Lord told me, I ſhould find ſuch Perſons, and accordingly I found them; and this Anſwer was given.

Mr. *At. Gen.* What time did you ſtay?

Col. *Rumſey*. I think I was not there above a quarter of an Hour.

Mr. *At. Gen.* Was there any Diſcourſe happened while you were there about a Declaration?

Col. *Rumſey*. I am not certain whether I did hear ſomething about a Declaration there, or that

that Mr. *Ferguſon* did report it to my Lord *Shaftsbury*, that they had debated it.

Mr. Serj. *Jefferies*. To what purpoſe was the Declaration?

L. C. J. We muſt do the Priſoner that Right; He ſays he can't tell whether he had it from him or Mr. *Ferguſon*.

Mr. *At. Gen.* Did you hear no Diſcourſe to what it tended?

Col. *Rumſey*. My Lord, There was ſome Diſcourſe about ſeeing what Poſture the Guards were in.

One of the Jury. By whom, Sir?

Col. *Rumſey*. By all the Company that was there.

L. C. J. What was that Diſcourſe?

Col. *Rumſey*. To ſee what Poſture they were in, that they might know how to ſurprize them.

L. C. J. The Guards?

Col. *Rumſey*. Yes, That were at the *Savoy*, and the *Mews*.

L. C. J. Whoſe were the words? Tell the words as near as you can.

Col. *Rumſey*. My Lord, The Diſcourſe was, that ſome ſhould——

L. C. J. Who made that Diſcourſe?

Col. *Rumſey*. My Lord, I think Sir *Tho. Armſtrong* began it, and Mr. *Ferguſon*.

Mr. *At. Gen.* Was it diſcourſed among all the Company?

Col. *Rumſey*. All the Company did debate it. Afterwards they thought it neceſſary to ſee with what care and vigilance they did guard themſelves at the *Savoy* and the *Mews*, whether they might be ſurprized or not.

Mr. *At. Gen.* Were there any undertook to go and ſee there?

Col. *Rumſey*. There were ſome Perſons.

Mr. Serj. *Jefferies*. Name them.

Col. *Rumſey*. I think the Duke of *Monmouth*, my Lord *Grey*, and Sir *Tho. Armſtrong*.

Mr. Serj. *Jefferies*. Was my Lord *Ruſſel*, the Priſoner, there, when they undertook to take the view?

Col. *Rumſey*. Yes, Sir.

Mr. *At. Gen.* To what purpoſe was the view?

Col. *Rumſey*. To ſurprize them if the Riſing had gone on.

Mr. Serj. *Jefferies*. Did you obſerve by the Debates that happened, that they did take Notice there was a Riſing intended?

Col. *Rumſey*. Yes.

Mr. Serj. *Jefferies*. And that Direction was given to take a view of the Guards, if the Riſing had gone on?

Col. *Rumſey*. Yes.

L. C. J. Pray, Sir, declare juſtly the diſcourſe.

Col. *Rumſey*. I went to them from my Lord *Shaftsbury*: And I did tell them, That my Lord did pray they would come to ſome Reſolution; and they told me, Mr. *Trenchard* they depended upon, for *Taunton* had failed them, who when he came up to Town firſt at the Term, had aſſured them, that in three or four Hours time, he could have *One Thouſand* Foot, and *Three Hundred* Horſe: But now it came to be tryed, he anſwered it was not poſſible for him to undertake it, for People would not ruſh into it of a ſudden, but have ſome time to prepare for their Families.

Mr. *At. Gen.* Was it pretended there ſhould be a Riſing at that time?

Col. *Rumſey*. Yes, the 19th of *November* was appointed for the Riſing.

L. C. J. Was it before that time, you went to preſs them from my Lord *Shaftsbury*?

Col. *Rumſey*. Yes, I think it was a matter of a Fortnight before, or ſomething more. For I think it was concluded *Sunday* fortnight after my Lord *Grey* met.

Mr. *At. Gen.* But you ſay, beſides what you heard there, you underſtood there was to be a Riſing at that time; Was you to be engaged in this?

Col. *Rumſey*. Yes, I was.

L. C. J. You muſt ſpeak ſo, that what you deliver may be ſenſible; for if you ſpeak, I apprend ſo and ſo, that will be doubtful.

Col. *Rumſey*. No, my Lord, the Riſing was determined, and I was to have gone to *Briſtol*.

Mr. *At. Gen.* In what capacity, as *Colonel* or *Captain*?

Col. *Rumſey*. There was no Determination of that, no Quality.

L. C. J. By whoſe Appointment was that?

Col. *Rumſey*. My Lord *Shaftsbury* ſpake that to me.

Mr. Serj. *Jefferies*. But pray, Col. *Rumſey*, this you are very able to know, what the Debates were, and need not be pumped with ſo many Queſtions; Pray, was there any Debate, when you came with the Meſſage from my Lord *Shaftsbury*'s, was there a Debate about the Riſing?

Col. *Rumſey*. There was no Debate of it, becauſe they made anſwer, Mr. *Trenchard* had failed them.

Mr. Serj. *Jefferies*. But did not they take notice of the Riſing? Give an account of it.

Col. *Rumſey*. I have done it twice.

Jury. We deſire to know the Meſſage from the Lord *Shaftsbury*.

L. C. J. Direct your ſelf to the Court: Some of the Gentlemen have not heard it, they deſire you would with a little more loud Voice repeat the Meſſage you were ſent of from my Lord *Shaftsbury*.

Col. *Rumſey*. I was ſent by my Lord, to know the Reſolution of the Riſing in *Taunton*; they anſwered, Mr. *Trenchard*, whom they depended upon for the Men, had failed them, and that it muſt fall at that time, and my Lord muſt be contented.

Mr. *At. Gen.* Was the Priſoner at the Bar preſent at that Debate?

Col. *Rumſey*. Yes.

Mr. Serj. *Jefferies*. Did you find him averſe to it, or agreeing to it.

Col. *Rumſey*. Agreeing to it.

Baron Street. What ſaid my Lord *Shaftsbury*?

Col. *Rumſey*. Upon my return he ſaid, He would be gone, and accordingly did go.

Mr. Serj. *Jefferies*. If my Lord *Ruſſel* pleaſes to ask him any Queſtions, he may.

L. *Ruſſel*. Muſt I ask him now?

L. C. J. Yes, my Lord, propoſe your Queſtions to me.

L. *Ruſſel*. I have very few Queſtions to ask him, for I know little of the matter, for it was the greateſt accident in the World I was there, and when I ſaw that Company was there, I would have been gone again. I came there accidentally to ſpeak with Mr. *Sheppard*; I was juſt come to Town, but there was no Diſcourſe

of

of ſurprizing the Guards, nor no undertaking of raiſing an Army.

L. C. J. We will hear you to any thing by and by, but that which we now deſire of your Lordſhip is, as the Witneſſes come, to know if you would have any particular Queſtions asked of them.

L. *Ruſſel.* I deſire to know, if I gave any Anſwer to any Meſſage about the Riſing: I was up and down; I do not know what they might ſay when I was in the Room; I was taſting of Wine.

L. C. J. Did you obſerve that my Lord *Ruſſel* ſaid any thing there, and what?

Col. *Rumſey.* Yes, my Lord *Ruſſel* did ſpeak.

L. C. J. About what?

Col. *Rumſey.* About the Riſing of *Taunton.*

L. *Ruſſel.* It was Sir *Tho. Armſtrong* that converſed with Mr. *Trenchard.*

L. C. J. What did you obſerve my Lord *Ruſſel* to ſay?

Col. *Rumſey.* My Lord *Ruſſel* did diſcourſe of the Riſing.

L. *Ruſſel.* How ſhould I diſcourſe of the Riſing at *Taunton,* that knew not the Place, nor had knowledge of *Trenchard?*

Mr. *At. Gen.* Now, my Lord, we will give you an account, that my Lord *Ruſſel* appointed this place, and came in the dark without his Coach.

L. *Ruſſel.* My Lord, I think the Witneſs was asked, if I gave my Conſent.

L. C. J. What ſay you, Did my Lord give any Conſent to the Riſing?

Col. *Rumſey.* Yes, my Lord, he did.

Mr. *At. Gen.* Pray Swear Mr. *Sheppard.*

[*Which was done.*

Pray will you ſpeak aloud, and give an account to my Lord, and the Jury, of the Meetings at your Houſe, and what was done.

Mr. *Sheppard.* In the month of *October* laſt, as I remember, Mr. *Ferguſon* came to me in the Duke of *Monmouth*'s Name, and deſired the conveniency of my Houſe, for him and ſome other Perſons of Quality to meet there. And as ſoon as I had granted it, in the Evening the Duke of *Monmouth,* my Lord *Grey,* my Lord *Ruſſel,* Sir *Thomas Armſtrong,* Col. *Rumſey,* and Mr. *Ferguſon* came. Sir *Thomas Armſtrong* deſired me, that none of my Servants might come up, but they might be private; ſo what they wanted I went down for, a Bottle of wine or ſo. The ſubſtance of their Diſcourſe was, how to ſurprize the King's Guards: And in order to that, the Duke of *Monmouth,* my Lord *Grey,* and Sir *Thomas Armſtrong,* as I remember, went one night to the *Mews,* or thereabout, to ſee the King's Guards. And the next time they came to my Houſe, I heard Sir *Thomas Armſtrong* ſay, the Guards were very remiſs in their places, and not like Soldiers, and the thing was feaſible, if they had ſtrength to do it.

Mr. *At. Gen.* How many Meetings had you there?

Mr. *Sheppard.* I remember but *twice,* Sir.

Mr. *At. Gen.* Did they meet by chance, or had you notice they would be there that night?

Mr. *Sheppard.* Yes, I did hear it before.

Mr. *Sol. Gen.* Who had you notice would be there?

Mr. *Sheppard.* The Duke of *Monmouth,* my Lord *Grey,* my Lord *Ruſſel,* Sir *Tho. Armſtrong,* Col. *Rumſey,* and Mr. *Ferguſon.*

Mr. *At. Gen.* Did they come with their Coaches, or a foot, in the night time, and in the dark?

Mr. *Sheppard.* I cannot tell; it was in the Evening, I did not let them in.

Mr. *At. Gen.* Were there any Coaches at the door?

Mr. *Sheppard.* None that I heard, or ſaw, they came not all together, but immediately one after another.

Mr. Serj. *Jefferies.* Had they any Debate before they went into the Room?

Mr. *Sheppard.* No, they went readily into the Room.

Mr. Serj. *Jefferies.* Was my Lord *Ruſſel* both times there?

Mr. *Sheppard.* Yes, Sir, as I remember.

Mr. Serj. *Jefferies.* Had you any particular buſineſs with my Lord *Ruſſel,* or he with you?

Mr. *Sheppard.* No, not at that time, but ſince I have had, about the Affairs of my Lord *Shaftsbury.*

Mr. Serj. *Jefferies.* Do you remember, Col. *Rumſey* at the firſt time had any Diſcourſe about any private buſineſs relating to my *Ruſſel*?

Mr. *Sheppard.* No, I do not remember it.

Mr. *At. Gen.* Beſides the ſeizing of the Guards, did they diſcourſe about Riſing?

Mr. *Sheppard.* I do not remember any further Diſcourſe, for I went ſeveral times down to fetch Wine, and Sugar, and Nutmeg, and I do not know what was ſaid in my abſence.

Mr. Serj. *Jefferies.* Do you remember any Writings or Papers read at that time?

Mr. *Sheppard.* None that I ſaw.

Mr. Serj. *Jefferies.* Or that you heard of?

Mr. *Sheppard.* Yes, now I recollect my ſelf, I do remember one Paper was read.

Mr. Serj. *Jefferies.* To what purpoſe was it?

Mr. *Sheppard.* It was ſomewhat in the nature of a Declaration; it was read by Mr. *Ferguſon,* who was preſent at the reading, I cannot ſay, whether they were all preſent or not. The purport of it was ſetting forth the Grievances of the Nation, but truly what Particulars I can't tell: It was a pretty large Paper.

Mr. *At. Gen.* But you can tell the Effect of it, When was that to be ſet out?

Mr. *Sheppard.* It was not diſcourſed, it was ſhewn only, I ſuppoſe, for Approbation.

Mr. *At. Gen.* Who was it ſhew'd to?

Mr. *Sheppard.* Sir *Tho. Armſtrong.*

Mr. Serj. *Jefferies.* Who elſe?

Mr. *Sheppard.* As I remember the Duke was preſent, and I think Col. *Rumſey.*

Col. *Rumſey.* No, I was not, it was done before I came.

Mr. Serj. *Jefferies.* What was the deſign of that Paper? Recollect your ſelf, what was the deſign?

Mr. *Sheppard.* The deſign of that Paper, was in the nature of a Declaration, ſetting forth the Grievances of the Nation, in order to a Riſing, I ſuppoſe by the purport of the Paper; but cannot remember the particular Words of it.

Foreman of the Jury. Can you ſay my Lord *Ruſſel* was there, when that Declaration was read, as you call it?

Mr. *Sheppard.* I can't ſay that.

Mr. *At. Gen.* But he was there when they talked of ſeizing the Guards?

Mr. *Sheppard.* Yes, my Lord was there then.

L. *Ruſſel.* Pray, Mr. *Sheppard*, do you remember the time when theſe meetings were?

Mr. *Sheppard.* I can't be poſitive as to the Time, I remember it was at the time my Lord *Shaftsbury* was abſent from his own Houſe, and he abſented himſelf from his own Houſe about *Michaelmas* day; but I can't be poſitive as to the Time.

L. *Ruſſel.* I never was but once at your Houſe, and there was no ſuch deſign as I heard of. I deſire that Mr. *Sheppard* may recollect himſelf.

Mr. *Sheppard.* Indeed, my Lord, I can't be poſitive in the times. My Lord, I am ſure, was at one meeting.

L. C. J. But was he at both?

Mr. *Sheppard.* I think ſo, But it was 8 or 9 Months ago, and I can't be poſitive.

L. *Ruſſel.* I can prove I was then in the Country. Col. *Rumſey* ſaid there was but one meeting.

Col. *Rumſey.* I do not remember I was at two; if I was not, I heard Mr. *Ferguſon* relate the Debates of the other meeting to my Lord *Shaftsbury.*

L. *Ruſſel.* Is it uſual for the Witneſſes to hear one another?

L. C. J. I think your Lordſhip need not concern your ſelf about that, for I ſee the Witneſſes are brought in one after another.

L. *Ruſſel.* There was no deſign.

Mr. Serj. *Jefferies.* He hath ſworn it.

Mr. *At. Gen.* Swear my Lord *Howard.*

[*Which was done.*

Pray will your Lordſhip give an account to the Court, what you know of a Riſing deſigned before my Lord *Shaftsbury* went away, and afterwards how it was continued on.

L. *Howard.* My Lord, I appear with ſome Confuſion. Let no man wonder that it is troubleſome to me. My Lord, as to the Queſtion Mr. *Attorney* puts to me, this is the Account I have to give. 'Tis very well known to every one, how great a ferment was made in the City, upon occaſion of the long diſpute about the Election of Sheriffs: And this ſoon produced a greater freedom and liberty of Speech one with another, than perhaps had been uſed formerly, tho' not without ſome previous preparations and diſpoſitions made to the ſame thing. Upon this occaſion among others, I was acquainted with Captain *Walcot*, a Perſon that had been ſome Months in *England*, being returned out of *Ireland*, and who indeed I had not ſeen for 11 Years before. But he came to me as ſoon as he came out of *Ireland*, and when theſe unhappy diviſions came, he made very frequent applications to me; and tho' he was unknown himſelf, yet being brought by me he ſoon gained a confidence with my Lord *Shaftsbury*, and from him derived it to others, when this unhappy Rent and Diviſion of mind was, he having before got himſelf acquainted with many Perſons of the City, had entered into ſuch Counſels with them, as afterwards had the Effect, which in the enſuing narrative I ſhall relate to your Lordſhip. He came to me and told me that they were now ſenſible all they had was going, that this Force put upon them——

L. C. J. Pray, my Lord, raiſe your voice, elſe your Evidence will paſs for nothing.

One of the Jury. We cannot hear, my Lord.

L. *Howard.* There is an unhappy accident happen'd that hath ſunk my Voice, I was but juſt now acquainted with the Fate of my Lord of *Eſſex*—My Lord, I ſay, He came to me, and did acquaint me, that the People were now ſo ſenſible, that all their Intereſt was going, by that violence offered to the City in their Elections, that they were reſolved to take ſome courſe to put a ſtop to it, if it were poſſible: He told me there were ſeveral Conſults and Meetings of Perſons about it, and ſeveral Perſons had begun to put themſelves into a diſpoſition, and preparation to Act; That ſome had furniſhed themſelves with very good Horſes, and kept them in the moſt ſecret and blind Stables they could; That divers had intended it, and for his own part, he was reſolved to imbark himſelf in it. And having an Eſtate in *Ireland*, he thought to diſpatch his Son thither; (for he had a good Real Eſtate, and a great Stock, how he diſpoſed of his Real Eſtate I know not;) But he ordered his Son to turn his Stock into money to furniſh him for the occaſion: This I take to be about *Auguſt.* His Son was ſent away. Soon after this, the Son not being yet returned, and I having ſeveral accounts from him, wherein I found the Fermentation grew higher and higher, and every day a nearer approach to Action: I told him I had a neceſſity to go into *Eſſex* to attend the Concerns of my own Eſtate, but told him, how he might by another name convey Letters to me, and gave him a little Cant, by which he might blind and diſguiſe the Matter he wrote about, when I was in the Country. I receiv'd two or three Letters from him, that gave me an Account in that diſguiſed Stile, but ſuch as I underſtood, that the Negotiation which he had with my Correſpondents was going on, and in good Condition; and it was earneſtly deſired, I would come to Town; this was the middle of *September.* Notwithſtanding was willing to ſee the Reſult of that great Affair, upon which all Men's Eyes were fixed, which was the Determination of the Shrivalty about that time. So I ordered it to fall into Town, and went to my own Houſe on *Saturday* night, which was *Michaelmas* day. On *Sunday* he came to me, and dined with me, and told me (after a general account given me of the Affairs of the times) that my Lord *Shaftsbury* was ſecretted and withdrawn from his own Houſe in *Alderſgate ſtreet*; and that though he had a Family ſetled, and had abſconded himſelf from them, and divers others of his Friends and Confidents; yet he did deſire to ſpeak with me, and for that purpoſe ſent him to ſhew me the way to his Lodging: He brought me to a Houſe at the lower end of *Wood-ſtreet*, one *Watſon*'s Houſe, and there my Lord was alone. He told me he could not but be ſenſible, how innocent ſoever he was, both he and all honeſt Men were unſafe, ſo long as the Adminiſtration of Juſtice was in ſuch Hands as would accommodate all things to the Humor of the Court. That in the Senſe of this he thought it but reaſonable to provide for his own Safety, by withdrawing himſelf from his own Houſe into that Retirement. That now he had ripen'd Affairs to that head, and had things in that Preparation, that he did not doubt but he ſhould be able, by thoſe Men that would be in readineſs in *London*, to turn the Tide, and put a ſtop to the Torrent that was ready to overflow. But he did complain to me, that his Deſign, and the Deſign of the Publick was very much obſtructed by the unhandſome Deportment of the

the Duke of *Monmouth*, and my Lord *Ruſſel*, who had withdrawn themſelves, not only from his Aſſiſtance, but from their own Engagements and Appointments. For when he had got ſuch a formed Force as he had in *London*, and expected to have it anſwered by them in the Country, they did recede from it, and told him they were not in a Condition, or Preparation in the Country, to be concurrent with him at that time. This he looked upon but as an artificial Excuſe, and as an Inſtance of their Intentions, wholly to deſert him; but notwithſtanding there was ſuch Preparation made in *London*, that if they were willing to loſe the Honour of being concurrent with him, he was able to do it himſelf, and did intend ſpeedily to put it into Execution. I asked him, what Forces he had, he ſaid he had enough; ſays I, what are you aſſured of? Says he, there is above *Ten Thouſand* brisk Boys are ready to follow me, whenever I hold up my Finger: Says I, how have you methoded this, that they ſhall not be cruſhed, for there will be a great Force to oppoſe you? Yes, he anſwered, but they would poſſeſs themſelves of the Gates; and theſe *Ten Thouſand* Men in 24 Hours, would be multiplied into five times the Number, and be able to make a Sally out, and poſſeſs themſelves of *Whitehall*, by beating the Guards. I told him, this was a fair Story, and I had reaſon to think, a Man of his Figure would not undertake a thing that might prove ſo fatal, unleſs it were laid on a Foundation that might give a prudent Man ground to hope it would be ſucceſsful. He ſaid he was certain of it, but confeſſed it was a great Diſappointment, that theſe Lords had failed him: I told him, I was not provided with an Anſwer at that time, That he well knew me, and knew the general Frame and Bent of my Spirit. But I told him, I looked upon it as dangerous, and ought to be laid deep, and to be very well weigh'd and conſider'd of; and did not think it a thing fit to be enter'd upon, without the Concurrence of thoſe Lords: And therefore deſired, before I diſcover'd my own Inclination, to diſcourſe with thoſe Lords. He did conſent, with much ado; but, ſays he, you will find they will wave it, and give doubtful and deferring Anſwers, but you will find this a Truth. I went to *Moor-Park* the next day, where the Duke of *Monmouth* was, and told him the great Complaint my Lord *Shaftsbury* had made, that he failed him: Says he, I think he is mad, I was ſo far from giving him any Encouragement, that I did tell him from the beginning, and ſo did my Lord *Ruſſel*, there was nothing to be done by us in the Country at that time. I did not then own I had ſeen my Lord, but ſpeak as if this were brought me by a third Perſon, becauſe he had not given me liberty to tell them where his Lodging was. Says I, My Lord, I ſhall be able to give a better account of this in a day or two; Shall I convey it to my Lord, that you are willing to give a Meeting? Yes, ſays he, with all my Heart: This was the *ſecond*, *third*, or *fourth* of *October*; I came to Town on *Saturday*, and was carried to him on *Monday*; and I ſuppoſe this was *Tueſday* the *ſecond* of *October*; On *Wedneſday* I think I went to him again (but 'tis not very material) and told him I had been with the Duke of *Monmouth*, and given him a punctual Account of what I had from him; and the Duke did abſolutely diſown any ſuch thing; and told me, he never did give him any Encouragement to proceed that way, becauſe the Countries were not in a diſpoſition for Action, nor could be put in readineſs at that time: Says my Lord *Shaftsbury*, 'Tis falſe; they are afraid to own it. And, ſays he, I have reaſon to believe, there is ſome artificial Bargain between his Father and him, to ſave one another: For when I have brought him to Action, I could never get him to put on, and therefore I ſuſpect him: And, ſays he, ſeveral honeſt Men in the City have puzzled me, in asking how the Duke of *Monmouth* lived: Says he, they puzzled me, and I could not anſwer the Queſtion; for I know he muſt have his Living from the King; and ſays he, We have different Proſpects; We are for a *Common-wealth*, and he hath no other Deſign but his own perſonal Intereſt, and that will not go down with my People now (ſo he called them) they are all for a *Common-wealth*: And then ſays he, 'Tis to no purpoſe for me to ſee him; it will but widen the Breach, and I dare not truſt him to come hither. Says I, My Lord, That's a good one indeed, Dare not you truſt him, and yet do you ſend me to him on this Errand? Nay, ſays he, 'Tis becauſe we have had ſome Miſunderſtanding of late; but I believe he is true enough to the Intereſt. Says I, 'Tis a great Unhappineſs to take this Time to fall out; and I think 'tis ſo great a Deſign, that it ought to be undertaken with the greateſt Strength and Coalition in the Kingdom. Says he, My Friends are now gone ſo far, that they can't pull their Foot back again without going further; for, ſays he, it hath been communicated to ſo many, that 'tis impoſſible to keep it from taking Air, and it muſt go on. Says he, We are not ſo unprovided as you think for; there are ſo many Men, that you will find as brisk Men as any in *England*. Beſides, We are to have 1000 or 1500 Horſe, that are to be drawn by inſenſible Parties into Town, that when the Inſurrection is, ſhall be able to ſcour the Streets, and hinder them from forming their Forces againſt us. My Lord, After great Enlargement upon this Head, and Heads of the like nature, I told him I would not leave him thus, and that nothing ſhould ſatisfy me, but an Interview between him and the Lords: No, I could not obtain it: But if I would go and tell them what a Forwardneſs he was in, and that, if they would do themſelves Right, by putting themſelves upon correſpondent Action in their reſpective Places, and where their Intereſt lay well, otherwiſe he would go away without them. So I went again to the Duke of *Monmouth*, I ſpake to him only (I never ſpake to my Lord *Ruſſel* then, only we were together, but I had never come to any cloſe Conjunction of Counſels in my Life with him at that time.) Says I to the Duke, This Man is mad, and his Madneſs will prove fatal to us all; he hath been in a Fright by being in the *Tower*, and carries thoſe Fears about him, that cloud his Underſtanding: I think his Judgment hath deſerted him, when he goes about with thoſe ſtrange ſanguine Hopes, that I can't ſee what ſhould ſupport him in the Ground of them. Therefore ſays I, Pray will you give him a Meeting. God-ſo, ſays the Duke, with all my Heart, and I deſire nothing more. Now, I told him, I had been with my Lord *Shaftsbury*, with

with other Enlargements that I need not trouble your Lordſhip with: Well, ſays he, pray go to him, and try if it be poſſible to get a Meeting: So I went to him, and told him. Says I, This is a great Unhappineſs, and it ſeems to be a great Abſurdity, that you are ſo forward to act alone in ſuch a thing as this. Pray, ſays I, without any more to do, ſince you have this Confidence to ſend for me, let me prevail with you to meet them, and give them an Interview, or elſe you and I muſt break. I will no longer hold any Correſpondence, unleſs it be ſo. Says he, I tell you they will betray me. In ſhort, He did with much importunity yield, That he would come out the next Night in a Diſguiſe. By this time it was *Saturday*, I take it to be the *ſixth* of *October*; an Almanack will ſettle that: So the next Night being *Sunday*, and the Shops ſhut, he would come out in a Concealment, be carried in a Coach, and brought to his own Houſe, which he thought then was ſafeſt. I came and gave the Duke of *Monmouth* an account of it; the Duke, I ſuppoſe, conveyed the ſame Underſtanding to my Lord *Ruſſel*; and, I ſuppoſe, both would have been there accordingly, to have given the Meeting; but next Morning I found Colonel *Rumſey* had left a Note at my Houſe, that the Meeting could not be that Day. Then I went to the Duke of *Monmouth*, and he had had the account before, That my Lord *Shaftsbury* did apprehend himſelf to be in ſome Danger in that Houſe, and that the Apprehenſion had occaſioned him to remove; but we ſhould be ſure to hear from him in two or three Days. We took it as a Waver, and thought he did from thence intend to abſcond himſelf from us, and it proved ſo to me, for from that time I never ſaw him. But Captain *Walcot* came to me, and told me, that he was withdrawn, but it was for fear his Lodging might be diſcovered, but he did not doubt, but in a Week he would let me know where his Lodging was. But told me within ſuch a time, which I think was eight or ten Days, there would be a Riſing; and I told the Duke of *Monmouth*, and I believe he told my Lord *Ruſſel*; and we believed his Frenzy was now grown to that heighth, that he would riſe immediately, and put his Deſign in execution; ſo we endeavour'd to prevent it. Upon which my Lord *Ruſſel* (I was told) and the Duke of *Monmouth*, did force their way to my Lord *Shaftsbury*'s, and did perſwade him to put off the Day of his Rendezvous. I had not this from my Lord *Ruſſel*, for I had not ſpoke a word to him; but the Duke told me, my Lord *Ruſſel* had been with him (I had indeed an intimation that he had been with him;) but the Duke told me, ſays he, I have not been with him, but my Lord *Ruſſel* was, having been convey'd by Colonel *Rumſey*. After this Day was put off, it ſeems it was put off with this condition, That thoſe Lords, and divers others, ſhould be in a readineſs to raiſe the Country about that Day Fortnight, or thereabouts; for there was not above a Fortnight's time given: And ſays the Duke of *Monmouth*, We have put it off, but now we muſt be in Action, for there's no holding it off any longer. And, ſays he, I have been at *Wapping* all Night, and I never ſaw a company of bolder, and briſker Fellows in my Life: And, ſays he, I have been round the Tower, and ſeen the Avenues of it; and I do not think it will be hard, in a little time, to poſſeſs our ſelves of it: But, ſays he, they are in the wrong way, yet we are engaged to be ready for them in a Fortnight, and therefore, ſays he, now we muſt apply our ſelves to it as well as we can. And thereupon I believe they did ſend into the Country; and the Duke of *Monmouth* told me, he ſpake to Mr. *Trenchard*, who was to take particular Care of *Somerſetſhire*, with this Circumſtance: Says he, I thought Mr. *Trenchard* had been a briſker Fellow; for when I told him of it, he looked ſo pale, I thought he would have ſwooned, when I brought him to the brink of Action; and ſaid, I pray go and do what you can among your Acquaintance: And truly, I thought it would have come then to Action. But I went the next day to him, and he ſaid it was impoſſible; they could not get the Gentlemen of the Country to ſtir yet.

L. *Ruſſel*. My Lord, I think I have very hard meaſure, here is a great deal of Evidence by Hear-ſay.

L. C. J. This is nothing againſt you, I declare it to the Jury.

Mr. *At. Gen.* If it pleaſe you, my Lord, Go on in the method of Time. This is nothing againſt you, but it's coming to you, if your Lordſhip will have Patience, I aſſure you.

L. *Howard*. This is juſt in the Order it was done. When this was put off, then they were in a great hurry; and Captain *Walcot* had been ſeveral times with me, and diſcourſed of it. But upon this Diſappointment they ſaid, it ſhould be the Diſhonour of the Lords, that they were backward to perform their Parts; but ſtill they were reſolved to go on. And this had carried it to the latter end of *October*. About the 17th or 18th, Captain *Walcot* came to me, and told me, now they were reſolv'd poſitively to riſe, and did believe that a ſmart Party might perhaps meet with ſome great Men. Thereupon I told the Duke of it; I met him in the Street, and went out of my own Coach into his, and told him, That there was ſome dark intimation, as if there might be ſome Attempt upon the King's Perſon; with that he ſtruck his Breaſt with a great Emotion of Spirit, and ſaid, God-ſo, Kill the KING! I will never ſuffer that. Then he went to the *Play-houſe* to find Sir *Tho. Armſtrong*, and ſend him up and down the City to put it off, as they did formerly; and it was done with that Succeſs, that we were all quieted in our minds, that at that time nothing would be done. But upon the Day the King came from *New-Market*, we din'd together; the Duke of *Monmouth* was one, and there we had a Notion conveyed among us, that ſome bold Action ſhould be done that Day; which comparing it with the King's Coming, we concluded it was deſign'd upon the King. And a remember my Lord *Grey*, ſays he, by God, If they do attempt any ſuch thing, it can't fail. We were in great anxiety of mind, till we heard the King's Coach was come in, and Sir *Thomas Armſtrong* not being there, we apprehended that he was to be one of the Party (for he was not there,) This failing, it was then next determined (which was the laſt Alarum and News I had of it) to be done upon the 17th of *November*, the Anniverſary of Queen *Elizabeth*; and I remember it by this Remark I made my ſelf, That I fear'd it had been diſcovered,

covered, becauſe I ſaw a Proclamation a little before, forbidding publick Bonfires without Leave of my Lord Mayor. It made ſome Impreſſions upon me, that I thought they had got an intimation of our Intention, and had therefore forbid that Meeting. This therefore of the 17th of *November* being alſo diſappointed, and my Lord *Shaftsbury*, being told things were not ripe in the Country, took Shipping and got away; and from that time I heard no more of him till I heard he was dead. Now Sir, after this we all began to lie under the ſame Senſe and Apprehenſions that my Lord *Shaftsbury* did, That we had gone ſo far, and communicated it to ſo many, that it was unſafe to make a Retreat; and this being conſidered, it was alſo conſidered, that ſo great an Affair as that was, conſiſting of ſuch infinite Particulars, to be managed with ſo much Fineneſs, and to have ſo many Parts, it would be neceſſary, that there ſhould be ſome General Council, that ſhould take upon them the Care of the whole. Upon theſe Thoughts we reſolved to erect a little *Cabal* among our ſelves, which did conſiſt of ſix Perſons; and the Perſons were, The Duke of *Monmouth*, my Lord of *Eſſex*, my Lord *Ruſſel*, Mr. *Hambden* Jun. *Algernoone Sidney*, and my ſelf.

Mr. *At. Gen.* About what time was this, when you ſetled this Council?

L. *Howard.* It would have been proper for me in the next place to tell you that, and I was coming to it. This was about the middle of *January* laſt (as near as I can remember;) for about that time we did meet at Mr. *Hambden*'s Houſe.

Mr. *At. Gen.* Name thoſe that met.

L. *Howard.* All the Perſons I named before; that was, the Duke of *Monmouth*, my Lord *Eſſex*, my Lord *Ruſſel*, Col. *Sidney*, Mr. *Hambden* Jun. and my ſelf. When we met there, it was preſently agreed what their proper Province was, which was to have a care of the whole: And therefore it was neceſſary ſome general things ſhould fall under our Care and Conduct, which could not poſſibly be conducted by individual Perſons. The Things that did principally challenge this Care, we thought were theſe; Whether the Inſurrection was moſt proper to be begun in *London*, or in the *Country*, or both at one inſtant. This ſtood upon ſeveral different Reaſons: It was ſaid in the *Country*; and I remember the Duke of *Monmouth* inſiſted upon it, that it was impoſſible to oppoſe a Formed, well Methodiz'd, and Governed Force, with a Rabble haſtily got together; and therefore whatever Numbers could be gathered in the City, would be ſuppreſſed quickly before they could Form themſelves: Therefore it would be better to begin it at ſuch a diſtance from the Town, where they might have an opportunity of Forming themſelves, and would not be ſubject to the like panick Fear, as in the Town, where half an hour would convey the News to thoſe Forces, that in another half hour would be ready to ſuppreſs them.

Mr. *At. Gen.* Was this determined among you all?

L. *Howard.* In this manner that I tell you, Why it was neceſſary to be done at ſome reaſonable diſtance from the Town. And from thence it was likewiſe conſidered, that the being ſo remote from the Town, it would put the King upon this *Dilemma*, that either the King would ſend his Forces to ſubdue them, or not; if he did, he muſt leave the City naked, who being *Proximi Diſpoſitioni* to Action, it would give them occaſion to Riſe, and come upon the back of the King's Forces; if he did not ſend, it would give them time to form their Number, and be better ordered.

Mr. *At. Gen.* My Lord, We do not deſire all your Diſcourſe and Debates; What was your other General thing?

L. *Howard.* The other was, What Countries and Towns were the fitteſt and moſt diſpoſed to Action: And the *Third*, What Arms were neceſſary to be got, and how to be diſpoſed: And a *Fourth* (which ſhould have been indeed firſt in Conſideration) propounded by the Duke of *Monmouth*, That it would be abſolutely neceſſary to have ſome Common Bank of 25 or 30000 *l.* to anſwer the Occaſions of ſuch an Undertaking. Nothing was done, but theſe Things were offered then to our Conſideration, and we were to bring in our United Advice concerning them. But the Laſt and Greateſt was, How we might ſo order it, as to draw *Scotland* into a Conſent with us, for we thought it neceſſary that all the Diverſion ſhould be given. This was the Laſt.

Mr. *At. Gen.* Had you any other Meetings?

L. *Howard.* We had about ten Days after this at my Lord *Ruſſel*'s.

Mr. *At. Gen.* The ſame Perſons?

L. *Howard.* Every one of the ſame Perſons then meeting.

Mr. *At. Gen.* What Debate had you there?

L. *Howard.* Then it was ſo far, as we came to a Reſolution, That ſome Perſons ſhould be ſent to my Lord *Argyle*, to ſettle an Underſtanding with him, and that ſome Meſſengers ſhould be diſpatch'd into *Scotland*, that ſhould invite ſome Perſons hither, that were judged moſt able to underſtand the Eſtate of *Scotland*, and give an account of it: The Perſons agreed on were, Sir *John Cockram*, my Lord *Melvile*, and another, whoſe Name I have ſince been told upon my Deſcription, Sir · *Cambel.* For this purpoſe we did order a Perſon ſhould be thought on that was fit ——

Mr. *At. Gen.* Do you know who was ſent, and what was done upon this Reſolution?

L. *Howard.* I have heard (I never ſaw him in ſix Months before) that *Aaron Smith* was ſent.

Mr. *At. Gen.* Who was intruſted to take care of that Buſineſs?

L. *Howard.* Colonel *Sidney*. We, in diſcourſe, did agree to refer it to Colonel *Sidney* to have the care of ſending a Perſon.

Mr. *At. Gen.* Who acquainted you *Aaron Smith* was ſent?

L. *Howard.* Colonel *Sidney* told me he had ſent him, and given him ſixty Guineas for his Journey.

Mr. *At. Gen.* What more Meetings had you?

L. *Howard.* We did then conſider that theſe Meetings might have occaſioned ſome Obſervation upon us, and agreed not to meet again till the Return of that Meſſenger. He was gone, I believe, near a Month before we heard any thing of him, which we wonder'd at, and feared ſome Miſcarriage, but if his Letter had miſcarried, it could have done no great Hurt, for it carried only a kind of Cant in it; It

was

was under the Diſguiſe of a Plantation in *Carolina.*

Mr. *At. Gen.* You are ſure my Lord *Ruſſel* was there?

L. *Howard.* Yes, Sir, I wiſh I could ſay he was not.

Mr. *At. Gen.* Did he ſit there as a Cypher, what did my Lord ſay?

L. *Howard.* Every one knows my Lord *Ruſſel* is a Perſon of great Judgment, and not very laviſh in Diſcourſe.

Mr. Serj. *Jefferies.* But he did conſent?

L. *Howard.* We did not put it to the Vote, but it went without contradiction, and I took it that all there gave their Conſent.

Mr. *Sol. Gen.* The raiſing of Money you ſpeak of, was that put into any way?

L. *Howard.* No, But every Man was to put themſelves upon thinking of ſuch a way, that Money might be collected without adminiſtering Jealouſy.

Mr. *At. Gen.* Were there no Perſons to undertake for a Fund?

L. *Howard.* No, I think not. However it was but Opinion, the thing that was ſaid, was jocoſely, rather than any thing elſe, that my Lord of *Eſſex* had dealing in Money, and therefore he was thought the moſt proper Perſon to take the care of thoſe things; but this was ſaid rather by way of Mirth, than otherwiſe.

Mr. *At. Gen.* What do you know elſe, my Lord?

L. *Howard.* I was going to tell you, I am now at a full Stop. For it was 6 Weeks or more, before *Smith*'s Return, and then drew on the time, that it was neceſſary for me to go into *Eſſex*, where I had a ſmall Concern; there I ſtaid about three Weeks; when I came back, I was informed that he was returned, and Sir *John Cockram* was alſo come to Town.

L. C. J. Did you meet after this?

L. *Howard.* No, my Lord, I tell you, that I was forced to go three Weeks upon the account of my Eſtate, and afterwards I was neceſſitated to go to the Bath, where I ſpent five Weeks, and the time of coming from the Bath to this time, is five Weeks more; ſo that all this time hath been a perfect Parentheſis to me, and more than this, I know not.

L. C. J. My Lord *Ruſſel*, Now, if your Lordſhip pleaſes, is the time for you to ask him any Queſtions.

L. *Ruſſel.* The moſt he hath ſaid of me, my Lord, is only Hear-ſay, the two times we met, it was upon no formed Deſign, only to talk of News, and talk of things in general.

L. C. J. But I will tell you what it is he teſtifies, that comes neareſt your Lordſhip, that ſo you may conſider of it, if you will ask any Queſtions. He ſays, after my Lord *Shaftsbury* went off (all before is but Inducement as to any thing that concerns your Lordſhip, and does not particularly touch you) after his going away, he ſays the Party concerned with my Lord *Shaftsbury* did think fit to make choice of ſix Perſons to carry on the Deſign of an Inſurrection or Riſing, as he calls it, in the Kingdom. And that to that purpoſe Choice was made of the Duke of *Monmouth*, my Lord of *Eſſex*, your Lordſhip, my Lord *Howard*, Colonel *Sidney*, and Mr. *Hambden*.

L. *Ruſſel.* Pray, my Lord, not to interrupt you, by what Party (I know no Party) were they choſen?

L. *Howard.* 'Tis very true, we were not choſen by Community, but did erect our ſelves by mutual Agreement, one with another into this Society.

L. *Ruſſel.* We were People that did meet very often.

L. C. J. Will your Lordſhip pleaſe to have any other Queſtions asked of my Lord *Howard*?

L. *Ruſſel.* He ſays it was a formed Deſign, when we met about no ſuch thing.

L. C. J. He ſays, That you did conſult among your ſelves, about the Raiſing of Men, and where the Riſing ſhould firſt be, whether in the City of *London*, or in more Foreign Parts, that you had ſeveral Debates concerning it; he does make mention of ſome of the Duke of *Monmouth*'s Arguments for its being formed in Places from the City; he ſays, you did all agree not to do any thing further in it, till you had conſider'd how to raiſe Money and Arms: And to engage the Kingdom of *Scotland* in this Buſineſs with you; that it was agreed among you, that a Meſſenger ſhould be ſent into the Kingdom of *Scotland*. Thus far he goes upon his own Knowledge, as he ſaith, what he ſays after, of ſending a Meſſenger, is by Report only.

Mr. *At. Gen.* I beg your pardon, my Lord.

L. C. J. 'Tis ſo, that what he heard concerning the ſending of *Aaron Smith*.

Mr. *At. Gen.* Will you ask him any Queſtions?

L. *Ruſſel.* We met, but there was no Debate of any ſuch thing, nor putting any thing in method. But my Lord *Howard* is a Man hath a voluble Tongue, talks very well, and is full of Diſcourſe, and we were delighted to hear him.

Mr. *At. Gen.* I think your Lordſhip did mention the *Cambells*?

L. *Howard.* I did ſtammer it out, but not without a Parentheſis, it was a Perſon of the Alliance, and I thought of the Name of the *Argyles*.

L. *Ruſſel.* I deſire your Lordſhip to take notice, that none of theſe Men I ever ſaw; my Lord *Melvile* I have ſeen, but not upon this account.

Mr. Atterbury *ſworn.*

Mr. *At. Gen. Aaron Smith* did go, and *Cambell* he went for, is here taken. This is the Meſſenger. Pray what do you know of the Apprehending of the *Cambells*?

Mr. *Atterbury.* If it pleaſe your Lordſhip, I did not apprehend Sir *Hugh Cambell* my ſelf, but he is now in my Cuſtody; he was making his Eſcape out of a Woodmonger's Houſe, both He and his Son.

Mr. *At. Gen.* How long did he own he had been at *London*?

Mr. *Atterbury.* Four Days, and that in that time he had been at their Lodgings; and that he and his Son, and one *Baily*, came to Town together.

Mr. *At. Gen.* My Lord, we ſhall beſides this, (now we have fixed this upon my Lord) give you an account, that theſe Perſons, that were to Riſe, always took them as their Pay-maſters, and expected their Aſſiſtance. Mr. *Weſt*, Mr. *Keeling* and Mr. *Leigh*.

Mr. *Weſt* Sworn.

Mr. *At. Gen.* That which I call you to, is to know whether or no, in your managery of this Plot, you underſtood any of the Lords were concerned, and which?

Mr. *Weſt.* My Lord, As to my Lord *Ruſſel*, I never had any Converſation with him at all, but that I have heard in this, That in the Inſurrection in *November*, Mr. *Ferguſon*, and Colonel *Rumſey*, did tell me that my Lord *Ruſſel* intended to go down and take his Poſt in the *Weſt*, when Mr. *Trenchard* had failed them.

L. C. J. What is this?

Mr. *At. Gen.* We have proved my Lord privy to the Conſults, now we go about to prove the Under-actors did know it.

Mr. *Weſt.* They always ſaid my Lord *Ruſſel* was the Man they moſt depended upon, becauſe he was a Perſon looked upon as of great Sobriety.

L. *Ruſſel.* Can I hinder People from making uſe of my name? To have this brought to influence the Gentlemen of the Jury, and inflame them againſt me, is hard.

L. C. J. As to this, the giving Evidence by Hear-ſay, will not be Evidence; what Colonel *Rumſey* or Mr. *Ferguſon* told Mr. *Weſt*, is no Evidence.

Mr. *At. Gen.* 'Tis not Evidence to convict a Man, if there were not plain Evidence before, but it plainly confirms what the other Swears. But I think we need no more.

Mr. Serj. *Jefferies.* We have Evidence without it, and will not uſe any thing of Garniture; we will leave it as 'tis, we won't trouble your Lordſhip any further. I think, Mr. *Attorney*, we have done with our Evidence.

L. C. J. My Lord *Ruſſel*, the King's Counſel do think to reſt upon this Evidence that they have given againſt your Lordſhip. I would put your Lordſhip in mind of thoſe things that are material in this Caſe, and proved againſt your Lordſhip; Here is Colonel *Rumſey* does prove againſt your Lordſhip this, That he was ſent upon an Errand, which in truth, was Traiterous, it was a Traiterous Errand ſent from my Lord *Shaftsbury* by him to that Meeting. He does Swear your Lordſhip was at that Meeting, and he delivered his Errand to them, which was to know what account could be given concerning the Deſign of the Inſurrection at *Taunton*, and he ſays, your Lordſhip being there, this return was made, That Mr. *Trenchard* had failed them in his undertaking in the Buſineſs, and therefore my Lord *Shaftsbury* muſt be contented, and ſit down ſatisfied as to that time. Mr. *Sheppard* does likewiſe ſpeak of the ſame time, that your Lordſhip was there with the reſt of the Perſons, the Duke and others; That there was a Diſcourſe concerning an Inſurrection to have been made, (though he is not ſo particular, as to the very Notion of it, as Colonel *Rumſey* is,) as to the time they do agree.

L. *Ruſſel.* Col. *Rumſey* is not poſitive that I ſay'd, or heard any thing.

L. C. J. My Lord, If you will have a little Patience to hear me, I will tell you what it is preſſes you; there is this which I have mentioned, and Mr. *Sheppard* does ſay, there was a Paper purporting a Declaration then read among the Company there, which was to be Printed upon the Riſing, ſetting forth the Oppreſſions and Grievances of the Nation: And then my Lord *Howard*, (after a great Diſcourſe concerning the many Deſigns of my Lord *Shaftsbury*) comes particularly to your Lordſhip and ſays, that Six of you, as a choſen Council among your ſelves, (not that you were actually choſen) but as a choſen Council among your ſelves, did undertake to manage the great matter of the Inſurrection, and Raiſing of Men in order to ſurprize the King's Guards, and for to Riſe, (which is a Rebellion in the Nation.) He ſays, that you had ſeveral Conſults concerning it. I told you the ſeveral particulars of thoſe Conſults he mentioned: Now it is fit for your Lordſhip, and 'tis your time to give ſome Anſwer to theſe things.

L. *Ruſſel.* My Lord, I cannot but think my ſelf mighty unfortunate to ſtand here charged with ſo High and Heinous a Crime, and that intricated and intermixed with the Treaſons and horrid Practices and Speeches of other People, the King's Counſel taking all advantages, and improving and heightening things againſt me. I am no Lawyer, a very unready ſpeaker, and altogether a ſtranger to things of this Nature, and alone, and without Counſel. Truly my Lord, I am very ſenſible, I am not ſo provided to make my juſt Defence as otherwiſe I ſhould do. But my Lord, you are equal, and the Gentlemen of the Jury, I think, are Men of Conſciences, they are Strangers to me, and I hope they value Innocent Blood, and will conſider the Witneſſes that Swear againſt me, Swear to ſave their own Lives; for howſoever Legal Witneſſes they may be accounted, they can't be Credible. And for Col. *Rumſey*, who 'tis Notoriouſly known hath been ſo highly obliged by the King and the Duke, for him to be capable of ſuch a deſign of murdering the King! I think no body will wonder, if to ſave his own Life, he will endeavour to take away mine; neither does he ſwear enough to do it. And then if he did, the Time by the 13*th* of this King is Elapſed, it muſt be, as I underſtand by the Law, proſecuted within ſix Months, and by the 25 *E.* 3. a Deſign of Levying War is no Treaſon unleſs by ſome Overt Act it appear. And my Lord, I deſire to know what Statute I am to be Tryed upon, for Generals, I think, are not to be gone upon in theſe Caſes.

L. C. J. (To the *Attorney General.*) Mr. *Attorney*, You hear what it is my Lord objects to this Evidence, He ſays, that as to thoſe Witneſſes that teſtify any thing concerning him, above ſix Months before he was Proſecuted, he conceives the Act of Parliament, upon which he takes himſelf to be Indicted, does not extend to it, for that ſays that within Six Months there ought to have been a Proſecution; And my Lord tells you, that he is adviſed, that a deſign of Levying War, without actual Levying of War, was not Treaſon before that Statute.

Mr. *At. Gen.* To ſatisfy my Lord, He is not Indicted upon that Statute, we go upon the 25 *E.* 3. But then for the next Objection, ſurely my Lord is informed wrong. To Raiſe a Rebellion or a Conſpiracy within the Kingdom, is it not that which is called Levying of War in that Statute, but to Raiſe a Number of Men to break Priſons, *&c.* which is not ſo directly tending againſt the Life of the King. To prepare Forces to fight againſt the King, that is a deſign within that Statute to kill the King; And to deſign to de-

depoſe the King, to impriſon the King, to raiſe the Subjects againſt the King, theſe have been ſettled by ſeveral Reſolutions to be within that Statute, and Evidences of a Deſign of killing the King.

L. *Ruſſel.* My Lord, This is a matter of Law; Neither was there but one meeting at Mr. *Sheppard's* Houſe.

Mr. *At. Gen.* My Lord, If you admit the Fact, and will reſt upon the Point of Law, I am ready to argue it with any of your Counſel. I will acquaint your Lordſhip how the Evidence ſtands. There is one Evidence ſince *Chriſtmas* laſt.

L. *Ruſſel.* That's not to the buſineſs of *Sheppard's* Houſe. My Lord, one Witneſs will not convict a Man of Treaſon.

Mr. *At. Gen.* If there be one Witneſs of one Act of Treaſon, and another of a 2d, another of a 3d, that manifeſt the ſame Treaſon to depoſe or deſtroy the King, that will be ſufficient.

L. C. J. My Lord, That has been reſolved, the two Witneſſes the Statute requires, are not to the ſame individual Act, but to the ſame Treaſon, if they be ſeveral Acts declaring the ſame Treaſon, and one Witneſs to each of them, they have been reckoned two Witneſſes within the Statute of *Edw. 6.*

Mr. Serj. *Jefferies.* If my Lord will call his Witneſs———

L. *Ruſſel.* This is tacking of two Treaſons together, here is one in *November* by one Witneſs, and then you bring on another with a Diſcourſe of my Lord *Howard,* and he ſays the Diſcourſe paſſed for Pleaſure.

L. C. J. If your Lordſhip do doubt whether the Fact proved againſt your Lordſhip be Treaſon or not within the Statute of *E.* 3. and you are contented that the Fact be taken as proved againſt your Lordſhip, and ſo deſire Counſel barely upon that, that is matter of Law. You ſhall have it granted.

L. *Ruſſel.* I am not knowing in the Law. I think 'tis not proved, and if it was, I think it's not puniſhable by that Act. I deſire Counſel may be admitted upon ſo Nice a Point. My Life lies at Stake; here's but one Witneſs that ſpeaks of a Meſſage.

Mr. Serj. *Jefferies.* The Fact muſt be left to the Jury, Therefore if my Lord *Ruſſel* hath any Witneſſes to call, in Oppoſition theſe matters, let him.

L. C. J. My Lord, There can be no matter of Law but upon a Fact admitted and ſtated.

L. *Ruſſel.* My Lord, I do not think it proved, I hope you will be of Counſel for me; its very hard for me that my Counſel may not ſpeak for me in a point of Law.

L. C. J. My Lord, To hear your Counſel concerning this Fact, that we cannot do, it was never done, nor will be done. If your Lordſhip doubts whether this Fact is Treaſon or not, and deſire your Counſel may be heard to that, I will do it.

L. *Ruſſel.* I doubt in Law, and do not ſee the Fact is proved upon me.

Mr. *Sol. Gen.* Will your Lordſhip pleaſe to call any Witneſs to the Matter of Fact?

L. *Ruſſel.* 'Tis very hard a Man muſt loſe his Life upon Hear-ſay. Colonel *Rumſey* ſays he brought a Meſſage, which I will ſwear I never heard nor knew of. He does not ſay he ſpake to me, or I gave him any Anſwer. Mr. *Sheppard* remembers no ſuch thing, he was gone to and again, here is but one Witneſs, and ſeven Months ago.

Mr. *At. Gen.* My Lord, If there be any thing that is Law, you ſhall have it.

L. *Ruſſel.* My Lord, Colonel *Rumſey,* the other day before the King, could not ſay that I heard it, I was in the Room, but I came in late, they had been there a good while; I did not ſtay above a quarter of an hour taſting *Sherry* with Mr. *Sheppard.*

L. C. J. Read the Statute of 25 *E.* 3. *c.* 2. My Brothers deſire to have it read.

Cl. of Cr. Whereas divers opinions have been before this time, in what Caſe Treaſon ſhall be ſaid, and in what not: The King at the Requeſt of the Lords and of the Commons, hath made a Declaration in the manner as hereafter followeth. That is to ſay, when a Man doth compaſs or imagine the Death of our Lord the King, or of our Lady his Queen, or of their Eldeſt Son and Heir; or if a Man do Violate the King's Compagnion, or the King's Eldeſt Daughter unmarried, or the Wife of the King's Eldeſt Son and Heir; or if a Man do levy War againſt our Lord the King, in his Realm, or be adherent to the King's Enemies in his Realm, giving to them Aid and Comfort in the Realm or elſewhere, and thereof be proveable attainted of open Deed by People of their Condition. And if a Man counterfeit the King's Great or Privy Seal, or his Money: And if a Man bring falſe Money into this Realm, counterfeit to the Money of England, as the Money called Luſhburgh, or other like to the ſaid Money of England, knowing the Money to be falſe, to Merchandiſe or make Payment in deſeit of our ſaid Lord the King, and of his People: And if a Man Slea the Chancellor, Treaſurer, or the King's Juſtices of the one Bench or the other, Juſtices in Eyre, or Juſtices of Aſſiſe, and all other Juſtices deſigned to hear and determin, being in their places during their Offices. And it is to be underſtood that in the Caſes above rehearſed, that ought to be Judged Treaſon, which extends to our Lord the King, and his Royal Majeſty.

L. C. J. My Lord, That which is urged againſt you by the King's Counſel, is this, You are accuſed by the Indictment of compaſſing and deſigning the King's Death, and of endeavouring to Raiſe an Inſurrection in order to it; That, that they do ſay, is, that theſe Councils that your Lordſhip hath taken, are Evidences of your compaſſing the King's Death, and are Overt Acts, declaring the ſame; and upon that it is they inſiſt your Lordſhip to be Guilty within that Statute.

L. *Ruſſel.* It is in a Point of Law, and I deſire Counſel.

Mr *A.*

Mr. *At. Gen.* Admit your Conſultations, and we will hear them.

L. C. J. I would ſet your Lordſhip right, for probably you may not apprehend the Law in this Caſe; If your Counſel be heard, they muſt be heard to this, That taking it, that my Lord *Ruſſel* has conſulted in this manner, for the Raiſing of Forces within this Kingdom, and making an Inſurrection within this Kingdom, as Colonel *Rumſey* and my Lord *Howard* have depoſed, whether then this be Treaſon, we can hear your Counſel to nothing elſe.

L. *Ruſſel.* I do not know how to anſwer to it. The point methinks muſt be quite otherwiſe, that there ſhould be Two Witneſſes to one thing at the ſame time.

Mr. *At. Gen.* Your Lordſhip remembers, in my Lord *Stafford*'s Caſe, there was but one Witneſs to one Act in *England*, and another to another in *France*.

L. *Ruſſel.* It was to the ſame point.

Mr. *At. Gen.* To the general point, the lopping point.

Mr. Serj. *Jefferies.* There was not ſo much Evidence againſt him, as there is againſt your Lordſhip.

L. C. J. My Lord, If your Lordſhip will ſay any thing, or call any Witneſſes to diſprove what either of theſe Gentlemen have ſaid, we will hear your Lordſhip what they ſay. But if you can't contradict them by Teſtimony, it will be taken to be a Proof. And the way you have to diſprove them, is to call Witneſſes, or by asking Queſtions, whereby it may appear to be untrue.

Mr. *Sol. Gen.* If you have any Witneſſes, call them; my Lord.

L. *Ruſſel.* I do not think they have proved it. But then it appears by the Statute, that Levying War is Treaſon, but a Conſpiracy to Levy War is no Treaſon, if nothing be done, 'tis not Levying War within the Statute. There muſt be manifeſt Proof of the matter of Fact, not by Inference.

Mr. *At. Gen.* I ſee that is taken out of my Lord *Coke*. Levying War is a diſtinct branch of the Statute, and my Lord *Coke* explains himſelf afterwards, and ſays, 'tis an Aſſuming of Royal Power, to Raiſe for particular purpoſes.

Juſt. Withins. Unleſs matter of Fact be agreed, we can never come to argue the Law.

L. *Ruſſel.* I came in late.

Mr. *Sol. Gen.* Pray, my Lord, has your Lordſhip any Witneſſes to call, as to this matter of Fact?

L. *Ruſſel.* I can prove I was out of Town when one of the meetings was, but Mr. *Sheppard* can't recollect the Day, for I was out of Town all that time. I never was but once at Mr. *Sheppard*'s, and there was nothing undertaken of viewing the Guards while I was there; Colonel *Rumſey*, Can you Swear poſitively, that I heard the Meſſage, and gave any Anſwer to it?

L. C. J. (To Colonel *Rumſey.*) Sir, Did my Lord *Ruſſel* hear you, when you deliver'd the Meſſage to the Company? Were they at the Table, or where were they?

Col. *Rumſey.* When I came in they were ſtanding at the fire-ſide, but they all came from the fire-ſide to hear what I ſaid.

L. *Ruſſel.* Colonel *Rumſey* was there when I came in.

Col. *Rumſey.* No, my Lord. The Duke of *Monmouth* and my Lord *Ruſſel* went away together, and my Lord *Grey* and Sir *Thomas Armſtrong*.

L. *Ruſſel.* The Duke of *Monmouth* and I came together, and you were ſtanding at the Chimney when I came in; you were there before me. My Lord *Howard* hath made a long Narrative here of what he knew, I do not know when he made it, or when he did recollect any thing; 'tis but very lately, that he did declare and proteſt to ſeveral People, That he knew nothing againſt me, nor of any Plot I could in the leaſt be queſtioned for.

L. C. J. If you will have any Witneſſes called to that, you ſhall, my Lord.

L. *Ruſſel.* My Lord *Angleſey*, and Mr. *Edward Howard*.

My Lord *Angleſey* ſtood up.

L. C. J. My Lord *Ruſſel*, What do you ask my Lord *Angleſey*?

L. *Ruſſel.* To declare what my Lord *Howard* told him about me, ſince I was confined.

L. *Angleſey.* My Lord, I chanced to be in Town the laſt Week, and hearing my Lord of *Bedford* was in ſome Diſtreſs and Trouble, concerning the Affliction of his Son, I went to give him a Viſit, being my old Acquaintance, of ſome 53 Years ſtanding, I believe, for my Lord and I were bred together at *Maudlin-Colledge* in *Oxon*, I had not been there but a very little while, and was ready to go away again, after I had done the good Office I came about, but my Lord *Howard* came in, I don't know whether he be here.

L. *Howard.* Yes, Here I am to ſerve your Lordſhip.

L. *Angleſey.* And ſate down on the other ſide of my Lord of *Bedford*, and he began to comfort my Lord, and the Arguments he uſed for his Comfort, were, My Lord, You are happy in having a wiſe Son, and a Worthy Perſon, one that can never ſure be in ſuch a Plot as this, or ſuſpected for it, and that may give your Lordſhip reaſon to expect a very good Iſſue concerning him, I know nothing againſt him, or any Body elſe, of ſuch a Barbarous Deſign, and therefore your Lordſhip may be comforted in it. I did not hear this only from my Lord *Howard*'s Mouth, but at my own home upon the *Monday* after, for I uſe to go to *Totteridge* for freſh Air; I went down on *Saturday*, this happen'd to be on *Friday*, (my Lord being here, I am glad, for he can't forget this Diſcourſe,) and when I came to Town on *Monday*, I underſtood that my Lord *Howard* upon that very *Sunday* had been at Church with my Lady *Chaworth*. My Lady has a Chaplain, it ſeems, that preaches there, and does the Offices of the Church, but my Lady came to me in the Evening. This I have from my Lady———

L. C. J. My Lord, What you have from my Lady is no kind of Evidence at all.

L. *Angleſey.* I don't know what my Lord is, I am acquainted with none of the Evidence; nor what hath been done. But my Lady *Chaworth* came to me, and acquainted me, There was ſome Suſpicion——

Mr. Serj. *Jefferies.* I don't think it fit for me to interrupt a Perſon of your Honour, my Lord, but your Lordſhip knows in what place we

ſtand

ſtand here, what you can ſay of any thing you heard of my Lord *Howard*, we are willing to hear, but the other is not Evidence. As the Court will not let us offer Hear-ſays, ſo neither muſt we that are for the King permit it.

L. *Angleſey*. I have told you what happened in my Hearing.

Then Mr. Howard *ſtood up.*

L. C. J. Come Mr. *Howard*, What do you know?

Mr. *Howard*. I muſt deſire to ſay ſomething of my ſelf and my Family firſt: My Lord and I have been very intimate, not only as Relations, but as dear Friends. My Lord, I have been of a Family known to have great Reſpect and Duty for the King, and I think there is no Family in the Nation ſo numerous, that hath expreſſed greater Loyalty, upon which account I improved my Intereſt in my Lord *Howard*; I endeavoured, upon the great Miſunderſtanding of the Nation, (if he be here he knows it,) to perſwade him to apply himſelf to the King, to ſerve him in that great difficulty of State, which is known to all the World. I ſometimes found my Lord very forward, and ſometimes I ſoften'd him, upon which Parly, upon his Permiſſion, and more upon my own Inclination of Duty, I made ſeveral Applications to Miniſters of State, (and I can name them) that my Lord *Howard* had a great deſire of ſerving the King in the beſt way of Satisfaction, and particularly in the great Buſineſs of his Brother. I wonder'd there ſhould be ſo much ſharpneſs for a matter of Opinion, and I told my Lord ſo, and we had ſeveral Diſputes about it. My Lord, I do ſay this before I come to the thing. After this I did partly by his Permiſſion, and partly by my own Inclination, to ſerve the King, becauſe I thought my Lord *Howard* to be a Man of Parts, and ſaw him a Man that had Intereſt in the Nation, tell my Lord *Feverſham*, that I had prevailed with a Relation of mine, that may be he might think oppoſite, that perhaps might ſerve the King in this great Difficulty that is emergent, and particularly that of his Brother. My Lord *Feverſham* did receive it very kindly, and I writ a Letter to him to let him know how I had ſoften'd my Lord, and that it was my deſire he ſhould ſpeak with my Lord at *Oxon*. My Lord *Feverſham* gave me a very kind Account when he came again, but he told me——

L. C. J. Pray apply your ſelf to the matter you are called for.

Mr. *Howard*. This it may be is to the matter, when you have heard me; for I think I know where I am, and what I am to ſay.

L. C. J. We muſt deſire you not to go on thus.

Mr. *Howard*. I muſt ſatisfy the World, as well as I can, as to my ſelf, and my Family, and pray do not interrupt me. After this, my Lord, there never paſſed a Day for almoſt——

L. C. J. Pray ſpeak to this matter.

Mr. *Howard*. Sir, I am coming to it.

L. C. J. Pray, Sir, be directed by the Court.

Mr. *Howard*. Then now Sir, I will come to the Thing. Upon this ground I had of my Lord's Kindneſs, I applied my ſelf to my Lord in this preſent Iſſue, on the breaking out of this Plot. My Lord, I thought certainly, as near as I could diſcern him, (for he took it upon his Honour, his Faith, and as much as if he had taken an Oath before a Magiſtrate,) that he knew nothing of any Man concerned in this Buſineſs, and particularly of my Lord *Ruſſel*, whom he vindicated with all the Honour in the World. My Lord, it is true, was afraid of his own Perſon, and as a Friend, and a Relation, I concealed him in my Houſe, and I did not think it was for ſuch a Conſpiracy, but I thought he was unwilling to go to the Tower for nothing again. So that if my Lord *Howard* has the ſame Soul on *Monday* that he had on *Sunday*, this can't be true that he ſwears againſt my Lord *Ruſſel*. This I ſay upon my Reputation, and Honour, and ſomething I could ſay more, he added, he thought my Lord *Ruſſel* did not only unjuſtly ſuffer, but he took God and Men to Witneſs, He thought him the worthieſt Perſon in the World, I am very ſorry to hear any Man of my Name ſhould be guilty of theſe Things.

L. *Ruſſel*. Call Dr. *Burnet*. Pray Dr. *Burnet*, Did you hear any thing from my Lord *Howard*, ſince the Plot was diſcover'd, concerning me?

Dr. *Burnet*. My Lord *Howard* was with me the Night after the Plot broke out, and he did then, as he had done before, with Hands and Eyes lifted up to Heaven, ſay he knew nothing of any Plot, nor believed any, and treated it with great Scorn and Contempt.

L. *Howard*. My Lord, May I ſpeak for my ſelf?

Mr. Serj. *Jefferies*. No, no, my Lord, we don't call you.

L. C. J. Will you pleaſe to have any other Witneſſes called?

L. *Ruſſel*. There are ſome Perſons of Quality, that I have been very well acquainted and converſed with, I deſire to know of them, if there was any thing in my former Carriage, to make them think me like to be Guilty of this? My Lord *Cavendiſh*.

L. Cavendiſh. I had the Honour to be acquainted with my Lord *Ruſſel* a long time, I always thought him a Man of great Honour, and too prudent and wary a Man to be concerned in ſo vile and deſperate a Deſign as this, and from which he would receive ſo little Advantage; I can ſay nothing more, but that two or three Days ſince the Diſcovery of this Plot, upon Diſcourſe about Colonel *Rumſey*, my Lord *Ruſſel* did expreſs ſomething, as if he had a very ill Opinion of the Man, and therefore it is not likely he would intruſt him with ſuch a Secret.

L. *Ruſſel*. Dr. *Tillotſon*. [*He appears.*

L. C. J. What Queſtions would you ask him, my Lord?

L. *Ruſſel*. He and I, happened to be very converſant. To know whether he did ever find any thing tending to this in my Diſcourſe?

L. C. J. My Lord calls you as to his Life, and Converſation, and Reputation.

Dr. *Tillotſon*. My Lord, I have been many Years laſt paſt acquainted with my Lord *Ruſſel*, I always judged him a Perſon of great Virtue, and Integrity, and by all the Converſation and Diſcourſe I ever had with him, I always took him to be a Perſon very far from any ſuch wicked Deſign he ſtands charged with.

L. *Ruſſel*.

L. *Ruſſel.* Dr. *Burnet.* If you pleaſe to give ſome account of my Converſation.

Dr. *Burnet.* My Lord, I have had the Honour to be known to my Lord *Ruſſel* ſeveral Years, and he hath declared himſelf with much Confidence to me, and he always upon all Occaſions expreſſed himſelf againſt all Riſings, and when he ſpoke of ſome People that would provoke to it, he expreſſed himſelf ſo determined againſt that matter, I think no Man could do more.

L. C. J. Will your Lordſhip call any other Witneſſes?

L. *Ruſſel.* Dr. *Cox.*

Dr. Thomas Cox *ſtood up.*

Dr. *Cox.* My Lord, I did not expect to have been ſpoken to upon this Account. Having been very much with my Lord of late, that is, for a Month or ſix Weeks before this Plot came out, I have had occaſion to ſpeak with my Lord in private, about theſe Publick Matters. But I have always found that my Lord was againſt all kind of Riſings, and thought it the greateſt Folly and Madneſs till things ſhould come in a Parliamentary way. I have had occaſion often to ſpeak with my Lord *Ruſſel* in private, and having my ſelf been againſt all kind of Riſings, or any thing that tended to the Diſorder of the Publick, I have heard him profeſs ſolemnly, he thought it would ruin the beſt Cauſe in the World to take any of theſe irregular ways for the preſerving of it, and particularly my Lord hath expreſſed himſelf occaſionally of theſe two Perſons, my Lord *Howard* and Colonel *Rumſey*. One of them, Colonel *Rumſey*, I ſaw once at my Lord's Houſe, and he offered to ſpeak a little privately. But my Lord told me he knew him but a little, I told him he was a valiant Man, and acted his Part valiantly in *Portugal*. He ſaid he knew him little, and that he had nothing to do with him but in my Lord *Shaftsbury*'s Buſineſs. He ſaid, for my Lord *Howard*, he was a Man of excellent Parts, of luxuriant Parts, but he had the Luck not to be much truſted by any Party. And I never heard him ſay one Word of Indecency or Immodeſty towards the King.

L. *Ruſſel.* I would pray the Duke of *Somerſet*, to ſpeak what he knows of me.

D. of *Som.* I have known my Lord *Ruſſel* for about two Years, and have had much Converſation with him, and been often in his Company, and never heard any thing from him, but what was very Honourable, Loyal, and Juſt.

L. C. J. My Lord does ſay, that he has known my Lord *Ruſſel* for about two Years, and hath had much Converſation with him, and been much in his Company, and never heard any thing from him, but what was Honourable, and Loyal, and Juſt, in his Life.

Foreman of the Jury. The Gentlemen of the Jury deſire to ask my Lord *Howard* ſomething upon the Point my Lord *Angleſey* teſtified, and to know what Anſwer he makes to my Lord *Angleſey*.

L. C. Bar. My Lord, What ſay you to it, that you told his Father he was a diſcreet Man, and he needed not to fear his Engagement in any ſuch thing?

L. *Howard.* My Lord, If I took it right, my Lord *Angleſey*'s Teſtimony did branch it ſelf into Two Parts, one of his own Knowledge, and the other by Hear-ſay; as to what he ſaid of his own Knowledge, when I waited upon my Lord of *Bedford*, and endeavoured to comfort him, concerning his Son, I believe I ſaid the Words my Lord *Angleſey* has given an account of, as near as I can remember, that I looked upon his Lordſhip, as a Man of that Honour, that I hoped he might be ſecure, that he had not entangled himſelf in any thing of that nature. My Lord, I can hardly be provoked to make my own Defence, leſt this Noble Lord ſhould ſuffer, ſo willing I am to ſerve my Lord, who knows I can't want Affection for him. My Lord, I do confeſs I did ſay it; for your Lordſhip well knows under what Circumſtances we were, I was at that time to outface the thing, both for my ſelf, and my Party, and I did not intend to come into this Place, and act this Part. God knows how it is brought upon me, and with what Unwillingneſs I do ſuſtain it, but my Duty to God, the King, and my Country, requires it, but I muſt confeſs, I am very ſorry to carry it on thus far. My Lord, I do confeſs I did ſay ſo, and if I had been to viſit my Lord *Pemberton*, I ſhould have ſaid ſo. There is none of thoſe that know my Lord *Ruſſel*, but would ſpeak of my Lord *Ruſſel*, from thoſe Topicks of Honour, Modeſty, and Integrity, his whole Life deſerves it. And I muſt confeſs, I did frequently ſay, there was nothing of Truth in this, and I wiſh this may be for my Lord's Advantage. My Lord, will you ſpare me one thing more, becauſe that leans hard upon my Reputation, and if the Jury believe that I ought not to be believed, for I do think the Religion of an Oath is not tyed to a Place, but receives its Obligation from the Appeal we therein make to God, and, I think, if I called God and Angels to witneſs to a Falſhood, I ought not to be believed now. But I will tell you as to that, your Lordſhip knows, that very Man that was Committed, was Committed for a Deſign of Murdering the King; now I did lay hold on that part, for I was to carry my Knife cloſe between the Paring and the Apple, and I did ſay, that if I were an Enemy to my Lord *Ruſſel*, and to the Duke of *Monmouth*, and were called to be a Witneſs, I muſt have declared in the Preſence of God and Man, that I did not believe either of them had any Deſign to murder the King. I have ſaid this, becauſe I would not walk under the Character of a Perſon, that would be perjured at the Expence of ſo Noble a Perſon's Life, and my own Soul.

L. *Ruſſel.* My Lord *Clifford.*

L. C. J. What do you pleaſe to ask my Lord *Clifford?*

L. *Ruſſel.* He hath known my Converſation for many Years.

L. *Clifford.* I always took my Lord to be a very Worthy Honeſt Man, I never ſaw any thing in his Converſation to make me believe otherwiſe.

L. *Ruſſel.* Mr. *Gore.*

Mr. *Luton Gore.* I have been acquainted with my Lord ſeveral Years, and converſed much with him; in all the Diſcourſe I had with him, I never heard him let any thing fall that tended in the leaſt to any Riſing, or any thing like it: I took him to be one of the beſt Sons, one of the beſt Fathers, and one of the beſt Maſters, one of the beſt Husbands, one of the beſt

beſt Friends, and one of the beſt Chriſtians we had. I know of no Diſcourſe concerning this matter.

L. *Ruſſel.* Mr. *Spencer*, and Dr. *Fitz-Williams.*

Mr. *Spencer.* My Lord, I have known my Lord *Ruſſel* many Years, I have been many Months with him in his Houſe; I never ſaw any thing by him, but that he was a moſt Virtuous and Prudent Gentleman, and he had Prayers conſtantly twice a Day in his Houſe.

L. C. J. What, as to the general Converſation of his Life, my Lord asks you, whether it hath been ſober?

Mr. *Spencer.* I never ſaw any thing but very good, very prudent, and very virtuous.

L. *Ruſſel.* What Company did you ſee uſed to come to me?

Mr. *Spencer.* I never ſaw any but his near Relations, or his own Family. I have the Honour to be related to the Family.

Then Dr. Fitz-Williams *ſtood up.*

L. *Ruſſel.* If it pleaſe you, Doctor, you have been at my Houſe ſeveral times, give an account of what you know of me.

Dr. *Fitz-Williams.* I have had the Knowledge of my Lord theſe fourteen Years, from the time he was married to his preſent Lady, to whoſe Father, Eminent for Loyalty, I had a Relation by Service; I have had Acquaintance with him both at *Stratton* and *Southampton* Buildings, and by all the Converſation I had with him, I eſteemed him a Man of that Virtue, that he could not be guilty of ſuch a Crime as the Conſpiracy he ſtands charged with.

L. C. J. My Lord, Does your Lordſhip call any more Witneſſes?

L. *Ruſſel.* No, my Lord, I will be very ſhort. I ſhall declare to your Lordſhip that I am one that have always had a Heart ſincerely Loyal and Affectionate to the King and the Government, the beſt Government in the World. I pray as ſincerely for the King's happy and long Life as any Man alive; and for me to go about to raiſe a Rebellion, which I looked upon as ſo wicked and unpracticable, is unlikely. Beſides, if I had been inclined to it, by all the Obſervation I made in the Country, there was no tendency to it. What ſome hot-headed People have done there, is another thing. A Rebellion can't be made now as it has been in former times; we have few great Men. I was always for the Government, I never deſired any thing to be redreſſed but in a Parliamentary and Legal Way. I have been always againſt Innovations, and all Irregularities whatſoever, and ſhall be as long as I live, whether it be ſooner or later. Gentlemen, I am now in your Hands eternally, my Honour, my Life, and all; and I hope the Heats and Animoſities that are amongſt you will not ſo byaſs you, as to make you in the leaſt inclined to find an Innocent Man Guilty. I call to witneſs Heaven and Earth, I never had a Deſign againſt the King's Life in my life, nor never ſhall have. I think there is nothing proved againſt me at all. I am in your Hands, God direct you.

Mr. *Sol. Gen.* My Lord, and you Gentlemen of the Jury, the Priſoner at the Bar ſtands Indicted for High-Treaſon, in Conſpiring the Death of the King. The Overt Act that is laid to prove that Conſpiracy and Imagination by, is the Aſſembling in Council to raiſe Arms againſt the King, and raiſe a Rebellion here. We have proved that to you by three Witneſſes. I ſhall endeavour as clearly as I can to ſtate the ſubſtance of the Evidence to you, of every one of them as they have delivered it.

The firſt Witneſs Colonel *Rumſey* comes, and he tells you of a Meſſage he was ſent of to Mr. *Sheppard*'s Houſe to my Lord *Ruſſel*, with ſeveral other Perſons who he was told would be there aſſembled together. And the Meſſage was to know what Readineſs they were in, what Reſolutions they were come to concerning the Riſing at *Taunton*. By this you do perceive that this Conſpiracy had made ſome Progreſs, and was ripe to be put in action. My Lord *Shaftsbury* that had been a great Contriver in it, he had purſued it ſo far, as to be ready to riſe. This occaſioned the Meſſage from my Lord *Shaftsbury* to my Lord *Ruſſel*, and thoſe Noble Perſons that were met at Mr. *Sheppard*'s Houſe, to know what the Reſolution was concerning the Buſineſs of *Taunton*, which you have heard explained by an Undertaking of Mr. *Trenchard*'s: That the Anſwer was, they were diſappointed there, and they could not then be ready, and that my Lord *Shaftsbury* muſt be content. This Meſſage was delivered in preſence of my Lord *Ruſſel*; the Meſſenger had notice my Lord *Ruſſel* was there; the Anſwer was given as from them all, That at preſent they could not be ready, becauſe of that Diſappointment. Colonel *Rumſey* went further, and he ſwears there was a Diſcourſe concerning the ſurprizing of the Guards; and the Duke of *Monmouth*, my Lord *Grey*, and Sir *Thomas Armſtrong*, went to ſee what poſture they were in, whether it were feaſible to ſurprize them, and they found them very remiſs; and that account they brought back, as is proved to you by Mr. *Sheppard*, the other Witneſs, That it was a thing very feaſible. But to conclude with the ſubſtance of Colonel *Rumſey*'s Evidence, he ſays, my Lord was privy to it, that he had Diſcourſe among the reſt of it, tho' my Lord was not a Man of ſo great Diſcourſe as the reſt, and did talk of a Riſing. He told you there was a Riſing determined to be on the 19th of *November* laſt, which is the ſubſtance of Colonel *Rumſey*'s Evidence.

Gentlemen, the next Witneſs is Mr. *Sheppard*, and his Evidence was this: He ſwears that about *October* laſt, Mr. *Ferguſon* came to him of a Meſſage from the Duke of *Monmouth*, to let him know, that he and ſome other Perſons of Quality would be there that Night; that accordingly they did meet, and my Lord *Ruſſel* was there likewiſe; that they did deſire to be private, and his Servants were ſent away; and that he was the Man that did attend them. He ſwears there was a Diſcourſe concerning the way and method to ſeize the Guards; he goes ſo far, as to give an account of the Return of the Errand the Duke of *Monmouth*, my Lord *Grey*, and Sir *Thomas Armſtrong* went upon, That it was feaſible, if they had Strength, to do it. Then he went a little farther, and he told you there was a Paper read, that in his Evidence does not come up to my Lord *Ruſſel*, for he did not ſay my Lord *Ruſſel* was by, and I would willingly repeat nothing but what concerns the Priſoner. This therefore Colonel *Rumſey* and Mr. *Sheppard* agree in, That there was a Debate among them how to ſurprize the Guards,

and whether that was feaſible, and Mr. *Sheppard* is poſitive as to the return made upon the view.

The next Witneſs was my Lord *Howard*; he gives you an account of many things, and many things that he tells you are by Hear-ſay. But I cannot but obſerve to you, that all this Hear-ſay is confirmed by theſe two poſitive Witneſſes, and their Oaths agree with him in it. For my Lord *Shaftsbury* told him of the diſappointment he had met with from theſe Noble Perſons that would not joyn with him; and then he went from my Lord *Shaftsbury* to the Duke of *Monmouth* to expoſtulate with him about it (for my Lord *Shaftsbury* then was ready to be in action) and that the Duke ſaid he always told him he would not engage at that time. This thing is confirmed to you by theſe two Witneſſes. Col. *Rumſey* ſays, when he brought the Meſſage from my Lord *Shaftsbury*, the Anſwer was, They were not ready, my Lord muſt be contented.

Next he goes on with a diſcourſe concerning my Lord *Shaftsbury*, (that does not immediately come up to the Priſoner at the Bar, but it manifeſts there was a deſign at that time) he had 10000 brisk Boys (as he called them) ready to follow him upon the holding up his finger. But it was thought not ſo prudent to begin it, unleſs they could joyn all their Forces. So you hear in this they were diſappointed: And partly by another accident too, my Lord *Howard* had an apprehenſion it might be diſcovered, that was upon the Proclamation that came out forbidding Bonfires, to prevent the ordinary Tumults that uſed to be upon thoſe occaſions. Then my Lord *Howard* goes on and comes particularly to my Lord *Ruſſel*, for upon this diſappointment, you find my Lord *Shaftsbury* thought fit to be gone. But after that, the Deſign was not laid aſide; for you hear, they only told him all along, they could not be ready at that time, but the Deſign went on ſtill to raiſe Arms, and then they took upon themſelves to conſult of the methods of it; and for the carrying it on with the greater ſecrecy, they choſe a ſelect Council of Six, which were the Duke of *Monmouth*, my Lord of *Eſſex*, my Lord *Howard*, my Lord *Ruſſel*, Mr. *Hambden*, and Colonel *Sidney*. That accordingly they met at Mr. *Hambden*'s (there was their firſt meeting) and their Conſultation there was, how the Inſurrection ſhould be made, whether firſt in *London*, or whether firſt in the Country, or whether both in *London* and in the Country at one time. They had ſome Debates among themſelves that it was fitteſt firſt to be in the Country; for if the King ſhould ſend his Guards down to ſuppreſs them, then the City that was then as well diſpoſed to riſe, would be without a Guard, and eaſily effect their Deſigns here.

Their next meeting was at my Lord *Ruſſel*'s own Houſe, and there their Debates were ſtill about the ſame matter, how to get in *Scotland* to their Aſſiſtance, and in order to that, they did intruſt Col. *Sidney* one of their Council, to ſend a Meſſenger into *Scotland* for ſome Perſons to come hither, my Lord *Melvile*, Sir *Hugh Cambell*, and Sir *John Cockram*. Accordingly Col. *Sidney* ſends *Aaron Smith* (but this is only what Col. *Sidney* told my Lord afterwards, that he had done it, but) you ſee the fruit of it. Accordingly they are come to Town, and Sir *Hugh Cambell* is taken by a Meſſenger upon his arrival; and he had been but four days in Town, and he had changed his Lodging three times.

Now Gentlemen, this is the ſubſtance of the Evidence that hath been produced againſt my Lord *Ruſſel*. My Lord *Ruſſel* hath made ſeveral Objections, That he was accidentally at this meeting at Mr. *Sheppard*'s Houſe, and came about other buſineſs; but I muſt obſerve to you, that my Lord *Ruſſel* own'd that he came along with the Duke of *Monmouth*, and I think, he ſaid, he went away with him too. You obſerve what Mr. *Sheppard*'s Evidence was: Mr. *Ferguſon* came to tell him the Duke of *Monmouth* would come; and accordingly the Duke of *Monmouth* did come, and brought his Companion along with him, which was my Lord *Ruſſel*; and certainly they that met upon ſo ſecret an Affair, would never have brought one that had not been concerned. Gentlemen, there are other Objections my Lord hath made, and thoſe are in point of Law; but before I come to them, I would obſerve what he ſays to the ſecond Meeting. My Lord does not deny but that he did meet both at Mr. *Hambden*'s Houſe, and my Lord's own: I think my Lord ſaid they did meet only to diſcourſe of News; and my Lord *Howard* being a man of excellent diſcourſe, they met for his Converſation. Gentlemen, you can't believe that this deſigned Meeting was for nothing, in this cloſe ſecret Meeting that they had no Contrivance among them. You have heard the Witneſs, he ſwears poſitively what the Converſation was, and you ſee the fruit of it, Sir *Hugh Cambell*'s coming to Town, and abſconding when it is diſcovered. Now my Lord *Ruſſel* inſiſts upon it, that admitting theſe Facts be proved upon him, they amount to no more than to a Conſpiracy to levy War, and that that is not Treaſon within the Statute of 25 *E.* 3. and if it be only within the Statute of the 13th of this King, then 'tis out of time, that directs the Proſecution to be within ſix months: The Law is plainly otherwiſe. The Statute of the 13th of this King I will not now inſiſt upon, though I believe if that be ſtrictly looked into, the clauſe that ſays the Proſecution ſhall be within ſix months, does not refer to Treaſon, but only to the other Offences that are highly puniſhable by that Statute. For the Proviſo runs thus:

13 Car. 2. Provided always, that no Perſon be proſecuted for any of the Offences in this Act mentioned, (other than ſuch as are made and declared to be High-Treaſon) unleſs it be by Order of the King's Majeſty, his Heirs or Succeſſors, under his or their Sign Manual, or by order of the Council-Table of his Majeſty, his Heirs or Succeſſors, directed unto the Attorney General for the time being, or ſome other Council learned to his Majeſty, his Heirs or Succeſſors for the time being: Nor ſhall any Perſon or Perſons by virtue of this preſent Act, incur any the Penalties herein before mentioned, unleſs he or they be proſecuted within ſix months next after the Offence committed, and indicted thereupon within three months after ſuch proſecution; any thing herein contained to the contrary notwithſtanding.

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This word (Nor) is a Continuation of the former Sentence, and the exception of High-Treaſon will go through all, and except that out of the temporary limitation of Treaſon: But this is High-Treaſon within 25 *E.* 3. To conſpire to levy War, is an Overt Act to teſtifie the deſign of the death of the King. And the Error of my Lord *Coke* hath poſſibly led my Lord into this miſtake. But this, Gentlemen, hath been determined; it was reſolved by all the Judges in the Caſe of my Lord *Cobham*, 1 *Jac.* A Conſpiracy to levy War againſt the King's Perſon (as this was a Conſpiracy to ſeize the Guards) what does that tend to but to ſeize the King? And that always hath been taken to be High-Treaſon. But there are ſome things called levying of War in Law, that are not ſo directly againſt the King, as if a number of men go about to levy Men to overthrow all Incloſures, this by the generality of the Intent, and becauſe of the conſequences, is accounted levying War againſt the King. A Conſpiracy therefore to levy ſuch a War which by conſtruction only is againſt the King, perhaps that may not be ſuch an Overt Act, as to teſtifie the imagination of the death of the King; but other Conſpiracies to raiſe War againſt the King have always ſo been taken. 'Tis the Reſolution of all the Judges in my Lord *Dyer*'s Reports, the Caſe of Dr. *Story*: A Conſpiracy to invite a Foreign Prince to make an Invaſion, though no Invaſion follow, is an Overt Act to prove the conſpiring the Death of the King; and as it has been ſo taken, ſo it hath been practiſed but of late days. In the King's Bench I take it, the Indictment againſt *Plunket* that was hanged, he was indicted for Conſpiring againſt the Life of the King, and his Charge went no further than for raiſing of Arms, and inviting the French King in, and he ſuffered. This is acknowledged by my Lord *Coke*, for he himſelf ſaid in the Paragraph before that out of which this advice to my Lord *Ruſſel* is extracted, That a Conſpiracy to invite a Foreign Prince to invade the Kingdom, is a Conſpiracy againſt the Life of the King. And in the next Paragraph, he ſays an Overt Act of one Treaſon cannot be an Overt Act of another Treaſon; but conſtant Practice is againſt him in that: For what is more common than to indict a Man for imagining the Death of the King, and to aſſign the Overt Act in a Conſpiracy to raiſe Arms againſt the King? And ſometimes they go on and ſay, Did levy War againſt the King. Now by my Lord *Coke*'s Rule, levying War, unleſs the Indictment be particular for that, is not an Overt Act for the compaſſing the Death of the King; but the contrary hath been reſolved by all the Judges in the Caſe of Sir *Henry Vane*, and it is the conſtant practice to lay it ſo in Indictments. It would be a ſtrange conſtruction if this ſhould not be High-Treaſon. 'Tis agreed by every body, to take the King Priſoner, to ſeize the King, that is a compaſſing of the Death of the King; And to ſit in council to conſpire to effect that, that is an Overt Act of the imagination of the Death of the King: Now no man can diſtinguiſh this caſe from that; And this Conſultation amounted to all this, for plainly thither it tended. The Conſultation was to ſeize upon the King's Guards, that could have no other ſtop but to ſeize upon the King's Perſon, and bring him into their Power. As to the killing of the King, I am apt to think that was below the honour of the Priſoner at the Bar; But this is equal Treaſon: If they deſigned only to bring the King into their Power, till he had conſented to ſuch things as ſhould be moved in Parliament, 'tis equally Treaſon as if they had agreed directly to aſſaſſinate him. Therefore I think there is nothing for you to conſider, but to ſee that the Fact be fully proved; and I ſee nothing that hath been ſaid by my Lord *Ruſſel* that does invalidate our Evidence. He hath produced ſeveral Witneſſes, Perſons of Honour; my Lord *Angleſey* he tells you of a diſcourſe my Lord *Howard* had with my Lord of *Bedford*; That he told my Lord of *Bedford* that he needed not to fear, for he had a wiſe and underſtanding Son, and could not think he ſhould be guilty of any ſuch thing as was laid to his Charge. This is brought to invalidate my Lord *Howard*'s teſtimony. Gentlemen, do but obſerve, My Lord *Howard* was as deep in as any of them, and was not then diſcovered: Is it likely that my Lord *Howard*, that lay hid, ſhould diſcover to my Lord of *Bedford*, that there was a Conſpiracy to raiſe Arms, and that he was in it? This would have been an Aſperſion upon my Lord of *Bedford*, that any ſuch thing ſhould have been ſaid.

Mr. *Edward Howard* is the next, and he proves, That my Lord *Howard* uſed ſolemn proteſtations that he knew nothing of this Conſpiracy. I did obſerve, that worthy Gentleman in the beginning of his Diſcourſe (for it was pretty long) ſaid firſt that he had been ſeveral times tempting my Lord *Howard* to come over, and be ſerviceable to the King, and if he knew any thing, that he would come and confeſs it. Why, Gentlemen, Mr. *Howard* that had come to him upon theſe Errands formerly, and had thought he had gained him, I conceive you do not wonder if my Lord *Howard* did not reveal himſelf to him, who preſently would have diſcovered it, for, for that Errand he came. But if my Lord had had a deſign to have come in and ſaved his Life, he would have made his ſubmiſſion voluntarily, and made his Diſcovery. But my Lord tells nothing till he is pinched in his Conſcience, and confounded with the Guilt (being then in cuſtody) and then he tells the whole truth, that which you have heard this day.

Gentlemen, this hath been all that hath been objected againſt the Witneſſes, except what is ſaid by Dr. *Burnet*; and, he ſays, that my Lord *Howard* declared to him, that he believed there was no Plot, and laughed at it. Why, Gentlemen, the Dr. would take it ill to be thought a perſon fit to be intruſted with the diſcovery of this; therefore what he ſaid to him ſignifies nothing, for 'tis no more than this, that he did not diſcover it to the Dr.

But the laſt Objection (which I ſee there has been a great many Perſons of Honour and Quality called to) is, That 'tis not likely my Lord *Ruſſel* ſhould be guilty of any thing of this kind, being a Man of that Honour, Virtue, and ſo little blameable in his whole Converſation. I do confeſs, Gentlemen, this is a thing that hath weight in it. But conſider on the other hand, my Lord *Ruſſel*, is but a Man, and hath his Human frailties about him. Men fall by ſeveral temp-

Temptations; Some out of Revenge, Some by Malice fall into ſuch Offences as theſe are: My Lord *Ruſſel* is not of that Temper, and therefore may be theſe are not the Ingredients here. But, Gentlemen, there is another great and dangerous Temptation that attends People in his Circumſtances, whether it be Pride or Ambition, or the cruel Snare of Popularity, being cryed up as a Patron of Liberty. This hath been a dangerous Temptation to many, and many Perſons of Virtue have fallen into it, and 'tis the only way to tempt Perſons of Virtue; and the Devil knew it, for he that tempted the Pattern of Virtue, ſhewed him all the Kingdoms of the World, and ſaid, *All theſe will I give thee, if thou wilt fall down and worſhip me.* Tho' he be a Perſon of Virtue, yet it does not follow, but his Virtue may have ſome weak Part in him. And I am afraid, theſe Temptations have prevailed upon my Lord. For I cannot give my ſelf any colour of Objection, to disbelieve all theſe Witneſſes who give in their Teſtimony. I ſee no Contradiction, no Correſpondence, no Contrivance at all between them. You have plain Oaths before you, and I hope you will conſider the Weight of them, and the great Conſequence that did attend this Caſe, the Overthrow of the beſt Government in the World, and the beſt and moſt unſpotted Religion, which muſt needs have ſuffered; the greateſt Liberty and the greateſt Security for Property that ever was in any Nation, bounded every way by the Rules of Law, and thoſe kept ſacred. I hope you will conſider the Weight of this Evidence, and conſider the Conſequences ſuch a Conſpiracy, if it had taken effect, might have had. And ſo I leave it to your Conſideration upon the Evidence you have heard.

Mr. Serj. *Jefferies.* My Lord, and you Gentlemen of the Jury, this Cauſe hath detained your Lordſhip a long time, by reaſon of ſo many Witneſſes being called, and the length of the Defence made by the Priſoner at the Bar; and if it had not been for the length I would not have injured your Patience by ſaying any thing, Mr. Sollicitor having taken ſo much Pains in it. It is a Duty incumbent upon me, under the Circumſtances I now ſtand, to ſee if any thing hath been omitted that hath not been obſerved to you; and I ſhall detain you with very few Words.

Gentlemen, You muſt give me leave to tell you, 'tis a Caſe of great conſequence, of great conſequence to that Noble Perſon that now is at the Bar, as well as to the King; for it is not deſired by the King nor by his Counſel, to have you influenced in this matter by any thing but by the Truth, and what Evidence you have received. You are not to be moved by Compaſſion or Pity, the Oath you have taken is to go according to your Evidence; and you are not to be moved by any Inſinuations that are offered by us for the King, nor by any Inſinuations by the Priſoner at the Bar; but the Truth, according to the Teſtimony given, muſt be your Guide. How far the Law will affect this Queſtion, that we are not to apply to you, for that we are to apply our ſelves to the Court (they are the Judges in point of Law) who will take ſo much care in their Directions to you, that you may be very well ſatisfied you will not eaſily be led into Error. For the Inſtances that have been put, I could put ſeveral others; But I will take notice only of one thing that that Noble Perſon at the Bar ſeems to object. Gentlemen, It is not neceſſary there ſhould be two Witneſſes to the ſelf-ſame Fact at the ſelf-ſame time; but if there be two Witneſſes tending to the ſelf-ſame Fact, tho' it was at ſeveral times, and upon ſeveral occaſions, they will be in point of Law two Witneſſes, which are neceſſary to convict a Man for High-Treaſon. Gentlemen, I make no doubt this thing is known to you all, not only by the Judgment of all the Judges in *England*, but the Judgment of the Lords in Parliament, when I doubt not the Priſoner at the Bar did attend in the Caſe of my Lord *Stafford*, wherein one Witneſs gave an account of a Conſpiracy in *England*, *Turbervile* of another in *France*; and by the Opinion of all my Lords the Judges approved in Parliament, that was enough, and he was Convicted.

The Queſtion is, Whether we have ſufficiently proved this matter. Gentlemen, I muſt tell you, we rake no Goals, nor bring any profligate Perſons, Perſons that wanted Faith or Credit before this time. I muſt tell you, that notwithſtanding the fair Notice that hath been given to the Priſoner at the Bar (that you ſee he hath taken an Advantage of it, he hath given an account of a private Converſation with my Lord *Howard* before that Noble Perſon that was Witneſs againſt him was taken) he has not given you in all his Proof hitherto, nay I ſay, he has not pretended any thing in the World: Wherefore you, Gentlemen, that are upon your Oaths, ſhould take it upon your Conſciences, that two Men, againſt whom there is no Objection, ſhould come to damn their own Souls to take away the Life of this Gentleman, when there is no Quarrel, no Temptation wherefore theſe Gentlemen ſhould come in the face of a Court of Juſtice, in the face of ſuch an Auditory, without reſpect to that infinite Being to whom they appeal for Confirmation of the Truth of their Teſtimony: And if they had the Faith of Men or Chriſtians, they muſt neceſſarily conclude, That if they did ſwear to take away a Man's Life that was innocent, God would ſink them down preſently into Hell.

Gentlemen, In the next Place I muſt acquaint you, That the firſt Witneſs, Colonel *Rumſey*, it is apparent that he was taken notice of by the Priſoner as a Man fit to be truſted; he was engaged by my Lord *Shaftsbury*: But, ſays he, would any Man believe that that Man that had received ſo many Marks of the King's Favour, both in Advantage to his Eſtate, his Honour, and Perſon, could be ever contriving ſuch an helliſh Deſign as this? Gentlemen, If you will argue from ſuch uncertain Conjectures, then all Criminals will come off. Who ſhould think that my Lord of *Eſſex*, who had been advanced ſo much in his Eſtate and Honour, ſhould be guilty of ſuch deſperate things! which had he not been conſcious of, he would ſcarcely have brought himſelf to that untimely End, to avoid the Methods of publick Juſtice. Colonel *Rumſey* tells you, my Lord *Shaftsbury* was concerned in this Conſpiracy. I am ſorry to find that there have been ſo many of the Nobility of this Land that have lived ſo happily under the benign Influence of a Gracious Prince, ſhould make ſo

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ill Returns. Gentlemen, I muſt appeal to you, whether in your Obſervation you found Colonel *Rumſey* to be over-haſty and an over-zealous Witneſs; he did not come as if he came in ſpight to the Priſoner at the Bar; you found how we were forced to pump out every thing; but after he had been preſſed over and over again, then he came to it: So that I obſerve to you, that he was an unwilling Witneſs.

Gentlemen, Give me leave to obſerve to you, the Priſoner at the Bar, before ſuch time as Mr. *Sheppard* came up and gave Evidence againſt him, ſays he, I came only by accident, only to taſte a parcel of Wine. Mr. *Sheppard* when he comes up, he tells you, there was no ſuch Deſign. *Ferguſon*, that was the Perſon he kept Company with, the Reverend Dean and the reſt of the Clergy of the Church of *England*, they were not fit to be truſted with it, but this Independant Parſon *Ferguſon*, he gives notice of the Coming of theſe Perſons; and in purſuance of this notice they all come, they come late, in the Evening, not in the Poſture and Quality they uſe to go, for you find they had not ſo much as a Coach. Is it probable they came to taſte Wine? Wherefore did they go up into a Room? Wherefore did they order Mr. *Sheppard* that none of the Boys ſhould come up, but that the Maſter muſt fetch the Sugar and Wine himſelf? Wherefore you may perceive the Action they were upon, there were only to be ſuch Perſons as had an Affection for ſuch a Cauſe. You find purſuant to what Colonel *Rumſey* ſays, that there was a Direction to take a View of the Guards, that Sir *Thomas Armſtrong* comes back and makes this Report: Says he, I have taken notice they are in ſuch an idle careleſs Poſture, that it is not impoſſible to ſurprize them. This Mr. *Sheppard* he does not come, nor does he appear to you to come here out of any vindictive Humour, to do the Priſoner at the Bar any Hurt.

In the next place we have my Lord *Howard*, he comes and poſitively tells you, after he had given an account (for you obſerve there were two Parts to be acted in this horrid Tragedy; there was firſt the Scoundrel ſort of People were to be concerned to take away the Life of the King and the Duke, the Great Perſons were to head the Party in the Riſing) they put themſelves in proper Poſtures, each of them conſenting to ſomething of the Surprize, inaſmuch as you obſerve that Sir *Thomas Armſtrong* and ſome other Perſons might not be truſted. They come and reſolve themſelves out of a general Council, and they meet in a particular Council of Six, looking upon themſelves as the Heads of the Party: And I muſt tell you many of them (we live not in an Age of ſuch Obſcurity, but we know them) how fond have they been of the Applauſe of the People! As that Perſon encouraged himſelf yeſterday, they were *Liberatores Patriæ*, that could murder the King and the Duke.

My Lord, I muſt take notice that this Noble Lord is known to have an Intimacy with him; you obſerve with how much Tenderneſs he is pleaſed to deliver himſelf, how carefully he reports the Debates of the particular Conſults of the Perſons to be intruſted in the Management; he tells you, that Noble Lord the Priſoner at the Bar was pitched upon, and *Algernoone Sidney*, a Man famous about the Town: For what? To call in Parties from ſome of His Majeſty's other Dominions, Perſons we know ripe enough for Rebellion, to aſſiſt. Purſuant to this, you find Perſons ſent of a Meſſage for ſome to come over, whereof ſome are in hold: So that for all dark and obſcure ſort of Matters, nothing can be brought better to light, than this, of taking all Matters together; with the concurring Circumſtances of Time and Place.

Gentlemen, I muſt confeſs this Noble Lord hath given an account by ſeveral Honourable Perſons of his Converſation, which is a very eaſy matter. Do you think if any Man had a Deſign to raiſe a Rebellion againſt the Crown, that he would talk of it to the Reverend Divines, and the Noble Lords that are known to be of Integrity to the Crown? Do you think the Gentleman at the Bar would have ſo little Concern for his own Life, to make this Diſcourſe his ordinary Converſation? No, it muſt be a particular Conſult of Six, that muſt be entruſted with this. I tell you, 'tis not the Divines of the Church of *England*, but an Independant Divine, that is to be concerned in this; they muſt be Perſons of their own Complexion and Humour. For Men will apply themſelves to proper Inſtruments.

Gentlemen, I would not labour in this Caſe; for far be it from any Man to endeavour to take away the Life of the Innocent. And whereas that Noble Lord ſays, he hath a virtuous good Lady, he hath many Children, he hath Virtue and Honour he puts into the Scale: Gentlemen, I muſt tell you on the other ſide, You have Conſciences, Religion; you have a Prince, and a Merciful one too; conſider the Life of your Prince, the Life of his Poſterity, the Conſequences that would have attended if this Villany had taken effect. What would have become of your Lives and Religion? What would have become of that Religion we have been ſo fond of Preſerving? Gentlemen, I muſt put theſe things home upon your Conſciences. I know you will remember the horrid Murder of that moſt Pious Prince the Martyr, King *Charles* the Firſt. How far the Practices of thoſe Perſons have influenced the ſeveral Puniſhments ſince, is too great a Secret for me to examine. But now I ſay, you have the Life of a Merciful King, you have a Religion that every honeſt Man ought to ſtand by, and I am ſure every Loyal Man will venture his Life and Fortune for. You have your Wives and Children. Let not the Greatneſs of any Man corrupt you, but diſcharge your Conſciences both to God and the King, and to your Poſterity.

L. C. J. Gentlemen of the Jury, the Priſoner at the Bar ſtands Indicted before you of High-Treaſon, in Compaſſing and Deſigning the Death of the King, and in declaring of it by Overt Acts, endeavouring to raiſe Inſurrections and popular Commotions in the Kingdom here. To this he hath pleaded Not Guilty. You have heard the Evidence that hath been againſt him, it hath been at large repeated by the King's Counſel, which will take off a great deal of my Trouble in repeating it to you again. I know you cannot but take notice of it, and remember it, it having been ſtated twice by two of the King's Counſel to you; 'tis long, and you ſee what the Parties here have proved.

proved. There is firſt of all Colonel *Rumſey*, he does atteſt a Meeting at Mr. *Sheppard*'s Houſe, and you hear to what purpoſe he ſays it was; the Meſſage that he brought, and the Return he had; it was to enquire concerning a Riſing at *Taunton*; and that he had in Return to my Lord *Shaftsbury* was, that Mr. *Trenchard* had failed them, and my Lord muſt be contented, for it could not be that time. You hear that he does ſay that they did deſign a Riſing; he ſaith there was a Riſing deſigned in *November*, I think he ſaith the 17th, upon the Day of Queen *Elizabeth*'s Birth. You hear he does ſay, there was at that Meeting ſome Diſcourſe concerning inſpecting the King's Guards, and ſeeing how they kept themſelves, and whether they might be ſurprized; and this he ſays, was all in order to a Riſing. He ſays that at this my Lord *Ruſſel* was preſent. Mr. *Sheppard* does ſay, that my Lord *Ruſſel* was there: That he came into this Meeting with the Duke of *Monmouth*, and he did go away with the Duke of *Monmouth*, as he believes. He ſays there was ſome Diſcourſe of a Riſing or Inſurrection that was to be procured within the Kingdom, but he does not tell you the Particulars of any thing, he himſelf does not. My Lord *Howard* afterwards does come and tell you of a great Diſcourſe he had with my Lord *Shaftsbury* in order to a Riſing in the City of *London*, and my Lord *Shaftsbury* did value himſelf mightily upon 10000 Men he hoped to raiſe; and a great deal of Diſcourſe he had with my Lord *Shaftsbury*. This he does by way of inducement to what he ſays concerning my Lord *Ruſſel*. The Evidence againſt him is ſome Conſults that there were by ſix of them, who took upon them, as he ſays, to be a Council for the Management of the Inſurrection that was to be procured in this Kingdom. He inſtances in two that were for this purpoſe, the one of them at Mr. *Hambden*'s Houſe, the other at my Lord *Ruſſel*'s Houſe. And he tells you at theſe Meetings there was ſome Diſcourſe of providing Treaſure, and of providing Arms, but they came to no Reſult in theſe things. He tells you, that there was a Deſign to ſend for ſome of the Kingdom of *Scotland* that might joyn with them in this thing. And this is upon the matter the ſubſtance of the Evidence that hath been at large declared to you by the King's Counſel, and what you have heard. Now, Gentlemen, I muſt tell you, ſome things it lies upon us to direct you in.

My Lord excepts to theſe Witneſſes, becauſe they are concerned by their own ſhewing in this Deſign: If there were any, I did direct (Some of you might hear me) yeſterday, that that was no ſufficient Exception againſt a Man's being an Evidence in the Caſe of Treaſon, that he himſelf was concerned in it; they are the moſt proper Perſons to be Evidence, none being able to detect ſuch Councils but them. You have heard my Lord *Ruſſel*'s Witneſſes that he hath brought concerning them, and concerning his own Integrity and Courſe of Life, how it has been ſober and civil, with a great Reſpect to Religion, as theſe Gentlemen do all teſtify. Now the Queſtion before you will be, Whether upon this whole matter you do believe my Lord *Ruſſel* had any Deſign upon the King's Life, to deſtroy the King, or take away his Life, for that is the material Part here. 'Tis uſed and given you (by the King's Counſel) as an Evidence of this, That he did conſpire to raiſe an Inſurrection, and to cauſe a Riſing of the People, to make as it were a Rebellion within the Nation, and to ſurprize the King's Guards, which, ſay they, can have no other end but to ſeize and deſtroy the King; and 'tis a great Evidence (if my Lord *Ruſſel* did deſign to ſeize the King's Guards, and make an Inſurrection in the Kingdom) of a Deſign for to ſurprize the King's Perſon. It muſt be left to you upon the whole matter: You have not Evidence in this Caſe as there was in the other Matter that was tried in the morning, or yeſterday, againſt the Conſpirators to kill the King at the *Rye*. There was a direct Evidence of a Conſult to kill the King, that is not given you in this Caſe; This is an Act of Contriving Rebellion and an Inſurrection within the Kingdom, and to ſeize his Guards, which is urged as an Evidence, and ſurely is in it ſelf an Evidence, to ſeize and deſtroy the King.

Upon this whole matter this is left to you. If you believe the Priſoner at the Bar to have Conſpired the Death of the King, and in order to that to have had theſe Conſults that theſe Witneſſes ſpeak of, then you muſt find him Guilty of this Treaſon that is laid to his Charge.

Then the Court adjourned till four a Clock in the Afternoon, when the Jury brought the ſaid Lord Ruſſel *in Guilty of the ſaid High-Treaſon.*

THE

THE TRYAL OF JOHN ROUSE.

Thurſday, July 12. 1683. John Rouſe *and* William Blague *being ſet to the Bar, and after holding up their Hands, the following Indictment was read.*

London. THE *Jurors for our Sovereign Lord the King, upon their Oaths preſent, That* John Rouſe *late of* London *Gent. and* William Blague *late of* London *Gent. as falſe Traitors againſt the moſt Illuſtrious and Excellent Prince, our Sovereign Lord* Charles *II, by the Grace of God, of* England, Scotland, France *and* Ireland *King, their natural Lord, not having the Fear of God in their Hearts, nor weighing the Duty of their Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, and the true Duty, and natural Obedience, which True and Faithful Subjects of our Sovereign Lord the King, towards him our ſaid Lord the King do bear, and of right ought to bear, wholly withdrawing; and with their whole Strength intending the Peace and common Tranquillity of this Kingdom of* England *to diſturb, and War and Rebellion againſt our ſaid Lord the King to move and ſtir up; and the Government of our ſaid Lord the King within this Kingdom of* England *to ſubvert, and our ſaid Lord the King from his Title, Honour and Kingly Name of the Imperial Crown of this his Kingdom of* England *to put down and deprive; and our ſaid Lord the King to Death and final Deſtruction to bring and put, the ſecond Day of* March, *in the Year of the Reign of our Sovereign Lord* Charles *II, King of* England, *&c. the Five and Thirtieth, and divers other Days and Times, as well before as after, at the Pariſh of St.* Michael Baſſiſhaw, *in the Ward of* Baſſiſhaw, London, *Maliciouſly and Traiterouſly with divers other Traitors, to the Jurors aforeſaid unknown, they did Conſpire, Compaſs, Imagine and Intend our ſaid Lord the King, their Supreme Lord, not only of his Kingly State, Title, Power and Government of this his Kingdom of* England *to deprive and throw down; but alſo our ſaid Lord the King to kill, and to Death to bring and put; and the ancient Government of this his Kingdom of* England *to change, alter and wholly to ſubvert, and a miſerable Slaughter amongſt the Subjects of our ſaid Lord the King through his whole Kingdom of* England *to cauſe and procure, and Inſurrection and Rebellion againſt our ſaid Lord the King to move, and ſtir up within this Kingdom of* England. *And to fulfil and perfect the ſaid moſt horrible Treaſons, and traiterous Conſpiracies, Imaginations and Purpoſes aforeſaid, the ſaid* John Rouſe *and* William Blague, *then and there, and divers other Days and Times, as well before as after, as falſe Traitors, Maliciouſly, Traiterouſly and Adviſedly, they did aſſemble, meet together, and conſult between themſelves and with the ſaid other Traitors, to the Jurors aforeſaid unknown, and with them did treat of the taking and ſeizing the Tower of* London, *and of and for the executing and perfecting their Treaſons, and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid. And that they the ſaid* John Rouſe *and* William Blague, *as falſe Traitors, Maliciouſly, Traiterouſly and Adviſedly, then and there, and divers other Days and Times, as well before as after, they and either of them did undertake, and to the ſaid other Traitors did promiſe for themſelves to be aiding and aſſiſting in the execution of the Treaſons and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid; and in providing Arms and Armed Men to fulfil and perfect the ſaid Treaſons, and traiterous Compaſſings, Imaginations, and Purpoſes aforeſaid. And the ſaid moſt wicked Treaſons, and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid to fulfil and bring to paſs, they the ſaid* John Rouſe *and* William Blague, *as falſe Traitors, Maliciouſly, Traiterouſly and Adviſedly, then and there, did procure and prepare Arms, to wit, Blunderbuſſes, Carbines and Piſtols, againſt the Duty of their Allegiance, againſt the Peace of our Sovereign Lord the King, his Crown and Dignity, and againſt the Form of the Statutes in that caſe made and provided,* &c.

Cl. of Cr. What ſayeſt thou, *John Rouſe*, Art thou guilty of this High-Treaſon whereof thou ſtandeſt Indicted, or Not Guilty?

Rouſe. Not Guilty.

Cl. of Cr. Culprit, How wilt thou be tryed?

Rouſe. By God and my Country.

Cl. of Cr. God ſend thee a good Deliverance. What ſayeſt thou *William Blague*, Art thou guilty of this High Treaſon whereof thou ſtandeſt Indicted, or Not Guilty?

Capt. *Blague.* Not Guilty.

Cl. of Cr. Culprit, How wilt thou be tryed?

Capt. *Blague.* By God and my Country.

Cl. of Cr. God ſend thee a good Deliverance.

Friday

Friday July 13. *in the Afternoon, the Court being met, and Proclamation made.*

Cl. of Cr. Set *John Rouſe* and *William Blague* to the Bar. You the Priſoners at the Bar, theſe good men that you hear called, are to paſs between our Sovereign Lord the King upon Tryal of your ſeveral Lives and Deaths; if you will challenge them or any of them, your time is as they come to the Book to be ſworn, before they are ſworn. *Nicholas Charlton.*

Capt. *Blague.* I hope I ſhall only ſpeak for my ſelf.

Sir *Edmond Saunders.* *L. C. J.* Yes, You ſhall be heard.

Rouſe. My Lord, I have had no liberty ſo much as ſending for my Wife. *Monday* Morning they gave me notice of Tryal, but I have had no advantage of that notice; I preſumed it is meant we ſhould have the liberty of Subjects, but though notice was then given, yet I had not the liberty of ſending for any body till *Wedneſday*: It was 8 or 9 of the Clock on *Wedneſday* night that one came and told me, I ſhould have no liberty of Counſel, unleſs I had it from the Court; and yeſterday morning I found that Captain *Blague* and I were joyned in one Indictment, which alters the Caſe with ſubmiſſion to the Court. What time I have had for Tryal has been ſo ſhort, I have not been able to get my Witneſſes ready. I deſire nothing but as an *Engliſh* Man.

L. C. J. As an *Engliſh* Man? You can demand no time to prepare for Tryal, for thoſe that will commit crimes, they muſt be ready to anſwer for them, and defend themſelves. 'Tis Matter of Fact you are charged with, you knew long agoe what you were to be Tryed for, for you were taken up and charged with High-Treaſon. You might then reaſonably conſider what kind of Evidence would be againſt you; if you be an innocent Perſon, you may defend your ſelf without queſtion. But if you have done an ill thing, the Law does not deſign to give you time to ſhelter your ſelf under any ſubterfuge, or make any excuſe, or to prepare any Witneſſes to teſtify an untrue thing for you.

Rouſe. My Lord, I only beg a little time, I don't deſign to make any Evaſion, That I am innocent I thank God I am.

L. C. J. We can't give you any further time unleſs the King pleaſes, we are bound to Try thoſe he brings before us.

Mr. Serj. *Jefferies.* Becauſe Captain *Blague* does not deſire to be joyned to the other, we that are for the King are contented that *Rouſe* be Tryed firſt.

Then Captain Blague *was taken away, and after ſeveral Perſons challenged by* Rouſe, *the Jury that were Sworn, were*

Robert Beddingfield,	Jur'	*Richard Hoare,*
John Pelling,		*Thomas Barnes,*
William Windbury,		*Henry Robbins,*
Theophilus Man,		*Henry Kempe,*
John Short, Senior,		*Edward Raddiſh,*
Thomas Nicholas,		*Edward Kempe.*

Cl. of Cr. John Rouſe, Hold up thy hand. You of the Jury look upon the Priſoner and hearken to his Cauſe; he ſtands Indicted,——*Prout antea* in the Indictment *Mutatis mutandis*; upon this Indictment he hath been Arraigned, and thereunto Pleaded *Not Guilty*, and for his Tryal put himſelf upon his Country, which Country your are, your Charge is to inquire, *&c.*

Mr. *Jones.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, the Priſoner at the Bar ſtands Indicted for High Treaſon, in conſpiring the Death of the King, and in order thereunto conſulting how to ſeize the Tower, and in providing of Arms in order to deſtroy the King and ſubvert the Government; if we prove it upon him, you are to find him Guilty.

Mr. Serj. *Jefferies.* The Priſoner at the Bar was (as you have been acquainted) in that horrid Conſpiracy, whereof ſeveral of the Conſpirators have been brought to Tryal, and received a Verdict ſurely according to Evidence. The Priſoner at the Bar did bear a proportion among the reſt. It does occur to your memories, there were ſeveral undertakers that undertook ſeveral ſtations; ſome whereof were to undertake the blackeſt part of this horrid Villany, by the taking off the King and his Royal Highneſs his Brother; others (in order to the ſame deſign) were to ſeize upon the King's Guards, and ſo to deprive him of all manner of defence whatſoever, and to prevent all perſons to make any defence againſt them, as you heard there was another part to be acted, therefore the Town was to be divided into ſeveral Diviſions, I think there was Twenty, but the moſt numerous and beneficial parts were thought to be about *Wapping.* A particular part of the Evidence was, that the Tower was to be ſeized and the King's Arms there, I know you obſerved that they took notice of a particular place of the Tower that was moſt capable of acceſs. This *Rouſe* is a Gentleman very well known, 'tis not the firſt time he hath been at this Bar: He was here at a time when the common Juſtice of the Nation could not be obtained in this place, in ſo much that the Judges who came to execute Juſtice, had more reaſon to fear being executed upon the Bench than the Priſoner at the Bar. It may eaſily appear how far Mr. *Rouſe* was concerned (I don't love to aggravate matters, he has crimes enough) he was reckoned Pay-maſter to this Rabble, he was to take care to manage thoſe Perſons that were to ſeize upon the Tower. He is a Man of great skill in that ſubject, a Doctrine wherein he was well tutored under a Lord you heard mentioned this morning, but he is in his Grave, and ſo I ſhall ſay no more of him. We ſhall give you an account of a Deſign he had how to compaſs this buſineſs. *Black-heath* was looked upon as a convenient place, where there was to be a Golden Ball, for which the Sea-men were to play in great numbers, and he that won the prize was to have the Golden Ball, but his eye was upon the Tower all this while. He thought to allure theſe ſilly Sea-men by the advantage of the honourable winning of this Ball, and when they were fraighted with the ſucceſs of this meeting, then it was proper to attack the Tower. We ſhall prove the other Priſoner that was at the Bar, ingaged with this Priſoner at the Bar. We ſhall not only prove this, but that Mr. *Rouſe* hath been al-

always of an inclination againſt the Government. We ſhall call you Witneſſes, that he hath undertaken to diſpute by what Authority the King comes to govern in *England*, that he hath ſaid *he had forfeited his Government*, that he told an ordinary Miſcreant one of his Levellers, *that he had as much right to the Crown as he had.* My Lord, if we prove this matter to your Lordſhip, and the Gentlemen of the Jury, it will be high time for us to endeavour to preſerve the Crown upon that Royal Head, upon which all Loyal Men deſire it ſhould flouriſh as long as the Sun and Moon indure.

Mr. *Burton.* Call *Thomas Leigh.*

[*Who was ſworn.*

Mr. *Jones.* Pray give us an account what you know concerning Mr. *Rouſe.*

Mr. *North.* Of any deſign againſt the King, and providing Arms.

Rouſe. If it pleaſe you my Lord, one word before he ſpeaks: I have an exception againſt him. I wonder with what confidence you can look in my face at this time.

King's Counſel. Nay, nay, ſpeak to the Court.

Rouſe. My Lord, he is a Perſon that before he was taken up, was ſwore by two perſons to have a hand in the Plot, one was Mr. *Keeling*, the other Mr. *How* of *Old ſtreet*, and then being taken up, and conſcious to himſelf that he was Guilty of ſuch notorious Crimes, and knowing I was pretty well acquainted with him, he was deadly afraid I ſhould come and Swear againſt him, and thereupon he took the boldneſs to Swear againſt me firſt.

Mr. *North.* My Lord, He hath offered nothing of Objection.

Rouſe. I ſuppoſe, with ſubmiſſion to the Court, without he have his Pardon, he is no Evidence in this Caſe.

Mr. Serj. *Jefferies.* Come tell us all you know.

Mr. *Leigh.* If it pleaſe you, my Lord, I have been concerned in this Conſpiracy, I know ſomething of it, but I believe Mr. *Rouſe* knows a great deal more. Mr. *Rouſe* takes me to the *King's Head* Tavern in *Swithins Alley*, where after ſome time Mr. *Goodenough* came, where there was a Club of Men that were in the Conſpiracy. I had ſeen Mr. *Goodenough* before, he acquainted me that there was an apprehenſion our *Rights* and *Priviledges* were Invaded, and it was time to look to our ſelves, for *Popery* was deſigned, and *Arbitrary Power*; and therefore he deſired to know whether I would engage in that Affair to prevent it, and withal he told me, the City of *London* and *Middleſex* was divided in Twenty parts, and he asked me to ingage in one part. I told him, my acquaintance did not lie where I lived, but I would get a part where my acquaintance was. I acquainted Mr. *Rouſe* and Mr. *Goodenough* what Men I had ſpoke to. Mr. *Goodenough* told me, the deſign was to ſet up the Duke of *Monmouth*, and kill the King and the Duke of *York*, but that all Parties muſt not know of it: But that we muſt tell ſome people there was like to be a Foreign Invaſion, and ask them what readineſs they were in, and if we found they were like to be compliant in that, then we might diſcourſe with them about the other Matter. I diſcourſed with ſeveral Men about this Affair: And he told me, the Lord Mayor and Aldermen were to be killed immediately, (eſpecially the preſent Lord Mayor Sir *John Moore*) and their houſes plundered, and there would be Riches enough, and that would help to maintain the Army, and we went on further in this Diſcourſe. Then I acquainted Mr. *Rouſe* with this buſineſs, but he knew of it before, and he did tell me he could provide Arms for an Hundred Men, and ſaid nothing was to be done unleſs the King was ſeized; ſaying, we remember ſince **Forty One** the King went and ſet up his Standard; Therefore (ſays he) we will ſeize them, that they ſhall not ſet up their Standard. But (ſays he) I am for ſeizing them, but not for ſhedding their Blood. Mr. *Rouſe* went off with that Diſcourſe, ſays he, I muſt ſpeak with Mr. *Goodenough* and ſome of thoſe that are principally concerned. Mr. *Rouſe* acquainted me, that it was a very convenient thing to have a Ball played upon *Black-Heath*, and to that end we muſt ſpeak to ſome Sea-Captains, and (ſays he) I will engage Ten, and they ſhall manage that Affair, and he that wins the Ball take it. But when they have ſo done, every Captain ſhall take his Party and tell them they have other work, and then go with long Boats and Arms and ſeize the Tower. I acquainted Mr. *Goodenough* with this, and Mr. *Goodenough* asked me the charge of the Golden Ball, Mr. *Rouſe* had told me it would be Ten or a Dozen Pounds; Mr. *Goodenough* ſaid if it was Forty Pound he would be at the charge of it all. Several ſuch Diſcourſes Mr. *Rouſe* hath in my hearing ſpoke to ſeveral Men at the *King's Head* Tavern. I underſtood I was Sworn againſt, I heard of it at the *King's-Head* Tavern in his Company and Mr. *Goodenough's*. Mr. *Rouſe* directed me to go to the *Sun*-Tavern near *Moorgate*, and he would come to me, and there Mr. *Rouſe* and Mr. *Goodenough* came to me, and Mr. *Rouſe* told me I ſhould lie at his Houſe. Mr. *Rouſe* cut off my Hair, and went to Mr. *Bateman's* and fetched me a Perriwigg; Mr. *Rouſe* and I went ſeveral times to view the Tower, and took Mate *Lee* along with us. So Mate *Lee* directed us to *Traitors-Bridge*, and he ſaid that was an eaſy place, and he would undertake to do it with an Hundred Men, ſo they had but hand Granadoes. We had ſome time before that appointed to meet at *Wapping*, to ſpeak with the Sea-Captains, Mr. *Rouſe* met the firſt day in order to this Buſineſs at the *Amſterdam* Coffee-houſe, and there Mr. *Rouſe* met with two Sea Captains (as he told me) that were to officiate in this Buſineſs, and the Two Captains he took to the *Angel* and *Crown* in *Threadneedle ſtreet*. A ſmall time after, about an hour and a half or thereabouts, Mr. *Rouſe* came, (I am not poſitive whether Mr. *Goodenough* was there or no) and told me, he had ſpoke to both the Sea-Captains, and they were willing, but one was going to *New Jerſey*, and therefore the work muſt be done before he went, or he could not aſſiſt: Another time he appointed Mate *Lee* to meet at the Anchor in *Wapping*. I did ſpeak to Mr. *Goodenough*, but he did not meet us, ſo that we could not go down that day, but Mr. *Rouſe* always undertook that Buſineſs to get Ten Sea-Captains, and get Arms for an Hundred Men. After I was Sworn againſt, and went to Mr. *Rouſe's* Houſe; the next day Mr. *Nelthrop* and Mr. *Goodenough* came to me to Mr. *Rouſe's*, ſays Mr. *Rouſe*, be not diſcouraged let the Buſineſs go on. I was directed by Mr. *Nelthrop* and Mr. *Goodenough*, when ever I was taken into Cuſtody, I ſhould *deny all*, and it could not *touch my Life.*

I thank him for his kindneſs, I lay well, and eat well at his Houſe, my Lord; but however I will tell the truth. We met afterwards ſeveral times, and went to Captain *Blague*'s, and the reſt of the Company, but at different places. We had an account that Mr. *Goodenough* was in the North raiſing Men, and that the Duke of *Monmouth* was thereabouts, and that a Deliverance ſhould be wrought for all this.

L. C. J. About what time was this?

Mr. *Leigh.* In laſt *June.* The Deſign was ſo laid, that I was told it was to be done in a Fortnight. They never agreed on a way or method of killing the King, but they told me they had a Thouſand Horſe ready in the Country, and that there was Five Hundred Horſe or thereabouts ready in the Town, and that the King ſhould be killed coming from *Windſor.* Now they were contriving how to ſend Arms, that they might not be ſuſpected, to ſome private place, they were to be ſent in Trunks to ſome private Houſe, and there they were to Arm themſelves in the Night, and ſome Brick-men were to go to *Windſor* to know when the King came, and give Information, and ſo they were to ſet upon him in ſome convenient place, and both were to be taken off together, the King and the Duke; and Mr. *Rouſe* ſaid, take them off, and then no Man can have Commiſſion to fight for them.

Mr. Serj. *Jefferies.* He is a Politician every inch of him.

Mr. *Jones.* What did he employ you to do?

Mr. *Leigh.* I was employed by Mr. *Goodenough* to make all the Friends I could in this Engagement. I went into *Spittle-fields* and engaged ſome Weavers and other People. They promiſed me a Gratuity, but I never had any thing.

Mr. Serj. *Jefferies.* If Mr. *Rouſe* has a mind to ask him any Queſtions.

Rouſe. I will, my Lord.

L. C. J. Propoſe your Queſtions to the Court.

Rouſe. I ask him by the Oath he has taken, Whether ever I ſpake with him of any Deſign againſt the King and Government? I ask you, whether you did not begin with me?

L. C. J. You hear his Queſtion, anſwer it.

Mr. *Leigh.* For that I anſwer, That Mr. *Rouſe* was the firſt Man that ever I heard propoſe that the King and the Duke ſhould be ſecured, and there is another thing come in my mind, Mr. *Rouſe* hath been a Traveller, he did preſume to ſay, and has ſaid to me, and in Company, that the King was *Sworn* in *France* and *Spain* to bring in *Popery* and *Arbitrary Power* in ſo many Years, and therefore it was no Sin to take him off, and he told me he had it under his own Hand.

Rouſe. It was impoſſible, my Lord.

Mr. Serj. *Jefferies.* I do believe it. I do not believe he thought thee fit to be a Secretary.

L. C. J. Look you, if you would have any thing asked him, propoſe it to me.

Rouſe. What place was it I began to ſpeak of any thing of this Deſign?

Mr. *Leigh.* The *King's-head.*

Rouſe. Who was with us?

Mr. *Leigh.* Mr. *Goodenough* and ſeveral others.

Rouſe. Was it diſcourſed of before them?

Mr. *Leigh.* No, You never diſcourſed of it before them.

Rouſe. You diſcourſed of going an Hay-making in the Country; ſays you, I will truſt them one alone, but ſays you, I am under an Oath of Secrecy not to communicate it but to one at a time, but I make bold to acquaint you with it; I give you an account what I heard from his own Mouth.

L. C. J. Look you, What you heard from him will ſignify nothing, unleſs you are able to make proof of it by other Witneſſes: If you will ask him any Queſtions, you ſhall. We will hear what you can ſay for your ſelf at laſt. But you muſt not invade the King's Evidence with any Diſcourſe at random.

Rouſe. Did I ever put you upon any thing of this nature? Did you not tell me, there was a Deſign to overturn the Government, but you would not ſhed Blood?

Mr. *Leigh.* I will anſwer; I can't be poſitive whether I came to Mr. *Rouſe*, or he to me. I had been in his Company ſeveral times before, and whether he diſcourſed it firſt to me, or I to him, I cannot tell; but when that Point was diſcourſed, he was very zealous to get ten Captains, and that the Ball might be played, and the Tower taken.

Rouſe. Did ever Mr. *Goodenough* and you and I meet upon ſuch an account?

Mr. *Leigh.* Yes, at the *King's-head* Tavern.

Rouſe. I can take my Oath I never ſaw Mr. *Goodenough* but twice in your Company, and I never knew you till *May* laſt.

Mr. Serj. *Jefferies.* You came to a very ſtrict Alliance by that time it came to *June.*

Mate Lee *ſworn.*

Mr. Serj. *Jefferies.* Tell my Lord and the Jury what you know, the whole Truth, and nothing but the Truth.

Lee. The whole Truth I will tell. About a Week before *Midſummer* or thereabouts I met Mr. *Rouſe*, I think it was in *Pope's-head* Alley, going to look after Captain *Blague:* Says Mr. *Rouſe*, I have ſomething to ſay to you, but he did forbear ſpeaking it then; ſo I went to the *King's-head* Tavern by the *Exchange*, we went into a little Room; ſays he, there is ſomething I would have you do. What's that? ſays I. Says he, can't you get ſome Sea-men fitting to make Commanders of Ships? I did not underſtand Mr. *Rouſe*'s meaning in it, but I thought Mr. *Rouſe* being in Employment might put me in, being deſtitute of Employment as well as other Men. So after we did appoint to meet at *Wapping*, at the Sign of the *Blew Anchor* in *Wapping*-Dock. Says Mr. *Rouſe*, If I come not at ten of the Clock, do not look for me. Says he, Can you get no Men that are fit to make Commanders of Ships? Says I, I have no Acquaintance with any, I do not know but two or three: But, ſays I, I will ſee what I can do. I waited for Mr. *Rouſe* and Mr. *Leigh* next Day (both were to come.) The next Day I asked him, what he intended by the Commanders of the Ships? Where would he have thoſe Ships? He anſwered, ſome of the King's Men of War that lay at *Deptford* and *Woolwich* to make Guard-Ships. Says I, what will you do if you have no Powder and Shot? If you could take the *Tower*, then you might provide them with every thing fitting. Says Mr. *Rouſe*, We muſt ſecure

cure the *Tower* and *Whitehall* both, or we can do nothing. Says I, Mr. *Rouſe*, where is your Oath of Allegiance then that is to the King? Says he, We will ſecure the King that he ſhall come to no Damage, and he ſhall remain King ſtill. If Mr. *Rouſe* hath any thing to object againſt what I ſay, I deſire to hear it, I ſpeak nothing but the truth.

Mr. Serj. *Jefferies*. Did you meet with him at any other time?

Lee. This was the firſt time he put out any ſuch thing to me, concerning any ſuch Contrivance.

Mr. Serj. *Jefferies*. Did you meet with him afterwards?

Lee. Yes, We had ſome Diſcourſe, it was to the ſame effect, but it ſignifies nothing, and my Memory being ſhallow, I do not exactly remember it. I know I muſt give an account of this before a greater Court than this.

Mr. *Burton*. Mr. *Corbin*.

Mr. Serj. *Jefferies*. I did acquaint you, my Lord, that there was occaſion to make uſe of Evidence againſt the Priſoner at the Bar, I gave you an account how that Evidence was not received. Now I deſire to give you Proof, that the continual Inclination of this Man's Heart was the *Killing* of the King, and *Deſtruction* of the Government.

Mr. Thomas Corbin *ſworn*.

Mr. Serj. *Jefferies*. Pray, Sir, tell my Lord, and the Gentlemen of the Jury, what Meetings you had heretofore with the Priſoner about the Year *Eighty One* or thereabouts. See whether you know him.

Mr. *Corbin*. What I have to ſay againſt Mr. *Rouſe* is only what I gave in Evidence to the Court before.

Rouſe. When was that?

Mr. *Corbin*. In *Eighty One*.

L. C. J. Pray what do you know of him? Don't tell us what you gave in Evidence, but you are on your Oath to ſpeak truth, not what you ſaid then.

Mr. *Corbin*. My Lord, Some few Days before the Members for the City of *London* went for *Oxford*, I happened to appoint a Gentleman (one Mr. *Wyat*) to meet me at Mr. *Leech*'s in *Cornhil*. Mr. *Rouſe* came by, I knew him very well, he was concerned in the Commiſſion for Disbanding the Army as well as I. He came in, and ſaluted not only me but the Maſter of the Shop with *How do you?* He enter'd into Diſcourſe, and ſaid he intended to go for *Oxford*, and that he had agreed with the Coffee-men about Town to furniſh them with News; ſays he, there are ſeveral Gentlemen reſorting to your Shop, it would do well if you had it. Says Mr. *Leech*, what ſhall I give you? Says he, if you will go to the Tavern, we will agree it over a Glaſs of Wine. But Mr. *Rouſe* told me he had a Kindneſs to beg of me, and (ſays he) I would have you engage ſome of your Friends to deliver them ſpeedily to ſuch a Perſon I ſhall appoint, *de die in diem*; for, ſays he, if they be delivered by the ordinary Letter-Carrier, they won't turn to account, nor give ſatisfaction. By and by Mr. *Wyat* came in, (that I was to meet at the *Stationers*) Mr. *Wyat* asked me, what I thought of the Seſſions? Mr. *Rouſe* made anſwer, he did foreſee it would be a very ſhort Seſſions. Says he, theſe frequent Prorogations and Diſſolutions of the Parliament won't avail him, for whatever the King has, the Parliament gave him, and they may *take it away* when they pleaſe. One bid him have a care what he ſaid, and he reply'd, *the King had forfeited his Crown, and had no more Right to it than he had.*

L. C. J. Mr. *Rouſe*. If you would ask him any Queſtions, pray direct your ſelf to us and we will ask them.

Rouſe. I deſire he may be asked what was ſaid before and after?

L. C. J. Can you tell him? Do you know there was any previous or ſubſequent Diſcourſe to this, that might any way alter it?

Rouſe. It was the ſame Queſtion propounded in *Eighty One*.

Mr. *Juſt. Withins*. Pray, Did he ſay the King had *forfeited* his Crown?

Mr. *Corbin*. Yes, and when he was rebuked for it, he reiterated it.

Mr. Serj. *Jefferies*. We will trouble your Lordſhip but with one piece of Evidence more, only to give you an account Mr. *Rouſe* is a Man very well known in the City of *London*, yet when there were Officers came to ſeize him, he had forgot his Name of *Rouſe*, and did not remember it. Swear *William Richardſon* (*which was done.*) Pray tell my Lord, and the Jury, whether you were at the taking of this Mr. *Rouſe*, and what Name he went by.

Mr. *Richardſon*. I was upon the Fourth of *July* inſtant, to ſearch for one *Armiger*, and coming to Widow *Hay*'s Coffee-houſe (I think they call it) the Widow told me there was no Man in the Houſe: I went down the Street and came back again, and one ſaid he ſaw a Man go into the Garden; ſays he, do you ſtay here and I will go and ſee; he ſaw this Gentleman, ſays he, what is your Nume? He ſaid *Johnſon*, I asked him and he ſaid *Johnſon*. I told him, we muſt have an account of him. Some ſaid they did not know him. We went to the *Half-Moon* Tavern in *Alderſgate-ſtreet*, he ſent for other Men, they ſaid they did know him, but they could ſay nothing in his behalf.

Mr. Serj. *Jefferies*. Is that the Man, *Johnſon*?

Mr. *Richardſon*. That is the Man that ſaid his Name was *Johnſon*.

L. C. J. Look you now, Mr. *Rouſe*, this is your time to ſpeak for your ſelf. What have you to ſay to this that is charged upon you? You hear the firſt Witneſs does ſay, That you would have engaged him in a Deſign of *raiſing of Men*, and you told him you deſigned to *ſurprize the Tower*, and to that purpoſe he ſurveyed it with you, and you told him what your Deſign was you met Mr. *Goodenough* about, it was to raiſe Men. *Goodenough* was for *Killing* the King, you, it ſeems, at firſt was but for *ſecuring* the King, and making him *do what you pleaſe*; but afterwards it was come to an higher matter, and then you had found out a way to engage ſome Captains to ſeize the *Tower*, and others were to ſeize *Whitehall*, both were to be done at once. What ſay you to this? (Here are three Witneſſes that teſtify very ſtrongly againſt you) and the Device you had to get Men to *Black-heath* to ſecure the *Tower*.

Rouſe. My Lord, I ſtand here for my Life; it never enter'd into my Heart, nor came out of my Mouth, but he came to me ſeveral times

about it, and I oppoſed it. At laſt he dogg'd me ſo often, that he gave me occaſion to ask him the meaning of it. The firſt place I ſaw him in was the *King's-head* (as he ſaith truly) in *Swithin's Alley*. There were ſeveral Perſons (as they met there every Day upon their private Occaſions) that is true. He asked me a ſtrange Queſtion, (that was the firſt time I heard of it) whether I was willing to oppoſe a Foreign Invaſion that was like to be made ſpeedily? And whether I would engage in the Defence of it? And this he did two or three times afterwards. To which I replyed, Sir, I and every honeſt Man are bound (as we are Subjects, and have taken the Oaths of *Supremacy* and *Allegiance*) to engage in ſuch a thing you put me upon, that was, to engage againſt a Foreign Invaſion. The next time, he asked me how far I would aſſiſt, if ſuch a thing ſhould fall out as a Foreign Invaſion. I wonder'd to hear it ſo often repeated; I anſwered, I never had but one Sword for ſeveral Years, tho' I have had occaſion for many in other Countries, but I make no queſtion but by the Aſſiſtance of my Friends, *to Raiſe an hundred Arms*, that was my very Expreſſion. But withal I demanded what he meant by Invaſion, and that I inſiſted upon ſeveral times; for, ſays I, I know of none, and I hope there is none like to be. I took an account of this in Characters, and have acquainted His Majeſty and the Council with it. He replyed to me, ſays he, I wonder you are a Stranger to ſuch a thing. 'Tis true, ſays he, that is the *Word* goes up and down, but, ſays he, there is another kind of Invaſion meant by ſome Men. I asked him what other Invaſion do you mean? He anſwered preſently, Don't you know? Are you a Stranger in *England*? in *Iſrael*? Says he, there is an Invaſion upon our *Rights* and *Liberties* and *all we have*: Whereupon I was a little ſtartled. This was at the *King's-head* Tavern. Another time I deſired him to explain his meaning, being a Stranger to it, when I expreſſed my readineſs to ſerve the King upon ſuch an Occaſion in thoſe Words; they that know me, know that I am not in the Capacity of Raiſing an hundred Arms, but I intended it, as God knows, in oppoſition to a Foreign Invaſion. But I thank God, I took Characters day by day, and with a Reſolution day by day to diſcover it, but he has got the ſtart of me, for fear I would ſwear againſt him. He inſiſted ſtill upon it, that our Rights and Liberties were invaded, and that was the Invaſion all along intended, and that was the way to hook in Perſons, only upon that pretence of a Foreign Invaſion. I asked him in *what manner* he meant Invaſion? Says he, what with their Doctrines on one hand, and Oppreſſion on the other, they lye ſo heavy that we *can't bear it no longer*. Says I, What do you mean by this? What Courſe do you think of? What can you propound to your ſelf to extricate your ſelf out of theſe Troubles you ſo much complain of? To which he anſwered, You are a Stranger to what is a foot and hath been a foot a great while. Do you not know the Perſons that are engaged in the Deſign? (I was a little inquiſitive to know what was meant by the Perſons.) No (ſays I) poſitively, I know not what you mean, I am a perfect Stranger to theſe Perſons and this Deſign, and I wiſhed him and all others (as they were Men and Chriſtians) that they would take care of *oppoſing the Government they lived under*, that was my very Words. Says he, that we have conſider'd very well, and how to ſecure the *two things*, and, ſays he, you ſhall ſee we will do it dexterouſly, without ſhedding a drop of Blood, nay, ſays he, not the Blood of the Duke of *York*, tho' he be the verieſt Dog in *England*. I deſired him to explain himſelf, he anſwered, The miſchief of it is we can't agree among our ſelves, for it was *Us* and *We* at every Word; ſo I concluded he was of the Cabal and Club that met together on this Deſign (that hath come before your Lordſhip;) and I am pretty confident there was ſuch a helliſh Deſign, tho' I thank God I had no hand in it. Said I, Who are the Perſons? Pray declare the bottom of this Story you come to me about one day after another. With much ado, he told me Mr. *Goodenough* was one. After this Diſcourſe I never ſaw Mr. *Goodenough* but twice, once was at the *King's-head* Tavern, where I believe was twenty; the ſecond time was a day or two after I ſaw the Proclamation and his Name in it. So much I ſpeak of Mr. *Goodenough*. I asked him the Names of the other Perſons that were engaged in this Deſign, and (ſays he) I muſt conceal them, for I am under an Obligation; but the firſt time I ſaw the Proclamation againſt Colonel *Rumſey*, and the others, ſays he, I was deadly afraid I was in the Proclamation; but (ſays he) all theſe Perſons are concerned and ſeveral others. Thereupon he told me, that when they met they came to this Reſolution of ſeizing the *Tower*, the Aldermen, and taking of *London*. Says I, Pray what Money have you to carry on this? Money! Oh, ſays he, we don't want Money; ſays he, Mr. *Goodenough* hath aſſured me there is 40000 *l.*

L. C. J. Look you, You invert all his Diſcourſe: He hath ſworn it againſt you. Have you any Evidence in the World? You are not in a Capacity to ſwear againſt him.

Rouſe. My Lord, he hath turned it upon me, he ſpake to me always in private.

L. C. J. Look you, You have fixed but upon one Perſon here was Mate *Lee*, that gives a very ſhrewd Evidence againſt you; Did he come and teach you? Did he uſe theſe Words?

Rouſe. My Lord, I have nothing to ſay againſt Mate *Lee*, I hope he is an honeſt Man. But I having a Deſign to diſcover this whole thing, and having ſo much out of *Leigh* the Dyer.——

L. C. J. What did you uſe theſe Words to him for then?

Rouſe. To ſatisfy the Gentlemen that put me upon it, that I might come to the bottom of the Deſign.

Mr. *Juſt. With.* You ſay you know a great deal more: How came it to paſs you never told the King one word of this till after you was taken?

Rouſe. I have told it ſince I was taken.

Mr. *Sol. Gen.* Pray, when you had got to the bottom of all this (as you call it) Why did you deny your Name?

Rouſe. I did not deny my Name.

Mr. Serj. *Jefferies.* He hath as many Names as he has Deſigns, and they are abundance.

Rouſe.

Rouſe. I did not know they were Officers. I did not think there was any Obligation upon me to tell every Man my Name.

L. C. J. You hear what Evidence is given againſt you concerning your Diſcourſe in *Eighty One*, which tho' it be not the thing for which you are directly called in Queſtion; yet if you could clear your ſelf of it, it would import you much, for that does ſhew your Spirit, and that you have had a long while a Deſign againſt the King's Life, if that be true; therefore it would be very fitting that you purged your ſelf of it, and that you could ſome way or other give an Anſwer to what you ſaid, *That the King had forfeited his Crown, and had no more Right to it, than one of thoſe ſorry Perſons you ſpoke to:* And to ſay the Parliament might *take away the King's Authority*. Theſe are ſtrange Treaſonable Expreſſions.

Rouſe. My Lord, Tho' this thing be revived, which was out of doors two Years ſince, and I ſuppoſe it is well known to your Lordſhip, who was then upon the Bench. As I was told, there was a Word in the Indictment called *Colloquium*: He was asked what Diſcourſe paſſed before? But if Mr. *Corbin* would remember himſelf, I do confeſs I did ſay theſe Words; but the Words that followed before.

Mr. *Juſt. With.* What do you mean, the Cart before the Horſe?

Rouſe. Mr. *Wyat* was urging of ſeveral Diſcourſes, the Popiſh Grandure in Depoſing Kings, and I gave this Anſwer in theſe Words: *Sir*, (ſays I) *If it were in the Power of any Pope to depoſe the King, then he might as well take away the Crown off the King's Head; but he hath no ſuch Power; if he had that Power*, ſays I, *then the Crown of* England *is yours as much as his.*

Mr. *Sol. Gen.* What was the *Colloquium*, when you ſaid the Parliament might *take it away?*

Rouſe. I never ſaid that.

L. C. J. I have heard a great deal of your Diſcourſe, if you think you can make any of it good by Witneſſes to your Advantage, call them.

Rouſe. My Lord, I have not had time to collect my Witneſſes. How can it be ſuppoſed I ſhould call Witneſſes? I don't know whether they are here. Here are Witneſſes called to prove a Matter, whereof upon a Tryal two Years paſt I was acquitted.

Mr. *Juſt. With.* Pray do not go away with that, here are two Witneſſes ſince.

L. C. J. You were told, *that* was not the thing laid to your Charge now, that does only ſhew the Temper of your Spirit, and how your Inclinations have been all along. Look you, this you are now charged with, is a Deſign to *Seize and Kill the King*, and to that purpoſe to have enter'd into a Conſpiracy with *Goodenough* and others, for the *raiſing of Men*, and the making of a *Rebellion* and *Inſurrection* here in the Kingdom; whereby you might have ſeized not only the *King* but his Fort here the *Tower*, and made your ſelves Maſters of his Ships, and ſo enter'd into a perfect War with him in his own Kingdom, to the Deſtruction of himſelf and the Government. You hear what the Witneſſes ſay againſt you.

Rouſe. I do declare in the Preſence of God Almighty, before whom I muſt ſtand, it never enter'd into my Heart.

Mr. *Jones.* If that would do, we ſhould have none hanged.

Rouſe. I appeal to your Lordſhip, and this honourable Court, whether 'tis likely for me, who am ſuch a ſilly Perſon, to engage in ſuch a deviliſh Deſign, eſpecially being concerned with no Perſon in the World about it; for I declare, if I was upon ten thouſand Oaths, I never had any Diſcourſe with any Perſon in the World about it. In the next place, I was never in any Meeting, tho' I have heard of ſeveral darkly that they met in *London*, and in ſeveral Clubs, but I could never find out the places. I deſire to ask him, whether he knows with whom I did concern my ſelf.

L. C. J. Look you, Did you never meet him with any Company concerning any of theſe Treaſonable Deſigns that you have ſpoken of?

Mr. *Leigh.* I will give your Lordſhip, and the Jury, an account. Mr. *Rouſe* acquainted me he could make ten Sea-Captains, I acquainted Mr. *Goodenough* with it. He told me he would have a Golden Ball, and told me the Charge. We went to the *Angel and Crown* Tavern, from thence he came to meet Mr. *Goodenough* to tell him what he had ſaid to theſe Captains. The next Day he met Mr. *Goodenough*; and Mr. *Goodenough*, Mr. *Rouſe*, Mr. *Pachin*, and I, went from *Joſeph's* Coffee houſe in *Exchange-Alley*, and he diſcourſed about getting of theſe Captains.

Rouſe. Who was preſent?

Mr. *Leigh.* We never diſcourſed the Matter joyntly, but ſingly with one Man. Mr. *Rouſe* and Mr. *Goodenough* went into a Room apart above ſtairs, and diſcourſed this Matter (as I believe) half an hour.

Rouſe. How do you know what Diſcourſe I had with Mr. *Goodenough* when you was not preſent?

Mr. *Leigh.* Mr. *Goodenough* thanked me for bringing him acquainted with you.

L. C. J. How do you know what Diſcourſe they had?

Mr. *Leigh.* I know only what Mr. *Rouſe* told me, Mr. *Rouſe* told me that he would engage ten Sea-Captains, that a Ball ſhould be played, and every Man take his Dividend.

L. C. J. Did he tell you he had diſcourſed this with Mr. *Goodenough.*

Rouſe. Did I tell you ſo?

Mr. *Leigh.* Yes, Sir.

L. C. J. You ſpeak of ſeveral in Company, one *Pachin* and others.

Mr. *Leigh.* We went from the *King's-head* Tavern, for there was Company we did not like, tho' we diſcourſed there but of *Hay-making*, and getting Men to help the Country People.

L. C. J. What did you mean by that?

Mr. *Leigh.* That was to get Men for this Buſineſs.

L. C. J. What did he ſay the Intention was of raiſing theſe Men?

Mr. *Leigh.* Mr. *Rouſe* hath frequently and often acquainted me, that the King had taken an Oath in *France* and *Spain* to bring in *Popery* and *Arbitrary Power* in ſo many Years, and that he had not done it, made the *Popiſh* Party angry, but that he would do it.

L. C J. Well, what Deſign was there in raiſing of Men and ſeizing the Tower?

Mr. *Leigh.* He told me all things muſt be done together. The King and the Duke muſt be ſeized, for that was the principal Work.

Rouſe.

Rouſe. It never enter'd into my heart. Be pleaſed to ask him if he was not arreſted by one *Keeling*, and what was the account of it.

Mr. *Leigh.* No.

Rouſe. I mean ſworn againſt.

Mr. *Leigh.* I will give your Lordſhip an account of it. Mr. *Goodenough*, Mr. *Rouſe*, Mr. *Pachin*, and I, had been at the *King*'s-*Head* Tavern, a Man came and told me, a Man had been at my Houſe, and that one ſwore againſt me, and it would be dangerous to go home. A while after comes one *Armiger*, and he told me Mr. *Bateman* was gone one way and he another to ſeek for me, and deſired me to have a care of my ſelf. With that Mr. *Rouſe*, Mr. *Goodenough*, and Mr. *Pachin* came out to me. Mr. *Rouſe* directed me to go to the *Sun*-Tavern at *Moorgate*, and I went; Mr. *Rouſe*, Mr. *Goodenough*, and Mr. *Pachin*, came to me. I told them I would meet my Wife, but they would not let me go on by any means, but ſent one Mr. *Thomas* a Coffeeman for my Wife.

She came and told me Mr. *Goodenough* had ſworn againſt ſeveral People, or he was ſworn againſt, I went to Mr. *Rouſe*'s Houſe, where Mr. *Goodenough* came to me, Mr. *Rouſe* would have had Mr. *Goodenough* ſtaid there all night: Mr. *Goodenough* ſent for his Wife, to know if his Brother had ſworn, ſhe acquainted him he had not ſworn; Mr. *Rouſe* invited him to lie with me. He ſhewed me behind the Bed a Window to go into another man's Room to make my Eſcape, if any man ſhould come to ſearch the Houſe. I lay there on *Saturday*, Mr. *Goodenough* and Mr. *Nelthrop* came to me; Mr. *Goodenough* told me, he had lain at Mr. *Nelthrop*'s all Night, but he had ſeen his Brother, and he had not ſworn againſt me: I heard that Mr. *Keeling* had ſworn againſt me, and did ſay in Diſcourſe, if I did light of *Keeling*, I would kill him.

Rouſe. I deſire to ask him another Queſtion, When he was told he was ſworn againſt, what did he ſay?

L. C. J. He tells you before-hand, that he ſaid he would kill *Keeling* if he could meet him.

Rouſe. He ſays, Mr. *Goodenough* and *Nelthrop* came to my Houſe, ask him if I was in the Houſe, or ſaw Mr. *Goodenough*?

Mr. *Lee.* I am not poſitive whether he ſaw them together, but that he ſaw Mr. *Goodenough* there the *Friday* Night, for he invited him to lie with me.

L. C. J. Pray what was your Reaſon in putting Mate *Lee* upon the inquiring out men to make Maſters of Ships?

Rouſe. To ſatisfie the Gentleman, becauſe he told me there was ſuch a Deſign in hand, to get to the bottom of that Deſign, that ſo his Majeſty might come to no damage. Pray, my Lord, How could I acquaint the King, or any Juſtice of Peace, what he meant by it, unleſs I underſtood it?

L. C. J. Have you any thing more to ask? Or would you have any Witneſſes called?

Rouſe. My Lord, 'Tis my unhappineſs I have no Witneſſes.

Mr. Serj. *Jefferies.* He hath confeſſed the Treaſon enough.

L. C. J. Look you, Gentlemen, of the Jury. You hear that this perſon at the Bar is Indicted for High-Treaſon in conſpiring the King's Death, and declaring this by Overt Acts, that is, endeavouring to raiſe Men here for to ſeize the Tower, and to make an Inſurrection here, and a Rebellion within the Kingdom: You hear two poſitive Witneſſes of what they have heard from him: He did endeavour, ſays *Lee*, to bring him into it, and he told him the whole Deſign, he did declare to him the manner how they intended to ſeize the King and the Duke of *York*: Mr. *Goodenough* was one of the Perſons that confederated with him, one of them, but ſeveral others they had. They had covert Terms to diſguiſe this, by getting the Country People in their Harveſt. He told them of a Deſign he had to get the Seamen, a Thouſand of them together, to ſeize the *Tower* and *White-Hall* both at a time. And you hear that Mate *Lee* had the ſame diſcourſe in ſubſtance with him, of endeavouring to ſeize the *Tower* and get Arms, for to ſeize the King's Ships, to raiſe a Thouſand Perſons for the effecting of this. All theſe things you have heard proved againſt him, he gives no Anſwer to any of them, but only tells you, That in truth he did not ſay theſe things to them; but they, that is the firſt *Lee*, ſaid theſe things to him. He hath no Evidence at all of it. You hear likewiſe (which does agree with this caſe) the Teſtimony by the other perſon concerning his Diſcourſe in 81. How he ſaid, The King had forfeited his Crown, and had no Right to it; but the Parliament gave him his Authority and might take it away. All theſe Diſcourſes they ſavour of a wicked Spirit as can be in the whole World. I muſt leave it to you whether you believe him Guilty.

The Jury preſently gave their Verdict that he was Guilty.

THE

THE TRYAL OF *WILLIAM BLAGUE.*

William Blague *having been Arraigned on* Thurſday, July 12*th*, *pleaded Not Guilty, and put himſelf upon his Country was brought to the Bar again* Friday July 13*th*. *He made no Challenges, and the former Jury was Sworn.*

Robert Beddingfield, *John Pelling*, *William Windbury*, *Theophilus Man*, *John Short*, Senior, *Thomas Nicholas*, Jur' *Richard Hoare*, *Thomas Barnes*, *Henry Robbins*, *Henry Kempe*, *Edward Raddiſh*, *Edward Kempe.*

Clerk. GEntlemen of the Jury, look upon the Priſoner, and hearken to his Charge. He ſtands Indicted by the Name of *William Blague*, late of *London*, Gent. that he, together with *John Rouſe*, &c.

Mr. *North.* Gentlemen, you that are ſworn; the Priſoner at the Bar, is charged with compaſſing the death of the King, and conſpiring to raiſe War and Rebellion to deſtroy the Government, and take poſſeſſion of it; that he did conſpire with one *Rouſe*, and ſeveral others not yet known, to bring theſe things to paſs, and being join'd together to ſeize the *Tower*, and to provide ſeveral Arms: To this he hath pleaded not Guilty, *&c.*

Mr. Serj. *Jefferies.* My Lord, and you Gentlemen of the Jury, we ſhall not need to trouble you much with the Priſoner at the Bar, for this Priſoner, with him that went before, were to undertake that part of this horrid Conſpiracy relating to the ſeizing the *Tower*, becauſe the the ſame Witneſſes that were againſt the former, are againſt the Priſoner at the Bar. We ſhall not need to trouble you with the hiſtory, we will cauſe our Witneſſes to prove it.——Do you hear, *Lee*, you muſt tell my Lord and the Jury what the Priſoner at the Bar was concerned in.

L. C. J. What do you know of any Treaſonable practices of his?

Mr. *Lee.* I will acquaint your Lordſhip and the Gentlemen of the Jury, that Capt. *Blague*, and Mr. *Rouſe* were frequently at the Tavern. I preſume many times they came in about buſineſs, and ſometimes there were Diſcourſes to carry on this Conſpiracy. Mr. *Rouſe* told me he had acquainted Capt. *Blague* with it, about getting ten Sea-Captains; Captain *Blague* told him, they had better engage one or two Ships to ſhoot Mortar-pieces into the *Tower*, which would preſently deſtroy it; and diſcourſing with Captain *Blague* about the Affair, he told me he would be ready in a Fortnight or Three Weeks.

Capt. *Blague.* My Lord, Will you pleaſe to ask what time that was.

L. C. J. You ſhall have any queſtion asked by and by.

Capt. *Blague.* Very well.

Mr. *Lee.* Capt. *Blague* told me he would be ready in a Fortnight or ſomething more, and he had an intention to lay in about fourteen Guns in his own Ship that he had bought, he would have twenty four in it, and lay it on *Southwark* ſide againſt the *Tower*. He would venture his Ship, but they muſt ſee they were provided with money for the Sea-men. I acquainted Mr. *Goodenough* with this, and Mr. *Goodenough* deſired to ſpeak with Capt. *Blague*; I told Capt. *Blague* of it, and we took Coach at *Stocks-Market*, and went to the *King's-head* in *Chancery-Lane*, where we met with Mr. *Richard Goodenough*, and Mr. *Francis Goodenough*, Capt. *Blague* asked what money they had provided, they ſaid, about 40000 *l.* ſays Capt. *Blague*, the Sea-men will ſwallow that up immediately.

L. C. J. What did Capt. *Blague* ſay?

Mr. *Lee.* Mr. *Goodenough* and Capt. *Blague* diſcours'd about the matter at the *King's-head* Tavern at *Chancery-lane* end, and the Diſcourſe about the matter was, how to ſeize the *Tower*, he then told them again, the only way was to do it with Mortar pieces, that he would venture his own Ship, and provide Two hundred Men.

L. C. J. What did he ſay about Money?

Mr. *Lee.*

Mr. *Lee.* He asked what Money was provided, he ſaid, there was about 40000 *l.* then he ſaid, that would be eaſily ſwallowed. Mr. *Goodenough* ſaid, that there would be more provided at any time. Captain *Blague* and Mr. *Goodenough*, both of them, drank a Glaſs or two of Wine together, and ſo at that time we parted. I met with Captain *Blague* again, and he bid me for God's ſake, don't diſcourſe before my Mate ſuch a one, but my Mate *Lee* is a very honeſt Fellow: Said he, I will undertake once in twenty times to diſmount them ſix Guns that face towards *Surrey* ſide, which I underſtood to be about *Traitors-Bridge*, he would undertake to diſmount them. What Diſcourſe Captain *Blague* and Mr. *Goodenough* had apart I can't tell, but Mr. *Goodenough* told me, he would get ſome other Captains to engage in that Affair. That Buſineſs was left to him and I, and I was deſired to be frequently with Captain *Blague* for the managing this Affair of the *Tower*; and, ſays he, I have had a Commiſſion, tho' not in *England*, by Land as well as by Sea.

L. C. J. Will you ask him any thing, Sir? Now he ſhall be asked any thing that you will propoſe. Firſt, You do propoſe to him about what time this Meeting was. What ſay you to that?

Mr. *Lee.* If it pleaſe your Lordſhip, I believe it was toward the latter end of *May*, or the beginning of *June*.

Capt. *Blague.* If you pleaſe, my Lord, I will give you a Journal or Narrative of all my Proceedings.

L. C. J. Will you ask him any more than that?

Capt. *Blague.* No, my Lord.

Mr. Serj. *Jefferies.* We will call Mate *Lee.* This Mate *Lee* was the Man that might not be truſted. —— Mate *Lee*, Tell my Lord, and the Gentlemen of the Jury, what Diſcourſe you have had with the Priſoner at the Bar, Captain *Blague*, about ſeizing the *Tower*.

Mate *Lee.* I ſhall, Sir. The firſt Diſcourſe that ever I underſtood, was one time he and I was riding in a Coach, ſays Capt. *Blague*, one of theſe days we ſhall have a Ball to toſs. I did not know the meaning of this Ball, till afterwards Mr. *Rouſe*, and Mr. *Lee* and I came together, and he told me of toſſing a Ball upon *Black-heath*. Then I began to underſtand it. And after this, I can't tell whether it was before that, Captain *Blague* and I walking about the *Tower*, and diſcourſing of this, my Way was to ſcale the *Tower*, and take it that way; ſays Captain *Blague*, the beſt way is to ſhoot Mortar-pieces on *Southwark* ſide; this was all the Diſcourſe.

Mr. Serj. *Jefferies.* Can you ſay any thing about the Ship?

Mate *Lee.* Nothing about the Ship, but about Mortar-pieces on *Southwark* ſide.

Mr. Serj. *Jefferies.* What time was that?

Mate *Lee.* I cannot be poſitive, about ſix Weeks ago, or leſs.

Mr. Serj *Jefferies.* The firſt time was in the Coach?

Mate *Lee.* That was about the Ball, I did not underſtand it, only toſſing up a Ball, I did not underſtand the meaning of it, till afterwards Mr. *Rouſe* and Mr. *Lee* and I came together.

L. C. J. How came you to diſcourſe with him concerning the beſt way of taking the Tower?

Mate *Lee.* Mr. *Rouſe*, and Mr. *Lee* and I, and Captain *Blague* had been together. We diſcours'd about taking the *Tower*. And we had this Diſcourſe among our ſelves, which was the beſt way to take the *Tower*; my Approbation was Scaling Ladders, and Hand-Granadoes, that was the beſt Way, Captain *Blague*'s way was with Mortar-pieces on *Southwark* ſide.

L. C. J. To what Intent was this Diſcourſe, had you had any former Diſcourſe with any Perſons?

Mate *Lee.* Not at all, if it pleaſe your Lordſhip. The firſt Diſcourſe I had was with Mr. *Rouſe* and Mr. *Lee.*

L. C. J. And was that about taking the *Tower*?

Mate *Lee.* To ſurprize the *Tower*, and Mr. *Lee* and Mr. *Rouſe* and I went down to view the *Tower*.

L. C. J. Then afterwards Captain *Blague* came in about the way to take it?

Mate *Lee.* This Diſcourſe with Captain *Blague* about the *Tower* was between him and I. I don't remember it in any other Company.

L. C. J. What was your Buſineſs with Captain *Blague*?

Mate *Lee.* My Buſineſs was with Capt. *Blague* to be his Mate, and I was converſant with him at the *Exchange*, the *Coffee-houſe*, and the *King's-head* Tavern. And we had Diſcourſe about theſe things.

L. C. J. Come Captain *Blague*, Would you have him asked any Queſtion?

Capt. *Blague.* My Lord, Otherwiſe I had gone to Sea ſoon after I came home, but ſo it was, that I had an occaſion for *Penſilvania*, and *New York*, and coming one day to the *Exchange*, I met Mr. *Rouſe*, whom I had not ſeen in 16 or 17 Years before, for Mr. *Rouſe* made a Voyage to *Virginia* with me about 20 Years ago. Now, my Lord, meeting with Mr. *Rouſe*, I had an occaſion then to take up two or three hundred Pounds, and knowing Mr. *Rouſe* was a Broker, I did employ him to procure it me, but he did not; however, daily I came to him to diſpatch that Affair, and Mr. *Rouſe* being a Man for a Tavern, I went to the *King's-head* Tavern, and the *Sun* Tavern, if he was not at one place I found him at another, in order to perfect this Buſineſs. So, my Lord, when I came into his Company, ſeveral People uſe to be with him that I never ſaw in my Life, and Mr. *Rouſe* would ſay, ſit down a little, and I will go with you preſently, ſo I would ſit down and drink a Glaſs of Wine, and go to the places where the Affair was to be managed; after I had done thus ſeveral days, and to no purpoſe, I did it my ſelf. Now, my Lord, Mr. *Rouſe* in that time brought me acquainted with *Goodenough*, becauſe *Goodenough* was in his Company and Mr. *Lee*, not that I ever ſaw Mr. *Goodenough* in my Life before, and not as Mr. *Lee* ſays, that I ever was with him at the *Dragon*.

Mr. *Lee.* The *King's-head* Tavern in *Chancery-Lane*.

Capt. *Blague.* I was juſt coming home when Mr. *Lee* was going to meet with Mr. *Goodenough*, and I went in there and took a Glaſs of Wine, and bid him farewel, and ſo went home. When I was

I was with Mr. *Rouſe*, I was asking what People they were that were in his Company, he ſaid very honeſt Men, drank a Glaſs of Wine and went away, and ſtill I found them together. I was ſaying to this Mr. *Leigh* here, if you will go along with me, you ſhall give me as much for your Paſſage as any of the reſt of the Paſſengers do. Now at this time my Ship was not in my Poſſeſſion; this very Day three Weeks I had it in my Poſſeſſion, and now at this very Day ſhe is in the Carpenter's Hands, who is here now, I ſuppoſe.

L. C. J. Well, go on.

Capt. *Blague.* Now Sir, whereas Mr. *Leigh* reports that I diſcours'd with Mr. *Goodenough* concerning any publick Affairs, or any thing tending to the Diſturbance of the Peace, then am I not a Chriſtian. Beſides, Sir, I did not ſpeak twenty Words, or ten Words at the time, but your Servant, Sir, or here's to You in a Glaſs of Wine; and this I do ſpeak in the Preſence of God Almighty. And when I came into a Room, I never ſtaid longer than Mr. *Rouſe*, for my Buſineſs was with him, and ſo went about my own Affairs. As for Mr. *Goodenough*, I believe I was three times in his Company before I could remember his Name, I would ask *Rouſe* ſeveral times, What do you call that Man? But in reference to the *Tower* that Mr. *Leigh* ſpeaks of, that muſt be touched at; I do remember very well, I ſhall by no means palliate it, if I were preſently to die; Coming up from the Ship, we were coming by Water, indeed I ſhould have had Poſſeſſion of the Ship a Fortnight before, if they had done me Juſtice, I had two or three hundred Pounds for them before, but coming from the Ship, we were coming up by Water by the *Tower*, I don't know how it was, I ſpake it to the Water-man, this Place is not well fortified, and if any occaſion ſhould happen, this Place lies in more peril and jeopardy than any Place of the *Tower*, and ſo it does. It is an eaſy matter for any to give their Sentiments, whether they be accepted of or no. This is the very thing I ſaid, and then they were talking of a *French War*, and the like. Then I ſaid, you ſilly Fools, if they ſhould take it, it is but going over a t'other ſide, and throwing half a dozen Bombo's to them and ſet them out again. But however, Mate *Lee*, if he remember, I told him the ſame thing at that ſame time; and I told Mr. *Leigh*, It was pity a thouſand times that Place was not better Fortified. But as to what Mr. *Leigh* ſays, to have two hundred Men in a poor Pink, I have refuſed ſeveral in that very Ship, becauſe I could not ſtow an hundred Men, Women and Children, and that I ſhould preſs two hundred Men in that Ship, that will not hold. And beſides, it is a Pink, let any one look upon her, and ſee whether that Ship be fit or no to take in two hundred Men. But whereas they ſay I had Arms and ſuch things, I bought the Ship and Arms together, I had

4 Blunderbuſſes, 2 Javelins, and Half-Pikes, that is all.

L. C. J. You forget to anſwer ſeveral things, you had Diſcourſe about a Bank of Money.

Capt. *Blague.* A Bank of Money, my Lord, I never diſcours'd of. And as to the Ball that my Mate ſpeaks of, my Lord, I know no more what it means to this very day, than one that never ſaw a Ball.

L. C. J. Look you, Sir, you were with Mr. *Leigh*, this Mr. *Leigh* hath ſworn, he ſays, you told him, That you would undertake to get two hundred Men, and you had bought fourteen Pieces of Ordnance already, and that you would within a Fortnight's time, do you remember, bring your Ship to *Southwark*, and be ready to beat down that part of the *Tower*.

Capt. *Blague.* My Lord, I have told you already the Ship was not mine to bring till this Day three Weeks.

L. C. J. That was within compaſs, for they tell you this Diſcourſe was about a Month ago.

Capt. *Blague.* It was in *May*, my Lord, they talk of.

L. C. J. No, they ſpeak of about a Month ago, you were to have them in a Fortnight's time —— What ſays the firſt *Leigh*, what time does he ſpeak of?

Mr. *Leigh.* If it pleaſe your Lordſhip, he ſaid his Ship would be ready in a Fortnight's time or thereabouts.

L. C. J. How long was that ago?

Mr. *Leigh.* About a Month or five Weeks.

L. C. J. To what purpoſe did you meet Mr. *Goodenough* ſo often to diſcourſe about this matter of the *Tower*?

Capt. *Blague.* My Lord, I never met with him at all, but when I came to Mr. *Rouſe* about this Buſineſs of the two hundred Pounds.

L. C. J. Mr. *Leigh.* What ſay you concerning his Enquiry for Money?

Mr. *Leigh.* If it pleaſe your Lordſhip, Mr. *Goodenough* and the Captain met at the *King's-head* Tavern, they met ſeveral times apart out of Company, and diſcours'd of the Buſineſs apart; Mr. *Goodenough* asked me for the Captain many times, I told him what the Captain ſaid to me. Mr. *Goodenough* took the Captain out, and diſcours'd him about this Affair. Mr. *Goodenough* hath told me ſeveral times the Captain would be very ſerviceable. The Captain asked what Money there was; I told him about 40000 *l.* and he ſaid that would be quickly gone. I enquired of Mr. *Goodenough* again, and Mr. *Goodenough* told me there was more Money in *Holland*.

L. C. J. What Money was he to have?

Mr. *Leigh.* Two hundred Men—— The Captain ſays, I named him before the King and Council, to be at a Meeting at the *Green-Dragon* Tavern. It is true, I did acquaint the King and Council, that Mr. *Rouſe* had Buſineſs at the *Green-Dragon* Tavern. But this was at the time of my abſconding, I could not tell where to meet him again.

L. C. J. What Guns did he ſay he had provided?

Mr. *Leigh.* If it pleaſe your Lordſhip, he ſaid, he had fourteen Guns in the Ship, and would make them up twenty four: He would undertake in twenty ſhot, to diſmount them Guns.

L. C. J. Where was this Diſcourſe you had with him, about this two hundred Pound?

Mr. *Leigh.* If it pleaſe your Lordſhip, it was at ſeveral times, one was with Mr. *Goodenough* at the *Kings-head* at the corner of *Chancery-Lane*.

L. C. J. Look you, Sir, by the Oath you have taken, did he undertake to raiſe Men, and to aſſiſt with his Ship in taking the *Tower*?

Mr. *Leigh.* If it pleaſe your Lordſhip, he told me he would ſo do it. He told me he would have twenty four Guns.

Jury. Did the Captain tell you ſo?

Mr. *Leigh.* Captain *Blague* that is here.

Capt. *Blague.* My Lord, in reference to the two hundred Men, this is the thing that I would anſwer, I could not ſtow a hundred Men, Women and Children.

L. C. J. Two hundred Men he ſays for this Service.

Capt. *Blague.* Yes, my Lord, I mean ſo. Who can you have to ſay ſo beſides your ſelf?

Mr. *Leigh.* If it pleaſe your Lordſhip, this Diſcourſe was only with Mr. *Rouſe*, Mr. *Goodenough*, Captain *Blague* and I.

Capt. *Blague.* My Lord, Mr. *Lee* ſaid before the King and Council, that he was never along with me but once, and of what I ſaid then, he could tell only he was there when I went to look Mr. *Rouſe*. How can theſe two Expreſſions go together?

Mr. *Leigh.* My Lord, As to that before the King and Council, I did ſay I was not apart with Captain *Blague* and Mr. *Goodenough* at the *King's-head* Tavern, but Captain *Blague* and Mr. *Goodenough* were there ſeveral times, and they were apart by themſelves, and that I had Diſcourſe with Captain *Blague* and Mr. *Goodenough*, and came with them once to the *King's-head* Tavern.

L. C. J. What did Captain *Blague* tell you of what Diſcourſe he had with Mr. *Goodenough?*

Mr. *Leigh.* Captain *Blague* did tell me, that we muſt have a great care, or elſe we ſhould be all ruined, and that his Ship ſhould be ready, and always encouraged me. And ſays he, when I have done the Buſineſs, I have been a Captain aſhore in another Country, I have been in Commiſſion in another Country aſhore, and can tell how to manage Men aſhore as well as aboard. Another thing was, after all this, ſome time, when I underſtood I was ſworn againſt, I was indeed, the Captain ſays right, to have gone with him a Paſſenger, and was with him ſeveral times, I gave him a Report how the *Tower* might be taken by Ladders and Granadoes, and he told me that *Nelthrop*'s Brother came to ſee him, and did inform me that neither Mr. *Goodenough* nor his Brother was taken, and that the Duke of *Monmouth* was in the Country, and quickly would come.

L. C. J. Who told you this?

Mr. *Leigh.* Captain *Blague.*

Mr. Serj. *Jefferies.* This is a pretty matter to ſmirk at, Captain.

Capt. *Blague.* I will aſſure you, Sir, there is no truth in it.

Mr. Serj. *Jefferies.* Would you ſmile the Witneſſes out of their Oaths?

L. C. J. Look you, Mate *Lee*, what ſay you to this? In your Judgment and your Thoughts, was the Diſcourſe concerning taking the Tower in a jeſting way?

Mate *Lee.* No, an't ſhall pleaſe your Lordſhip, I was in earneſt in diſcourſing of it, my Way was, as I told your Lordſhip before, Scaling Ladders and Hand-Granadoes.

L. C. J. Had you any Talk before of ſurprizing the *Tower?*

Mate *Lee.* No, my Lord, by no body but Mr. *Rouſe* and *Leigh.*

L. C. J. What had they ſpoken to you concerning ſurprizing the *Tower?*

Mate *Lee.* Mr. *Rouſe* ſpoke to me of getting ſome Sea-men, that might be fit to make Maſters of Ships, and I asked him what he would do with thoſe Sea-men to make Commanders of Ships? He ſaid, to put them aboard the King's Men of War, and make Guard-Ships of them; I ſaid, what can you do with them to make Guard-Ships, when there is neither Powder, Shot, nor Ammunition? But ſaid I, if you can take the *Tower* you may do well enough: So that our Diſcourſe was about taking the *Tower.*

L. C. J. Was Captain *Blague* with you then?

Mate *Lee.* What Diſcourſe we had about taking the *Tower* was between our ſelves.

L. C. J. How came you to diſcourſe concerning this?

Mate *Lee.* This was our common Diſcourſe, I ſuppoſe the inſtigation might be by Mr. *Rouſe.* I was acquainted with Mr. *Rouſe*, by going with Captain *Blague*; this was my firſt Diſcourſe with Mr. *Rouſe* and Mr. *Lee* together.

L. C. J. Who was with you when you diſcours'd it firſt?

Mate *Lee.* There was only Mr. *Rouſe* and Mr. *Leigh*, I can be poſitive that Captain *Blague* was not, but this Captain *Blague* did ſay, when I gave my Way of taking the *Tower* by Scaling Ladders, and Hand-Granadoes, no, ſays Captain *Blague*, it is a better Way to have Mortar-pieces over the Water, and ſhoot into the *Tower.*

Mr. Serj. *Jefferies.* Hark you, Friend, Did *Leigh* or *Rouſe* tell you that *Blague* was made privy to it?

Mate *Lee.* I underſtood nothing of it, but what we diſcours'd together, for I was acquainted with none of the Cabal, but Mr. *Rouſe* and Mr. *Leigh.*

L. C. J. What did you diſcourſe about?

Mate *Lee.* About taking the *Tower.* I won't mince it, I am upon my Oath.

L. C. J. Therefore we would have the truth out of you.

Mate *Lee.* I did gather from Mr. *Rouſe* and Mr. *Leigh*, that the Intention was to take the *Tower.*

L. C. J. Give ſome account how you and *Blague* came to diſcourſe of ſuch a thing as this is, and in order to what Deſign.

Mate *Lee.* The Deſign was to take the *Tower.*

L. C. J. Did *Blague* and you diſcourſe it to this purpoſe?

Mate *Lee.* Captain *Blague* and I diſcours'd it to that purpoſe of taking the *Tower.*

Mr. *Sol. Gen.* Did you diſcourſe of it as a thing that might be done, or that was intended to be done?

Mate *Lee.* We did diſcourſe of it as a thing that might be done, or was intended to be done.

L. C. J. Now, Captain *Blague*, if you have any thing to ask him, you may.

Capt. *Blague.* Ask him, whether there were any Projections or Proviſions made for the taking it, and whether or no there was any Reſolution taken, that the *Tower* ſhould be taken.

Mate *Lee.* An't ſhall pleaſe your Lordſhip, the King's Majeſty asked me when I ſaid what Captain *Blague* ſaid about taking the *Tower* with Mortar-pieces, if it pleaſe your Majeſty, ſaid I, I don't

I don't know whether there was any ſuch thing diſcours'd, that I did not hear.

L. C. J. Well, was there any thing provided or deſigned in order to it?

Mate *Lee.* An't pleaſe your Lordſhip, there was nothing of Men or Guns provided, that I did know or hear of.

Mr. Serj. *Jefferies.* How many times did you talk with Captain *Blague* about this?

Mate *Lee.* Several times.

L. C. J. Had you any Order from any other Perſons for to diſcourſe Captain *Blague* in order to this?

Mate *Lee.* No, An't ſhall pleaſe your Lordſhip, to the beſt of my knowledge I had no order, for they were commonly together, Captain *Blague*, Mr. *Rouſe*, and Mr. *Lee*, and I came to them when I had buſineſs with Captain *Blague.*

L. C. J. Did you ever diſcourſe this thing with Captain *Blague* before them?

Mate *Lee.* I cannot be poſitive in that.

Mr. *Sol. Gen.* Did thoſe other Perſons that you ſaid you diſcours'd with engage you?

Mate *Lee.* Mr. *Rouſe* and Mr. *Lee*, and I went out, to view the *Tower*, how it might be taken.

Mr. *Sol. Gen.* Did they engage you?

Mate *Lee.* Yes, they did engage me.

Jury. My Lord, We deſire to have the Witneſs asked, Whether the Captain knew he went to view the *Tower.*

L. C. J. Had he any intimation you went to view the *Tower?*

Mate *Lee.* My Lord, I can't be poſitive in that: Some time after we met the Captain, and did tell the Captain we had view'd the *Tower*; but I don't remember what Obſervations we made.

Mr. Serj. *Jefferies.* Nor what he ſaid to you?

Mate *Lee.* No, nor what he ſaid to me upon it.

L. C. J. Look you, Mr. *Lee*, Mate *Lee*, the Captain told you of this Ball that was to be thrown upon *Blackheath*, how long ago was it?

Mate *Lee.* An't pleaſe your Lordſhip, I cannot be poſitive, it was five or ſix Weeks ago, I think it was the laſt time I rid along with him to the *King's-head* Tavern. I went to *Chancery-Lane*, and you gave me Coach-hire for nothing, and then you ſpoke of toſſing up the Ball.

L. C. J. What was it he ſaid?

Mate *Lee.* This was all, I did not know his meaning, neither did he expreſs his meaning, he was ſaying to the beſt of my remembrance, we ſhall ſee a Ball toſs'd up, I don't remember he ſaid upon *Blackheath*; the Confirmation of it was by Mr. *Rouſe* and Mr. *Leigh*, then I came to underſtand what the Ball did mean.

Sir *James Butler.* With his Lordſhip's Leave, Did you ſpeak firſt to the Captain about the *Tower*, or did he ſpeak to you, was it your motion to him, or his to you?

Mate *Lee.* I don't know but it might be my motion to him.

Sir *James Butler.* Then, my Lord, give me leave to ask another. How were theſe Mortar-pieces to be brought up, to be planted on *Southwark*-ſide to play upon the Wall of the *Tower?*

Mr. Serj. *Jefferies.* That was t'other Man, Sir *James.*

L. C. J. Is there any thing more that you would have asked of any of theſe Witneſſes, or have you any Witneſſes of your own?

Capt. *Blague.* My Lord, The Witneſſes that I have, in reference to the Number of Men are here. I deſire, my Lord, you will be pleaſed to order them to come in, to know upon what account I Shipped them.

Jury. My Lord, Pray let us ask t'other *Leigh* one Queſtion.

L. C. J. The firſt *Leigh.*

Jury. We deſire to know, whether he heard any thing of the Ball or Toſſing it?

L. C. J. He hath told you a long Story of it.

Mr. *Leigh.* The Story of *Blackheath* I acquainted you with it, about Mr. *Rouſe.* There was a Golden Ball to be play'd upon *Blackheath*, a thouſand Sea-men to be at the playing of this Ball, ten Sea-Captains to manage theſe thouſand Sea-men, and after the Play was over, every Captain to take his Diviſion apart, and treat them with Punch, and after that was done, to tell them they had other Work to do, and to have Long-boats and Arms ready, to go and ſeize the *Tower.*

Jury. Did Captain *Blague* acquaint you with this?

Mr. *Leigh.* Mr. *Rouſe* told me, Captain *Blague* was acquainted with it, I never diſcours'd with Captain *Blague* about it. Captain *Blague* told me, the beſt way was to ſet a Ship on t'other ſide, and ſhoot Mortar-pieces into the *Tower.*

L. C. J. What would you have Mr. *Wright* asked?

Capt. *Blague.* My Lord, Pleaſe to ask him upon what account he was ſhipped.

L. C. J. Was you ſhipped upon the Captain's Ship, and upon what account?

Mr. *Wright.* An't ſhall pleaſe your Honour, I was ſhipped upon him almoſt four Months and three Weeks ago.

L. C. J. Upon what account?

Mr. *Wright.* I was ſhipped upon him upon the account of *New York*, *England* and *Holland.*

L. C. J. Well, what uſe do you make of this Evidence?

Capt. *Blague.* Only, my Lord, if you pleaſe to ask the reſt, Whether I have ſhipped any more Men, or ſpoke with any more than theſe are.

Mr. *Wright.* An't like your Honour, I have waited upon the Captain ever ſince I have been ſhipped: I have waited upon him in *London* at the Coffee-houſe about Buſineſs: Since I have belonged to him I was in Pay, altho' we had not a Ship in Poſſeſſion: Sometimes at the Mayor's Court Office, Mr. *Briggs*, ſometimes with Mr. *Rouſe*, who had ſomething to do for Captain *Blague.* I kept at the Coffee-houſe commonly every Day from Eight or Nine a Clock in the Morning, ſufficient Perſons know me in *London.* I have kept at the Coffee-houſe from Nine or Ten a Clock in the Morning till Four or Five in the Afternoon, and ſo I have ſatisfied him about what People have inquired after him.

Capt. *Blague.* Call *Robert Chappel.*

L. C. J. Captain *Blague*, What would you have him asked?

Capt. *Blague.* Carpenter, Declare to my Lord how long you have been with me, and upon what account I ſhipped you?

Chappel. Four Months and an half.

L. C. J. What beſides?

Chappel. We were to go to *New York.* I have been ſhipped four Months and an half to go to *New York:* We came to the Coffee-houſe in *Birchin-Lane.*

L. C. J. Well.

Chappel. We have had the Ship a Month in our Hands next *Monday.*

L. C. J. Is ſhe fitted?

Chappel. No, ſhe is not fitted.

L. C. J. Was ſhe in a condition to have done any Service upon the Water?

Capt. *Blague.* Carpenter, Do you hear what my Lord ſays?

Chappel. The Ship is a ſmall Veſſel, about an hundred and fifty Tun, between that and an hundred.

Capt. *Blague.* My Lord asks you if ſhe be in a condition to do ſervice.

L. C. J. Was ſhe capable to do any ſervice upon the Water?

Chappel. No ſervice at all upon the Water ſhe could do three Weeks ago.

Mr. Serj. *Jefferies.* A Ship of one hundred and fifty or two hundred Tun, would hold a great many People, ſhe was to lie ſtill, that was the Miſchief.

Chappel. We haled her down to the Carpenter's Yard, ſhe is now in a condition to work.

L. C. J. Have you any more Men?

Capt. *Blague.* Doctor, Upon what account were you ſhipped?

Bellinger. For *New York, England,* and *Holland.*

Capt. *Blague.* When were you ſhipped?

Bellinger. Seven Weeks ago.

L. C. J. When were you to begin your Voyage?

Bellinger. I belonged to the Captain before he had a Ship.

L. C. J. But when did you reckon to begin your Voyage?

Bellinger. That I cannot tell.

Capt. *Blague.* My Bill upon the Exchange doth ſpecify it, Sir.

Jury. Pray, my Lord, will you ask if he have any Guns aboard, and how many?

L. C. J. What ſay you? What Guns are there about the Ship?

Bellinger. Fourteen, Sir, and four Wooden ones.

L. C. J. What are they?

Bellinger. Six above Deck, four in the Hold.——

Capt. *Blague.* They are Saker Guns.

L. C. J. Saker?

Capt. *Blague.* Yes, Sir —— *Richard Clarke,* What Voyage had we?

Clarke. New York.

L. C. J. Surely it doth appear that theſe Men were ſhipped a great while ago.

Capt. *Blague.* Some of them have had a Dependance upon me a great while, one hath depended upon me I believe ſeven Months.

L. C. J. Have you any thing more to ſay?

Capt. *Blague.* No, my Lord.

L. C. J. Look you, Gentlemen, You that are of this Jury, This Gentleman is Indicted for conſpiring the death of the King, and doing ſome Acts in order to it, that is, endeavouring to ſurprize the Tower, and raiſing of Men, and preparing of Shipping and Guns, and this on purpoſe to ſurprize the Tower. That there was an evil Deſign, a very wicked notorious Deſign of ſeizing the King's Perſon, and killing the King, that is moſt certain, you have heard it by a great many Witneſſes, and it is a thing I think not to be doubted of by any. The queſtion is, whether this man be guilty of it, and hath undertaken any thing in relation to it. Look you, you ought to have in ſuch Caſes of High-Treaſon, as you have been told, you ought to have two Witneſſes againſt a Perſon. Here are two Witneſſes produced, one of them does ſpeak very ſhrewdly to the Caſe, and tells you, he had it from this perſon himſelf, that he had ſpoken with *Goodenough* about this matter, about ſurprizing the Tower, and that he told him it was an eaſy thing to ſurprize the Tower, and that he could do it; that he had a Ship ready, and he would undertake that 200 Men ſhould be ready with Mortar-pieces from *Southwark*-ſide to throw them and beat down the Tower, ſo that it might have preſently been down. Firſt, Mr. *Leigh* doth ſay, That the Captain there at the Bar, that he was oftentimes with Mr. *Goodenough,* and Mr. *Rouſe,* and others, who it is plain were in that Deſign, both *Rouſe* and *Goodenough* was, and that he heard *Goodenough* ſay, That the Captain had undertaken it; and he ſays, that the Captain had Diſcourſe with *Goodenough* about it. He ſays, the Captain asked him in order to this, what Money could be raiſed, and he told him there was 40000 *l.* and the Captain told him that was but a ſmall matter, the Sea-men would eat up that; and *Goodenough* told him, there was a greater Bank in *Holland,* that would be brought over. So that this Evidence goes a great way. But then, Gentlemen, you muſt conſider whether you have another Evidence or not. There is a Perſon that you call *Mate,* the *Mate* doth give a dark kind of an Evidence; he does ſay here, That he and the Captain had Diſcourſe about the way of taking the Tower, and he believes it was in order to take the Tower; but he does ſay, when he heard it, no body was preſent but himſelf, and he was of one Opinion how the Tower might be taken, that is, by Scaling Ladders and Hand-Granadoes, and that the Captain was of another Opinion, whether it might be the better taken by Mortar-pieces thrown from *Southwark*-ſide, but whether the Captain had any notice of this Deſign of taking it, he cannot tell, or whether he had any Acquaintance concerning it. So that his Evidence does ſeem to be ſomewhat dark. Whether this were ſportive, or a Trial of their Skill, or whether it was a Deſign to have Counſel and Advice one of another, which way to take it, I muſt leave it to you, whether it was done with an Intent and Deſign, for to find out the beſt way in order to the taking of it. But if it were only a Diſcourſe at large between them, and Endeavour to try their Judgments one with another, and ſpeaking their Minds one with another in that Caſe, then this Evidence doth not come home to make him guilty of the Plot of taking the Tower, or taking away the King's Life. He tells you, he did ſpeak of a Ball to be thrown up, but whether he ever heard of the other Deſign that *Leigh* ſpeaks of, the firſt *Leigh, Thomas Leigh,* of throwing up a Ball by Sea-men

in

in order to the taking of the Tower, he knows not. *Leigh* ſays, the firſt Witneſs, he does not know any thing whether this Man at the Bar was ever acquainted with the Ball or not. If upon what you have heard, you believe that there are two Witneſſes to prove this Gentleman at the Bar Guilty of this Deſign of ſurprizing the Tower, and killing the King, and taking the Tower in order to it in this manner; then you ought to find him Guilty: But if you have not two Witneſſes that do teſtify the thing, then Gentlemen, under two Witneſſes a Man cannot be Guilty.

After which the Jury withdrawing to conſider of their Verdict, in a ſhort time returned, and brought him in Not Guilty.

Saturday 14*th*, July, *My Lord* Ruſſel *was brought to the Bar.*

Cl. of Cr. *William Ruſſel* Eſq; hold up thy hand (*which he did.*) Thou haſt been Indicted for High-Treaſon againſt our Soveraign Lord the King, and thereupon haſt pleaded Not Guilty, and for thy Tryal haſt put thy ſelf upon the Country, which Country has found thee Guilty. What canſt thou ſay for thy ſelf why Judgment of Death ſhould not paſs upon thee according to Law?

L. *Ruſſel.* Mr. Recorder, I ſhould be very glad to hear the Indictment read.

Mr. *At. Gen.* You may read it.

Cl. of Cr. Will you have it read in Latin or in Engliſh?

L. *Ruſſel.* In Engliſh.

The Clerk read to the Words, Of Conſpiring the Death of the King.

L. *Ruſſel.* Hold, I thought I had not been charged in the Indictment as it is, of Compaſſing and Conſpiring the Death of the King.

Mr. *At. Gen.* Yes, my Lord.

L. *Ruſſel.* But Mr. Recorder, If all that the Witneſſes ſwore againſt me be true, I appeal to you and the Court, I appeal to you whether I am guilty within the Statute of 25 *E.* 3. they having ſworn a Conſpiracy to levy War; but no Intention of killing the King: And therefore I think truly Judgment ought not to paſs upon me for Conſpiring the Death of the King, of which there was no Proof by any one Witneſs.

Mr. *At. Gen.* That is no Exception.

Mr. *Recorder.* My Lord, that was an Exception proper (and as I think you did make it) before the Verdict; whether the Evidence does amount to prove the Charge, that is proper to be obſerved to the Jury; for if the Evidence come ſhort of the Indictment, they can't find it to be a true Charge: But when the Jury has found it, their Verdict does paſs for Truth. We are bound by the Verdict as well as your Lordſhip, we are to go by what the Jury have found, not their Evidence.

L. *Ruſſel.* Without any Proof?

Mr. *Recorder.* The Jury muſt be governed by their Evidence.

L. *Ruſſel.* I think it very hard I muſt be condemned upon a Point that there was not one thing of it ſworn, therefore I think I may very Legally demand Arreſt of Judgment.

Mr. *Recorder.* I hope your Lordſhip will conſider 'tis not the Court can give a Verdict, it muſt be the Jury. I believe there is no body in the Court does delight in giving ſuch Judgments, eſpecially againſt your Lordſhip. The Verdict is found, and the King's Attorney General on behalf of the King does demand it.

Mr. *At. Gen.* I do demand Judgment of the Court againſt the Priſoner.

Proclamation made for ſilence, whilſt Judgment was giving.

Mr. *At. Gen.* My Lord, *Ruſſel*, your Lordſhip hath been Indicted, and Tryed, and found Guilty of High-Treaſon, the greateſt of Crimes, your Quality is great and your Crime is great. And I hope and expect that your behaviour and preparation in this Condition will be proportionable. My Lord, It is the Duty of the Witneſſes to give Evidence according to Truth: It is the Duty of the Jury to proceed according to Evidence, and 'tis the Duty of the Court to give Judgment according to the Verdict. It is the King's Pleaſure ſignified by his Attorney General, to demand Judgment againſt your Lordſhip according to this Verdict, and therefore, my Lord, I ſhall not delay it with any further circumlocution. The Judgment the Law hath provided, and is the Duty of the Court to give, is,

That you be carried back again, to the place from whence you came, and from thence be drawn upon an hurdle to the place of Execution, where you ſhall be hanged up by the Neck, but cut down alive, your Entrails and Privy Members cut off from your Body, and burnt in your ſight, your Head to be ſevered from your Body, and your Body divided into four Parts, and diſpoſed at the King's Pleaſure. And the Lord have Mercy upon your Soul.

Mr. *At. Gen.* Set up the other now.

Cl. of Cr. Set Captain *Walcot* to the Bar, *Rouſe*, and *Hone*.

Which was done, and they bid ſeverally to hold up their hands, which they did; and Captain Walcot *being asked, What he could ſay why Judgment of Death ſhould not be paſſed upon him, ſaid,*

Capt. *Walcot.* I have nothing to ſay, only I have one favour to beg of the Court, whether it be proper to beg it now or no, I can't tell.

Mr. *Recorder.* What is it?

Capt. *Walcot.* I would beg the favour that the Youth my Son might come and ſee me, and ſome of my Friends.

Mr. *Recorder.* Capt. *Richardſon* does not deny it to any man after he is condemned, that is a piece of Humanity you need not ask, I never knew it denied.

Then

Then Hone *was asked, what he could ſay againſt Judgment.*

Hone. I beg the ſame favour.

Mr. *Recorder.* Ay, Ay, God forbid. You had beſt ask for ſome Divine to come to you.

Then Rouſe *was asked the ſame Queſtion.*

Rouſe. I would ſpeak of the diſadvantages I had when I came upon my Tryal. When I was put upon my Tryal, you know very well, I begged the favour of ſome things; one was a Copy of the Indictment, when I ſaw a perſon come before me, who in his own Conſcience knew was the Author of all theſe things: I have nothing to ſay againſt the Judgment or Verdict, I always had a great Veneration for the Conſtitutions of the Kingdom, I pray God forgive them that came againſt me. I wiſh I had no more weight upon my Legs than I have in my own Conſcience. I prayed a Copy of my Indictment. Theſe things unexpectedly came upon my Tryal, that I had not opportunity to ſpeak what I ſhould.

Mr. *Recorder.* We are content to hear you. But obſerve, You are to anſwer the Queſtion that is asked. Why Judgment ſhould not paſs upon you. You ſay you won't ſpeak againſt the Jury, we muſt not hear you, nor againſt the Verdict.

Rouſe. I have one word more, and that is, the vaſt difference between the Indictment and their Oaths; the Indictment was, That ſuch and ſuch Words and Diſcourſes, paſſed the ſecond of *March*; the Oaths ſworn were, That the Words were not ſpoken then, but the laſt of *June*, which was three Months difference, but however the Jury have pleaſed to find it. I muſt throw my ſelf at His Majeſty's Feet, I have nothing more to ſay.

Then Silence was proclaim'd, and Judgment given againſt Walcot, Hone, *and* Rouſe, *in like manner as upon the Lord* Ruſſel.

The Magiſtracy and Government of England *Vindicated.* In Three Parts. *Containing,* I. *A Juſtification of the* Engliſh *Method of Proceedings againſt Criminals,* &c. II. *An Anſwer to ſeveral Replies,* &c. III. *Several Reaſons for a General Act of Indemnity.*

IN the preſent Age, when the variety and multiplicity of new Prints is ſuch, that the Money and Time required for their Purchaſe and Peruſal, is more than an ordinary Gentleman can reaſonably allow; it may deſervedly be thought a Nuſance to the Publick to have their Numbers increaſed; eſpecially ſince the Complaint of the ingenious Author of the *Trimmer's Character*, that for this very Cauſe, he could almoſt have wiſhed himſelf unable to read; but yet the Support of Magiſtracy and Government is a noble Theme, ſo uſeful to the Publick, and ſo generally agreeable to the Humour of Mankind, that the meer Subject will (I preſume) be an Excuſe for this Publication, if any thing can be ſo.

At this time of day none would have thought that a Neceſſity ſhould happen of writing upon ſuch a Topick, when every *Engliſh* Proteſtant was entertaining himſelf with the pleaſing Proſpect of Impartial, Due, and Indifferent Adminiſtrations, when Authority was becoming Amiable and Eaſy to the People, when the People were inclining to a Zeal and Affection for the Honour of Magiſtrates; in ſhort, when the Law was recovering its clouded Credit: In this Conjuncture none expected to ſee all the Pillars and Poſts in the Town daubed with plentiful Title-Pages (like ſo many Hiſtriomaſtrixes of *William Prinn*'s) directing their Spectators to Books of Obloquy and Reproach, not only on the Perſons and Opinions, but the Authority of Judges; when neither of the three are corrigible, or ſo much as cenſurable any otherwiſe than in and by a Parliament; much leſs was it expected, that Gentlemen of the long Robe would appear in Print to ridicule their own Profeſſion, and expoſe our Law even to the Scorn of Foreigners. It would not have been ſo very ſtrange to have ſeen a Doctor of the Commons exerciſing his Wit and Railery on the Common Law Proceedings, when he ſaw his deareſt *Diana*, I mean his Excommunication-Proceſs, in danger of becoming uſeleſs, and a fair occaſion given him for ſuch an Eſſay from the Diſguſt of the People againſt *Weſtminſter-Hall.*

But none imagin'd that Satyrs and Invectives upon paſt Proceedings ſhould be writ by Lawyers, who expect a farther Benefit from their Profeſſion by the Grace and Favour of the Government, which if they happen to acquire, according to their Expectations, I would only remember them that Mocking is catching in the Proverb. There was once upon a time a certain Maſter of Arts, who, whilſt at *Cambridge*, did ridicule and expoſe the Clergy of the

the *Engliſh* Church, by writing the pretended Cauſes of their Contempt; but the *Templars* ſaid, that he, whilſt at *London*, did give an occaſion for a third Part to the ſame Tune, or at leaſt a new Edition of the Book, with Additions by the Author himſelf, even of his own dull—— as proper for the like uſe. In petty Corporations they who have moſt complained of other Hardſhips have frequently outdone their Predeceſſors, when once they have got their Places. A whining complaining Servant doth often prove a peeviſh imperious Maſter; and I am ſure, in the Inns of Court, the moſt noiſy, troubleſome and mutinous Students and Barriſters, make the ſtiffeſt and moſt magiſterial Benchers. I make no application, but I leave the Reader to do what he pleaſeth. Better things are to be hoped of all concerned in Publick Government.

Since the Preſs ſeems open, and Lawyers Books are publiſhed without a Licenſe, another may aſſume the ſame Liberty with equal Authority, and with more Reaſon, when his Province is only to correct the Miſrepreſentations of Things, Actions and Perſons, tho' made by Authors of Age, Experience, Figure and Learning, (I will not ſay Candour or Honeſty,) eſpecially ſince they are private Men, and having vented their own Thoughts in Print, they remain no longer theirs, but are equally expoſed to the Cenſure or Applauſe of every Reader. Beſides, 'tis generally preſumed, that an Author expects a publick Animadverſion, or otherwiſe he would never have become ſuch. He preſumes his Arguments irrefragable, and then an Anſwer does him no miſchief; and if they are otherwiſe, he deſerves it. And ſurely he ſtands as liable to be corrected by others, as others were to be cenſured by him. And it is more warrantable certainly to write and print for the Vindication of former Proceedings, than it can be either candid or gentile to arraign or expoſe them; eſpecially, ſince to do ſo, is and muſt needs be miſchievous to paſt, preſent, and future Governments, as Experience will unqueſtionably teach us; but the other is and will be of Service to future Adminiſtrations, by maintaining the Reputation and Credit of Judiciary Proceedings.

It is well known, that the Lord *Ruſſel* being ſo unfortunate as to fall under the Accuſation of Treaſon, was the moſt pitied of any under thoſe Circumſtances, by all who knew either his Family or perſonal Character; great Expectations were then had of the Iſſue of that Tryal, the Event gave great occaſion for Diſcourſe afterwards, and almoſt ever ſince; the printing of his Laſt Speech, with the ſeveral Anſwers to it, did much augment the Talk. It cannot but be remember'd how various and different the Sentiments of moſt were upon that Subject; the Debates concerning it generally concluded in a Pity to his Perſon and Relations, as a great Misfortune upon both, and in truth upon the Nation, that a Gentleman of ſuch Qualifications ſhould be guilty of ſo much Inadvertency (to ſay no worſe) as to engage ſo frequently in ſuch Conſults as he unhappily did. Some blamed the Jury, moſt cenſured the Witneſſes, but very few arraigned either Counſel or Court; and in truth, the Fairneſs and Indifferency of that Tryal was ſuch, that his own Relations were pleaſed, and his Enemies angry, with thoſe that then ſat upon the Bench; and thus it continued till the preſent Revolution.

Then the Memory of that unfortunate Gentleman was revived by the Publication of a Defence of his Innocency; the Name ſubſcribed to the Title-page is ſo great, that I ſhould be afraid to proceed, but that I am reſolved not to be known; and therefore if any thing falls from my Pen indecent or diſreſpectful, he muſt excuſe it as a Privilege claimed by Authors, eſpecially of Books that have no Name to them.

To begin at the end; for what purpoſe was that Pamphlet printed?

It could not be for the Good of the Nation, as a means for conſumption of Paper; for, as I have been told, that's a *French* Commodity.

It could not be for the Bookſeller's Profit only, for a Reaſon to be gueſſed at.

It could not be for the ſake of that Lord's Memory, or any of his ſurviving Relatives; for no Man will think it a Service to them, to renew the Thoughts of that unhappy Accident in ſo Noble, Ancient, and Worthy a Family. In truth, the whole Treatiſe is nothing but a painting to the life the too deep Concern of that Branch on't in a weak as well as criminal Enterprize; for what elſe doth ſignify the Expreſſion, *pag.* 4. that being preſent at a Conſult of Traitors a ſecond time, or oftner, raiſes a ſtrong ſuſpicion, that the Party who does ſo, likes it, conſents to it, and approves it; or elſe he would have forborn after his having been once amongſt them. And many other ſuch Expreſſions there are with the like Reflections; as *pag.* 7. that *Rumſey* and *Sheppard*, the two firſt Witneſſes, *&c.* raiſe a ſtrong ſuſpicion upon my Lord, and make it probable that he was guilty. And in the ſame Page the Author ſeems to agree him guilty of Miſpriſion. And *pag.* 17. he re-publiſhes the Evidence of *Rumſey*, that there was a Conſent, and this the Author agrees to be High-Treaſon; but he then endeavours to invalidate the Credibility of that Evidence, by ſhewing the wildneſs of his own Memory. Now how this could ſerve the Reputation of the Deceaſed, or cure the Reſentment of his Relations upon that account, I confeſs my ſelf utterly unable to imagine. Nor can any Reader ſuppoſe the Title verified by the Book, *viz. A Defence of Innocence*, when there's not one Word to be read of it but in the Frontiſpiece. Surely there's no thanks due to the Author from that Family, no more than was an extraordinary Fee due to that Lawyer who pleaded for a Defendant to this effect: *My Client, I muſt confeſs, is a Wag, but not ſo great a Wag as the Counſel of the other ſide would repreſent him; their Proof is very ſtrong, but not ſo ſtrong as they would boaſt it to be; our Defence is but dark and weak, but not ſo weak as they would argue it.* So that the Book could not be writ for a Service to that Family, unleſs a Conceſſion of Guilt can be called a *Vindication of Innocence.*

It could not be for the ſake of the Government: for it can never be deemed a politick Service to rake into old Sores, when lenifying and moderate Methods are more adviſable; and if every thing ſhould be re-publiſhed which hath given diſguſt to the People, few would eſcape the laſh, the Righteous themſelves would ſcarcely be ſaved, for abundance of them have tript either in their publick or private Converſation,

and

and ſome in both, and that notoriouſly too: I name no Body. Beſides, the Government muſt of neceſſity never allow the Doctrines divulged in this Pamphlet, unleſs 'tis intended that its being and continuance ſhall be as precarious as a *Beneplacito* Judgeſhip, and as dependent upon the People's humour as that is upon the King's: Nor can any Government countenance and encourage the Arraignment of a conſiderable number of wealthy worthy Citizens, with the Printed Cenſure and Inſinuation of their being a parcel of corrupt, ignorant, injudicious, diſhoneſt and partial Fellows, and this is done to the full, when ſaid, that the contrary would have ſworn to a Not Guilty, or at leaſt wiſe they ſhould, if the Author had been there. But moſt of his Readers are of another opinion, notwithſtanding the ſecond Letter, *pag.* 7.

It could not be for the ſake of popular Applauſe; for it's thought, that the Treatiſe will never deſerve or procure it, eſpecially if you take it in pieces, and conſider them apart, and with ſober Reflections. So that no Man can tell what it was writ for.

When the Title of the Book, and Name of the Author was firſt publiſhed, Mankind was full with a pregnant expectation of ſome rare, abſtruſe, uncommon Learning upon the Point of Treaſons with which the World was before unacquainted. No Man looked for a Preachment concerning the Body and Blood of our Saviour, the World to come, and the Guards of Heaven, as Topicks proper for an Animadverſion upon that Tryal, eſpecially from ſuch an Author. But there's nothing ſtrange under the Sun.

The Preface is an Encomium upon the Author himſelf, declaratory of his readineſs for publick Services, and ſeems to be calculated for a Cooler, or a Defence againſt the Heats and Rigors of an harſh and oppreſſive Government, for an help to ſuch as may poſſibly hereafter fall into the like danger and trouble: and to teach the People the fear and jealouſie of a poſſibility of ſuch Occurrences again, can never be thought a publick Service. As to part of the Preface, it is ſo dark, that a ſlender underſtanding can never reach the ſenſe of it, I mean that long Paragraph, *The Copies of*, &c.

The firſt Letter begins with a ſeeming ſhew of a bold Reſolution in the Author to perform the Duty of a Friendly Counſel, maugre all the inconveniencies that might happen to himſelf thereby. But it concludes with an extraordinary caution and care to prevent all danger, even to ſuch a degree as much diminiſhes the credit of that invincible and heroick Reſolution at firſt boaſted of. And if his Courage had been ſo ſtrong, why were not theſe Letters publiſhed formerly, and in times when in the Author's judgment there was more occaſion for their uſe, than the preſent can poſſibly afford? But rather it may be again asked why are they Printed at all, the Obſervations contained in them having been Printed not above 500 times already, and perhaps with as much advantage? Was it a Secret to the World, that a variance between the Indictment and the Evidence might be alledged on the general Iſſue? Did no Man in Town know that Treaſon and the Miſpriſion of it are different Crimes? Is the diſtinction between them ſuch a new invention, and ſo very uſeful, as to be an equivalent for the want of Counſel in capital Tryals, as the *Preface* and *Letter* do inſinuate, if they do any thing? Who ever doubted, but that Proofs of Treaſon muſt not be by Hear-ſay or Argument only? Was it ever a Queſtion for this Hundred Years, but that every Indictment of Treaſon muſt contain an Overt Act? Or that leſs than two Witneſſes was allowable for proof of that Crime? Or did any Man ever ſcruple but that *Keble*'s Statute-Book contains a true Copy of the 13 *Car.* 2. *cap.* 1. which requires Witneſſes credible? Now if theſe Queſtions muſt be anſwered in the Negative, how can the advice of theſe Letters be aſſiſtant to a better Defence, than was known long ſince?

The Book itſelf begins with Stories of Tranſubſtantiation of Bodies, and Tranſmigration of Souls, as much to the purpoſe, as the Parſon's Text was to his Doctrine, who Preached upon the Certainty of a Day of Judgment from that Verſe in *Geneſis*, *And Adam knew Eve, and ſhe conceived*, &c. But perhaps the Author intended all that firſt Page for a Flouriſh, and to entice his Reader into a patient peruſal of what follows, and prejudice him againſt the Sheet he pretends to anſwer. He is very frank in ſtiling it a Libellous Pamphlet, and the Author ſome rank bigotted Papiſt, but to what purpoſe no Man can divine, unleſs it were to expoſe him to the rage of the Mobile; but his Name was never poſted, and ſo he is ſafe from that danger.

The Aſſertions are two, that there was neither Charge nor Proof; that the Indictment and Evidence were both inſufficient.

I muſt confeſs, that it would be a mighty Addition to the Liberty of the Subject, to have the Law eſtabliſhed, and declared to be what the late Judge doth argue it is; for then there would be a freedom for Malecontents to endeavour their own ſatisfaction by Conſpiracies and Conſults, and that with Impunity. But as the Law was, and always hath been taken to be, an *Engliſh* Subject hath very little colour for his pretence to ſuch a priviledge as that Doctrine gives.

The Indictment is, that at ſuch a place and time *he did Compaſs and Imagine not only to Deprive the King of his Government and Royal State, but to kill and put him to Death, and to procure a miſerable Slaughter amongſt the King's Subjects; and to Subvert the Government of* England, *and to raiſe a Rebellion againſt the King.* Then follows, *That to fulfill and perfect theſe Treaſons and traiterous Imaginations, he, together with other Traitors, did then and there with them traiterouſly Conſult, Conſpire, Conclude and Agree, to raiſe a Rebellion, and to ſeize and deſtroy the Guards of the King's Perſon*, contra, &c. Now whether theſe laſt Acts be not a natural and genuine Evidence of the former, let any rational Man judge. But I will particularly prove, that this Indictment was ſufficient to warrant the Judgment which the Court gave, and pronounced upon a Verdict, that the Accuſed was guilty of that Fact in the Indictment, and then anſwer the Objections ſtarted againſt it.

Firſt, There's a ſufficient Treaſon alledged. And, ſecondly, Here's a ſufficient Overt Act; both theſe I'll agree are neceſſary, and if either were wanting, the Indictment was naught. Now it muſt be agreed to me, that the firſt is clear and plain, for by the Law, to compaſs or imagine the Death of the King, Queen, or their

their eldeſt Son, is High Treaſon. It is true, by the ſame Law ſome Open Act of which human Juſtice can take a Conuſance is requiſite to be proved; the very Words of the Statute do expreſsly require it; and in truth it is no more than what muſt have been, had no ſuch Words been uſed; for Thoughts are ſecret, and can never be arraigned, proved, or cenſured, any otherwiſe than as they are diſcovered by ſome Overt Act; ſo that the Clauſe requiring an appearance of the Compaſſing and Imagination by ſome Overt Act or Open Deed, is no more than would have been impliedly requiſite, had the Clauſe been omitted. 'Tis the Imagination and Compaſſing which is the Treaſon, that alone is the *Crimen læſæ Majeſtatis*, which is prohibited and condemned; the Overt Act is not the Treaſon, that's only a neceſſary Circumſtance, without which no Court can ever take Conuſance of the other. And it is neceſſary to alledge ſome ſuch Deed, *à neceſſitate rei*, without reſpect to the Words of that Statute. I inſiſt the longer upon this, becauſe it is uſed as an Objection, that the Clauſe of *proveably attaint by*, &c. is reſtrictive, whereas it is not ſo; for it is only to make that firſt ſpecified Treaſon of Imagination and Compaſſing to be a thing intelligible and triable; and farther to prove this, it is conſiderable, that this Requiſite of the Overt Act is of uſe and neceſſity barely, and only in the Caſe of that which is firſt mentioned, *viz. Compaſſing*; for the other ſorts of Treaſon are Acts themſelves whereof notice may be had, as Levying War, Violating the Queen's Bed, and the like; and in an Indictment you need only alledge the Facts themſelves, as that there was a War levied, there was a carnal Knowledge had, and the like. And this farther appears from the very Form of Indictments uſed ever ſince that Statute; for there never was an Indictment (and if there were, it could never be good) barely averring an Overt Act without an expreſs Allegation of the Compaſſing.

Then the Matter reſults ſolely into this Queſtion, Whether the Fact here laid be naturally and neceſſarily declaratory of the Party's Imagination to deſtroy the King; for if ſo, the Indictment is undoubtedly good; and it can never be called a conſtructive Treaſon, or a thing deviſed by the Judge's Interpretation of the Statute; for they adjudge no more Treaſon, than what the Statute declares, and that is an Imagination of the King's Death; now whatſoever is ſignificative of a Man's Intention or Imagination, is a ſufficient Overt Deed to demonſtrate, that that Man had ſuch Intention or Imagination; and whatſoever is expreſſive or ſignificative of a Man's Intending, Compaſſing, or Imagining of the King's Death, is a ſufficient Overt Act to prove and make ſuch a Man a Traitor within this Law. Now that a Conſult about, and an Agreement and Concluſion actually to ſeize the King's Guards, and raiſe a Rebellion, are a natural and genuine Declaration, that the Perſon who did ſo conſult, agree and conclude, did Compaſs and Imagine the Death of the King, is ſurely plain enough; for a Rebellion, if ſucceſsful, can determine in nothing elſe but the King's Death, either Natural or Civil, which is all one within this Law; now he that deſigns and intends the neceſſary means naturally conducing to a particular end, that Man may certainly be ſaid to intend and deſign that end, *Cauſa Cauſæ eſt Cauſa Cauſati.* If the Deed tend and conduce to the Execution of the Treaſon, that's a ſufficient Overt Act, ſays *Coke* 3 *Inſt.* 12. and in the ſame Book, *fol.* 6. he hath theſe Words, *That he who declareth by Overt Act to depoſe the King, is a ſufficient Overt Act to prove, that he Compaſſeth and Imagineth the Death of the King*; and ſo it is to impriſon the King, to get him into his Power; and to manifeſt the ſame by ſome Overt Act, this is alſo a ſufficient Overt Act for the Intent aforeſaid.

In 3 *Inſt.* p. 12. 'tis held, That a *Preparation* by ſome Overt Act to depoſe the King, or take the King by Force and ſtrong Hand, or to impriſon him till he hath yielded to certain Demands, that is a ſufficient Overt Act to prove the Compaſſing and Imagination of the King's Death; for that this, upon the matter, is to make the King a Subject, and to deſpoil him of his Regal Office; and ſo he ſays it was reſolved by all the Judges of *England*, *Hil.* 1. *Jac.* 1. in the Caſe of the Lord *Cobham*, Lord *Grey*, *Watſon*, and *Clark*, Seminary Prieſts; and ſo he tells us in the ſame place, that it had been reſolved by the Juſtices in the Caſe of the Earls *E.* and *S.* Now if we conſider the reaſon why theſe were Overt Acts of Treaſon, 'twill appear to be only becauſe of their natural tendency to the Accompliſhment of that particular Treaſon of Compaſſing, which holds the ſame in the Author's Caſe as well as in thoſe there mentioned.

A Conſpiracy with a Foreign Prince, is agreed by my Lord *Coke*, *ib.* 14. to be Treaſon, if it be to invade the Realm; and an Overt Act of ſuch Practice to be a ſufficient Overt Act of a Compaſſing the King's Death; and the reaſon is, becauſe ſuch Actions cannot be thought to be intended for any other purpoſe; and yet that particular Act may be accompliſhed, and it may ſo happen, as that the King's Death may not follow, and yet they are Overt Acts of that treaſonable Imagination, becauſe of their Conduciveneſs and Tendency thereto. The Caſe of Cardinal *Poole* was, writing a Book of the Pope's Supremacy, in which were contained Incitements of *Charles* the Emperor to an Invaſion of this Realm; and that was held an Overt Act of Imagining the King's Death. In the Lord *Cobham*'s and Sir *Walter Rawleigh*'s Caſe, a Conſpiracy, Conſult and Agreement to promote an Inſurrection and procure an Invaſion, was held an Overt Act, 1 *Jac.* 1. and their Meeting, Conſulting and Agreeing, was laid as an Overt Act, tho' diſcovered before the thing took effect. Dr. *Story*'s Caſe, which is mentioned by the Lords *Dyer* and *Coke*, was no more than a Practice or Perſwaſion to promote an Inſurrection and Invaſion, and the Overt Act that was alledged was the Writing of Letters for that purpoſe; which is no more influential towards it, not ſo much as frequently Meeting, Conſulting and Conſpiring, and at laſt Concluding and Agreeing to make an Inſurrection. The Caſe of Mr. *Coleman* was no other; for whatſoever the Indictment laid, the Evidence was only of Letters to the like effect (as to this point) with thoſe of Dr. *Story*; and the Caſe of Dr. *Story* was before the 13 *Eliz.* which made a new Treaſon during her Life; for the Tryal was in *Hilary* Term, and the Parliament did not begin till *April* following. A Machination or Agreement to raiſe a Rebellion naturally tends

to the Deſtruction both of King and People; and an Advice to it hath been adjudged ſo: As in the Reign of *Hen.* 4. one *Balſhal* going from *London*, found one *Bernard* at Plow in the Pariſh of *Oſley* in the County of *Hertford*; *Balſhal* told him, that King *Ric.* 2. was alive in *Scotland*, (which was falſe, for he was then dead) and adviſed him to get Men, and go to King *Richard*; in *Mich.* 3 *Hen.* 4. *Rot.* 4. you'll find this adjudged Treaſon. *Throgmorton*'s Caſe is as plain, for his was only a Conſpiracy to levy War within this Realm; he did not join in the Execution, and the Conſpiracy alone was declared to be a ſufficient Overt Act by the Judges; 'Tis no Anſwer to it, to ſay, that a War was afterwards levied, for *quoad* him 'twas a bare Conſult; his Offence was no more than that. In Sir *Henry Vane*'s Caſe, Meeting and Conſulting were alledged and held to be Overt Acts. The Caſe of *Conſtable*, mentioned in *Calvin*'s Caſe, was only an Act tending to depoſing the Queen, as diſperſing Bills in the Night, that *Edw.* 6. was alive and in *France*; and held an Overt Act declarative of his Compaſſing her Death, and he was executed for it: And in the Report of *Calvin*'s Caſe you have ſeveral other Caſes mentioned, where Endeavours to draw Subjects from their Allegiance have been adjudged Overt Acts of this ſpecies of Treaſon, The Compaſſing, *&c.*

The Word Compaſs in the Statute is of a larger extent than only to mean an actual Aſſault on the King's Perſon, and an Endeavour to cut his Throat; it moſt certainly implies any Conſult or Practice of another thing directly which may produce that effect, as the diſſwading People from their Fidelity; ſuch was *Owen*'s Caſe in King *Jac.* 1. his Time, in the 13th Year of that Reign: This Advice was to this effect, That King *James* being excommunicated by the Pope, might be killed by any Man, and that ſo to do was no Murder; for being convicted by the Pope's Sentence, he might be ſlaughter'd without a Fault, as an Executioner hangs a Criminal condemned by Law; and for this he was hanged as a Traitor. He that denies the Title to the Crown, and endeavours to ſet it upon another's Head, may do this without a direct and immediate deſiring the Death of him that wears it; (ſo ſaid *Saint-John* in his Argument againſt the Earl of *Strafford*;) and yet this is Treaſon as was adjudged in the Caſe of *Burton*, and in the Duke of *Norfolk*'s Caſe, 13 *Eliz.* This denying of the Title, with Motives, tho' but impliedly of Action againſt it, hath been adjudged on Overt Act of Compaſſing the King's Death, as it was in *John Sparhawke*'s Caſe, *Paſch.* 3. *Hen.* 4. *Rot.* 12. The like was the Caſe of *John Awater*, who was indicted for a Treaſon of that nature in *Kent*, and the Indictment removed into B. R. *Trin.* 18 *Ed.* 4. ſee *Rot.* 17. and he was thereupon afterwards out-lawed as a Traitor; and ſo was *Thomas Heber* at the ſame time; and Words ſignificative of an actual Intention have been held ſo, as are the Opinions of *Yelver.* 107. 197. *Arthur Crobagan*'s Caſe, *Cro. Car.* 332. and abundance of others might be named as they are reported in our Law-Books, but I do not particularly mention them, for that their Authority in ſome of them is very ſlender, and may be ill uſed, to the ſtraining of raſh and unadviſed Words into a Signification of a Man's Compaſſing, when perhaps the Man never thought as he ſpoke: However all of them do evince, that adviſed and deliberate Preparations moving to a Danger to the King's Perſon, have all along been held Overt Acts of a Compaſſing his Death; and ſome of them prove, that Preparatives and Motives to the levying of a War have been held Treaſon, as was Sir *William Aſhton* of *Suffolk*, 31 *Hen.* 6. mentioned in *Cro. Car.* 119. for making Ballads reflecting upon the King, and writing Letters to the Men of *Kent*, exciting them to riſe to aid the then Duke of *York*, &c. *ad guerram levandam*; and no mention of any War actually levyed. *Germain* and *Taylor*'s Indictment hath very little more in it mentioned than the like Preparations and Incitements to a Rebellion; and yet the Treaſon there laid was a Compaſſing of the King's Death, *anno* 2 *Ed.* 4. The Caſe of *Thomas Burdett*, in 17 *Ed.* 4. as at large it appears in the ſame Report of *Cro. Car.* amounts to no more than the Indictment in queſtion, *viz.* That he compaſſed the King's Death; and to accompliſh that Intention, he did diſperſe divers Writings, *&c. ad intentionem* that the People ſhould riſe and levy War, *&c.* the Judgment in that Caſe, Drawing, Hanging, and Quartering; the like in *Collingbourn*'s Caſe, 2 *Rich.* 3. in the ſame Rep. 122. where he is indicted in like manner, for exciting and moving the People to an Inſurrection and War, and he incurred the like Judgment; which Caſes are infinitely ſhort of this in queſtion; and it cannot but be wonder'd that any Man who has read them ſhould queſtion, whether a conſulting and conſpiring about Riſing, and an actual Agreement and Determination to riſe, be an Overt Act of Compaſſing the King's Death. In the very Tryal of the Lord *Stafford* it is affirmed by Sir *William Jones* (who was certainly of great Authority with the Author) that the meeting and conſulting together is an Overt Act, tho' the thing agreed on be never put in Execution; and 'tis there reſolved by the Judges that the ſame Treaſon may be proved by two Witneſſes to ſeveral Overt Acts, tho' one ſpeak of Words or Actions that were ſpoken or done at one time and place, and another ſpeak of Words and Actions at another time and place; which argues, that Words, much more a Conſult and Agreement, may make an Overt Act. Even in the Caſe of *Stephen Colledge*, in which tho' the Tryal hath been cenſured, yet the Indictment never was, and in that Indictment the Treaſon is laid as in this Caſe, That he traiterouſly Imagined and Compaſſed the King to depoſe, kill, and deſtroy; the Overt Acts are, That he armed himſelf, and adviſed others to arm, and ſpoke ſeveral Words, *&c.* Here was no War levyed, only a Preparation, and yet that was allowed an Overt Act; and as for the Words, if they are allowed to be one, with much more reaſon may Meeting, Conſulting, Concluding, and Agreeing to do.

As to the Objection, Surely there is no weight in the firſt which is *Page* 10. that criticizes upon the Word *fait* Act, and that 'tis only a Meeting to agree, and an Agreement to do, but 'twas not done: Suppoſe they had concluded and agreed to poiſon or ſtab, *&c.* according to the Opinion in that Page, this was no Treaſon; for 'tis only agreeing and concluding upon a thing to be done, but it is not done. He doth

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in *Page* 13. argue, that this can never be an Overt Act of Compaſſing the King's Death, becauſe levying War is a diſtinct ſpecies of Treaſon, and a Conſpiring to levy War is not a Levying War, and even Levying War it ſelf cannot be aſſign'd as an Overt Act of Compaſſing, unleſs the Indictment were particularly for that; but ſurely another ſort of Act that favours of another ſpecies of Treaſon, if it naturally conduce to the Accompliſhing of the firſt ſpecies, *viz.* that of Compaſſing, it may be aſſigned as an Overt Act of it; and Sir *Henry Vane*'s Caſe is quite otherwiſe, for there a Levying War was the Overt Act alledged of the Compaſſing, and allowed by all the Judges; and all the Indictments in the *Weſt* upon *Monmouth*'s Rebellion were ſo, and yet drawn by very good Advice; beſides, what Anſwer can be given to the Caſes which I have cited, where Conſults, Conſpiracies, Practices, Advices, Letters, Perſwaſions, and other Motives and Preparatives to an Inſurrection, have been held Overt Acts of an Imagination of the King's Death, tho' no War was levied, though no Inſurrection was made.

'Tis apparent from what was ſaid before, that to take the King Priſoner, or to ſeize his Perſon, is a Compaſſing of his Death; and if ſo, then to ſit in Council to Conſpire the effecting of that, is an Overt Act of Compaſſing the King's Death; and this Caſe amounts to that, here was a Conſultation to ſeize upon the King's Guards, which could tend to nothing but the ſeizing of his Perſon; and then the Conſequence is plain. The Author ſays, *Page* 14. If it had but been alledged in the Indictment, that in purſuance of the Conſult and Agreement, there had been a View of the Guards, and a Report made that the thing was feaſible, this would have been more to the purpoſe, how much more, no Man can tell; for every Objection in the Book would have been as good againſt that as this. The great Objection he ſeems to rely on, is, That the Law takes no notice of them: For once I will ſuppoſe that it doth not, and then let us obſerve if any Argument can be drawn from thence: Perhaps the thing was not uſed or known when the 25 *Edw.* 3. was made. Can nothing be Treaſon, if the Plot laid to accompliſh it be concerning a thing not in *eſſe* at the time of the Statute? Certainly it may. If ſeveral Malecontents ſhould conſult and agree and prepare (in order to an Inſurrection) to ſeize the *Tower*, *Portſmouth*, *Hull*, and *Plymouth* Fort, would not this be an Overt Act of Treaſon? And yet our Law takes no notice of any Garriſons there or any where elſe; they have no relation to the Militia, nor were there any Arms in thoſe places in *Edward* III. his time that we read of in our Law-Books; if this be otherwiſe; Why did not the Author find fault with *Rouſe*'s Indictment, which was tried much at the ſame time with this in queſtion? Suppoſe all the Gentlemen Penſioners, Grooms of the Stole, Gentlemen of the Bed-chamber, and the like, killed in the Night, and the Doors in *Whiteball* broken up, and all the Swords, Muskets, and Piſtols there taken away, and yet it happen'd that the King's Perſon was left untouch'd; would this be an Act of Burglary and Murther only? We have no Law-Books that take notice of Arms at *Whiteball*, or ſuch Names as thoſe Servants go by; and ſuppoſe, at the ſame time, upon the Conſult, that the Conſpirators did move, diſcourſe, debate, and conclude of an Inſurrection, would it not then be Treaſon? If not, nothing can be ſo, unleſs the King's Perſon be murthered or ſeized, and the Statute ſhould not have ſaid Compaſs or Imagine, but Seize or Kill, *&c.* It ſuffices then, that the Guards are in common Underſtanding known to be uſed and employed for the Attendance upon and Preſervation of his Perſon. If common Senſe and Reaſon be Judge, no Man can think but that he who intended to move an Inſurrection and ſeize the Guards, had a farther Deſign upon the King's Perſon; and then 'tis Treaſon; if otherwiſe, a King of *England* is in a worſe Condition than the worſt and meaneſt of his Subjects; for a King muſt not, cannot, in or by our Law, aſſault, ſtrike, ſeize, attach, or impriſon in Perſon, and conſequently cannot defend himſelf; and ſhall not his Servants, Guards, and Attendants (which are all of the ſame nature) wear a Sword, or carry a Muſket before him? If they do ſo, is it not then known that they do it? If it be commonly known to be ſo, doth not he that ſeizes and deſtroys thoſe Attendants, endanger the King's Perſon? And if that be ſo, the Inference is eaſy. It can never be, it will never be allowed for Law, that a Seizing all the King's Guards is only a Breach of the Peace, unleſs we renounce the Law, and will judge more by Inclinations and Partyſhips than by Reaſon and Precedents. As to the diſtinction between an actual Seizing them, and a Conſult and Agreement to ſeize them, what I have urged before overthrows it; and what the Author ſays doth not maintain it, for both have a tendency to the Execution of the Treaſon intended.

I will not take the pains to remark upon all the Inconſiſtencies of the Conceſſions and Denials in the Book, they are obvious to the Readers. As to his Quarrel at the King's Guards as an illegal thing, and terrible to the People, ſomewhat of the *French* Growth, I hope the King will always preſerve them for his own perſonal Preſervation, notwithſtanding the Author's Opinion. As to his Temporary Laws, which declare Words Treaſon, moſt part of them were affirmative of the Old Law, and were made only in Compliment to a New-crown'd Head, when they prohibited nothing but what was before ſo; and for the reſt, no Concluſion could be made from them for the maintenance of his Aſſertion if he had repeated them; which ſince he does not, nor will I.

As to the Caſes cited by the Author of the Antidote (which I have mentioned,) he agrees to *Conſtable*'s Caſe, but does not diſtinguiſh it in its Reaſon from that in Diſpute. He denies the Authority and Law of Dr. *Story*'s Caſe, which no body ever denied before him. He ſays, that in the Lord *Cobham*'s Caſe there were People aſſembled, but gives not any Anſwer to what the Antidote affirmed, *viz.* That the Overt Act, taken notice of in the little Book, called, *The Pleas of the Crown*, was only the Conſpiring to make an Inſurrection. He doth confeſs, that in the Lord *Grey*'s Caſe there was only a Conſpiracy: He ſays, that in Sir *Henry Vane*'s and *Plunket*'s Caſe there were ſeveral other Ingredients to mount them to Treaſon, but what they were no body muſt learn at leaſt not from the Author, for he names none of them.

He conſumes half a Page in an Encomium upon the Judiciouſneſs of that Court, which made a conſcientious legal Scruple, Whether the Murther of a Miſtreſs by her Servant were Petit-Treaſon, by reaſon of the difference of her Gender? But at laſt he tells us, That the Judges of the *Common Pleas* did upon much Deliberation ſatisfie thoſe of the *King's Bench*, that Maſter and Miſtreſs were in effect but one.

In the concluſion of the firſt Letter, he ſays, That Conſpiring againſt the King's Perſon, is moſt juſtly taken to be to conſpire againſt the King's Life; but in the Book he will not allow a conſpiring and agreeing to ſeize (*i. e.* beat and deſtroy) the Guards, which are ordinarily and commonly known to attend the King's Perſon, to be a conſpiring againſt his Perſon; which whether it be or not, the next Tryal of this Nature will determine. Now, after all, what can be a greater Reflection upon the Learning, Judgment, and Integrity of the King's Counſel, Judges, and Recorder, than to declare and publiſh in Print, that the firſt proſecuted, the ſecond tried, and the laſt condemned a Gentleman as a Traitor, when the Charge had nothing in't of that nature: If true, the bare Printing it is unbecoming the —— But as for their Reputations, let them juſtifie themſelves. The reaſon of my undertaking to explode ſuch a Reflection, was my own and every Man's Duty to the preſent Government (the King and Queen's Majeſties being both concerned, and eminently too, in the Conſequence of ſuch Doctrines) and a Love to my Countrey-men, that they may not preſume upon the Authority of ſuch a Defence; for if they do, they may find their Miſtake, when noozed through the Power of Truth, the contrary Opinion.

As to the Proof I will not rake into it, ſince the Author hath repreſented too much of its Strength, and *De mortuis nil niſi bonum*, it can never be thouhgt a grateful Province to debate or convince of Guilt; but yet I may ſay ſo much, that there was Evidence enough to juſtifie All concerned in the Proſecution and Tryal, though for ſeveral Reaſons the Attainder is fit to be reverſed, but hardly for thoſe which this Author mentions.

Since the Writing of this Sheet, there came to my Hands a Treatiſe, calling it ſelf, *The Lord* Ruſſel's *Caſe*, which ſavours more of Policy than Law, and his Topicks are the Rights of the People and Power of Parliaments; they argue the Author to be a greater Stateſman than Lawyer, and therefore much too great for me to encounter; and a Debate concerning the Heads he inſiſts on, is neither ſafe nor allowable without Doors. I ſhall make but three Remarks on what he ſays: Firſt, He may aſſure himſelf, That that Power from which he argues his Law, is now apparently lodged in the Commonalty, not in the Nobility. Secondly, the King's Solicitor (whom he reflects on) twittered more Reaſon and Law than yet hath been or ever will be anſwered: And thirdly, The Indictment contained no new conſtructive Treaſon, but only that which was plainly and directly declared in and by the 25 *Edw.* 3. if the Letters of it make Words, and the Words Senſe, and one Man may be allowed able to read them as well as another.

Since the writing of the *laſt Paragraph*, there came to my Hands another Pamphlet, written by a new Obſervator; but I ſuppoſe the Judges that ſhall be, will correct that Sort of Licentiouſneſs which he aſſumes in his Remarks: Which if they do not, they'll have fine eaſie Places on't as well as their Predeceſſors; and much good may it do them.

Ætas parentum pejor avis, tulit
Nos nequiores, mox daturos
Progeniem vitioſiorem. Horat.

A Second Vindication of the Magiſtracy and Government of England, *by way of Anſwer to the ſeveral Replies*, &c.

IT is very obſervable, that ſince the late Revolution, nothing hath more diſturbed our Peace than the Liberty of the Preſs: And amongſt all our new Prints, the moſt malignant and miſchievous Libels on the preſent Government, have been written by thoſe Lawyers who pretend themſelves the greateſt Zealots for its Honour and Service, which may be ſuſpected as falſe, unleſs it be withall conſidered, that ſome modern Royaliſts have nothing recommendatory of themſelves, but the Miſcarriages of others, and others of them have ſuch great ones of their own, that an Extenuation or Excuſe is impoſſible, and therefore to cloud their own Deformities, they would blacken other Men's Reputations, and in order to it they have cenſured Innocence, and arraigned Laws; and where a Slip or Fault hath been, though ſo ſmall as ſcarcely to deſerve the name of one, they have magnified it into an execrable Villany; and for a colour of ſuch their Calumny and Slander, they have vented new Goſpel and Law both: Nay, they have broached ſuch Notions to the World, as are directly fatal to that Crown, of which they boaſt themſelves the Makers and Supporters, and yet in doing ſo they pretend to merit——

It is ſtrange but true, for the Fact is plain, and the Conſequence too: Upon the preſent Change, the Republicans of both Gowns did deem it their Policy and Intereſt to beſpatter and reproach other Men's Actions; and, like baſe and means Spirits, gave ill Names and Words to every thing in which themſelves had not been concerned, and made Reviling ſo cuſtomary, that it is become the modiſh Sin of the Age. It is moſt certain, the old *Engliſh* Honour, Frankneſs, Ingenuity, and good Nature, is quite abandoned from ſome Companies and Places in the Town, and inſtead of Folly, we have aſſumed a Vice in our common Converſation, inſtead of Drollery and Banter, the new faſhioned Wit at—', allows

allows nothing as acceptable but Lying and Slander; nay, the very Spark of a Courtier hath changed his Note: Whereas fulſom, groſs, and falſe Flattery was wont to be his Talent, he is now got to the other Extreme, *i. e.* revengeful, weak, and falſe Characters, both of Perſons and Actions: Which is the worſt is difficult to determine, but Falſhood is the moſt predominant humour in both; and that Age is ſurely unhappy, which is plagued with a Surfeit of either, eſpecially when the Exceſs is ſo great as now, that no Gentleman can be thought a good Companion, no Clergyman a true Proteſtant, no Lawyer an honeſt *Engliſhman*, no Courtier a faithful Servant, unleſs he can, and do rail and ſnarl, and ſcold, and that at Things that were juſtly uſed in former Times, and muſt neceſſarily be uſed in theſe Times, and will be ſo in all Times whatſoever, even in *Secula Seculorum*: Theſe little ſtinging Animals, do value themſelves upon their Honeſty, becauſe they find Faults, but it is in Caſes where no Eye can ſpy them but their own; they value themſelves upon their Wit, becauſe their Cenſures are ſharp and biting, but that is ſo eaſy, ſo very eaſy a Province, that Nature teaches even the rudeſt of her Breed to be ſatyrical, and the Natural oftentimes outdoes the pretended Scholar in Ribaldry, and hath perhaps a better Faculty that way than Fancy for Picquancy of Reflection.

Now as the Fact is thus criminal and ridiculous both, ſo muſt the Conſequence prove fatal to the Government which they would be thought (but intend not) to ſupport; for when once reſolved to arraign all paſt Proceedings, they are forced for the maintenance of ſuch their Reflections to vent thoſe Opinions, Doctrines, and Rules in Divinity and Law, which have in every Age (ſave one) been juſtly exploded, as deſtructive to the Honour and Being of the then Poſſeſſors of the Crown; and can conduce to no other end than the utter Subverſion of this, and every other Government that doth but ſmell of a Monarchy.

It cannot be denied but in moſt Reigns there have been ſome Occaſions given for Diſguſt to the People, that Kings have born too hard upon their Subjects, that the Subjects have worthily complained of ſome Warps from the Law, but no Man ever with Senſe pretended that this is a Reaſon to induce a Belief, that every Act of State, and every Judgment of Law in former times was Arbitrary and Unwarrantable: No ſurely, the Publiſhers of ſuch Reflections are of another thought themſelves; and ſome folks imagine, they who formerly were engaged in Seditious Practices againſt the Crown, would now upon the preſent occaſion explode that Law which doth condemn ſuch Practices, that they may with impunity repeat them whenſoever the King or his Miniſters ſhall chance to diſoblige them, and that this is the true reaſon of half the new Libels and Invectives upon paſt Proceedings.

It is now apparent to all Mankind, that every Line, or at leaſt Page of ſome Men's Works are deſigned only as a Courtſhip to the Mobb, by bridling the Sovereignty, and clipping the Prerogative, even to ſuch a degree, as doth abſolutely deprive it of thoſe Rights, Powers, and Authorities, which the ancient Law, continued Uſage, and our preſent Repreſentatives conſent to allow it.

To check this growing Itch of Pamphleting the Nation into another Change, and to vindicate the Rights of the Crown, and juſtifie the Magiſtracy of *England*, from the Obloquy which was induſtriouſly thrown on it in one Particular, there was three Months ſince, a Sheet Printed and Publiſhed, at which ſome Men took Offence, but others were of Opinion, that its Publication was ſeaſonable and well timed; that its reflection on the trifling Defence which it aſſumed to anſwer, were juſt and ſmooth, and very ſoft, conſidering the occaſion given for a more Satyrical Style, from the fondneſs and incoherence of the Defenders Expreſſions and Inferences, and that the mode of managing his Argument, was modeſt and tender, with a decent and due regard to the Memory of the unfortunate Deceaſed, which had ſuffered more than enough of Injury by that pretended Juſtification.

A Cholerick and Sedulous Enquiry hath been made after the Author's Name, but the Inquiſitor is ſtill at a loſs, notwithſtanding his Confidence of a certain Knowledge who it was that came behind and ſtruck him, *&c.* But to give him ſome Satisfaction, after all his fatigue in ſearching, I will aſcertain who it was not; he may aſſure himſelf that none concerned in that Tryal, were concerned or privy to its Vindication, and when it was compoſed and writ, the Party intended it chiefly for his own and the World's Diverſion, from the ungrateful neceſſity of Reading always on one Side, by the interpoſal of a few Lines on the other; that our Humours might not be quite ſowred, and our Genius turn too peeviſh, through the Influence of Satyr and Libel, with which the World hath too much abounded of late Years; nor had there been one Word more publiſhed upon that Subject, but that the Authority of the Defender doth challenge a Vindication, and the Word of a Prieſt ſays, that it needs one; both ſhall have an Anſwer preſently.

But firſt it is remarkable, that this new Reply hath got a Licenſe, when none of his other elaborate Works could procure one; however, it is poſſible that the Licenſer may hereafter renounce, or retract his Allowance in this Caſe, as he hath done in ſeveral others already, when his Superiours are acquainted with the Contents and Tendencies of that to which he hath given his *Imprimatur*; for it is not to be ſuppoſed, that Miniſters of State will ever be ſo incurious of their Maſter's Honour, and the Rights of his Crown, as to approve their Diminution, when once they perceive it.

The ſingle Point which the Advocate for Magiſtracy aſſumed to maintain, was that the Indictment in queſtion was Legal and Good, ſufficient both for Matter and Form, and did warrant the Judgment which was pronounced upon the Verdict that affirmed its Truth; this ſeems the principal Aſſertion in that Paper, which whether his Precedents and Authorities, Arguments and Reaſons, are ſufficient to prove, the Reader muſt judge; that the Caſes he cites are truly reported for ſo much as he uſes them, none can deny, and that the Law is with them upon the whole Matter, ſhall be farther evinced.

But ſince that Sheet hath made ſome noiſe amongſt angry Men (which was little expected by him that wrote it,) it will not, I hope, be thought impertinent to ſpend a few *Paragraphs* upon

upon the boisterous and blustering Invectives and Remarks made against its Author, in a pretended Reply. In his Vindication therefore I shall observe, the Temper, the Wit, the Guess, the Reason, the Religion, and lastly, the Law of that Replication.

As to the Temper, it seems to be writ under some disappointment, for the Author doth in every Sentence declare his Passion, and plainly tells us, that he was then discomposed; but whether his Displeasure were conceived at a past or present Chief, is not so easie to determine: To expose his Fury, it is enough to repeat his Epithets of Daring, Bold, Impudent, Presumptuous, Base, Ingenerous, Insolent, *&c.* and all this despised by his reputed Author, and smiled at by the real one. He is pleased to call the Sentence and Execution a plain Murther, which if so, sure I am that he is bound in Conscience to Prosecute an Indictment against the Judges, the Recorder, the Grand and Petit Jury, the Witnesses, the Clerks, the Sollicitors, the Goaler, the Sheriffs and the Executioner, for they were all concerned either as Accessories, or Principals, and demerit a Halter if the Repliant's Opinion be Law; but it is observed amongst *Honest Men*, that none of these Parties shew any fear on't; and the reason they give for it is, because the Indictment was as good as their Jurisdiction, and the Concurrence of those two makes them as safe as an Act of Indemnity can do: But all this was Passion.

As to the Wit on't, most of his Readers are at a loss where to find it, unless it be in his *English* Verses, which do so hit the sense of the Original, and contain such strong and pregnant flights of *English* Poetry, that some of his Readers have compared them even with *Sternhold* and *Hopkins*; and others are of Opinion, that they do not come short of the Essays of the two *Grays-Inn* Poets, one of which Translated *Grotius, de Veritate Christianæ Religionis*, and the other *Coke* upon *Littleton* into Rhime, but the generality do declare that for Heighth of Fancy, Propriety of *English*, and Exactness of Rhime, he hath much out-done all those: but for my part, I believe, that last Rhapsody was added not so much for the Ingeny sake, as to menace the Answerer with a design to Sacrifice him whensoever an occasion should offer it self, and consequently to do what the whole Book complains of; but that Advocate is not so much a Coward as to be afraid on't.

As for the Guess, it is very cunning, and argues more Figure-Knowledge than true Judgment in Styles, Modes, Dialects, or Peculiarities of Speech, or Writing, for he will have the Author of that Sheet, to be the Author of the *Antidote*, though he never saw it till he had the misfortune to have read the *Defence*; and his particular Idioms are as different from those of the *Antidote*, as they are from those of the *Defence*; but this is all Guess. He will have it one of the Counsel of that Tryal, because he hath put *Counsel* before *Court*: A Cunning Man would have guess'd the contrary, as supposing it done *fallendi gratia*, for the sake of disguise; but he may be assured it was meer accident that occasioned that fault. He will have it to be the then Sollicitor, because of his Reputation, which is supposed to be touched in that *Defence*: But his Readers think that that Gentleman's Figure for Learning, Honour, and Virtue, is so far above the reach of a little *Pamphlet*, that all the virulent Reproaches of the *Reply* cannot sully it, nor is it in the power of his Tongue or Pen, to prejudice his Character in the World; but however it is prudent to suppose to my self an eminent Adversary, that if a Foil be my fortune, it may be the easier.

But since we are at guessing, the World guesses, that he who wrote the *Reply*, did write the Half Sheet called the *Justification*; and it is really sportive to read the *Justifier*, commending the *Defender* for a learned worthy Person; and the *Repliant* doing the same good Office for the *Justifier*, and almost in the same words commending him: Nay, he spends a whole Page in the fulsom Praises upon that *Small Bulk* Author, and rejoyces that the Work was done to his Hands, which is a very pretty jest. However, it is at most but *R.* for *A.* and *A.* for *R.* and *R. A.* still, which is much better than the contrary practice, of which some Authors have been guilty.

As to the Reasoning part, the Reader must excuse my brevity, for in truth there is very little in it of that nature; however, a few remarks may quicken and revive that faculty against the next turn. The Advocate owns it to be writ in answer to his Defence, *ergo* it reflects upon the Nation's Wisdom. He expresses a Resentment at my Lord *Russel*'s engaging in such a weak and criminal Enterprise, *ergo* he reflects upon the Nation's Justice. He names the Lord *Russel*, (though with the most tender Appellations that could be used,) *ergo* he reflects on that Lord's memory. He vindicates the Indictment as good, *ergo* he justifies all the Proceedings in that Case. He argues that the Sentence was legal upon such a Verdict, *ergo* he is against the Reversal. He puts a Case, offers a Point, and makes a Proof on't, *ergo* he is transcendently impudent. These, and such like, are the Inferences, and do demeric a Laugh.

As to Religion, I see none in it, unless it be in the mention of the Devilish Powder Plot, which is still as much to the purpose of his *Reply*, as the story of Transmigration of Souls, was to that of his *Defence*; only Meekness is transparent in his Style, Humility in the Title Page, and true Christian Charity in his Menaces of an exception out of the Act of Indemnity, which he repeats three or four times at least, as if his whole interest were designed to promote it. The Gentleman's Danger is from publick and scandalous Actings in the Eye of the World; which were (says he) labouring to *Support the Government*, every Man knows what sort; lashing the innocent with a *bitter* and *sharp Tongue*, and *inveigling* of *Juries* with Rhetorical Flourishes. Now to examine a little these three monstrous Transgressions, let us go backwards. As to the last, a Duty can never be a Crime; every Servant owes Truth to his Master, while such: Every Advocate is to do his utmost, and a failure in it had deserved both the worst of Names, and Punishment, which the *Repliant* could invent, or his Interest procure. For all Mankind must agree that the now Servants of the present Crown are obliged to do the like upon the like occasion; if otherwise, the *Jacobites* side will be the safest. I will not reflect on the weakness of the Juries that were thus inveigled, if any such there were, but rather suppose that the Oaths of Witnesses, not the Pleading of Counsel,

ſel, did govern their Conſciences. As to the ſecond, that is falſe, and needs no other anſwer. As to the firſt, that Gentleman's Honour and Merit afterwards, is as remarkable as his Fault at firſt, if it were any; but however he is likely to have abundance of Company, in Deſert at leaſt, if not in Cenſure; for a Duke of *York*'s Creature is certainly as culpable as a King *James*'s Servant. And *Andrew Marvel*'s Characters in his *Growth of Popery*, will be as true a Directory to decypher Criminals as the Four Volumes of noted Tryals. And perhaps if the Ordinance of *May* 10. 1650. ſhould chance to be revived, Danger and Fear may ſeize other Men, as well as thoſe that ſerved paſt Governments; it is therefore thought adviſable, for all to ſit down quiet and forgive and forget what is paſt, but ſerve God and their Majeſties for the future, and not belabour the excepting one another; for if any ſhould be ſuch Fools, the Knaves will get the better of it, and the Righteous ſcarcely be ſaved. So much for Religion.

Now for the Law if we can find it: But becauſe the *Defender* ſeems ſomewhat diſpleaſed at the Repetition of that unhappy Lord's Name, whoſe Caſe gives occaſion for the preſent Queſtion. Let us therefore put it like Mooters, *John a Styles* was indicted, for that he, at ſuch a time and place, did compaſs to deprive his Natural Lord the King that then was, of his Regal State, and to deſtroy his Life, and to ſubvert the Government, and raiſe a Rebellion, and to fulfil that Imagination, he, together with others, did then and there conſult and agree to raiſe a Rebellion againſt the ſaid King, and to ſeize and deſtroy the Guards of the ſaid King's Perſon, contrary to, *&c.* The Queſtion was not whether *J. S.* was not Guilty? nor, If the Witneſſes ſwore falſe? Whether his Attainder were fit to be reverſed, But the Diſpute was, Whether that Indictment were legal? Whether ſuppoſing *J. S.* to be found Guilty, the Court that pronounced the Sentence of Treaſon againſt him, ought to have arreſted ſuch Judgment on the motion of *J. S.* that the Indictment was inſufficient? The Sheet argues that the Indictment was good, and conſequently the Sentence purſuant thereto was warrantable by the Laws of this Land. The Argument ſeems founded both upon the Reaſon of Things, and the Authority of Precedents.

Firſt, The Reaſon alledged was, that the laſt part, which in Lawyers terms is called an Overt Act, was a natural and genuine Senſe or Declaration, or Overt ſignification of the firſt part, which is an internal ſecret Thought, *i. e.* the Imagination and Compaſſing, which is the Treaſon prohibited and condemned. That the latter directly and conſequentially tending and conducing in the common Senſe and Reaſon of all Mankind, (excepting the *Defender*, and two or three more,) to the accompliſhment of the former, makes a good and ſufficient charge within the Stat. *Ed.* 3. A Repetition is tedious, and an Abridgment is ſcarcely poſſible, the whole Sheet being but a Breviate, I ſhall therefore refer you thereto.

Secondly, The Authorities there urged, are either the Opinions of Judges and other Lawyers, or Precedents of Indictments of the like, or the ſame nature, from which the Legality of this may be juſtly concluded. The ſubſtance of them on the whole matter is, that Overt Acts to depoſe the King, or deſpoil him of his Regal Office, or take him by Force or ſtrong Hand, or to impriſon his Perſon till he yields to the demands of thoſe who practiſe ſuch endeavours, are ſufficient Overt Acts to prove the Compaſſing and Imagination of his Death. That levying War, cauſing an Inſurrection, promoting an Invaſion; nay, that Conſults, Conſpiracies, Practices, Advices, Letters, Perſuaſions, and other Motives, and Preparations to an Inſurrection, or Invaſion, though none ſucceed, have been held Overt Acts of Imagining the King's Death. I will not repeat the Caſes, but as occaſion offers from the other ſide.

The Objections there mentioned and anſwered from the Penning of the Statute are too trivial to deſerve a remembrance, nor would they have ever been thought otherwiſe, but that *J. S.* was a Noble Perſon, and the *Defender* a great Man, and the Prefacer thought ſo too, either by himſelf or others. Theſe and ſuch like Ingredients, have made ſome ſemblance of difficulty: And in truth, had there been a real doubt in the Caſe, the Author of the *Remarks* on that Tryal, who wanted neither Senſe nor Will to cenſure it, had his Opinion ſo inclined, I ſay, he would certainly have fallen foul on it in thoſe invidious Obſervations of his upon the late Times. He quarrels with the Legality of the Jurors, the *Defender* with that of the Indictment, and both with the Evidence. The Author of the Sheet differs from them in the two firſt, but agrees with them in the laſt, that Teſtimony delivered for fear of Life, or hopes of Pardon or other Reward, is hardly creditable; but that is not the Point. Let us ſee if the *Replication* doth overthrow the Charge as inſufficient; and for my part I cannot find a Line of Argument in it, but only it is naught, becauſe it is naught. The conſulting and concluding to make an Inſurrection and Rebellion, and ſeize the King's Guards, is not a Declaration of the Party's compaſſing the King's Depoſal or Death, and why? Becauſe conſpiring to levy War, is not a levying War, and levying War is a diſtinct Treaſon; this is the ſubſtance of the tenth Page, if I can read: The Sheet ſaid truly, That levying War it ſelf might be alledged as an Overt Act of Compaſſing, and hath been ſo frequently, and meeting and agreeing to rebel and ſeize the Guards, hath a direct tendency to promote a Demiſe of the King either natural or civil, and therefore might as well be alledged an Overt Act as moſt things whatſoever.

I had almoſt forgot one Clauſe, and that is the Unneceſſarineſs of making 13 *Car.* 2. if it ſhould be as the Advocate argues; I ſuppoſe he means the firſt Paragraph, for the ſecond is agreed to be introductive of a new Law, *&c.* but the firſt is only a Paraphraſe upon the 25 *Ed.* 3. It is thus, **That if any Perſon or Perſons whatſoever, ſhall within the Realm or without, compaſs, imagine, invent, deviſe, or intend death or deſtruction, or any bodily harm, tending to death or deſtruction, maim or wounding, impriſonment, or reſtraint of the perſon of our Sovereign Lord the King, or to deprive or depoſe him, from the ſtyle, honour, or Kingly name of the Imperial Crown of this Realm, or of any other his Majeſty's Dominions or Countries, or to levy War againſt his Majeſty within this** Realm

Realm or without, or to move or stir any Foreigner or Stranger with force to invade this Realm, or any other his Majesty's Dominions and Countries being under his obeysance, and such compassings, imaginations, inventions, devices, or intentions, or any of them shall express, utter, or declare, by any printing, writing, preaching, or malicious advised speaking, being legally convicted thereof, by the Oaths of two lawful and credible Witnesses upon Tryal, or otherwise convicted or attainted by due course of Law; then every such, &c. shall, &c. Now what is this but a Confirmation of the old Statute in words at length; which was agreed to be so in the *House of Commons*, 1 *Jac.* 2. when a Motion was made to renew that Law, the Lawyers Answer was, that the 25 *Ed.* 3. did the same thing, and a Man may boldly say it, that here's nothing declar'd Treason, but what had been adjudg'd so before, and Attainders and Executions had pursuant to it: The Sheet mentions Cases enough, and to the purpose, tho' some think otherwise; but I'll not repeat them.

In the 11th *Page* the Reader is referr'd to the Justification in the Half-sheet; and therefore let's examine that a little; a third part of it is spent upon the Evidence, but that is not within my Province, which is only to vindicate the Vindication: As to the rest, the Force of it, if any, seems only to be founded on his first Assertion, the Conspiring to do a thing is not the doing a thing, and he quotes two great Men's Names for it, I would have agreed that, tho' he had spar'd the Authority to justify it; but this is sufficiently answered in the Sheet: He offers an Argument from the late Statutes declaring Treasons, because they were temporary, but I answer as the Sheet doth, they were in affirmance of the Old Law, and I can shew him three or four temporary, and an hundred other Acts of Parliament that are so, and therefore that is no Argument at all; but I am, as the Party I justify was, confin'd to a Sheet, and therefore cannot enlarge.

He lays down a Rule for Construction of Statutes, that a thing particulariz'd in one part is not to be construed within the general Words of another part, but that Rule hath near fourscore Exceptions in the Books; besides it comes not to this Case, for here's Compassing the King's Death made Treason, and declar'd by Overt Act; then Levying War is made Treason: Now says the Repliant, nothing can be an Overt Act of and conduce to promote and accomplish the first, that doth any ways concern the latter, I say it is a *non sequitur*; for there are several Instances mentioned in the Sheet, which respect the Levying War, and yet are a genuine Evidence of the Intention and Compassing; and if so, the Judges who have ruled such Indictments to be good, did neither assume an Arbitrary Power, nor transgress any Rule of Law, as the half Sheet insinuates.

Then the Lord *Cobham's* Case is endeavoured to be answered, by a Wonder that Sir *Edward Coke*, late Lord Chief Justice, and then Sheriff, should differ from Mr. Attorney *Cook*; for we know his thoughts in Sir *Walter Rawleigh's* time, and his Speeches in *Car.* I. his time; they are as different each from other as the times were, and in this particular that Gentleman hath had more Followers than Precedents; but the Query is, What is Law?

Then Sir *Henry Vane's* Case is endeavoured to be answered by this, that *Syderfin* mentions not the Overt Act in the Indictment, but he oth say, the Treason alledged was a Compassing the King's Death, and every Man knows what Sir *Henry Vane* did to accomplish that: He neither sign'd the Warrant to execute that Murther, nor was he actually concerned in it, the Justifier says, he does not remember it printed any where but in *Syderfin's* Report; for the refreshment of his Memory, I'll tell him of another Book where it is, and that *Keble's* First Volume of Reports, 304. and there the Indictment is said to be for Compassing the King's Death, and endeavouring to accomplish the Treason, by Changing and Usurping the Government, and Levying War, which Case doth directly overthrow all the Defender's, Justifier's, and Repliant's Arguments, from the distinctness or difference of the Sort of Treason.

Then for Dr. *Story's* Case, he says, 'tis hard to justify it for Law; whereas there are above Forty Places in our printed Law-Books, where 'tis cited and agreed to be Law: Now 'tis pretty odd, that a Case so resolved and so ratified, should one Hundred and eighteen Years after, be arraigned in Print, for 'twas *Hil.* 13 *Eliz.* if any thing be Law, that is so, and not distinguishable from this Case in question, but that the Evidence was different, which the Justifier would make a reason to invalidate this Indictment; the Logick of it passeth all Understanding: Besides, 'tis observable, that the Benches were filled both with Learning and Integrity in 1571, and 1662, neither of those Times were *Tory* or *Popish*; and in *Dyer*, 298. the reason given was, That it could not tend but to the great Peril of the King's Person, and therefore an Attempt to promote such Invasion, though none followed, was adjudged as aforesaid. In 2 *Anderson, pl.* 2. *fo.* 5. *Grant's* Case, 'twas held, That when any Person intendeth or contriveth to levy War for a Thing, which the Queen by her Law or Justice ought or may do in Government as Queen, it's not material whether they intend any hurt to her Person; but if they intend to levy War against the Office and Authority of the Queen, that's enough, and that Resolution overthrows the Justifier's Notion, that *J. S.* his Design was only to defend the Laws, though the 13 *Eliz.* also was then in force, it's a good Argument to answer that Pretence.

Now I have repeated and observed all the Replication or Justification offers in answer to my Friend's Sheet, the Reader may perhaps expect some new Matter, not so much for Confirmation, as to give occasion for a farther defence. In Sir *Fr. Moor's Rep fol.* 621. *pl.* 849. on the Tryals of the Earls of *Essex* and *Southampton*, before the then High Steward, the Justices did there resolve, that when the Queen sent to the Earl of *Essex* the Keeper of her Great Seal, and others, with a Command to him to disperse the Persons armed which he had in his House, and to come to her, and he did refuse to do so; and continued the Armour and armed Persons in his House, that this was Treason; and they did also resolve, that when he went with a Troop of Captains and others from his House to the City of *London*, and there prayed Aid of the Citizens to assist him in defence of his Life, and

and to go with him to Court, that he might get into the Queen's Preſence, that he might be ſufficiently powerful to remove from her his Enemies who were then attendant, that this was High Treaſon, becauſe it tended to a Force on the Queen, *&c.* I make no Inference, let the Reader do that; 'tis plain, that an actual mental intention of Hurt, is not material in the one Caſe or other. As the Duke of *Norfolk*'s Caſe is related by *Cambden*, in his Hiſtory of Q. *Eliz.* 163. the Treaſon which the Duke confeſſed, was a Plot to ſeize upon the Tower of *London*, and deliver the Queen of *Scots*; and that's all.

There's nothing remains in doubt, but the legality or illegality of the King's keeping Guards for the preſervation of his Perſon; they ſay the Law takes care of him, and therefore he is to take none of himſelf, and that the Judges are his Guards, and therefore he needs no other, that *Henry* VII. was the firſt that had any other. But let us reaſon a little; can it be ſuppoſed, that he ſhould be ſo ſacred in his Perſon, ſo great in his Power, and of ſuch Authority as to make War or Peace Abroad, and raiſe Forces and ſuppreſs them at Home, as the Danger or Defence of his Realm ſhould require, and not be able to provide for his own Perſonal Safety *de præſenti*? Can he only puniſh by his Judges afterwards, or prohibit by Proclamation before, but not defend himſelf for the preſent? Is it Senſe to ſuppoſe it? The Kings of *England* might have, and actually had Soldiers or Guards (call them what you will) even in times of Peace, and long before *Hen.* VII. as well as continually ſince; I may be ſo bold as to defie any Man to ſhew me the Year, the Month, the Week, or the Day, ſince the Conqueſt by *William* I. that *England* was without armed Men, actually upon Duty in ſome part or other of the Nation. This Sheet is not intended for a ſtudied Argument on this Subject; and perhaps it would be difficult to juſtifie a ſtanding Army as warrantable, when there's no Occaſion for it; but to ſay he can't by Force, even by Force, provide for his own Perſonal Safety, when he apprehends it in Danger, as every *Engliſh* King hath continual reaſon to do, eſpecially if ſome Men's Doctrine prevail, it may be modeſtly affirmed unreaſonable: Hath not every Subject power to keep Arms, as well as Servants in his Houſe for defence of his Perſon? Is not his Manſion called his Caſtle? And yet the Law protects him too by Prohibitions *à parte ante*, and Puniſhments *ex parte poſt*: There are many Tenures in *England*, which oblige to the annual Payment of certain Sums towards Soldiers Wages, for Defence of the King and Kingdom; there are others oblige to the annual finding certain quantities of Grain in kind, for the ſupplying the King's Caſtles and Garriſons, as well as Houſhold; which being annual, do demonſtrate the lawfulneſs of their continuance, even in Times of Peace, and their being immemorial, do conclude a Common Law Right in the Kings of *England*, to have thoſe Occaſions, as they do conclude him a Right to have them ſupplied by ſuch like Services: Nay, Grand Serjeantry, is either by Services of Attendance on the King's Perſon in Time of Peace, or for Military Aids in Time of War. The Crown may raiſe Forces by Commiſſion, or of the Militia, to ſuppreſs Inſurrections, in caſe the Civil Power of the Sheriff is not ſufficient, or ineffectual. The King's of *England* have the ſole Power and Force of the Nation; Complaints have been in Parliament againſt Billeting Soldiers contrary to the Will of the Hoſts, but never for maintaining a Guard for their own Perſon at their own Charge; Complaints have been of a ſtanding Army, but never of a ſelect Company for his Perſonal Preſervation; a Terror to the People may as well be pretended from his Coachmen, Footmen, or Grooms, if their Numbers be great: Beſides, for a competent Power in Arms he always may have occaſion, when his Subjects know nothing on't; 'tis his Province to foreſee and prevent as well as ſuppreſs and puniſh domeſtick Tumults, and the Buſineſs of War is ſeparately his Office, and that excluſive of his Subjects, any otherwiſe than as they are bound to obey and fight, or deſired to aſſiſt with Aids and Subſidies; and for this to avoid a numerous Volume of Citations, I'll name one notable Roll or two *in Parliament.* 6 *Ric.* II. *Mem.* 9. the manner and way of the Proſecution of a War, being given in Charge to the Commons to adviſe upon, they anſwered, That this *nec doit nec ſolayt* appertain *al eux mes al Roy*, and ſo they did, 31 *Edw.* III. *Parte prim. n.* 11. *&* 21 *Edward* III. *n* 5. It's true in 5 *Edward* II. *n.* 4. Ordinances were made, that the King without the aſſent of his Barons could not make War; but thoſe were repealed and dampned, 15 *Edw.* II. *Parl. Rot. M.* 13. becauſe prejudicial to the Royal Power of a King; and this is ſufficiently affirmed by the Act concerning the Militia, in *Carol.* II. his Time. It is well known in what Time *Bryan* Chief Juſtice ſaid, that if all the Subjects of *England* ſhould war with the Subjects of another Kingdom, that this is no War, unleſs the King denounces it: It ſuffices for my Friend's Point, that the King may lawfully have armed Men or Guards, when himſelf judges his Perſon or People to be in danger, or ſtand in need of them: And that he may, when reaſons of State will not admit their Publication to the World. But however, ſome ſtanding Force the Crown ever had, and ever will have, though not always to ſuch a Degree as ſhall be burdenſome or oppreſſive; and our old Law-Books ſay, that Arms as well as Laws are neceſſary for the Prince, not only in, but againſt the Times of Neceſſity, I mean War or Tumult; beſides in *Bracton, Lib.* II. *Cap.* 3. *de Corona*, 'tis ſaid, that *Crimen læſæ Majeſtatis*, is the greateſt Crime, becauſe of the Greatneſs of the Perſon againſt whom 'tis committed; his Deſcription of it is, *Preſumptio contra perſonam ipſius Regis*; then when he particularizes the ſeveral Sorts of Treaſon, the firſt which he names is, *Si quis auſu temerario machinatus ſit in* (*i. e.* towards) *mortem domini Regis, vel aliquid egerit vel agi procuraverit ad ſeditionem Domini Regis vel exercitus ſui, licet id quod in voluntate habuerit non perduxerit ad effectum.* I'll make no Inference, there needs no Paraphraſe, the Words are plain; an Act tending to the Deſtruction of the King's *Hoſt* is High Treaſon againſt his *Perſon*, *agere ad ſeditionem exercitus regis eſt preſumptio contra perſonam Regis, & preſumptio contra perſonam Regis eſt crimen læſæ Majeſtatis*: Now can *Bracton* be thought to ſpeak only of Treaſons in Time of War? *Glanvil, Lib.* XIV. *Cap.* 1. *Crimen læſæ Majeſtatis dicitur de ſeditione Domini Regis, vel regni, vel exercitus*; and *Fleta, L.* I. *c.* 20. *De ſeductione exercitus ſui: & cap.* 21. the ſame Words, *Seductionem ejus vel exercitus ſui*; this was the Senſe of the old Law, and is very appoſitely applicable to the Caſe in queſtion, as I could

eaſily ſhew, would my Paper bear it. There is one Thing which I had quite forgot, and that is, that the Inſtrument of Grievances which the Prudence of the preſent Parliament hath provided, complains of a *Standing Army*; the Anſwer is eaſie, 'tis not of *Perſonal Guards*, and the wiſe Enquiry of the *Houſe of Commons*, into the *quantum* requiſite to maintain ſuch and ſuch Forces during the preſent Occaſion, and of the Expences of the Crown in Houſhold, Courts, Guards, *&c.* afterwards do plainly ſhew, that that was not the intended Grievance: Now, to ſum up what is not anſwered at all or endeavoured to be ſo by the Defender, nothing is ſaid to the reaſon of the Thing, or the neceſſity and nature of an Overt-Act, to the Opinion of *Coke* in the Places cited, to the Caſe of Sir *Walter Rawleigh*, the Caſe of the Cardinal, the Caſe of Mr. *Coleman*, the Caſe of *Conſtable*, the Caſe of *Owen*, the Caſe of *Burton*, the Caſes of *Sparhawke*, *Awater*, and *Heber*, the Indictment againſt Sir *William Aſhton*, *Germain*, and *Taylor*, and *Thomas Burdett*, *Collingbourne*, and *Colledge*, nor to the Opinion of the Judges in the Lord *Stafford*'s Caſe, as if 'twere all impertinent, but the Reader is Judge if it be ſo.

Now for the Prefacer, I'll be as ſhort upon him as he was upon my Friend; he ſaid that the Sheet needed a Vindication, and I have given it one, and if this needs another, I hope the Crown will find a Friend to write ſome Third. He ſeems ſo us'd to the Word *Libel*, that he cannot forbear calling it an *infamous* one; he ſays, it has not one true material Word in it; I'll remember him of one, that Mocking is catching in the Proverb, that is, *A Grumbletonian in the Stirrup generally proves a Tyrant——in the Saddle*; that's enough for him to remember: If he wants any more Truth, and that he may not ſay this hath none in't, Treaſons are eaſier committed than diſtinguiſh'd, by ſome Men eſpecially, and the reaſon why I ſay this, is becauſe of his *Octavo* Preface, where he is grumbling ſtill, for I always thought that he had ſmarted too much for Libelling on Miniſters of State and Male-Adminiſtrations, to venture again; but when a Prieſt meddles with Law, he is like an Apothecary at Politicks, he generally runs himſelf into a Nooſe, for he'll never leave off till he's advanced one way or another. To conclude, the Deſign of the Sheet was to juſtifie the Prerogative of the King and Queen, and the Rights of their Crown; and the Republican is angry that either ſhould have any, and from thence flames the Paſſion; nay, rather than it ſhould be allowed, they'll attempt another Change, from which good Lord deliver us, *Prov.* 28. 2.

During the compoſure of the Premiſes, News was brought me, that another Pen had been procured to attack the Vindication, *viz.* The Author that runs a-muck at all Mankind, except his own Patrons: A deſerved and full Remark upon ſo voluminous a Book, is not here to be expected, however, this Appendix may ſerve for an Advertiſement to the World, that the new Repliant is in ſeveral Particulars obliged to Sollicitor *Coke*, and the other Regicides Defence on their Tryals for much of his Materials; Time is wanting to ſhew the Parallel; at preſent 'tis fit to be obſerved, that his blind Side alſo is apparent, and conſequently capable of a ſufficient Anſwer, and to give my Reader a Specimen thereof, I'll take notice of a few (amongſt many) Miſtakes, both in Fact and Law, which he hath wilfully committed. In the firſt Page he ſays, That to juſtifie what hath been taken ill, accuſes the preſent Government of Injuſtice; which is falſe. In *pag.* 2. he ſays, That the Vindication ventures on a Point of Law, which it pretends is the reſult of the Evidence given; there's no ſuch Pretence in the whole Paper, the only Debate was upon the Indictment. He ſays in the ſame Paper, that it's ſaid his Relations were pleaſed with the juſtneſs of the Tryal; it only ſays, his Relations were pleaſed, and his Enemies angry with thoſe who then ſat upon the Bench, and that's true; for ſome of his Relations cannot deny it, the Fact is ſo well known. The laſt Line of *pag.* 3. and firſt of the next are alſo falſe; for 'twas neither written, perus'd, nor approv'd by any of his pretended Criminals: I believe they thought the Point too clear to need a Vindication; but this is juſt like his wonted poſitiveneſs in his Remarks; where for inſtance, he ſays, that one of the Judgments he cavils at, was the firſt that was ever given without Argument or Reaſons delivered in Court, which is alſo falſe; for in *Plowden*'s Comment, 459. In Sir *T. Wroth*'s Caſe, the Author takes expreſs notice, that the reaſons of the Judgment were not diſcloſed, when the ſame was pronounced; and Fifty other Caſes I could name him of the ſame, but one Inſtance is enough to falſifie a general indefinite Poſition, though there are ſeveral more even in that very Book.

But to run over his Volume, *Pag.* 2. is only a farther ſcurrilous Reflection to vindicate his own Remarks, and an impertinent bombaſt of Words on the Phraſe of *Engliſh* Proceedings: The 3d *pag.* aſſigns four Reaſons of Printing, the two laſt are applicable to himſelf only, and he thinks ſo of the fourth, or elſe his Story is fooliſh like — In the *4th pag.* he boulſters himſelf in his Railery, by reſorting to his refuge of the Parliament's Authority that reverſed the Judgment, which all Men agree to be juſt, but it was not becauſe the Recorder did not arreſt the Judgment on that trivial Exception to the Indictment, but becauſe the Proſecution was ſuppoſed malicious, and the Evidence ſuppoſed falſe or deficient, or both.

The 5, 6, 8, 9, and 10*th* Pages are all impertinent to the Point in queſtion, and contain nothing but a Vindication of his juſtly condemned Clamour in his former Book; concerning which, I'll boldly ſay it, in ſeventeen Points of twenty he is out in his Law; if 'twere convenient to publiſh the Proof on't, I could make it plain. His Deſign is to ſhew in thoſe Pages his Wit and Fancy, more than Candor or Law; for my Part, I am of his Friend's Mind, that he comes not ſhort of the old Obſervator for managing a Dialogue: But all this is not to the Purpoſe, he is not come at it yet, the 12 *pag.* ſavours of the ſame Kidney, and 13 and 14 are no better: There he vents his Gall, and that in Ribaldry; no ſofter a name than Tools can be afforded to Men of Worth and Honour: If himſelf be one, as ſome ſuppoſe him, I am ſure it is not to the preſent Government, for he plainly condemns it, and declares the People, *i. e.* his ſort of them, unſatisfied with it, for its ſparingneſs in Vengeance; and it is becauſe others are not puniſhed for maintaining the Law, and themſelves not preferred for arraigning it: Some Men know my Meaning. He ſays, he is only

only for mumbling of Judges and Counsel, *Causa patet.*

But I must tell him two things, 1. The Inclinations of *Englishmen*, and the Laws of the Land, will never quadrate with a Commonwealth.

2. His supposed Criminals do not depend on their Number, but the Law, which ought, and will justify them; if it doth not please, let it be changed by Parliament, or if the Author thinks that a tedious way, let us burn all our Law-Books at once, and then perhaps his *Remarks* and *Reply* will be thought to be Reason, and himself the greatest and only Lawyer in the Realm; but till then, he must give others leave to know, and to say that they know, he is mistaken: For Resolutions, and Opinions, pursuant and agreeable to the Opinions and Rules of former Ages, I mean, frequent and repeated Precedents, approved by the Lawyers of the Age that used them: I say these will be the Law to the End of the World, unless altered by new Statutes.

And now we are come to debate the Question, all that is past is upon the Times, and not the Point. In *p.* 18. is his Reasoning-part which is no more than was said before in, *&c.* To redargue him I must repeat; if therefore he will observe what is said by the Sheet, *p.* 22. I will say no more on't, but submit to the Judgment of the Reader; he says the Inferences are ridiculous, I say they are Rational and Genuine: The single Issue is, if his or my Friend's Arguments are the most Logical and Natural, let the Reader judge.

Now for Authority, let us see if he urges any on his side, or answers that on the other. He admires (*p.* 24) at the Assurance of the Sheet-Author, and others admire at his. He says the Parliament had often adjudged it, but none can shew any Judgment in the House of Lords, or Vote of the Commons House to that purpose. I have shewn the Sense of the present Parliament in the Point of Guards, and his temporary Laws are already answered; nor would any Man but he, and one more, pretend that they are Judgments in the Case. Surely it will not be pretended that his Case of the Earl of *Northumberland* in *Hen.* IVth's Time, is any thing to the purpose: Nor is it any Argument to say, no King of *England* was ever killed for want of Guards.

Now for Cases, *p.* 26. He saith that in the Earl of *Essex*'s Case there was an actual War levyed, and that, as I said before, destroys the Argument from the Different sorts of Treason. As to Cardinal *Pool*'s Case, he only says there was another Statute in force then, but no Record or History says that he was indicted on any other than the 25 *Edw.* 3. As to Dr. *Story*'s Case, he tells a long Tale out of *Camden* about the Fact, but answers not one Word to the Indictment, whatsoever the Evidence was, the Indictment was as the Sheet alledges, and that is enough.

His Answer to *Coleman*'s Case is that, that things happening afterwards proved more, but the Evidence was no more than what my Friend alledges. As to Sir *Henry Vane*'s Case, his Answer is, his own Hearsay of what was proved, but the Indictment he never perused, *argued like a Lawyer.* As to *Constable*'s Case and the rest, he gives no Answer, but only that a Repetition of a number of Cases makes a Mutter and a Noise, and so it does when they govern and rule the Matter in question, and are not answered. *Owen*'s Case, he says, the Author presses it strangely, and that is all. He says, the Cases of *Burton*, Duke of *Norfolk*, *Awater*, *Heber*, and *Crohagan*, are not to the purpose, let the Reader judge if they are not pertinent: As to the Opinion of the Judges in the Lord *Stafford*'s Case, he doth not mention it, but says the reviving that Case might have been spared, and that is all, a pretty Answer: As to *Colledge*'s Case, he talks of a Proof of a Self-defence, but nothing to the Point it was urged for. As to the Cases of Lord *Cobham*, *Grey*, and *Rawleigh*, in 32, 33, 34, 35, *Pag.* Setting aside his scandalous Invectives and Reflections upon those Times, Ministers, and Governments, he no ways attempts to answer the Argument drawn from them, *viz.* That the Charge was the same as in the Case in Dispute.

Now I appeal to any Man of Sense and Reason that will read and think closely, if the *Repliant* hath offered any one Argument more than the Lord *Russel*'s Case, Defence and Justification had alledged. If he hath shewn any one Judgment where such Indictment was resolved naught; if he hath given any Answer to Dr. *Story*'s, *Collingborn*'s, Sir *William Ashton*'s, *Burdett*'s, and Sir *Henry Vane*'s Indictment; in short, if he hath answered any two of the Cases cited; or if he hath done any thing but reflect on past and late times, and if the Indictment remain not good, both for Matter and Form, notwithstanding all these pretended *Replies.* Upon the whole, I desire the Reader to peruse the Book cited, and to judge if there be not Precedents enough unanswered to justify the Indictment in question, and that the Recorder gave a good Judgment upon the Verdict that affirmed its truth; *quod fuit Probandum.*

To conclude, Since the *Repliant* is in love with *Horace*, I would advise him to consider one hint of his,

——— *Forum, putealque Libonis*
Mandabo siccis, ——— Hor.

The third and laſt Part of the Magiſtracy and Government of England *Vindicated, with Reaſons for a General Act of Indemnity*, &c.

IT hath been the obſerved Misfortune of moſt mix'd Governments, particularly of our own, never long to enjoy the intire Friendſhip of all its individual Subjects; the lowermoſt Side hath too frequently acquired the greateſt ſhare of the People's Love, or at leaſt Pity: It's then no point of Wonder, that the Servants of former Crowns ſhould have incurred their proportion of Envy, Hatred, and Reproach; and amongſt all thoſe none more obnoxious to it, than the Miniſters, Officers, and Inſtruments of Juſtice; for ſuch are the viciated Sentiments of Perſons intereſted in all Suits, that the Vanquiſh'd is certainly injured, or thought, or ſaid to be ſo, which is all one, by the Perſons themſelves, their Friends or Relatives, their Patrons or Creatures. In truth there's ſcarce a Tryal on the Plea or Crown-ſide, but one Party, and ſometimes both, do leave the Court with a ſwinging Curſe or two on Judge, Counſel, Jury, Witneſſes, and perhaps all concerned; upon which account, it can never be deemed a juſtifiable, much leſs a commendable and meritorious Employment, for Lawyers to note and report, and afterwards publiſh to the World the Clamours of ſuch Malecontents, with the addition of Sarcaſm inſtead of Argument, and bluſhleſs Lies inſtead of Law and Precedents, and all this under the pretence of ſerving their Majeſties and the Government, but 'tis a meer pretence; for firſt, it's not their Province; theſe Publications are made by them, not as Legiſlators or Judges, but as private Perſons; and one of their *Libels* ſeems calculated only for private Lucre, as either the Hopes of a Place, or Encreaſe of Practice, by telling the Town in the firſt and laſt Pages where the Author lives, of what Profeſſion, and how long ſtanding; an Art learn'd from ſome of thoſe exquiſite Doctors inhabiting towards the Fields, whoſe Knowledge and Converſation is pretended to be in Heaven: Another writes for Bread, and ſcribbles that he may eat, *&c.* A third, or rather the firſt and prime, is inſpired with Venom and Revenge, even the pure Spirit on't, as one baulk'd he is angry at all, and becauſe ſome were not his true Friends, he's reſolved to make Enemies of thoſe who deſpiſe him, and of them the number is great. But ſecondly,

It's of no uſe to the preſent Government, for Truth only can be a ſure *Baſis* of Reſpect to that; and in caſe of Slander, the Filth rebounds, and the Dirt thrown moſt ſurely turns on, and dawbs their own Faces, eſpecially when they arraign thoſe as ignorant, whoſe Learning, Knowledge, and Judgment, are ſo clear and acknowledged, as to render the Cenſors unworthy even of being their Bag-bearers; the like when they cenſure thoſe as corrupt, who have always boldly done their Duty, even in defiance of a Court Cabal, or a Popular Faction; who have always adhered to the old *Engliſh* Law and their juſt Opinions in it, tho' Frowns from *Whitehall*, or Clamours from *Wapping*, tho' Lampoons from *Grub-ſtreet*, or a worſe Uſage from an *Obſervator*, tho' a *Superſedeas* or a *Take him*, &c. were the only Reward they could expect for ſuch their (formerly called Puritanical, now Arbitrary) Juſtice: Gentlemen who never poll the Law (which the great and good Sir *Mat. Hale* did truly call a robbing the Poor of Juſtice) for the acquiring a Farm or an Office, or a lumping Summ for Sale of it; who never begg'd an Executorſhip for to gain a Fortune; Gentlemen who never gave ſtrain'd Opinions concerning the Revenue when made for their Clients the Farmers, but clamour'd at the ſame when uſed by their King with more Moderation; Gentlemen who parted with their Places, tho' of Honour and Profit, rather than comply with a Court-Opinion or a Club-Notion, when others (I name no body) offered entire and everlaſting Service, if they could have preceded or ſucceeded them, (Teſte.... *apud* St. *James*'s and the City of *Glouceſter*,) but miſſing their Aim then, as now they do, their Gall muſt have a Vent, and ſo it hath with a vengeance, when a true and bold Juſtice is made the Subject on't: The Reaſon is plain, thoſe Men's Repute is too great for Truth, Probity, and Uſefulneſs: An Eclipſe is neceſſary if poſſible, for if otherwiſe, the Defender will never be *Keeper*, the Remarker *Solicitor*, nor the *Gray's-Inn* Poet wear Scarlet in *Wales*; their Hopes are but ſmall, unleſs they can poſtpone all their Betters by Death, Commitments, or that which is but little worſe, Reproach and Slander; but ſome think their Sting grows weak, for 'tis apparent, that there are a ſort of Men, who tho' they might and did love His Majeſty when as Prince, yet do not, will not, cannot love him, or any Man elſe, as King; and this is now pretty plain. But thirdly,

Their Libels are criminal, and injurious to common Juſtice, for they create a Diſreſpect and Contempt upon all Judiciary Proceedings; to arraign all paſt is to excite a Suſpicion of all preſent and future Adminiſtrations; whereas *Plowden* ſaith, *fol.* 38. *It's a good and ſure way to believe the laſt Judgment*; and if ſo, 'tis plain what Name the contrary Practice deſerves; beſides, were it otherwiſe, the Inſtitution of Judges and Courts were vain, and our State, as *Engliſhmen*, the moſt unfortunate; for we have no Rule but *ex ore Judicum*, or from particular Statutes, and of them they are the Expoſitors. Now let's inquire which is law, the Defender's Fancy in his Argument *inter S.* and *B.* or the Judgment in the Exchequer Chamber, affirmed

affirmed by the Lords? If the Judicial Reſolution be ſo, then the Publication of his Argument was injudicious, and I am not to follow him as my Guide; but perhaps he'll tell me, That manifeſt Reaſon and good Lawyers ought to govern me; if ſo, then I ask him, Who ſhall I follow in the E. of *D*'s Caſe of a *Capias pro fine puis Judgment*, &c. whether the Eleven beſt Lawyers, or the Vote of the Houſe? If the latter, why not ſo in the former Caſe? And if otherwiſe, then his Judgment was miſtaken; ſo that *quacunque via data*, there's no Infallibility in this World, and conſequently no Excuſe for Private Cenſures of Publick Proceedings in Courts of Juſtice: Beſides, the Books are pretty clear, that ſuch things are puniſhable; but I leave the Reader to peruſe them at leiſure. Then let us conſider the Confuſion that muſt enſue upon the publick countenancing ſuch a Practice as theſe Scribblers have introduced; for if allowable on a Disbanded Judge, 'tis ſo on a Sitting one, for the Caſe is the ſame in reſpect of private Lawyers, who pretend to think their Judgments erroneous or corrupt; but ſurely both are unlawful. Beſides all this, in the preſent Caſe;

They have palpably wreſted the Law in divers Inſtances: I need name no more than the Indictment in queſtion, which that it was legal and good, moſt Men do now agree, eſpecially ſince the dint of the Oppoſal ſeems current only on the Evidence, with a Waver of the other, and more ſince that Guards are proved lawful, and the Obſervator concedes it the moſt legal part of the Procedure, and the Juſtice of Parliaments, *&c.* ſuppoſed written by the Defender, ſtrains all its Forces on the Evidence and the Times: and their Follower, the Poet, in his new *Non conformiſt*, pag. 10. runs the ſame way too: Only

There remains one Objection to the firſt Vindication, which is, that it affirms, Words may be Treaſon within the 25th of *Edw.* 3. and the Remarker challenges a Proof of it, and asks where it may be found; and the *Non-conformiſt* quarrels at the Lawyer that did aſſert it, and ſome others have done the ſame *ore tenus.*

I confeſs, that the firſt Sheet did publiſh the Aſſertion, but waved its Eviction, for fear of a ſtrained Uſe of ſuch Opinion to ill purpoſes, for the ſerving a turn upon particular Occaſions; nor had there been any more ſaid on it, but that their Confidence and Malice ſeems ſo exorbitant as to extort a Check, for the Regulator is grown ſo confident of his own Knowledge as to undervalue the greateſt of Judgments; whereas his Common-place-Book affords us no Titles but thoſe of Colluſion and Malice prepenſe; and his Practice hath been much of the ſame Stamp, only that ſometimes he hath added a little of the Lunatick, as appears by his *Rhimes, Prophecies, Dreams, Politicks*, and other *Religionary Works.*

To prove the Aſſertion, I depend not on the Authority of the Senſe of the Commons Houſe. 1 *Jac.* 2. tho' (let the Cryer for Juſtice, or who elſe pleaſes, contradict it) it was in Fact then affirmed and agreed unto, and upon that, the then King's Council and Courtiers deſiſted the Motion and Proſecution of a Bill to make Words, *&c.* But that's a ſupernumerary Argument, there's more than enough beſides.

I am not to maintain, that all rank, malicious, groſs Words againſt the King or Queen's Perſon are ſuch, nor that whoſoever drinks an Health to our Sovereign Lord the People, or to the late King *James*, is a Traitor; but that Words ſignificative and expreſſive of a preſent Intention to do an Act to the King's Deſtruction, ſuch Words deliberately, maliciouſly, and adviſedly ſpoken on purpoſe to accompliſh the Demiſe of the King, as by Promiſe of Money with importunity to commit the Fact, may be an *Overt fait* to prove the Imagination within 25 *Edw.* 3.

To evince this, let us think a little..... and 'twill be plain.

The Words of this Statute are clear and of an eaſy Conſtruction, if we will allow thoſe dull old Times to ſpeak Senſe: They are to this effect. That if it ſhall compaſs or imagine the Death, *&c.* and *de ceo provablement ſoit attaint per overt fait:* Now the Objection is this, That Words are not Deeds within that Clauſe; to this the Anſwer is very clear; for by all the Grammatical and other Rules for Interpretation of the Senſe of Words, the latter part of a Sentence is to be conſtrued (if uſed by way of oppoſition) as oppoſite to the thing mentioned and intended in the foregoing Part, and not as oppos'd to every thing which it may *ex vi termini* exclude in other Caſes; and this is an agreed difference, both amongſt Divines in Expoſition of Sentences in Scripture, and Grammarians in almoſt all Caſes whatſoever. Now to apply this:

Overt fait is uſed not in oppoſition to Words, for there's no ſuch thing mentioned; but 'tis added in contradiſtinction to that which was before ſpecified, *viz.* Thoughts, and ſuch are Imagination and Compaſſing; and therefore *overt fait* muſt mean any open manifeſt thing as can truly diſcover thoſe Thoughts, as may proveably attaint the Traitor of ſuch his Imagination; and it is a moſt natural and proper Mode of Speech, if they did intend, as moſt undoubtedly they did, that the Thought ſhould be the thing prohibited, then 'tis as plain they intended by the Word *fait* any Diſcovery of ſuch Thought by Words or Actions; and ſo ſaid *Newton* in 19 *Hen.* 6. That to imagine the Death of the King, is Treaſon, tho' he do no act towards it, if ſuch Imagination be diſcloſed that it can be tried if he did ſo think and imagine. If that Thoughts and Words are mentioned both in a Sentence, and afterwards Deeds in oppoſition, then the laſt will exclude both the former; but here when uſed only in contradiſtinction with Thoughts, it ſeems plainly otherwiſe. That Deed, when uſed in oppoſition to Thought, doth include both Words and Acts, none can deny; a thouſand Inſtances might be given of it; and in the exacteſt propriety of Speech, Words are Deeds when and as contradiſtinguiſh'd from Thoughts; for the Soul thinks even as abſtractly conſidered from the Body, but Man never ſpeaks without Action and Motion: The difference is plain, and needs no Explication. But further,

I would fain know, What is a Conſult or Plot, but the mutual and reciprocal Declaration of two or more Traitors Minds each to the other? Each declares his Traiterous Imagination by Words, and ſo of an Agreement to commit

commit the actual Murther, 'tis but a Declaration of their Minds by Words each to the other, only they do happen to agree. Now ſuppoſe one Man thinks and intends to deſtroy the King, and by Words doth willingly, deliberately, and adviſedly declare this to another that is not of his Mind, tho' by miſtake is thought to be ſuch; is not this the ſame thing? If a Man traiterouſly offers and promiſes to another a thouſand Pounds to perpetrate the villainous Act; if he accept it, and a parole Agreement is made between them accordingly, ſurely the Apologiſts for Treaſon will agree that to be an Overt Thing, and both guilty, if it can be proved by two Witneſſes of Credit. Suppoſe then the Party offered and promiſed doth abhor and refuſe, will that make a diſtinction? If it does, 'tis without a difference: Perhaps the Word *Conſult* will be called a new Cant; we know whoſe Coin it is, and who gave it the firſt Stamp; 'twas no leſs a Man than Sir *William Jones*, who at the time of ſuch his Invention was no Prerogative Lawyer, tho' conſiderably ſo in Times then lately paſt: Nor is it imaginable what is the meaning of a Conſpiracy or Plot to take away the King's Life, but a Communication by Words between ſeveral Traitors concerning ſuch Act, and the method of its Accompliſhment, and a Declaration by Words of each Man's being fixed in that purpoſe; which, if it be proved by ſufficient Teſtimony, will undoubtedly be an Evidence of a Compaſſing, *&c.* which is the Treaſon Prohibited and Puniſhable; nor can the Meeting make it more ſo, for they could not diſcourſe unleſs they met; and therefore 'tis the Words only that are the manifeſt *overt fait*. Nor doth *Hugh Pynes*'s Caſe, or the Reſolution of the Judges therein, contradict this, notwithſtanding the Confidence of the Remarker that it did; they only ſay that the Words in that Caſe were not Treaſon, that thoſe Words were not an Evidence of Compaſſing, that for thoſe Words he could not be Indicted upon that Statute; but their Opinion doth plainly imply, that had the Words been Evidence of a Compaſſing, *&c.* as they were only ſlanderous and reflective, it had been otherwiſe; and the Inſtances there mentioned are full to this, as *John Quick*'s Indictment was only for Words to King *Henry*, unleſs ſtanding up and ſpeaking will alter the Caſe: *Thomas Koiver*'s, *John Clipſham*'s, and *John Mirfield*'s, are all for Words, and ſome others there ſpecified. Beſides, it's obſervable, that in moſt Indictments on this Statute, ſome Words have been alledged in them as an *overt fait* to demonſtrate the Imagination, which would be impertinent if the Law were thought otherwiſe. I'll not inſiſt on *Colledge*'s, becauſe the Caſe hath been cavilled at, tho' with no colour as to the Indictment: Part of *Patrick Harding*'s Indictment was *loquendo publicavit*, but I'll not dwell on that, becauſe fooliſhly drawn; but *Arthur Crohagan*'s Caſe in *Cro. Car.* is pretty full, and for Words; and the Words of the Book are, That the traiterous Intent and Imagination of his Heart was declared by his Words, and therefore held High-Treaſon within the expreſs Proviſion of 25 *Ed.* 3. and upon his coming into *England* he was arreſted, *&c.* Now no Anſwer can be to this, but that he came into *England*; but the Words only ſhewed his Intent, and by that Book the Words are alledged as the *overt fait*; beſides the Caſe of *Blanchflower* and *Atwood*, *Mic.* 5. *Jac.* 1. *B. R.* in *Telverton*'s Reports 107. *per curiam*, reſolved, that Words may be Treaſon; and that is an expreſs Reſolution; for there was then no temporary Law in being concerning Parole Treaſons that I know of. The Caſe of *Berisford* and *Preſſc. Hill.* 8 *Jac.* 1. *B. R. Telvert.* 197. adjudged, That Treaſon may be committed by Speech as well as by Act, for any thing which diſcovers the Mind of a Man to be Traiterous to his Sovereign, is capital to the Party: *Hitcham ad. Brook Paſch.* 1 *Car.* 1. *Hutt.* 75. held *per cur.* that the ſpeaking of Treaſon was Treaſon, and that *ſermo eſt index animi* as well as Preaching or Writing; and no Man can doubt but thoſe are Acts; and Speech is as much ſo.

Beſides, If the Conſequence of the contrary Doctrine be well conſider'd, 'twill appear to be a plain Evaſion of the Statute of 25 *Edw.* 3. as is manifeſt upon the reading it; and the common Books are full of this, for otherwiſe no Action could lie for ſaying a Man hath ſpoke Treaſon: But here's enough ſaid to anſwer the Challenge, where's the Authority for ſuch an Aſſertion? Tho' infinitely more might be ſaid for it, nay 'tis as eaſy to dumbfound the contrary as 'tis to tranſcribe Law Caſes. If this doth not give them ſatisfaction, they ſhall remain unſatisfied for me, I'll plague the World no more with writing on this dull, flat, unprofitable Subject, Crown-Law, leſt I ſhould provoke our new Scribblers to double the Plague by their Replies: If they attempt an Anſwer, I'll leave the Tobacconiſt and Grocer to confute them; and unleſs a Trunk or Band-box chance to bring them to my View, I'll never be tempted to read them; and of this they may aſſure themſelves. I ſay it to complement the Reader with Patience to peruſe the reſt of the Sheet, being aſcertained never to hear more on't, at leaſt not from this Hand.

Some perhaps may wonder at the reaſon of the Publication of theſe Sheets, and conceive them the Product of Malice on one ſide, as thoſe virulent Pamphlets are on the other: To ſolve that Scruple, I need only repeat the Reaſons alledged in the firſt; but a Repetition is damnably dull, as well as tedious and irkſome: I'll therefore add a new one, and that's to ſhew the Reaſonableneſs as well as the Neceſſity of a general, indefinite, ſpeedy Act of Oblivion; for tho' the Blood-hounds fret, and huff, and bounce, as if all their Madneſs and Rage were founded on a true *Baſis*; yet 'tis apparent from the Premiſes, that their Foundation is falſe, and the Law is direct and plain in their Teeth, and doth and will juſtify in moſt of the Particulars, at which they foam their Curſes and Execrations: Reaſon therefore as well as Neceſſity enjoyns a ſilence as to what is paſt, for otherwiſe the Kingdom can never have its deſired ſatisfaction; for in Points juſtifiable, or at leaſt doubtful, the Juſtice of inflicting Puniſhments can never be vindicated, did I call them Puniſhments, I beg the Reader's Pardon for the Impropriety; however I'll not name their proper Term, but with calmneſs endeavour to evince three things.

1. That it would be grateful to the Nation in general, and every good Man in particular.
2. Conducing to the Settlement and Intereſt of

of the preſent Government ; and laſtly, That 'tis conſiſtent with, and promotive of the higheſt and trueſt Juſtice.

Firſt, The Nation did and doth expect it, for Revenge is never natural but when freſhly purſued, and Time wears off the Senſe of Injuries, by the Intervention of new ones either real or imaginary, which is all one as to this Purpoſe: The Horror of any Crime, or at leaſt the Deteſtation of the Criminal, grows faint and languid upon the removal of the Object, eſpecially if Time interpoſes with the acceſſion of preſent Fears, which at preſent do more affect us than greater if more diſtant. It can never therefore be thought the Deſire of the People of *England*, to have their Neighbours or Acquaintance harraſs'd and perſecuted by Fines, Confiſcations, Impriſonments, Marks of Diſgrace, or the like, for Actions done in the laſt or former Reigns, about which the World hath been ſo much divided, if lawful or not : Beſides, that this was the general Expectation of the Kingdom on the the new Settlement, or at leaſt the Coronation, of which nature there never was an Inſtance before this without an Act of Grace ; and it is moſt plain, that none are Adverſaries to it, but the *Republicans* and the *Jacobites*, not for that they need it nor, as I ſhall ſhew anon, but for different ends, each drives at and wiſhes a Change, it matters not to what, for if to the latter, the other hopes a Common-wealth will be the more deſirable : If the *Republican* ſucceeds, then the other believes a Reſtoration the more eaſie, but both diſlike the preſent, and therefore dread a Settlement, and conſequently dread the People's Satisfaction and Quiet under their Majeſties, and conſequently dread an Act of Indemnity : 'Tis true, the Cry for Vengeance is loud, but 'tis only from theſe two Corners ; which leads to the ſecond Particular, that

It will eſtabliſh and promote the Intereſt of the preſent Government, while the Popular Bully is full of his Damme's and Menaces, there's certainly Danger, and where there's Danger there's Fear ; now fear cauſes an Averſion, and Averſion begets Hatred ; and the Object of it is that from whence the ſuppoſed Danger ariſes, which is from the Government irritated by the Venom and Fury of thoſe hot-headed Animals, whatſoever hath Power and Will to hurt me, muſt and will be abhorr'd ; and though none are immediate actual Patients, yet the being poſſibly obnoxious to it, and the want of Security for the contrary, doth of neceſſity cool their reſpect to the preſent Power, under which they were not ſafe, and this tempts them and their Friends upon Contrivances and Attempts of Danger, both to Themſelves and the Publick ; and Danger by the Attempt is no Diſcouragement where the like Danger attends their forbearance : And this is of Weight, unleſs *Cromwell's* Politicks be thought Chriſtian, to cheriſh and promote a Plot, as of advantage to Settlement, if ſeaſonably diſcovered and ſubtilly managed ; but however 'tis as true, that Enemies who are deſperate, ought never to be thought inconſiderable ; for they may ſhake and batter what they can't deſtroy, they may do Miſchief, though they can't work Ruin to their Adverſaries, upon which Account, the Temptation of continual impending Danger is fit to be removed : Beſides

The want of Security, and the fear of Danger, making Men uneaſie in their Thoughts, repleniſhes them with Complaints and Murmurs at every awkard Action, or ſuppoſed miſcarriage of the Government feared ; it makes them Mutineers at publick Taxes and Impoſitions, partly becauſe they think it ſtrengthens and increaſes the Power of hurting them, and partly becauſe it ſponges and bleeds them of that, which they fear an occaſion of themſelves to bribe Blackrods, Serjeants at Arms, and other Goalers with ; and in a conjuncture when extraordinary Aids are indiſpenſibly requiſite, no temptation to Complaint is deſerving of Countenance ; beſides, that it cramps Trade, and diſcourages Projects for Publick Good, *&c.* but farther, it's the living, not the dead, the happy, contented, and chearful, and free, not the oppreſſed, miſerable, forlorn, or impriſoned Subject, that doth Service to the Crown and the Publick.

It hinders all ſuch as are thought to be ſo obnoxious from any bold Eſſays for the Uſe of the preſent Government, for that if Succeſs be the attendant of ſuch their Attempt, they continue unſafe notwithſtanding, for no Man will adventure an hazard to ſecure that Authority, which he is not ſure will make him ſafe, if he doth undertake the preſent Adventure, and eſcapes that Danger, and performs the Service ; ſo that Self-preſervation renders it their Policy to unhinge themſelves from, or to be ſhy of the preſent Power ; of which a conſiderable number might prove uſeful Friends, which are now Neuters at leaſt, if not Enemies.

It's obſervable in all foreign Policies, either to work a total Extirpation of the whole Party, or an univerſal Indemnity, after ſo grand a Revolution as this was ; the former is not to be practis'd here for two Reaſons : 1. Becauſe we want People : 2. Many of our Friends muſt be baniſh'd too, for divers of the ſuppoſed Criminals were inſtrumental to the preſent Change, &c. *Ergo* the latter only is, and can be moſt adviſable ; for once I'll ſuppoſe their Numbers but ſmall, in compariſon to the Saints and Innocents, (if any ſuch there are in the Nation) yet under our preſent Circumſtances, all are to be obliged as Friends that poſſibly may ; but if the thirteen Heads, with the Surrenderer's Clauſe, and all its and their Subdiviſions had been reduced into a Law, in the deſigned Act of Attainder, one third at leaſt of the Nation had been involved, who with their diſobliged Relatives and Dependants is not ſo contemptible a Flock, though but of Sheep for the ſlaughter. Beſides,

It's impolitick as well as unjuſt to deny or delay it to thoſe who have ſubmitted to the Government, yielded it Obedience, and quietly bore its publick Charges according to their Proportion, and yet give a free, full, and general Pardon, both in *Scotland* and *Ireland*, to all that took up Arms, for all their Sins then paſt and preſent ; it provokes the former to repent their Non concurrence with the latter, for 'twas but reſuming their Quiet and Submiſſion at pleaſure, and then they were ſafe, which now they are not, but under continued Menaces and Dangers of both, as appears in their being baited by every barking Cur, that can but write with Gall in his Ink, or ſpeak with a Damme in his Mouth.

Experience farther tells us, that nothing turns or changes the Humour of the *Engliſh* Commoner, like Rage, Inſolence, and Cruelty in their Fellow-Subjects, when made Superiors, and ſuch

is

s raking into old Sores, thought to be; it matters not whether juſtly or no as to this Purpoſe, the Effect is generally ſuch: The Star-Chamber in *Car.* I. his Time, the Major-Generals in *Cromwell's*: The Tophamizing of Abhorrers in *Car.* II. his Time: The Weſtern Campaign, and the other Criminal Proſecutions in the beginning of *Jac.* II. I ſay all the Violences uſed in theſe ſeveral Periods (and yet they had their reſpective Provocations) did moſt notoriouſly alter the Kidney of the Commons, and made even their once beloved, firſt dreadful and terrible, then odious and loathſome; they produced conſiderable Changes in their ſeveral Conſequences: I could come nearer Home, even to the teazing of *Moore* and *North*, and other Citizens of *London*, which firſt turn'd the Stomach of that City, as is now apparent; but *Sat verbum*, *&c.* But farther,

The want of this renders both the Policy and Honour of the great Bellowers for Vengeance to be juſtly ſuſpected: 1. Their Honour in taking care of their own Servants, for all their Exceſſes upon the Revolution, and oppoſing the Indemnity of all others, as by the Act appears. 2. Their Policy, for that it's obſervable in Story, that the Aſſociation in Queen *Eliz.* Time, was under a Proteſtant Prince for the Proteſtant Religion, and no ill Succeſs attended it, yet thoſe wiſe Anceſtors of ours thought fit to ſecure themſelves, by turning the Aſſociation into a Law, and a general Act of Indemnity; I do not ſay they needed it, but the Aſſociators in that Reign thought it needful; and 'tis very conſiderable, that in no Reign was there more Peace and Quiet than in Hers, and in none were there ever more free and general Pardons, and in truth the latter was the occaſion of the former; for when Men are once ſafe and quiet, no ſmall Temptation will provoke any more Adventures, though they like another better, yet Men being eaſy are generally contented. There was one free and general Pardon of the Queen's at firſt confirmed, 5 *Eliz.* cap. 11. another 8 *Eliz.* cap. 18. 13 *Eliz.* cap. 28. 18 *Eliz.* cap. 24. 23 *Eliz.* cap. 16. 27 *Eliz.* cap. 30. 29 *Eliz.* cap. 9. 31 *Eliz.* cap. 16. 35 *Eliz.* cap. 14. 39 *Eliz.* cap. 28. 43 *Eliz.* cap. 19. Eleven in number, and never five Years without a Parliament-Pardon, and this made Parliaments and Crowns the Darlings and Deſire of the People. Beſides, it's the Intereſt of each Party amongſt us, though ſome don't ſee it; the *Whig* ought to promote it for two Reaſons; 1. Leſt being the leſſer Part he chance to feel the want of it, and for that he has given ſome Provocation. 2. That if it be the greater, the Memory of his Vengeance and Fury may be forgotten, and himſelf reſtored to the good Opinion of the reſt of Mankind, by one act at leaſt of good Nature: The *Tory* ought to purſue the ſame Meaſures, and much for the ſame Reaſons, for his Top-gallantry hath been, and if repractis'd, will be again as odious and loathſome to the moderate and good, as ever it was, or as the others could be; Temper therefore is now the Game, and a Veil over all that's paſt, is certainly the moſt Politick, eſpecially conſidering the Multitude of the ſuppoſed Criminals, and the Juſtice of their ſeveral Excuſes, which comes next: For,

Laſtly, It's conſiſtent with, and promotive of the trueſt and higheſt Juſtice, for in moſt of the Caſes the Law was doubtful, and to puniſh Opinion in Matters of Law, is as unjuſt, as to perſecute Miſtakes in Matters of Religion is unchriſtian, and new Laws for Government *de futuro*, are more agreeable to natural Equity, than a retroſpective Fury; that it was the doubtful, is plain, the modern Scribblers have ſufficiently proved it. In two of the Caſes cited they differ themſelves, for Dr. *Story*'s Caſe, the Defender crys 'tis not Law, the Remarker agrees 'tis, and that he was well hanged; for *Plunket*'s Caſe, the Defender cries, he was well hanged, for there was Treaſon enough in his Charge, the Remarker inſinuates as if he ſuffer'd hardly; now what ſhall a little Lawyer believe between theſe two great Bodies of Learning? The like may be ſaid of *Soames*'s Caſe, and the other above mentioned. But what is more: In the Voluminous Argument againſt the *Diſpenſing Power*, owned by Sir *R. A.* he doth concede, that there are ſome Prerogatives ſo perſonally and inſeparably inherent in the Crown, that no Act of Parliament can cramp or diminiſh, or at leaſt take away; and that being granted, I'm ſure all that the reſt of the Book ſays can never make that a plain Caſe, and in Truth his own Argument ſhews and leaves it a diſputable Point; and if that were doubtful, every particular elſe may well be buried in Oblivion; beſides in Caſes of Conſtruction the nature of the thing admits of Doubt, and then there's no Colour for Puniſhment. Beſides,

In reſpect of Inferiour Perſons, by our Conſtitution they are obliged to ſubmit to and follow *Weſtminſter-Hall*, which is the *Lex loquens Angliæ*, and when all theſe Things are duly conſidered, there will remain but few grand execrable Criminals, who are fit to be made Examples of, only to tickle ſome, aggrieve others, and terrify none; for that will be the Conſequence; for that's the Caſe of all Violence, where the Juſtice of the Thing is not clear and undoubted. Then for Exceptions;

Let us think a little; Is it reaſonable that ſome ſhould ſuffer for not being afraid of Puniſhments never declared or promulgated, and others ſhould eſcape, becauſe their Countenances are more fawning, or that by conſent their Relations have play'd on the other Side, or that their ſwinging Fortunes enable them to ſcatter Mice for their perſonal Indemnity, or that they have had the lucky Principle of being faithful to all Changes, and true to nothing elſe, or that they have been forward to ſubvert their old Maſter, after their Fire and Folly had ruined him, and endangered themſelves? Theſe and ſuch like are no Pleas for Juſtice, and yet this is the Caſe. Farther,

The Drift is to magnify and aggrandize Puniſhments by Bill, which by the ſtanding Laws and common Juſtice of the Realm could not be inflicted, and they urge two Reaſons for it, 1. Their particular Pardons will otherwiſe excuſe them. To that I anſwer, Either they are valid in Law, or not, if not, there's no need of Bills; if they are valid in Law, the ſame Law and Juſtice of the Land enjoin their allowance; even the ſame Law by which the Countrey-man plows his Land, the Gentleman receives his Rent, the Trader recovers his Debt, and the Senator ſits in the Houſe; and by the ſame Reaſon that theſe enjoy their Properties, the Criminal ought to have his Pardon allowed, for one's a Right accrued by the Law, as well as the other.

other. 2. The common Channel is too ſmooth; Severity is ſometimes neceſſary, and that now if ever; and therefore the Legiſlative Authority ought to exert its Power, and puniſh according to Demerit. To anſwer that, I ſay, either they are no Offences by Law, and there needs a Bill to make them ſuch, and inflict Evils upon them as ſuch; or elſe they are Offences, but deſerve a greater Puniſhment than a common Court may pronounce: Now if the firſt be the Caſe, then I'm ſure 'tis rank palpable tyrannical Injuſtice, and that's the Plague of living under an Arbitrary Power, for none can know what's not Criminal: If they mean the latter, as I ſuppoſe they do, then I ask, to what end were Puniſhments invented in Societies, but to reſtrain Men from doing particular Actions, through the power and influence of Fear? And how could that Conſequence be expected, when the Penalty was never known before 'tis inflicted? And to inflict an Evil afterwards, which was not known before, is to make a Man ſuffer that which he could not fear, becauſe he could not know it, and this becauſe he did not fear it: And the Juſtice of that is plain too.

I agree with the Satyriſts, that there are ſome Precedents of this laſt Method of proceeding, but moſt of them are repealed; I'll name two that are ſo, the Earl of *Strafford*'s, which the very Law it ſelf did enjoyn Poſterity not to obſerve, or follow, or do the like. I can't forget one Expreſſion of his to this Effect upon the Tryal, if there be an Error in a Judge, ſo that he give a Sentence otherwiſe than a Man of better Underſtanding conceives Reaſon for, there's no cauſe the Offence ſhould be heightened, becauſe he was not ſo wiſe a Man as he might have been, nor ſo underſtanding as another; which if allowed, will make it more eligible to follow a Plow than ſerve a Government, to dig in a Ditch than bear an Office; for all Men ſtand obnoxious to the Conſtructions and Paſſions of ſucceeding Times. There's one Inſtance more, and that was Sir *Tho. Haxey*'s, who was attainted of Treaſon, for bringing in a Bill into the Commons Houſe againſt the Prerogative, though while and as a Member: I ſuppoſe the Sparks will not much applaud the Juſtice of that Procedure for their own Sakes; but as I ſaid before, that, and moſt others of their Precedents, were repealed, when a cooler Aſſembly met upon the next Seſſion, and ſo was *Haxey*'s, in 1 *Hen.* 4. *Cott. abr. rec.* 362, 363.

But if Vengeance be requiſite, it ought to be without reſpect of Perſons, the *Juſtice* of it ought to be *impartial*, *true*, and *Catholick*: And then come in the Penſioners and Surrenderers, the Regulators and Promiſers, the old High Commiſſioners, and the new Creed Makers, *&c.* and, God knows, *quis non? &c.* To conclude, our Saviour's Rule, if obſerved, will be the moſt infallible Indemnity that can be contrived, and that is, *John* 8. 7. *Let him that is without Sin amongſt you, caſt the firſt Stone.* And in truth a Cenſor of the Manners of others ought himſelf to be pure, clean, and innocent, *in omni re quacunque*; and if there be no Danger but from ſuch, I'm ſure there's no Danger at all, and that it ſhould be ſo, is the trueſt Juſtice in the World, *quod fuit probandum.*

I'll not mention the Argument from the Vacancy, that the Government was diſſolved, every Thing reduced into its primitive State of Nature, all Power devolved into Individuals, and the Particulars only to provide for themſelves by a new Contract; for if ſo, there's yet no new conſent for Puniſhment of Acts done before the Diſſolution, and conſequently revenge for that is at an end; Indemnity therefore ought to be promoted by thoſe who made that Vote, for otherwiſe their Truth may be ſuſpected, *&c.*

The Lord Ruſſel's *Innocency further Defended; in Anſwer to the Magiſtracy and Government of* England *Vindicated.*

THERE is a Pamphlet very lately publiſhed, which ſtiles it ſelf, *The Magiſtracy and Government of* England *Vindicated.*

It appears by the following part of the Title, to be no leſs than a *Juſtification of the Proceedings againſt Criminals*; impudently declaring in plain and expreſs Words, as alſo by all his ſubſequent Diſcourſe, That by the *Criminal* he means the late Lord *Ruſſel*, *Pag.* 2. *Column* 2. in the middle of it.

And the Author does profeſſedly own, That the Book is written by way of Anſwer to a ſmall Diſcourſe or Argument lately printed, which bears the Title of *A Defence of the late Lord* Ruſſel's *Innocency.*

It argues a tranſcendent Boldneſs in this Anſwerer, to call this Noble Lord a *Criminal*, and to juſtifie thoſe Proceedings againſt him, which all honeſt Men ever accounted no leſs than Murther, under a Pretence and Colour of a legal Proceeding, and to preſume to publiſh ſuch a Diſcourſe as this, after the King and the Two Houſes of Parliament have, by the moſt Solemn Judgment that can be given, pronounced that Noble Lord to have been Innocent; and thereby have done ſo great Right to his Memory, and that with ſo high a Zeal, and ſo mighty a Concernment for him, as the like cannot be ſhewn in former Precedents.

It is moſt evident, that the Author was compoſing this ſcandalous Libel even when he very well knew the Bill was brought down from the Lords to the Commons, for reverſing this Noble Lord's Attainder; and the Author could not but obſerve with what Zeal and Affection

the Bill was entertain'd at its firſt Entrance into that Houſe.

The Author, by endeavouring to conceal himſelf, is from thence, as he plainly profeſſes, encouraged to take the more liberty to lay about him in the dark (as he fanſies) and thinks to eſcape unſeen; and not only ſtrikes at the Author of the Lord *Ruſſel*'s Defence; but, as far as in him lies, wounds that Noble Lord in his Honour, whoſe Juſtification and Defence was ſo undertaken, and labours to overthrow that Right and Juſtice that hath been done by the Supreme Authority of the Nation.

This is no way agreeable to a Noble and Generous Soul, to come behind a Man and ſtrike him, it rather follows the Example of that deviliſh *Powder-Plot*, to deſtroy and blow up the King and both Houſes, and to do it in ſuch a cloſe and clandeſtine way, *as it ſhould not be known who hurt them*; for he was too much a Coward to ſet his Name to it.

But it is very eaſy to tell you what are the firſt Letters of this Author's Name, without caſting of a Figure. His Argument in Law plainly ſpeaks his Profeſſion; and what Robe he wears; and his Style and Phraſe of ſpeaking having appear'd in ſo many noted Tryals, as do in ſo many viſible and legible Characters diſcloſe the Author, Sir *R. S.* does under his Hand readily and utterly diſclaim it; and is heartily believ'd in what he ſays.

This ſlanderous Author acknowledges, that upon the Lord *Ruſſel*'s Tryal ſome blamed the Jury, moſt cenſured the Witneſſes, but very few arraigned the *Counſel* or Court. Here it evidently appears how our Author is concerned, firſt for the Counſel, and then the Court, and *Self* hath the Preference, tho' it be here with a breach of good Manners to name the Counſel before the Court.

Page 1. he takes it heinouſly that any Gentlemen of the *Long Robe* ſhould appear in Print to ridicule their own Profeſſion, this groſsly ſpeaks our Author, one that was of Counſel in the Tryal. *Et tu, Brute?*

If it had been an open Enemy, a Doctor of the Commons exerciſing his Wit and Raillery on the Common Law Proceedings, then (as he expreſſes himſelf) this Author could have born it; but he did not imagine that Satyrs and Invectives upon paſt Proceedings ſhould be writ by Lawyers.

In reply to which it may be juſtly ſaid, That when Lawyers will make uſe of their Wit and Rhetorick, as this Anſwerer has done, to bouſter up an unjuſt and revengeful Proceeding, and out of ambitious Deſigns, to get or continue in Favour, and to gain greater Preferment, or ſhew their Parts, will engage in Cauſes of Blood, and help to deſtroy the Innocent, and be inſtrumental in ſubverting the Laws and Government, it is every Lawyer's Duty, as far as in him lies, to vindicate the Profeſſion, by utterly diſclaiming and abhorring all ſuch Practices: And the Defender can appeal to all that have known his Converſation for above theſe forty Years and under, whether ever he uſed any ſuch pitiful, mean and ungenerous Arts and Methods, better becoming the Stage than a Court of Juſtice; and whether he did not, when it was in his Power, conſtantly reſtrain and condemn that ſcandalous and diſgraceful way of Practice. And he can as freely appeal to all that will be at the pains to read his Printed Argument (which this conceal'd Author ſo unjuſtly cenſures) whether any ſuch bitter Reviling, and revengeful Humour appears in any part of what he ſo publiſh'd, or the leaſt reflecting upon any particular Perſon, but only in the general, and no further than the meer Juſtice of the Cauſe did extort from him; ſo far was he from this Author's ſcurrilous and rude Courſe of reflecting upon any Perſon's private Converſation; but ſome Men's Faculties lie this way, and they are very well known, tho' after ſuch manifeſt and groſs Provocations that have been given by this Author, and ſuch publick and ſcandalous Actings of his in the Eye of the World, it might juſtly be ſaid with the Poet:

Difficile eſt Satyras non ſcribere.

The Author of this Anſwer, in his firſt Paragraph, would have the World believe that he writes upon no other Deſign than to *ſupport Magiſtracy*, and the *Government*; *a noble Theme* (as he terms it.) Every Man knows what ſort of Government he labour'd to ſupport but the other day, and how far he was inſtrumental in it; but it is rather thought fit to leave him to a general Act of Indemnity and Oblivion, than take any Revenge upon him.

He ſeems to allow the Lord *Ruſſel*'s Defender, in his fourth Paragraph, to be an Author of Age, Experience, Figure, and Learning, (but he will not ſay Candour or Honeſty.) Thus he writes.

The Lord *Ruſſel*'s Defender is very glad he hath ſo little of this Adverſary's Commendation, for it would gain but ſmall Eſteem amongſt Men of true Worth, to be commended by him. It might be ſaid to him with the Philoſopher upon the like Occaſion, being commended by an infamous Perſon, *What Ill have I done, that thou ſhould'ſt thus Commend me?* Yet that Candor and Honeſty, which he covertly refuſes to allow, is that which the Lord *Ruſſel*'s Defender prefers before all this Anſwerer's mercenary Wit and Rhetorick.

In his fifth Paragraph he judges the Lord *Ruſſel* very unfortunate to fall under the Accuſation of Treaſon, and ſays, that Noble Lord was moſt pitied, of any under thoſe Circumſtances.

That Noble Lord's Misfortune (among other things) was his falling under the laſh of ſo bitter and ſharp a Tongue as yours, who, however you ſeem now to mention that Lord with Pity, had then no Pity for him, but uſed him with Severity, as may appear by your own Printed Narrative of that Tryal, and your Rhetorical Flouriſhes in a Caſe of innocent Blood, which contributed in an high degree to inveigle the Jury, and bring that Noble Lord to the Scaffold. *Reply.*

He confidently ſays in the ſame Paragraph, that *in truth the fairneſs and indifferency of that Tryal was ſuch, that his own Relations were pleaſed.*

How untrue this is, in both the Parts of it, that the Tryal was very fair and indifferent, and that his neareſt Relations were highly exaſperated and offended, ſhall appear before we part. *Reply.*

In

In the ſixth Paragraph of his Sheet, he complains that *the Memory of that Unfortunate Gentleman was revived by the Publication of the Defence of his Innocency.*

Why, what Hurt in the reviving of his Memory? His Memory is precious, he dyed a Martyr for his Religion, and for the Rights and Liberties of his Country, and fell a Sacrifice under cruel and mercileſs Hands.

It is indeed this Anſwerer's Conſcience that flies in his Face, the reviving of this Noble Lord's Memory ſpeaks Terror and Amazement to the Anſwerer. Thus did bloody *Herod* when he heard of the Fame of Jeſus, he preſently cries out, *This is* John *whom I beheaded.*

He does prepare himſelf to make uſe of *indecent or diſreſpectful Language*, (as himſelf expreſſes it) and comforts himſelf with the thought, that his Name ſhall not be known. A pitiful and unmanly dealing, not becoming a Perſon pretending to Ingenuity. The Lord *Ruſſel*'s Defender dealt otherwiſe, and owns his Name, and will let the World know what this Anſwerer is.

In the four next enſuing Paragraphs, he is much to ſeek for what end and purpoſe the Lord *Ruſſel*'s Defence was Printed in that Pamphlet (as his wonted Rhetorick thinks fit to call it.)

It could not be (as he moſt contemptuouſly ſays) for Conſumption of Paper.

Nor for the Bookſeller's Profit, for a Reaſon to be gueſs'd at.

Forbear, for ſhame, to uſe theſe ſly and ſilly Intimations, they are fitter for School-boys, or the Mountebank's Stage, or for *Billingſgate*, than for a Man of your Figure, one may be aſhamed to have any Diſpute with ſuch an Emperick, or rather a jeſting and jeering Merry-Andrew. Pray keep this Sport for the next *Bartholomew*-Fair, and learn more Gravity and Civility.

It could not be (as he further proceeds upon the ſame Enquiry) for the ſake of the Lord *Ruſſel*'s Memory, or any of his ſurviving Relations; for what was written in the Lord *Ruſſel*'s Defence, is (ſays he) but a painting to the Life the too deep Concern of that Noble Lord, in a weak as well as criminal Enterpriſe.

This is wonderful Boldneſs and daring in this *Anſwerer*, ſtill to pronounce him a Criminal (that Noble Lord) whom the Supreme Power of the Nation, and the higheſt Judicature and Authority have adjudged innocent. And yet he has the Impudence to entitle his undutiful Pamphlet, *The Magiſtracy and Government of* England *Vindicated*: And to publiſh this, after he, as well as any Man, knew that the Act of Parliament had paſs'd, aſſerting the Innocency of that Noble Lord, and the Barbarity and Injuſtice of the Proceedings againſt him. Wherein this *Anſwerer* had ſo great an Hand, and ſo bitter and ſharp a Tongue.

One would think that an ordinary Wit might have ſerved to put him in mind, that as yet there is no Act of General Pardon and Indemnity paſs'd: And who knows upon whom the great Exception may light.

But he gives a very juſt occaſion to the Lord *Ruſſel*'s Defender, to let the World know for what end and purpoſe he long ſince writ, and ſo lately printed ſo deſpiſed a Pamphlet; by which, even his Adverſary may be convinc'd it was not meerly for Conſumption of Paper, or for the Bookſeller's Profit, but truly for the ſake of that Lord's Memory, in aſſerting his Innocency, and at the deſire, and for the ſake of his ſurviving Relations. And for the truth of what is thus affirm'd, he does appeal to thoſe Noble Relations of his who are yet alive.

While that Noble Lord was upon his Tryal, or very ſoon after, there came a Letter to his Defender's Hand, who was then in the Country, near 80 Miles from *London*, and this from a Perſon of great Honour, and one of the neareſt Relations to that Noble Lord, requeſting the Author of his Defence to afford the beſt Advice he could; and accordingly he heartily and freely gave it: Much of which does appear by what is printed by him.

This was not the only *Letter* he receiv'd from that Lord's great Relations, upon that ſad occaſion: But after that bloody Stroke had been given, a Paper was Publiſh'd, as the Speech intended by that Dying Lord.

In Anſwer to which, the now *Anſwerer* and Adverſary (as is too evident) did publiſh his firſt Pamphlet, Entituled, *An Antidote againſt Poyſon*, compoſed (to uſe its own Words) of ſome Remarks upon the Paper printed by the Direction of the Lady *Ruſſel*, and mentioned to have been delivered by the Lord *Ruſſel* to the Sheriffs at the Place of the Execution. Thus far of the Title of that pretended *Antidote*.

In the latter end of his ſecond *Page*, that which is mentioned in the Diſcourſe out of his Pamphlet call'd the *Antidote*, and which is barely repeated in order to be anſwer'd and confuted, he groſsly miſtakes in this latter Pamphlet, and falſely affirms, it is admitted to be true; and from thence endeavours to have the Lord *Ruſſel*'s Defender underſtood as arguing againſt the Lord *Ruſſel*, and acknowledging his Guilt: Which is a very unworthy way of dealing by this pretended *Anſwerer*, but eaſily diſcern'd by any wary and intelligent Reader. Nay, this *Anſwerer* himſelf immediately after, before he is aware, clears the Lord *Ruſſel*'s Defender again from the Imputation, by taking notice that the Defender of the Lord *Ruſſel* endeavours to invalidate the Credibility of the Evidence given againſt the Lord *Ruſſel*.

This Reply declines the taking notice of many of this Anſwerer's Paragraphs, that are ſpent meerly in vilifying the Lord *Ruſſel*'s Defender, it being obvious that they were intended only to render mean and contemptible the Perſon he undertakes to anſwer; it being beneath this *Reply* to repeat them, and to follow the *Anſwerer* in his rude and ſcurrilous way of writing.

It was indeed no Secret to the Learned, that a Variance between the Indictment and the Evidence, might be alledged on the *General Iſſue*; nor that *Treaſon* and the *Miſpriſion* of it are different Crimes; nor that Proofs of Treaſon muſt not be by Hearſay nor Argument only; nor that leſs than two Witneſſes are not to be allow'd for Proof of that Crime; nor that the Witneſſes ought to be credible: But theſe are not ſo generally known to ſuch as are not profeſs'd Lawyers, and may be uſefully remember'd to ſuch as are brought upon their Tryals for their Lives, and are denied the Help of Counſel when they moſt need it, and are apt to be more under a Conſternation, when they are beſet with ſuch ſad Apprehenſions of their Danger, and baited at by a multitude of crafty Wits, and ſuch as abuſe their Parts and Elo-

quence, to deſtroy the Innocent, and the Court (it may be) not always ſo indifferent as they ſhould be. And theſe uſeful and well-intended Aſſiſtances, as ordinary and uſeleſs as the pretended *Anſwerer* would repreſent them, were very thankfully entertain'd, and made uſe of by ſeveral Perſons of great Abilities, and of the beſt Quality, who afterwards fell under the like cruel and malicious Proſecution; but they were no profeſs'd *Lawyers*. And moſt of theſe are ſtill living, and will and do teſtify the truth hereof.

The *Anſwerer*, in his fourth Page, falls to argue the Points in Law upon the great Head and Title of Treaſon.

This *Reply* forbears to repeat what the *Anſwerer* ſays upon this Subject, or to repeat what this *Repliant* has formerly printed, but therein refers himſelf to what is ſo printed.

Only finds it neceſſary to ſtate the Point in queſtion in as few and plain Words as he can, and leave it to any impartial Reader to judge of it.

The great Statute of Treaſon, *viz.* that of the 25th of *Edw.* 3. was the only Statute upon which the Lord *Ruſſel* was indicted, and this is acknowledg'd and profeſs'd by the *Attorney General*, as appears by the printed Narrative of the Tryal, and he could beſt know his own Meaning.

They could not proceed againſt the Lord *Ruſſel* upon the late Statute of Treaſons, made in 13 *Car.* 2. for that Statute limits the Proſecution to a certain time, after the Treaſon committed, which was elaps'd in the Lord *Ruſſel*'s Caſe.

Now the Statute of 25 *Edw.* 3. does ſpecify and enumerate the ſeveral and particular Heads, and Sorts, or Species of Treaſon, that might be proceeded upon, or tryed and adjudged in the ordinary Courts, *viz.* in the *King's-Bench*, or Judges of *Oyer* and *Terminer*, or Goal-delivery. Such as that of *Newgate*, or the Seſſions for Goal-delivery at the *Old-Baily*, where the Noble Lord *Ruſſel* was brought to his Tryal.

The ſcope and drift of that Statute of 25 *Edw.* 3. (as appears by the Preamble) was to confine thoſe ordinary Courts and the ordinary Judges to plain manifeſt Rules, what they ſhould adjudge Treaſon, and what not, it being of ſo great Concernment to the Lives of Men; and not to allow the Judges or Lawyers a latitude or liberty to make what they thought fit to be Treaſon, or to exerciſe the Tongues and unruly Noiſes of *Lawyers* in a matter of that moment. And that Statute of 25 *Edw.* 3. being in its nature a confining, reſtraining and explanatory *Law*, ought therefore not to be largely extended or improv'd and ſtretched beyond the plain Words and apparent Senſe of them.

Now among other ſeveral Species, or Heads, or Sorts of Treaſon, particularly enumerated by that Statute, there are theſe two, pertinent to our Caſe, *viz.*

1. Compaſſing or Imagining the Death of the King.
2. Levying War againſt the King.

Whereupon the common Reader (for whoſe Satisfaction this is written) may eaſily obſerve this diſtinction, That the firſt of theſe is Treaſon (in the very Imagining or Conſpiring) tho' the King's Death do not enſue.

But the latter is not Treaſon in the Conſpiring and Imagining, but the Treaſon muſt be in the actual Levying of War.

So that barely to Conſult, Conſpire, or Imagine to levy War, tho' there be never ſo plain nor ſo open or overt an Act of ſuch Conſulting or Conſpiring or Imagining of it, will not amount to this Species or ſort of Treaſon, upon this Statute of 25 *Edw.* 3. which is the only Statute upon which the Lord *Ruſſel* was concern'd.

For that Statute of 25 *Edw.* 3. did not intend to make it Treaſon, to Conſult or Conſpire to levy War, without the actual Levying of War.

This will not be denied nor diſputed by the Lord *Ruſſel*'s Adverſaries, nor by this *Anſwerer*.

But perfectly to evade this Statute and the manifeſt Intent and Meaning of it, they inſiſt,

That tho' Conſpiring to levy War, be not Treaſon within the Statute of 25 *Edw.* 3. yet to Conſpire, Conſult, Agree, or Conclude to ſtir up, or raiſe, or move Inſurrection and Rebellion againſt the King, and to Conſult or Conſpire to ſeize the King's Guards (which ſignify one and the ſame thing with Conſulting or Conſpiring to levy War) theſe (ſay they) may be an open or overt Act, to prove a Conſulting or Conſpiring to kill the King.

What is this but to confound the ſeveral and diſtinct ſorts and ſpecies of Treaſons, which the Statute of 25 *Edw.* 3. doth ſo carefully and induſtriouſly labour to diſtinguiſh?

And what is this, but to make a bare Conſpiring and Conſulting to levy War, without any actual levying of it, to be Treaſon within this Statute of *Edw.* 3. which plainly this Statute would not have to be ſo taken? And ſo the good Deſign and Scope of the Statute, the Security of Men's Lives, is wholly overthrown by this Artifice; and what ſhall be taken to be Treaſon, and what not, will be ſtill as uncertain as it was before the making of that Act of 25 *Edw.* 3.

And it was then a needleſs idle thing in thoſe that made the Statute of 13 *Car.* 2. and ſo of former Statutes, to make the Conſpiring to levy War to be Treaſon; for by this Practice and Conſtruction it is already made ſo to their Hands, by 25 *Edw.* 3.

Now the Lord *Ruſſel* was Indicted for Conſpiring to kill King *Charles* II, and the overt or open Act alledg'd to ſhew and ſignify it, is nothing but his Conſulting and Conſpiring to raiſe and ſtir up Inſurrection and Rebellion, and Conſulting to ſeize the King's Guards, (tho' they were not actually done) which are juſt the ſame thing with Conſpiring to levy War; which plainly is no Treaſon within the Statute of 25 *Edw.* 3. and therefore moſt clearly the Lord *Ruſſel* was not guilty within that Statute, upon that Indictment and Evidence.

Since the Lord *Ruſſel*'s Defender has compos'd this ſhort State of his Caſe upon this great Point, there hath come to his Hands a Printed Half-ſheet, which has excellently well done the ſame Work, which, had it been but a few Hours ſooner, had ſaved the Labour of this part of the preſent Diſcourſe and Argument: This Half-ſheet is juſtly entituled, *A Juſtification of the late Act of*

of Parliament, for the Reverſing the Judgment againſt the Lord Ruſſel.

There is but one Point more to ſpeak to, and then the Lord *Ruſſel*'s Defender will bid his *Anſwerer* and *Reader* Adieu: And it is that Point which the *Anſwerer*'s firſt Print, *viz.* his *Antidote againſt Poyſon*, did not mention, and ſo no occaſion was given then to conſider of it; but it is largely debated by Court and Counſel, at the Lord *Ruſſel*'s Tryal; yet being then but ſuddenly ſtarted, tho' it were well argued by the Lord *Ruſſel*'s Counſel aſſign'd, no Authorities however were then cited (tho' called for by the Court) to juſtify and make good the Arguments and Reaſons urged by the Counſel; and it is a Point in *Law* which the Act for Reverſing the Judgment againſt the Lord *Ruſſel* is principally and in the firſt place grounded upon, *viz.* That there had been an undue and illegal Return of Jurors to Try that Noble Lord (too often practiſed of late) and that the Noble Lord was refus'd his Lawful Challenge to them for want of Freehold. The truth of this as to matter of Fact, doth evidently appear by the large Narrative of the Tryal, Printed by that Lord's Adverſaries; and this is not in the leaſt touched upon by the printed Half-ſheet, ſtiled, *A Juſtification of the Act for Reverſal of the Judgment againſt that Lord.*

That Point in *Law* now only remains to be ſpoken to, *viz.* That in all Caſes of the Tryal of a Man, eſpecially in a Tryal for his *Life*, the Jurors ought to be Freeholders even at the *Common Law*, and before the Statute of 2 *H.* 5. *Cap.* 3. and that not only in Tryals within the City of *London* (as the Lord *Ruſſel*'s was) but in all other Cities or Towns Corporate, where there was a Juriſdiction of Trying for Life in Caſes Criminal.

It was not material at the *Common Law*, how much, or of what yearly Value that Freehold was, or is to be, but ſome Freehold (tho' never ſo ſmall) the Jurors ought to have, or elſe it was a juſt Cauſe of Challenge.

It was indeed the Statute of 2 *H.* 5. *C.* 3. that firſt ſate the yearly Value of the Freehold, and requir'd it ſhould be of 40 *s. per Annum*, which 40 *s. per Annum* was then in that King's Reign, being ſo long ſince, equivalent to a much higher Value now.

And therefore the Books and Authorities that ſpeak of Freehold of a leſs Value than 40 *s. per Annum*, muſt of neceſſity be underſtood not to ſpeak of Caſes within that Statute, but of Caſes at the *Common Law*.

3 *H.* 4. *fol.* 4. *b. Rolle*'s Abridgment, Title-tryal, *fol.* 648. It is there held, that Freehold of any Value was ſufficient for a Juror. This proves that Freehold is requiſite, and that it was ſo before the Statute of 2 *H.* 5. it being in the Reign of King *Henry* Vth's Father; and with this agrees *Kelloway*, *fol.* 46. towards the end.

Some other Caſes after the Time of King *Henry* V. prove the ſame, as 16 *Edw.* 4. *fol.* 8. half an Acre of Land, ſo it be within the Hundred, ſays that Book, is ſufficient, and it is well known, that as to this Qualification of having Freehold, the ſame Rule governs in the reſt of the Jurors, as in thoſe of the Hundred 10 *H.* 6. *Brooke*'s Abridgment, *Challenge* 192. *Hales*'s *Pleas of the Crown*, 260.

Nor do theſe Authorities diſtinguiſh at all between Caſes Criminal and Civil, nor in Caſes Criminal between that of Treaſon and in Caſes leſs Criminal.

This being ſo at the *Common Law*, and the Statute of 2 *H.* 5. *c.* 3. only adding the yearly Value, *viz.* 40 *s. per Annum* Freehold, which before at the *Common Law*, might be of any lower Value. Now tho' that Statute of 2 *H.* 5. be Repealed, as to Tryals in Treaſon, as in truth it is by the later Statute of 2 and 3 of *Philip* and *Mary*, *cap.* 10. which enacts that all Tryals in Treaſon, ſhall be according to the Courſe of the *Common Law*, the Reſult is, that ſtill there muſt be Freeholders to Try, tho' they may be Freeholders as at the *Common Law*, of any yearly Value whatſoever.

That the Statute of 2 *H.* 5. (while it was in force) did extend to Caſes of Treaſon (tho' Treaſon was not expreſsly mentioned in it, and the Statute ſpeaks very ambiguouſly and obſcurely) appears by the Authorities following, *viz. Stamford*'s *Pleas of the Crown*, 161; and *Poulton de Pace Regis & Regni*, 187; and by the Statute of 33 *H.* 8. *c.* 23. in the Proviſo, that reſerves to the Party the Challenge, for want of 40 *s.* Freehold, even in Caſe of Treaſon, tho' it make the Treaſon tryable in any County.

See Sir *Chriſtopher Blunt*'s Caſe, Juſtice *Croke*, 37 *Eliz. fol.* 413. In an Information of Intruſion, by the Queen; a Juror was challenged for want of Freehold, and upon Examination of the Juror, it appear'd he had Freehold of 15 *s. per Annum* Value, and that was adjudg'd ſufficient; which admits it had been a good Cauſe of Challenge, had there been no Freehold at all; and it neceſſarily implies that it was requir'd by the *Common Law*, for no Statute interpoſed as to any lower Value than 40 *s. per Annum*. Nor does this Caſe diſtinguiſh between the Caſe of Intruſion upon the Queen, and any other Caſe.

But it may reaſonably be argued, if Freehold be neceſſary in a Juror, who is to try a Caſe of Intruſion only, *à Fortiori*, it is requiſite in a Caſe of High-Treaſon, but in that Caſe of Sir *Chriſtopher Blunt*, another Juror was challenged that had no Freehold, and he was therefore ſet aſide.

Now that the Challenge, for want of Freehold, extends to the City of *London*, and other Cities and Burroughs, as well as to the Counties, is abundantly proved by the Statutes of 11 *H.* 6. *c.* 1. 7 *H.* 7. *c.* 5. and 23 *H.* 8. *c.* 13. to which the Reader for brevity's ſake is referred.

It is no where maintain'd that an Agreement to Poyſon or Stab, *&c.* is no Treaſon, if the very Act do not enſue, as the *Anſwerer* very falſely alledges in the ſecond Column of his ſixth Page, towards the lower end; for thoſe have a manifeſt tendency towards killing, nor are they any diſtinct ſpecies or ſorts, or kinds of Treaſon from the Killing of the King, as that of Levying of War, and Seizing the King's Guards (eſpecially not ſhewing what Guards) are a diſtinct ſpecies from that of Killing the King, and need not neceſſarily be underſtood to terminate and conclude in a Killing the King, taking the King Priſoner, or ſeizing his Perſon, may more reaſonably be thought to aim

at

at a Killing of the King, or have a tendency towards it.

And the Indictment ought ſurely to have declar'd and expreſs'd clearly and plainly what Guards were meant, there being variety of Guards; for every Indictment ought to contain Certainty.

Herein the very Indictment was faulty.

The bold *Anſwerer* hopes the King will always preſerve thoſe Guards, tho' the Parliament have declared their Senſe to the contrary, when the preſent extraordinary Occaſion ſhall be over.

This daring preſumptuous *Anſwerer*, in defiance of the Act for Reverſal of the Lord *Ruſſel*'s Attainder, the Tryal having been partial, unjuſt, and illegal, as the Act affirms it, yet dares to averr in his laſt Page, that there was Evidence enough to juſtify all concerned in the Proſecution and Tryal.

The *Anſwerer*, towards his Cloſe, takes great Care, and is much concern'd to juſtify the King's Sollicitor that then was.

And this would incline one to think that the then King's Sollicitor was not the Author of that *Antidote againſt Poyſon*; nor of this laſt Print, intituled, *The Magiſtracy and Government Vindicated*; which are ſo much alike in their Style and Strain. And in truth that late King's Sollicitor doth utterly deny that he had any Hand in either of them. And Sir *George Jefferies*, the laſt Lord Chancellor, could not compoſe this laſt. This being ſo, it may eaſily be judged where it muſt fix: For this, look into the printed Tryal.

I now refer the *Anſwerer* to juſtify himſelf at Law, if he happen to be in danger of an Exception out of an *Act* of General Pardon and Indemnity, where he may have a fairer Opportunity to defend himſelf in his own more immediate Concern for endeavouring to ſubvert the Law, which ever proves too hard for all its Oppoſers. And I will ſo far follow his Humour and Vein, as to conclude with Verſes too.

Rode Caper Vitem, tamen hic cum ſtabis ad Aras
In tua quod fundi cornua poſſit, erit.

Which I thus Engliſh:

Go, ſpightful Satyr, browze that Sacred Vine
(The LAW) but know there ſhall not want for Wine
To pour upon thy Head, which may ſuffice
To render Thee a perfect Sacrifice.

The Case *of* William *Lord* Ruſſel, *Tryed for High-Treaſon*, July 13. 1683.

THE Indictment is very long: But for ſubſtance it is, *for Conſpiring the Death of the King, and intending to Levy War, and to that end to ſeize the Guards*: For the Indictment concludes, *and the Guards for the Preſervation of the Perſon of our ſaid Lord the King to ſeize, and deſtroy, againſt the Duty of his Allegiance, againſt the Peace*, &c. *and alſo againſt the Form of the Statutes*, &c.

Thoſe that gave their Evidence againſt the Priſoner, were *Rumſey*, *Sheppard*, and my Lord *Howard*.

The *Overt Act* of *Conſpiring the Death of the King*, is *Conſulting to Levy War, and to that intent to ſeize the Guards*. So that the Deſign to ſeize the Guards, is the *Overt Act* aſſign'd of Conſpiring the King's Death.

The *Quære* then is, Whether my Lord *Ruſſel* was Guilty of High-Treaſon within the Statute of 25 *Ed.* 3. (for upon that Statute he was tryed) And I conceive he was not; and therefore his *Attainder* ought to be Reverſed.

But before I ſpeak to the Matter of Law, on which I ſhall chiefly inſiſt, I muſt deſire you to obſerve ſome Inconſiſtencies and Contradictions in the Evidence.

Firſt, That none of theſe Perſons had their Pardons: Which was otherwiſe in the Popiſh Plot. For no Perſon gave Evidence before he had his Pardon. Therefore being unpardon'd, tho' they might be *Legal*; yet not *Credible Witneſſes*: Both which are required by the Statute. For whilſt the Fear of Death attends a Man, he is thinking how he may ſave his Life, rather than to ſpeak nothing but the Truth; and he that is ſo baſe to purchaſe his own Life at the Price of another Man's, will be ſure not to ſpeak leſs than the Truth.

Next, I obſerve how the King's Counſel, by the Queſtions they put to the Witneſſes, did lead, if not, in a manner, dictate to them what to ſay.

And I take notice, that my Lord *Howard*, who muſt be ſuppoſed to have a full Knowledge of the Plot, yet never ſays a word of their Intent to ſeize the Guards, which was the principal thing in the Evidence of *Rumſey* and *Sheppard*: For had there been any ſuch Intent, it is ſtrange that my Lord *Howard*, who had brought in ſo many other things by Head and Shoulders, ſhould forget ſo remarkable a piece of Evidence, and ſo home as that.

This is only in general. But in particular, do but obſerve *Rumſey*'s Evidence.

He ſays, He was not there above a quarter of an hour; and whilſt he was there, two things were debated, and reſolved, and a third thing diſcourſed. Surely they were things which they did not much value; or elſe they were Men of wonderful Diſpatch, that could receive, and debate the Meſſage which he brought from my Lord *Shaftsbury*, then debate the Matter of the Guards, and come to a Reſolution in both; and

and afterwards discourse about the Declaration; and all this in a quarter of an hour; or else *Rumsey* is perjured.

In the next place it is very remarkable, where he says, *He was not certain whether he was at another Meeting, or else heard Mr.* Throgmorton *make a Report of another Meeting to my Lord* Shaftsbury. And again he says, that *he was not certain, whether he did hear something about a Declaration, when he was at that Meeting; or that Mr.* Ferguson *did report it to my Lord* Shaftsbury, *that they had debated it.* To say no more of it, It is very strange, that a Man cannot be certain, whether he knows a thing of his own knowledge, or by hear-say. And if in so plain matters as those, he spoke on uncertain Knowledge, it is not unreasonable to suppose that he might as easily be mistaken in the rest of his Evidence.

Then as to *Sheppard*, He first swears point blank, that my Lord *Russel* was at two Meetings at his House. But being press'd by my Lord *Russel*, he can remember but one; and when that was, he could not recollect himself, tho' not above eight or nine Months before, as he confesses. It's strange that a Man should be so much in a wood about so remarkable a thing. But surely it must be hard upon the Prisoner, that the time could not be better fix'd: For if Witnesses may give Evidence at that rate, it will be much ado for any Prisoner to make his Defence.

As to my Lord *Howard*, his Evidence is so notorious that I need say nothing of it, but refer you to the Printed Tryal for your Satisfaction. Only I will take notice of one thing which he says, to reconcile what he said to my Lord of *Bedford*, my Lord *Anglesey* being present, and what he afterwards swore against my Lord *Russel* at his Tryal. Says he, *Your Lordship knows that every Man that was committed, was committed for a Design of Murdering the King. Now I laid hold on that part: For I was to carry my Knife close between the Paring and the Apple; and I did say, that if I were an Enemy to my Lord* Russel, *and to the Duke of* Monmouth, *and were call'd to be a Witness, I must have declared in the Presence of God and Man, that I did not believe either of them had any Design to Murder the King.*

As to the first, What he said to my Lord of *Bedford*, was as to the Plot in general, and if to any particular Part of it, it must be as to the *Insurrection:* For there was to be my Lord *Russel*'s Province.

2*ly.* My Lord *Howard* knew that all that were committed, their Commitments run as well *for Levying of War*, as *for Conspiring the King's Death.* So that his Lordship must find out something that will reconcile himself to himself, better than his *Knife betwixt the Apple and the Paring*, or else it will follow, That he solemnly said one thing and swore another.

I have but only touch'd these things; because I hasten on to the matter of Law. For tho' it were without contradiction, that every thing sworn against my Lord *Russel* were true, yet it did not amount to *High-Treason.*

First, Because a *Conspiracy to Levy War*, is not an *Overt Act of Imagining the Death of the King.*

In arguing of this, I will not meddle at all with the Original of *Allegiance*, nor the true Nature of it; neither make any Discourse, that heretofore it was a less Offence to Plot against the King's Life, than against the Government; but I will leave those sore Places, and endeavour to prove my Point, by considering these five things,

First, Whether any Court, the Parliament excepted, can try a Man upon an Indictment for High-Treason, that is grounded upon the Common Law?

Secondly, To what end and intent the Statute of 25 *Edw.* 3. *cap.* 2. was Enacted?

Thirdly, Whether [*Conspiring the Death of the King*,] and [*Levying of War*] are distinct Species of Treason?

Fourthly, Whether every Law is not to be construed most strictly, to restrain the Mischief against which it was Enacted?

Fifthly, What is the true Meaning and Signification of being *Provably Attainted by Overt Deed?*

1. As to the first, It seems to be out of doubt, at this day there can be no such thing as an Indictment at Common Law for High-Treason; tho' for other things there may: Because there is no Precedent of it, since the Statute of 25 *Edw.* 3. For nothing is more common, than for every Prisoner that is Arraigned for High-Treason, to demand upon what Statute he is Indicted. And the Court, or King's Counsel, to tell him the particular Statute. Besides, every Impeachment before the Lords in Parliament, is grounded upon some Statute: And if so, *à fortiori*, no inferior Court can Try a Prisoner upon an Indictment for High-Treason grounded upon the Common Law. For the Law, which greatly delights in Certainty, especially in Case of Life, will not allow of an Indictment at Common Law: Because no Issue can be joyn'd upon it by reason of the Uncertainty.

As to the second, *viz.* to what End or Intent the Statute of 25 *Edw.* 3. was made? I thus answer:

Edward III. was a Victorious Captain, and Potent Prince, whereby he became very Renowned. But that which made his Name the Greater, and his Fame the more lasting, was those good and wholsome Laws which were Enacted in his Time; by which he restored and beautified the Government, that had been defaced, and almost destroyed, by the illegal Proceedings during his Father's irregular Reign. And of all the Oppressions under which the Nation groan'd, there was none that lay heavier upon the People, than the extravagant Licence which the Judges took in the Interpretation of Treason. And this appears by the particular, and universal Joy expressed by the whole Land at the making of the said Statute. For tho' he called Parliaments very frequently, and none of them prov'd abortive of good Laws; yet that Parliament which was held in the 25th Year, did more than any of the rest. And of all the beneficial Laws that were then Enacted, the second Statute whereby *Treason* was reduc'd to Certainty, gave the People the greatest Cause to lift up their Heart and Voice in Thankfulness to God, and the King; because the Jaws of that devouring Monster were broken, which had torn in pieces so many Families, and threatened Destruction to the rest. So that this Statute was made to restrain, and limit the Judges from calling any thing *Treason*, that might be so by Inference or Implication, and only to judge upon that which is Literally so within

that

that Statute. For it is there provided, That if any ſuch like Treaſons ſhall come before any of the Juſtices, that they muſt ſtay, without going to Judgment, till the Cauſe be declared before the King and his Parliament. And all Subſequent Statutes of *Treaſon*, are all as ſo many Confirmations of this Statute. For they had been needleſs, if the Judges could have called any thing *Treaſon*, but what is Literally ſuch within that Statute. And the Statute it ſelf had been made to no purpoſe, if it had not ſtrictly reſtrained the Judges. And my Lord Chancellor *Nottingham*, was of Opinion, that even the Lords in Parliament, could not proceed upon an Indictment for *High Treaſon*, unleſs the Fact therein alledg'd, were firſt Declared by ſome Statute to be Treaſon.

3. As to the Third Thing, It never was, nor ever will be deny'd, That *Compaſſing the Death of the King*, and *Levying of War*, are two diſtinct Species of *Treaſon*, unleſs all *Treaſons* are of the ſame Kind. But if there are ſeveral Sorts of *Treaſons*, then it will follow, that theſe are alſo Diſtinct: Becauſe in every Statute of *Treaſon*, which mentions *Conſpiring the Death of the King*, and *Levying of War*, they are named Diſtinctly. Beſides, they are different in the manner of Proof: For that which is neceſſary to prove the one, does in no Sort prove the other. And furthermore, the one may be effected, and the other never ſo much as intended, or deſigned. As for Example, the King may be Murder'd, and no War Levied, nor Intended. And moreover, in the one Caſe it is Treaſon, as well to Intend as to Execute it, without tacking it to any other Thing: But it is not ſo in the other. For it is in it ſelf, and abſtractly from every thing elſe, *Treaſon*, as well to *Compaſs* the *King's Death*, as to *Kill* him. But an Intention to Levy War, and doing all Things in order to it, is not Treaſon, unleſs the War be Levied, except by Implication, or Inference. And I am perſwaded that the want of obſerving that theſe are diſtinct Species of Treaſon, has been the occaſion of that Miſtake, of calling a *Conſpiracy to Levy War, an Overt Act of Conſpiring the King's Death.*

4. As to the Fourth, No doubt, every Statute is to be conſtrued moſt ſtrictly, to reſtrain the Miſchiefs againſt which it was Enacted. For the uninterrupted Courſe of all Judgments, and Reſolutions have been accordingly; and nothing can more directly thwart Common Senſe, than to make it otherwiſe. And therefore if the Statute be abſolute, the more forcibly it is conſtrued to reſtrain that Miſchief, the more truly is the Intent of that Statute purſued. For how ſhall any Evil be ſuppreſſed, if the Remedy muſt be applied but by halves? The Law then would be rather a Mockery, than a Means to redreſs the Evil, if it ſhall not be taken moſt ſtrongly againſt it. Either it is, or it is not a Reſtraint of the Grievance complained of. If it is not, why was it made? If it is, why muſt it not be underſtood in that Senſe, whereby the Miſchief, or Evil may be more effectually ſuppreſs'd and prevented?

5. As to the Fifth, The Anſwer will be beſt underſtood, by conſidering, firſt the Signification of the two Words apart, *viz. Provably* and *Overt*.

Provably ſignifies to prove, or make good by Evidence, Argument, Reaſon, or Teſtimony.

Overt has all theſe Significations, *Open, Clear, Plain, Apparent, Manifeſt, Notorious, Evident, Publick, Known, Undoubted, Certain, Perſpicuous.*

Theſe then being the Significations of thoſe Words, what can follow more naturally than that, To be *Provably Attainted by Overt Deed*, is, that the Fact muſt not only be Direct, Apparent, and Notorious to the Point, but it muſt alſo be proved Clearly, Evidently, Plainly, and Perſpicuouſly, void of all Doubt, or Obſcurity? And thoſe two Words being taken together, do the better expound each other, and ſeem to be choice Words, and Words of Art, cull'd out by the Penners of that Statute, as the moſt expreſſive, to exclude all Implications, or Inference, that might be made in Caſe of *Treaſon*.

Theſe Things being premis'd, which are as eaſily proved, as alledg'd, there will remain very little, beſides Shifts and Evaſions, to prove, That a *Conſpiracy to Levy War*, is an *Overt Act of Compaſſing the King's Death.*

The Things that are chiefly and commonly urged to maintain that Opinion, are theſe two.

Firſt, It would be of dangerous Conſequence, if a *Conſpiracy to Levy War*, may not be interpreted an *Overt Act of Compaſſing the King's Death*: Becauſe there is no means left to prevent it, and the Miſchief attending it, when the War is levied.

Secondly, If a War be Levied, the Death of the King muſt needs be intended, and will certainly enſue, if the Rebels prevail.

In anſwer to theſe, it may be replied, That the one of them is but a bare Objection, and the other no ſubſtantial Argument; becauſe it begs the Queſtion; which is ſurely a feeble way of Arguing.

But I will give a more particular Anſwer to them. And it will be more proper to begin with the Second; becauſe in ſpeaking to it, the other will in a great meaſure receive an Anſwer.

Now as to the Second, It may be obſerved, that the Death of the King is made ſo certain, and neceſſary a Conſequence of *Levying of War*, that by reaſon of that *Certainty*, *a Conſpiracy to Levy War*, is an *Overt Act of Compaſſing the King's Death.* If therefore the *Certainty* will not hold, but that many Caſes may be put, and inſtances produced wherein the King's Death is not intended, nor did enſue upon the prevailing of the Party, then is the whole weight and ſtrength of the Argument of no effect.

The *Huguenots* in *France* have heretofore aſſembled in Arms: And tho' they repeated it ſeveral times, yet on which of thoſe Occaſions does it appear, either by the Cauſe of their coming together in that manner, or by the Effect of it, that it was levell'd at the King's Life? No, the Cauſe of their Riſing in Arms was for the Aſſerting of their Religion, and juſt Rights. For as ſoon as their reaſonable Demands were ſatisfied, they laid down their Arms more willingly than they took them up; neither did they attempt

any

any thing against the King's Life, when he was in their Power; but after they were answered in those Things to which they had Right, both by the Laws of Nature, and the Government, immediately they returned Home in Peace, and upon all other Occasions proved the most firm, and Loyallest Subjects of all other in that King's Dominions, and so this present King of *France* must testify for them, if he will do them right.

If the Protestants in *France* should at this time rise in Arms upon so just a Provocation as now they have, it would be senseless to suppose, that they Levied the War with a principal Design to Murder the King, and not for the Defence of themselves and just Rights, which are so inhumanly, and against all Law, and Justice, at this time Invaded, and Ravished from them. Story is full of like Cases and Instances to this. But to speak more particularly to *England*, What was the Barons Wars? The Answer to which must be, That they took up Arms to assert their Rights and Liberties, which the King contrary to his Oath with-held from them, and though it lasted near Forty Years, yet the King's Death was never intended, nor his Life in any danger. For as soon as their just Demands were answered, they put up their Swords, and every Man returned Home, and prayed for the Life of the King. And out of *English* Story, what one Instance can be produced, where the Cause of War was Declared to be against the King's Life; or if the Party prevailed, the King was to be put to Death by their general Consent and Approbation? For though it be true, that there are some Instances where they have been Murdered after the War; yet it is also as true, that it was by private Assassination, and not by the Consent and Privity of those who Levied the War. For all those who were concerned in the Murther, were afterwards Condemn'd and Executed for it, as Traytors. As in the Case of *Edw.* 2. and *Ric.* 2.

As for that of *Charles* the *First*, which is so much press'd and urg'd, though the Cause of War had been expresly against his Life; yet as one Swallow does not make a Summer; so neither does one Precedent prove the Point. But besides, in that Case of *Charles* the *First*, To infer from thence, that the King's Death is principally intended by Levying of War, is altogether as weak an Argument, as to say, because a Thing falls out by Accident, therefore that very Thing was the principal Design and Aim of the whole Action. For in that War, those who first took up Arms, did it to oppose the King's Arbitrary Practices: And though he was afterwards put to Death; yet it was altogether against their Consent or Desire; and most of the Army was against it, and would have prevented it, but that they were at that time so broken into Factions and Parties, that they durst not trust one another. For after that Tragedy was acted, those who first took up Arms, immediately upon it laid them down, and were afterwards the chief Instruments of the late King's Restoration.

But if the King's Death be the Principal Thing intended by Levying of War, to what purpose is the War Levied? Cannot the King be taken off more easily by Poison, or a private Assassination? To the effecting of which, Opportunity cannot be wanting; and so with more certainty the End is obtained, and a less Hazard run in the Execution, than could be done by a War; except those who Levy the War to kill the King, are not content with the Murther of him, unless they cut the Throats of all those that would defend him. Indeed to do it by an open War, rather than by Poison, or a private Assassination, is the more generous way; for they give him fair warning to look to himself; like a Noble Enemy that scorns to kill his Adversary basely. 'Tis indeed to go round about, for the neareſt way. Therefore a War when Levied, must be for some other Intent than to take away the King's Life: Since *Englishmen*, if they enjoy their Properties, no Prince is so Great and Happy in the Heads, Hearts, Hands, and Purses of his Subjects, as an *English* King.

But yet allowing that upon every War levied, the Death of the King would certainly ensue, if the Rebels prevail; yet this Question does naturally arise, *viz.* Where is that Statute which does in expres Terms say, That *a Conspiracy to Levy War is Treason?* For if it be not so expresly, and literally, within some Statute, then it is a Constructive Treason, and consequently no such Treason, as upon which the Judges may proceed, if the Statute of the *25th Ed.* 3. was made to any purpose. For that the Statute restrains *all Constructive Treason, or none.* But if the Judges may in any one Case, make a Constructive Treason, they may do it in all: And so we are left in the same Uncertainty about Treason, as we were before that *Stat. 25th. Ed. 3d.* was made.

If the Judges might judge upon *Constructive Treason*, yet it seems to be a far-fetch'd *Construction* to make a *Conspiracy to Levy War*, an *Overt Act of Compassing the King's Death.* For this is not to be *Provably attainted by Overt Deed.*

First, Because the *Conspiring the Death of the King*, and *Levying of War*, are two distinct Species of Treason; and therefore it would be very unnatural, and too much forc'd to join these together, and as it were, to make them one and the same thing, that are so different, and divers, not only in the Manner and Matter of Proof, but also in themselves.

For then, *Secondly*, A Conspiracy to commit any other Treason, may also be called an *Overt Act of Imagining the King's Death:* Which was never yet pretended.

Thirdly, A Conspiring of any one Treason, may then be Overt Act of any other Treason.

Fourthly, Any other Criminal Act may then as well be called, *An Overt Act of Conspiring the King's Death.*

Fifthly, This is to make *a Conspiracy to Levy War*, Treason in it self. For there is very little difference, between calling a Thing Treason in it self, and to make it an *Overt Act* of some Treason within the Statute.

Sixthly, Because a *Conspiracy to Levy War*, was not Treason at Common Law.

Seventhly, The Statutes of *23d*, of *Eliz.* and the *1st*, and *3d Jac. 4th.* which make it High Treason *to Reconcile any to the Church, or See of Rome*, or to be so Reconciled, were Enacted to

no Purpose, if a *Conspiracy to Levy War*, is an *Overt of the Compassing the King's Death.* For what can tend more plainly, and directly to *Levy War*, than to perswade the People to renounce their Allegiance to the King; and to promise Faith and Obedience to some other Power? So that these, and all other Statutes concerning Treason, which have been made since the Statute 25*th Ed.* 3. are as so many Confirmations of it; and consequently prove that the Judges can call nothing Treason, but what is Literally such, within that, or some other Statute.

Eighthly, My Lord *Cook* says, That *Conspiracy to Levy War* is not Treason, unless the *War be Levied in facto.* And questionless his Opinion is very good Law: Because in many Cases it is not Treason to *Levy War: & à fortiori*, a Conspiracy cannot. For look into the Statute, Queen *Mary* 12. and there you will find several Things provided against, which are plainly, and directly a *Levying of War*; and yet they are declared to be but *Felony.*

But it may be objected, That by *Stat.* 3, and 4 *Ed.* 6. the Offences mention'd in 1 Queen *Mary* were made Treason. It is very true: Yet it does not alter the Case, but rather prove the Point. For *First*, they being made Treason by Statute, proves that it was no so in it self: *Secondly*, because in the two next succeeding Reigns it is declared to be but Felony. For the Statute of Queen *Mary* is confirmed by 1 *Eliz.* 16. And thereupon the Argument is the stronger; because those two Queens were of different Religions. *Thirdly*, because when a Thing is declared an Offence by Act of Parliament, and is afterwards made a less Offence by Statute, it proves that it was not so great in it self; but that the necessary Circumstances of Time and Affairs requir'd it should then be such.

But the Case is yet stronger, because in some Cases it may be but a Trespass to *Levy War*; as it was in the Case of my Lord *Northumberland*, 5 *Henr.* 4*th.* He did actually raise Forces, and such as were taken to be a *Levying of War:* For which he was questioned before the Lords, and tryed for High Treason. But though the Lords did find the Fact, yet they adjudged it but a Trespass; because the Powers raised were not against the King, but against some Subjects. This Precedent seems to carry great weight in it: *First*, because it is a Judgment given in the highest Court of Judicature; *Secondly*, because it was given so soon after the making of the Statute of 25 *Ed.* 3. who must be supposed to understand the Intent and Meaning of that Statute full as well as succeeding Ages.

The Case of those who aided Sir *John Old-Castle* might also be urg'd; who were acquitted, because in their Defence, it did appear, that by reason of Fear, and to save themselves, they were constrained to what they did. Which is Ground for another Argument, if there were Occasion; because it proves, that the Maxim in Law, *Actus non sit reus, nisi Mens sit rea*, holds in Case of Treason, as well as in all other Cases. But I think there's no need of it. For if War may be Levied, which is neither *Treason* nor *Felony*; it must be a very unnatural Construction of a Conspiracy to Levy War, to make it an *Overt Act of Compassing the King's Death.*

Thus the *Second* Thing objected has received a full Answer; and likewise the *First*, in a great measure. Yet I will add a few Words; that no Doubt may remain.

If the Consequence on all Hands be duly considered, the Danger will be found to lie on the other hand. Yet be it as great as can be pretended; it must be remembered, that the Law has settled the Point; and so it must stand, till by the same Authority it be altered. For the Rule in Law is not to be forgotten, *Nemo Legibus Sapientior.* It is pretended, that out of a tender Regard which the Law, and all Subjects ought to have for the King's Life, a *Conspiracy to Levy War*, is taken to be an *Overt Act of Compassing the King's Death:* To this it may be answered, by way of Question, How comes it about that this Age should have a greater Care of the King's Life, than our Fore-fathers had? Can it be imagin'd that they did not understand the Nature of the Government as well as we do? Nor did know of what Consequence to the Publick, the Preservation of the King's Life is? Can it be thought that they did not impartially weigh, and consider the Consequence on all Hands? Yet however let the Defects be never so many; seeing it is settled by Law, it cannot be alter'd but by the same Power: For if it may, then let the Consequences be seriously debated, of leaving it in the Breast of the Judges to rectify the Mistakes, or Defects, be they fictitious or real. For then, when a Turn is to be serv'd, the Law will be sure to be Defective; and so in effect they shall *Legem dare.* Treason will then be reduced to a Certainty; that is, if the Judges please; otherwise not: There will be then no need of Parliaments: for the Judges shall both declare, and make Law. What will all our Laws signify, though made and penn'd with all the Wisdom and Caution that a Parliament is capable of, if the Judges are not tied up, and bound by those Laws? It renders Parliaments useless, and sets the Judges above that great Council. They can undo what the other has done. The Parliament chains up some unruly Evil, and the Judges let it loose again. But besides, where is this dangerous Consequence, as is objected? Indeed there had been some Weight in the Objection, had a *Conspiracy to Levy War* been wholly left unpunishable. But the Law has provided a Punishment commensurate to the Offence: Which though it does not extend to Life; yet is sufficient to deter Men from the Commission of it. Yet if a *Conspiracy to Levy War* is to be punish'd in as high a degree as a *War when Levy'd*, this would be to punish Thoughts as highly as Deeds; which if it be just, yet is *summum jus.*

Mr. *Sollicitor Finch* twitter'd out two or three imperfect Precedents, *viz.* that of my Lord *Cobham*, Dr. *Story*, and *Plunket.* These, as they are not altogether to the purpose, so they are so very modern, that no great regard is to be had to them; and they rather prove the Ignorance, or Boldness of those Judges, than that a *Conspiracy to Levy War is an Overt Act of Compassing the King's Death.* Because the Statute of 25 *Ed.* 3. has provided, That if any such like Treasons come before the Justices, they must tarry without going to Judgment, till the Cause be shew'd before the King and his Parliament. And therefore for those Judges to take upon them to judge upon that which was doubtful, and

not

not litterally nor expresly a *Treason*, was to assume the Part which the King and Parliament had reserved to themselves. And therefore upon what has been said, this Conclusion will follow, that no Man can (before the Judges) be Convicted of *Treason*, unless the Fact be expresly and literally *Treason* within some Statute, and he be thereof provably Attainted by some *Overt Deed*, and consequently a *Conspiracy to Levy War*, is not an *Overt Act of Compassing the King's Death*; but a Trespass, or *High Misdemeanour*: And therefore the Judgment against my Lord *Russel* was manifestly unjust; and so of Course it ought to be Revers'd.

If a *Conspiracy to Levy War* were *Treason* of it self, or an *Overt Act of Imagining the King's Death*; yet my Lord *Russel* was not Guilty of *High Treason* within the Statute of 25 *Ed.* 3. because the Overt Act assign'd against him, was *His being of a Council of Six, to manage an Insurrection*, and in order to it, to *seize the Guards*. For had he actually seiz'd the Guards, yet it could not be *Treason* within the Statute 25 *Ed.* 3.

First, Because the *Guards* are not settled by Act of Parliament, and consequently they are no Legal Force. For the Law has pronounced that all standing Force, other then the *Militia*, is in *terrorem populi*, Illegal, and a Grievance. And the Reason of it is clear; because the Law does never Protect or Countenance any Thing that is, or may be burthensome, or that is useless. And it is so evident, that in the *Pensionary Parliament*, this Vote pass'd in the House of *Commons*, *Nemine Contradicente*. That all Standing Force other than the *Militia is Illegal, and a Grievance*. And though they have the King's Commission, as may be objected; yet his Commission cannot make that Lawful that is Illegal; no more than he can tolerate a Riot, or pardon a common *Nuisance*. For if several Persons were Try'd for a Riot, and it manifestly appear upon the Evidence to be such, would their producing the King's Commission keep them out of the Compass of the Law? Or should those who did assemble together to suppress them, be Guilty of *Levying War*, because those other Persons had the King's Commission? Therefore if my Lord *Russel* had assembled a Force sufficient to seize the *Guards*, the most that could have been made of it, was to bring it within the Statute of the 1*st*, *Qu. Mary* 12. which makes it but Felony. And this being duly compared with the Precedents urg'd by Mr. *Attorney*, and Mr. *Sollicitor*, will retort them strongly upon themselves.

Secondly, It could not be Treason within the Statute, 25 *Ed.* 3. because at the Time of making that Statute, there was no such thing as the Guards. For the first thing of that Sort was the Band of Pensioners which *Hen.* 7*th*, set up, in imitation of what he had seen, and learned in *France*. For in *Ed.* the 3*d*'s Time, though he was the Third, that without interruption, had succeeded to the Crown; yet Succession had not then obtained so sacred a Reputation, as not to stand in need of the People to uphold them in the Throne. And therefore Kings were then too wise, to do any thing that would be so apparent a Distrusting of the People, as to call in Guards to their Aid. And besides, the constant Wars, either with *France*, or *Scotland*, made them stand continually in need of the People's Supplies: And therefore they would be sure cautiously to avoid all Things, that might give the Nation occasion of Offence. And nothing could be more distasteful to the People, than to be nosed by a standing Force, which the Law had adjudged to be Illegal, and a Grievance. And therefore, as there were no such things as *Guards* at the making of that Statute 25 *Edw.* 3. So that Statute cannot be supposed to take notice of them.

Thirdly, If the *Guards* were Established by Act of Parliament, yet if they were so Established since the 25 of *Ed.* 3. my Lord *Russel* was not within that Statute, because it provided for nothing but what was lawfully in being at the time when it was made. So that if it were an Offence to seize the *Guards*, my Lord *Russel* ought to have been Indicted upon that Statute which did so make it an Offence. For if a Prisoner is Indicted upon a wrong Statute, and the Evidence proves nothing of that Statute on which he is Indicted, but comes very home, and point blank to the Statute on which he ought to have been Indicted, he may plead specially to it, and the Court must direct the Jury to bring him in *Not Guilty*.

Fourthly, My Lord *Russel* was not within the Statute 25 *Edw.* 3. Because the Indictment concluded falsly; and more falsly than any Indictment that I ever saw or heard of. For it says [*And the Guards for the Preservation of the Person of our said Lord the King to seize and destroy, against the Duty of his Allegiance, against the Peace, and also against the Form of the Statutes.*] This Conclusion contains in it four Parts, and none of them is true. *First*, That the Guards are for *Preservation of the King's Person*. It will be an easier Matter to find a World in the Moon, than that the Law has made the *Guards* a lawful Force, or any Statute that has Established any Force, particularly for the Guard of the King's Person. And though the Law had established any such Force; yet it was not done by the 25 *Ed.* 3. and therefore in this the Indictment concluded falsly.

The *Second* Thing is this, That to seize and destroy the *Guards* was against the *Duty* of his *Allegiance*. To speak fully to the Nature of *Allegiance*, would require a long Discourse. But a few Words will lay this upon it's back. It cannot be deny'd, that Nature and the Law did nothing in vain. And if so, can it be imagin'd that the Law would establish such a Thing as the *Guards*, which had made so much a better Provision for the Preservation of the King's Person, even the Duty and Interest of every one of his Subjects? In the next Place, *Subjection* and *Protection* are Convertible Terms, and therefore if the Subjects do not receive Protection by the *Guards*, it is not against their *Allegiance* to seize and destroy them: Whereas to seize the *Militia* is against their *Allegiance*; because they receive *Protection* by them. Besides, no Man becomes an Offender, till the Law has been promulged so, as that no Man can reasonably be supposed to be ignorant of it. Now then, though the King by his Commission might make the *Guards* such a lawful Force; yet *non constat*, that they are so Commission'd by him. For it has not been publish'd in that due manner and

form, as that the Nation can regularly take notice of it. And beſides, there is no Record enter'd, or remaining of it in any Court, or any other Place, whereby the People may come to a certain knowledge of it. Which is alſo a forceable Argument againſt the *Legality* of ſuch a Commiſſion. So that tho' in other Caſes *Ignorantia Juris* is not allow'd; yet in this Caſe it is a very good Plea, That it was not againſt my Lord *Ruſſel's Allegiance* to ſeize the Guards, tho' the King's Commiſſion did make them a lawful Force.

The *Third* thing is, *That it was againſt the Peace*, which is an untrue Concluſion. For it is not againſt the Peace to ſeize any Force that is not countenanced by Law. And a Needle may ſooner be found in a Cart-load of Hay, than any Statute that hath Eſtabliſhed the *Guards*. And if the King's Commiſſion can make a Force a lawful Force, then it's hard to ſay, whether the Rebellion in *Ireland* did not act upon ſufficient Authority, ſince no clear Anſwer has yet been made to the Commiſſion under the Broad Seal, which the Rebels produced to juſtify their Proceedings. In the next place, every Treaſon is againſt the Peace. But to conclude, becauſe it is againſt the Peace, therefore it is Treaſon, is neither Law, nor Reaſon. For every Offence is againſt the Peace; but every Offence is not Treaſon. Furthermore, the King's lawful Commiſſion is not to be oppoſed in any Caſe; and the Indictment upon it will run, that it is *againſt the King's Crown and Dignity, and againſt the Peace.* Therefore to conclude, that it is Treaſon, is a *non ſequitur*. For it is not Treaſon in many Caſes, to ſeize and deſtroy thoſe that Act by the King's Lawful Commiſſion.

The *Fourth* thing is, that it was *againſt the Form of the Statutes.* The Statutes thus mention'd muſt be thoſe Statutes, or at leaſt muſt comprehend ſome Statute that ſettles the Guards for the Preſervation of the King's Perſon: For the *Seizing of the Guards, is the Overt Act* aſſigned of *Compaſſing the King's Death.* Now if there be no ſuch Statute, then is this Part of the Concluſion of the Indictment alſo falſe. And conſequently the Judgment againſt my Lord *Ruſſel* ought to be revers'd.

The ARRAIGNMENT *of* Algernone Sidney *Eſquire*, November *the 7th*, 1683.

ALgernone *Sidney*, Eſq; was by *Habeas Corpus* brought up to the Bar of the Court of *King's-Bench*, and the Clerk of the Crown having read the Return, Mr. Attorney General informed the Court there was an Indictment againſt the Priſoner, and prayed he might be charged with it.

Cl. of Cr. Algernone Sidney, Hold up thy Hand. (*which he did.*

Midd. ſſ. *The Jurors for our Lord the King, upon their Oaths do preſent, That* Algernone Sidney, *late of the Pariſh of St.* Martin in the Fields, *in the County of* Middleſex, *Eſquire, as a falſe Traitor againſt the moſt Illuſtrious, moſt Excellent Prince, our Lord* Charles *II, by the Grace of God, King of* England, Scotland, France *and* Ireland, *and his Natural Lord, not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance, but moved and ſeduced by the inſtigation of the Devil, utterly withdrawing the cordial Love, and true, due and natural Obedience, which a true and faithful Subject of our ſaid Lord the King ſhould bear, towards him the ſaid Lord the King, and of Right is bound to bear; Contriving, and with all his Strength intending, to diſturb the Peace and Common Tranquillity of this Kingdom of* England, *and to ſtir up and move War and Rebellion againſt the ſaid Lord the King, and to ſubvert the Government of the ſaid Lord the King, in this Kingdom of* England, *and to Depoſe and Deprive the ſaid Lord the King, from the Title, Honour, and Regal Name, of the Imperial Crown of his Kingdom of* England, *and to bring and put the ſaid Lord the King to Death, and final Deſtruction, the thirtieth Day of* June, *in the Five and thirtieth Year of the Reign of our Lord King* Charles *II, now King of* England, *&c. and divers other Days and Times, as well before, as after, at the Pariſh of St.* Giles in the Fields, *in the County of* Middleſex, *Maliciouſly, and Traiterouſly, with divers other Traitors to the Jurors aforeſaid unknown, did Conſpire, Compaſs, Imagine and intend to deprive and caſt down, the ſaid Lord the King, his Supreme natural Lord, not only from the Regal State, Title, Power and Rule of his Kingdom of* England; *but alſo to Kill and bring and put to Death the ſame Lord the King, and to change, alter and utterly ſubvert the Ancient Government of this his Kingdom of* England, *and to cauſe and procure a miſerable Slaughter among the Subjects of the ſaid Lord the King thorough his whole Kingdom of* England, *and to move and ſtir up an Inſurrection and Rebellion againſt the ſaid Lord the King, within this Kingdom of* England, *And to fulfil and perfect thoſe his moſt horrid, wicked and diabolical Treaſons, and traiterous Compaſſings, Imaginations and Purpoſes, the ſame* Algernone Sidney *as a falſe Traitor, then and there, and divers other Days and Times, as well before as after, Maliciouſly, Traiterouſly, and Adviſedly, did Aſſemble himſelf, meet and conſult, with the aforeſaid other Traitors to the Jurors aforeſaid unknown, and with the ſame Traitors did Treat of, and for thoſe his Treaſons and traiterous Compaſſings, Imaginations and Purpoſes, to be executed and fulfilled. And that the aforeſaid* Algernone Sidney *as a falſe Traitor, Maliciouſly, Traiterouſly and Adviſedly, then and there, and divers other Days and Times, as well before as after, upon himſelf did aſſume, and to the aforeſaid other Traitors did promiſe that he would be*

Aiding

Aiding and Aſſiſting in the Execution of their Treaſons and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid, and to fulfil, perfect and reduce to effect thoſe their moſt horrid Treaſons and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid, the ſame Algernone Sidney *as a falſe Traitor, then and there, Falſely, Maliciouſly, Adviſedly and Traiterouſly did ſend one* Aaron Smith *into* Scotland, *to invite, procure, and incite divers evil diſpoſed Subjects of our ſaid Lord the King, of his Kingdom of* Scotland, *to come into this Kingdom of* England, *to adviſe and conſult with the aforeſaid* Algernone Sidney, *and the aforeſaid other unknown Traitors in this Kingdom of* England, *of Aid and Aſſiſtance to be expected and ſupplied from the Kingdom of* Scotland *to fulfil, perfect, and reduce to effect thoſe their moſt wicked, horrid, and traiterous Treaſons aforeſaid. And that the aforeſaid* Algernone Sidney *to fulfil and perfect thoſe moſt wicked, horrid, and deviliſh Treaſons, and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid, And to perſwade the Subjects of the ſaid Lord the King of this Kingdom of* England, *That it is lawful to make and ſtir up an Inſurrection and Rebellion againſt the ſaid Lord the King that now is, the ſaid Thirtieth Day of* June, *in the Five and thirtieth Year of the Reign of the ſaid Lord the King that now is, at the Pariſh of St.* Giles in the Fields, *in the County of* Middleſex, *falſely, unlawfully, wickedly, ſeditiouſly, and traiterouſly, did make, compoſe, and write, and cauſed to be made, compoſed, and written a certain falſe, ſeditious and traiterous Libel, in which ſaid falſe, ſeditious and traiterous Libel among other things is contained as followeth in theſe Engliſh Words,* viz. The Power Originally in the People of *England* is delegated unto the Parliament, He (the moſt Serene Lord, *Charles* II. now King of *England*, meaning) is ſubject unto the Law of God, as He is a Man to the People, that makes him a King, inaſmuch as He is a King, the Law ſets a meaſure unto that Subjection, and the Parliament judges of the particular Caſes thereupon ariſing, He muſt be content to ſubmit his Intereſt unto theirs, ſince He is no more than any one of them in any other reſpect than that He is by the Conſent of all, raiſed above any other: If he doth not like this Condition, He may renounce the Crown; but if he receive it upon that Condition (as all Magiſtrates do the Power they receive) and ſwear to perform it, He muſt expect that the Performance will be exacted, or Revenge taken by thoſe that He hath betrayed. And that in another place in the ſaid falſe, ſeditious and traiterous Libel, among other things, theſe falſe, ſeditious, and traiterous Engliſh Sentences are contained (that is to ſay) We may therefore change or take away Kings, without breaking any Yoke, or that is made a Yoke which ought not to be one, the Injury is therefore in making or impoſing, and there can be none in breaking it, *Againſt the Duty of his Allegianee, againſt the Peace of the ſaid now Lord the King, His Crown and Dignity,* &c. *And againſt the Form of the Statutes in this Caſe made and provided,* &c.

How ſay'ſt thou, Art thou Guilty of this High Treaſon whereof thou ſtandeſt Indicted, or not Guilty?

Col. *Sidney.* My Lord, I find here an heap of Crimes put together, diſtinct in nature one from another, and diſtinguiſhed by Law; and I do conceive, my Lord, That the Indictment it ſelf is thereupon void, and I cannot be Impeached upon it.

L. C. J. We are not to admit of any Diſcourſes, till you anſwer the Queſtion, Whether you be Guilty or not Guilty. *Sir George Jefferies.*

Mr. *At. Gen.* If he will demur, my Lord, we will give him leave. *Sir Robert Sawyer.*

Col. *Sidney.* I preſume your Lordſhip will direct me, for I am an ignorant Man in Matters of this kind, I may eaſily be ſurprized in it, I never was at a Tryal in my life of any body, and never read a Law-Book.

L. C. J. Becauſe no Priſoner under your Circumſtance is to have Counſel, but in ſpecial Caſes to be aſſigned in Matters of Law, the Court is bound by their Oaths and Duty of their Places, that they ſhall not ſee any wrong done to you: But the buſineſs we are to tell you now is, You are to plead Guilty, or not Guilty, or Demur, which is a Confeſſion in point of Law.

Col. *Sidney.* Under favour, my Lord, There may be Indictments that are erroneous, and if they are erroneous and vitious, they are null, and ought not to be anſwered to.

Mr. *Juſt. Withins* If you pleaſe to demur to it, you ſhall have liberty to make any Exceptions.

Col. *Sidney.* I don't demur, 'tis only Exceptions. I think in Matters of Life, a Man may give in his Exceptions to the Bill, and plead not Guilty afterwards. I am ſure in Sir *Henry Vane*'s Caſe, the Court ſaid it, and offered him to do it; That which, under favour, I hope to do.

L. C. J. You muſt Plead or Demur.

Col. *Sidney.* My Lord, If I put in Exceptions to the Bill, I don't Plead till thoſe Exceptions are over ruled. This was in the Caſe of Sir *Henry Vane.*

L. C. J. Sir, I muſt tell you, You muſt either Plead or Demur.

Col. *Sidney.* My Lord, There are in this Indictment, ſome Treaſons or repured Treaſons, that may come within the Statute of the 13*th* of this King, which is limited by time, the Proſecution muſt be in ſix Months, and the Indictment within three. Now, my Lord, if that this Buſineſs that is mentioned, be above ſix Months before my Commitment, or above three before the Indictment, I think, under favour, I ought not to anſwer to theſe Matters.

L. C. J. You are miſtaken in the Law. That will be ſaved when the Fact comes to appear. If they alledge the thing to be at a time, which, according to that Allegation would maintain the Indictment, if upon the Tryal it appear otherwiſe, the Court is bound to take notice of it when you come to your Tryal, but we are not bound to examine that before you have pleaded.

Col. *Sidney.* My Lord, Every body will acknowledge, that there have been, or may be, vitious Indictments. Now if I plead to an erroneous Indictment, and am acquitted, I may be indicted again. Bills of Attainder have been upon Errors in Original Indictments, as that of the Duke of *Somerſet.* Now if there be here ſeveral things diſtinct in Nature, diſtinguiſhed by Law that are put together, 'tis impoſſible to make a poſitive Anſwer to any one. If any one ſhould tell me, that I by my ſelf, or by

other

others, by Sword or by Piſtol conſpired to kill the King, I can ſay, I did it, or I did it not. If any one ſay, I have levyed War, and by ſeveral Acts undertake to prove I have done it, I can ſay I have done it, or I have not. But here I don't find any thing ſpecify'd, or can tell upon what Statute I am indicted. I pray I may ſee the Record.

L. C. J. That we can't do. You ſhall hear it read again if you will, If you think it to be a void Indictment, Demur to it if you will.

Col. *Sidney.* My Lord, I deſire you to accept of this. (*Shewing a Parchment.*)

L. C. J. What is it? Put in what Plea you ſhall be adviſed; but if you put in a ſpecial Plea, and Mr. Attorney demurs, you may have Judgment of Death, and by that you wave the Fact.

Col. *Sidney.* I can't make any Objection to the Bill after I have pleaded, Not Guilty, for I accept the Bill thereby to be good.

L. C. J. If you can aſſign any Matter of Law, do. But otherwiſe what a kind of thing would it be? All Criminals would ſay in all Caſes, I doubt whether the Bill be good or bad. And after I have thus conſidered of it, I will Plead. You are miſ-informed, and this the Court tells you, as a Duty incumbent on them.

Mr. *Juſt. Withins.* If you Demur, and ſhew what your Cauſes are, We will aſſign you Counſel.

Col. *Sidney.* I deſire you would not try me, and make me to run on dark and ſlippery Places, I don't ſee my way.

L. C. J. Don't apprehend your ſelf to be ſo, as if the Court would run you on any Inconvenience. But they are bound to ſee the Methods of Juſtice preſerved, they are thoſe that you, and all the King's Subjects are bound to conform to. If any one of us were in the ſame Condition, we muſt obſerve the ſame Methods of Law.

Cl. of Cr. Art thou Guilty, or not Guilty?

Col. *Sidney.* Then pray, my Lord, will you tell me this, Is it true, That a Man, how vitious ſoever an Indictment is, muſt Anſwer or Demur to it?

L. C. J. He muſt either Anſwer or Demur.

Col. *Sidney.* Are there no Exceptions to be admitted?

L. C. J. None: And if you don't do the one, or the other, Judgment paſſes, as if you had pleaded.

Col. *Sidney.* This is a Plea.

Mr. *Juſt. Withins.* Will you ſtand by it? Conſider your ſelf, and your Life, If you put in that Plea, and Mr. Attorney Demurs, if your Plea be not good, your Life is gone.

Col. *Sidney.* Pray, my Lord, give me a Day to conſider of it.

L. C. J. No, We muſt not introduce new Methods or Forms for any body. The ſame Caſe that is with you, may be with other People.

Col. *Sidney.* My Lord, I do not pretend to any thing but what is Law, and due to every Man upon *Engliſh* Ground. I would be very ſorry to do that which may be hurtful.

L. C. J. You have the Rule of the Court. You muſt do one or the other. Call him to it.

Col. *Sidney.* I deſire this may be read. (*Shewing the ſame Parchment.*)

L. C. J. It ſhall not be read, unleſs you put it in as a Plea.

Mr. *At. Gen.* I muſt do my Duty, Mr. *Williams* exceeds his Liberty, he informs the Priſoner ſeveral things.

Mr. *Williams.* I only ſaid, if it was a Plea, put it in, Mr. Attorney can hear all I ſay. (*Whereupon Mr.* Williams *was reproved by the Lord Chief Juſtice.*)

Col. *Sidney.* I only give it as Exceptions to the Bill.

Cl. of Cr. Art thou Guilty, or not Guilty?

Col. *Sidney.* If any one ſhould ask me any particular thing, I could tell how to anſwer.

L. C. J. He asks you a particular thing. 'Tis the Duty of the Court to pronounce Judgment, if you do not plead.

Col. *Sidney.* Why then, if you drive me upon it, I muſt plead.

L. C. J. I am ſure there is no Gentleman of the Long Robe would put any ſuch thing into your Head. There was never any ſuch thing done in Capital Matters.

Col. *Sidney.* My Lord, I am there indicted for Conſpiring the Death of the King; I have not Conſpired the Death of the King; I am there Indicted for Levying of War, I have not done that. I am indicted for having invited in others, of another Nation, I have not done that neither. I am there indicted to have written a ſeditious Libel to ſtir up the Spirits of the People againſt the King, I have not written any thing to ſtir up the People againſt the King. ——

L. C. J. We are not to hear all this, you muſt Plead as other People, or elſe in plain Engliſh we will pronounce Sentence. We ought to give all Men ſatisfaction that will be ſatisfied; but if they won't be directed, we can't help that.

Col. *Sidney.* My Lord, If you put me upon this inevitable neceſſity, it lies upon you; I muſt plead then.

Cl. of Cr. Art thou Guilty, or not Guilty?

Col. *Sidney.* Not Guilty.

Cl. of Cr. Culprit, How wilt thou be tryed?

Col. *Sidney.* By God and my Country.

Cl. of Cr. God ſend thee a good Deliverance.

L. C. J. If you be not Guilty, I pray God you may eſcape.

Mr. *At. Gen.* My Lord, Will you pleaſe to appoint a Day for his Tryal, that he may take notice of it now?

L. C. J. What time would you have?

Mr. *At. Gen.* A Week's time, do you think that will be enough?

Col. *Sidney.* No, Pray, my Lord, give me a Fortnight's time.

Mr. *At. Gen.* I won't oppoſe it.

Col. *Sidney.* In the next place I deſire a Copy of the Indictment.

L. C. J. We can't grant it by Law.

Col. *Sidney.* I deſire you would pleaſe to give me Counſel.

L. C. J. We can't do it, If you aſſign us any particular Point of Law, if the Court think it ſuch a Point as may be worth the debating, you ſhall have Counſel. But if you ask for Counſel for no other reaſon than becauſe you ask it, we muſt not grant it. The Court is bound to ſee that nothing be done againſt you, but what is according to the Rules of Law. I would be very loth to draw the Guilt of any Man's Blood upon me.

Col.

Col. *Sidney.* Has not every body Counsel?

L. C. J. No.

Col. *Sidney.* I have several Points of Law.

L. C. J. Tell us them.

Col. *Sidney.* My Lord, Will you oblige me that am an ignorant Man, and confess my self so, upon hearing my Indictment for things I know not of, a long thing, presently to raise a Point of Law.

L. C. J. 'Tis not we oblige you, Mr. *Sidney*, 'tis the Law obliges you. We are the Ministers of the Law, 'tis the Law says we are not to allow you Counsel without making your Objections, that the Court may understand whether it be fit; 'Tis the Law says we may not allow you a Copy of the Indictment. Therefore don't go away and say that we as Men sitting here impose upon you, we sit here only to administer the Justice of the Nation.

Mr. *Just. Withins.* Sir, You will have a Fortnight's time to consider of Objections in Law.

L. C. J. If you will have it read, you shall. Those things that you may have by Law, God forbid but you should have the Benefit of them.

Col. *Sidney.* I desire, my Lord, to hear it read again.

Mr. *At. Gen.* Would you have it read in Latin.

Col. *Sidney.* Yes, if you please, I do understand a little Latin.

Then the Indictment was read in Latin.

Col. *Sidney.* What is that Statute?

L. C. J. When you come to your Tryal, Mr. Attorney will tell you what Statute he goes upon. And he may give in Evidence, any Act of Parliament that comprehends Treason.

Col. *Sidney.* Methinks he should say what Statute he goes upon.

Mr. *Just. Withins.* Sir, Would you have a new Indictment for you?

L. C. J. He must take notice of his Tryal this Day Fortnight. Lieutenant of the Tower, you may take the Prisoner back again.

Then the Lieutenant of the Tower took away his Prisoner.

The Tryal *of* Algernone Sidney *Esquire*, November *the* 21*st*, 1683.

Algernone *Sidney*, Esq; was brought to the Bar of the Court of *King's Bench* by *Habeas Corpus*, and Proclamation for Information being made, he desired Pen, Ink and Paper, which were granted him. And he also desired, that two Persons, (*viz.*) Mr. *Wynn* and Mr. *Gibbs*, might write for him, which was also allowed by the Court.

Col. *Sidney.* My Lord, When I was last here before your Lordship, I did desire a Copy of my Indictment, and I thought the Law did allow it me. But being in an hurry, carried first to a Tavern, then led through Soldiers, and surprized absolutely, I could not give that Reason why I thought the Law allowed me a Copy. My Lord, I was denyed a Copy, and thereby I was deprived of the Benefit of a special Plea I designed to have put in. This would have been a great Help to your Lordship, and to me; the Denial of which hath been a great Prejudice. Now, my Lord, that which I thought was Law then, I think I can give a better Testimony that 'tis so now upon the Statute of 46 *E.* 3. wherein 'tis expressed, that *tout partes & tout gents*, that is, all People shall have a Copy of every Record; and it enumerates several Matters, as well that against the King as other People. This is a General Law still in force: My Lord *Strafford* had a Copy, and my Lord *Stafford*, and the Lords in the *Tower* had Copies of their Indictments. And, under favour, I think it was never more necessary than to me, there never having been, perhaps, a Charge so long, and so confused. Now, my Lord, I have a Copy transcribed of this Statute.

[*Shewing a Paper.*

Sir *George Jefferies.*

L. C. J. We remember the Law very well. Mr. *Sidney* did move for a Copy of the Indictment, and the Court denied him then, and so shall now. And yet all this while we shall deny you nothing that is Law. You shall have the Right that becomes a Subject in your Condition. And we must tell you, that notwithstanding all that Case we ought not to have given you so much Favour (perhaps in strictness) as we did. And because you did particularly take notice of the Case of Sir *Henry Vane* last time, I will shew you the Court did indulge more to you than was done to that Person. In Sir *Henry Vane*'s Case, by the Opinion of all the Judges, it was declared, that no Copy ought to be given, neither of the whole, nor any part of the Indictment, except they shew Matter of Law. But your Counsel, since you went away, moved for the Copy of the Indictment; and to satisfy them, I directed the Case that you took notice of to be read in the Court. And I thought they had been sufficiently satisfied. You had the Indictment read to you in Latin, which was denied in the Case of Sir *Henry Vane*. And there is a later Case known to most Persons here. By the Opinion of all the Judges of *England*, a Copy of the Indictment was denied to my Lord *Russel*. Therefore arraign him upon the Indictment; we must not spend our time in Discourses to captivate the People.

Col. *Sidney.* Is not this a good Law, my Lord?

[*Holding out the Paper.*

L. C. J. You have the Rule of the Court.

Mr. *Just. Withins.* Any thing the Law will allow you, you shall have; but I am sure if you did advise with your Counsel, they must tell you the same thing.

So

So the Clerk of the Crown called the Jury, and after ſeveral Challenges, the Names of the Jury were as follow,

John Amger, *Richard White*, *William Linn*, *Lawrence Wood*, *Adam Andrews*, *Emery Arguiſe*, Jur' ~ *Joſias Clerke*, *George Glisby*, *Nicholas Baxter*, *William Reeves*, *William Grove*, and *John Burt*.

L. C. J. Look you, Gentlemen of the Jury, There are ſome Gentlemen at the Bar, as we are informed, are apt to whiſper to the Jury; 'tis no part of their Duty; nay 'tis againſt their Duty: And therefore, Gentlemen, if you hear any of them by you that offer to whiſper, or make Comments in this Cauſe, as you are upon your Oaths, and I doubt not but will do your Duty between the King and the Priſoner; ſo I expect if you hear the Counſel ſay any thing, you will inform the Court. Let us have no Remarks, but a fair Tryal in God's Name.

Cl. of Cr. You that are ſworn look upon the Priſoner, and hearken to his Cauſe. He ſtands Indicted by the Name of *Algernone Sidney*, of, *&c.* (as in the Indictment) your Charge is to inquire, *&c.*

Then Proclamation for Evidence was made.

Mr. *Dolben.* May it pleaſe your Lordſhip, and you Gentlemen that are ſworn. This is an Indictment of High Treaſon, preferred againſt *Algernone Sidney*, the Priſoner at the Bar. The Indictment ſets forth, That he, as a falſe Traitor againſt our moſt Illuſtrious Prince, *Charles* the Second, his natural Lord, not having the Fear of God in his Heart, *&c.* On the Thirtieth of *June*, in the Thirty Fifth Year of the King, and divers other Days and Times, as well before as after, in the Pariſh of St. *Giles in the Fields*, in the County of *Middleſex*, traiterouſly, with divers Traitors unknown, did conſpire the Death of the King, and to levy War within this Kingdom. And to complete theſe Traiterous Purpoſes, did then, and there maliciouſly, adviſedly and traiterouſly, ſend one *Aaron Smith* into *Scotland*, to excite ſome ill diſpoſed Perſons of that Kingdom to come into this, and to conſult with the ſaid *Algernone Sidney*, and other Traitors, of and upon Aſſiſtance from the Kingdom of *Scotland*, to carry on thoſe Deſigns. And the Indictment ſets forth further, that to perſwade the People of *England* it was lawful to raiſe Rebellion, the ſaid *Algernone Sidney* did cauſe to be written a falſe Seditious Libel, in which are contained theſe *Engliſh* Words, *The Power originally in the People of* England *is delegated unto the Parliament. The King is ſubject to the Law of God, as he is a Man to the People that makes him a King. In as much as he is a King, the Law ſets a meaſure unto that Subjection*, &c. (as in the Indictment.) This is laid to be againſt the Duty of his Allegiance, againſt the Peace of the King, his Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided. If we prove him Guilty, we doubt not but you will find it.

Sir *Robert Sawyer.* Mr. *At. Gen.* My Lord, and you Gentlemen of the Jury, the Priſoner at the Bar ſtands indicted of the higheſt Crimes, the conſpiring the Death of the King, and the Overthrow of the *Engliſh* Monarchy. Gentlemen, we ſhall uſe this Method in our Evidence. We ſhall ſhew by many Witneſſes, that there was a Deſign of raiſing and making a Rebellion within this Kingdom. For, Gentlemen, you muſt take notice, and I think there is no *Engliſhman* but does believe, that for ſeveral Years laſt paſt a Deſign was laid, and for that purpoſe ſeveral ſecret Inſinuations were made uſe of, and publick Libels ſpread Abroad to perſwade the People, that the King was introducing Arbitrary Power, that he ſubverted all their Rights, Liberties, Properties, and whatever was dear to them. They endeavoured to make the World believe the King was a *Papiſt*. And when, Gentlemen, by ſuch Stratagems they had worked upon many incautelous Perſons, when they thought they had gotten a ſufficient Party, then there was a Deſign of an open Riſing (for they thought all Things were ripened) and that was to be in ſeveral Parts of the Kingdom. Some Perſons to effect this Deſign, were for a preſent Aſſaſſination of the King. Others would do it in a more fair and gentle way. They thought it below Perſons of that great Quality as the Priſoner is, and therefore were for doing it by open Force.

When we have given that general Evidence, we ſhall then come to ſhew you what Share and Part the Priſoner had in this Deſign. For certainly he was looked upon as a very eminent Perſon, whoſe Education Abroad, and former Practices at Home had rendered him fit to adviſe and proceed in ſuch Affairs. We ſhall prove when theſe Matters were ripe, this Gentleman was of the Council of State, of the Six that were to manage this Matter of the Riſing. We ſhall ſhew the ſeveral Conſultations they held: One at Mr. *Hambden*'s Houſe, another at the Houſe of my Lord *Ruſſel*. There we ſhall acquaint you what Debates they had; for they acted like very ſubtile Men; and there they debated, whether the Riſing ſhould be firſt in the Countrey or City, or both together. They came to a Reſolution it ſhould be in both Places at once. Then when they had aſſerted that Point, they come to conſider the Time of Riſing; and upon that they thought fit to call in Aid of *Scotland* firſt; and that was this Gentleman's particular Province. For he being a Man of great Secrecy, was to ſend an Emiſſary into that Kingdom, and invite ſome Perſons over to treat with them about it. We ſhall prove that an Emiſſary was ſent, and this Gentleman gave him a conſiderable Sum to bear his Charges. We ſhall prove that ſeveral *Scotch* Gentlemen, in purſuance of this Reſolve, came here to treat with this great Council of State, about this Affair: And ſhall make it appear to you, that as ſoon as ever the leaſt Diſcovery of this Plot was, Theſe Perſons concealed themſelves and withdrew, as the reſt of the Plotters that have fled from Juſtice.

Gentlemen, this was not enough for this Gentleman to conſult on theſe ſeveral Paſſages, but to demonſtrate to the World, That his Head and Heart was intire in this Service, and that he might carry it on the more effectually, he was at this very time, when this Emiſſary was gone into *Scotland*, preparing a moſt Seditious and Traiterous Libel, we inſtance in ſome particular Words of it. But we ſhall ſhew you, that the whole Deſign of this Treatiſe is to perſwade the People of *England*, that it is lawful,

nay,

nay, that they have a right to ſet aſide their Prince, in caſe it appear to them, that he hath broken the Truſt laid upon him by the People. Gentlemen, he does uſe in that Treatiſe ſeveral Arguments drawn from the moſt Rebellious Times that ever were in *England*, from the late Rebellion (I muſt needs uſe that Word notwithſtanding the Act of Oblivion, when a Gentleman ſhall now attempt to do thoſe Things for which he was pardoned then) and from other Kingdoms, where Rebellion hath been proſperous againſt Princes. Then he falls to Reaſoning, and uſes great Reaſon in the Caſe, That all the Power of the Prince is originally in the People, and applies that Diſcourſe, that the Power of the King was derived from the People upon Truſt, and they had already declared the King had invaded their Rights, and therefore he comes to argue, they might aſſume that Original Power they had conferred. And he tells the King, that is no hard Condition; if he thinks it ſo, he ſhould lay down his Crown, if not, he threatens the Condition would be exacted, or otherwiſe ſhould be revenged by thoſe he had betrayed; and who but this Gentleman and his Confederates, that thought himſelf not only able to govern this Nation, but many Monarchies, ſhould call him to Account for it? For he lays down this Principle, That tho' all the People do riſe againſt their Prince, it is no Rebellion. The whole Book is an Argument for the People to riſe in Arms, and vindicate their Wrongs. He lays it down, *That the King has no Authority to diſſolve the Parliament; but 'tis apparent the King hath diſſolved many; therefore he hath broken his Truſt, and invaded our Rights.* And at laſt concludes with that Paſſage laid in the Indictment, *We may therefore ſhake off our Yoke; for 'tis not a Yoke we ſubmitted to, but a Yoke by Tyranny* (that muſt be the meaning of it) *they have impoſed on us.*

Gentlemen, if we prove all theſe Matters to you, I doubt not you will do right to the King and Kingdom, and ſhew your Abhorrence of thoſe Republican Principles; which, if put in Practice, will not only deſtroy the King, but the beſt Monarchy in the World.

Mr. *Sol. Gen.* Pray call Mr. *Weſt.*

Mr. *Finch.* [*Who appeared.*

Col. *Sidney.* I pray one Word, my Lord, before Mr. *Weſt* be ſworn, I have heard, my Lord, Mr. *Weſt* hath confeſſed many Treaſons, I deſire to know whether he is pardoned, or no?

L. C. J. I don't know that.

Col. *Sidney.* My Lord, how can he be a Witneſs then?

L. C. J. Swear him: For I know no Legal Objection againſt him. He was a good Witneſs in my Lord *Ruſſel's* Tryal.

Col. *Sidney.* My Lord, if another did not except againſt him, 'tis nothing to me.

Mr. *North.* Pray give an Account to the Court of what you know of a general Inſurrection intended in *England.*

Col. *Sidney.* What he knows concerning me.

L. C. J. We will take care of that, that no Evidence be given but what ought to be.

Col. *Sidney.* Is it ordinary that he ſhould ſay any thing, unleſs it be to me and my Indictment?

L. C. J. Mr. *Sidney*, You remember in all the Tryals about the late *Popiſh* Plot, how there was firſt a general Account given of the Plot in *Coleman's* Tryal, and ſo in *Plunket's*, and others: I don't doubt but you remember it. And Sir *William Jones*, againſt whoſe Judgment, I believe you won't object, was Attorney at that time.

Mr. *North.* Mr. *Weſt*, What do you know of the general Inſurrection lately deſign'd?

Mr. *Weſt.* My Lord, I have had the Honour to to know Colonel *Sidney* ſeveral Years; but I don't remember that I ever ſaw him from the time I came acquainted with any part of the Conſpiracy, till the Diſcovery that was at the Council.

Mr. *North.* Pray give an Account of what you know of the Plot in general.

Mr. *Weſt.* My Lord, in *October* laſt, Captain *Walcot* came to me, and told me that my Lord *Shaftsbury* had deſigned an Inſurrection in *November*; I uſed ſome Arguments to diſſwade him from it. But a little afterwards he came and told me, the Thing was wholly diſappointed, and then it went off, and my Lord *Shaftsbury* went for *Holland.* Colonel *Rumſey* afterwards about *Chriſtmas*, ſaid there were ſome Lords and Gentlemen intended to make an Inſurrection, the Perſons were the Duke of *Monmouth*, my Lord of *Eſſex*, my Lord *Howard*, my Lord *Ruſſel*, the Priſoner at the Bar, and Mr. *Hambden, Jun.* After ſome time he told me they had altered their Meaſures, and were reſolved not to venture upon an Inſurrection in *England*, till they had a Concurrency in *Scotland.* Afterwards I was not privy to any thing elſe, but what I had the Report of from Mr. *Nelthorp* and Mr. *Ferguſon.* Mr. *Nelthorp* told me the Priſoner had ſaid——

Col. *Sidney.* My Lord, I am very unwilling to interrupt the Gentleman——

L. C. J. You muſt not interrupt the Witneſs. Go on, Sir.

Mr. *Weſt.* Mr. *Nelthorp* told me, the Priſoner at the Bar had ſent *Aaron Smith* into *Scotland*, and given him a Sum of Money to bear his Charges, and ſent Letters to ſome *Scotch* Gentlemen to invite them to Town. The Letter bore a Cant of ſettling ſome Buſineſs in *Carolina*; but the Buſineſs was coming up about the Inſurrection. After this Mr. *Smith* returned, and ſome *Scotch* Gentlemen with him; and ſoon after Mr. *Ferguſon* gave an Account of that Affair, and ſaid, the *Scotch* propoſed, if they might have thirty Thouſand Pounds in ready Money, they would undertake to make an Inſurrection in *Scotland*, without the Concurrence of *England.* He ſaid this Propoſal was agreed to, and Money would be ſoon ready; and he ſaid that *Sheppard* would return the Money. That the Arms were ready bought, and my Lord of *Argyle* would go into *Scotland*, and head the *Scots.* He told me when Things were thus ſettled, ſome difference aroſe about raiſing the Money; and at laſt he told me, my Lord *Grey* did offer to raiſe ten Thouſand Pounds out of his own Eſtate, if the reſt would pay their Proportion. Then the *Scots* came down to leſs, but that would not be complied with. The Places for the Riſing were *Briſtol, Taunton, York, Cheſter, Exeter, London.* That there had been ſome Debates, whether they ſhould begin at *London*, or the other Places, and at laſt it was reſolved they ſhou'd begin at *London* with the reſt of the Places.

My Lord, This was the Account I had of the Matter in general of Mr. *Ferguſon*; but he ſaid they were diſappointed. Afterwards he told

me, the Priſoner at the Bar, and Major *Wildman*, were very inſtrumental in working of it off, becauſe they could not agree upon the Declaration to be made upon the Inſurrection. The *Engliſh* were for a Common-wealth ; but the *Scotch* Gentlemen anſwered fairly, it might come to it in time, but the Noblemen there would not agree to it at preſent. As to the Priſoner in particular, I know nothing, and did never ſpeak with him till ſince the Diſcovery.

Mr. *At. Gen.* Colonel *Rumſey*. [*Sworn.*

Mr. *North*. Pray Sir, will you give the Court an Account of what you know of any Inſurrection intended, and how they deſigned to carry it on.

Col. *Rumſey*. My Lord, the latter end of *October*, or beginning of *November*, I was deſired by my Lord *Shaftsbury* to go to Mr. *Sheppard*'s, to know of the Gentlemen that were met there, what was done about the Riſing intended at *Taunton* ; and I had their Anſwer, that Mr. *Trenchard* had failed them, and that it muſt ceaſe for that time. That was all at that time.

Mr. *Sol. Gen.* What elſe do you know of any Inſurrection afterwards ?

Col. *Rumſey*. After that we had ſeveral Meetings at Mr. *Weſt*'s Chamber, where we had divided the City into twenty Parts, and ſeven Parts Mr. *Goodenough* had brought an Account of ; the other thirteen he ſaid nothing of ; for he had not ſpoke with thoſe that were to tell him how many Men they would afford. There was there Captain *Walcot*, Mr. *Weſt*, the two *Goodenoughs*, Mr. *Borne*, Mr. *Wade*, and my ſelf.

L. C. J. What was the Reſult of thoſe Debates ?

Col. *Rumſey*. To ſee what Number of Men they could produce in the City for the Inſurrection.

L. C. J. Was there a Riſing deſigned ?

Col. *Rumſey*. Yes.

L. C. J. And did theſe People meet ?

Col. *Rumſey*. There was no time ſet.

Mr. *Sol. Gen.* When was the meeting ?

Col. *Rumſey*. There were ſeveral meetings in *March*, and *April*, and *May*.

Mr. *Sol. Gen.* After the meeting at *Sheppard*'s ?

Col. *Rumſey*. Yes, a great while. It ceaſed, I think, ſix Weeks or three Months.

L. C. J. Who did you meet with at Mr. *Sheppard*'s ?

Col. *Rumſey*. There was the Duke of *Monmouth*, my Lord *Grey*, my Lord *Ruſſel*, Sir *Thomas Armſtrong*, Mr. *Ferguſon*, and Mr. *Sheppard*.

Mr. *Sol. Gen.* Who did you expect ſhould head this Army ?

Col. *Rumſey*. That was never ſaid any thing of.

Mr. *At. Gen.* Who were to manage the Riſing ?

Col. *Rumſey*. We that met there.

Mr. *At. Gen.* Had you no expectation of great Men ?

Col. *Rumſey*. Mr. *Weſt* told me, and Mr. *Goodenough*, that there was a Council, which were the Duke of *Monmouth*, my Lord *Eſſex*, my Lord *Howard*, Colonel *Sidney*, Mr. *Hambden*, and my Lord *Ruſſel*, there were Six.

L. C. J. What did he tell you of them Six ?

Col. *Rumſey*. He told me they were managing a Buſineſs with *Scotland*.

L. C. J. A Buſineſs, pray ſpeak plain, tell all you know.

Col. *Rumſey*. For the Inſurrection.

L. C. J. Say ſo then, we know nothing of the Buſineſs you were about.

Col. *Rumſey*. My Lord, Mr. *Weſt* had that Diſcourſe with my Lord *Howard* I never had ; he is more fit to ſpeak to that than me.

L. C. J. Speak your own Knowledge and no more.

Mr. *Jones*. After the death of my Lord *Shafſbury*, who were the Managers, and were to carry it on ?

Col. *Rumſey*. I told you, Mr. *Weſt* and Mr. *Goodenough* did tell me the Duke of *Monmouth*, my Lord *Eſſex*——

Mr. *At. Gen.* He told you ſo before. Do you know there was an Inſurrection then intended ?

Col. *Rumſey*. Yes, becauſe we met towards the management of it, the Company that met at Mr. *Weſt*'s Chamber, and other Places.

Mr. *At. Gen.* What Diſcourſe had you with Mr. *Ferguſon* about it ?

Col. *Rumſey*. Not about thoſe Gentlemen.

Mr. *North*. The next Thing we ſhall ſhew, ſhall be that the *Scotchmen* came to Town.

Col. *Sidney*. My Lord, I muſt ever put you in Mind, whether it be ordinary to examine Men upon Indictments of Treaſon concerning me that I never ſaw, nor heard of in my Life.

L. C. J. I tell you, all this Evidence does not affect you, and I tell the Jury ſo.

Col. *Sidney*. But it prepoſſes the Jury.

Mr. Keiling *called and ſworn.*

Mr. *At. Gen.* I ask you in general, what you know of the Riſing to have been laſt Spring ?

Mr. *Keiling*. My Lord, It was ſome time laſt Summer, Mr. *Goodenough* came to me, and brought me *three* Papers numbered on the back-ſide ; I asked him to what end he delivered them me ? He told me, One was for my ſelf, and I was to deliver the other Two to whom I could truſt in the two Diviſions. I asked him, What was the Deſign ? He ſaid, to raiſe Men ; ſays I, Do you deſign a general Inſurrection ? He ſaid, if he did not, if the King was taken off this would do well ; for then People would know how to have recourſe to a formidable Body. And I have heard him ſay, that Colonel *Sidney*, whom I don't know, had a conſiderable Part in the Management of that Affair.

Mr. *At. Gen.* We charge him with Conſpiring, and there muſt be Confederates in the Caſe. Now then we come to the Priſoner, We will call my Lord *Howard*, that was one of the Perſons that did Conſult.

The Lord Howard *Sworn.*

Mr. *At. Gen.* Pray acquaint my Lord and the Jury of your Knowledge, of what Tranſactions there have been with the Priſoner about this Affair of the general Riſing.

Lord *Howard*. Truly my Lord, In the entering of the Evidence I am about to give, I cannot but obſerve, what a natural Uniformity there is in Truth. For the Gentlemen that have been before, have ſo exactly inſtanced, in every Particular, with what I have to ſay, that two Tallies could not more exactly fall into one another, though I confeſs I had not ſeen their Faces, till the Plot brake out, for ſome Months before.

My

My Lord, and Gentlemen of the Jury, About the middle of *January* laſt, it was conſidered by ſome of us that met together, That it was very neceſſary and expedient to an Enterpriſe that had been long in Hand, and fallen flat then, that it ſhould be revived by ſome Conſult or Cabal that ſhould be ſet up to give Life to it, and Governance to the Motions of it. The firſt (for ought I know) Movers of this, were the Duke of *Monmouth*, the Gentleman at the Bar, and my Self: And there we did agree, That we ſhould bethink our ſelves of ſome few, we were willing it ſhould not exceed *Five*, at the moſt *Seven*. This Agreement being at firſt between us *Three*; I remember the Duke of *Monmouth* undertook to ingage my Lord *Ruſſel*, and my Lord *Salisbury*; and this Gentleman Colonel *Sidney* for my Lord of *Eſſex*, and Mr. *Hambden*; and theſe being put together, did preſently conſtitute a little Cabal, of as great a Number as was intended. This being ſetled among them, it was within a few Days after, I can't certainly tell when, but between the middle and latter end of *January*, that I was told, That the Perſons had agreed to enter into this Conjunction of Councils; and in order to that, they had appointed a Meeting at Mr. *Hambden*'s Houſe, to which I was invited. This in time was between the middle and latter end of *January*, but I can't tell exactly. When we came there, there were all thoſe Gentlemen I before-named, the Duke of *Monmouth*, my Lord *Eſſex*, my Lord *Ruſſel*, Colonel *Sidney*, Mr. *Hambden*, and my Self. It was at Mr. *Hambden*'s Houſe, which ranges on the ſame Row with *Southampton* Houſe: And being met, Mr. *Hambden*, I ſuppoſe, did think it moſt properly belonged to him to take upon him the Part as it were to open the Seſſions, that was, to give us a little Account of the Reaſon, End, and Intention of that Meeting: In which Diſcourſe, he took Occaſion to recapitulate ſome Deſign, that had been before chiefly carried on by my Lord *Shaftsbury*, before this time Dead; and alſo took Notice of the ready Diſpoſition and Inclination of the Minds of Men to go on with it; and did give one Inſtance of his Judgment of it, That it being a Deſign communicated to ſo many, it had not been ſo much as Revealed, or a Murmur or Whiſper gone about it: From whence he took occaſion to tell us, That it was abſolutely neceſſary for the future, there ſhould be ſome Council, that ſhould be as a Spring, a little to guide and govern the Motions of the reſt, for that there were divers Things to be taken care of, which if not taken care of by particular Perſons, would all miſcarry. This was the Subſtance of the Prologue and Introduction he made. From hence he made a Tranſition to ſome particular Things, that he thought were moſt principally to be taken Care of. And though it is impoſſible for me to remember the Order and Method in which we diſcourſed, or who ſaid this or that, but that which the Senſe of all reſulted to was this: That ſince we did not come prepared for it, we ſhould conſider what were the Things that would hereafter challenge our particular Care, that was, The time when, the Places where, and the Perſons by whom theſe Things ſhould be carried on. This led into ſome particular Diſcourſe, concerning ſome of theſe Heads: For the Time; that it ſhould be ſhortly, leſt the Minds of Men ſhould chill; and then as to the Place where, whether in City or Countrey, or both jointly. In all theſe, ſome Opinions were given, but not ſetled to any Reſolution, but they were committed to our Thoughts to be digeſted afterwards. But theſe being the Things that every one was to take upon his Thoughts, there was this Prerequiſite to the Undertaking, and that was to conſider what *Magazines* were to be got; and that led to another Particular, which was, With what they ſhould be gotten, and that was Money; and thereupon was propounded a conſiderable Sum to be raiſed: and as I remember, the Sum propounded by the Duke of *Monmouth* was *Twenty-Five Thouſand* Pounds, or *Thirty Thouſand* Pounds. And then it was conſidered, how it ſhould be raiſed without drawing Obſervation or Jealouſy. Theſe are only the Heads that were then agreed on, hereafter to be better conſidered. But the preſent Reſolution that was taken, was, That before any Procedure was made in any of theſe Things, or any Advance towards the Undertaking; the firſt Thing to be conſidered, was, How to make a Coalition of Councils between *Scotland*, and what we were doing here; and for that Purpoſe, we ſhould bethink our ſelves of ſome fit Perſon to be ſent thither, to Unite us into one Senſe and Care. This is as much as occurs to my Memory upon that Meeting. About a Fortnight or three Weeks after, which I ſuppoſe carried it to the middle of *February* next, we had another Meeting, and that was at *Southampton* Houſe at my Lord *Ruſſel*'s, and there were every one of the ſame Perſons; and when we came there, there happen'd to fall in a Diſcourſe which I know not how it came in, but it was a little warmly urged, and thought to be untimely, and unſeaſonable; and that I remember was by Mr. *Hambden*, who did tell us, That having now united our ſelves into ſuch an Undertaking as this was, it could not but be expected, that it would be a Queſtion put to many of us; To what End all this was? Where it was we intended to Terminate? Into what we intended to Reſolve? That theſe were Queſtions he met with; and it was probable, every one had or would meet with from thoſe Perſons whoſe Aſſiſtance we expected; and that if there was any thing of a Perſonal Intereſt deſigned or intended, that there were but very few of thoſe, whoſe Hearts were now with us, but would fall off: And therefore, ſince we were upon ſuch an Undertaking, we ſhould reſolve our ſelves into ſuch Principles, as ſhould put the Properties and Liberties of the People into ſuch Hands, as it ſhould not be eaſily invaded by any that were truſted with the Supream Authority of the Land; and it was mentioned to Reſolve all into the Authority of the Parliament. This was moved by him, and had a little harſhneſs to ſome that were there; but yet upon the whole Matter we generally conſented to it, That it was nothing but a Publick Good that we all intended. But then after that, we fell to that which we charged our ſelves with at the firſt Meeting, and that was concerning ſending into *Scotland*, and of ſetling an Underſtanding with my Lord of *Argyle*: And in order to this, it was neceſſary to ſend a Meſſenger thither to ſome Perſons, whom we thought were the moſt leading Men of the Intereſt in *Scotland*: This led us to the inſiſting on ſome particular Perſons; the Gentlemen named, were my Lord

Melvin, Sir *John Cockram*, and the *Campbels*; I am ſure it was ſome of the Alliance of my Lord of *Argyle*, and I think of the Name. As ſoon as this was propounded, it was offered by this Gentleman Colonel *Sidney*, that he would take the Care of the Perſon; and he had a Perſon in his Thoughts, that he thought a very fit Man to be intruſted; one or two, but one in ſpecial, and he named *Aaron Smith* to be the Man, who was known to ſome of us, to others not; I was one that did know him, and as many as knew him, thought him a proper Perſon. This is all that occurs to me that was at the ſecond Meeting, and they are the only Conſults that I was at.

Mr. *At. Gen.* What was he to do?

Lord *Howard.* There was no particular Deed for him, more than to carry a Letter. The Duke of *Monmouth* undertook to bring my Lord *Melvin* hither, becauſe he had a particular Dependance upon him, and I think ſome Relation to his Lady: But to Sir *John Cockram* there was a Letter to be ſent under the diſguiſe of carrying on ſome Buſineſs of the Plantation in *Carolina*. This Letter I ſuppoſe was writ by my Lord *Ruſſel* (tho' I know it not) for he was perſonally known to my Lord *Ruſſel*, and I don't know that he was known to any of us. About three Weeks after this, then he was diſpatched I ſuppoſe.

Mr. *At. Gen.* To what purpoſe were theſe Gentlemen to come up?

Lord *Howard.* Theſe were to acquaint us how they found *Scotland* tempered, and what Opportunities or Advantages there were or might be of putting them into a Commotion, and how Men might be Raiſed, and how they would fall under *Argyle*, and alſo to keep Time and Place with us. After this, I was with Colonel *Sidney*, when he was going into *London*, and he did take out ſeveral Guineas, I can't tell how much it was, I ſuppoſe they might be about ſixty, and put them into his Pocket (and ſet me down at my Lodging) which he ſaid were to give *Aaron Smith*; whether he gave it or no, I don't know; and after that he was ſent.

Mr. *At. Gen.* Who told you ſo?

Lord *Howard.* Col. *Sidney*, For I was inquiring of him; and he ſaid, he had not heard of him in three Weeks, or but once, when he was about *New Caſtle*. After this, I had Occaſions that called me into the Country, and there I was. Some time after that I went to the *Bath*: And this is all the Account I can give.

Mr. *Sol. Gen.* Do you know that *Aaron Smith* did go?

Lord *Howard.* I know nothing but by hear-ſay. Col. *Sidney* told me he was gone, and was upon the Road, and he heard from him about *New-Caſtle*.

L. C. J. Did you underſtand by the Diſcourſe after he was gone, that he went in purſuance of that Debate?

Lord *Howard.* Yes, my Lord, That was the whole end of his going.

Mr. *Juſt. Withins.* I think you ſay, that Gentleman (*ſpeaking of Col.* Sidney) undertook to ſend him?

Lord *Howard.* Yes, he did.

L. C. J. Will you ask him any Queſtions?

Col. *Sidney.* I have no Queſtions to ask him.

Mr. *At. Gen.* Silence——You know the Proverb. The next Step is to ſhew you, my Lord, that theſe Perſons came up immediately after *Aaron Smith* went down thither; and according to that which was ſaid to be the ſhadow and pretence of their coming hither, they pretended they came about *Carolina* Buſineſs. Sir *Andrew Foſter* and Mr. *Blathwaite*.

Sir Andrew Foſter *ſworn.*

Mr. *At. Gen.* Pray, Sir, give an account what *Scotch* Gentlemen came up lately.

Sir *Andrew Foſter.* My Lord, About the end of the Spring, or beginning of Summer, as I remember, theſe Gentlemen, Sir *John Cockram*, and Commiſſary *Monro*, and the two *Campbels* Father and Son, came up hither. I did not ſee the Father at all, but I ſaw the Son the day of the Lord *Ruſſel*'s Tryal; but the other two, I think, I ſaw a little before the Diſcovery of the Plot.

Mr. *At. Gen.* What did they pretend they came about?

Sir *Andrew Foſter.* They pretended they came to make a Purchaſe in *Carolina*, and I ſaw their Commiſſion from the Perſons ſaid to be concerned in that Deſign.

L. C. J. Who do you ſpeak of?

Sir *Andrew Foſter.* Sir *John Cockram* and Commiſſary *Monro*.

Mr. *At. Gen.* As ſoon as the Rumour came of the *Plot*, what became of thoſe Gentlemen?

Sir *Andrew Foſter.* Sir *John Cockram* abſconded, but Commiſſary *Monro* never abſconded, and the *Campbels* I heard were ſeized changing their Lodging from place to place.

Mr. *Atterbury ſworn.*

Mr. *At. Gen.* Mr. *Atterbury*, Will you give my Lord and the Jury an account what you know of theſe Scotch-men, their abſconding and lying hid.

Mr. *Atterbury.* My Lord, Upon the latter end of *June*, or the beginning of *July*; the beginning of *July* it was, I was ſent for into *London* upon a Diſcovery of ſome Scotch Gentlemen that lay about *Black-Fryars*; and when I came down there, there was the *Common Serjeant* and ſome others, had been before me, and found them making an Eſcape into a Boat.

Mr. *At. Gen.* Who were they?

Mr. *Atterbury.* Sir *Hugh Campbel*, and Sir *John Cockram*, and one that was committed to the *Gate-houſe* by the Council as ſoon as brought thither.

Mr. *At. Gen.* We ſhall end here, my Lord: How long had they been in Town?

Mr. *Atterbury.* They had been in Town ſome little time.

Mr. *At. Gen.* We have done with this piece of our Evidence. Now, to ſhew that while this Emiſſary was in *Scotland*, at the ſame time the Colonel (which will be another Overt Act of the Treaſon) was, writing a Treaſonable Pamphlet. I will call you the Witneſſes. It is all of his own Writings. Sir *Philip Lloyd.*

Mr. *At. Gen.* Sir *Philip Lloyd*, Pray will you look upon thoſe Papers, and give my Lord and the Jury an account where you found them.

Sir *Philip Lloyd.* I had a Warrant, my Lord, from the Secretary by the King and Council, to ſeize Mr. *Algernon Sidney*'s Papers, and purſuant to it, I did go to his Houſe, and ſuch as I found there I put up. I found a great many

upon

upon the Table, amongſt which were theſe, I ſuppoſe it is where he uſually writes, I put them in a Pillowbear I borrowed in the Houſe, and that in a Trunk; I deſired Col. *Sidney* would put his Seal upon them, that there ſhould be no Miſtake; he refuſed, ſo I took my Seal, and ſealed up the Trunk, and it was carried before me to Mr. Secretary *Jenkins*'s Office. When the Committee ſate, I was commanded to undo the Trunk, and I did ſo, and found my own Seal upon it. And I took the Papers out of the Bag I put them into before.

L. C. J. Was Col. *Sidney* preſent when you ſeized theſe Papers?

Sir *Phil. Lloyd.* Yes.

Mr. *At. Gen.* Are theſe ſome of thoſe Papers?

Sir *Phil. Lloyd.* Yes, I verily believe it.

Mr. *At. Gen.* In the next place, I think we have ſome Papers of his particular Affairs which will prove his Hand. Call Mr. *Sheppard*, Mr. *Cooke* and Mr. *Cary*.

Mr. *North.* Sir *Philip Lloyd*, When were they ſeized?

Sir *Phil. Lloyd.* Towards the latter end of *June*, my Lord.

Jury-man. Which *June*?

Sir *Phil. Lloyd.* Laſt *June*.

Mr. Sheppard *ſworn.*

Mr. *At. Gen.* Pray will you look upon thoſe Writings. (*Shewing the Libel.*) Are you acquainted with Col. *Sidney*'s Hand?

Mr. *Sheppard.* Yes, my Lord.

Mr. *At. Gen.* Is that his Hand-writing?

Mr. *Sheppard.* Yes, Sir, I believe ſo. I believe all theſe Sheets to be his Hand.

Mr. *At. Gen.* How come you to be acquainted with his Hand?

Mr. *Sheppard.* I have ſeen him write the Indorſement upon ſeveral Bills of Exchange.

Mr. Cary *ſworn.*

Col. *Sidney.* My Lord, I deſire you would pleaſe to conſider this, That Similitude of Hands can be no Evidence.

L. C. J. Reſerve your ſelf till anon, and make all the advantageous Remarks you can.

Mr. *At. Gen.* Have you had any dealing with him?

Mr. *Cary.* I never ſaw him write, to my knowledge, more than once in my life, but I have ſeen his Indorſement upon Bills, and 'tis very like that.

L. C. J. Do you believe it is his Hand, as far as you can gueſs?

Mr. *Cary.* My Lord, It is like what came to me for his Hand-writing.

L. C. J. And you believe it to be his Hand?

Mr. *Cary.* Yes.

Mr. Cooke *ſworn, and the Papers ſhewn him.*

L. C. J. What ſay you, Mr. *Cooke*?

Mr. *Cooke.* My Lord, I did never ſee Col. *Sidney* write, but I have ſeen ſeveral Notes that have come to me with Indorſement of his Name, and we have paid them, and 'tis like to this.

L. C. J. And you were never called to account for Miſpayment?

Mr. *Cooke.* No, my Lord.

Mr. *At. Gen.* I pray it may be read. We will read as much as is neceſſary to prove the Indictment.

Col. *Sidney.* I pray it may be all read.

L. C. J. Mr. Attorney muſt have what part he deſires read, and you ſhall have what part you will have read afterwards.

Col. *Sidney.* I deſire it may all be read.

Mr. *At. Gen.* Begin there. *Secondly*, There was no Abſurdity in this, becauſe it was their own Caſe.

Clerk reads.

Secondly, There was no Abſurdity in this, tho' it was their own Caſe; but to the contrary, becauſe it was their own Caſe; that is, concerning Themſelves only, and they had no Superior. They only were the competent Judges, they decided their Controverſies, as every Man in his own Family doth, ſuch as ariſe between Him and his Children, and his Servants. This Power hath no other Reſtriction, than what is put upon it by the municipal Law of the Country, where any Man, and that hath no other Force, than as he is underſtood to have conſented unto it. Thus in *England* every Man (in a degree) hath a Right of chaſtiſing them; and in many places (even by the Law of God) the Maſter hath a Power of Life and Death over his Servant: It were a moſt abſurd Folly, to ſay, that a Man might not put away, or in ſome places kill an Adulterous Wife, a Diſobedient Son, or an Unlawful Servant, becauſe he is Party and Judge, for the Caſe doth admit of no other, unleſs he hath abridged his own Right by entering into a Society where other Rules are agreed upon, and a ſuperior Judge conſtituted, there being none ſuch between King and People: That People muſt needs be the Judge of things happening between Them and Him whom they did not conſtitute, that they might be Great, Glorious, and Rich; but that they might judge them, and fight their Battles; or otherwiſe do good unto them as they ſhould direct. In this Senſe, he that is *ſingulis Major*, and ought to be obliged by every Man, in his juſt and lawful Commands, tending to the Publick Good: And muſt be ſuffered to do nothing againſt it, nor in any reſpect more than the Law doth allow.

For this Reaſon *Bracton* ſaith, that the King hath Three Superiors, to wit, *Deum*, *Legem*, & *Parliament*'; that is, the Power, Originally in the People of *England*, is delegated unto the Parliament. He is ſubject unto the Law of God as he is a Man, to the People that makes him a King, in as much as he is a King: The Law ſets a meaſure unto that Subjection, and the Parliament judges of the particular Caſes thereupon ariſing: He muſt be content to ſubmit his Intereſt unto Theirs, ſince he is no more than any one of them, in any other reſpect, than that He is, by the Conſent of all, raiſed above any other.

If he doth not like this Condition, he may renounce the Crown; but if he receive it upon that Condition, (as all Magiſtrates do the Power they receive) and ſwear to perform it, He muſt expect that the Performance will be exacted, or Revenge taken by thoſe that he hath betrayed.

If this be not ſo, I deſire to know of our Author, how one or more Men can come to be guilty of Treaſon againſt the KING, As *Lex facit*

facit ut ſit Rex. No Man can owe more unto him than unto any other; or he unto every other Man by any Rule but the Law; and if he muſt not be Judge in his own Caſe, neither he nor any other by Power received from him, would ever try any Man for an Offence againſt him, or the Law.

If the King, or ſuch as he appoints, cannot judge him, he cannot be judged by the ways ordinarily known amongſt us. If he, or other by Authority from him, may judge, he is Judge in his own Caſe, and we fall under that which he accounts the utmoſt of all Abſurdities: If a Remedy be found for this, he muſt ſay that the King in his own Caſe may judge the People, but the People muſt not judge the King, becauſe it is theirs; that is to ſay, the Servant entertained by the Maſter may judge him, but the Maſter muſt not judge the Servant, whom he took only for his own Uſe. The Magiſtrate is bound by no Oath or Contract to the People that created him, but the People is bound to its own Creature, the Magiſtrate.

This ſeems to be the ground of all our Author's Follies; he cannot comprehend that Magiſtrates are for or by the People, but makes this Concluſion, as if Nations were created by or for the Glory or Pleaſure of Magiſtrates, and affect ſuch a piece of Nonſenſe; it ought not to be thought ſtrange, if he repreſent, as an abſurd thing that the Headleſs Multitude may ſhake off the Yoke when they pleaſe. But I would know how the Multitude comes under the Yoke, it is a Badge of Slavery. He ſays, that the Power of Kings is for the Preſervation of Liberty and Property. We may therefore change or take away Kings without breaking any Yoke, or that made a Yoke which ought not to be one; the Injury is therefore in Making or Impoſing, and there can be none in breaking it.

That if there be not an Injury, there may perhaps be an Inconvenience; if the headleſs Multitude may ſhake off the Yoke, I know not why the Multitude ſhould be concluded to be headleſs; it is not always ſo. *Moſes* was Head of the Multitude that went out of *Egypt*, *Othniel* led them againſt the King of *Meſopotamia*, under the Conduct of *Phœbidas*; they obtain'd a Victory againſt the *Moabites*, they had the like Succeſs under *Shamger*, *Barac*, *Gideon*, *Jeptha*, *Samuel*, *Sampſon*, and others againſt the *Canaanites*, *Midianites*, *Philiſtines* and others; the Multitude that oppoſed *Saul* and *Iſhboſheth* had *David* for its Head; and the Ten Tribes that rejected *Reoboam* choſe unto themſelves *Reoboam*; the *Athenians* riſing againſt the Thirty *Tyrants* had *Thraſybulus*; thoſe that drave —— from *Thebes* were conducted by *Pelopidas*: When the *Romans* drave out the *Tarquins*, they choſe *Brutus* and *Publicola*, and they deſtroyed the *Decemviri* under *Horatius* and *Valerius*. All the Multitudes that afterwards revolted from them under *Mauritius*, *Telerius*, *Spartanus* and others, were not headleſs; and we know of none that were, but all either found Heads, or made them. The *Germans* ſet up *Arminius*; the *Britains*, and others in later Times, the *Cartinians*, that roſe againſt *Peter the Cruel*, had the Lord *Detracta Mara*.

The *French*, when they grew weary of the corrupted Races of *Pharamond* and *Pepin*, and the ſame *Pepin* and *Hugh Capet*: The *Scots*, when they ſlew *James* III, had his Son to be their Head; and when they depoſed and impriſoned Queen *Mary*, the Earl of *Murray* and others ſupplied the want of Age that was in her Son: And in all the Revolutions we have had in *England*, the People have been headed by the Parliament, or the Nobility and Gentry that compoſed it; and when the Kings failed of their Duties; by their own Authority called it. The Multitude therefore is not ever headleſs, but doth either find or create Heads unto it ſelf, as occaſion doth require; and whether it be one Man, or a few or more, for a ſhort or a longer time, we ſee nothing more regular than its Motions. But they may, ſaith our Author, ſhake off the Yoke; and why may they not, if it prove uneaſy or hurtful unto them? Why ſhould not the *Iſraelites* ſhake off the Yoke of *Pharaoh*, *Jabin*, *Siſera*, and others that oppreſſed them?

When Pride had changed *Nebuchadnezzar* into a Beaſt, what ſhould perſwade the *Aſſyrians* not to drive him out amongſt Beaſts, until God had reſtored unto him the Heart of a Man? When *Tarquin* had turned the Regal Monarchy of *Rome* into a moſt abominable Tyranny, why ſhould they not aboliſh it? And when the Proteſtants of the *Low Countries* were ſo grievouſly oppreſſed by the Power of *Spain*, under the proud, cruel and ſavage Conduct of the Duke of *Alva*, why ſhould they not make uſe of all the means that God had put into their Hands for their Deliverance? Let any Man who ſees the preſent State of the Provinces that then united themſelves, judge whether it is better for them to be as they are, or in the Condition unto which his Fury would have reduced them, unleſs they had, to pleaſe him, renounced God and their Religion: Our Author may ſay, they ought to have ſuffered: The King of *Spain* by their Reſiſtance loſt thoſe Countries; and that they ought not to have been Judges in their own Caſe. To which I anſwer, That by reſiſting they laid the Foundation of many Churches, that have produced multitudes of Men, eminent in Gifts and Graces; and eſtabliſhed a moſt glorious and happy Commonwealth, that hath been ſince its firſt beginning, the ſtrongeſt Pillar of the Proteſtant Cauſe now in the World, and a Place or Refuge unto thoſe who in all Parts of *Europe* have been oppreſſed for the Name of Chriſt: Whereas they had ſlaviſhly, and, I think I may ſay, wickedly as well as fooliſhly, ſuffered themſelves to be butchered, if they had left thoſe empty Provinces under the Power of Antichriſt, where the Name of God is no otherwiſe known than to be blaſphemed.

If the King of *Spain* deſired to keep his Subjects, he ſhould have governed them with more Juſtice and Mercy; when, contrary unto all Laws both Human and Divine, he ſeeks to deſtroy thoſe he ought to have preſerved, he can blame none but himſelf, if they deliver themſelves from his Tyranny: And when the Matter is brought to that, That he muſt not reign, or they over whom he would reign, muſt periſh; the Matter is eaſily decided, as if the queſtion had been asked in the Time of *Nero* or *Domitian*, Whether they ſhould be left at liberty to deſtroy the beſt part of the World, as they endeavoured to do, or it ſhould be reſcued by their Deſtruction? And as for the People's being Judges in their own Caſe, it is plain, they ought

ought to be the only Judges, becauſe it is their own, and only concerns themſelves.

Mr. *At. Gen.* The latter end, the laſt Sheet of all, §. 35.

L. C. J. The Argument runs through the Book, fixing the Power in the People.

Cl. of Cr. The general Revolt of a Nation from its own Magiſtrates, can never be called Rebellion.

Mr. *At. Gen.* §. 37.

Cl. of Cr. The Power of calling and diſſolving Parliaments is not in the King.

Mr. *At. Gen.* So much we ſhall make uſe of; if the Colonel pleaſe to have any other part read to explain it, he may.

Then the Sheets were ſhewn to Col. Sidney.

Col. *Sidney.* I do not know what to make of it, I can read it.

L. C. J. Ay, no doubt of it, better than any Man here. Fix on any part you have a mind to have read.

Col. *Sidney.* I do not know what to ſay to it, to read it in pieces thus.

L. C. J. I perceive you have diſpoſed them under certain Heads: To what Heads will you have read?

Col. *Sidney.* My Lord, Let him give an account of it that did it.

Mr. *At. Gen.* My Lord, We will not delay Col. *Sidney* from entering on his Defence, only we have this piece of Evidence to give further. One of his Complices was my Lord *Ruſſel*, we will give in Evidence his Conviction. We will only ask my Lord *Howard*, Was your Lordſhip ſworn as a Witneſs at the Tryal of my Lord *Ruſſel*?

Lord *Howard.* Yes.

Mr. *At. Gen.* Whether or no, when you met, were there in thoſe Debates any Reflections upon the King, that he had broken his Duty?

Lord *Howard.* Not that I remember.

Mr. *At. Gen.* Why would you riſe?

Lord *Howard.* If you mean upon the Miſgovernment, not perſonally upon the King?

Mr. *At. Gen.* Ay.

Lord *Howard.* Yes, and principally and chiefly that, which we thought was the general Diſguſt of the Nation, the impoſing upon the City at that time.

Mr. *Juſt. Withins.* That was complained of at that time?

Lord *Howard.* Yes, my Lord, We took it all along to be the chief Grievance.

L. C. J. Have you any more Witneſſes?

Mr. *At. Gen.* Only the Record.

Mr. *Sol. Gen.* I know there is no time miſpent to make things clear. If the Jury have a mind to have the Words read again ——

L. C. J. If they have a mind, let it.

Then Mr. Trinder *was ſworn, and teſtified it to be a true Copy of the Record, and ſaid he examined it at* Fiſhmongers-hall *with Mr.* Tanner.

Then the Record of the Conviction of the Lord Ruſſel *was read.*

L. C. J. What will you go to next, Mr. Attorney.

Mr. *Sol. Gen.* We have done, unleſs the Jury deſire to have the Words of the Libel read again. [*But they did not.*

Col. *Sidney.* My Lord, I deſire to know upon what Statute I am indicted.

Mr. *At. Gen.* My Lord, I will give as plain an Anſwer, You are Indicted upon the old Statute of 25 *Edw.* 3.

Col. *Sidney.* Then I deſire to know upon what Branch of that Statute?

Mr. *At. Gen.* Why, I will acquaint you, 'Tis upon the firſt Branch of that Statute, for Conſpiring and Compaſſing the Death of the King.

Col. *Sidney.* Then I conceive, what does not come within that, does not touch me.

Mr. *At. Gen.* Make what Inferences you pleaſe, Colonel, we will anſwer you.

Col. *Sidney.* I deſire to know what the Witneſſes have ſworn againſt me upon that point?

Mr. *At. Gen.* Go on, You have heard the Witneſſes as well as we.

L. C. J. He ſays, You are indicted upon the Statute of 25 *Edw.* 3. which Statute makes it High Treaſon to Conſpire the Death of the King, and the Overt Act is ſufficiently ſet forth in the Indictment; now the Queſtion is, whether 'tis proved?

Col. *Sidney.* They have proved a Paper found in my Study of *Caligula* and *Nero*, that is Compaſſing the Death of the King, is it?

L. C. J. That I ſhall tell the Jury. The Point in Law you are to take from the Court, Gentlemen: Whether there be Fact ſufficient, that is your Duty to conſider.

Col. *Sidney.* I ſay, my Lord, that ſince I am indicted upon that Statute, I am not to take notice of any other. I am indicted for Conſpiring the Death of the King, becauſe ſuch a Paper, is found in my Houſe; Under favour, I think that can be nothing at all to me. For tho' Sir *Philip Lloyd* did ask me, whether I would put my Seal to it, he did not ask me till he had been in my Cloſet, and I knew not what he had put in, and ſo I told him I would not do it. Then come theſe Gentlemen upon Similitude of Hands. My Lord, We know what Similitude of Hands is in this Age. One told me within theſe two days, that one came to him, and offered to counterfeit any Hand he ſhould ſhew him in half an hour. So then, my Lord, I have nothing to ſay to theſe Papers. Then for Point of Witneſs, I cannot be indicted, much leſs tryed or condemned on 25 *Edw.* 3. for by that Act there muſt be two Witneſſes to that very Branch unto which the Treaſon does relate, which muſt be diſtinguiſhed. For the Levying of War, and Conſpiring the Death of the King, are two diſtinct things, diſtinct in Nature and Reaſon, and ſo diſtinguiſhed in the Statute. And therefore the Conſpiring the Death of the King is Treaſon, and the other not. 1 *Edw.* 6. 12. 5 *Edw.* 6. 11. does expreſsly ſay, there muſt be two Witneſſes to either of theſe Acts. Now here is my Lord *Howard*, (I have enough to ſay of him by and by) 'Tis he only who ſpeaks of ſix Men, whom he calls a ſelect Council, and yet ſelected by no Man in the World. I deſire to know who ſelected my Lord *Howard*? Who ſelected me? If they were ſelected by no body, 'tis a Bull to ſay they were a ſelect Council. If they were not ſelected, but erected themſelves into a Cabal, then they have

have either Confidence in one another, or find they are near equally able to aſſiſt in the Deſign. Here is nothing of all this, ——These ſix Men were Strangers to one another. For my own Part, I never ſpake with the Duke of *Monmouth* above three times in my life, and one time was when my Lord *Howard* brought him to my Houſe and cozened us both. He told the Duke I invited him, and he told me the Duke invited himſelf, and neither of them was true. Now that ſuch Men as theſe are, not hardly knowing one another, ſhould preſently fall into a great and intimate friendſhip, and truſt and management of ſuch a Buſineſs as this is, is a thing utterly improbable, unleſs they were mad. Now I do find in my Lord *Howard*'s Depoſition againſt my Lord *Ruſſel*, that they were in Proſecution of my Lord *Shaftsbury*'s Deſign; and yet he acknowledges the Duke of *Monmouth* ſaid he was mad, and he himſelf ſaid ſo too. Now that they ſhould join with four more in the Proſecution of the Deſign of a mad Man, they muſt be mad too. Now whether my Lord *Howard* would have you think he was mad, becauſe a mad Man cannot be guilty of Treaſon, I cannot tell. My Lord *Howard* in his laſt Depoſition at my Lord *Ruſſel*'s Tryal, fixes the two Meetings, one about the middle of *January*, the other ten Days after: Now he fixes one to be the latter end of *January*, the other the middle of *February*. Then he makes it to be the Proſecution of my Lord *Shaftsbury*'s Deſign. I do not find that any one there had any thing to do with my Lord *Shaftsbury*, for my Part I had not. I had not ſeen his Face in two Years. Then, my Lord, that I go upon is, whatever my Lord *Howard* is, he is but one Witneſs. The Law of God, and the Law of Man, underſtood and taken by all Men, does require two Witneſſes; *Moſes* ſays ſo, ſo the Apoſtles the ſame after him, and Chriſt ſays the ſame, That every Matter is to be eſtabliſhed by two Witneſſes. There ought to be two Witneſſes to the ſame Thing. Now for one to come and tell a Tale of a Tub, of an imaginary Council, and another of a Libel, a Paper written no body knows when, is ſuch a Thing, you can never go over it. But if the Law of God be, that there muſt be two Witneſſes to the ſame Fact, there is an end of this Matter. And under the Judicial Law, the Penalty would be in this Caſe, to put a Man to death. Now here there are but two Things, which if allowed of, no body will be ſafe for Perjury. The one is to ſuffer Men to give their Teſtimony, one to one thing, and another to another, that the Fraud cannot be diſcovered; and the other is to take away the Puniſhment. Now the Puniſhment is taken away in ſome meaſure: And do but take away the other Point, whereby the Fraud cannot be diſcovered; and then there is no Defence can be made. That both Witneſſes ſhould be to the ſame Point; ſee the Story of *Suſanna*. Two Elders teſtified they ſaw her in the Act of Adultery: They were carrying of her to death; both of them ſaid the ſame thing; until they were taken aſunder and examined, the Fraud was not diſcovered; and then one ſaid, ſhe was under a Tree of the right hand, and the other, under the Tree on the left; and ſhe eſcaped, and they were puniſhed. But now if you apply it to ſeveral Facts, my Lord *Howard* may ſay what he pleaſes, and if another ſhall come with a ſupplemental Proof, no Juſtice can be had. But, my Lord, I deſire this, If there be two Witneſſes to prove the Conſpiracy, and in that there were thoſe Matters done that are Treaſon, I muſt anſwer to it; but if there be not, I preſume, I need ſay nothing to it. If you do not allow it me, I deſire Counſel to argue it.

L. C. J. That is a Point of Fact, Whether there be two Witneſſes? I tell you before-hand, one Witneſs is not ſufficient.

Col. *Sidney*. Why then there is my Lord *Howard*, and never another.

L. C. J. Nay, do not make thoſe Inferences; I will tell the Jury, if there be not two Witneſſes as the Law requires in this Caſe, they ought to acquit you.

Col. *Sidney*. You confound me, I cannot ſtir. You talk of a Conſpiracy; What is a Conſpiracy to kill the King? Is there any more Witneſſes than one for Levying of War?

L. C. J. Pray do not deceive your ſelf; You muſt not think the Court and you intend to enter into a Dialogue. Anſwer to the Fact; if there be not ſufficient Fact, the Jury will acquit you. Make what Anſwer you can to it.

Col. *Sidney*. Then I ſay, There being but one Witneſs, I am not to anſwer to it at all.

L. C. J. If you rely upon that, we will direct the Jury preſently.

Col. *Sidney*. Then for Levying War, what does any one ſay? My Lord *Howard*, let him if he pleaſe, reconcile what he hath ſaid now, with what he ſaid at my Lord *Ruſſel*'s Tryal. There he ſaid, he ſaid all he could; and now he has got I do not know how many Things that were never ſpoken of there. I appeal to the Court, whether he did then ſpeak one Word of that, that he now ſays of Mr. *Hambden*. He ſets forth his Evidence very Rhetorically, but it does not become a Witneſs, for he is only to tell what is done and ſaid, but he does not tell what was done and ſaid. He ſays, they took upon them to conſider, but does not ſay what one Man ſaid, or what one Man reſolved, much leſs what I did. My Lord, If theſe Things are not to be diſtinguiſhed, but ſhall be jumbled all up together, I confeſs I do not know what to ſay.

L. C. J. Take what liberty you pleaſe. If you will make no Defence, then we will direct the Jury preſently. We will direct them in the Law, and recollect Matter of Fact as well as we can.

Col. *Sidney*. Why then my Lord, I deſire the Law may be reſerved to me, I deſire I may have Counſel to that Point of there being but one Witneſs.

L. C. J. That is a Point of Fact. If you can give any Teſtimony to diſparage the Witneſs, do it.

Col. *Sidney*. I have a great deal to that.

L. C. J. Go on to it then.

Col. *Sidney*. Then, my Lord, was there a War levied? Or was it prevented? Why then, if it be prevented, 'tis not levied; if it be not levied, 'tis not within the Statute; ſo this is nothing to me.

L. C. J. The Court will have Patience to hear you; but at the ſame time I think it is my Duty to advertiſe you, That this is but miſpend-

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ing of your Time. If you can anſwer the Fact, or if you have any Mind to put any Diſparagement upon the Witneſſes, that they are not Perſons to be believed, do it, but do not ask us Queſtions this way or t'other.

Col. *Sidney.* I have this to ſay concerning my Lord *Howard:* He hath accuſed himſelf of divers Treaſons, and I do not hear that he has his Pardon of any: He is under the Terror of thoſe Treaſons, and the Puniſhment for them: He hath ſhewn himſelf to be under that Terror: He hath ſaid, That he could not get his Pardon, until he had done ſome other Jobbs, till he was paſt this Drudgery of Swearing: That is, my Lord, that he having incurred the Penalty of High-Treaſon, he would get his own Indempnity by deſtroying others. This by the Law of God and Man, I think, deſtroys a Man's Teſtimony. Beſides, my Lord, he is my Debter, he owes me a conſiderable Sum of Money I lent him in time of his great Neceſſity; he made ſome Covenants with me for the Payment of that Money, which he hath broken; and when his Mortgage was forfeited, and I ſhould take the Advantage the Law gives me, he finds out a way to have me laid up in the *Tower:* He is a very ſubtle Man: At my Lord *Ruſſel*'s Tryal, he carried his Knife, he ſaid, between the Paring and the Apple; and ſo this is a Point of great nicety and cunning, at one time to get his own Pardon, and at the ſame time to ſave his Money. Another thing, my Lord, is, when I was Priſoner, he comes to my Houſe, and ſpeaks with my Servant, and ſays, how ſorry he was that I ſhould be brought in Danger upon this Account of the Plot, and there he did in the Preſence of God, with Hands and Eyes lifted up to Heaven, ſwear he did not believe any Plot, and that it was but a Sham; and that he was confident if I had known any thing, I would have told it him. He hath ſaid ſomewhat of this before, I have ſeveral Witneſſes to prove both. He was deſirous to go further, and he would not only pay my Debt by his Teſtimony againſt me, but he would have got my Plate and other Goods in my Hands into his Hands, and he deſired my Men, as a Place of Truſt, to put them into his Hands. And the next News was, that there was a Warrant againſt my Lord *Ruſſel* and me. But then, my Lord, he made other Affirmations in the ſame Preſence of God, that I was innocent in his Opinion, and he was confident of it; for if he had known any thing of it, he would have told it. Now I know, in my Lord *Ruſſel*'s Caſe, there was Dr. *Burnet* ſaid ſomething like it. And when he came to anſwer it, he ſaid he was to face it out, and make the beſt of it he could. Now he did face it out bravely againſt God, but he was very timorous of Man. So that my Lord, he does ſay at the ſame time, at my Lord *Ruſſel*'s Tryal, upon his Oath, That he did believe that the Religious Obligation of an Oath, did not conſiſt in the formality of applying it to the Place, *&c.* but in calling God to witneſs. So that when he did call God to witneſs before Doctor *Burnet* and my Servant, and others, and this is not conſiſtent with the Oath he has taken here, as the Gentleman ſaid at my Lord *Ruſſel*'s Tryal, unleſs he has one Soul in Court, and had another at my Houſe, theſe Things are inconſiſtent, and cannot be true; and if he ſwear both under the Religion of an Oath, he ſwears himſelf perjured. Then my Lord, he talks of *Aaron Smith*, What have I to do with *Aaron Smith*? He ſays, I ſent him; my Lord, there is no body elſe ſpeaks a Word of it. Then by a ſtrange kind of Conſtruction and Imagination, they will have it, that ſome Papers here, which are ſaid to be found in my Study, have relation to this Plot, as they call it; I know of none, nor am in none. Now, my Lord, I am not to give an account of theſe Papers, I do not think they are before you, for there is nothing but the ſimilitude of Hands offered for Proof. There is the like Caſe of my Lady *Carr* ſome few Years ago: She was indicted of Perjury, and as Evidence againſt her, ſome Letters of hers were produced, that were contrary to what ſhe ſwore in *Chancery*, and her Hand was proved; that is to ſay, it was like it: But my Lord Chief Juſtice *Keiling* directs the Jury, that though in Civil Cauſes it is a Proof, yet it is the ſmalleſt and leaſt of Proofs; but in Criminal Caſes it was none at all. So that my Lord *Howard*'s Teſtimony is ſingle; and what he talks of thoſe two Buſineſſes that he calls a Conſult, and *Aaron Smith*, is deſtroyed by want of Proof. What could ſix Men do? Can my Lord *Howard* raiſe five Men by his Credit? By his Purſe? Let him ſay as much for me, with all my Heart; for my Part I do not know where to raiſe five Men. That ſuch Men as we are, that have no Followers, ſhould undertake ſo vaſt a Deſign, is very unlikely: And this great Deſign that was carried on thus, it had neither Officers nor Soldiers, no Place, no Time, no Money for it. That which he ſaid laſt time, which he forgot now, he talked of twenty five, or thirty thouſand Pound, but no Man knew where it was to be had, but laſt time he ſaid, it was ſpoken in jeſt. Now this is a pretty Cabal, that ſix Men ſhould meet about a Buſineſs, and they neglect every one of the Points relating to the Thing they met about, make no ſtep about the Buſineſs, and if any one did ſpeak of it, it was but in jeſt. This is a very deep maintaining of the Plot. Then my Lord, as to theſe Papers, I do not think, I am to give any Account of them, I would ſay nothing to the diſparagement of Sir *Philip Lloyd*, I never ſaw him till he came to my Houſe, but yet I ſay he is the King's Officer, and when I am proſecuted at the King's Suit, I think he ought to be no Witneſs. The Government of *France* is violent and abſolute, but yet a few Years ago, a Miniſter of State had his Papers taken from him, and abundance of them had dangerous Plots againſt the King in them; but becauſe they were inventoried in his Officers preſence, or thoſe deputed by him, there was no uſe could be made of them, it was an irreparable Fault in the Proceſs, and that ſaved him. The ſimilitude of Hands is nothing: We know that Hands will be counterfeited, ſo that no Man ſhall know his own Hand. A Gentleman that is now dead, told me, that my Lord *Arlington* about five Years ago, deſired him to write a Letter, and ſeal it as well as he could; he writ it with care, and ſealed it with a Wafer and Wax upon it, and within a few Days, my Lord *Arlington* brought him five Letters, and he did not know which was his own. The Attorney ſhews theſe Papers to me, I do not know whether they are my own or no; but theſe very Papers, ſuch as they are, do abhor as much as any one can, ſuch a Deſign. Look upon them, you ſee they are all old Ink. Theſe

Papers may be writ perhaps, these twenty Years, the Ink is so old. But my Lord, it is a polemical Discourse, it seems to be an Answer to *Filmar*, which is not calculated for any particular Government in the World: It goes only upon these general Principles, That according to the universal Law of God and Nature, there is but one Government in the World, and that is Intire and Absolute; and that the King can be bound by no Law, by no Oath, but he may make all Laws, and abolish them as he pleases: And this whether of Age or no, a Man, or a Child of Sense, or out of his Sense. Now, my Lord, what if any Man in his Cabinet should have written this Book? Then he has another Principle, he says, 'Tis the same thing whether a King come in by Election, by Donation, by Inheritance, or Usurpation, or any other way; than which, I think, never was a thing more desperately said. *Cromwell*, when one *White* a Priest wrote a Book, wherein he undertook to prove, *That Possession was the only Right to Power*, though he was a Tyrant, and a violent one, (you need not wonder I call him Tyrant, I did so every Day in his Life, and acted against him too) it would be so odious a Principle, he would not endure it, and he used him very slightly for it. Now this *Filmar*, that no Man must write against, is the Man that does assert it, That 'tis no matter how they come by their Power, and gives the same Power to the worst Usurpers, as they that most righly come to the Crown. By the same Argument, if the erranteſt Rascal of *Israel* had killed *Moses*, *David*, &c. and seized upon the Power, he had been possessed of that Power, and been Father of the People. If this be Doctrine, my Lord, that is just and good, then I confess it may be dangerous for any thing to be found in a Man's House contrary to it; but if a Commoner of *England* write his present Thoughts, and another Man looking on his Book writes his present Thoughts of it, what great hurt is there in it? And I ask Mr. Attorney how many Years ago that was written?

L. C. J. I don't know what the Book was in answer to. We are not to speak of any Book that Sir *Robert Filmar* wrote, but you are to make your Defence, touching a Book that was found in your Study, and spend not your time, and the Court's time, in that which serves to no other Purpose, than to gratify a luxuriant way of Talking that you have. We have nothing to do with his Book, you had as good tell me again, That there was a parcel of People rambling about, pretending to my Lord *Russel*'s Ghost, and so we may answer all the Comedies in *England*. Answer to the Matter you are indicted for. Do you own that Paper?

Col. *Sidney*. No, my Lord.

L. C. J. Go on then, it does not become us to be impatient to hear you, but we ought to advertise you, that you spend not your time to no Purpose, and do your self an Injury.

Col. *Sidney*. I say first, 'tis not proved upon me: And secondly, 'Tis not a Crime if it be proved ——

L. C. J. You began very materially in one Thing; it is material for you to apply your self to take off the Credibility of my Lord *Howard* that is a Witness; call your Witnesses to that purpose, or if you have any other Point to take away the Credibility of any other Witness.

Col. *Sidney*. My Lord, I have seven or eight Points of Law.

L. C. J. I hear not one yet.

Col. *Sidney*. Why, my Lord, Conspiring to levy War is not Treason, and I desire to have Counsel upon that.

L. C. J. 'Tis not a Question. You had as good ask me, whether the first Chapter in *Littleton* be Law?

Col. *Sidney*. My Lord, I have neither made War, nor conspir'd to levy War.

L. C. J. You are still in a Mistake, you shall not think that we intend to dialogue with you, to let you know how far the Proof hath been given or not given, but when we come to direct the Jury, then we shall observe how far the Law requires there should be two Witnesses. But whether there be such a Proof, that must be left to the Jury.

Mr. *Just. Withens*. If you agree the Conspiracy, I will tell you my mind of it; I cannot give you my Opinion in Law, till the Fact be stated.

L. C. J. The Law always arises upon a Point of Fact; there can be no doubt in Point of Law, till there be a settlement in Point of Fact.

Mr. *Just. Holloway*. My Lord has put you in a right way: The Conspiracy is proved but by one Witness, if you have any thing to take off his Credibility, 'tis to the purpose.

Col. *Sidney*. Truly, my Lord, I do as little intend to mis-spend my own Spirit, and your Time, as ever any Man that came before you. Now, my Lord, if you will make a Concatenation of one thing, a Supposition upon Supposition, I would take all this asunder, and shew, if none of these Things are any thing in themselves, there can be nothing joined together.

L. C. J. Take your own Method, Mr. *Sidney*; but I say, if you are a Man of low Spirits and weak Body, 'tis a Duty incumbent upon the Court, to exhort you not to spend your time upon Things that are not material.

Col. *Sidney*. My Lord, I think 'tis very material, that a whimsical imagination of a Conspiracy, should not pass for a real Conspiracy of the Death of the King; besides, if these Papers were found in my House, 'tis a Crime created since my Imprisonment, and that cannot come in, for they were found since. My Lord, if these Papers are right, it mentions 200 and odd Sheets, and these show neither Beginning nor Ending; and will you my Lord, indict a Man for Treason for scraps of Paper found in his House, relating to an ancient Paper, intended as innocently as any thing in the World, and piece and patch this to my Lord *Howard*'s Discourse, to make this a Contrivance to kill the King? Then my Lord, I think 'tis a Right of Mankind, and 'tis exercised by all studious Men, that they write in their own Closets what they please for their own Memory, and no Man can be answerable for it, unless they publish it.

L. C. J. Pray don't go away with that right of Mankind, that it is lawful for me to write what I will in my own Closet, unless I publish it; I have been told, Curse not the King, not in thy Thoughts, not in thy Bed-Chamber, the Birds of the Air will carry it. I took it to be the Duty of Mankind, to observe that.

Col. *Sidney*. I have lived under the Inquisition ——

L. C. J. God be thanked we are governed by Law.

Col. *Sid-*

Col. *Sidney.* I have lived under the Inquiſition, and there is no Man in *Spain* can be tried for Hereſy——

Mr. *Juſt. Withins.* Draw no Preſidents from the Inquiſition, here, I beſeech you, Sir.

L. C. J. We muſt not endure Men to talk, that by the right of Nature every Man may contrive Miſchief in his own Chamber, and he is not to be puniſhed, till he thinks fit to be called to it.

Col. *Sidney.* My Lord, if you will take Scripture by pieces, you will make all the Penmen of the Scripture blaſphemous; you may accuſe *David* of ſaying, There is no God; and accuſe the Evangeliſts of ſaying, Chriſt was a Blaſphemer and a Seducer; and the Apoſtles, That they were drunk.

L. C. J. Look you, Mr. *Sidney*, if there be any Part of it that explains the Senſe of it, you ſhall have it read; indeed we are trifled with a little. 'Tis true, in Scripture 'tis ſaid, there is no God, and you muſt not take that alone, but you muſt ſay, the Fool hath ſaid in his Heart, there is no God. Now here is a thing imputed to you in the Libel; if you can ſay, there is any Part that is in excuſe of it, call for it. As for the Purpoſe, whoever does publiſh, that the King may be put in Chains or depoſed, is a Traytor; but whoſoever ſays, that none but Traytors would put the King in Chains, or depoſe him, is an honeſt Man; therefore apply *ad idem*, but don't let us make Excurſions.

Col. *Sidney.* If they will produce the whole, my Lord, then I can ſee whether one Part contradicts another.

L. C. J. Well, if you have any Witneſſes call them.

Col. *Sidney.* The Earl of *Angleſey.*

L. C. J. Ay, in God's Name, ſtay till to Morrow in Things that are pertinent.

Col. *Sidney.* I deſire to know of my Lord *Angleſey*, what my Lord *Howard* ſaid to him concerning the Plot that was broken out.

Lord *Angleſey.* Concerning this Plot you are now queſtioned for?

Col. *Sidney.* The Plot for which my Lord *Ruſſel* and I was in Priſon.

Lord *Angleſey.* The Queſtion I am asked, is, What my Lord *Howard* ſaid before the Tryal of my Lord *Ruſſel*, concerning the Plot; I ſuppoſe, this goes as a Branch of that he was accuſed for. I was then in the Countrey, when the Buſineſs was on foot, and uſed to come to Town a Day or two in the Week, living near in *Hertfordſhire*, and I underſtanding the Affliction my Lord of *Bedford* was in, I went to give my Lord a Viſit, we having been Acquaintance of above fifty Years ſtanding, and bred together in *Maudlin* Colledge in *Oxford*. When I came to my Lord of *Bedford*, and had adminiſtred that Comfort that was fit for one Chriſtian to give another in that Diſtreſs, I was ready to leave him, and my Lord *Howard* came in. It was upon the *Friday* before my Lord *Howard* was taken, he was taken (as I take it) upon *Sunday* or *Munday*, my Lord *Howard* fell into the ſame Chriſtian Office that I had been juſt diſcharging, to compaſſionate my Lord's Affliction, to uſe Arguments to comfort and ſupport him under it, and told him, he was not to be troubled, for he had a diſcreet, a wiſe, and a vertuous Son, and he could not be in any ſuch Plot (I think that was the Word he uſed at firſt, though he gave another name to it afterward) and his Lordſhip might therefore well expect a good Iſſue of that Buſineſs, and he might believe his Son ſecure, for he believed he was neither guilty, nor ſo much as to be ſuſpected. My Lord proceeded further, and did ſay, that he knew of no ſuch barbarous Deſign (I think he called it ſo in the ſecond Place) and could not charge my Lord *Ruſſel* with it, nor any body elſe. This was the effect of what my Lord *Howard* ſaid at that Time, and I have nothing to ſay of my own Knowledge more than this; but to obſerve that I was preſent when the Jury did put my Lord *Howard* particularly to it; what have you to ſay to what my Lord *Angleſey* teſtifies againſt you? My Lord, I think, did in three ſeveral Places give a ſhort Account of himſelf, and ſaid it was very true, and gave them ſome further account why he ſaid it, and ſaid, he ſhould be very glad it might have been advantageous to my Lord *Ruſſel.*

Col. *Sidney.* My Lord of *Clare*, I deſire to know of my Lord of *Clare*, what my Lord *Howard* ſaid concerning this Plot and me.

Lord *Clare.* My Lord, A little after Colonel *Sidney* was taken, ſpeaking of the Times, he ſaid, That if ever he was queſtion'd again, he would never plead, the quickeſt diſpatch was the beſt, he was ſure they would have his Life, though he was never ſo innocent, and diſcourſing of the late Primate of *Armagh*'s Prophecy; for my Part, ſays he, I think the Perſecution is begun, and I believe it will be very ſharp, but I hope it will be ſhort, and I ſaid, I hoped ſo too.

Mr. *At. Gen.* What anſwer did your Lordſhip give to it?

Lord *Clare.* I have told you what I know, my Lord is too full of Diſcourſe for me to anſwer all he ſays; but for Colonel *Sidney*, he did with great Aſſeverations aſſert, that he was as innocent as any Man breathing, and uſed great Encomiums in his Praiſe, and then he ſeemed to bemoan his Misfortune, which I thought real; for never was any Man more ingaged to another, than he was to Colonel *Sidney*, I believe. Then I told, they talked of Papers that were found, I am ſure, ſays he, they can make nothing of any Papers of his.

Mr. *At. Gen.* When was this?

Lord *Clare.* This was at my Houſe the beginning of *July.*

Mr. *At. Gen.* How long before my Lord *Howard* was taken?

Lord *Clare.* About a Week before.

Mr. *At. Gen.* I would ask you, my Lord, upon your Honour, would not any Man have ſaid as much, that had been in the Plot?

Lord *Clare.* I can't tell, I know of no Plot.

Col. *Sidney.* Mr. *Philip Howard.*

Mr. *Juſt. Withins.* What do you ask him?

Col. *Sidney.* What you heard my Lord *Howard* ſay concerning this pretended Plot, or my being in it?

Mr. *Phil. Howard.* My Lord, when the Plot firſt brake out, I uſed to meet my Lord *Howard* very often at my Brother's Houſe, and coming one Day from *Whiteball*, he asked me, what News? I told him, my Lord, ſays I, there are abundance of People that have confeſſed the horrid Deſign of murthering the King, and the Duke. How, ſays he, is ſuch a thing poſſible? Says I, 'tis ſo, they have all confeſſed it. Says he, do you know any of their Names? Yes, ſays I, I have heard their Names. What are their

Names? Says he, why; says I, Col. *Rumsey*, and Mr. *West*, and one *Walcot* and others, that are in the Proclamation (I can't tell whether *Walcot* was in Hold) says he, 'tis impossible such a thing can be; says he, there are in all Countries People that wish ill to the Government, and, says he, I believe there are some here; but, says he, for any Man of Honour, Interest or Estate to go about it, is wholly impossible. Says I, my Lord, so it is, and I believe it. Says I, my Lord, do you know any of these People? No, says he, none of them; only one day, says he, passing thro' the *Exchange*, a Man saluted me, with a Blemish upon his Eye, and he embraced me, and wished me all Happiness; says he, I could not call to mind who this Man was; but afterwards, I recollected my self that I met him at my Lord *Shaftsbury*'s, and heard afterwards, and concluded his Name to be —— his at whose House the King was to be assassinated ——

Mr. *At. Gen. Rumbold?*

Mr. *Howard.* Ay, *Rumbold.* My Lord, May I ask if my Lord *Howard* be here?

L. C. J. He is there behind you.

Mr. *Howard.* Then he will hear me. My Lord, says I, what does your Lordship think of this Business? Says he, I am in a Maze; says I, if you will be ruled by me, you have a good opportunity to address to the King, and all the discontented Lords, as they are called; and to shew your Detestation and Abhorrence of this thing; for, says I, this will be a good means to reconcile all things. Says he, you have put one of the best Notions in my Head that ever was put. Says I, You are a very good Pen-man, draw up the first Address (and I believe I was the first that mentioned an Address, you have had many an one since, God send them good Success) Says he, I am sorry my Lord of *Essex* is out of Town, he should present it. But, says I, here is my Lord *Russel*, my Lord of *Bedford*, my Lord of *Clare*, all of you that are disaffected, and so accounted, go about this Business, and make the Nation happy, and King happy. Says he, Will you stay till I come back? Ay, says I, if you will come in any time; but he never came back while I was there. The next Day, I think, my Lord *Russel* was taken, and I came and found him at my Brother's House again (for there he was Day and Night) says he, Cousin, What News? Says I, my Lord *Russel* is sent to the *Tower*. We are all undone then, says he. Pray, says he, go to my Lord Privy-Seal, and see if you can find I am to be taken up; says he, I doubt 'tis a Sham-Plot, if it was a true Plot, I should fear nothing; says I, What do you put me to go to my Lord Privy-Seal for? He is one of the King's Cabinet Council, do you think he will tell me? I won't go; but, says I, if you are not guilty, why would you have me go to inquire? Why, says he, because I fear 'tis not a true Plot, but a Plot made upon us, and therefore, says he, there is no Man free. My Lord, I can say no more as to that time, (and there is no Man that sits here, that wishes the King better than I do.) The next thing I come to, is this, I came the third Day, and he was mighty sad and melancholy, that was when Col. *Sidney* was taken; says I, Why are you melancholy, because Col. *Sidney* is taken? Says I, Col. *Sidney* was a Man talked of before, why were you not troubled for my Lord *Russel*, that is of your Blood? Says he, I have that particular Obligation from Col. *Sidney*, that no one Man had from another. I have one thing to say farther, I pray I may be rightly understood in what I have said.

L. C. J. What, you would have us undertake for all the People that hear you? I think you have spoken very materially, and I will observe it by and by to the Jury.

Col. *Sidney.* Pray call Dr. *Burnet.*

Mr. *Just Walcot.* What do you ask Dr. *Burnet?*

Col. *Sidney.* I have only to ask Dr. *Burnet*, whether after the News of this pretended Plot, my Lord *Howard* came to him? And what he said to him?

Dr. *Burnet.* My Lord, the Day after this Plot brake out, my Lord *Howard* came to see me, and upon some Discourse of the Plot, with Hands and Eyes lifted up to Heaven, he protested he knew nothing of any Plot, and believed nothing of it, and said, that he looked upon it as a ridiculous thing.

My Lord Paget *was sent for at the Prisoner's Request, being in the Hall.*

Col. *Sidney.* My Lord, I desire *Joseph Ducas* may be called, (*who appeared, being a Frenchman.*)

Col. *Sidney.* I desire to know, whether he was not in my House when my Lord *Howard* came thither, a little after I was made a Prisoner, and what he said upon it?

Ducas. Yes, my Lord, my Lord *Howard* came the day after the Colonel *Sidney* was taken, and he asked me, where was the Colonel *Sidney*? And I said, he was taken by an Order of the King; and he said, oh Lord! what is that for? I said, They have taken Papers; he said, Are some Papers left? Yes. Have they taken something more? No, well you must take all the things out of the House, and carry them to some you can trust: I dare trust no body, says he; I will lend my Coach and Coach man I said, if the Colonel *Sidney* will save his Goods; he save them, if not, 'tis no matter. A little after the Lord *Howard* came in the House of Col. *Sidney* about eleven a Clock at Night. When he was in, I told him, What is this? They talk of a Plot to kill the King and the Duke, and I told him, they spake of one general Insurrection; and I told him more, that I understood that Col. *Sidney* was sent into *Scotland*: When my Lord *Howard* understood that, he said, God knows, I know nothing of this, and I am sure if the Colonel *Sidney* was concerned in the matter, he would tell me something, but I know nothing. Well, my Lord, I told him, I believe you are not safe in this House, there is more Danger here than in another place. Says he, I have been a Prisoner, and I had rather do any thing in the World than be a Prisoner again.

Then my Lord Paget *came into the Court.*

Col. *Sidney.* Pray, my Lord, be pleased to tell the Court, if my Lord *Howard* has said any thing to you concerning this late pretended Plot, or my being any Party in it.

Lord *Paget.* My Lord, I was *subpœna'd* to come hither, and did not know upon what account, I am obliged to say, my Lord *Howard*

was

was with me presently after the breaking out of this Plot, and before his appearing in that Part which he now acts, he came to me; and I told him, That I was glad to see him abroad, and that he was not concerned in this Disorder. He said, he had Joy from several concerning it, and he took it as an Injury to him, for that it looked as if he were Guilty. He said, he knew nothing of himself, nor any body else. And tho' he was free in Discourse, and free to go into any Company indifferently; yet he said, he had not seen any body that could say any thing of him, or give him occasion to say any thing of any body else.

Col. *Sidney.* Mr. *Edward Howard.*

Mr. *Ed. Howard.* Mr. *Sidney,* What have you to say to me?

Col. *Sidney.* My Lord, I desire you would ask Mr. *Ed. Howard* the same thing, what Discourse he had with my Lord *Howard* about this Plot?

L. C. J. Mr. *Howard,* Mr. *Sidney* desires you to tell what Discourse you had with my Lord *Howard* about this Plot.

Mr. *Ed. Howard.* My Lord, I have been for some time very intimate with my Lord, not only upon the account of our Alliance, but upon a strict Intimacy and Correspondence of Friendship, and I think I was as much his as he could expect from that Alliance. I did move him during this time, to serve the King upon the most honourable account I could, but that proved ineffectual: I pass that, and come to the Business here. Assoon as the Plot brake out, my Lord having a great Intimacy with me, expressed a great Detestation and Surprizing in himself to hear of it, wherein my Lord *Howard* assured me under very great Asseverations, that he could neither accuse himself, nor no Man living. He told me moreover, That there were certain Persons of Quality, whom he was very much concerned for, that they should be so much reflected upon or troubled, and he condoled very much their Condition both before and after they were taken. My Lord, I believe in my Conscience, he did this without any Mental Reservation, or Equivocation, for he had no reason to do it with me. I add moreover, if I have any sense of my Lord's Disposition, I think if he had known any such thing, he would not have stood his being taken, or made his Application to the King in this manner, I am afraid not so suitable to his Quality.

L. C. J. No Reflections upon any body.

Mr. *Howard.* My Lord, I reflect upon no body, I understand where I am, and have a Respect for the Place; but since your Lordship has given me this occasion, I must needs say, That that Reproof that was accidentally given me at the Tryal of my Lord *Russel,* by reason of a weak Memory, made me omit some Particulars I will speak now, which are these, and I think they are material: My Lord, upon the Discourse of this Plot, did further assure me, that it was certainly a Sham, even to his Knowledge; how, my Lord, says I, do you mean a Sham? Why, says he, such an one, Cousin, as is too black for any Minister of publick Employment to have devised, but, says he, it was forged by People in the dark, such as Jesuits and Papists, and, says he, this is my Conscience; says I, my Lord, if you are sure of this thing, then pray, my Lord, do that honourable thing that becomes your Quality, that is, give the King satisfaction as becomes you; pray make an Address under your Hand to the King, whereby you express your Detestation and Abhorrence of this thing; says he, I thank you for your Counsel; to what Minister, says he, shall I apply my self? I pitched upon my Lord *Hallifax,* and I told him of my Lord's Desire, and I remember my Lord *Howard* named the Duke of *Monmouth,* my Lord of *Bedford,* the Earl of *Clare,* and he said he was sure they would do it; that he was sure of their Innocence, and would be glad of the Occasion: And I went to my Lord *Hallifax,* and told him that my Lord was willing to set it under his Hand, his Detestation of this Plot, and that there was no such thing to his Knowledge. My Lord *Hallifax* very worthily received me; says he, I will introduce it; but my Lord *Russel* being taken, this was laid aside, and my Lord gave this Reason. For, says he, there will be so many People taken, they will be hinder'd. I must needs add from my Conscience, and from my Heart before God and Man, that if my Lord had spoken before the King, sitting upon his Throne, abating for the Solemnity of the Presence I could not have more believed him, from that Assurance he had in me. And I am sure from what I have said, if I had the Honour to be of this Gentleman's Jury I would not believe him.

L. C. J. That must not be suffered.

Mr. *At. Gen.* You ought to be bound to your good Behaviour for that.

L. C. J. The Jury are bound by their Oaths to go according to their Evidence, they are not to go by Men's Conjectures.

Mr. *Howard.* May I go, my Lord?

Mr. *At. Gen.* My Lord *Howard* desires he may stay, we shall make use of him.

Col. *Sidney.* My Lord, I spake of a Mortgage that I had of my Lord *Howard,* I don't know whether it is needful to be proved; but it is so.

Lord *Howard.* I confess it.

Col. *Sidney.* Then, my Lord, here is the other Point, He is under the Fear, that he dare not but say what he thinks will conduce towards the gaining his Pardon; and that he hath expressed, that he could not have his Pardon, but he must first do this drudgery of Swearing. I need not say, that his Son should say, That he was sorry his Father could not get his Pardon unless he did swear against some others.

Col. *Sidney.* Call Mr. *Blake.* (*Who appeared.*) My Lord, I desire he may be asked, whether my Lord *Howard* did not tell him that he could not get his Pardon yet, and he could ascribe it to nothing, but that the drudgery of Swearing must be over first.

Then my Lord Chief Justice asked the Question.

Mr. *Blake.* My Lord, I am very sorry I should be called to give a publick Account of a private Conversation, how it comes about I don't know. My Lord sent for me about six Weeks ago, to come and see him. I went, and we talked of News, I told him I heard no body had their Pardon, but he that first discovered the Plot; he told me, no; but he had his Warrant for it. And, says he, I have their Word and Honour for it; but, says he, I will do nothing

thing in it till I have further Order, and, ſays he, I hear nothing of it, and I can aſcribe it to no other Reaſon, but I muſt not have my Pardon till the drudgery of Swearing is over. Theſe Words my Lord ſaid, I believe my Lord won't deny it.

Then Col. Sidney *called Mr.* Hunt *and* Burroughs, *but they did not appear.*

Col. *Sidney.* 'Tis a hard Caſe they don't appear, One of them was to prove that my Lord *Howard* ſaid he could not have his Pardon till he had done ſome other Jobs.

L. C. J. I can't help it, If you had come for Aſſiſtance from the Court, I would willingly have done what I could.

Then Col. Sidney *mentioned the Duke of* Buckingham, *but he was informed he was not ſubpœna'd.*

Col. *Sidney.* Call *Grace Tracy* and *Elizabeth Penwick.* (*Who appeared.*) I ask you only, what my Lord *Howard* ſaid to you at my Houſe concerning the Plot, and my being in it?

Tracy. Sir, He ſaid, that he knew nothing of a Plot he proteſted, and he was ſure Col. *Sidney* knew nothing of it. And he ſaid, If you knew any thing of it, he muſt needs know of it, for he knew as much of your Concerns as any one in the World.

Col. *Sidney.* Did he take God to Witneſs upon it?

Tracy. Yes.

Col. *Sidney.* Did he deſire my Plate at my Houſe?

Tracy. I can't tell that, he ſaid the Goods might be ſent to his Houſe.

Col. *Sidney. Penwick,* What did my Lord *Howard* ſay in your Hearing concerning the pretended Plot, or my Plate carrying away?

Penwick. When he came, he asked for your Honour; and they ſaid your Honour was taken away by a Man to the Tower for the Plot, and then he took God to Witneſs he knew nothing of it, and believed your Honour did not neither. He ſaid, he was in the Tower two Years ago, and your Honour, he believed, ſaved his Life.

Col. *Sidney.* Did he deſire the Plate?

Penwick. Yes, and ſaid it ſhould be ſent to his Houſe to be ſecured. He ſaid it was only Malice.

Mr. Wharton *ſtood up.*

Mr. *Wharton.* 'Tis only this I have to ſay, That if your Lordſhip pleaſes to ſhew me any of theſe Sheets of Paper, I will undertake to imitate them in a little time that you ſhan't know which is which. 'Tis the eaſieſt Hand that ever I ſaw in my Life.

Mr. *At. Gen.* You did not write theſe, Mr. *Wharton?*

Mr. *Wharton.* No; but I will do this in a very little time, if you pleaſe.

L. C. J. Have you any more Witneſſes?

Col. *Sidney.* No, my Lord.

L. C. J. Then apply your ſelf to the Jury.

Col. *Sidney.* Then this is that I have to ſay. Here is a huge Complication of Crimes laid to my Charge: I did not know at firſt under what Statute they were, now I find 'tis the Statute of 25 of *Edw.* 3. This Statute hath two Branches; one relating to War, the other to the Perſon of the King. That relating to the Perſon of the King, makes the Conſpiring, Imagining, and Compaſſing his Death, criminal. That concerning War is not, unleſs it be Levied: Now, my Lord, I cannot imagine to which of theſe they refer my Crime, and I did deſire your Lordſhip to explain it. For to ſay that a Man did meet to Conſpire the King's Death, and he that gives you the account of the Buſineſs does not ſpeak one Word of it, ſeems extravagant; for Conſpiracies have ever their Denomination from that Point to which they tend; as a Conſpiracy to make falſe Coin infers Inſtruments and the like. A Conſpiracy to take away a Woman, to kill, or rob, are all directed to that end. So Conſpiring to kill the King, muſt immediately aim at killing the King. The King hath two Capacities, Natural and Politick, that which is the Politick can't be within the Statute, in that Senſe he never dies, and 'tis abſurd to ſay it ſhould be a Fault to kill the King that can't die: So then it muſt be the Natural Senſe it muſt be underſtood in, which muſt be done by Sword, by Piſtol, or any other way. Now if there be not one Word of this, then that is utterly at an end, tho' the Witneſs had been good. The next point is concerning Levying of War. Levying of War is made Treaſon there, ſo it be proved by Overt Act, but an Overt Act of that never was, or can be pretended here. If the War be not Levied, 'tis not within the Act; for Conſpiring to Levy War is not in the Act. My Lord, There is no Man that thinks that I would kill the King that knows me, I am not a Man to have ſuch a Deſign, perhaps I may ſay I have ſaved his Life once. So that it muſt be by Implication, that is, it is firſt imagined, that I intended to raiſe a War, and then 'tis imagined that War ſhould tend to the Deſtruction of the King. Now I know that may follow, but that is not Natural or Neceſſary, and being not Natural or Neceſſary, it can't be ſo underſtood by the Law. That it is not is plain, for many Wars have been made, and the Death of the King has not followed. *David* made War upon *Saul,* yet no body will ſay he ſought his Death, he had him under his Power and did not kill him, *David* made War upon *Iſhboſheth,* yet did not deſign his Death; and ſo in *England* and *France* Kings have been taken Priſoners, but they did not kill them. King *Stephen* was taken Priſoner, but they did not kill him. So that 'tis two diſtinct things, to make War and to endeavour to kill the King. Now as there is no manner of pretence that I ſhould endeavour to kill the King directly, ſo it can't be by Inference, becauſe 'tis Treaſon under another ſpecies. I confeſs I am not fit to argue theſe Points, I think I ought to have Counſel, but if you won't allow it me, I can't help it; but theſe things are impoſſible to be jumbled up together. Now I ſay this, If I am not under the firſt Branch, if not directly, I can't be by Implication; tho' I did make War, I can't be ſaid to Conſpire the Death of the King, becauſe 'tis a diſtinct ſpecies of Treaſon, and my Lord *Coke* ſays, 'Tis the Overthrow of all Juſtice to confound *Membra dividentia*; now if the making of War can't be underſtood to be a Conſpiring

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the Death of the King, then I am not guilty of this Indictment, but here, my Lord, is neither Conſpiring the Death of the King, nor making War, nor Conſpiring to make War. Beſides, I ſay, 'tis not the beſt Man's Evidence here would be good in this Caſe, becauſe the Law requires two. The next thing is the Buſineſs of *Aaron Smith*, which my Lord tells ſo imperfectly, and ſo meerly conjectural, that there is nothing in it, but his *Rhetorick* in ſetting it out. He tells you of a Letter ſent with him, but he does not tell you by whom writ, what was in it, or whether it was delivered or no: So that I think we may lay that aſide as the other, as things nothing in them at all. Then ſays Mr. Attorney, Theſe *Scotch* Gentlemen are come to Town, I profeſs I never heard the Names of one of them till he named them to me in the Tower. I have not ſent my ſelf, nor writ a Letter into *Scotland* never ſince the Year 59, nor do I know one Man in *Scotland* to whom I can write, or from whom I ever received one. I returned into *England* in the Year 77. and ſince that time have not writ nor received a Letter from *Scotland*. Then ſome Gentlemen came hither, What is that to me? I never ſaw one of the *Campbells* in my Life, nor *Monro*; if any one can prove I have had Communication with them, I will be glad to ſuffer. Then here are Papers; If any thing is to be made of them you muſt produce the whole, for 'tis impoſſible to make any thing of a part of them. You ask me, What other Paſſage I would have read, I don't know a Paſſage in them, I can't tell whether it be good or bad. But if there are any Papers found ('tis a great doubt whether they were found in my Study or no, or whether they be not counterfeit; but tho' that be admitted that they were found in my Houſe) the Hand is ſuch, that it ſhews they have been writ very many Years. Then that which ſeems to be an account of the Sections and Chapters, that is but a ſcrap, and what if any body had, my Lord, either in my own Hand or another's, found Papers that are not well juſtifiable, Is this Treaſon? Does this imagine the Death of the King? Does this reach the Life of the King? If any Man can can ſay I ever printed a Sheet in my Life, I will ſubmit to any Puniſhment. Many others, my Lord, they write, and they write what comes into their Heads. I believe there is a Brother of mine here has forty Quires of Paper written by my Father, and never one Sheet of them was publiſhed, but he writ his own Mind to ſee what he could think of it another time, and blot it out again, may be. And I my ſelf, I believe, have burned more Papers of my own writing than a Horſe can carry. So that for theſe Papers I can't anſwer for them. There is nothing in it, and what Concatenation can this have with the other Deſign that is in it ſelf nothing, with my Lord's Select Council ſelected by no body to purſue the Deſign of my Lord *Shaftsbury*? And this Council that he pretends to be ſet up for ſo great a Buſineſs, was to be adjuſted with ſo much Fineneſs ſo as to bring things together, What was this Fineneſs to do? (taking it for granted, which I don't) This was nothing (if he was a credible Witneſs) but a few Men talking at large of what might be or not be, what was like to fall out without any manner of Intention or doing any thing. They did not ſo much as inquire. Whether there were Men in the Country, Arms, or Ammunition. A War to be made by five or ſix Men, not knowing one another, not truſting one another. What ſaid Dr. *Coxe* in his Evidence at my Lord *Ruſſel*'s Tryal, of my Lord *Ruſſel*'s truſting my Lord *Howard*? He might ſay the ſame of ſome others. So that, my Lord, I ſay, theſe Papers have no manner of Coherence, no Dependance upon any ſuch Deſign. You muſt go upon Conjecture upon Conjecture; and after all, you find nothing but only Papers, never perfect, only ſcraps, written many Years ago, and that could not be calculated for the raiſing of the People. Now, pray what Imagination can be more vain than that? And what Man can be ſafe, if the King's Counſel may make ſuch (whimſical I won't ſay, but) groundleſs Conſtructions? Mr. Attorney ſays, the Plot was broken to the *Scots* (God knows we were neither broken nor joined) and that the *Campbels* came to Town about that time I was taken, and in the mean time my Lord *Howard*, the great Contriver of all this Plot, who was moſt active; and adviſed the Buſineſs that conſiſted of ſo much Fineneſs; he goes there and agrees of nothing; and then goes into *Eſſex* upon great important Buſineſs, greater than the War of *England* and *Scotland*, to what purpoſe? To look after a little pimping Mannour, and what then? Why then it muſt be laid aſide, and he muſt be idle five Weeks at the Bath, and there is no inquiring after it. Now, I deſire your Lordſhip to conſider, whether there be a poſſibility for any Men, that have the Senſe of Porters and Grooms, to do ſuch things as he would put upon us. I would only ſay this, If Mr. Attorney be in the right, there was a Combination with the *Scots*, and then this Paper was writ; for thoſe that ſay I did it, ſay I was doing of it then, and by the Notes, there is work enough for four or five Years, to make out what is mentioned in thoſe ſcraps of Paper, and this muſt be to kill the King. And I ſay this, my Lord, that, under favour, for all Conſtructive Treaſons you are to make none, but to go according to plain Proof, and that theſe Conſtructive Treaſons belong only to Parliament, and by the immediate Proviſo in that Act. Now, my Lord, I leave it to your Lordſhip, to ſee whether there is in this any thing that you can ſay is an Overt Act of Treaſon mentioned in 25 *Edw.* 3. If it be not plainly under one of the two Branches, That I have endeavoured to Kill the King, or Levied War, then 'tis matter of Conſtruction, and that belongs to no Court but the Parliament. Then, my Lord, this hath been adjudged already in *Throgmorton*'s Caſe. There are twenty Judgments of Parliament, the Act of 13 *Eliz.* that ſays —— I ſhould have ſomebody to ſpeak for me, my Lord.

L. C. J. We are of another Opinion.

Mr. *Juſt. Withins.* If you acknowledge the Matter of Fact, you ſay well.

Col. *Sidney.* I ſay there are ſeveral Judgments of Parliament, that do ſhew whatever is Conſtructive Treaſon does not belong to any private Court, that of 1 *Mary*, 1 *Edw.* 6. 1 *Eliz.* 5 *Eliz.* 18. another 13 *Car.* ſhews this. Now, my Lord, I ſay that the Buſineſs concerning the Papers, 'tis only a Similitude of Hands, which is juſt nothing.

nothing. In my Lady *Carr*'s Caſe, it was reſolved to extend to no Criminal Cauſe, if not to any, then not to the greateſt, the moſt Capital. So that I have only this to ſay, That I think 'tis impoſſible for the Jury to find this Matter, for the firſt Point you proved by my Lord *Howard*, that I think is no body, and the laſt concerning the Papers, is only Imagination from the ſimilitude of Hands. If I had publiſhed it, I muſt have anſwered for it, or if the Thing had been whole and mine, I muſt have anſwered for it; but for theſe Scraps never ſhewed any body, that I think does not at all concern me. And I ſay, if the Jury ſhould find it (which is impoſſible they can) I deſire to have the Law reſerved unto me.

Mr. *Sol. Gen.* My Lord, and you Gentlemen of the Jury. The Evidence hath been long; but I will endeavour to repeat it as faithfully as I can. The Crime the Priſoner ſtands accuſed for, is compaſſing and imagining the Death of the King. That which we go about to prove That Compaſſing and Imagining by, is by his meeting and conſulting how to raiſe Arms againſt the King, and by plain matter in writing under his own Hand, where he does affirm, it is lawful to take away and deſtroy the King. Gentlemen, I will begin with the firſt Part of it, the Meeting and Conſultation to raiſe Arms againſt the King. The Priſoner, Gentlemen, hath endeavoured to avoid the whole Force of this Evidence, by ſaying, that this in Point of Law can't affect him, if it were all proved; for this does not amount to a Proof of his compaſſing and imagining the Death of the King, and he is very long in interpreting the Act of Parliament to you of 25 *Ed.* 3. and dividing of it into ſeveral Members or Branches of Treaſon, and does inſiſt upon it, that though this ſhould be an Offence within one Branch of that Statute, yet that is not a Proof of the other, which is the Branch he is proceeded upon, that is the firſt Clauſe againſt the compaſſing and imagining the Death of the King. And, ſays he, conſpiring to Levy War, is not ſo much as one Branch of that Statute, but it muſt be War actually levied. This is a Matter he is wholly miſtaken in, in Point of Law. It hath been adjudged over and over again, That an Act which is in one Branch of that Statute, may be an Overt Act to prove a Man Guilty of another Branch of it. A levying War is an Overt Act to prove a Man Guilty of Conſpiring the Death of the King. And this was adjudged in the Caſe of Sir *Henry Vane*, ſo is meeting and conſulting to raiſe Arms. And Reaſon does plainly ſpeak it to be ſo; for they that conſpire to raiſe War againſt the King, can't be preſumed to ſtop any where; till they have Dethroned or Murdered the King. Gentlemen, I won't be long in citing Authorities, it hath been ſetled lately by all the Judges of *England*, in the Caſe of my Lord *Ruſſel*, who hath ſuffered for this Conſpiracy. Therefore that Point of Law will be very plain againſt the Priſoner. He hath mentioned ſome other Things, as that there muſt be two Witneſſes to every particular Fact, and one Witneſs to one Fact, and another to another, is not ſufficient; it hath been very often objected, and as often over-ruled: It was over-ruled Solemnly in the Caſe of my Lord *Stafford*. Therefore if we have one Witneſs to one Overt Act, and another to another, they will be two Witneſſes in Law to convict this Priſoner. In the firſt part of our Evidence, we give you an Account of the general Deſign of an Inſurrection that was to have been, that this was contrived firſt, when my Lord *Shaftsbury* was in *England*, that after my Lord *Shaftsbury* was gone, the Buſineſs did not fall; but they thought fit to revive it again, and that they might carry it on the more ſteadily, they did contrive a Council among themſelves of Six, whereof the Priſoner at the Bar was one. They were the Duke of *Monmouth*, my Lord of *Eſſex*, my Lord *Howard*, my Lord *Ruſſel*, the Priſoner at the Bar, and Mr. *Hambden*. This Council they contrived to manage this Affair, and to carry on that Deſign, that ſeemed to fall by the Death of my Lord of *Shaftsbury*, and they met; this we give you an Account of, firſt by Witneſſes, that gave you an account in general of it. And though they were not privy to it, yet they heard of this Council, and that Colonel *Sidney* was to be one of this Council. This, Gentlemen, if it had ſtood alone by it ſelf, had been nothing to affect the Priſoner at all. But this will ſhew you, that it was diſcours'd among them that were in this Conſpiracy. Then my Lord *Howard* gives you an Account, that firſt the Duke of *Monmouth*, and he, and Colonel *Sidney* met, and it was agreed to be neceſſary to have a Council, that ſhould conſiſt of ſix or ſeven, and they were to carry it on. That the Duke of *Monmouth* undertook to diſpoſe my Lord *Ruſſel* to it, and Colonel *Sidney* to diſpoſe the Earl of *Eſſex*, and Mr. *Hambden*; that theſe Gentlemen did meet accordingly, and the Subſtance of their Diſcourſe was, taking notice how the Deſign had fallen upon the Death of my Lord *Shaftsbury*, that it was fit to carry it on before Men's Inclinations were cool, for they found they were ready to it, and had great reaſon to believe it, becauſe this being a Buſineſs communicated to ſo many, yet for all that it was kept very ſecret, and no body had made any mention of it, which they looked upon as a certain Argument that Men were ready to ingage in it. This incouraged them to go on in this Conſpiracy. Then when the Six met at Mr. *Hambden*'s Houſe, they debated concerning the Place of Riſing, and the Time, the Time they conceived muſt be ſuddenly, before Men's Minds were cool, for now they thought they were ready and very much diſpoſed to it, and for Place, they had in Debate, whether they ſhould riſe firſt in the Town, or in the Countrey, or both together. And for the Perſons, they thought it abſolutely neceſſary for them to have the United Counſels of *Scotland* to join with them, and therefore they did refer this Matter to be better conſidered of another time, and they met afterwards at my Lord *Ruſſel*'s Houſe in *February*, and there they had Diſcourſe to the ſame purpoſe. But there they began to conſider with themſelves, being they were to deſtroy this Government, what they ſhould ſet up in the room of it; to what purpoſe they ingaged. For they did very wiſely conſider, if this be only to ſerve a Turn, and to make one Man great, this will be a great hinderance in their Affair, therefore they thought it was neceſſary to ingage upon a publick account, and to reſolve all into the Authority of a Parliament, which ſurely they either

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ther thought to force the King to call, or otherwiſe that the People might call a Parliament, if the King refuſed, and ſo they to chooſe their own Heads. But ſtill they were upon this Point, That it was neceſſary for their Friends in *Scotland* to have their Councils united with them, and in order to that, it was neceſſary to contrive ſome way to ſend a Meſſenger into *Scotland*, to bring ſome Men here to treat and conſult about it, and Colonel *Sidney* is the Man that does engage to ſend this Meſſenger, and he had a Man very fit for his Turn, that is, *Aron Smith*, whom he could confide in, and him he undertook to ſend into *Scotland*. This Meſſenger was to fetch my Lord *Melvin*, the two *Campbell*'s, and Sir *John Cockram*; Colonel *Sidney* as he ingaged to do this, ſo afterwards he did ſhew to my Lord *Howard* Money, which he affirmed was for that Buſineſs; he ſays it was a Sum of about ſixty Guineas, and he believes he gave it him, for that Colonel *Sidney* told him, *Aaron Smith* was gone into *Scotland*, That the Pretence was not bare-faced to invite them over, to conſult of a Rebellion, but to conſult about the Buſineſs of *Carolina*, being a Plantation for the perſecuted Brethren, as they pretended in *Scotland*. Gentlemen, theſe *Scotchmen* that were thus ſent for over, they came accordingly, that is, the two *Campbells*, and Sir *John Cockram*, and the Diſcourſe with Sir *Andrew Foſter* was according to this Cant that was agreed on beforehand, concerning a Plantation in *Carolina*. This was that that was pretended for their coming hither; but the true Errand was, the Buſineſs of the Inſurrection intended. Gentlemen, that they came upon ſuch a Deſign, is evident from the Circumſtances; they came about the Time the Buſineſs brake out, and in that time ſuſpiciouſly changing their Lodging, they were taken making their eſcape, and this at a time before it was probable to be known Abroad that theſe Men were named as part of the Conſpirators. Theſe Things do very much verify the Evidence my Lord *Howard* hath given, and there is nothing has been ſaid, does at all invalidate it. The ſending of *Aaron Smith* into *Scotland*, and his going, and the coming of theſe Men, and their endeavouring to make their eſcape, are mighty concurrent Evidences with the whole Evidence my Lord *Howard* has given. Now, What Objections are made againſt this Evidence? Truly none at all. Here are Perſons of great Quality have given their Teſtimony, and they do not impeach my Lord *Howard* in the leaſt; but ſome do extremely confirm the Truth of my Lord *Howard*. My Lord *Angleſey* gives you an Account of a Diſcourſe at my Lord of *Bedford*'s, That my Lord *Howard* came in, and that my Lord *Howard* ſhould there comfort my Lord of *Bedford*, and enlarge in the Commendations of his Son, and ſay he was confident he knew nothing of the Deſign, and he muſt be innocent. Gentlemen, This is the nature of the moſt part of the Evidence. My Lord of *Clare*, his Evidence is much the like, that is, his denying that he knew of any Plot. Now here is my Lord *Howard* under a Guilt of High-Treaſon; for he was one of thoſe Conſpirators not yet diſcovered, nor no Evidence of any Diſcourſe leading to any thing that ſhould give Occaſion to him to proteſt his Innocency: And, ſays he, I know nothing of the Plot. You would have wondered if he ſhould have been talking in all Places his Knowledge, and declaring himſelf: His denying of it under the Guilt, when he was not accuſed, is nothing to his Confeſſion when he comes to be apprehended and taken for it. Here Mr. *Philip Howard* ſays, he had ſeveral Diſcourſes with him about this Buſineſs, upon the breaking out of the Plot, and that he adviſed him to make an Addreſs, and that this was a Thing that would be very acceptable, and very much for their Vindication; and my Lord *Howard* (he ſays) thanked him for his very good Advice, and ſaid, he would follow it: And preſently after when my Lord *Ruſſel* was apprehended, Mr. *Howard* tells him the News, that my Lord *Ruſſel* was apprehended; this was ſudden to him. And what ſays he? We are all undone. When my Lord *Ruſſel* that was one of this Council, that was a ſecret Council, and could not be traced but by ſome of themſelves, when He is apprehended, then he falls out into this Expreſſion, *We are all undone.* This is an Argument my Lord *Howard* had a Guilt upon him. For, why were they all undone, that my Lord *Ruſſel* was apprehended, any more than upon the apprehending the reſt? Yes, becauſe my Lord was one of the Six, and now 'twas come to the knowing of that Part of the Conſpiracy. It was traced to the Council of Six, which in all likelyhood would break the Neck of the Deſign. Now though he put it off afterwards, ſaying, *I believe it is a Sham Plot*, yet this was but a trivial Put-off. And then, when Colonel *Sidney* is taken, the ſame Witneſs Mr. *Howard* tells you, my Lord was very ſad and melancholy; for then he had greater reaſon to lie under an apprehenſion of being detected. Therefore, Gentlemen, this will rather confirm the Truth of the Evidence, than any way impeach it. Then (for I would repeat it all, though I think it had no great Weight in it) Doctor *Burnet* ſays, That after the Plot my Lord *Howard* pretended he knew of no Plot. This is no more than was teſtified by the other Lords before; and all it imports, is, that my Lord did not diſcover himſelf to Doctor *Burnet*. But I would fain know, if my Lord had told Doctor *Burnet*, had it not argued that he had great Confidence in him, that he thought him a Man fit to be intruſted with ſuch a Secret? And unleſs the Doctor deſires to be thought ſuch a Man, himſelf muſt own, 'tis no Objection, That my Lord *Howard* did not tell him. *Ducas*'s Teſtimony is no more neither, That he proteſted he was innocent, and believed Colonel *Sidney* was innocent; and this was before my Lord *Howard* diſcovered any thing of this Plot. Then Colonel *Sidney* objects, This is by Malice, my Lord *Howard* owes him Money, and ſeeks to pay his Debts by taking away his Life; and in further Proſecution of this Malice, would have ſeized upon his Goods. But the Evidence does not receive ſuch Conſtruction, for my Lord *Howard* only offered Colonel *Sidney* the Civility of his Houſe to protect his Plate and Goods. Now, Gentlemen, there were two other Witneſſes, my Lord *Paget*, and Mr. *Edward Howard*; but they ſay no more than the reſt of them, that he did proteſt his Innocency, and Mr. *Howard* ſays, he adviſed him to make an Addreſs to the King. This, Gentlemen, I repeat, not that it is material, but for no other reaſon, than becauſe Co-

lonel *Sidney* had produced it; and ſo we are to think, he intended to make ſome uſe of it; but I can't ſee any Inference to be drawn from it. There is one Witneſs more, and that is Mr. *Blake*, to the Credit of my Lord *Howard*, who comes here, and ſays, that when he diſcourſed about a Pardon, my Lord ſhould ſay, That he had a Warrant for his Pardon, but that he had not yet paſſed it, and could not yet; and he apprehended the Reaſon was, Becauſe the drudgery of Swearing was not over. But this is but what my Lord *Howard* had conjectured: Firſt, It does not appear, that there is any Promiſe of Pardon at all to my Lord *Howard*, on any Terms impoſed on him. In the next place, Whatever Expectation he has of a Pardon, he can't reaſonably hope for it without making a clear Diſcovery of all he knows: For to ſtifle the Evidence he has given, is not a way to deſerve a Pardon of his Prince. Therefore, Gentlemen, whatever Expreſſions were uſed, tho' he called it the drudgery of Swearing, however unwilling he is to come to it, and tho' he gives it very many hard Names, and might think it very harſh to come and own himſelf to be one of the Conſpirators, it might be irkſome, and very irkſome; yet none of them tell you, That my Lord *Howard* ſhould ſay, that what he had ſaid was not true. Now he has come and given his Evidence, and you have heard all theſe Objections againſt it, and not one of them touch it in the leaſt.

I come in the next place to the other part of the Evidence, The Papers found in Colonel *Sidney*'s Houſe, And in the firſt place he objects, They can't affect him; for, ſays he, there is no Proof they were found in my Houſe, no Proof they were written by me; for Compariſon of Hands, that is nothing; and if they were proved to be mine, 'tis nothing at all to the purpoſe; they are an Anſwer to a Polemical Diſcourſe, wherewith he entertained himſelf privately in his Study. Why, you have obſerved, I know, that Sir *Philip Lloyd* in the firſt place ſwears, that by Warrant from the Secretary he ſearched his Houſe, and he found the Papers lying upon Colonel *Sidney*'s Table in his Study, when he came in there; and there is no ground nor colour for you to ſuſpect otherwiſe than that they were there, and he found them there. For the ſurmiſe of the Priſoner at the Bar, that they might be laid there, 'tis ſo foreign and without ground, that by and by you will think there is nothing at all in it. In the next place, We prove Col. *Sidney*'s Hand, and that by as much Proof as the thing is capable of; ſuch a Proof as in all Caſes hath been allowed; and that is, for Men to come that know and are acquainted with the Hand-writing, and ſwear they know his Hand-writing, and they believe this to be his Hand. You have heard from Mr. *Sheppard*, a Man that uſed to tranſact Buſineſs for him, pay Money for him; and Mr. *Cooke*, and Mr. *Cary*, Men of known Credit in the City of *London*, that have had the like Dealings with Col. *Sidney*, and they ſwear this is his Hand-writing, as they verily believe. So that, Gentlemen, this Proof to you of Colonel *Sidney*'s Hand-writing does verify Sir *Philip Lloyd*, That theſe Papers muſt be found there, if Col. *Sidney* writ them; and then this being found that they were writ by him, the next thing will be, How far this will be an Evidence to prove his Compaſſing and Imagining the Death of the King. Compaſſing and Imagining the Death of the King, is the Act of the Mind, and is Treaſon whilſt it remains ſecret in the Heart, tho' no ſuch Treaſon can be puniſh'd, becauſe there is no way to prove it; but when once there is any Overt Act, that is, any thing that does manifeſt and declare ſuch Intention, then the Law takes hold of it, and puniſhes it as High-Treaſon.

Now after this Evidence, I think no Man will doubt, whether it was in the Heart of the Priſoner at the Bar to deſtroy the King. But firſt he objects, That this is a part of a Book, and unleſs you take the whole, nothing can be made of it: As it is in wreſting of Texts of Scripture, ſays he, you may as well ſay, That *David* ſays there is no God, becauſe *David* hath ſaid, *The fool hath ſaid in his Heart, there is no God.* But, Gentlemen, the Application won't hold; for you ſee a long Diſcourſe hath been read to you, a continued Thread of Argument; 'tis not one Propoſition, but an whole Series of Argument: Theſe are the Poſitions, "That the "King derives all his Power from the People; "That 'tis originally in the People, and that "the meaſure of Subjection muſt be adjudged "by the Parliament; and if the King does fall "from doing his Duty, he muſt expect the Peo-"ple will exact it. And this he has laid down as no way prejudicial to him; for, ſays he, The King may refuſe the Crown, if he does not like it upon theſe Terms. But, ſays he, if he does accept it, he muſt expect the Performance will be exacted, or Revenge taken by thoſe he hath betray'd. Then next, he ſets up an Objection, and then argues againſt it: Ay, but ſhall the People be Judge in their own Cauſe? And thus he anſwers it, It muſt be ſo; for is not the King a Judge in his own Cauſe? How can any Man elſe be Tryed, or Convicted of any Offence, if the King may not be Judge in his own Cauſe; for to a judge by a Man's ſelf, or by his Deputy, is the ſame thing; and ſo a Crime againſt the King can't be puniſhed? And then he takes notice of it as a very abſurd Poſition, "That the King ſhall judge in "his own Cauſe, and not the People. That would be to ſay, The Servant entertained by the Maſter ſhall judge the Maſter, but the Maſter ſhall not judge the Servant. Gentlemen, after this ſort of Argument he comes to this ſettled Poſition, "We may therefore, ſays he, "change, or take away Kings, (without break-"ing any Yoke, or that is made a Yoke;) the "Injury is therefore in impoſing the Yoke, and "there can be none at all in breaking of it. But he goes on in his Book, and that is by way of Anſwer to an Objection, That if there be no Injury, yet there may be Inconvenience, if the headleſs Multitude ſhould ſhake off the Yoke. But, ſays he, I would fain know how the Multitude comes to be headleſs; and there he gives you many Inſtances in Story, and from Foreign Nations he comes home to the *Engliſh*, and tells you how all Rebellions in later Ages have been headed; and tells you the Parliament is the Head, or the Nobility and Gentry that compoſe it; and when the King fails in his Duty, the People may call it. The Multitude therefore is never headleſs, but they either find or

create

create an Head, ſo that here is a plain and avowed Principle of Rebellion Eſtabliſhed upon the ſtrongeſt Reaſon he has to back it. Gentlemen, This, with the other Evidence that has been given, will be ſufficient to prove his Compaſſing the Death of the King. You ſee the Affirmations he makes; when Kings do break their Truſt they may be called to Account by the People. This is the Doctrine he broaches and argues for: He ſays in his Book in another Part, that the Calling and Diſſolving of Parliaments is not in the King's Power. Gentlemen, You all know how many Parliaments the King hath Called and Diſſolved; if it be not in his Power, he hath done that that was not in his Power, and ſo contrary to his Truſt. Gentlemen, At the Entrance into this Conſpiracy, they were under an Apprehenſion that their Liberties were invaded, as you hear in the Evidence from my Lord *Howard*, that they were juſt making the Inſurrection upon that Tumultuous Oppoſition of Electing of Sheriffs in *London*. They enter into a Conſultation to raiſe Arms againſt the King; and it is proved by my Lord *Howard*, that the Priſoner at the Bar was one. Gentlemen, Words ſpoken upon a ſuppoſition will be High-Treaſon, as was held in King *James*'s Time, in the Caſe of *Collins* in *Rol*l's Reports, *The King being Excommunicate may be Depoſed and Murdered*, without affirming he was Excommunicated; and this was enough to convict him of High-Treaſon. Now according to that Caſe, to ſay the King having broken his Truſt may be Depoſed by his People, would be High-Treaſon, but here he does as good as affirm the King had broke his Truſt. When every one ſees the King hath Diſſolved Parliaments; this reduces it to an Affirmation. And tho' this Book be not brought to that Council to be peruſed, and there debated, yet it will be another, and more than two Witneſſes againſt the Priſoner: For I would ask any Man, ſuppoſe a Man was in a Room, and there were two Men, and he talks with both apart, and he comes to one and endeavours to perſwade him that it is lawful to Riſe in Arms againſt the King, if ſo be he break his Truſt; and he ſhould go to another Man, and tell him the King hath broken his Truſt, and we muſt ſeek ſome way to redreſs our ſelves, and perſwade the People to Riſe; theſe two Witneſſes do ſo tack this Treaſon together, that they will be two Witneſſes to prove him Guilty of High-Treaſon. And you have heard one Witneſs prove it poſitively to you, That he conſulted to Riſe in Arms againſt the King, and here is his own Book ſays, it is lawful for a Man to Riſe in Arms againſt the King, if he break his Truſt, and in effect he hath ſaid, the King hath broken his Truſt: Therefore this will be a ſufficient Demonſtration what the Imagination of the Heart of this Man was, that it was nothing but the Deſtruction of the King and the Government, and indeed of all Governments. There can be no ſuch thing as Government if the People ſhall be Judge in the Caſe: For what ſo uncertain as the heady and giddy Multitude? Gentlemen, I think this will be a ſufficient Evidence of his Conſulting the Death of the King. You have here the Priſoner at the Bar that is very deep in it. Indeed ſome Men may by Paſſion be tranſported into ſuch an Offence, and tho' the Offence be never the leſs, whatever the Motives are, yet in ſome it is leſs dangerous, for thoſe that venture upon Paſſion to raiſe Commotions and Rebellion, are not always ſo much upon their Guard, but that they may make ſome falſe Steps to intrap themſelves. But this Gentleman proceeds upon a ſurer Foundation, it is his Reaſon, it is his Principle, it is the Guide of all his Actions, it is that by which he leads and directs the ſteady Courſe of his Life. A Man convinced of theſe Principles, and that walks accordingly, what won't he do to accompliſh his Deſigns? How wary will he be in all his Actions? Still reaſoning with himſelf, which way to bring it moſt ſecurely about. Gentlemen, This is the more dangerous Conſpiracy in this Man, by how much the more it is rooted in him; and how deep it is, you hear, when a Man ſhall write as his Principle, that it is lawful for to Depoſe Kings, they breaking their Truſt, and that the Revolt of the whole Nation cannot be called Rebellion. It will be a very ſad Caſe when People act this according to their Conſciences, and do all this for the Good of the People, as they would have it thought; but this is the Principle of this Man. Gentlemen, We think we have plainly made it out to you, and proved it ſufficiently, that it was the Imagination of his Heart to deſtroy the King, and made ſufficient Proof of High-Treaſon.

Col. *Sidney*. Give me leave, my Lord, to ſay a very few Words. I deſire Mr. Sollicitor would not think it his Duty to take away Men's Lives any how: Firſt, We have had a long Story ——

L. C. J. Nay, Mr. *Sidney*, We muſt not have vying and revying, I asked you before what you had to ſay; the Courſe of Evidence is, after the King's Counſel have concluded, we never admit the Priſoner to ſay any thing.

Col. *Sidney*. My Lord, It was a wiſe Man ſaid, There never could be too much Delay in the Life of a Man: I know the King's Counſel may conclude, if they pleaſe. Mr. Sollicitor, I would not have him think that it is enough by one way or another to bring a Man to Death: My Lord, This Matter of Sir *Henry Vane* is utterly miſrepreſented. ——

L. C. J. I muſt tell you, Gentlemen of the Jury, that what the Priſoner ſays that is not proved, and what the King's Counſel have ſaid, of which there is no Proof to make it out, muſt not be taken into any Conſideration.

Col. *Sidney*. Then, my Lord, here is a Place or two in Old *Hales*, (*turning over my Lord* Hales *Book*) for the Overt Act of one Treaſon, not being an Overt Act of another, your Lordſhip knows *Coke* and *Hales* were both againſt it. (*He reads.*) Compaſſing by bare Words is not an Overt Act, Conſpiring to Levy War is no Overt Act.

Mr. *Sol. Gen.* I deſire but one Word more for my own ſake as well as the Priſoner's, and that is, that if I have ſaid any thing that is not Law, or miſrepeated, or miſapplied the Evidence which hath been given, I do make it my humble Requeſt to your Lordſhip to rectify thoſe Miſtakes as well in point of Fact as point of Law; for God forbid the Priſoner ſhould ſuffer by any Miſtake.

L. C. J. Gentlemen, The Evidence has been

been long, and it is a Cauſe of great Concernment, and it is far from the Thoughts of the King, or from the Thoughts, or Deſire of any of his Judges here to be inſtrumental to take away the Life of any Man, that by Law his Life ought not to be taken away. For I had rather many guilty Men ſhould eſcape, than one innocent Man ſuffer. The Queſtion is, Whether upon all the Evidence you have heard againſt the Priſoner, and the Evidence on his behalf, there is Evidence ſufficient to Convict the Priſoner of the High-Treaſon he ſtands charged with. And as you muſt not be moved by the Denial of the Priſoner further than as it is backed with Proof; ſo you are not to be inveigled by any Inſinuations made againſt the Priſoner at the Bar, further or otherwiſe than as the Proof is made out to you. But it is uſual, and it is a Duty incumbent on the King's Counſel, to urge againſt all ſuch Criminals, whatſoever they obſerve in the Evidence againſt them, and likewiſe to endeavour to give Anſwers to the Objections that are made on their behalf. And, therefore, ſince we have been kept ſo long in this Cauſe, it won't be amiſs for me (and my Brothers, as they ſhall think fit,) to help your Memory in the Fact, and diſcharge that Duty that is incumbent upon the Court as to the points of Law. This Indictment is for High-Treaſon, and is grounded upon the Statute of 25 *Edw.* 3. By which Statute, the Compaſſing and Imagining the Death of the King, and declaring the ſame by an Overt Act is made High-Treaſon. The reaſon of that Law was, becauſe at Common Law there was great Doubt what was Treaſon; wherefore to reduce that High Crime to a Certainty was that Law made, that thoſe that were guilty might know what to expect. And there are ſeveral Acts of Parliament made between the Time of *Edward* III, and that of 1 *M.* but by that Statute all Treaſons that are not enumerated by After-Acts of Parliament remain as they were declared by that Statute of 25 *Edw.* 3. And ſo are Challenges and other Matters, inſiſted upon by the Priſoner, left as they were at the Time of that Act: I am alſo to tell you that in point of Law, it is not only the Opinion of us here, but the Opinion of them that ſate before us, and the Opinion of all the Judges of *England*, and within the Memory of many of you, That tho' there be two Witneſſes required to prove a Man guilty of High-Treaſon; yet it is not neceſſary there ſhould be two Witneſſes to the ſame thing at one time. But if two Witneſſes prove two ſeveral Facts, that have a tendency to the ſame Treaſon, they are two Witneſſes ſufficient to Convict any Man of High-Treaſon. In the Caſe of my Lord *Stafford* in Parliament, all the Judges aſſiſting, it is notoriouſly known, That one Witneſs to a Conſpiracy in *England*, and another to a Conſpiracy in *France*, were held two Witneſſes ſufficient to Convict him of High-Treaſon. In the next place, I am to tell you, That tho' ſome Judges have been of Opinion that Words of themſelves were not an Overt Act; but my Lord *Hales*, nor my Lord *Coke*, nor any other of the Sages of the Law, ever queſtioned but that a Letter would be an Overt Act, ſufficient to prove a Man guilty of High-Treaſon; For *ſcribere eſt agere*, Mr. *Sidney* ſays, The King is a Politick Perſon; but you muſt deſtroy him in his Natural Capacity, or it is not Treaſon; but I muſt tell you, If any Man Compaſs to Impriſon the King, it is High-Treaſon; So was the Caſe of my Lord *Cobham*. And my Lord *Coke*, when he ſays, If a Man do attempt to make the King do any thing by Force and Compulſion, otherwiſe than he ought to do, that it is High-Treaſon within that Act of 25 *Eliz.* 3. But if it were an Indictment only for the Levying of War, there muſt be an actual War Levied; but this is an Indictment for Compaſſing the Death of the King; and the other Treaſon, mentioned in that Act of Parliament for the Levying War, may be given in Evidence to prove the Conſpiracy of the King's Death: For 'tis rightly told you by the King's Counſel, That the Imagination of a Man's Heart is not to be diſcerned; but if I declare ſuch my Imagination by an Overt Act, which Overt Act does naturally evince, that the King muſt be Depoſed, Deſtroyed, Impriſoned, or the like, it will be ſufficient Evidence of Treaſon within that Act. In the next place, having told you what the Law is, for, Gentlemen, 'tis our Duty upon our Oaths, to declare the Law to you, and you are bound to receive our Declaration of the Law, and upon this Declaration, to inquire whether there be a Fact, ſufficiently proved, to find the Priſoner guilty of the High-Treaſon of which he ſtands indicted: And for that, I muſt tell you, whatever happens to be hear-ſay from others, it is not to be applied immediately to the Priſoner; but however thoſe Matters that are remote at firſt may ſerve for this purpoſe, To prove there was generally a Conſpiracy to Deſtroy the King and Government: And for that matter, you all remember it was the conſtant Rule and Method obſerved about the Popiſh Plot, firſt to produce the Evidence of the Plot in general: This was done in that famous Caſe of my Lord *Stafford* in Parliament. Gentlemen, I am alſo to tell you, This alone does not at all affect the Priſoner at the Bar, but is made uſe of as a Circumſtance to ſupport the Credibility of the Witneſſes; and is thus far applicable to the Buſineſs before you, That 'tis plain, by Perſons that don't touch the Priſoner at the Bar, (and I am ſorry any Man makes a Doubt of it at this time of day) that there was a Conſpiracy to kill the King; for after ſo full a Proof in this Place, and in others, and the Execution and Confeſſion of ſeveral of the Offenders, I am ſurprized to obſerve that the Priſoner at the Bar, and ſome others preſent, ſeem not to believe it.

But, Gentlemen, you hear the firſt Witneſs; I ſpeak of *Weſt*: He tells you he had the Honour to be acquainted with Mr. *Sidney*, and that he had Diſcourſe with *Walcot*, a Perſon Convicted and Executed for this horrid Conſpiracy. Why, ſays he, he told me at my Chamber, That they were not the only Perſons concerned, but that there were other Perſons of great Quality that had their Meetings for the carrying on the Buſineſs in other Places. And *Ferguſon*, that was the Ring-leader in this Conſpiracy, told him there was a Deſign of a general Inſurrection; it was once laid down, but it is now taken up again. There are other Counſellors of great importance; and he names, among the reſt, the Priſoner at the Bar. Mr. *Weſt* goes a little further, and he tells you this:

Says

Says he, He did not only tell me so, but that there was a Design to conciliate a Correspondence with some Persons in *Scotland*, and they were to do it under the Cant of having Business in *Carolina*. There is Mr. *Keeling*, he tells you too, There was a Design for a general and publick Insurrection; That he was present with the *Goodenoughs*, one and t'other, and that they had taken upon them to divide, and did divide the City into such and such Districts: And what was the Business? It was, that there might be a general Insurrection; might be an Insurrection, not only to Destroy the King and the Duke, but to Destroy all the King's Loyal Subjects; and in taking away their Lives, to take away the Life of Monarchy it self, and to subvert the Religion Established by Law. Then comes in Col. *Rumsey*, and he gives you an account that he had heard of such things in Mr. *West*'s Chamber; and tells you he had received such Intelligence. And all these give you an Account, that there was such a Design to kill the King: And this is the Substance of the general Evidence produced to prove the Conspiracy. Then to make this Matter come home to the Prisoner at the Bar, first my Lord *Howard* gives you an Account, and does directly swear, That about the middle or latter end of *January* last, he happened to meet with Colonel *Sidney*, the Prisoner at the Bar, and the Duke of *Monmouth* (they were the Persons first began to have Discourse about this Matter) and how they met with a Disappointment; the thing had slept a great while, and that it was fit it should be revived again; and that Persons of Quality were mentioned, who were to have an immediate Care in the carrying on of the Business, and that it should not be divulged to too many; accordingly there was my Lord *Russel*, my Lord of *Essex*, my Lord of *Salisbury*, and Mr. *Hambden* named. He tells you, the Prisoner at the Bar undertook for my Lord of *Essex*, and Mr. *Hambden*, and he tells you, the Duke of *Monmouth* undertook for my Lord *Russel*, and the rest; and that this was the Result of one Meeting: He goes yet further, That pursuant to this it was communicated to those Persons so to be engaged, and the Place and Time was appointed; the Place, Mr. *Hambden*'s House; but is not so positive to the Time, but only to the Place and Persons. He says, all these Persons met, and he gives you an Account, That Mr. *Hambden* (because it was necessary for some Person to break Silence) gave some short Account of the Design of their Meeting, and made some Reflections upon the Mischiefs that attended the Government, and what Apprehensions many People had upon the late Choice of Sheriffs, and that there had been a Male-Administration of Publick Justice; That it was fit some means should be used to redress these Grievances. He can't tell you positively, what this Man, or that Man, said there; but says, that all did unanimously consent to what was then debated about an Insurrection; and in order to it, they discoursed about the Time, when it should be, and that they thought fit it should be done suddenly, while Men's Minds were wound up to that height, as they then were; and as the first Witness tells you, There was a Consideration, whether it should be at one Place, or at several Places together: He says, then it was taken into Consideration, that this could not be carried on, but there must be Arms and Ammunition provided. The next Step is, about a necessary Concern, the Concern of Money, and therefore our Law calls Money, *The Sinews of War*. My Lord *Howard* tells you, That the Duke of *Monmouth* proposed 25 or 30000 *l.* That my Lord *Grey* was to advance 10000 *l.* out of his own Estate; but then they thought to make their Party more strong by the Assistance of a Discontented People in *Scotland*, my Lord of *Argyle*, and Sir *John Cockram*, and several other People there to joyn with them. That pursuant to this, they all after met at my Lord *Russel*'s, and the same Debate is re-assumed, and among the rest, this particular thing of conciliating a Friendship with the *Scotch*; the *Campbels*, my Lord of *Argyle*, and my Lord *Melvin* were particularly mentioned. That Col. *Sidney* took upon himself to find out a Messenger, but it was my Lord *Russel*'s Part to write the Letter; One of the Messengers named to convey the same, was *Aaron Smith*, he was known, says my Lord *Howard*, to some of us; and then we all agreed, that *Aaron Smith* was the most proper Man: Upon this they brake up that very Time. Afterwards comes my Lord *Howard* to Col. *Sidney* at some distance of time, and he comes to him, and shews him threescore Guineas, and told him, he was going into the City, and that they were to be given to *Aaron Smith*. He tells you after this, That he had some other Discourse about a Fortnight or three Weeks after, with Col. *Sidney*; and that Colonel *Sidney* did take notice, that he had sent him, and that he had an Account of him, as far as *Newcastle*. So that 'tis very plain, That it was not sudden and rash Thoughts, it is a little more than, according to the Language we meet with in some Pamphlets of late, more than Heats and Stirs. Gentlemen, Then I must tell you here are Circumstances proved in pursuance of this Design, for Sir *Andrew Foster* informs you, how that Sir *John Cockram* and the *Campbels*, and one *Monro*, as I take it, came to Town, and that he had Discourse with some of them about their Business of coming out of *Scotland*; and he says, they pretended it was about Business of some Trade to *Carolina*, which does still corroborate the Evidence. He tells you likewise, That there being a Noise of discovering the Plot, they begun to hide; Sir *John Cockram* began to hide, and sculk from place to place; they come first with that Cant in their Mouths, about *Carolina*; The Messenger *Atterbury* tells you, When they came to take these Men, how they shuffled from place to place. So, Gentlemen, I must tell you, That if in case there be but one Witness to prove a direct Treason, and another Witness to a Circumstance that contributes to that Treason, that will make two Witnesses to prove the Treason: Because I would explain my Mind, Not long ago all the Judges of *England* were commanded to meet together, and one that is the *Senior* of the King's Counsel was pleased to put this Case. If I buy a Knife of *J. S.* to kill the King, and it be proved by one Witness I bought a Knife for this purpose, and another comes and proves, I bought such a Knife of *J. S.* they are two Witnesses sufficient to prove a Man guilty of High-Treason; and so it was held by all

all the Judges of *England* then preſent, in the preſence of all the King's Counſel. And therefore, Mr. *Sidney* is mightily miſtaken in the Law: For in caſe of any Treaſon (except the Treaſon at the Bar) or in Treaſon for Clipping and Coining, one Witneſs is ſufficient at this Day. Now, Gentlemen, Suppoſing all this ſhould not be ſufficient, here is a Libel, and it is a moſt Traiterous and Seditious Libel. If you believe, that that was Colonel *Sidney*'s Book, writ by him, no Man can doubt, but it is a ſufficient Evidence, that he is guilty of Compaſſing and Imagining the Death of the King; and let us conſider, what Proof can be greater, than what has been given of it. Mr. *Sheppard*, an intimate Acquaintance of his, that has ſeen him write, he looks upon the Hand, and ſays, He is extreamly acquainted with the Hand, and ſays he, I believe in my Conſcience, this Book is Colonel *Sidney*'s Hand. Gentlemen, Do you expect Mr. *Sidney* would call a Witneſs to be by to ſee him write that Book?

In the next Place, you have two Trades-men, *Coke* and *Cary*, and they tell you, one had ſeen him write once, the other had ſeen his Hand-writing, and they both believe it his Hand-writing, and they have good reaſon, for they have paid ſeveral Sums of Money, upon Notes which they took, as well as this, to be his Hand-writing. Gentlemen, Beſides that, give me leave to tell you, here is another thing, that makes it more plain. This very Book is found in Colonel *Sidney*'s Houſe, on the Table in his Study, where he uſed to write, by a Gentleman, againſt whom Colonel *Sidney* can't make the leaſt Objection; and that there was that fairneſs offered by the Gentleman, *Pray Colonel put your Seal upon it, that you may ſee, that no Injury be done you*; but Mr. *Sidney* would not do it. Therefore he ſeals them with his own Seal, and carries them to *White-Hall*, where they were broken open, and ſwears that thoſe Papers were found in his Cloſet, whereof this was one. Another thing which I muſt take notice of to you in this Caſe, is, to mind you, how this Book contains all the Malice, and Revenge, and Treaſon, that Mankind can be guilty of: It fixes the ſole Power in the Parliament and the People; ſo that he carries on the Deſign ſtill, for their Debates at their Meetings were to that purpoſe. And ſuch Doctrines as theſe ſuit with their Debates; for there, a general Inſurrection was deſigned, and that was diſcourſed of in this Book, and incouraged: They muſt not give it an ill Name: It muſt not be called a Rebellion, it being the general Act of the People. The King, it ſays, is reſponſible to them, the King is but their Truſtee; That he had betrayed his Truſt, he had miſgoverned, and now he is to give it up, that they may be all Kings themſelves. Gentlemen, I muſt tell you, I think I ought more than ordinarily to preſs this upon you, becauſe I know the Misfortune of the late unhappy Rebellion, and the bringing the late bleſſed King to the Scaffold, was firſt begun by ſuch kind of Principles: They cried, He had betrayed the Truſt that was delegated to him from the People. Gentlemen, in the next Place, becauſe he is afraid their Power alone won't do it, he endeavours to poiſon Men's Judgments; and the way he makes uſe of, he colours it with Religion, and quotes Scripture for it too; and you know, how far that went in the late Times; How we were for binding our King in Chains, and our Nobles in Fetters of Iron. Gentlemen, this is likewiſe made uſe of by him to ſtir up the People to Rebellion. Gentlemen, if in caſe the Priſoner did deſign the Depoſing the King, the removing the King, and if in order thereunto he be guilty of Conſpiring to Levy War; or, as to the Letter writ by my Lord *Ruſſel*, if he was privy to it, theſe will be Evidences againſt him. So that 'tis not upon two, but 'tis upon greater Evidence than 22, if you believe this Book was writ by him. Next I muſt tell you, Gentlemen, upon, I think, a leſs Teſtimony, an Indictment was preferred againſt the late Lord *Ruſſel*, and he was thereupon Convicted and Executed; of which they have brought the Record. Theſe are the Evidences for the King.

For the Priſoner, he hath made ſeveral Objections; As that there was no War levied: For that, Gentlemen, at the beginning of the Cauſe, I told you, what I took the Law to be, and I take it to be ſo very plainly. But, Gentlemen, as to the Credibility of my Lord *Howard*, he offers you ſeveral Circumſtances. Firſt, He offers you a Noble Lord, my Lord *Angleſey*, who ſays, That he attending my Lord of *Bedford*, upon the Misfortune of the Impriſonment of his Son; after he had done, my Lord *Howard* came to ſecond that Part of a Chriſtian's Office, which he had performed, and told him, he had a very good Son, and he knew no harm of him; and as to the Plot, he knew nothing of it. Another Noble Lord, my Lord *Clare* tells you, That he had ſome Diſcourſe with my Lord *Howard*, and he ſaid, that if he were accuſed, he thought they would but tell Noſes, and his Buſineſs was done. Then Mr. *Philip Howard*, he tells you, how he was not ſo intimate with him as others, but he often came to his Brother's; and that he ſhould ſay, he knew nothing of a Plot, nor did he believe any; but at the ſame time, he ſaid, he believed there was a Sham Plot; and then he preſſed him about the Buſineſs of the Addreſs; but that now my Lord of *Eſſex* was out of Town, and ſo it went off. Another Thing Mr. *Sidney* took notice of, ſays he 'tis an Act of Revenge in my Lord *Howard*, for he owes him a Debt, that he does (beſides by his Allegation) does not appear.

Col. *Sidney*. My Lord, he hath confeſſed it.

L. C. J. Admit it; yet in caſe Colonel *Sidney* ſhould be Convicted of this Treaſon, the Debt accrues to the King, and he can't be a Farthing the better for it. But how does it look like Revenge? I find my Lord *Howard*, when he ſpeaks of Colonel *Sidney*, ſays, he was more beholding to him than any body, and was more ſorry for him; ſo ſays my Lord *Clare*. Gentlemen, You have it likewiſe offered, that he came to Colonel *Sidney*'s Houſe, and there he was deſirous to have the Plate and Goods removed to his Houſe, and that he would aſſiſt them with his Coach and Coachman to carry them thither; and did affirm, that he knew nothing of the Plot; and did not believe Colonel *Sidney* knew any thing: And this is likewiſe proved by a couple of Maid-Servants, as well as the *Frenchman*. You have likewiſe ſomething to the ſame purpoſe ſaid by my Lord *Paget*, and this

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is offered to take off the Credibility of my Lord *Howard*. Do you believe, becauſe my Lord *Howard* did not tell them, I am in a Conſpiracy to kill the King; therefore he knew nothing of it; he knew theſe Perſons were Men of Honour, and would not be concerned in any ſuch thing. But do you think, becauſe a Man goes about and denies his being in a Plot, therefore he was not in it: Nay, it ſeems ſo far from being an Evidence of his Innocence, that it is an Evidence of his Guilt. What ſhould provoke a Man to diſcourſe after this manner, if he had not apprehenſions of Guilt within himſelf? This is the Teſtimony offered againſt my Lord *Howard*, in diſparagement of his Evidence. Ay, but further its objected, he is in expectation of a Pardon: And he did ſay, he thought he ſhould not have the King's Pardon till ſuch time as the drudgery of Swearing was over. Why, Gentlemen, I take notice, before this Diſcourſe happened, he Swore the ſame Thing at my Lord *Ruſſel*'s Tryal. And I muſt tell you, though it is the Duty of every Man to diſcover all Treaſons; yet I tell you, for a Man to come and Swear himſelf over and over Guilty, in the Face of a Court of Juſtice, may ſeem irkſome, and provoke a Man to give it ſuch an Epithet. 'Tis therefore for his Credit, that he is an unwilling Witneſs: But, Gentlemen, conſider, if theſe things ſhould have been allowed to take away the Credibility of a Witneſs, what would have become of the Teſtimonies that have been given of late Days? What would become of the Evidence of all thoſe that have been ſo profligate in their Lives? Would you have the King's Counſel to call none but Men that were not concerned in this Plot, to prove that they were Plotting? Ay, but Gentlemen, it is further objected, This Hand looks like an old Hand, and it may not be the Priſoner's Hand, but be Counterfeited; and for that there is a Gentleman, who tells you what a dexterous Man he is. He ſays, he believes he could Counterfeit any Hand in half an Hour; 'tis an ugly temptation, but I hope he hath more Honour than to make uſe of that Art, he ſo much glories in. But what time could there be for the Counterfeiting of this Book? Can you imagine that Sir *Philip Lloyd* through the Bag Sealed up did it? Or who elſe can you imagine ſhould, or, does the Priſoner pretend, did write this Book? So that as on one Side, God forbid, but we ſhould be careful of Men's Lives, ſo on the other Side, God forbid, that Flouriſhes and Varniſh ſhould come to indanger the Life of the King, and the Deſtruction of the Government. But, Gentlemen, We are not to anticipate you in Point of Fact, I have according to my Memory recapitulated the Matters given in Evidence. It remains purely in you now, whether you do believe upon the whole Matter, that the Priſoner is Guilty of the High-Treaſon whereof he is Indicted.

Mr. *Juſt. Withins.* Gentlemen, 'Tis fit you ſhould have our Opinions; in all the Points of Law we concur with my Lord Chief Juſtice: Says Colonel *Sidney*, here is a mighty Conſpiracy, but there is nothing comes of it, who muſt we thank for that? None but the Almighty Providence: One of themſelves was troubled in Conſcience, and comes and diſcovers it; had not *Keeling* diſcovered it, God knows whether we might have been alive at this Day.

Then the Jury withdrew, and in about half an Hour's time returned, and brought the Priſoner in, Guilty.

And the Lieutenant of the Tower *took away his Priſoner.*

Monday 26. *Nov.* 1683. Algernone Sidney *Eſquire was brought up to the Bar of the Court of* King's-bench, *to receive his Sentence.*

L. C. J. MR. Attorney, will you move any thing?

Mr. *At. Gen.* My Lord, the Priſoner at the Bar is convicted of High Treaſon, I demand Judgment againſt him.

Cl. of Crown. Algernone Sidney, Hold up thy Hand (which he did) Thou haſt been Indicted of High Treaſon, and thereupon arraigned, and thereunto pleaded not Guilty, and for thy Tryal, put thy ſelf upon God and the Countrey, which Countrey has found thee Guilty, What can'ſt thou ſay for thy ſelf, Why Judgment of Death ſhould not be given againſt thee, and Execution awarded according to Law?

Col. *Sidney.* My Lord, I humbly conceive, I have had no Tryal, I was to be try'd by my Countrey, I do not find my Countrey in the Jury that did try me, There were ſome of them that were not Freeholders, I think, my Lord, there is neither Law nor Preſident of any Man that has been tried by a Jury, upon an Indictment laid in a Countrey, that were not Freeholders. So I do humbly conceive, That I have had no Tryal at all, and if I have had no Tryal, there can be no Judgment.

L. C. J. Mr. *Sidney*, You had the Opinion of the Court in that Matter before: We were unanimous in it, for it was the Opinion of all the Judges of *England*, in the Caſe next preceeding yours, though that was a Caſe relating to Corporations, but they were of Opinion, That by the Statute of Queen *Mary*, the Tryal of Treaſon was put as it was at Common-Law, and that there was no ſuch Challenge at Common-Law.

Col. *Sidney.* Under favour, my Lord, I preſume in ſuch a Caſe as this, of Life, and for what I know concerns every Man in *England*, you will give me a Day and Counſel to argue it.

L. C. J. 'Tis not in the Power of the Court to do it.

Col. *Sidney.* My Lord, I deſire the Indictment againſt me may be read.

L. C. J.

L. C. J. To what purpoſe?

Col. *Sidney.* I have ſomewhat to ſay to it.

L. C. J. Well, read the Indictment.

Then the Clerk of the Crown read the Indictment.

Col. *Sidney.* Pray Sir, will you give me leave to ſee it, if it pleaſe you.

L. C. J. No, that we cannot do.

Col. *Sidney.* My Lord, there is one thing then that makes this abſolutely void, it deprives the King of his Title, which is Treaſon by Law, *Defenſor Fidei.* There is no ſuch thing there, if I heard right.

L. C. J. In that you would deprive the King of his Life, that is in very full I think.

Col. *Sidney.* If no body would deprive the King no more than I, he would be in no danger. Under favour theſe are Things not to be over-ruled in Point of Life ſo eaſily.

L. C. J. Mr. *Sidney,* We very well underſtand our Duty, we don't need to be told by you what our Duty is, we tell you nothing but what is Law, and if you make Objections that are immaterial, we muſt overrule them. Don't think that we overrule in your Caſe that we would not over-rule in all Mens Caſes in your Condition. The Treaſon is ſufficiently lay'd.

Col. *Sidney.* My Lord I conceive this too, that thoſe Words, that are ſaid to be written in the Paper, that there is nothing of Treaſon in them; Beſides, that there was nothing at all proved of them, only by ſimilitude of hands, which upon the Caſe I alledge to your Lordſhip, was not to be admitted in a Criminal Caſe. Now 'tis eaſy to call a thing *Proditorie*; but yet let the nature of the things be examined, I put my ſelf upon it, that there is no Treaſon in it.

L. C. J. There is not a Line in the Book ſcarce, but what is Treaſon.

Mr. *Juſt. Withins.* I believe you don't believe it Treaſon.

L. C. J. That is the worſt part of your Caſe; When Men are riveted in Opinion, that Kings may be depoſed, that they are accountable to their People, that a general Inſurrection is no Rebellion, and juſtify it, 'tis high time, upon my Word, to call them to Account.

Col. *Sidney.* My Lord, the other Day I had a Book, wherein I had King *James*'s Speech, upon which all that is there, is grounded in his own Speech to the Parliament in 1603. and there is nothing in theſe Papers, which is called a Book, though it never appeared, for if it were true, it was only Papers found in a private Man's Study, never ſhewed to any body; and Mr. *Attorney* takes this to bring it to a Crime, in order to ſome other Counſel, and this was to come out ſuch a time, when the Inſurrection brake out. My Lord, There is one Perſon I did not know where to find then, but every body knows where to find now, that is the Duke of *Monmouth*; if there had been any thing in Conſultation, by this means to bring any thing about, he muſt have known of it, for it muſt be taken to be in Proſecution of thoſe Deſigns of his: And if he will ſay there ever was any ſuch thing, or knew any thing of it, I will acknowledge whatever you pleaſe.

L. C. J. That is over; you were Tried for this Fact: We muſt not ſend for the Duke of *Monmouth.*

Col. *Sidney.* I humbly think I ought, and deſire to be heard upon it.

L. C. J. Upon what?

Col. *Sidney.* If you will call it a Tryal——

L. C. J. I do. The Law calls it ſo.

Mr. *Juſt. Withins.* We muſt not hear ſuch Diſcourſes, after you have been Tried here, and the *Jury* have given their Verdict; as if you had not Juſtice done you.

Mr. *Juſt. Holloway.* I think it was a very fair Tryal.

Col. *Sidney.* My Lord, I deſire, That you would hear my Reaſons; why I ſhould be brought to a new Tryal.

L. C. J. That can't be.

Col. *Sidney.* Be the Tryal what it will?

Cl. of Cr. Cryer, make an Oyes.

Col. *Sidney.* Can't I be heard, my Lord?

L. C. J. Yes, If you will ſpeak that which is proper; 'tis a ſtrange thing. You ſeem to appeal as if you had ſome great Hardſhip upon you. I am ſure, I can as well appeal as you. I am ſure you had all the Favour ſhewed you, that ever any Priſoner had. The Court heard you with Patience, when you ſpake what was proper; but if you begin to Arraign the Juſtice of the Nation, it concerns the Juſtice of the Nation to prevent you: We are bound by our Conſciences and our Oaths to ſee Right done to you; and though we are Judges upon Earth, we are accountable to the Judge of Heaven and Earth; and we act according to our Conſciences, though we don't act according to your Opinion.

Col. *Sidney.* My Lord, I ſay. In the firſt Place I was brought to *Weſtminſter* by *Habeas Corpus*, the 7*th* of this Month, granted the Day before I was to be Arraigned, when yet no Bill was exhibited againſt me; and my Proſecutors could not know it would be found, unleſs they had a Correſpondence with the Grand Jury, which under Favour ought not to have been had.

L. C. J. We know nothing of it: You had as good tell us of ſome bodies Ghoſt, as you did at the Tryal.

Col. *Sidney.* I told you of two infamous Perſons that had acted my Lord *Ruſſel*'s Ghoſt.

L. C. J. Go on, if you have any thing elſe.

Col. *Sidney.* I prayed a Copy of the Indictment, making my Objections againſt it, and putting in a ſpecial Plea, which the Law I humbly conceive allowed me: The help of Counſel to frame it was denied.

L. C. J. For the Copy of the Indictment, it was denied in the Caſe you cited. This Favour ſhewed you to Day, was denied at any time to Sir *Henry Vane*, that is, to have the Indictment read in *Latin.* Don't ſay on the other Side, we refuſed your Plea. I told you, have a care of putting it in. If the Plea was ſuch as Mr. Attorney did demur to it: I told you, you were anſwerable for the Conſequences of it.

Mr. *Juſt. Withins.* We told you, you might put it in, but you muſt put it in at your Peril.

Col. *Sidney.* My Lord, I would have put it in.

L. C. J. I did advertiſe you: If you put in a Plea, upon your Peril be it. I told you, We are bound by Law to give you that fair Advertiſement

vertiſement of the great Danger you would fall under, if it were not a good Plea.

Col. *Sidney.* My Lord, my Plea was that could never hurt me.

L. C. J. We do not know that.

Col. *Sidney.* I deſire, my Lord, this, that it may be conſidered, That, being brought here to my Tryal, I did deſire a Copy of my Indictment, upon the Statute of 46 *Edw.* 3. which does allow it to all Men in all Caſes.

L. C. J. I tell you the Law is otherwiſe, and told you ſo then, and tell you ſo now.

Col. *Sidney.* Your Lordſhip did not tell me, That was not a Law.

L. C. J. Unleſs there be a Law particular for Col. *Sidney.* If you have any more to ſay——

Col. *Sidney.* I am probably informed, and, if your Lordſhip will give me time, ſhall be able to prove it, That the Jury was not ſummoned, as it ought to be: My Lord, if this Jury was not ſummoned by the Bayliff, according to the ordinary way, but they were agreed upon by the Under-Sheriff, *Graham* and *Burton*, I deſire to know whether that be a good Jury?

L. C. J. We can take notice of nothing, but what is upon the Record: Here is a Return by the Sheriff; if there had been any indirect means uſed with the Sheriff, or any elſe, you ſhould have mentioned it before they were ſworn.

Col. *Sidney.* Is there any thing in the World more irregular than that?

L. C. J. I know nothing of it. That time is paſt.

Col. *Sidney.* Now, my Lord, All Men are admitted on the Jury.

L. C. J. Why, You did not like Gentlemen, and now you don't like thoſe that you had. In plain Engliſh, if any Jury had found you Guilty, it had been the ſame thing. It had been a good Summons, if they had acquitted you.

Col. *Sidney.* When the Jury, thus compoſed, was ſworn, four Witneſſes, of whom three were under the Terror of Death for Treaſons, were produc'd againſt me. And they confeſſed themſelves guilty of Crimes of which I had no Knowledge, and told Stories by hear-ſay. And your Lordſhip did promiſe in ſumming up the Evidence, that the Jury ſhould be informed what did reach me, and what not, and I don't remember that was done.

L. C. J. I did it particularly, I think I was as careful of it as poſſible I could be.

Col. *Sidney.* My Lord *Howard* being the only Witneſs, that ſaid any thing againſt me; Papers, which were ſaid to be found in my Houſe were produced as another Witneſs, and no other Teſtimony given concerning them, but that the Hand was like unto mine. No Man can ſay, I read them, or ſhew'd them to any Man. None knew when they were written; The Ink ſhewed, they had been done many, and perhaps 20 or 30, Years. Yea, ſome Paſſages were read out of them, without examining what went before and after, when I deſired the whole might be read, it was refuſed, unleſs I ſpecified the Paſſage, which I could not do, knowing not one Word in them. When I alledged, that in Criminal Caſes Similitude of Hands could not be taken for Evidence, propoſed my Points of Law concerning Conſtructive Treaſon, *&c.* And I did conceive, that no Court under the Parliament could be Judges of it, and did deſire the Statute, which did ſo enact it, might be read, it could not be obtained: And I cited many Judgments in Parliament.

L. C. J. Mr. *Sidney*, If you arraign the Juſtice of the Nation ſo, as tho' we had denied you the Methods of Juſtice, I muſt tell you, you do what does not become you, for we denied you nothing that ought to have been granted. If we had granted you leſs, I think we had done more our Duty. What Points of Law do you mean?

Col. *Sidney.* That of Conſtructive Treaſon, my Lord.

L. C. J. We do not go upon Conſtructive Treaſon, 'tis plain Treaſon within 25 *Edw.* 3.

Col. *Sidney.* Is Writing an Act?

L. C. J. Yes, 'tis *agere.*

Proclamation made for Silence.

Mr. *Bamfield.* Sir, I pray you to hear me one Word as *Amicus Curiæ*, I humbly ſuppoſe that your Lordſhip will not give Judgment if there be a material Defect in the Indictment, as the Clerk did read it he left out *Defenſor fidei*, which is part of the Style of His Majeſty.

L. C. J. We have heard of it already, we thank you for your Friendſhip, and are ſatisfied. Mr. *Sidney*, there remains nothing for the Court, but to diſcharge their Duty, in pronouncing that Judgment the Law requires to be pronounced againſt all Perſons Convicted of High-Treaſon; and, I muſt tell you, that tho' you ſeem to arraign the Juſtice of the Court, and the Proceeding——

Col. *Sidney.* I muſt appeal to God and the World, I am not heard.

L. C. J. Appeal to whom you will. I could wiſh with all my Heart, inſtead of Appealing to the World, as tho' you had received ſomething extream hard in your Caſe, that you would Appeal to the Great God of Heaven, and conſider the Guilt you have contracted by the great Offence you have committed. I wiſh with all my heart, you would conſider your Condition, but if your own Ingenuity will not provoke you, nothing, I can ſay, will prevail with you to do it, if the King's General Pardon, in which you had ſo great a ſhare of the King's Mercy, will not. I could wiſh, that, as a Gentleman and as a Chriſtian, you would conſider, under what particular Obligations you lye to that Gracious King, that hath done much more for you. I ſhould have thought it would have wrought in you ſuch a Temper of Mind, as to have turned the reſt of your Life into a generous Acknowledgment of his Bounty and Mercy, and not into a State of conſtant Combining and Writing, not only to deſtroy Him, but to ſubvert the Government; and I am ſorry to ſee you ſo earneſt in the Juſtification of the Book, in which there is ſcarce a Line, but what contains the rankeſt Treaſon, ſuch as Depoſing the King: It not only encourages, but juſtifies all Rebellion. Mr. *Sidney*, you are a Gentleman of Quality, and need no Counſel from me: If I could give you any, my Charity to your Immortal Soul would provoke me to it. I pray God ſeaſon this Affliction to you. There remains nothing with the Court, but to Pronounce that Judgment that is expect-

ed, and the Law requires, and therefore the Judgment of the Court is,

That you be carried hence to the Place from whence you came, and from thence you ſhall be drawn upon an Hurdle to the Place of Execution, where you ſhall be hanged by the Neck, and, being alive, cut down; your Privy Members ſhall be cut off, and burned before your Face, your Head ſevered from your Body, and your Body divided into four Quarters, and they to be diſpoſed at the Pleaſure of the King. And the God of infinite Mercy have mercy upon your Soul.

Col. *Sidney*. Then, O God, O God, I beſeech thee to ſanctify theſe Sufferings unto me, and impute not my Blood to the Country, nor the City, thro' which I am to be drawn; Let no Inquiſition be made for it, but if any, and the ſhedding of Blood that is innocent, muſt be revenged, Let the Weight of it fall only upon thoſe, that maliciouſly perſecute me for Righteouſneſs ſake.

L. C. J. I pray God work in you a Temper fit to go unto the other World, for I ſee you are not fit for this.

Col. *Sidney*. My Lord, feel my Pulſe, (*holding out his Hand*) and ſee if I am diſorder'd, I bleſs God, I never was in better Temper than I am now.

Then the Lieutenant of the Tower carried back his Priſoner.

His Attainder was Reverſed in Parliament the 1*ſt* of *W.* and *M.*

The TRYAL of *John Hambden*, Eſq;

The 28*th Day of* November, 1683. Ann. 35 Car. 2. Reg. John Hambden, *Eſq*; *being brought up by Writ of* Habeas Corpus, *from the* Tower *of* London, *and there being an Indictment preferred againſt him for Miſdemeanor, His Majeſty's Attorney General prayed that he might be Arraigned upon it, which was done in this manner.*

Cl. of Cr. JOhn Hambden, *You ſtand here Indicted by the Name of* John Hambden, *late of the Pariſh of St.* Giles in the Fields, *in the County of* Middleſex, *Gent. For that you being a pernicious and ſeditious Man, and a Perſon of a wicked Mind, and of an impious, unquiet, and turbulent Diſpoſition, and contriving, practiſing, and falſly, unlawfully, unjuſtly, maliciouſly, turbulently, and ſeditiouſly intending the Peace of our Sovereign Lord King* Charles *that now is, and the common Tranquillity of this Kingdom of* England *to diſquiet, moleſt, and diſturb, and, as much as in you lay, Sedition within this Kingdom of* England *to incite, ſtir up, and procure, and the Government of our ſaid Lord the King in this Kingdom of* England *into danger to bring: And that you the ſaid* John Hambden, *your moſt impious, wicked, and ſeditious Intentions aforeſaid to fulfil and perfect, and bring to effect, the laſt Day of* June, *in the Five and thirtieth Year of the Reign of our ſaid Sovereign Lord the King that now is; and divers other Days and Times as well before as after, with Force and Arms,* &c. *At the Pariſh of St.* Giles in the Fields, *in the County of* Middleſex, *unlawfully, unjuſtly, maliciouſly, and ſeditiouſly did aſſemble your ſelf, meet, Conſult, Conſpire, and Confederate with divers evil diſpoſed Subjects of our ſaid Lord the King to the Jurors unknown, and with the ſaid Perſons did treat concerning your ſaid moſt wicked and ſeditious Compaſſings, Imaginations, and Purpoſes aforeſaid, to be executed, fulfilled, and brought to effect; and further that you the ſaid* John Hambden, *your moſt wicked, impious, and ſeditious Contrivances, Practices and Intentions aforeſaid to fulfil, perfect, and reduce to effect, then and there,* viz. *the laſt Day of* June *in the* 35*th Year aforeſaid, and divers other Days and Times, as well before as after, at the Pariſh aforeſaid, in the County aforeſaid, with Force and Arms,* &c. *falſly, unlawfully, unjuſtly, maliciouſly, and ſeditiouſly did Conſult, Conſent, Conſpire and Confederate of an Inſurrection within this Kingdom of* England *to be made, and of procuring and providing Arms and Armed Men to be prepared in divers Places within this Kingdom of* England *your ſame moſt wicked, impious and ſeditious Intentions and Compaſſings aforeſaid to fulfil and perfect: And that you the ſaid* John Hambden, *your moſt wicked, impious, and ſeditious Intentions aforeſaid to fulfil and perfect, and bring to effect afterwards,* viz. *the laſt Day of* June, *in the* 35*th Year aforeſaid, at the Pariſh aforeſaid, in the County aforeſaid, with Force and Arms,* &c. *falſly, unlawfully, unjuſtly, wickedly, maliciouſly, and ſeditiouſly did Conſult, Agree, and Conſent that a certain Perſon to the Jurors aforeſaid unknown, ſhould be ſent into* Scotland *to invite and incite divers evil diſpoſed Subjects of our ſaid Lord the King, of his Kingdom of* Scotland, *to come into this Kingdom*

of

of England *to Adviſe and Conſult with you the ſaid* John Hambden, *and others the aforeſaid evil diſpoſed Subjects of our ſaid Lord the King in this Kingdom of* England, *concerning Aid and Aſſiſtance to be expected and ſupplied out of the ſaid Kingdom of* Scotland, *your ſaid moſt wicked, impious, and ſeditious Intentions and Compaſſings aforeſaid to fulfil, effect, and promote, in manifeſt Contempt of the Laws of this Kingdom of* England, *to the evil and moſt pernicious Example of all others in the like caſe offending, and againſt the Peace of our ſaid Sovereign Lord the King, his Crown and Dignity.*

Cl. of Cr. How ſay'ſt thou, Art thou Guilty of this High Miſdemeanor whereof thou ſtandeſt Indicted, and haſt been now Arraigned, or not Guilty?

Mr. *Hambden.* Not Guilty.

Upon which Plea Iſſue was joined between His Majeſty's Attorney General, on behalf of the King and Defendant, and Bail was then taken for the Defendant's Appearance the next Term.

Hillary *Term* 35 *and* 36 Car. 2*di* Reg. *In the beginning of the Term,* Sir Thomas Jenner, *Knight, His Majeſty's Serjeant at Law, and Recorder of the City of* London, *moved for a Tryal at the Bar, in the Caſe between the King and Mr.* Hambden, *which was by the Court appointed to be on* Wedneſday *the 6th of* February *in the ſame Term.*

Die Mercurii 6 Februarii, 1683. Anno Regni Regis Caroli Secundi 36.

Cl. of Cr. CALL the Defendant *John Hambden.*

Mr. *Williams.* He appears.

Cl. of Cr. Gardez votrez Challenges. Call Sir *Charles Gerard.*

Cryer. You ſhall well and truly try the Iſſue between our Sovereign Lord the King, and John Hambden, *Gent. and a true Verdict give according to your Evidence,* So help you God.

Sir *Charles Gerard,* Jur'

Cl. of Cr.

Roger Jennings, Eſq; Jur'
Henry Hodges, Eſq; Jur'
Joſhua Galliard, Eſq;

Mr. *Williams.* We challenge him for the Defendant.

Sir *George Jefferies.* *L. C. J.* What is your Cauſe of Challenge?

Mr. *Williams.* If your Lordſhip pleaſe to let him go through the Pannel, we will ſhew Cauſe if there be not enough left without him.

L. C. J. No, Shew your Cauſe now, it being againſt the King.

Mr. *Williams.* He has an Employment under the King, he has an Office in the Foreſt, and that we ſay is our Cauſe of Challenge.

L C. J. What then if he have?

Mr. *Williams.* My Lord, We ſuppoſe then he is not an indifferent Perſon to try this Cauſe.

L. C. J. Ay, Let me hear that now proved and defended by any Gentleman of the long Robe, that That is a good Cauſe of Challenge. Shew me what Law there is for it.

Mr. *Williams.* To be of the King's Robe, or Pay, or Salary, is an Exception in any Caſe wherein the King is concerned.

L. C. J. Shew me any Law for that if you can, Mr. *Williams,* I know you are a Lawyer.

Mr. *Wallop.* It is the Opinion of my Lord *Coke* in his *Inſtitutes,* that it is a good Cauſe of Challenge.

L. C. J. But there is the Opinion of all the Judges in *Henry* IV's Time againſt it.

Mr. *Wallop.* It is, my Lord, *fol.* 156.

L. C. J. But I can cite you three or four Books, and you have them all together in *Roll*'s Abridgment, *Title Challenge,* where he ſets down four Books one after another, That it is no Cauſe of Challenge, even to be the King's Tenant, and there is a great deal of reaſon for it. For if that were a good Cauſe of Challenge, mark the Conſequence, then all Perſons that hold Lands in *England* hold them mediately or immediately of the King, and ſo the King could have no Freeholders to be Jury-men in his Cauſe.

Mr. *Williams.* This is a more ſpecial Cauſe of Challenge than that.

L. C. J. What can be greater than that of being the King's Tenant?

Sir *Robert Sawyer.* Mr. *At. Gen.* Eſpecially when all the Land of *England* was held of the Crown, as originally it was.

Mr. *Trever.* My Lord in 2d *Rolls* 646. *Tit. Tryals,* There is the expreſs Opinion of my Lord *Rolls,* that to be of the Livery, or a menial Servant of the Crown, is a good Cauſe of Challenge.

L. C J. And look you but in the 1ſt Caſe in the 1ſt Part of the Abridgment, *Title Challenges,* where he mentions three or four Books to the ſame purpoſe, and 'tis quite otherwiſe.

Mr. *Williams.* My Lord, In that of 1ſt *Rolls,* he only cites ſome Books, but the other is his own Opinion.

L. C. J. Well, make out your Fact if you have a mind to it; but it is well known, that neither Mr. Serjeant *Rolls,* nor my Lord *Coke,* when he delivered that Opinion, are to be reckoned ſuch Authorities in Crown-matters.

Mr. *Williams.* We will ask him, my Lord, if you pleaſe, I ſuppoſe he will not deny it.

L. C. J. No, make out your Fact if you will have any Benefit by it, 'tis only a Challenge to the Favour, which ought not to be in the King's Caſe. I am very glad that we are now to debate this Matter with Men of the Robe, becauſe we have had a ſtrange ſort of Notions and Reflections ſpread abroad of late, as tho' the

the Judges now-a-days gave ſtrange ſort of Opinions, and as tho' Perſons that had been Blemiſhes at the Bar, were preferred to do ſtrange things when they came upon the Bench; but truly I wonder to hear that it ſhould be a Doubt, when at the ſame time that which we gave as our Opinion about one particular Challenge, that is as to Freeholders, it was the Judgment of all the Judges, that That was no Challenge, and all the Counſel that were concerned in that Caſe know it was the Opinion of all the Judges. But now if we meet with Lawyers, I ſhall be glad to have the Matter fairly argued and debated, and pray ſhew me what Law or Reaſon is for it.

Mr. *Wallop.* Certainly, my Lord, there is a great difference betwixt the general Allegiance of all Men, and ſo of a general Tenure, and the Dependance of any particular Perſon who is a menial Servant, and receives Wages of the King.

L. C. J. I would deſire to know of you, Mr. *Wallop*, which is the greater Challenge, to ſay ſuch a one is Tenant, or ſuch a one is immediate Servant to *J. S*?

Mr. *Wallop.* There is a great difference, my Lord, I think, between an immediate Tenant, and the general Tenure of all Subjects.

L. C. J. But certainly the Law is thus, if he were an immediate or a mediate Tenant to any but the King, if his Lord were Party to the Suit it would be a good Challenge, but the being Tenant to the King is no good Challenge in the King's Caſe.

Mr. *Williams.* My Lord, I take it, the Act of Parliament that takes away the Court of Wards and Liveries hath altered the Law as to that Matter of Tenure; for now we hold in Socage, and that other Tenure is deſtroyed that was between the King and his Subjects.

L. C. J. But pray how comes it to be a Challenge now that was not one before? Does that Act of Parliament make it a good Cauſe of Challenge? If it does, ſhew it. I tell you the Old Books are againſt it.

Mr. *Williams.* I ſpeak, my Lord, to the Tenure, that That is nothing at all now to be objected, becauſe all is now in Socage.

L. C. J. I would not have Mr. Attorney inſiſt upon a Jury man, but yet with-all I would not have it gone away with as Law, that it is a good Cauſe of Challenge.

Mr. *Wallop.* My Lord, We finding in ſome Caſes that are in our Books, that it is held to be a good Cauſe of Challenge, lay it before the Court.

Mr. *At. Gen.* How many hundred Errors do you find in my Lord *Coke*, notwithſtanding all his Learning?

L. C. J. I ſay, if I was Mr. Attorney, I would not conteſt for any particular Man to be a Jury-man, I ſpeak that as my Advice, but I would not have it taken for Law, nor would I have it broached abroad, that tho' the Judges now were of one Opinion, yet the Law truly was of another.

Mr. *Jones.* If all that receive Salary, or Wages from the King, are not to be Jury-men in the King's Cauſes, then all the Deputy Lieutenants and Militia Officers, which generally are the moſt ſubſtantially Freeholders, are excluded from being Jury-men.

Mr. *Juſt. Withins.* Who will ſay ſo, Mr. *Jones*? No Lawyer in *England* ſurely will ſay ſo.

Mr. *Williams.* Offices where there is no Profit, will not be the ſame Exception.

Mr. *At. Gen.* But he is no menial Servant of the King's.

Mr. *Williams.* What is he then?

Mr. *Wallop.* We hear that he is Keeper of one of the King's Foreſts, and has a Fee for it.

Mr. *Williams.* Well, we will ask him upon a *voyer dire.*

Mr. *At. Gen.* My Lord, The Fact is quite otherwiſe, and I deſire they may make it out.

L. C. J. Truly, I think 'tis not *tanti* to inſiſt upon any particular Man, but I find we are in an Age that is ſo full of Cavils, that if we act but according to the Precedents that went before us, we are thought to act as Originals, and to make new Laws, when we only follow the Rules that we have received from our Predeceſſors. And I ſay there was no ſuch Challenge at Common Law, that ever I read of in any of our Books, nor is it any Challenge by the beſt Authorities extant.

Mr. *Jones.* I deſire them to ſhew me any ſuch Preſident, That any Man was challenged by one that was tried at the Suit of the King, for a Challenge to the Favour, but we muſt do unprecedented things, or elſe there will be no ſatisfying of ſome Men.

Mr. *At. Gen.* I would fain know, what one Opinion in a ſtragling Book is againſt the Current of all our Law?

Mr. *Williams.* Which do you call a ſtragling Book, Mr. *Attorney*? My Lord *Coke's Inſtitutes*, or my Lord *Roll's Abridgment*?

L. C. J. I ſay the better Opinion of the Books is on the other ſide, and the greater number too.

Mr. *At. Gen.* Firſt of all, I do know of my own Knowledge, he is no menial Servant.

L. C. J. Mr. Attorney, I do debate it for Learning ſake, truly I know not the Man, nor whether he be the King's Servant, or not, but I ſpeak againſt allowing the Challenge, that if he be ſet aſide, it may not be taken as a Precedent, and ſo paſs for Law that the King's Servants can't be Jury-men. I would have you quit the Man by Conſent, but not as a Forceput, as tho' the Law were ſo, for the Law, I think, is otherwiſe.

Mr. *At. Gen.* He is none, my Lord, they miſtake.

L. C. J. Nay, I know nothing of the Man, I tell you only what I think.

Mr. *Wallop.* He receives Wages, or a Fee from the King for his Office.

Mr. *Juſt. Withins.* I would never, for my part, while I live, nor never did, while I was a Practiſer, ſtand upon any particular Jury-man.

Mr. *At. Gen.* He may be a Jury-man by Law ſure.

L. C. J. There is no doubt of it, Mr. Attorney.

Mr. *At. Gen.* My Lord, If your Lordſhips have given your Opinion, I deſire he may ſtand by.

L. C. J. Well, Mr. Attorney waves him, Let him ſtand by.

Mr. *At. Gen.* But for no Reaſon that has been offered.

L. C. J.

L. C. J. No, No, I don't hear any thing of Reaſon offered for it.

Cl. of Cr. Mr. *Gallierd.* You may go down.

Thomas Harriott, Eſq; Jur'
Thomas Earsby, Eſq; Jur'
William Avery, Eſq; Jur'
John Sharpe, Eſq; Jur'
Richard Shoreditch.

Mr. *Williams.* We challenge him for the Defendant.

L. C. J. What is your Cauſe of Challenge?

Mr. *Williams.* There is the ſame Exception to him.

L. C. J. If Mr. Attorney will conſent, with all my heart.

Mr. *At. Gen.* No, we humour'd you in one, we won't humour you any more.

Mr. *Williams.* Nay, here is ſomething more clear for us, He is a Serjeant at Arms attending His Majeſty.

Mr. *Juſt. Withins.* You know our Opinions already, Mr. *Williams*, unleſs Mr. Attorney conſent, we can't do it.

Mr. *Williams.* We only acquaint Mr. Attorney with it, we muſt ſubmit to your Rule, he is certainly Serjeant at Arms, he came in the Place of *Dereham* that let my Lord *Grey* eſcape.

Mr. *At. Gen.* Pray prove it, I don't know it for my ſhare.

Mr. *Williams.* Will you ask him the Queſtion?

Mr. *At. Gen.* Pray prove it. Are we to gratify your Client? Pray, let him better inſtruct his Counſel.

L. C. J. If Mr. Attorney conſent not, then he muſt be ſworn.

Mr. *At. Gen.* If there be enough without him that do appear, let him ſtand by.

Cl. of Cr. Stand down, Mr. *Shoreditch.*

Charles Good, Eſq; Jur'

Mr. *At. Gen.* That it may appear how fair things were carried, they would not ſtrike out one of theſe Men when they came before the Protonotary, as they might have done.

Mr. *Juſt. Withins.* Truly that was not well done, to trouble the Court when you might make your Exceptions there.

Mr. *Williams.* We did not know it then, now we do, we offer it to the Court.

Cl. of Cr.

Samuel Rouſe, Eſq; Jur'
Hugh Squire, Eſq; Jur'
Nehemiah Arnold, Eſq; Jur'
John Bifeild, Eſq; Jur'

Then the Jury were number'd, and the 12 *ſworn were theſe.*

Sir *Charles Gerard*, Bar. — *John Sharpe*, Eſq;
Roger Jennings, Eſq; — *Charles Good*, Eſq;
Henry Hodges, Eſq; — *Samuel Rouſe*, Eſq;
Thomas Harriott, Eſq; — *Hugh Squire*, Eſq;
Thomas Earsby, Eſq; — *Nehemiah Arnold*, Eſq;
William Avery, Eſq; — *John Bifeild*, Eſq;
Jur'

Cl. of Cr. Gentlemen of the Jury, You that are ſworn, hearken to your Charge. The Defendant *John Hambden* ſtands indicted by the Name of *John Hambden*, of the Pariſh of St. *Giles in the Fields*, in the County of *Middleſex*, Gent. (*Prout* in the Indictment, *mutatis mutandis*) —— To this Indictment he has pleaded not Guilty, and for his Tryal puts himſelf upon the Country, and the King's Attorney General likewiſe, which Country you are, your Charge is to inquire whether the Defendant be guilty of the great Miſdemeanor whereof he ſtands indicted, or not guilty; if you find him guilty, you are to ſay ſo; and if you find him not guilty, you are to ſay ſo, and no more; and hear your Evidence.

Then Proclamation was made for Evidence in uſual Form.

Mr. *Holloway.* May it pleaſe your Lordſhip, and Gentlemen, you that are ſworn, I am of Counſel for the King upon this Indictment. Gentlemen, the Indictment ſets forth, that the Defendant being a ſeditious, malicious, evil diſpoſed Perſon, and ſeditiouſly and maliciouſly intending to diſturb the Peace of the Kingdom, the laſt Day of *June*, in the 35th Year of his now Majeſty's Reign, and divers other Days and Times, at the Pariſh of St. *Giles in the Fields*, in your County, did unlawfully aſſemble, and confederate himſelf with divers evil diſpoſed Perſons, Subjects of our Lord the King, and then and there, with thoſe other Perſons did falſly, maliciouſly, and ſeditiouſly Conſult and Conſpire to make an Inſurrection in the Kingdom of *England*, and to provide Arms and Armed Men in divers Places of the ſaid Kingdom. And the better to compleat his evil Intentions, the ſaid laſt Day of *June*, did Conſult and Agree to ſend certain Perſons, to the Jurors unknown, into *Scotland*, to invite ſeveral evil diſpoſed Perſons there to joyn in this Conſpiracy. This is the Subſtance of the Charge, and to this he ſays, He is not Guilty; If we prove him ſo, we do not queſtion but you will find it.

Mr. *At. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of this Jury, Mr. *Hambden* ſtands indicted of an High Miſdemeanour, for Conſpiring with ſeveral others, to raiſe Rebellion within the Kingdom, and to crave the Aſſiſtance of the Brotherhood of *Scotland*. Upon the Face of the Indictment, Gentlemen, it appears to be a very High Crime, and the Matter of this indeed has been formerly in Examination in other Tryals, and yet the Party you may obſerve do not acquieſce in thoſe Tryals, but think the Perſons accuſed lay under very great Hardſhips, and that to a very great degree, as not having the Advantage of Counſel, nor to have their Witneſſes examined upon Oath; and therefore, Gentlemen, the King is pleaſed to go leſs in this Caſe than in the others, That this Gentleman, who is now before the Court, may clear his Innocence, if he has any Witneſſes to do it. And if there be any Advantage that the having of Counſel can contribute to his Cauſe he has that allowed him too.

The Courſe of our Evidence, Gentlemen, will be this.

We ſhall prove to you that Mr. *Hambden*, with five other Perſons (I ſhall name them) the Duke of *Monmouth*, my Lord *Ruſſel*, Mr. *Sidney*, my Lord of *Eſſex*, and my Lord *Howard*, they met ſeveral times (the Particulars we ſhall give you an Account of) one was at Mr. *Hambden*'s Houſe, another was at my Lords *Ruſſel*'s, where they did contrive together, and took upon them to be a Junto, or a Council of Six, collected out of the wiſeſt Men of the Kingdom, to conſider how they

they might better the Affairs of the Nation, and how they might make a Stir: For they thought there was no way poſſible otherwiſe of doing it, but by their joint Counſels to carry on a Riſing. And that they might do it the better, they reſolved to crave the Aſſiſtance of *Scotland*. Gentlemen, We ſhall give you an Account of their Conſults and Debates, and ſhall ſhew you, that at length they came to a Reſolution, That the riſing was to be carried on jointly in *London*, and the ſeveral Parts of the Kingdom, in ſeveral Countries at once. Then they came to think, and conſider whether it were not beſt to ſend into *Scotland*, to draw them in too. And thereupon it was agreed by this Junćto, That they would ſend thither, and the Management of it was committed to Mr. *Sidney*, to ſend ſome fit Perſon into *Scotland*, to treat with the Male-Contents there; and the better to carry on this joint Deſign, ſome of them were to come up to *London*. And they were to have a Pretence to treat about going to *Carolina*, and the purchaſing ſome Shares in the Plantation there, of which my Lord *Shaftsbury* was a chief Governour. We ſhall prove to you, Gentlemen, beſides all that I have opened, That the Perſon to whom that Truſt was committed, Mr. *Sidney*, according to the Duty that he had taken upon him, does employ one *Aaron Smith*, which all that know him, do know him to be a fit Engine for ſuch Counſellors, and a fit Inſtrument for ſuch a Conſpiracy. We ſhall prove he actually was in *Scotland*, and that he went into *Scotland* upon this Errand. And then we ſhall prove, That thoſe Gentlemen that were ſent to, and were the Perſons named in their Conſults to be treated with, came here ſoon after to Town, and as ſoon as ever this Plot was diſcovered, they fled and abſconded themſelves. Gentlemen, If we ſhall prove all this Matter to you, I think it will be without any Queſtion clear, that this Gentleman is notoriouſly Guilty of this High Miſdemeanour. And indeed, if your obſerve it, one of the Perſons has given Judgment againſt himſelf, the Earl of *Eſſex*. But the Party have been ſo diligent and officious as to fling that upon the Government; but that Matter we ſhall have before the Court in Judgment to morrow. For two of the others they have received the Judgment of the Law; for two more of them the King has been pleaſed to take them into his Mercy; the one is my Lord *Howard*, who is ſummon'd to appear here to Day; the other is the Duke of *Monmouth*, who has confeſſed all this Matter, and has taken his Pardon, and we have Summoned him alſo to be here this Day; that the World, if they will have their Eyes opened (I mean the diſcontented World) may ſee there is nothing ſought, but the Peace and Quieting of the Kingdom.

Gentlemen, If we prove all this Matter to you, I ſhall be glad to hear the Defence of the Counſel, and the Defence made by Witneſſes upon Oath.

Mr. *Finch.* Mr. *Sol. Gen.* My Lord, we will call our Witneſſes, and firſt we begin with the Duke of *Monmouth*.

Mr. *At. Gen.* Call *James* Duke of *Monmouth*.

Cryer. *James* Duke of *Monmouth*.

Mr. *At. Gen.* Call him again.

Cryer. *James* Duke of *Monmouth*.

L. C. J. Was he ſerved with a *Subpœna*?

Mr. *At. Gen.* My Lord, we will prove we have ſerved him in all Places where he was like to be met with; That we left *Subpœna's* with his Servants, who promiſed to deliver them to him.

L. C. J. Prove it.

Mr. *At. Gen.* Where is Mr. *Atterbury*? Swear him (which was done.) Pray will you give the Court an Account, whether you did ſerve the Duke of *Monmouth* with any *Subpœna*? In what Places you were to ſerve him, and who you left it with?

Mr. *Atterbury.* My Lord, On *Friday* laſt was Seven-night, I was commanded by Mr. *Attorney General*, to carry a *Subpœna* to ſerve upon the Duke of *Monmouth*, and to go to his Houſe at *Moor Parke*, where it was generally diſcourſed he was. I did go and take a *Subpœna* from Mr. *Burton*, by Mr. *Attorney's* Order, and went to the Duke's Houſe at *Moor Parke*. When I came there, the outward Gate was locked, and I went to an Houſe where the Keys are kept, and having got the Keys, I went down to the Houſe, and I ſaw there one of his Servants fothering of Cattle; and coming up to him, I asked him if the Duke of *Monmouth* was in the Houſe? He told me, he could not well tell, whether he was or not, but he thought he was gone to *London*, for he ſaw the Calaſh, and 5 or 6 Horſemen with it, and they ſaid in the Houſe, that it was the Duke that was gone to *London*. I asked if there were any Servants that were nearer to his Grace in the Houſe, that I might ſpeak with? They ſaid, Yes, there was the Houſe-keeper or Steward, one Mr. *Rawkins*, that attended upon the Duke. I deſired to ſpeak with him, and he came out to me; I asked him if the Duke was there? He ſeemed to be unwilling to give me an Anſwer. I asked him the ſecond time; but he did not ſay he was, or he was not. I told him then, I had a *Subpœna*, which I brought with me by Mr. *Attorney General's* Order, to ſerve upon his Grace, which was to require him to attend here this Day, to teſtify his Knowledge, in a Caſe between the King and Mr. *Hambden*. He told me, Sir, ſaid he, give me your *Subpœna*, and I will take care the Duke ſhall have it. He took it of me, and I came back to *London* preſently. As ſoon as I came to Town, I had a ſecond *Subpœna* given me to ſerve upon his Grace, with which I went to the Duke's Houſe at the *Cockpit*.

When I came there, I ſpake with the Porter, I think his Name is *Johnſon* (but the Porter he is, and I remember him a Servant there many Years) I asked him, if the Duke were there? He told me he did not lodge there. I told him I had a *Subpœna* to ſerve upon his Grace to appear as this Day, the ſame as I ſaid at *Moor Park*. Says he, Mr. *Atterbury*, I will take care the Duke have it to Night, or to morrow Morning early.

L. C. J. When was this?

Mr. *Atterbury.* It was of the ſame Day, *Friday* was ſeven-night laſt. I was told afterwards by one that I met with, that the Duke did lodge at Mr. *Row's* Houſe, who is a Servant to the Duke, one of his Gentleman. He lives in the *Pall-Mall*, 'tis either his Houſe or his Lodging, but they call it his Houſe. I had a third *Subpœna* given me to the ſame effect. And when I came there, I asked for the Duke, and a Woman came

to

to the Door, Mrs. *Manley* (I think they call her) ſhe ſeemed to make little Anſwer to what I ſaid. Said I, Pray will you give this *Subpœna* to the Duke, or to Mr. *Row* to give it the Duke. She took it of me, and ſaid, ſhe would give it Mr. *Row* certainly to give to the Duke. And yeſterday, or the Day before, I met Mr. *Row* at *White-Hall*, and ſays he to me, Mr. *Atterbury*, you brought a *Subpœna* to my Houſe a little while ago? Yes, Sir, ſaid I, I did, had you it? Yes I had the *Subpœna*, ſays he. Then ſays I, I hope you gave the Duke it? To that he made me no anſwer, but nodded his Head, and ſmiled, and went away.

L. C. J. Now call his Grace again.

Cryer. James Duke of *Monmouth.* [*But he did not appear.*

Mr. *At. Gen.* Call *William* Lord *Howard.* (*Who was in the Court*) Pray ſwear my Lord *Howard.* [*Which was done.*

Mr. *At. Gen.* My Lord *Howard*, Pray will you be pleaſed to give the Court and the Jury an Account, what you know of any Meeting by the Gentleman that is now accuſed, and the Duke of *Monmouth*, my Lord *Ruſſel*, your ſelf and others, and when? Tell what you know?

Lord *Howard.* My Lord, in *January* laſt was 12 Month, about the midſt of *January* I was called out by Colonel *Sidney*, being then in my Lodgings in *Southampton ſtreet*, and carried by him to Mr. *Hambden*'s Houſe, I do not know what they call the Street, but the ſame ſide of the way with the Fine Houſe that is in *Bloomeſbury*——

Mr. *Jones.* By my Lord *Mountague*'s Houſe that now is, you mean?

Lord *Howard.* Yes, of the ſame ſide of the way. When I came there, there was my Lord *Ruſſel*, and the Duke of *Monmouth*, Colonel *Sidney* and I went together, Mr. *Hambden* was then in the Room where they were. Afterwards came in my Lord of *Eſſex*, this made up Six. When they were there, we fell into Diſcourſes——

Mr. *At. Gen.* Pray my Lord, before you come to tell the particular Diſcourſes, give an Account how, and upon what grounds you came to have this Junto of Six?

L. C. J. If you pleaſe, my Lord, Pray give an Account of the Preliminary Paſſages.

Lord *Howard.* My Lord, After the Diſappointment given to an Undertaking that was begun by my Lord *Shaftsbury*, which was in *October* or *November* before, in *November* he died. After that, truly I cannot ſay, but that Colonel *Sidney* and my ſelf might be, and were the two firſt that did give the Riſe to it. For being in Diſcourſe, We ſaid it was abſolutely neceſſary that there ſhould be ſome Council erected to give ſome ſteadineſs to the Motions——

L. C. J. My Lord, I would not willingly interrupt you. But you ſeem to ſpeak of a Diſappointment given to an Undertaking by my Lord *Shaftsbury*. Pray what was that Undertaking?

Lord *Howard.* Your Lordſhip has heard of that before, and know it very well.

L. C. J. Though we know it, the Jury do not. They have not heard it Judicially at leaſt.

Lord *Howard.* Becauſe it has been in the printed Books, every body I ſuppoſe knows it.

L. C. J. But that they cannot Judicially take notice of.

Lord *Howard.* That is ſomething a long Hiſtory, my Lord.

L. C. J. Though it be, we muſt hear it.

Mr. *At. Gen.* Pray make it as ſhort as you can, my Lord.

Lord *Howard.* So much as I can give account of is this. It was about the Day after *Michael*'s Day that I came to my own Houſe having been before in *Eſſex*, and that I think was *Saturday*. The *Monday* following Captain *Walcot* came to me and dined with me, and after Dinner told me, my Lord of *Shaftsbury* had left his Houſe, and had betaken himſelf to a private Lodging, and had hid himſelf from the reſt of his Friends; but had a great Kindneſs for me, (which Kindneſs truly I wiſh he had ſpared) and deſired to ſee me, I took time to conſider of it; but I bid him go back to my Lord *Shaftsbury*, and tell him, if he had any thing of an extraordinary Nature to acquaint me with, I would come and aſſiſt him all I could. He came the next Day again, and ſhewed me to my Lord *Shaftsbury*'s Lodgings: He lodged then at one *Watſon*'s Houſe, a Citizen, I know not what Street they call it; but it was in a little Street down by *Woodſtreet*. And when I came to him, I found my Lord *Shaftsbury* very much differing from what he uſed to be, which was more cautious, and preſently he fell to tell me, that he was forced to withdraw himſelf from his own Houſe, for fear of being attacked again by Sham-Charges and Plots, and falſe Evidence, as he had before: For now he ſaid, He ſaw they had the Poſſeſſion of all Juries, by having thoſe Sheriffs which were impoſed upon the City, as he ſaid, and he could not think his own Life or any Man's Life ſafe; for to be accuſed was ſufficient to bring his Life into very great danger, and for that reaſon he had withdrawn himſelf to that private retirement; and being there he was reſolved to make ſome ſpeedy Puſh, for recovering of the Liberties of *England*, that there was Preparation made in the City of ſeveral Thouſands of Men, that were all in readineſs to Riſe, and that for his part, he was reſolved to be ſet on Horſe-back; for get on Horſe-back he could not; and that there were great numbers that were ready, when he did but hold up his Finger, to be drawn together at any time: That divers had been drawn out of the Countrey to join with them by inſenſible Parties of Horſe, I think he named about Fourſcore or an Hundred. Which ſince I found were to be headed by Colonel *Rumſey*, upon the Day of making and declaring the Sheriffs; but finding there was nothing done, he withdrew himſelf and his Man thither; but there was ſuch a general Preparation in the City, that if ſome Lords did not unhandſomely deſert them, they ſhould be in readineſs for Action quickly. I asked him who he meant? He told me, the Duke of *Monmouth* and my Lord *Ruſſel* had very unhandſomely deſerted him; for they had promiſed and undertaken to be in readineſs with Men out of ſeveral Countries in which they had an Intereſt, he named *Somerſetſhire*, *Devonſhire*, and *Cheſhire*, I think, and that my Lord *Grey* ſhould be diſpoſed of into *Eſſex* to do the ſame there, and if they had held on this Reſolution, it had been ſuch a ſure Game, that it could not have failed:

But

But ſays he, they are ſtarted, and ſay they cannot be in a readineſs to do it. My Lord, I very much wonder that thoſe Perſons you named ſhould ingage in any Deſign, and fail of performing what they promiſed! Says he, I'll aſſure you 'tis ſo. And ſo he proceeded to ſpeak ſeveral ſharp Things of the Duke of *Monmouth*, upon the account of his Ambition, that he thought to have all under his Command: Which was a ſecret lurking Ambition in him, that he ſaid, he always ſuſpected the Duke to be guilty of. And now he found his Suſpicions true. That unleſs he might command all, he would do nothing. But for his part, ſince he found the Matter ſo, he was reſolved to go on alone, rather than fail in his Deſign. Said I, my Lord, I ſhould be very forward to concur with you in any thing; but I wonder your Lordſhip ſhould ſtep into an Action of ſuch Danger, thus divided from thoſe that are moſt likely to aſſiſt you in it. I cannot help it, ſaid he, I have left my Houſe, and muſt go on. My Lord, ſaid I, pray give me leave to go to the Duke of *Monmouth*, and expoſtulate the Matter with him, and I will come and give you an Account again. Says he, 'tis to no purpoſe, I dare ſay. Said I, my Lord, pray let me go and try, for I would not have you divided, but I will promiſe you this, I will not tell him I came from you, but as from my ſelf diſcourſe it with the Duke. Well, ſaid he, if you will you may. This was upon *Tueſday*, I think the 3*d* of *October*, the 3*d* or 4*th*. So I went to the Duke of *Monmouth* the next Day, which was *Wedneſday*, and finding him not at home at his Houſe in *Sohoe*, and being told he was at *Moor-Park*, I took an Occaſion to go to *Moor-Park*, and I came there a little after Dinner, and took him aſide, and told him all this that I now have ſpoken about my Lord of *Shaftsbury*. Says he, I think the Man is mad, What does he mean? We did undertake to do this, 'tis true; but not by that time he ſpeaks of, and Things are not ready, I know not what his own Fears make him do; but he does act ſo prepoſterouſly that he will undo us all. Said I, my Lord, all that I ſhall deſire is, that there may be an interview betwixt you, and diſcourſe the Thing with one another, or elſe it may be a thing of very fatal Conſequence for him to ſtep into an Action of this Danger and Concern while you are thus divided. With all my Heart, ſays the Duke, I would have nothing more, I deſire to ſpeak with him. This made me recoil back again to my Lord of *Shaftsbury* the next Day, and I told him all this, and deſired he would give a Meeting, ſays he, I ſee they are falſe then to ſay they did not engage, they were engaged, and that againſt this time too, the Confirmation and Swearing of the Sheriffs; and now for me to meet with them, I know I ſhall run out into Paſſion and Anger, and therefore 'tis better omitted. Said I, my Lord, I muſt poſitively inſiſt upon it. I muſt have an interview between you, for 'tis a madneſs for you to go on thus divided in ſo great a Buſineſs. I could not prevail, he would not; but he told me, if I would I might go to them from him, and let them know I had been with him; (for before I pretended to have it from a third Hand, and not from my Lord himſelf,) and if they would be in a readineſs with what they promiſed from the Countrey, he would ask nothing from the City, he would take that Place upon himſelf, if they would perform their Engagement for other Parts; but he reſolved to go on. So I went to the Duke of *Monmouth*'s again, and told him, what he ſaid, That I could not by any means get him to an interview. Says the Duke, he is a ſtrange Man, I know not what to do with him, we will all be in a Readineſs as ſoon as we can; but it is impoſſible to do it ſo ſoon. I went to my Lord of *Shaftsbury* again on the *Saturday*, and did then poſitively engage him that he would give a Meeting to me, and the Duke of *Monmouth*, and ſome others. And we appointed Time and Place, he appointed to come out in a Parſon's Habit, and a black Periwig to his own Houſe, which he thought the ſafeſt Place, becauſe he would not diſcover his Lodging to any of them, for fear it ſhould come to be known. With theſe Inſtructions I came to the Duke of *Monmouth* to prepare to about it, and proffered him to be ready the next Day at Evening with my Lord *Ruſſel* to go to him. All this while I had not ſpoken to my Lord *Ruſſel*, but only to the Duke of *Monmouth*. And the next Day when I came from Church to my own Houſe, there met me a Meſſage from Colonel *Rumſey*, who I underſtood by my Servants had been there, and left his Name. With this Meſſage, that he came to tell me, the Gentleman that was to meet could not meet. This was ſo confuſed a Matter, that I was impatient till I knew the meaning of it. I took my Coach and went directly to the Duke of *Monmouth*'s again, and he told me, Colonel *Rumſey* had been with him, and told him, my Lord of *Shaftsbury* was apprehenſive there were a great many *Tories* about his Houſe, and he feared being diſcovered, and therefore had removed his Lodging, and ſo could not meet; but we ſhould hear from him in two or three Days. So that was the laſt time that I ſaw my Lord of *Shaftsbury*, or indeed in a direct Line did hear from him; collaterally by *Walcot* I did afterwards hear; but by this means we were at a loſs. After this the Duke of *Monmouth* did tell me (for he did not own to me that he ſaw him, but indeed ſwore to me he did not ſee him; but I find ſince he did.) That he would do what he could, to prevent an untimely dangerous Undertaking. But after this it ſeems they had a Meeting at Mr. *Shephard*'s Houſe, where my Lord *Shaftsbury* ſent a Meſſage to him and my Lord *Ruſſel*; but the Duke of *Monmouth* only told me, that my Lord *Ruſſel* had met with him, and ſeen him; but he never owned that he had met him himſelf or ſeen him. About four or five Days after, Captain *Walcot* came to me, and told me, ſuch a Day was ſet for the Riſing. Upon which being ſtartled, I had nothing to do, but recoil back to the Duke of *Monmouth*, and endeavour to ſtop any raſh Proceedings, and it was ſtopped as I thought, and ſo it continued for two or three Days, and at that time, which was in *October*, there was a Rumour up and down whiſpered, as if ſomething would be attempted; but what it was we did not know, but thus it went on for two or three Days, and then it meeting with a Diſappointment upon the Conſultation at Mr. *Shephard*'s, my Lord *Shaftsbury* took up his Reſolution to be gone, and went away to *Holland*, and died in *Holland*. This is the Subſtance of that Account which I can give of thoſe former Tranſactions.

Mr. *At.*

Mr. *At. Gen.* Now give an Account of what was ſubſequent to this.

Lord *Howard.* This was in *November.* After this there being frequent Conferences between Colonel *Sidney* and me; for Colonel *Sidney* by the way knew nothing of all this, and I was cautioned by my Lord *Shaftsbury*, that I ſhould not tell my Friend *Sidney* any thing of it, and asking him the reaſon, why I ſhould not? Says he, I can't well tell; but you will wonder when I tell you, that his own Friend Major *Wildman* has barred him and would not let him know it. The Gentleman is now dead; but I will aſſure you he did know nothing of this for a Month after: For he was gone into the Countrey; but after my Lord *Shaftsbury* was dead, I told him the Hiſtory of all theſe Tranſactions, which he was before a Stranger to. After this, when I had acquainted him with what had been intended in *London*, and what Preparations had been made, and how what was intended had been ſuppreſſed, and in what Poſture Affairs then ſtood. We then took up a Reſolution to form a Council, that might for the time to come give ſuch Directions as might regulate the Motions of this Affair. Thereupon we began to think of the Perſons who they ſhould be. He undertook to ſpeak to my Lord of *Eſſex* and Mr. *Hambden*, and I was to bring the Duke of *Monmouth* to a right Underſtanding with him in it. So I went to the Duke of *Monmouth*, and told him Colonel *Sidney* did preſent his Service to him, and would willingly wait on him, but that he thought it would do him hurt, becauſe he was a Perſon of ſuch Note, and thereupon ſo obnoxious that it might prejudice him to have him ſeen to come to him; and therefore if his Grace would pleaſe to appoint any third Place, he ſhould be very glad to kiſs his Hand. Says the Duke, I do not know any where truly to appoint. Why then, ſaid I, I will tell you a Place: Let us e'en go to his Houſe (having before prepared Colonel *Sidney* for it) and take him by Surpriſe and dine with him, and then there will be the leſs Suſpicion. But, ſaid I, you muſt not expect to be treated as the Duke of *Monmouth*, becauſe he does not expect you; but take him as a Philoſopher, and dine with him as he uſes to dine at his own Table. Says the Duke of *Monmouth*, I care not for Entertainment; I will go with you: And there at that time did the Duke of *Monmouth* undertake to bring in my Lord *Ruſſel* and my Lord of *Salisbury*. This was the only Diſcourſe preparatory to it that ever I knew of. Within a Fortnight or three Weeks after; nay, I think it was leſs than Ten Days after, Colonel *Sidney* came to me, and told me, my Lord of *Eſſex* was very forward in it. The Duke of *Monmouth* would prepare my Lord *Ruſſel*, and my Lord *Salisbury*; and he himſelf did not doubt, but Mr. *Hambden* was very willing to be in it too; and they had appointed a Meeting at Mr. *Hambden*'s Houſe, and he would carry me thither to the Houſe; and this was the firſt Meeting that I knew of; and there we met all Six.

Mr. *At. Gen.* About what time was that?

Lord *Howard.* It was about the middle of *January*; and truly I think I could reduce it to a certain Day or two by the Perſons where I lodged.

Mr. *At. Gen.* What was debated there?

Lord *Howard.* When we came there every one diſcourſed what he would. There was a Diſcourſe of the Time and Places where to riſe; but among other Things it was reſolved as a principal Point, that there ſhould be a Preparation made for the Deſign, by a Treaty with thoſe of *Scotland*, and an Underſtanding ſettled with *Argyle*, and a Meſſenger ſent to my Lord *Argyle* and others. And before this was done, we could not be ripe for any Reſolution: But this muſt be ſpeedily done.

L. C. J. Pray, my Lord, give me your Favour, I would not interrupt you; but to make Things clear as we go, I deſire to ask you, when you came firſt to Mr. *Hambden*'s Houſe, Who ſpake firſt, when you were all met together?

Lord *Howard.* Every body diſcourſed what they pleaſed.

L. C. J. But who gave an Account of the Reaſon of the Meeting? Will you pleaſe to recollect, and tell what you know, who began the Diſcourſe?

Lord *Howard.* Something introductive to it was ſaid by Mr. *Hambden*, we being at his Houſe, as 'tis natural to conceive for any Gentleman at whoſe Houſe People are met, to ſay, Pray let us ſit down, and talk of our Buſineſs. Something leading and introductive was ſaid by him.

L. C. J. Pray, my Lord, as near as you can remember, will you give an Account what was the thing he began to diſcourſe of? Did he ſeem to take any Notice, or have any Knowledge of your Meeting, and other Things before?

Lord *Howard.* It was a general Hint and Intimation to us of the Ends of our Meeting, that we were there come to conſult and adviſe one with another, how to put Things into a better Method and Poſture than formerly: And he deſired that we would ſit down and diſcourſe of theſe Things. My Lord, I would not charge my ſelf with Particulars poſitively.

Mr. *At. Gen.* Upon what Queſtions did you debate and conſult, my Lord?

Lord *Howard.* Thoſe were ſtarted ſeverally. Some would ſpeak of the Time when it ſhould be, whether it were not convenient now, or when? Others offered ſomething concerning the Places, whether it ſhould be begun in the City or in the Countrey, or both together. Others took it into Conſideration, what Perſons were to be prepared in the ſeveral Countries to be aſſiſting in it, that were probable to carry it on. And then ſome diſcourſed concerning the raiſing of Money, and then what Sum ſhould be raiſed, and I think that was ſtarted by the Duke of *Monmouth*; but I am ſure the Sum that he named was 20 or 30000 *l.* The laſt Thing that was talked of, but which was concluded to be the Thing principally to be taken care of, was the ſetling ſuch a Concurrence and Correſpondence with *Scotland*, that they might chime in at the ſame time, that ſo we might give as many Diverſions both from Home and Abroad, as could be at one and the ſame time.

Mr. *At. Gen.* My Lord *Howard*, Did Mr. *Hambden* diſcourſe of this Matter?

Lord *Howard.* I cannot ſpeak to the Diſcourſe of any one in particular; for I cannot ſay it was put to the Vote as we formerly expreſs'd it, but it may be ſaid we were all conſenting and concurring.

L. C. J. Did any of you diſſent from the Riſing?

Lord *Howard.* No, no, my Lord.

Mr. *At. Gen.* Did any of you oppoſe it at all?

Lord *Howard.* No, no, That was diſcourſed of as a thing reſolved.

L. C. J. I ask you this Queſtion, my Lord *Howard*, Was there any ſort of Complaint made of the Government, That it was uneaſy and that occaſioned you to enter into theſe Debates?

Lord *Howard.* There was, I cannot ſay a Complaint, becauſe there was no Perſon to complain to; but it was ſpoken of as a Matter of great Grievance, that ſuch a Force and Violence ſhould be put upon the City in their Election of Officers, and the tendency of that as to all Juries, tho' I cannot diſtinctly remember the particular things.

L. C. J. You ſay you were talking of a Meſſenger to be ſent into *Scotland* to my Lord of *Argyle*, and others, to chime in with you in this Matter as you ſay, pray did you come to any Reſolution about that, and what did you reſolve upon?

Lord *Howard.* That there ſhould be one only at that time. And afterwards it was the matter of the Debate at the next Meeting, which was that Meeting at my Lord *Ruſſel's*, which was about this time twelve-month in *February* ſome time.

Mr. *At. Gen.* How long after the firſt Meeting at Mr. *Hambden's* was that?

Lord *Howard.* My Lord, I think it was about a Fortnight.

Mr. *At. Gen.* Who was there?

Lord *Howard.* The ſame Perſons that met before. But then there was little ſpoken of but the Buſineſs of *Scotland.*

L. C. J. Was Mr. *Hambden* there at the ſecond Meeting?

Lord *Howard.* He was there.

L. C. J. At my Lord *Ruſſel's* you ſay it was?

Lord *Howard.* Yes.

Mr. *At. Gen.* What Reſolution did you come to then?

Lord *Howard.* Then we came to a Reſolution that ſome body ſhould be ſent, and we began to diſcourſe who was fit, and Col. *Sidney* he propounded *Aaron Smith*, to ſome of the Company he was known, to others not; but thoſe that did know him did approve of him as a fit Perſon.

Mr. *At. Gen.* To whoſe Province was that committed of ſending this Perſon into *Scotland?*

Lord *Howard.* Col. *Sidney* undertook it himſelf.

Mr. *At. Gen.* Did the reſt conſent to it?

Lord *Howard.* Yes, No body did oppoſe it, but left it to him.

L. C. J. Did you name the Perſon then that was to go?

Lord *Howard.* He was not ſo named as to be with any ſolemnity approved or diſproved; but it was left to Col. *Sidney* to manage it, and he naming *Smith* as a fit Perſon (he told us that by the by not to put it to the Queſtion for our Approbation) and ſome of us knew the Perſon, others did not. I was one that did know him, and did think him a very fit Man to ſend.

L. C. J. Pray, my Lord, who was the Perſon? Be pleaſed to tell the Jury ſo as they may know it.

Lord *Howard. Aaron Smith.*

Mr. *Juſt. Withins.* Had you any Diſcourſe with Col. *Sidney*, my Lord, afterwards that he was ſent?

Lord *Howard.* Yes, my Lord.

L. C. J. Pray give an account of that.

Lord *Howard.* About three or four Days after this Meeting at my Lord *Ruſſel's*, I went to viſit Col. *Sidney* at his Houſe, and while I was there in the Room, he went to his Cabinet, and out of a Drawer where there were five or ſix hundred Pounds in Gold as I could gueſs, he took a good many Pieces, I do not know directly how many; but he took out ſo many as he ſaid were threeſcore Guineas that he was going to carry to *Aaron Smith*, I went not in my own Coach, and therefore went away with him in his Coach, and he ſet me down at *Southampton-ſtreet* at my own Lodging. I went no further, but he did, and he told me afterwards it was conveyed to him, and that he did go.

L. C. J. How long was that after your Meeting at my Lord *Ruſſel's*, where you ſay you intruſted Col. *Sidney* to ſend one into *Scotland?*

Lord *Howard.* I think it may be leſs than a Week, four or five Days, that I ſaw him carry the Money. After this he ſaid, he had given him this Money, and was gone: And when he was diſpatched, in a Week after I was making Enquiries after him, and Col. *Sidney* ſaid, he had not heard of him ſince he went away; but about a Fortnight or three Weeks Col. *Sidney* ſaid he had heard of him, That he was at *Newcaſtle* and ſtaid there; but he wondered he could hear no more of him. I then went into *Eſſex*, and when I came back from thence, he told me, he was come, but I had never ſeen him, not to this Day, indeed I had once appointed a Meeting with him at Mr. *Weſt's* Chamber; but ſomething or other happened, we did not meet.

Mr. *At. Gen.* We have done with my Lord *Howard*; if they will ask him any Queſtions, they may.

L. C. J. They know their time, when the King's Attorney has done with any Witneſs, then they may examine him if they pleaſe. If they will not, call your other Witneſſes.

Mr. *At. Gen.* Will you ask him any Queſtions?

Mr. *Jones*, No, no, by Advice they are to ask him nothing.

Mr. *At. Gen.* We ſhall give your Lordſhip and the Jury an account in the next place, that we have traced *Aaron Smith* into *Scotland.* And for that we ſhall call ſome Witneſſes which indeed we did not produce before at any Tryal, becauſe we had not then diſcovered ſo much. We ſhall bring you the Perſon at whoſe Houſe he lay at *Newcaſtle*, and the very Meſſenger that was ſent with him to conduct him a By-way into *Scotland.* Call *Sheriffs* and *Bell.*

L. C. J. Look ye, Gentlemen, You that are at the Bar there, you muſt let the Jury ſtand by themſelves. I ſee there are a great many others intermingled with them, and you, Gentlemen of the Jury, If any Whiſperer talk to you, we expect that you ſhould tell us who they are; for we will ſuffer no Remarks to be made but what are openly made to the Court, and the Jury, by the Counſel of both ſides.

Mr. *At. Gen.* Swear *Sheriffs* and *Bell.*

[*Which was done.*

Mr.

Mr. *Williams.* What is this Man's Name, Mr. Attorney? Friend, what is your Name?

Witneſs. My Name is *Sheriffe.*

Mr. *At. Gen.* Pray give my Lord and the Jury an account what you know of any Perſon that lay at your Houſe ſome time ſince, and whether you have ſeen him ſince? My Lord, this Gentleman did not know *Aaron Smith* before, and therefore I deſire Mr. *Atterbury* may be called and examined again. Mr. *Atterbury*, Do you know *Aaron Smith?*

Mr. *Atterbury.* Yes, I know him very well.

Mr. *At. Gen.* Had this Gentleman a View of *Aaron Smith?*

Mr. *Atterbury.* Yes, he had. He was brought where *Aaron Smith* was, and this other Perſon was by before him too, and I was by when they had a view of him.

Mr. *At. Gen.* Now pray give an account what you know of the Man you ſaw?

Mr. *Sol. Gen.* Where is *Aaron Smith?*

Mr. *Atterbury.* He is in the *King's-Bench* Priſon, and he was brought by *Habeas Corpus* to *Whitehall* before the King, where theſe two Perſons were brought likewiſe, and there this Man *Sheriffe* did own that *Aaron Smith* was the Man that was at his Houſe; and the other *Bell* owned that he travelled towards *Scotland* with him, and that he was hired to ſhew him the way into *Scotland.*

Mr. *At. Gen.* Did *Aaron Smith* ſay any thing?

Mr. *Atterbury.* He would not anſwer any thing at all, nor ſay a Word.

Mr. *At. Gen.* Pray give an account, Mr. *Sheriffe*, who it was that lay at your Houſe, and when it was, and what he ſaid was his Buſineſs, and by what Name he went?

Mr. *Sheriffe.* Indeed his Buſineſs I did not know; but he was at our Houſe about the middle of *February*, it was thereabouts.

L. C. J. When was it? What *February?*

Mr. *Sheriffe.* The laſt *February.*

Mr. *At. Gen.* You ſay he was at your Houſe laſt *February*, pray tell the Court where that is?

Mr. *Sheriffe.* At *Newcaſtle.*

Mr. *At. Gen.* Do you keep any Inn there?

Mr. *Sheriffe.* Yes.

Mr. *At. Gen.* What Sign?

Mr. *Sheriffe.* The Sign of the *Black ſpread Eagle.*

Mr. *At. Gen.* And what did he do there?

Mr. *Sheriffe.* He ſtaid there one Night and went away, and returned again in twelve Days or thereabouts, and came to my Houſe again.

Mr. *At. Gen.* Whither did he go from you?

Mr. *Sheriffe.* He went *Southward* as I ſuppoſe, I know no further.

Mr. *At. Gen.* But when he firſt came to your Houſe, which way went he?

Mr. *Sheriffe.* He went *Northward* towards *Scotland*, as he himſelf ſaid, and deſired to have one to ſhew him the way: And I ſent for this Man, and when he came to him he hired him to go with him, and I was by.

L. C. J. When he firſt came to your Houſe about the middle of *February* was twelve-month, Whither was he bound then, *Northward* or *Southward?*

Mr. *Sheriffe.* He was going to *Scotland*, that is *Northward.*

L. C. J. And you ſay, after he came back again, and lay another Night at your Houſe.

Mr. *Sheriffe.* Yes, ten or twelve Days after he did.

L. C. J. And which way went he then?

Mr. *Sheriffe.* Then he came *Southwards* towards *London.*

L. C. J. Did you take exact notice of the Man?

Mr. *Sheriffe.* Yes, I ſaw him before His Majeſty and the Council.

L. C. J. And upon your Oath that ſame Man you ſaw there was the ſame Man that lodged at your Houſe in *February* was twelve-month?

Mr. *Sheriffe.* Yes, it is.

Mr. *At. Gen.* What Name did he go by at your Houſe?

Mr. *Sheriffe.* He went under the Name of Mr. *Clerke*, but what his Sirname was I can't tell.

L. C. J. Had he a Servant with him?

Mr. *Sheriffe.* He had a Man with him that ſtaid at our Houſe during the time of his going *Northward?*

Mr. *At. Gen.* What did he call his Name?

Mr. *Sheriffe. William Langſton.*

Mr. *At. Gen.* Did he deſire you to furniſh him with a Guide?

Mr. *Sheriffe.* He told me his Servant did not know the way, and his Horſe was a little lamiſh, and deſired me to get a Guide for him. For after he had dined at our Houſe it happened to be a rainy Day, and he could not go further that Night, and therefore deſired me to get him a Man that knew that Country, and I ſent for this ſame Man, and he hired him; and he went along with him next Morning, my Lord.

Mr. *At. Gen.* Whither was he to go?

Mr. *Sheriffe.* Truly I did not know; but he told me he did not know the way into *Scotland*, and I directed him to a Gentleman's Houſe at *Jadbrough* in the way.

L. C. J. Is that the Road to *Scotland?*

Mr. *Sheriffe.* Yes, the high Road to one part of *Scotland.*

L. C. J. Did he tell you to what part or place of *Scotland* he was to go?

Mr. *Sheriffe.* He named the Weſt of *Scotland*, I think he named *Douglas*, but I do not know what Place certainly he deſigned for.

Mr. *At. Gen.* Then where is *Bell?*

Bell. Here.

Mr. *At. Gen.* Had you a view of this Man they call *Aaron Smith?*

Bell. Yes, I had.

Mr. *At. Gen.* Give an account, whether you ſaw him in the North, and when and where.

Bell. This Man, Mr. *Sheriffe*, ſent for me. I live at *Newcaſtle*, and there I keep Hackney Horſes to ſerve any Gentlemen, or be a Guide to them as there is occaſion, and Mr. *Sheriffe* ſent for me, and when I came, he told me the Gentleman wanted a Guide into *Scotland.* We immediately agreed, it was upon Thurſday Night before that we call *Eaſter-Eve.*

L. C. J. When was it, ſay you?

Bell. It was the Thurſday before *Eaſter-Even*, ſo they call it with us, that is, *Shrove-Tueſday.*

L. C. J. Ay, they call it ſo in thoſe Places, becauſe 'tis the *Even* of the Faſt of *Aſh-Wedneſday*, the beginning of Lent——— Well, go on.

Bell. We went away on Friday the next Morning on our Journey towards *Jadbrough*, and the 2d Day, which was Saturday in the Afternoon, my Horſe tired, whereupon he left me with my Horſe, and took the Man's Man of the Houſe where he left me, to guide him, for my Horſe would not ride up with him being tired, and he reſolving to go on, and he bid me follow him on the Sunday Morning to *Jadbrough* Town, which I did, and we ſtaid there all Sunday. And on Monday Morning I ſaw him take Horſe and another Man that was his Guide, and away they went, as I think, he ſaid towards *Douglas* he was going. And he paid me, and I returned again from him to *Newcaſtle* and left him.

L. C. J. Pray how far was this, you ſay you went with him to *Jadbrough*, how far diſtant is that from *Newcaſtle*?

Bell. To *Jadbrough*, my Lord?

L. C. J. Yes.

Bell. 'Tis Forty Miles, my Lord.

L. C. J. How near *Scotland* is it?

Bell. 'Tis within ſome ſix Miles of the Engliſh Border.

L. C. J. Did you ſee him at any time after that?

Bell. I ſaw him at his coming back again; being at *Sheriffe*'s Houſe, his Wife asked me, if I would go up and ſee the Gentleman that I went with towards *Scotland*: So I went up, and he made me eat and drink at the Table with him.

Mr. *At. Gen.* What Name did he go by?

Bell. He went by the Name of *Clerk*.

Mr. *At. Gen.* Was there any Servant with him?

Bell. There was a Man that came with him as a Servant there, and was all the time at *Newcaſtle*, that he was gone towards *Scotland*, till he came back again.

L. C. J. Mr. *Attorney*, Did this Man ſee *Smith* at the time the other ſaw him?

Bell. Yes, I did.

L. C. J. And is that the Man that went by the Name of *Clerk* at *Newcaſtle*, and that you went with towards *Scotland*?

Bell. Yes, It is.

Mr. *Atterbury.* And when they charged him with it, *Aaron Smith* did not deny it.

Mr. *At. Gen.* Did you go any By-road to get into *Scotland*?

Bell. No, 'tis the Road Gentlemen uſually go to *Jadbrough*, and ſo on; becauſe 'tis ſomething the nearer way to that part of *Scotland*, as we judge it to be, therefore Gentlemen uſe it.

Mr. *At. Gen.* Is it an High Open Road?

Bell. Yes, 'tis the High Open Way to that part of the Country.

Mr. *At. Gen.* My Lord *Howard*, Pray were the Names of any of the *Scotch-men* mentioned at your Meeting that were to be ſent for?

Lord *Howard.* Yes; There was my Lord *Melvin*, Sir *John Cockram*, and one *Campbel*.

Mr. *At. Gen.* Now, my Lord, We will give you an account, That as *Smith* went into *Scotland*, ſo theſe Perſons ſoon after came into *England*.

Jury-man. My Lord, We deſire that my Lord *Howard* would name thoſe *Scotch-men* that were to come.

Lord *Howard.* There was my Lord *Melvin*, Sir *John Cockram*, and one *Campbel*, one that was of my Lord *Argyle*'s Name and Family; and there was another Name, but I can't remember what that Name was.

Mr. *At. Gen.* We ſhall give you an account, my Lord, That they came immediately after this to Town; and at the breaking out of the Plot they abſconded.

L. C. J. Mr. Attorney, Has my Lord *Howard* his Pardon?

Mr. *At. Gen.* Yes, my Lord, he has.

L. C. J. Then your Lordſhip may be covered.

Lord *Howard.* I can't tell but they may ask me ſome Queſtions.

Mr. *At. Gen.* Then you may be uncovered when they ask them, in the mean time your Lordſhip may be covered. Swear Sir *Andrew Foſter.* (*Which was done.*) Pray, Sir, will you tell my Lord and the Jury what you know about the *Campbels*, and Sir *John Cockram*'s being in Town? or any other *Scotch men* that you know of?

Sir *Andrew Foſter.* My Lord, I did ſee thoſe Gentlemen in the beginning of laſt Summer. Sir *John Cockram*, and Mr. *Monroe*, and *Campbel* the Son, I did ſee; but the Father I did not, but I do know he was in Town, tho' I ſaw him not.

Mr. *At. Gen.* How do you know it?

Sir *Andrew Foſter.* I had Meſſages from them.

L. C. J. Sir *Andrew*, You ſay, you ſaw Sir *John Cockram*, and *Monroe*.

Sir *Andrew Foſter.* Yes.

L. C. J. Did you ſee any body elſe?

Sir *Andrew Foſter.* I ſaw Sir *George Campbel* the Son.

Mr. *At. Gen.* What became of them upon the Diſcovery of the Plot?

Sir *Andrew Foſter.* Sir *John Cockram* did abſcond, and Mr. *Monroe* was taken into Cuſtody.

Mr. *At. Gen.* What became of the others?

Sir *Andrew Foſter.* The *Campbels* were both in Cuſtody.

Mr. *At. Gen.* Did you ſee any Commiſſion they had?

Sir *Andrew Foſter.* I did ſee a Commiſſion that Sir *John Cockram* had.

Mr. *At. Gen.* What was it for?

Sir *Andrew Foſter.* To make a Purchaſe of ſome Plantations beyond Sea, I think it was *Carolina*.

L. C. J. Ay, where my Lord *Shaftsbury* had an Intereſt.

Sir *Andrew Foſter.* It was ſome of the *Weſt Indies*.

Lord *Howard.* I did omit that Paſſage, my Lord——

Mr. *At. Gen.* Pray, was it diſcourſed then, what ſhould be the Blind for theſe Gentlemen that were notorious Diſſenters, that they ſhould come to Town from *Scotland* about?

Lord *Howard.* It was to carry on a Plantation in *Carolina*. The *Scotch* Gentlemen were perſonally known to my Lord *Ruſſel* only; and my Lord *Ruſſel* was to write the Letter to them, and, I ſuppoſe, did.

Mr. *At. Gen.* Mr. *Atterbury*, What do you know of theſe *Scotch-men* coming to Town; and what became of them afterwards?

Mr. *Atterbury.* My Lord, About the beginning of *July*, 4th, 5th, or 6th, or thereabouts, I had ſome Information, That there were ſome *Scotch* Gentlemen that had been ſhifting up and down,

and

and at that time were about *Black-Fryars*, lodged there ſecretly. I immediately went with the King's Proclamation, and ſome Warrants that I had to apprehend ſome Traitors that were fled: And when I came, I found that Mr. *Common Serjeant* having notice of them, had beat up their Quarters, and they were endeavouring to eſcape by Water; but there they were catched. There was Sir *Hugh Campbel*, and *Bayley*, and Sir *George Campbel*, and ſome others, I know not the Names of them all; truly I can't tell whether *Monroe* was not another, but Sir *Hugh Campbel* I had in my Cuſtody, and *Bayley* was immediately committed to the *Gate-houſe*; and the reſt of the Gentlemen I afterwards took in a cunning Hole by *Moor-fields*, in a back Houſe. And when I came there, I found them lying on the Bed in the middle of the Day; and had them Priſoners in my Cuſtody two or three Months; and then they were all ſent out of my hands into *Scotland* Priſoners. Six of them there were, my Lord, that I ſaw.

Mr. *At. Gen.* We have done, my Lord, only we deſire that a Word of a Record may be read.

Mr. *Williams.* What Record is it, Sir?

Mr. *At. Gen.* Of Colonel *Sidney*'s Attainder.

Mr. *Williams.* My Lord, We ſhall deſire your Judgment, whether that Record ought to be read againſt Mr. *Hambden*; I perceive by Mr. Attorney, that 'tis a Record of the Conviction of Mr. *Sidney*, which ought not to be given in Evidence againſt Mr. *Hambden* upon this Indictment.

Mr. *At. Gen.* We make uſe of it, to ſhew how upon former Tryals, upon this Evidence, Verdicts have gone.

Mr. *Williams.* We are in your Judgment, my Lord, if by Law it may be given in Evidence againſt Mr. *Hambden*, who is neither Party nor privy to it, nor indicted for the ſame Offence.

Mr. *At. Gen.* Let it alone then.

L. C. J. Well, Mr. Attorney does not preſs it. What ſay you to it, Gentlemen, for the Defendant?

Mr. *Williams.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel for Mr. *Hambden* the Defendant upon this Indictment here before you. This Indictment is a ſevere Indictment: It is a very high Crime of which my Client is accuſed. How far the Evidence tends to reach it, you have heard; and I ſhall, with the patience of the Court, particularly obſerve it to you. But I ſhall firſt ſpeak to the Indictment it ſelf: It ſays, that Mr. *Hambden* being a Perſon of a turbulent Diſpoſition, and ſeditiouſly intending to diſturb and diſquiet the King's Peace, and to ſtir Sedition, and to bring the Government into Danger, did Conſpire, *&c.* As to this Matter, Gentlemen, there is no manner of Proof of what the Indictment charges, as to the Diſpoſition of the Perſon accuſed; nor that he had any other Deſign, than what my Lord *Howard* hath now ſworn. Then it ſays further, that Mr. *Hambden* did Conſult and Conſpire with divers Perſons to execute theſe Purpoſes; and particularly for the making and raiſing of an Inſurrection in the Kingdom. This is laid as the particular Fact: And for this purpoſe he did further Conſpire with ſeveral Perſons, to provide Arms and Armed Men: And for their fulfilling of this, he did further Conſult with ſeveral Perſons, that ſome Perſons ſhould be ſent into *Scotland* to ſtir up the King's Subjects in *Scotland*, to a Concurrence and Conjunction with ſome People in *England*, about this his evil Deſign. How far this Indictment is proved upon the Defendant, Gentlemen, is the Queſtion before you. He has pleaded not Guilty, and hopes to ſatisfy you he is not. Gentlemen, as to what Evidence has been given you ſo far as 'tis Poſitive and Affirmative, I mean the Teſtimony of my Lord *Howard*, in that part, it is impoſſible for us that are of Counſel for the Defendant directly to contradict him with Proof, or to give a direct poſitive Proof in anſwer to it: I ſay, 'tis impoſſible for us to contradict him, who gives ſuch a poſitive Evidence of Fact. By the Evidence of my Lord *Howard* he tells us there were ſix Perſons in this Council, as he is pleaſed to call them. By his Evidence, three of the ſix are dead, my Lord *Ruſſel*, Col. *Sidney*, and the Earl of *Eſſex*; He himſelf is the Fourth, the Defendant is the Fifth, who cannot give Evidence for himſelf; and the Duke of *Monmouth*, who is the Sixth, being away, there is not any Perſon in Being, that ſhould contradict my Lord *Howard*'s Affirmative in this part of his Evidence but the Duke of *Monmouth*: Whom we cannot have here, ſince it appears by the Evidence, Mr. Attorney General could not prevail to have him at this Tryal; therefore Proof of that nature cannot be reaſonably expected from my Client to acquit himſelf by a poſitive Contradiction of what my Lord *Howard* has ſworn. Then in this Caſe we muſt, as in all Caſes where a Perſon does ſwear directly againſt a Defendant, endeavour to ſatisfy and perſwade your Lordſhip and the Jury, upon Circumſtances ariſing out of this Fact, and further Circumſtances attending the Fact, and by probable Arguments and reaſonable Inductions out of the Evidence, that this Gentleman, the Defendant, is not guilty of what he is charged with.

In the firſt place, We ſhall obſerve upon the Teſtimony of my Lord *Howard*, that as to ſome things he is very poſitive, and particular: He has an incomparable Memory, and ſpeaks particularly to Perſons, particularly to Places, particularly to Times. But, Gentlemen, as to that which is the principal Part of his Evidence, and which moſt affects the Defendant, and wherein it concerns us to contradict or diſprove him, he is wanting as to that Circumſtance of Time. He that is ſo exact in his Memory as to other Circumſtances, is not poſitive, nor any thing like poſitive, as to the Times of the Meeting. For they would imagine, that the firſt Meeting the Defendant was concerned in, was at his own Houſe. He deſcribes the Houſe and the Place very exactly, but as for the Time, he only ſays it was about the middle of *January*: He carries other things in his Memory poſitively; and whether it might not be expected in a Caſe ſo remarkable as this, and which ſo nearly and highly concerned himſelf, that he ſhould be as particular in the Time, as he is in other things, you may rationally judge. His Lordſhip ſometimes is very particular as to Time: He tells you in his Relation about my Lord *Shaftsbury*, that his going to him was on the Saturday after *Michaelmas-day*; and then he

he purſues it to the Second and Third of *October*. He is poſitive to many ſeveral Days; upon which I would obſerve, that he being particular to a Day, as to other Things, may well be expected to be ready (if it be true) to be as particular as to the Time of this Meeting: But therein he is to ſeek; he is doubtful as to that. And you muſt give us leave, Gentlemen, to make this Obſervation, That ſince he will not be particular to that Time, we do apprehend that he gives himſelf a little Looſe, that we may not meet with him to contradict him in that Circumſtance: For if he ſhould be poſitive therein, as he is in the other Matters that concern not the Defendant, we might perhaps by clear pregnant Circumſtances contradict, if not diſprove his Lordſhip, that it is not probable (if poſſible) it ſhould be true what he affirms. But Gentlemen, we muſt anſwer it as well as we can; and ſince he is ſo cautious, we muſt meet him by Arguments in another way. Another Thing we ſhould obſerve upon my Lord's Evidence, is this; That my Lord, though he be particular as to many Facts and Things relating to my Lord *Shaftsbury*, where he names other particular Perſons, I think Coll. *Rumſey* and *Walcot*, and names the particular Diſcourſes, particularly inſtancing in them, between him and my Lord of *Shaftsbury*, between him and *Walcot*, and between him and other Perſons; yet he has not made uſe of any one Circumſtance of Fact in this Caſe of the Defendant's now before you, that does juſtify what he has ſaid, ſave only that of *Aaron Smith*; not any one Circumſtance of Fact. So that there is no more than the bare Saying of what my Lord *Howard* is pleaſed to deliver no more than his Oath, nay, no more than his Obſervation, and Inference of much of what paſſed in the Company of ſeveral Perſons, without any concurring Circumſtances in Fact to juſtify or confirm his Teſtimony. It might have been an eaſy Matter, if all that my Lord *Howard* ſays was true, that there was ſuch a Meeting at Mr. *Hambden*'s Houſe by ſuch and ſuch Perſons, to prove that ſuch Perſons, or ſome of them met there. But that there ſhould be no Perſon to prove, that theſe Gentlemen, or any of them, were there; nor any other Fact or Circumſtance in the World, to go along with my Lord *Howard* to juſtify his Aſſeveration, is very wonderful, and may well make it doubtful that it ſhould not be true: And the rather, Gentlemen, (if it be true, as my Lord *Howard* would have it) becauſe there was a ſecond Meeting of all theſe Perſons at my Lord *Ruſſel*'s, which was ſo publick and open a Place, and yet no Man to concur or go along with my Lord *Howard* in any one thing; no particular Fact aſſigned to juſtify his Teſtimony as to this Meeting, is ſtrange, if it be true.

So then, Gentlemen, there is no more than what my Lord *Howard* has Sworn, without any one Circumſtance to back it, to prove the Defendant Guilty. My Lord, taking this upon the main of my Lord *Howard*'s Evidence, it will be pretty hard too upon the nature of the Fact, that he is pleaſed to prove againſt this Gentleman, to make an Anſwer to it: And truly, I think as hard for you to believe it. Gentlemen, He would imagine, That there ſhould be Men raiſed, Men armed, a Diſcourſe of Money, and this done, as he would have it, about the middle of *January*; and yet nothing at all done, though there appears no manner of Diſcovery of this very evil Contrivance, till about *July*. Neither is there any thing done in order to the raiſing of Men, the arming of Men, or the levying of Money all this while. So that there is no one Fact of any kind whatſoever, that goes along with what my Lord *Howard* has ſaid.

My Lord, and Gentlemen, Another Thing we would deſire to obſerve, is this, and here we ſhall begin with what we have to ſay, as to our own Arguments and Circumſtances, that we have to take off from the Teſtimony of my Lord *Howard* in this Caſe: In the firſt Place, it appears by the Evidence of my Lord *Howard*, That he was very deep in a Conſpiracy againſt the Government, and to make a Diſturbance in the Kingdom long before this, that he now ſpeaks of againſt the Defendant, that is plain enough; for he tells you, That my Lord *Shaftsbury* and He at *Michaelmaſs*, were contriving of Projects to overturn the Government, and raiſe a Rebellion. It appears plainly by his Evidence, That my Lord *Shaftsbury*, when he left his Houſe, was reſolved upon it, and my Lord *Howard* was very Sollicitous to carry on the ſame Deſign; nay, he was ſo active in it, that he tells you, That he did create Meſſages between my Lord of *Shaftsbury*, and the Duke of *Monmouth*, and would needs go by a falſe Inſinuation of his own, to draw in the Duke of *Monmouth*, by telling his Grace, his Information he had from *Walcot*, and not ſaying he came from my Lord *Shaftsbury*, with whom he ſays he had been diſcourſing; but he would put it under ſome ſort of Diſguiſe, the better to prevail. So that it appears my Lord was very Criminal, and Guilty, in this Caſe. Why then, Gentlemen, my Lord being ſo highly Criminal, and there being a Diſcovery of this Conſpiracy by *Keeling*, and *Rumſey*, and *Weſt*, having made a more manifeſt Diſcovery, and this happening in *July*; Then it was high time my Lord *Howard* might conceive for him to ſecure himſelf, and ſave one, he being thus Guilty, as he declares: It is but reaſonable to conjecture, he then began to place his Security in a Pardon; and that there were no other means to ſave his Life, and that the way to it, muſt be by ſome further Diſcovery of a Conſpiracy againſt His Majeſty and the Government: And having ſince obtained a Pardon, it is agreeable, That whatſoever my Lord *Howard* has done in this Caſe, he has done for his own Sake, to purchaſe his own Pardon for a Treaſon he was ſo deep in, and to out-do all the Witneſſes that went before him, by freſh Teſtimony againſt the Defendant and others: This might incline him to go an Inch or two, or more, beyond the Diſcovery of *Keeling*, *Weſt*, and *Rumſey*; to have but ſaid the ſame thing that was proved by three or four Witneſſes before him, might not perhaps have availed him: May not the indifferent believe it in this Caſe, to be the Intereſt and Security of my Lord *Howard*, by theſe means to merit his Pardon? May it not be believable, that what he hath ſaid, he hath ſaid only for his own Sake, and that he has, by expoſing this Gentleman, and the Blood of others, procured himſelf a Pardon?

L. C. J.

L. C. J. What do you mean by that, Mr. *Williams?*

Mr. *Williams.* By being a Witneſs againſt the Defendant and others, he has procured his own Pardon.

L. C. J. That is a little harſh Expreſſion——

Mr. *Williams.* My Lord, I explain my ſelf thus——

L. C. J. 'Tis an harſh Word, and too roundly expreſſed; You had need to explain your ſelf; 'Tis a little too rank, as though the King's Pardon were to be procured by Blood.

Mr. *Williams.* My Lord, I intend nothing of hardſhip, or amiſs, but to ſpeak according to my Inſtructions, and to make the beſt Obſervations I can, out of the Evidence for my Client: I will expreſs my ſelf as well as I can, That my Lord *Howard* being a Witneſs againſt Men in a Caſe of this high Nature; and there being other Witneſſes before, and beſides himſelf, to the Diſcovery of the late Conſpiracy againſt the Government, it concerned him to give an home Evidence in the Caſe, or elſe he could not have any expectation of his Pardon: For if he had done no more than what others had done before him, when there were three Witneſſes beſides, and they had got the ſtart in the Diſcovery, his Diſcovery had been in vain; and therefore he was concerned perhaps to ſtrain, that he might make ſuch a Diſcovery as might anſwer his end; and this will ariſe naturally, I ſuppoſe, out of what has happened in this Caſe: For it ſeems, though it was ſomething long before he got his Pardon, now he has it. My Lord, another thing is this, How far my Lord *Howard* will be credited in this Matter, we ſhall leave his Credit to you, Gentlemen, upon what we ſhall prove. For we ſhall make it out by Perſons of great Honour, and Perſons of great Integrity, That upon Diſcourſe concerning this Conſpiracy, my Lord *Howard* did declare, That he knew of no Perſons that were guilty of having any Hand in it; he declared it upon his Honour, he declared it upon his Religion, and he uſed all the Aſſeverations that were poſſible for a Man to offer, to make himſelf believed.

My Lord, It may be objected, as it has been ſome times, that That was to out-face the Conſpiracy, and ſo ſtop the Proſecution of that he knew himſelf to be ſo guilty of: But however, thus far we may make uſe of it for the Defendant, That if my Lord *Howard* would, in the Face of Heaven, pawn his Honour, his Truſt, his Conſcience, and his Religion, to aſſert that which was not true, and under all thoſe Vows and Ingagements affirm an Untruth; a Man that would deal ſo, and ſpeak an Untruth with that Solemnity, I think is not a Perſon of the ſame Credit, as a Perſon of certain known Truth and Veracity. For if a Man will ſay one thing one time, and that with ſolemn Vows and Aſſeverations, and ſwear another Thing the quite contrary another time, he does not ſtand ſo fair for Credit, I think, as he that always maintains, and avows the Truth. So far we may make uſe of it very ſafely, I think, as to my Lord's Credit.

My Lord, Another Matter that we have to urge, is, That ſince the Tryal of my Lord *Ruſſel*, and ſince the Tryal of Colonel *Sidney*, my Lord *Howard* has in Diſcourſe owned, that my Lord *Ruſſel* died Innocent. If that be true, it will have a great Weight ſure with you, Gentlemen, to diſcredit my Lord's Teſtimony: For then he hath contradicted what he hath ſworn. For if my Lord ſwore, that my Lord *Ruſſel* was Guilty, as all the World knows he did; and afterwards Soberly, and Publickly, ſhall have ſaid he died Innocent, he has contradicted his own Evidence, and his own Oath; and ſure is not to be believed as to what he ſwears now againſt the Defendant. My Lord, it did not reſt there; but ſince the Tryal of Colonel *Sidney*, it will be proved by Witneſſes, that my Lord *Howard* did declare, That Colonel *Sidney* had hard Meaſure. This will be proved by Witneſſes; and 'tis rather to be preſumed, He meant hard Meaſure as to his own Teſtimony, which he was beſt knowing of, than of any thing elſe as to his Tryal. Now, how this Perſon of great Honour can ſolve this, and how it can ſtand with his Oath, and his Honour; I will leave it to you, Gentlemen, to judge of it. My Lord, I have another Matter to ſay, That with me ſeems to have very great Weight: My Lord *Howard*, upon ſome Occaſions has ſaid, being in Diſcourſe with a very great Intimate of his, and the Man being ſpeaking of the World to come, ſpeaking of Eternity, ſpeaking of the Immortality of the Soul, ſpeaking of the Rewards and Puniſhments of another Life; my Lord *Howard* ſhould ſay to him, *How long wilt thou perſiſt in this Folly? How long wilt thou be ſo fooliſhly prevailed upon, as to believe the World was ever Made, or will ever have an End?* My Lord, if a Perſon be of that Opinion, and a Man's Judgment in ſuch Things will diſcover it ſelf in his Words; How far the Teſtimony of a Man of that Perſwaſion ſhall influence a Jury when he ſtands ſingle, when there is no Fact to juſtify him, in Point of probable Circumſtance, will be eaſily obſervable, and I muſt leave it to the Gentlemen of the Jury to conſider.

My Lord, We have another ſaying of my Lord *Howard's*, which we ſhall give you an Account of in the Proofs, and that was in relation to his Pardon. Being free in Diſcourſe, as my Lord is a Man very liberal that way; and his Friend inquiring whether he had his Pardon: *No*, ſays he; *Nor I cannot have it, till the Drudgery of Swearing be over.* Truly 'tis a very odd Thing, that a Man ſhould call that Drudgery, that is his Duty. To teſtify the Truth, is as much the Duty of every honeſt Man, as any thing elſe. Men have died for the Truth, and we look upon thoſe as Martyrs, and the beſt of Martyrs that die for the Truth. Now, that this Noble Lord, or that any Man ſhould call this a Drudgery, which is ſo manifeſt a Duty, by giving a true Teſtimony to preſerve the King's Life, and ſupport the Government againſt the Contrivance, and Conſpiracies of evil Men, is but an odd Inſinuation; and truly I think is rather to be taken in this Senſe, as to my Lord, That he did ſtrain a little to make his Diſcovery the more profitable to him; and ſo did ſay more (ſo far I may ſafely go) than any one elſe did ſay. And my Lord, This is That that I would obſerve upon the firſt Part of the Evidence.

As for that part that concerns *Aaron Smith*, the Evidence given by *Sheriffe* and *Bell*, I ſubmit that to your Lordſhip, how far that can any way affect Mr. *Hambden* the Defendant. It

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is introduced to fortify the Teſtimony of my Lord *Howard*, and it is introduced by himſelf thus: That at their Meeting at Mr. *Hambden*'s Houſe, there was a Diſcourſe of ſome Aſſiſtance to be had from *Scotland*; but ſays he, at the ſecond Meeting at my Lord *Ruſſel*'s, then it came to a further Diſcourſe, and Colonel *Sidney* did undertake to name a Perſon to ſend thither; and a Perſon was named; he does not ſay Mr. *Hambden* was concerned in it, or that Mr. *Hambden* named the Man, or any thing particular as to Mr. *Hambden*, more than that he was in the Company. Mr. *Hambden* had no Hand in the Undertaking, or ſending him into *Scotland*; that was altogether the Part of Mr. *Sidney*; ſave this, that he ſays my Lord *Ruſſel* writ the Letter that was to go by him. It does not appear Mr. *Hambden* was at all concerned in it, but only was there.

L. C. J. And conſented to it.

Mr. *Williams*. I would not ſtrain any thing my Lord, further than the Evidence is.

L. C. J. Nor do not Miſrepeat it neither.

Mr. *Williams*. I deſign not any ſuch Thing, my Lord.

L. C. J. But you do though; for he ſwears it, Every one of them conſented.

Mr. *Williams*. By Silence it muſt be then. For he does not ſay, That he ſaid any Thing. He ſwears only Colonel *Sidney* undertook to manage it, to ſend a Perſon; and my Lord *Ruſſel* to write the Letter.

L. C. J. And all the reſt conſented to it.

Mr. *Williams*. What is meant by Conſent, when nothing was ſaid, I muſt leave to the Jury. I muſt agree, the Lord *Howard* did ſwear, that my Client was in their Company, but how far he did, or did not conſent, does not at all appear; and how far this will charge my Client, I muſt leave to you, Gentlemen. But the Proof, as to this Matter, ſtands thus; that *Aaron Smith* was at *New-Caſtle* in *February* laſt, that he went publickly. Now, my Lord *Howard* ſays, that he went to agitate a Confederacy between the Malecontents of *Scotland*, and thoſe in *England*. Now it is ſtrange, that a Man that was to agitate ſuch a Concern, ſhould go publickly with a Servant to *New-Caſtle*; ſo publickly as to be known again; and of his own accord tell them he was going to ſuch a Place in *Scotland*. And be it ſo in Fact, will any Man apply this to any thing was done before (as my Lord *Howard* ſays about a Conſultation to join in Rebellion?) Will any Man think, that he ſhould talk at that kind of rate, if that were his Employment, and tell whither he were going? But I rely upon this, in Point of Evidence. 'Tis not proved yet, that *Aaron Smith* was in *Scotland*. That he came within ſix Miles of the Borders of *Scotland*, is proved; but it is not proved he was in *Scotland*, or did agitate any Conſpiracy there; or did any thing more than go within ſix Miles of the Borders of *Scotland*. But then they would preſs it further, and they ſay, that there were ſome *Scotch* Gentlemen, that in the Summer came here into *England*, and that they hid themſelves, when the Plot was diſcovered. It does not appear my Client had any Converſation with theſe *Scotch* Gentlemen, or any of them, or was ever in their Company. 'Tis a very remote Inference to bring any thing of this to affect my Client in this high Charge.

My Lord, We ſhall add one thing more to diſprove that Part of the Indictment, that lays the Imputation of Turbulency and Sedition to the Charge of Mr. *Hambden*; and which alſo will ſhew the Improbability of his being concerned in any thing of this nature. We ſhall prove him to be a Perſon of a ſober Converſation, of a retired Life, and ſtudious Diſpoſition; and as an Evidence for the Defendant, we ſhall prove, that he, in *October* 1680. left *England* for his Health's ſake, and went into *France* for the Recovery of his Health. He continued there till about *Michaelmas* was Twelve month, then he returned. 'Tis true, he continued in *England* from *Michaelmas* to the time they ſpeak of; but we ſhall make it plain, that in *February*, my Client, and my Lord *Mountague* had adjuſted Matters between themſelves, to go the beginning of Summer again into *France*, there to continue and abide ſome time for their Healths. Here is a ſtrange kind of Imagination, that this Contrivance between my Lord *Howard* and my Lord *Shaftsbury*, that was going on before this time, and that was diſappointed, and my Lord *Shaftsbury* went away, and afterwards died in *Holland*, was taken up by my Client, and thoſe other Perſons when my Client, as we ſhall prove, never intended to ſtay in *England*. My Lord, he was a Parliament man in both the laſt Parliaments, but appeared in neither of them, being all the while in *France*, for the Recovery of his Health. We ſhall prove him to be one Studiouſly inclined, that he lived a retired Life, and kept very little or no Company; and you will hear from Perſons of very great Honour and Quality, what he is, as to his Perſon, and as to his Opinion; and then we ſhall ſubmit it to you Gentlemen of the Jury, Whether you can believe him Guilty of this he is charged with, which is your Iſſue. You are to try, whether he be Guilty, or Not Guilty of the Crime charged in the Indictment.

Mr. *Wallop*. My Lord, and Gentlemen of the Jury, I deſire to make one Obſervation, before we call our Witneſſes.

L. C. J. Pray do not take up our time altogether in Speeches, but go on to your Evidence.

Mr. *Wallop*. I deſire to obſerve but one Thing, my Lord.

L. C. J. Make your Obſervations at laſt, but ſpend not our Time in Speeches. I know you will expect to be heard at laſt, and ſo you ſhall whatever you will ſay.

Mr. *Williams*. Call the Earl of *Angleſey*, the Lord of *Clare*, and Lord *Paget*. Mr. *Ducas* (*Who appearing was ſworn.*) Now we have him here we muſt begin with him, my Lord. Mr. *Ducas*, Pray what did you hear my Lord *Howard* ſay at any time concerning this Conſpiracy, and who were concerned in it, and who were not?

Mr. *Ducas*. My Lord *Howard* came once to the Houſe of Colonel *Sidney*, I believe it was about 8 Days after the Impriſonment of Colonel *Sidney*, and when he was in the Houſe, I asked him, What is the Matter my Lord? He did anſwer me, he was told there was a Plot againſt the King and the Duke, and one general Inſurrection to be made, and that Colonel *Sidney* ſent a Man into *Scotland*, to which Thing my Lord *Howard* ſware, laying his Hand on his Breaſt, ſaying, *God knows all Things, and God knows I know nothing of that; and I am ſure if*

Colonel

Colonel Sidney *had known any thing, he would tell me*; and I ſaid, what is the Matter, my Lord? Are you afraid? And he made Anſwer to me, *No honeſt Man is ſafe in his own Houſe, I pray you lend me a Bed to lie in.* And he asked me about the Goods of Colonel *Sidney*, becauſe of the Plot and ſuch Things, and he deſired to have them removed to his Houſe; and he ſaid, rather than go to the *Tower* he would do any thing.

Mr. *Williams.* Speak again to the Jury that did not hear you, what ſaid my Lord *Howard* to you?

Mr. *Ducas.* He ſaid, rather than to be a Priſoner again he would do any thing.

Mr. *Williams.* Who to be a Priſoner again?

Mr. *Ducas.* My Lord *Howard.*

Mr. *At. Gen.* What Things were ſpoken of?

Mr. *Ducas.* He ſaid he would do any thing.

Mr. *Williams.* Were you ſpeaking of the Conſpiracy? Of the Plot?

Mr. *Ducas.* He ſpake of the Plot, and ſaid he knew nothing of it.

Mr. *Williams.* What did he ſay, Sir?

Mr. *Ducas.* He ſaid to me and ſwore, he knew nothing of it, and called God to witneſs.

Mr. *Williams.* Pray did he than ſay he would do any Thing rather than go to the *Tower*, when you were talking of the Plot and Conſpiracy?

Mr. *Ducas.* Yes, he would do any thing rather than be a Priſoner again.

Mr. *At. Gen.* Pray what did he ſay?

Mr. *Ducas.* He raiſed up his Hands on high, and ſaid, he knew nothing of the Plot, or of the Inſurrection, or that Colonel *Sidney* had ſent any Man into *Scotland.*

Mr. *Williams.* When was this?

Mr. *Ducas.* I believe it was 8 or 9 Days after the Impriſonment of Colonel *Sidney.*

Mr. *At. Gen.* What Day of the Month, and what Month was it?

Mr. *Ducas.* He was Impriſoned about the end of *June.*

Lord *Howard.* My Lord, It would be neceſſary that I ſhould make an Anſwer to this, and I know not whether I ſhould make a particular Anſwer to every one; for here is a whole Set of Witneſſes, I ſee.

L. C. J. No, let them alone. You muſt not interrupt them, they muſt go on with their Evidence; and when 'tis a fit time for you to anſwer them, the Counſel for the King will call you.

Mr. *Williams.* Pray ſwear Mr. *Howard* (*Which was done.*) Pray, Sir, will you pleaſe to acquaint my Lord and the Jury what you know, of what my Lord *Howard* has ſaid of the Plot, and who were concerned in it?

Mr. *Howard.* My Lord, what I have ſaid is in the Paper of Mr. *Sidney*'s Tryal, and truly I can ſay no more than what I ſaid there.

Mr. *Williams.* Pray ſpeak out, Sir, and tell it again to this Jury.

Mr. *Howard.* I was told I ſpake it very loud then.

L. C. J. Pray, Sir, ſpeak as you pleaſe, We don't direct you in what Key you ſhall ſpeak. Speak in what Key you will.

Mr. *Howard.* Then if you will have me ſpeak it, I will ſpeak it as loud again. My Lord, is Mr. *Hambden* here?

L. C. J. Yes, there he is.

Mr. *Howard.* In the firſt Place I do not know Mr. *Hambden*, my Lord, I cannot promiſe to ſpeak the very Words that I ſpake the laſt time, I cannot make them ſo fit as one Tally fits another.

Mr. *At. Gen.* Conſider, Sir, you were not Sworn then, you are Sworn now, That is the Difference, and therefore pray conſider of it.

Mr. *Howard.* My Lord, As near as I can, I will repeat the ſame Words again, I had little Acquaintance with my Lord *Howard*; but meeting him often at my Brother's Houſe (and being he was extraordinary pleaſant Company, I muſt needs ſay that he was ſo, and a Man of great Wit) and I coming from *White-Hall*, he asked me what News of the Plot? I told him there were ſome People that were in the Proclamation, or would be, and I named their Names. Says he, I know none of them except *Rumbald*, I think; and by chance I met him paſſing through the *Old Exchange*, and he ſaluted me very kindly. After this my Lord *Ruſſel* was taken, and when my Lord *Howard* heard that, ſays he, then we are all undone. And I very much fear it is a Sham Plot, ſince they have ſeized upon my Lord, and I doubt he is a loſt Man. After that, I think, as near as I can remember——The next Thing was this ——If you look upon the Book, you will ſee what I ſaid there.

L. C. J. We are not to look upon the Book, Man. You muſt give your Evidence your ſelf. Mr. *Howard*, I hope you do not Swear by Book? Let the Truth come out in God's Name, whatever it be.

Mr. *Williams.* Ay, my Lord, We deſire to have Truth come out.

L. C. J. Ay, whether it be of one Side, or the other, God forbid but Truth ſhould be ſpoken. Mr. *Howard*, go on.

Mr. *Howard.* Then my Lord, Colonel *Sidney* was taken, and ſays my Lord, I am extremely troubled for Colonel *Sidney*, for he is my very good Friend, ſaid I, Why are not you concerned for my Lord *Ruſſel*? He is of your Blood, ſays he, he is a Man without Exceptions. There is no Man of ſuch Honour as he, but I am concerned for Colonel *Sidney*, as that particular Man that has obliged me above all the World, but I never heard my Lord *Howard* name Mr. *Hambden* in all my Life.

Lord *Howard.* I'll give you a Reaſon for it, my Lord, if you pleaſe, why I ſaid ſo.

L. C. J. My Lord, This is Evidence for the Defendant. If the King's Counſel will call you afterwards to make Anſwer to any of theſe Things, then is your time to ſpeak. We will not let them interrupt you when you come to ſpeak, nor muſt you interrupt them now. We are bound to hear both Sides, and ſo by the Grace of God we will do.

Lord *Howard.* My Lord, I deſire both he and his Brother may ſtay in Court, for I have ſomething to ſay to them.

Mr. *Williams.* Pray what did you hear my Lord *Howard* ſay concerning the Plot?

Mr. *Howard.* He did deny it poſitively, and ſaid, they acted nothing but what was Legal, and he ſaid it 500 times over.

Mr. *Williams.* Did he deny it?

Mr. *Howard.* Yes, he did.

L. C. J. But when he ſaid they acted nothing but legally, what did he mean? Was this Plot legal?

Mr. *Howard.* I had former Diſcourſes with my Lord *Howard* at other times, and I asked him; My Lord, what tends all this to? Your going up into the City and making theſe Meetings? Says he, we intend nothing but what is legal. There is not one Man in the Company that I know of, intends any thing elſe.

Mr. *Williams.* What was my Lord's Opinion of the Plot in *June* or *July*, or *Auguſt*?

Mr. *Howard.* He ſaid he knew nothing of it, nor could he believe there was any ſuch thing. When thoſe Perſons were named that were to kill the King, *Lord bleſs me*, ſaid he, *can there be ſuch a thing in Nature, That any Men ſhould be ſo wicked, but that there is one Man of Honour or Eſtate, or Conſcience, that ever had any ſuch Thought, it can never into my Head, I can never believe it.*

Mr. *Williams.* When was this?

Mr. *Howard.* When *Rumbald* and thoſe other People were put into the Proclamation.

Mr. *At. Gen.* Mr. *Howard*, Then I will ask you your Opinion, whether, in your Judgment, every Man that was in the Plot could not have ſaid ſo much?

Mr. *Howard.* I ſuppoſe every Man in the Plot would have defended himſelf as well as he could, but I cannot tell what way.

Mr. *Thompſon.* Sir, Did he barely affirm it, or with Aſſeverations and Imprecations?

Mr. *Howard.* My Lord was not put upon his Oath before me.

Mr. *At. Gen.* Mr. *Howard*, Don't you believe a great many that were concerned in this Plot would deny it?

Mr. *Howard.* I am to give my Opinion only for my ſelf, not for other People.

L. C. J. Have you done with him?

Mr. *Williams.* Yes, my Lord.

L. C. J. Then go over, Sir.

Mr. *Howard.* My Lord, I am troubled with Fumes, and cannot well endure a Crowd, therefore I deſire I may have leave to be gone.

L. C. J. You may go, if you pleaſe.

Mr. *Williams.* Call Mr. *Edward Howard.* (*But he did not appear.*) Then ſwear my Lord of *Clare* and my Lord *Paget.* [*Which was done.*

L. C. J. Well, What do you ask my Lord of *Clare*?

Mr. *Williams.* My Lord of *Clare*, Will your Lordſhip pleaſe to acquaint the Court and the Jury, what you heard my Lord *Howard* ſay concerning the late Conſpiracy?

Earl of *Clare.* My Lord, Some Indiſpoſition I have had of late, together with the great Rigour of the Seaſon, has confined me to my Houſe theſe ſix Weeks, ſo that I ſhould not come here but upon this Summons of a *Subpœna*, which I thought I ought not to refuſe. I ſuppoſe I need not repeat much of what was ſaid at Col. *Sidney*'s Tryal.

L. C. J. My Lord, You muſt give what Evidence you have to give now.

Mr. *Williams.* My Lord, The Gentlemen of this Jury have not heard it, therefore you muſt ſay it all over again to them.

Earl of *Clare.* Sometime after Mr. *Sidney* was taken, my Lord *Howard* came to ſee me, and complaining of the Times, ſaid, That all things were very ſad and dangerous, and if ever he was queſtioned again, he would not Plead, but deſire them only to count Noſes, for the quickeſt Diſpatch he thought was beſt: I replied, Sure his Lordſhip was in jeſt. He ſaid, No, he was in earneſt, for he was confident if he came to Tryal, they would have his Life, let him appear never ſo innocent. I ſaid, I hoped not ſo, it was only his Lordſhip's Fear, and becauſe of that, I thought it might be preſumed he would venture much, rather than be Tryed. And diſcourſing of the late Primate of *Armagh*'s Prophecy; He ſaid, for his part, he thought the Perſecution was already begun, and he did believe it would be very ſharp, but withal, he hoped it would be but ſhort; and then he began to wiſh himſelf beyond Sea till the Troubles were over; and in compliance with his Lordſhip I did wiſh ſo too. But as to *Sidney*, He did with great Aſſeverations very much aſſert his Innocency. He ſaid, he thought he was not guilty of any of the things laid to his Charge; and ſpake with large Encomiums in his Praiſe, as he had Obligation to do, and ſeemed to bemoan his Misfortunes; which I ſaid I had then reaſon to believe he was real in, for I believe never any Man was more engaged to another than he to Colonel *Sidney*. I told him there was a Diſcourſe of ſome Writings of Mr. *Sidney*'s that were taken; he ſaid he was confident they could make nothing of any Writing of his; I told him, I ſuppoſed he meant, legally they could not do it. This was the moſt he ſaid; as to Mr. *Hambden*, he mentioned nothing that I know of.

Mr. *Williams.* Did he ſeem to declare any Opinion about the Plot or Conſpiracy in general, That there was any ſuch thing or not?

Earl of *Clare.* I do not remember it.

Mr. *At. Gen.* My Lord of *Clare*, Did you never hear my Lord *Howard* before this complain of the Government that it was amiſs, and was to be rectified?

Earl of *Clare.* Yes, he often did complain. Every body knows my Lord's way of Diſcourſe.

Lord *Howard.* Pray, will you ask him, if my Lord of *Clare* uſed to fall out with me upon thoſe Diſcourſes.

Earl of *Clare.* My Lord was always good Company.

Mr. *At. Gen.* You mean *à propos*, my Lord.

Earl of *Clare.* I underſtand what you mean by *à propos*, you are a learned Man, I know.

Mr. *Sol. Gen.* My Lord of *Clare*, if I apprehend your Lordſhip aright, my Lord *Howard* was diſcourſing of the Primate of *Armagh*'s Prophecy, and ſaid he thought the Perſecution was already begun, and would be ſharp, tho' he hoped it would be ſhort, and he wiſhed himſelf beyond Sea till the Troubles were over, and your Lordſhip wiſhed your ſelf ſo too?

Earl of *Clare.* No; I ſaid in compliance with his Lordſhip, ſince he wiſhed himſelf beyond Sea till the Troubles were over, I wiſhed he were there too.

L. C. J. But I perceive all theſe Diſcourſes concerning the Government are reckoned but Jeſts and Matter of Laughter, but 'tis a very rank way of jeſting, I aſſure you.

Mr. *Williams.* My Lord, We call our Witneſſes ſeriouſly, they are the King's Counſel that jeſt.

Mr. *At. Gen.* Was this before my Lord *Howard* was taken?

Earl

Earl of *Clare*. Yes, but after Mr. *Sidney* was taken.

L. C. J. Well, who do you call next?

Mr. *Williams*. My Lord *Paget*, Pray what have you heard my Lord *Howard* ſay concerning the Plot, and when?

Lord *Paget*. My Lord ſits there, and I believe he may remember it was about the 7th of *July*, the Saturday before my Lord went into the Country, to the beſt of my Memory, which was, I take it, the 9th of *July*. Upon Saturday the 7th at Night my Lord came to ſee me, I told him I was glad to ſee him abroad, and not concerned in the Diſorders that were then ſo general; my Lord told me he had been wiſhed joy by ſeveral, and he took it ill, becauſe it looked as if he were guilty. 'Tis true, my Lord was a Man of great fineneſs and readineſs in Diſcourſe, and came eaſily into all Company, my Lord ſaid that was true, but he had ſo carefully behaved himſelf, that he was ſure they could not touch him with any thing, nor did he know any thing of any body elſe that he could charge them withal.

Mr. *Williams*. When was this my Lord?

Lord *Paget*. This was the 7th of *July*.

Mr. *At. Gen*. Pray, good my Lord, Why did you joy my Lord *Howard*? Had you any reaſon to miſtruſt my Lord?

Lord *Paget*. No other reaſon, than becauſe I knew he was a Man of great Freedom in Diſcourſe, and might be concerned upon that account.

Mr. *At. Gen*. And he would frequently diſcourſe againſt the Government, I ſuppoſe?

Lord *Paget*. No, I never heard my Lord diſcourſe againſt the Government in my life.

Mr. *Williams*. Sware Dr. *Burnet*. (*Which was done.*) Pray will you, Doctor, acquaint the Court, what you have my Lord *Howard* ſay concerning the late Plot, and when?

Dr. *Burnet*. My Lord *Howard* came to ſee me the Day after the Diſcourſe of the Plot broke out, Thurſday I think it was, on Wedneſday it began to be talked of. The thing was little underſtood then, but in general a Plot was diſcovered, and my Lord with a great many Proteſtations, lifting up his Hands and Eyes to Heaven, proteſted he knew of none, and believed there was none, and ſpake of the whole thing as a Contrivance.

Mr. *Williams*. This was the Day after the Diſcovery broke out?

Dr. *Burnet*. Yes, the Day after that I firſt heard of it.

Mr. *Williams*. Had you any other Diſcourſe with my Lord about it?

Dr. *Burnet*. I had not ſeen my Lord before of ſome Months. And then he ſpake a great deal to me. He told me he had been in *Eſſex*, and after that he went to the *Bath*, and went ſo early and came away before the Company came, becauſe he would avoid all Danger. And he expreſſed great Apprehenſions of Fear of Sham-Plots, and ſpake of Falſe Witneſſes and former Deſigns of that nature. The Truth of it was, one had poſſeſſed me much with a Belief of the thing, it being then but a Secret, but he ſtrove to diſpoſſeſs me of that Belief, and his whole Diſcourſe ran upon that for an whole Hour, and expreſſed, as I ſaid, great Fear of ſome Sham-Contrivance, and ſpake much of Falſe Witneſſes, wiſhing that he were beyond Sea.

L. C. J. What, he ſpake as if there were like to be great Heats and Stirs, I ſuppoſe?

Dr. *Burnet*. No, the Talk was about the Diſcovery, which he ſaid he believed was a Contrivance.

Mr. *Williams*. Did my Lord *Howard* uſe to come to you ſometimes?

Dr. *Burnet*. Yes, he uſed to come frequently to ſee me.

Mr. *At. Gen*. Dr. *Burnet*, Pray let me ask you one Queſtion, you ſpake of ſolemn Declarations and Proteſtations made by my Lord *Howard*, what gave the occaſion to ſuch a Solemnity?

Dr. *Burnet*. I will tell you the occaſion truly, tho' it was never asked me before. It was thus, I being poſſeſſed with the Belief of the thing by one that aſſured me it was true, and would ſoon appear to be ſo, I argued upon that Belief to convince my Lord *Howard*, that it was true, and he argued a great deal to diſpoſſeſs me of that Belief. And I ſaid, if there be any ſuch thing, I pray God forgive them that are concerned, but certainly it is one of the monſtrouſeſt ill things that ever was done; for hereby they have done all that could be done to ruin the Proteſtant Religion. He was ſmoaking a Pipe of *Tobacco*, and he laid down his Pipe, and lifted up his Hands and Eyes to Heaven, and proteſted to me, he neither knew of any ſuch thing, nor believed it, but it was all a Contrivance.

Mr. *At. Gen*. By his Diſcourſe, you poſſibly might underſtand what he meant, did he mean being privy to the Murder of the King, or the Raiſing of Rebellion?

Dr. *Burnet*. There was not a word then of the Aſſaſſination, but it was all of the Plot in general.

Mr. *At. Gen*. Did he make no diſtinction?

Dr. *Burnet*. We talked of nothing but Plot in general. For the Particulars were not then known. It was only about the general Notion of a Plot.

Mr. *At. Gen*. Pray, What was the reaſon you had to believe it?

Dr. *Burnet*. There was a Gentleman from *Whitehall* that came to ſee me, and he did aſſure me it was true, as being one that had it from a Privy-Counſellor. This was on the *Wedneſday*, when the Council ſate long about it; and nothing of Particulars was then let out, but only a Diſcourſe in general of ſuch a thing, and he ſaid it would be found to be a certain Truth.

Mr. *At. Gen*. But, Doctor, did not you a little wonder at the Carriage of my Lord *Howard*? That a Man that was not accuſed, that you heard of, ſhould make ſuch ſolemn Proteſtations?

Dr. *Burnet*. My Lord, He ſaid juſt in this manner as I have told you, when I ſaid, *Pray God forgive them, if any have been concerned in ſuch a thing*, he laid down his Pipe, and lift up his Hands and Eyes. Whether he thought I ſuſpected him or no, I can't tell, he beſt knows his own Thoughts.

Mr. *At. Gen*. Did he ſay a Word of Mr. *Hambden*?

Dr. *Burnet*. No, There was not any particular Perſon named.

Mr. *Recorder*. Doctor, He would not make you his Confeſſor.

Dr. *Burnet*. His whole Hour's Diſcourſe was to diſpoſſeſs me of the Opinion and Belief I had entertained of the Plot.

Mr. *Juſt. Holloway*. This was about *July*, you ſay?

Dr. *Burnet*. I cannot remember the very Day of the Month, I believe it was the latter end of *June*, but I am ſure it was before any body was committed, that we heard of.

Mr. *Recorder*. Dr. *Burnet*, You ſay you did believe there was a Plot then?

Dr. *Burnet*. Yes, I did ſo, and he labour'd to diſpoſſeſs me of that Belief.

Mr. *Recorder*. Pray, do you believe it now?

Mr. *Williams*. What a Queſtion is that, Mr. *Serjeant*?

Dr. *Burnet*. I make no doubt of it, Sir, as to the Aſſaſſination.

Mr. *At. Gen*. My Lord *Newport*, Why do you lift up your Hands? You don't do well; for it is a very proper Queſtion.

L. C. J. Well, call your next Witneſs, Gentlemen?

Mr. *Thompſon*. Swear Mr. *Gisborne*.

[*Which was done.*

Mr. *Williams*. Pray, Sir, Will you acquaint the Court and the Jury, what you have heard my Lord *Howard* ſay about the late Conſpiracy?

Mr. *Gisborne*. My Lord only ſaid he knew nothing of the Plot; that is all I can ſay.

Mr. *Williams*. When was this?

Mr. *Gisborne*. The *Saturday* before he was taken into Cuſtody; then it was that your Honour did ſay ſo, my Lord.

Mr. *At. Gen*. Ay, and 100 more I believe would ſay ſo, that might be concerned in it for all that.

Mr. *Williams*. Swear Mr. *Blake*. (*Which was done.*) Pray acquaint my Lord and the Jury, what Diſcourſe you had with my Lord *Howard* about his Pardon, and what he ſaid to you?

Mr. *Blake*. My Lord, About the Month of *October* laſt my Lord *Howard* ſent to me to know how I did, and deſired me to come and make him a Viſit. The next Day I went and waited upon my Lord at his Lodging at *Whitehall*, and after the Complements paſſed, my Lord began a Diſcourſe of the Plot, and I told him, That I heard none of the Witneſſes had their Pardons, but only *Keiling* the firſt Diſcoverer. My Lord told me no, but he had a Warrant for his Pardon, and with that he pluck'd it out and ſhewed it me, and I read it. And then I told him I thought it was of no avail without he had his Pardon actually under Seal. He ſaid no, but he had their Word and Honour; But, ſaid he, when I firſt received the Warrant, they ſaid I ſhould not meddle in it till I heard from them again; which I have not yet, and I aſcribe it to no other reaſon but only this, That I muſt not have it till the Drudgery of Swearing is over.

Mr. *Williams*. When was this?

Mr. *Blake*. In *October* laſt ſome time. So I then took my leave of my Lord, and my Lord deſired me to come and ſee him at Night about 6 a Clock in the Evening, for he had a great many came to him, but then he ſhould be at leiſure, and had many things to ſay to me.

Mr. *At. Gen*. At that time did my Lord expreſs himſelf as diſcontented, and that it was irkſome to him to be brought as a Witneſs?

Mr. *Blake*. He only ſaid thoſe Words that I have told you, and looked up and turned up his Eyes towards Heaven when he ſaid ſo.

Mr. *Williams*. Pray, where is Mr. *Benjamin Mercer*? Sware him. [*Who was ſworn.*

L. C. J. What do you ask him?

Mr. *Williams*. We bring him to prove that my Lord *Angleſey* was ſerved with a *Subpœna*, but is ſo ill of the Gout he can't come.

L. C. J. If that be all, there is no queſtion of it, but that he was *ſubpœna'd*.

Mr. *Williams*. If your Lordſhip pleaſe, we will prove in what Condition my Lord *Angleſey* is, and then we hope your Lordſhip will give us leave to prove what my Lord has ſaid concerning my Lord *Howard*'s Diſcourſes with him.

L. C. J. No certainly, Mr. *Williams*, and I am ſure you ask it not as expecting it ſhould be granted.

Mr. *Williams*. I lay it before your Lordſhip and the Court.

L. C. J. Ay, You lay it before us, but you are a Lawyer, do you your ſelf think fit it ſhould be done?

Mr. *Williams*. My Lord, I muſt ſubmit it to you.

L. C. J. Come, Will you conſent, that what the Duke of *Monmouth* has ſaid, ſhall be given in Evidence, and then I preſume the King's Counſel will conſent to your Requeſt?

Mr. *Williams*. I conſent? Here is my Client, my Lord, in Court, I can conſent to nothing.

L. C. J. But if ſo be there be leave given on one ſide to tell what another Perſon has ſaid, why ſhould not it be conſented to on the other ſide, that it be proved what a third Perſon that is abſent has ſaid for them?

Mr. *Recorder*. Ay, Will you conſent that we prove what the Duke of *Monmouth* has ſaid?

Mr. *Williams*. We don't know what the Duke of *Monmouth* has ſaid.

L. C. J. But you do know 'tis not Evidence, nor fit to be granted what you ask.

Mr. *Jones*. You know that 'tis not for your purpoſe what he has ſaid.

Mr. *Williams*. My Lord, We muſt go according to our Inſtructions.

L. C. J. But you know the Law, why ſhould you offer any ſuch thing? Your offering it will make the *Lay gens* that know not the Law, think that the Court put Hardſhips upon People, in denying things which you that underſtand the Law know can't be granted.

Mr. *Williams*. I do not preſs it, my Lord, but leave it with you.

L. C. J. Why do you ſpend our time in urging things that are nothing to the purpoſe, and cannot be allowed?

Mr. *Williams*. Now, my Lord, We will go on to another part of our Defence, and that is, to call Witneſſes to the Reputation of Mr. *Hambden*, and his Behaviour, to ſatisfy you, that he cannot be ſuch a Perſon as the Indictment ſays, and as he muſt be if it be true what this Gentleman my Lord *Howard* has ſworn.

Mr. *Thompſon*. We will firſt examine my Lord *Paget*. [*Who ſtood up.*

Mr. *Williams*. My Lord, We ask you to that Queſtion. Have you known this Gentleman Mr. *Hambden*, and what a ſort of a Man is he?

Lord *Paget*. I have good reaſon to know him: I have known him a great while, and have always

always believed him an honest and a prudent Man, a Man of Honour and Virtue, and Integrity, my Lord; and I have had no reason to have other Opinion of him. I know he has been always ever since he came abroad into the World a Man that hath loved his Study, and Books and a contemplative Life. And therefore I should not be apt to believe, That he could apply himself to a thing so contrary to his own Nature, and to that way that he delighted in, and had always hitherto applied himself unto, I mean, to engage in a Design of so much Malice and Wickedness.

Mr. *Williams.* My Lord, You have had a long Conversation with the Knowledge of Mr. *Hambden*, you say. What say you as to his Disposition; Because this Indictment says he is a Person of a turbulent, factious, seditious Spirit?

Lord *Paget.* I have always known him a quiet peaceable Man, not medling in Business, very friendly, free from all Turbulency, not of much Acquaintance, nor desirous to make much.

Mr. *At. Gen.* Pray, my Lord *Paget*, upon the same Oath you have taken, have you not at any time heard him express Dissatisfaction as to the Male-administration of the Government?

Lord *Paget.* No, never to me in the least.

Mr. *At. Gen.* Not at the time of the last *Westminster* Parliament?

Lord *Paget.* No, I never heard him then, nor at any time else.

Mr. *Williams.* Mr. *Hambden* was then in *France*, and not in that Parliament, tho' he was a Member. Where is Mr. *Pelham?*

L. C. J. Here he is. He sits down here. (*Pointing to the Table.*) What would you ask him?

[*He was sworn.*

Mr. *Williams.* Sir, Will you please to acquaint the Cuort, what Acquaintance you have had with Mr. *Hambden*, and how long? And what you know of him?

L. C. J. You hear the Question, Sir, How long have you been acquainted with Mr. *Hambden?*

Mr. *Pelham.* I have been acquainted with Mr. *Hambden* about five or six Years living near him, and all that I could observe from him was, that he was a Man much addicted to his Studies, kept much at home, and I never observed that he had much Acquaintance; but as to the Business before you, I know nothing of it, nor ever heard him speak any thing relating to it.

Mr. *Williams.* As to his Spirit and Disposition, Is he a turbulent Man?

Mr. *Pelham.* No, I never found him any thing like it. We never talked together of Matters of that nature.

Mr. *At. Gen.* Were you ever in his Company at any time when he discoursed about Government?

Mr. *Pelham.* No, I was never with him at any time when he discoursed of any such thing.

Mr. *Williams.* Sir *Henry Hobart.*

Mr. *At. Gen.* My Lord, We oppose his being a Witness. He is one of his Bail.

Mr. *Williams.* That was upon the *Habeas Corpus* Act, not upon this Indictment.

Mr. *At. Gen.* If he be Bail for the Defendant, my Lord, he cannot be a Witness.

Mr. *Williams.* I appeal to the Rule of Court, whether he was not Bail upon the *Habeas Corpus* Act only?

Mr. *At. Gen.* Appeal where you will, the Bail cannot be a Witness.

Mr. *Williams.* We moved for an *Habeas Corpus* the beginning of last Term upon the late Act for *Habeas Corpus's.* And then at the last Day of the Term upon *Habeas Corpus* he was brought up thither, and was Bailed upon that Writ.

Mr. *At. Gen.* Are not you one of the Bail, Sir *Henry Hobart?*

Sir *Henry Hobart.* I was one of his Bail, I think it was for his Appearance.

L. C. J. If he be one of his Bail that he shall appear in this Court the first Day of this Term, and so from Day to Day till he shall be discharged, and remains under that Recognizance, then in any Case against him he cannot be a Witness for him.

Mr. *At. Gen.* But they mistake the Matter, He was then charged with this Indictment: He then Pleaded to it, and was Bailed to answer the Indictment; and surely in that Case he can never be a Witness.

L. C. J. That is certainly very true, and you know the Law so well Mr. *Williams* that I wonder you will insist of it; in every ordinary Case it is every Day's Practice to deny the Bail to be Witnesses.

Mr. *At. Gen.* Here is the Person Principal, will they render him in Custody?

L. C. J. Ay, What say you, will you render him in Custody? Then we will discharge the Bail.

Mr. *Williams.* My Lord, I will tell you what we will do.

L. C. J. Tell me what you will do! Answer my Question, Will you render him in Custody?

Mr. *Williams.* We will change the Bail, my Lord, and find some other sufficient Person to stand in Sir *Henry Hobart's* Place, rather than lose our Witness.

L. C. J. With all my heart.

Mr. *Williams.* Here is Mr. *Ashhurst*, my Lord, a Gentleman of very good Value.

L. C. J. But you must render him first, and change the whole Bail. They must enter into new Recognizances.

Mr. *Williams.* I can't tell whether we can do that so very well, because the others I am afraid are not all here. He is a mighty material Witness, I am sure.

Mr. *At. Gen.* My Lord, Mr. *Williams* says he is a material Witness, let him be sworn, I am so fair, I'll consent to it: Let us hear what he can say.

[*Which was done.*

Mr. *Williams.* We thank you, Mr. Attorney. I am afraid you won't live long, you are so good-natured.

L. C. J. But you are like to live for your good Nature, Mr. *Williams.*

Mr. *Thompson.* Sir *Henry Hobart*, How long have you been acquainted with this Gentleman Mr. *Hambden?*

Sir *H. Hobart.* I have known him any time these ten Years.

Mr. *Williams.* How has he been, Sir, as to his Disposition and Spirit? Did you ever find him to be of a turbulent Temper?

Sir *H. Hobart.* Very far from it always.

Mr. *Williams.* Have you had any intimate Conversation with him?

Sir *H. Hobart.* I have known him all along, I say, these ten Years, but of late I have had more Con-

Converſe with him ſome few Years in Travel.

Mr. *Williams*. Had you much Converſation, Sir?

Sir *H. Hobart*. I was with him continually at *Paris*, and Abroad.

Mr. *Williams*. What ſay you as to his Loyalty and Principles? Was he a Factious, Seditious Perſon?

Sir *H. Hobart*. Sir, He always expreſſed a great Eſteem for the Government, and great Reſpect and Duty to the King.

Mr. *Williams*. Pray Sir, when went Mr. *Hambden* Abroad to go into *France*?

Sir *H. Hobart*. He went into *France* for his Health about *November*, (80.) I think it was.

Mr. *Williams*. How long did he continue Abroad, Sir *Henry*?

Sir *H. Hobart*. I found him in *Paris* the *May* after.

Mr. *Williams*. How long did you tarry there, Sir, your ſelf?

Sir *H. Hobart*. I went from *Paris* in *June*, and came back again to *Paris* about *October*, or *November* the ſame Year, and I found him in *France* ſtill.

Mr. *Williams*. And when do you take it he returned into *England*.

Sir *H. Hobart*. I was with him till he came over, which was about *September*, (82.) I think.

Mr. *Thompſon*. What do you know, Sir, of his Intentions to go again beyond Sea?

Sir *H. Hobart*. When, Sir, do you mean?

Mr. *Thompſon*. Since that time he came over, you ſay in *September*, (82.)

Sir *H. Hobart*. He told me of it often, I think it was about *March*, more particularly once at his own Houſe.

Mr. *Thompſon*. What *March*, Sir?

Sir *H. Hobart*. *March* (83.)

Mr. *Thompſon*. That is laſt *March*.

Sir *H. Hobart*. Yes, laſt *March*, he talked of it ſeveral times, particularly once I went about ſome Buſineſs of my own, and then he diſcourſed a great deal of his going over with my Lord *Mountague* that now is; for he told me his Health was not yet eſtabliſhed, for he came over out of an hot Countrey in *Autumn*, and had been all the Winter in this colder Countrey, and the Air he found had impaired his Health again. And it was not only what he told me, but I had a Letter from a Friend of mine in *France*, to whom I had ſent to deſire him to come over; but he writ me Word, no, Mr. *Hambden* was coming over again, and he would not come back yet.

Mr. *At. Gen.* Did he tell you when he intended to go over, Sir *Henry*?

Sir *H. Hobart*. As ſoon as Mr. *Mountague*, my Lord *Mountague* that now is, could get ready, who was to carry his Lady over with him.

Mr. *Williams*. Sir, Do you know of any Preparation made by Mr. *Hambden* for it?

Sir *H. Hobart*. He had reſolved to take his Lady with him, becauſe Mr. *Mountague's* Lady went, and ſo I believe did prepare accordingly.

Mr. *At. Gen.* Did Mr. *Mountague* go over?

Sir *H. Hobart*. He did not go then, but ſince he is gone.

Mr. *At. Gen.* Were you in *France* then at this Time?

Sir *H. Hobart*. This was in *England* at his own Houſe.

Mr. *Williams*. Pray Sir, what is his Diſpoſition?

Sir *H. Hobart*. He was always inclined to a ſtudious Life, and kept very little Company.

Mr. *At. Gen.* Was this in *March*, 83?

Sir *H. Hobart*. Yes, he came over in *September* before. I always obſerved him to be of a retired Temper.

Mr. *At. Gen.* You ſay, in 1680. he went into *France*, and in (82.) he came over again?

Sir *H. Hobart*. Yes.

Mr. *At. Gen.* Pray, Sir *Henry*, ſince you converſed ſo much with him; Have you heard him ſince the laſt Parliament at *Weſtminſter*, or at any time have you been by when he hath diſcours'd his Opinion about Government?

Sir *H. Hobart*. Truly, Sir, I don't take my ſelf to be capable of diſcourſing with him about any ſuch Matters.

Mr. *At. Gen.* Have you heard him at any time complain of the Male-Adminiſtration of the Government?

Sir *H. Hobart*. No, Sir.

Mr. *At. Gen.* Have you never heard any ſuch Thing from him?

Sir *H. Hobart*. No, never.

Mr. *Williams*. Swear Dr. *Lupée*——My Lord, We muſt deſire an Interpreter, for the Dr. ſpeaks *French* only.

L. C. J. Swear an Interpreter.

Mr. *Williams*. Dr. *Burnet*, or if he be gone, call Sir *Henry Hobart* again. We muſt beg the Favour of you, Sir *Henry* to be an Interpreter, you underſtand the *French* Tongue very well.

Sir *H. Hobart*. I will do it with all my Heart, Sir, as well as I can.

L. C. J. Swear him.

Then the Dr. was ſworn, and the Oath repeated to him by Sir Henry Hobart *in* French.

Cryer. You ſhall well and truly interpret between the Court and the Witneſs, and the Witneſs and the Court, according to the beſt of your Skill and Knowledge: So help you God.

Mr. *Thompſon*. Sir *Henry*, Will you pleaſe to repeat what Queſtions we ſhall ask, and what Anſwers he makes?

Sir *H. Hobart*. Yes, Sir, as well as I can, I will.

Mr. *Williams*. Pray, Sir, ask the Doctor this Queſtion, If he be acquainted with Mr. *Hambden*?

Sir *H. Hobart*. Yes, he ſays very well. He lived near two Years with him.

Mr. *Thompſon*. How long is it ſince?

Sir *H. Hobart*. Four Years ſince, he ſays.

Mr. *Williams*. Pray in that time, What was his Diſpoſition? Was he a ſeditious and turbulent Man? Or was he a ſtudious retired Man, or what?

Sir *H Hobart*. He ſays the two Years he lived with Mr. *Hambden*, he kept him Company in his Studies, and all that time he found he had no other Inclinations but for Study and Knowledge, and his Inclinations were very Vertuous. He always obſerved in his Diſcourſe a great ſubmiſſion and reſpect that he had for the Laws of his Nation, and his Prince, and to that degree he was a faithful Subject to the King, that once he told him in diſcourſing with him of the late Popiſh Plot, that he was ready to

ſacrifice

ſacrifice his Life and Fortune for the King's Service.

Mr. *Thompſon.* Ask him what Diſcourſe he had with him of the Plot ſince it brake out?

L. C. J. Will that be any Evidence do you think, Mr. *Thompſon*? Will Mr. *Hambden*'s Declaration be any Evidence, he being a Perſon accuſed? Do you think he would tell the Doctor, or any body elſe that he was Guilty, when he was like to be queſtioned? That would have been a wiſe Buſineſs indeed. You ſay, he was a very ſtudious Man, and a learned Man, truly if he had done that, he had beſtowed his Time in Learning to very good Purpoſe.

Mr. *Williams.* My Lord, That that we would ask him is this; This Perſon the Doctor being diſcourſing with Mr. *Hambden* upon the Diſcovery of the late Conſpiracy, and of the dangerouſneſs of the Time, he would have adviſed Mr. *Hambden* to have gone; no, he ſaid, he would not, for he was an innocent Man, and would not ſtir.

L. C. J. Well, ask him what you will, but his Declaration of his own Innocence cannot be taken for Evidence.

Sir *H. Hobart.* He ſays, ſince this Plot was diſcovered, he was going one Day to viſit Mr. *Hambden*, and going through *Long-Acre*, he met a *French* Miniſter, a *Savoyard* Miniſter —— But, my Lord, he ſpeaks ſo faſt, and goes on with ſo much at a time, that I cannot remember it all.

Mr. *Williams.* Well, what ſaid that Miniſter to him?

Sir *H. Hobart.* He ſays, this Miniſter asked him, if Mr. *Hambden* was not concerned in the Plot, and upon that he went and told him what the Miniſter had ſaid to him——He ſays, he told Mr. *Hambden*, that the Duke of *Monmouth*, and my Lord *Grey* were hid——He ſays, upon that, Mr. *Hambden* ſaid to him, I will never fly, nor conceal my ſelf, for my Conſcience reproaches me in nothing.

L. C. J. Ask him why does he think the *French* Miniſter, the *Savoyard* as he calls him, ſhould ask whether Mr. *Hambden* were in the Plot?

Sir *H. Hobart.* He ſays, Mr. *Hambden* ſaid he would rather die innocent than fly with the imputation of Guilt upon him.

L. C. J. But ask him the Queſtion I put, Why ſhould that *Savoyard* Parſon ſay ſo? What reaſon had he to think Mr. *Hambden* was in the Plot?

Sir *H. Hobart.* He ſays the Miniſter did ask him, but he can't tell what Reaſon he had to think ſo.

Mr. *At. Gen.* Pray, Sir *Henry*, ask him this Queſtion; How long ago it was ſince he left him?

Sir *H. Hobart.* Four Years, he ſays.

Mr. *At. Gen.* Where was it, in *England*, or *France*?

Sir *H. Hobart.* Whilſt he lived in *Bloomsbury*, he ſays.

Mr. *Williams.* Call Dr. *Needham* and Monſieur *Juſtell* (*Who appeared*) and Monſieur *Juſtell* was ſworn. Pray Sir *Henry Hobart*, will you ask Monſieur *Juſtell* who ſpeaks *French* too, if he know any thing of Mr. *Hambden*'s Reſolution to Travel with Mr. *Mountague* into *France*?

Sir *H. Hobart.* He ſays, Yes. He did tell him he was going into *France*, and he offered to carry ſome Books for him along with him.

Mr. *Williams.* What Company was he to go in, and what time?

Sir *H. Hobart.* He ſays, Sir, he can't be exact to the Month when Mr. *Hambden* ſpake of going over, but he ſays, it was a great while before this Plot came to be diſcovered.

Mr. *Williams.* Was it ſome Months before?

Sir *H. Hobart.* It was a Month before it was known, he ſays.

Mr. *Williams.* In what Company was he to go?

Sir *H. Hobart.* He ſaid he was to go with Mr. *Mountague.*

Mr. *Conyers.* Pray, Sir, Will you ask him, was he employ'd to get any *French* Servants to be with him?

Sir *H. Hobart.* Yes, he ſays.

L. C. J. Ay, but what was the Queſtion; for there is ſuch a crowd of People before the Counſel, that the Court cannot hear Mr. *Conyer*'s Queſtion.

Mr. *Conyers.* My Lord, I asked him, Whether he was employed to get any *French* Servants to be with Mr. *Hambden.*

Sir *H. Hobart.* Yes, he ſays.

L. C. J. Well there is Dr. *Needham*, What do you ask him?

Then Doctor Needham *was ſworn.*

Mr. *Williams.* We call Dr. *Needham* for this Purpoſe my Lord, to prove that theſe Gentlemen that are accuſed, Mr. *Hambden*, and my Lord of *Eſſex*, and the others, had very little Eſteem, and mean Opinion of my Lord *Howard.* And how one, they ſo little eſteemed, ſhould be let into ſo great a Secret, will be very ſtrange to imagine. Dr. *Needham*, Pray, what can you ſay of any of theſe Gentlemen's Opinions of my Lord *Howard*? What Opinion had my Lord of *Eſſex* of him?

L. C. J. Is my Lord of *Eſſex* now before us? What is that to this Caſe, Mr. *Williams*? Let my Lord of *Eſſex* have what Opinion he would of him; How does that concern the Defendant?

Mr. *Williams.* I tell you why, I offer it to my Lord——

L. C. J. But pray, offer what is Evidence, and keep to the Buſineſs before you.

Mr. *Williams. Falſus in uno, falſus in omnibus.* If we can prove that what he hath ſaid of my Lord of *Eſſex* is falſe, he is not to be believed againſt the Defendant.

Mr. *At. Gen.* Ay, but upon the Evidence of my Lord *Howard*, all the reſt were convicted.

Mr. *Williams.* I offer it only upon what is here to Day before you. He ſays, my Client, and my Lord of *Eſſex* were confederate with him upon ſuch a Deſign. Now if my Lord of *Eſſex* was not there, then he is falſe in that, and that he was not, we offer this as Evidence——

L. C. J. But 'tis not a proper Evidence in this Caſe.

Mr. *Williams.* 'Tis a ſort of Evidence——

L. C. J. Ay, 'tis a ſort of Evidence, but 'tis not to be allowed. If you will prove Mr. *Hambden*'s Opinion, you may, but you muſt not for him bring Proof of what my Lord of *Eſſex*, a third Perſon, thought of my Lord *Howard.*

Mr. *Williams.* I only offer it thus——

L. C. J. Offer what is Evidence, Man! You are a Practiſer, and know what is Evidence, but you have offered two or three Things to Day, that I know you do at the ſame time know is not Evidence, and I ſpeak it that it may not be thought we deny you, or your Client any any thing that is according to the courſe of Law. You that know the Law, know 'tis ſo as we ſay. Mr. *Attorney* has gratified you in waving three or four Things already, but nothing will ſatisfy, unleſs we break the courſe of other Tryals.

Mr. *Williams.* My Lord, What I take not to be Evidence I do not offer, and where the Court over-rules me, I have not inſiſted upon it.

L. C. J. No!

Mr. *Williams.* No, my Lord.

L. C. J. But you would have inſiſted upon it, if Mr. *Attorney* would have been ſo eaſy as to conſent, and the Court would have let you. Pray keep to the Buſineſs, and the Methods of Law; you know the Law very well.

Mr. *Williams.* My Lord, I humbly apprehend this may be Evidence, and I lay it before you. My Lord *Howard* has proved that my Lord of *Eſſex*, and Five more, of which Mr. *Hambden* was one, met and conſulted about ſuch Matters. We may, I hope, be admitted to prove, That my Lord of *Eſſex* was not there; for if we can take off his poſitive Proof, as to any one of the Circumſtances, we take off from the Truth of the Fact. If all the Perſons were not there; then my Lord *Howard* is miſtaken in that, and accordingly muſt not be believed in the reſt; therefore my Lord, I preſs it no otherwiſe: He hath proved theſe ſix Perſons were there. I offer this as ſome Evidence, That it is unlikely it ſhould be ſo, becauſe my Lord of *Eſſex* had ſo little Opinion of my Lord *Howard*, that he would never conſult with him about any matter.

L. C. J. Then certainly my Lord *Howard* is to be believed, to all Intents and Purpoſes, for here is a Record of the Conviction of my Lord *Ruſſel*, and of Colonel *Sidney*, and all upon the Teſtimony of this Gentleman, my Lord *Howard*, and is not that more to ſupport his Credit, than a flying Report of a third Perſon's Opinion of him. And yet after all we ſay, 'tis no Evidence againſt Mr. *Hambden*, and has been waved by Mr. *Attorney*.

Mr. *Williams.* Then I will not preſs it, my Lord.

Mr. *Juſt. Withins.* It is no Evidence, certainly, Mr. *Williams*.

L. C. J. It ſeems my Lord *Eſſex* had ſuch an Opinion of my Lord *Howard*'s Evidence, That he thought fit to cut his own Throat, rather than abide the Tryal.

Mr. *Williams.* Call Mr. *Murray*.

L. C. J. Suppoſe my Lord of *Eſſex* had ſaid, That he was out of the Plot, and Mr. *Hambden* was in, would that have been good Evidence againſt Mr. *Hambden*, do you think? Pray mind what is the Buſineſs before you?

Mr. *Williams.* Swear Mr. *Murray*. [*Which was done.*

L. C. J. Well, what do you ask this Man?

Mr. *Williams.* My Lord, we call him as to what I opened of my Lord *Howard*'s Opinion of the World to come, and Rewards and Puniſhments there.

L. C. J. Mr. *Williams*. Pray take notice of this, private Diſcourſes that People can't come to make Anſwer unto, becauſe they can't imagine to have them objected, are a very odd ſort of Evidence.

Mr. *Williams.* Therefore I opened it warily and tenderly, my Lord, the Witneſs will tell you the Story better than I.

L. C. J. I cannot tell what Mr. *Williams* has ſaid, or I have ſaid in heat of Talk or Vanity. God knows how often all of us have taken the great Name of God in vain: Or have ſaid more than becomes us, and talked of Things that we ſhould not do.

Mr. *At. Gen.* My Lord, how can my Lord *Howard* be prepared to give any Anſwer to this?

Lord *Howard.* My Lord, This preſſes hard upon my Reputation, my Lord. I profeſs before God I do not know this Fellow, I never ſaw him in my Life before as I know: But a Company of impudent Fellows take the liberty of ſaying what they pleaſe.

L. C. J. To rake into the whole courſe of a Man's Life is very hard.

Lord *Howard.* I would fain have theſe Fellows dare to ſay this any where elſe of me.

Mr. *Williams.* Well, my Lord, we will wave it.

L. C. J. They do not think it a fit Thing to preſs it.

Lord *Howard.* But my Lord, it concerns me in my Reputation; who is this Raſcal they bring here? God's life, who is he?

L. C. J. We muſt be tender of Men's Reputation, and not let every thing come as Evidence when 'tis not fit to be Evidence, to put Slurs and Scandals upon Men that they can't be prepared to wipe off. Is he convicted of any Crime? If he is, you ſay ſomething, ſhew the Record of it.

Mr. *Juſt. Withins.* Mr. *Williams.* You know the Caſe adjudged lately in this Court, a Perſon was indicted of *Forgery*, we would not let them give Evidence of any other Forgeries, but that for which he was indicted, becauſe we would not ſuffer any raking into Men's courſe of Life, to pick up Evidence that they can't be prepared to anſwer to.

Mr. *Williams.* We have that reſpect for my Lord's Honour too, as not to preſs it, only we had it in our Briefs, and we muſt go according to our Inſtructions.

Lord *Howard.* I deſire to know who that Raſcal is; What is he? Where does he live? I will make him an Example.

L. C. J. Pray compoſe your ſelf, my Lord, There is nothing of this preſſed.

Lord *Howard.* To ſay, I am an Atheiſt, my Lord! What can be a greater Reflection?

L. C. J. He has not told us any ſuch thing as yet. And we will take care that nothing ſhall be offered but what is fitting.

Lord *Howard.* I vow to God, my Lord, I do not know the Man.

L. C. J. My Lord, Do you think that every thing that a Man ſpeaks at the Bar for his Client, and his Fee, is therefore to be believed, becauſe he ſaid it? No, the Jury are to take nothing here for Evidence to guide them of what the Counſel ſay, but what is approved. They are to judge *ſecundum allegata & probata*, that is their Duty.

Lord

Lord *Howard.* Does that Fellow look like a Man of that Figure, that I ſhould ſay any thing, or have any Converſation with him?

L. C. J. My Lord, I don't know what he is. Go on, Gentlemen.

Mr. *Williams.* My Lord, We have done with our Evidence. If Mr. Attorney will leave it here, we will.

Mr. *At. Gen.* My Lord, we won't miſtruſt the Evidence, nor the Court.

Mr. *Hambden.* My Lord, I deſire to ſpeak a Word my ſelf, if you pleaſe.

L. C. J. Ay, in God's Name. You, or your Counſel, I will hear all you will ſay, and as long as you will ſpeak, provided you ſpeak within the Bounds of Decency.

Mr. *Williams.* My Lord, I think it beſt to leave it to the Court: We hope we have made it clear that our Client is innocent.

L. C. J. Would to God you were Innocent, that is the worſt Wiſh I wiſh you, but we will either hear him or you ſpeak, ſpeak as long as you will.

Mr. *Wallop.* My Lord, I deſire to make but one Obſervation.

L. C. J. Ay, in God's Name make what Obſervations you will, Mr. *Wallop*, I hindered you from making your Obſervations at firſt, becauſe I knew it would be defired after the Evidence was over.

Mr. *At. Gen.* Then my Lord, I expect to be heard too. If Mr. *Hambden* makes a Speech, I will reply, or if his Counſel do it, I expect the laſt Word, for I will have neither the Party, nor the Counſel to ſpeak after I have ſumm'd up the Evidence for the King. Mr. *Hambden*, and his Counſel are all one.

Mr. *Wallop.* I have but one ſhort Obſervation to make.

L. C. J. Go on then, Mr. *Wallop*, and ſay what you will.

Mr. *Juſt. Withins.* I think 'tis very fit you ſhould do it of both Sides; 'tis a Cauſe of great concernment.

Mr. *Williams.* My Lord, We will leave it here I think.

L. C. J. Take your own Courſe, Do not ſay we hinder you of ſaying what you will for your Client.

Mr. *At. Gen.* Let them do what they will.

L. C. J. I'll ſit ſtill, make Speeches every one of you as long as you will.

Mr. *Juſt. Walcot.* 'Tis fit they ſhould ſpeak what they can for the Advantage of their Client.

Mr. *Williams.* My Lord, We leave it to the Court.

L. C. J. Gentlemen of the Jury, the Evidence has been ſomething long, and the Counſel both for the King, and for Mr. *Hambden* againſt whom this Indictment has already been found by the Grand Jury, having left it to the Court to Sum up all, I ſhall do it as well as I can: And the Queſtion before you, Gentlemen, is, Whether the Defendant be guilty of the Offence charged in the Indictment, or not Guilty, and there having been ſo long an Evidence on the one Side, and on the other, it will be fit for me according to the beſt of my remembrance to help your Memories, by recollecting what has been ſaid on both Sides, which I ſhall do as near as I can, and if my Brethren will pleaſe to ſupply any thing that ſhall be omitted by me, nay, if the Counſel for the King, or for the Priſoner, will put us in mind of any thing that has been ſpoken, and proved either againſt, or for the Party indicted, in God's Name let them have liberty to ſpeak it: For it is fit the Queſtion ſhould be left before you with all fairneſs, and according to the beſt of my Obſervation and Memory, thus it ſtands.

The firſt Thing, Gentlemen, that is conſiderable to you, is, That there is ſuch an Indictment, as has been already opened unto you, that is preferred againſt Mr. *Hambden*, that does ſet forth, That Mr. *Hambden* is a ſeditious Perſon, and a Man, according to the Language of the Indictment (which are Words of courſe and form in an Indictment of this Nature) of an evil Diſpoſition, deſigning to diſturb and diſtract the Government, and that he with ſeveral other Perſons, did conſpire to bring in Troubles, and Perplexities upon the Government; and in order to that, that there were ſome Meetings between him and ſeveral other Perſons, and that there was a Deſign to conciliate ſome Perſons of another Nation to go along with them in their Deſign, particularly ſome in the Kingdom of *Scotland.* This is the Purport in the Indictment, to which the Defendant has pleaded not Guilty.

Gentlemen, The Evidence for the King has been of this Sort, They did at the beginning, which yet I muſt tell you by the way, is not any thing of Evidence, but the King's Counſel would make ſome Overtures to preſs on their Side, as the Defendant, and thoſe that are of Counſel for Mr. *Hambden*, have made ſome little Hints to preſs on their Side, that ſome Witneſſes the one and the others would have had here, were *ſubpœna'd* but could not be here. It ſeems by the Proof, here was a Meeting, as it was between Six ſeveral Perſons, and they name them, the Duke of *Monmouth* was one, the Lord *Howard* another, the Lord *Ruſſel* a Third, the Earl of *Eſſex* a Fourth, *Algernone Sidney* a Fifth, and Mr. *Hambden* the Sixth. As for my Lord of *Eſſex* he is gone to his long Home, my Lord *Ruſſex*, and Mr. *Sidney* have received Sentence, and been executed. So there remains Three Surviving, and ſay they that are for the King: We produce my Lord *Howard*, and we have taken care to Summon the Duke of *Monmouth*, by leaving *Subpœna*'s, where it could be thought he was to be met with, with Promiſes of his Servants to deliver them to him in order to have the Duke to be a Witneſs for the King this Day. I preſume the meaning is, They would infer from that, that they would give an Account of the fairneſs of this Proceeding, though it has been a Matter that has obtained a Sort of Belief in the World, as though the Duke of *Monmouth* had denied, that there was any ſuch thing as this Confederacy and Conſpiracy: And that has given People occaſion to be of very different Opinions, and Perſuaſions about the Matter; but ſay they, to ſhew we are not afraid to have the Truth come out, we have done as much as in us lay to get this Perſon hither: Therefore we have left *Subpœna*'s at his Houſes, at his Lodging with his Servants, and they have promiſed to take care they ſhould be delivered to him, and he is not come. Againſt this on the other Side, ſay they, for the Defendant, We have taken all the care we could to bring my Lord *Angleſey*,

who was to have been a Witneſs for the Advantage of the Perſon indicted, but my Lord *Angleſey* is at preſent afflicted with a Fit of the Gout, and for that very reaſon we can't have him here. And ſo they ſhew, that they have been very zealous to get Witneſſes on their ſide to vindicate their Reputation, but they did not meet with that effect that they deſired. Theſe two things, Gentlemen, are Matters that are uſed both againſt him one way, and for him another.

But now to come home to the Evidence upon which this Matter is to turn, and here you are to conſider, that whatſoever has been ſaid or offered by the King's Counſel on the one ſide, or the Counſel for the Defendant on the other ſide, (I call him ſo, for 'tis but a Treſpaſs tho' a great one) You muſt not take into your Conſideration at all any further than as their Allegations are ſupported by the Teſtimony that has been given: And whatſoever the Witneſſes have ſaid either for or againſt him, and out of that Teſtimony as near as I can remember I will give you the Objections, and their Anſwers with the Obſervations that have been made, or do naturally ariſe out of the Facts in Proof.

My Lord *Howard*, in the firſt place, gives an account of this Matter, and, Gentlemen, the Times will be wonderful material, and therefore I beg you would take a Pen and Ink, and mark theſe material Circumſtances as you go. For in all Matters of Fact poſitively proved, which alſo have their Credit ſupported by Circumſtances which do accompany them, the Teſtimonies given of ſuch Facts are to be valued according as thoſe Circumſtances keep touch with, and humour, as I may ſo ſay, the Fact that they are to evidence the Truth of.

My Lord *Howard* does therefore in the firſt place acquaint you, that about *Michaelmas* there was a Diſcourſe between him and my Lord of *Shaftsbury*, and that was concerning a Riſing intended to be had, and he tells you how that my Lord *Shaftsbury* was fully reſolved upon it; That things at length came to that paſs, That he was forced to go from his own Houſe, as he ſaid, being diſappointed by the Duke of *Monmouth* and others who had promiſed to joyn with him, and was retired to the Houſe of one *Watſon* in or near *Woodſtreet*. But he underſtanding where he was, my Lord *Howard* went to him, (I think he ſays my Lord *Shaftsbury* ſent to him) when he came, my Lord *Shaftsbury* told him, That altho' there had been ſuch a Diſappointment by thoſe Perſons he named, yet that did not take off his Edge, but he was reſolved to go on himſelf, nay, tho' his Body was infirm, yet he would be ſet on Horſe-back, tho' he was lifted up to appear in the Head of a Party that he had prepared, and were ready when he would call them. And he began then to reflect upon the Diſappointment of the Duke of *Monmouth*, and as tho' the Duke of *Monmouth* had only a Proſpect to advance himſelf, and had only an Eye upon his own particular Intereſt. That he ſo managed Matters as if he deſign'd to have the ſole Diſpoſition of all things whatſoever, and began to be uneaſy with the Duke of *Monmouth*. My Lord *Howard* did endeavour to have prevailed with my Lord of *Shaftsbury* for a Reconciliation between the Duke of *Monmouth* and him, it being a Matter that required ſo much Safety and Security, and did deſire him that he would have ſome Intercourſe with the Duke of *Monmouth* in order to conciliate a Friendſhip between them, that they might go hand in hand. You find he was under ſome Difficulties about this Matter, he was not able to bring the Thing about; for after he had ſpake with the Duke of *Monmouth*, and prevailed with him, my Lord of *Shaftsbury* was peeviſh, and talked at a diſtance, and when he had appointed a Meeting one time, it was prevented, my Lord *Shaftsbury* went away into *Holland*, and there died in *Holland*. This is the Subſtance of what my Lord *Howard* ſays as to that Matter.

But, Gentlemen, this is material, and I'll tell you why I think it material; becauſe the Counſel for the Defendant have made it an Objection particularly to my Lord *Howard*'s Teſtimony, That my Lord *Howard* is particular as to the Day after *Michaelmas-day*, but he is not ſo particular when he comes to ſpeak of other times upon which the true Queſtion before you depends. For now he ſpeaks more generally as to the Meetings at the Defendant's, and my Lord *Ruſſel*'s, that they were about the middle of *January* and the beginning of *February*, and is not particular as to the Day. I ſpeak of this becauſe that has been made uſe of as an Objection againſt my Lord *Howard*'s Teſtimony. And I will tell you as near as I can all the Objections that have been made againſt this Teſtimony after ſuch time as I have ſetled it and laid before you what the whole of it amounts to.

Then comes my Lord *Howard* and ſays, that Meeting with the Duke of *Monmouth* ſome time after this they began to talk together, and they thought that tho' the Buſineſs had failed in the Managery of my Lord of *Shaftsbury*, yet it was fit there ſhould be a re-aſſuming of the Buſineſs again, but in order to ſettle Matters that things might not go inconſiderately on, it was thought fit that they ſhould reſolve themſelves into a certain Number that were confident one of another, in order to ſteer and tranſact theſe Matters the better among themſelves. And they muſt be Perſons fit to be truſted and for whom there ſhould be an Undertaking among them for their Faithfulneſs and Integrity; for all Perſons are not fit to be truſted, but only ſuch as they agreed upon. The Duke of *Monmouth* he undertook for my Lord of *Eſſex* and my Lord *Ruſſel*, thoſe were the Perſons for whom he would engage, as likewiſe for my Lord *Salisbury*. And then they began to talk of ſome more, particularly of Mr. *Sidney*, but he was a Cynical Man, and a Philoſopher, and they were firſt to come to him, and to treat with him in another manner than the reſt. He was not to appear as the Duke of *Monmouth*, but to take him in his Retirement and Privacies, and then they might be the better able to break the Matter to him. And he ſays accordingly there was a time deſigned on purpoſe; and at that ſame time the Duke of *Monmouth* and my Lord *Howard* did go and attack Mr. *Sidney*, they found him on a private Day, and dined with him; and upon that Dinner the whole Matter was broke up, and put into ſome Method; Then was the whole Deſign contrived as to the Perſon-

ſons that were to be engaged in this Matter; and he ſays, They agreed upon Six. The Duke of *Monmouth* undertook for my Lord of *Eſſex*, and my Lord *Ruſſel* and Col. *Sidney* undertook for Mr. *Hambden*. He ſpeaks of my Lord of *Salisbury*, but my Lord of *Salisbury* was never there among them, and ſo I put him out of the Caſe, I quit him from being of their Number, becauſe there were but Six in all, my Lord of *Eſſex*, and my Lord *Ruſſel*, who were undertaken for by the Duke of *Monmouth*, Mr. *Hambden* undertaken for by Mr. *Sidney*, and my Lord *Howard*; for by that time Mr. *Hambden* was come into the Matter upon Col. *Sidney*'s Undertaking.

Now we are got, Gentlemen, by theſe Steps till we come about the middle of *January*; but, ſays my Lord *Howard*, I cannot poſitively ſay, it was this Day, or that Day of the Month; but being about the middle of *January*, I conjecture it was about the 14th, but he is not poſitive to the Day. He ſays, accordingly they went to Mr. *Hambden*'s Houſe, which was the Place firſt deſign'd for them to meet in. He ſays, there accordingly they did all Six meet; and that it being Mr. *Hambden*'s Houſe, they thought it moſt proper for him who was Maſter of the Houſe, who uſually bids his Gueſts welcome, to break Silence, and to impart the Buſineſs of the Deſign they met about. He ſays, accordingly Mr. *Hambden*, after the firſt Complements of Entertainment, did give an account of the Buſineſs they were come about, and that it was in order to have a Riſing. This, he ſays, was propoſed by Mr. *Hambden*. He tells you, then they fell into Debate about the Time when, concerning Men, and Arms, and Money; and likewiſe concerning the Places. He tells you the Places wherein the Riſing was deſign'd to be, were *Devonſhire*, *Cheſhire*, *Somerſetſhire*, and other Places, that is, as to the Circumſtance of the Place. Then he tells you concerning the Time; it was debated, Whether it ſhould be all at one time, or at ſeveral times? Whether they ſhould only begin here, and the Country fall in, or all at once? That likewiſe they had in Conſideration the Buſineſs of Money, and that his Grace the Duke of *Monmouth* did ſpeak of 30 or 35 Thouſand Pounds, or ſome ſuch Sum at that time. But then, as was natural for Men of Deliberation and Conſideration to conſult about, they took into Debate that they might not go headlong, to endeavour to conciliate another Party to chime in, as he ſays, along with them, in the Buſineſs they were going about, and accordingly it was thought fit and propoſed, That there ſhould be an Endeavour to conciliate a Friendſhip with ſome Perſons in *Scotland*, to fall in with them; and then he tells you, who the Perſons were that were named: Some of the Names he remembers, and others he has forgot; he ſpeaks particularly of the *Campbels*, Sir *John Cockram*, and my Lord *Melvin*: And he ſays, other Perſons were mentioned, but he can't remember their Names; and my Lord *Ruſſel* knew ſome of theſe Perſons, and the Duke of *Monmouth* knew ſome others of them, becauſe of his near Relation to the Earl of *Argyle*, the Perſon that you know was proſcrib'd for Treaſon in the Kingdom of *Scotland*. He ſays, that ſo far the Debate of this Matter went, that they thought fit a Meſſenger ſhould be provided, a truſty Man to be ſent into *Scotland* to treat with theſe Gentlemen about this Matter; and my Lord *Ruſſel*, I think he ſays, undertook to write a Letter to be carried by this Meſſenger to theſe *Scotch* Gentlemen.

He ſays, purſuant to this Conſultation at Mr. *Hambden*'s, a Fortnight after, or thereabouts, which brings it up to the beginning of *February*, then was the Meeting at my Lord *Ruſſel*'s Houſe, and there they debated theſe Matters over again, and the whole Managery of ſending a Meſſenger into *Scotland*, was left to the Diſcretion of Col. *Sidney*, and he undertook that Work, that was his Poſt that he was to manage; and he does ſay, That he does very well remember, That *Aaron Smith* was the Perſon propoſed then; and tho' he was unknown to ſome of the Company, yet he was well known to others; and by reaſon of that Knowledge that others had of him, they looked upon him as a Perſon very fit, and every way qualify'd for it.

So that, Gentlemen, here is proved a Conſultation in order to the Raiſing of Men to infeſt the Government; a Diſcourſe concerning Money and Arms for this End, and the Places where, and the time when; and of conciliating a Friendſhip with ſome diſcontented Perſons in *Scotland*, to joyn, and chime in with theſe Conſpirators in *England*.

And then there is yet another Circumſtance very remarkable, Becauſe tho' my Lord ſpake it not at the ſame time that he delivered his Teſtimony; yet upon the Queſtion asked, he gives you a plain Account of it; and it has a plain Dependance upon what went before. Said they among themſelves, 'Tis proper for us, as near as we can, to ſhut the Door againſt any Exceptions about theſe Men's coming to Treat with us; but how ſhall we get them hither without ſuſpicion? We muſt have ſome Shams, or Cant or other, to be a Pretence for theſe People to come into *England*; and that was agreed to be about ſome Plantation in *Carolina*.

This, he ſays, was the Reſult of that Meeting; and that when the Meeting was broke up, about three or four Days afterwards (mind the Circumſtance of Time, Gentlemen, for 'tis very material) Col. *Sidney* and he met together, they went to Col. *Sidney*'s Houſe, and there he ſaw him take Money out of a Till, where there were ſeveral hundreds of Guineas, or Pieces of Gold; and as he believes, he ſays, he took threeſcore Guineas, or ſome ſuch Sum; and told him, it was to give to *Aaron Smith* in order to his Journey into *Scotland*: That he went out with him in his Coach, but Mr. *Sidney* ſet him down by the way, and he himſelf went into *London*, telling him, he went to that purpoſe, to give *Aaron Smith* the Money. Some time after, about a Week, or a Fortnight, or ten Days after that, he ſays, he met with Mr. *Sidney* again; and he ſays, Mr. *Sidney* gave him an account, That he had heard *Aaron Smith* had been at *Newcaſtle*, but he had not heard of him ſince that time, and that is another Circumſtance in point of Time, Gentlemen; ſo that you have here a poſitive Oath made by my Lord *Howard*, that Mr. *Hambden* was privy, and conſenting to all theſe Debates, as to the Raiſing of Men, and the Levying of Money, and

about the conciliating a Friendſhip with theſe Men of *Scotland*, and about ſending a Meſſenger into *Scotland* to that purpoſe. And if my Lord *Howard* do ſwear true, no Man living can doubt but that Mr. *Hambden* is guilty of this Indictment. The firſt Meeting was at his Houſe, and there he did take notice of what had been formerly done, and propoſed the things, breaking the Silence, and entering into the Debate; which ſhews that he had been diſcourſing about it before, and had it in his Thoughts before, or elſe he could not have propounded it as the End of their Meeting.

Now this, Gentlemen, Here is a poſitive Fact; and, as Mr. *Williams* ſays true, no Man living can give any Anſwer to a poſitive Fact, but by ſome other things that may be Circumſtances to oppoſe that Fact. Now he ſays, there are no Circumſtances that have been proved, that will give any Credibility to what has been depoſed, beſides the poſitive Oath of my Lord *Howard*. So that, ſays he, your Fact, tho' it be poſitively ſworn, is not ſupported by any Circumſtances of the Fact, that may give Credibility to it. And he objects very materially; for if it be not ſupported by credible Circumſtances, then indeed it would be leſs material; yet I cannot ſay, it would not be at all material; it is material, and you are to determine, whether you have ſufficient Evidence given you, to induce you to believe, That my Lord *Howard* is at this time Guilty of wilful and malicious Perjury; for it is Perjury, and that in the higheſt degree, if it be not true that he ſays; and God deliver all Mankind from being Guilty of any ſuch thing. I leave that to your Conſciences, Gentlemen, who are the Judges of it.

But ſays the King's Counſel, Here are Circumſtances that do ſupport our Fact, and the Credibility of it. For, *1ſt*, here is the Circumſtance of *Aaron Smith*, who was ſent into *Scotland* by Mr. *Sidney* in purſuance of this Deſign, and this Circumſtance my Lord *Howard* does ſubjoin to what he has poſitively affirmed againſt the Defendant. And this Circumſtance is a thing that may be helped by other Proof; and what is this Circumſtance? Say they, That *Aaron Smith* was ſent into *Scotland*; and in order to prove that, they have called one *Sheriffe*, who is a Man that keeps an Inn at the Poſt-houſe in *Newcaſtle*, from whence Col. *Sidney* told my Lord *Howard* he had notice of his Arrival at *Newcaſtle*, but had heard no more of him after that. And this *Sheriffe* ſwears directly, I ſaw that Man they call *Aaron Smith*, when he was ſhewn to me before the King and the Council; and Mr. *Atterbury* ſwears he ſhew'd *Aaron Smith* to him, and then *Sheriffe* ſwears, That Man you ſhew'd to me, was the Man I ſaw at my Houſe at *Newcaſtle*, that chimes in with the Circumſtance of Fact that Mr. *Sidney* heard from him at *Newcaſtle*. And then there is the Circumſtance of Time when he ſaw him there; Says he, I ſaw him the *Friday* before *Shrove-Tueſday*, which they in the North call *Faſter's-Even*. He came to my Houſe on *Thurſday* Night, and went away the next Day, *Friday*; and he went with his Guide, the other Man, *Northward*, in order to his Journey into *Scotland*, as he himſelf ſaid. Says he, I remember the time very particularly, it was the *Friday* before *Shrove-Tueſday* laſt, this *February* was Twelve-month; and he went yet further; ſays he, I did not only ſee him when he went away, but when he came back again, for he left his Man at my Houſe all the time, and he tells you what his Name was; for he ſays, *Smith* went under the diſguiſed Name of one *Clerke*, and he did then talk of going to the Weſtern Parts of *Scotland*, he named *Douglas* as he thinks, tho' he is not poſitive in that, but he is in the Perſon, that was the Man. And ſays he, I ſent for this Perſon, the other Fellow *Bell*, and he was the Guide he had along with him. And upon *Bell*'s Examination, What ſays he? Says he, I remember that Man came thither at that time to the other Man's Houſe; I take it upon my Oath that is the Man, and he went by the Name of *Clerke*, he hired me to be his Guide; I went out with him on *Friday* Morning, and I went along with him all that Day; but upon *Saturday*, which was the next Day, going *Northward* with him, my Horſe tired, and failed me. Thereupon I was forced to be left behind, but I overtook him on *Sunday* Night following; I overtook him at ſuch a Place, and ſaw him within ſix Miles of the Borders of *Scotland*. I take it upon my Oath, this is the Man that was there under the Name of *Clerke*; and at his returning back again, I took notice of him, I went up to him, I drank with him, and we had Diſcourſe of our Journey. He told me at firſt, he was to go to the *Weſt* of *Scotland*, and ſo he went *Northward*. After that, which was about ten or twelve Days, he came back again, and ſo went *Southward* towards *London*. This he doth ſwear directly to be at that time.

Now Gentlemen, The Time is wonderful material in that Caſe, becauſe that very time twelve-month that they talk of, is the beginning of *February*. If you look upon your Old Almanack of the laſt Year (I happen to have one in my Pocket, and look upon it, when the Men gave their Teſtimony) and there you will find, that the *Monday* before *Shrove-Tueſday*, when he ſays, he left him within ſix Miles of the Borders of *Scotland*, falls out to be the *19th* of *February*; I will look upon it again, leſt I ſhould miſtake; 'tis juſt ſo, and that humours the Time that my Lord *Howard* ſpeaks of, which was about the middle of *February*, a few Days after, that he ſays the Money was given by Mr. *Sidney*; and then for the Time for *Aaron Smith* to get to *Newcaſtle*, there is a fit ſpace of Time, for it falls out that the *Thurſday* that he arrived at *Newcaſtle*, is the *15th* Day of *February*, and ſo it falls in well with my Lord *Howard*'s Teſtimony, and ſo the *Monday* that he parted with him at the Borders of *Scotland* was the *19th*, which alſo juſt humours the time that he ſpeaks of. So that here is a Circumſtance of Fact to confirm his Teſtimony, both as to the ſending the Meſſenger, and the Circumſtance of Time. That he is the ſame Man is proved by theſe two Witneſſes, who agree in this, That he was there about ſuch a time; and it does likewiſe humour that other Circumſtance of Place, that Mr. *Sidney* ſaid he had heard from him from *Newcaſtle*, but not ſince; and then there is the other Circumſtance which backs and confirms all, There was not only a ſending for theſe Perſons, but there is notice taken that theſe *Campbels*, who were to be aſſiſting in this Matter,

ter, were to come about the Sham, and under the Diſguiſe of purchaſing Plantations in *Carolina.* About the beginning of *June* they come to Town, the Two *Campbels*, Sir *John Cockram*, and Mr. *Monroe.* Sir *Andrew Foſter* he tells you, he met with ſome of the Men, and they told him, They came about the Buſineſs of *Carolina*; and ſo the Cant of *Carolina* is made good in this Circumſtance that way; but when the Plot brake out, theſe Men ſculk, one flies one way, another another; ſome were taken as they were eſcaping away by Water; others of them were taken upon the Bed at Noon-day in *Moorfields:* Had the Buſineſs they came over into *England* about, been a fair, and a lawful, and honeſt Buſineſs, why ſhould they hide themſelves? Why ſhould any Man ſneak and ſculk, and be aſhamed to own an honeſt and lawful Buſineſs? But this does humour and touch the thing exactly, as to that Circumſtance, That *Carolina* was only a Cant for to diſguiſe their coming over. Theſe are the only Two Circumſtances that ſeem to be pretty ſtrong for them, to prove and ſupport the Credibility of what their Witneſs has ſworn.

For, Gentlemen, What a wonderful ſort of Expectation would it be, That we ſhall never Convict a Man of High-Treaſon, unleſs you can bring a Man to be a Witneſs that is not concern'd? For then all theſe Perſons muſt have been acquitted, for they intruſted none, it ſeems, but theſe Six, they took care they would keep it amongſt themſelves. Do you think they called their Servants to be Witneſſes of what they were about? That is a vain and idle Imagination. In the *Popiſh Plot*, what Witneſſes of it had you there? Were they Strangers to the *Plot?* No, you cannot expect any Witneſſes but ſuch as the nature of the Caſe will bear.

This is the Meaning of the Evidence that has been given for the King, and it carries a great weight in it. But they have made an Objection, which indeed is not remote, but may concern the Queſtion very much. Say they, If we prove my Lord of *Eſſex* was not there, or ſuch an one was not there, would it not diſcredit the Evidence of my Lord *Howard?* Yes, certainly, it would wholly diſcredit it, and he were not to be believed at all; Nay, which is yet nearer to the Queſtion, If Mr. *Hambden*, that had notice all along of the Times fixed wherein this Tranſaction was, to wit, about the middle of *January*, and beginning of *February*. For becauſe they talk of the Prints, Mr. *Hambden* had from them ſufficient Notice and Intimation of the Time. If Mr. *Hambden*, that hath had all this Notice, could have proved before you, That he was in *France*, or any other Place at that time, That had been wonderful material. But all the Circumſtances that are any way ſignificant to ſupport the Credit of this Matter, are very well proved; and ſo the Teſtimony of my Lord *Howard* is, by theſe concurrent Circumſtances of Fact, ſufficiently ſupported.

Now, Gentlemen, I muſt tell you, This being the Subſtance of the Evidence for the King; I will now, as near as I can, give you an account of the Evidence for the Defendant; It was opened by Mr. *Williams* very ingeniouſly for the Advantage of his *Client*, as every Man is bound to ſay what he can for his *Client*. He made a great many Objections againſt my Lord *Howard*; ſo if he could but ſhake the Teſtimony of my Lord *Howard*, then he might eaſily bring off his *Client*; and if you, upon any thing that has been offered, either in Evidence, or by way of Obſervation fairly made from the Evidence, do believe my Lord *Howard* has forſworn himſelf, you muſt find Mr. *Hambden*, the Defendant, Not Guilty; but if you believe he has not forſworn himſelf, you muſt find him Guilty. So all our Matter is reduced into a very narrow Compaſs; and therefore I muſt repeat it again what I ſaid at the beginning, If my Memory do not ſerve me to recollect all right, the Counſel for the Defendant ſhall have free liberty to inform the Court of what has been omitted.

Firſt, ſays Mr. *Williams*, My Lord *Howard* was a Man very deep in a Conſpiracy with my Lord *Shafiſbury*, by his own Acknowledgment, endeavouring to conciliate a Friendſhip between the Duke of *Monmouth* and my Lord *Shaftsbury*; and ſo he had a great Hand in the *Plot*; and what he might do on purpoſe to get himſelf out of danger from that *Plot*, and procure his Pardon, is not known.

It is a very ſtrange thing, that it ſhould be an Objection before he had his Pardon, That he did it for Fear, and to get his Pardon; and when he has it, now the Objection is, Becauſe he has his Pardon; and he got it, ſay they, by this means. It ſeems, whether he had his Pardon or no, it muſt be an Objection againſt him: Before he had it, he was under the Fear of not obtaining it till the Drudgery of Swearing was over; but now he has his Pardon, What now? Why he does it on purpoſe to accuſe other People. Why, he ſays no more now, than what he has ſaid before he was pardoned; and if after he is pardoned, when he is under no Dread or Fear becauſe of his Guilt, he ſays the ſame things that he did when he might be in Fear, How can that be an Objection to him? It cannot be thought he does it to ſave his own Life, for that is as ſafe now by his Pardon, as it can any way be; and 'tis, and muſt be a great Satisfaction to his Mind, and will be ſo to any other reaſonable Man's Mind: and is a plain Anſwer to the Objection of his Fear, (for 'tis a captious Age we live in, that will make ſome ſpecious Objection or other, tho' it be not of any great weight.) But how can it be thought a Man would come and ſwear too much, or too far, for fear he ſhould not ſave himſelf; or, as they call it, ſwear himſelf into a Pardon, when he has his Pardon? It might be an Objection before; but as long as he is under no ſuch Terrors now, but ſtands right, both by the Laws of God and Man to be heard as a Witneſs, I think it would be hard for any one to come, and ſay, *This Man would forſwear himſelf.* What ſhould provoke him to come and forſwear himſelf, when he is under no danger as to his own Particular? There might be an Umbrage, I ſay, of an Objection before he had his Pardon, tho' it was, indeed, no Objection before; not a rational weighty one, to ſet aſide his Teſtimony. But no body knows which way in the World to ſatisfy the Minds of ſome ſort of People.

In the next Place, Gentlemen, ſays Mr. *Williams*, You are not poſitive as to the Time; You ſay,

ſay, It was about the middle of *January*, and the beginning of *February*, and that is too general and wide; but you remember particularly to a Day the Buſineſs between you and my Lord of *Shaftsbury*, That that was the Day after *Michaelmas* Day: How can you be ſo particular as to the one, and not as particular as to the other?

Why, I will undertake that Mr. *Williams*, when he made the Objection, muſt needs think of the Anſwer that would be given to it. It is notoriouſly known, that the Preſſures theſe Gentlemen thought they lay under, were what my Lord of *Shaftsbury* ſaid, *Now they have got the Juries into their own Power, and no Man is ſafe; They will find me or any Man Guilty, as they pleaſe*; Why, how came they to get Juries into their own Hands, but by having the Sheriffs as they would have them? Now the Sheriffs that are to return Juries, are, as all Men know that know any thing, Sworn the Day before *Michaelmas* Day; therefore he might very well, and had good reaſon to remember that Day; When ſuch a notorious Thing happens to fall out at ſuch a notorious Time, 'tis eaſier for a Man to remember that Time, than to ſpeak to the particular time of an Action, done about the middle of a Month, where there is not ſuch a notorious Circumſtance. Why, I can tell you very well where I was upon the Day before *Michaelmas* Day; upon that Day, and the Day after; for that very reaſon, becauſe it was a notorious Day about the ſwearing of Sheriffs in *London*. But if you ask me, where I was the middle of *January*, or the middle of *February*, I cannot ſo well remember that. But there is Credit to be given to a Man that ſpeaks to a notorious Circumſtance, and thereby proves the Probability of what he ſays, though he ſhould not be ſo particular in a Thing that admits not of ſuch a notorious Circumſtance.

Gentlemen, I make the Objections as they are ſtated on the one Side, and on the other Side; and the Anſwers that naturally flow to prove the Matters before you one way or other; and you are to judge, you are to weigh them; and which has the greater Credit with you, you are to take notice of.

He does ſay, in the next Place, Here was a Diſcourſe of Arms and armed Men, and a great Sum of Money ſpoken of, but there breaks out nothing of this Matter till *July* following; but this Debate was in *January*, and *February* before. For that Matter, the Anſwer that is given, and it ſeems to be a plain one, is, That they were to conciliate a Correſpondence with People that were Abroad, and that they could not go on till they had effected that, and till theſe People came to join with them, which could not be without ſome time. And you hear the *Cockrams* and the *Campbels* came not to the Town, till *June* or *July*; ſo that it was not probable it ſhould break out till then, becauſe it was to be agitated upon their coming here. And ſo that Objection is anſwered, they did not apprehend any ſuch neceſſity for preſent engaging in it. For, my Lord *Howard*, becauſe he thought it would be a Work of Time to ſettle the Correſpondence, and get theſe People to Town, went down to his Countrey-houſe in *Eſſex*, and from thence to the *Bath*, for he did apprehend ſome conſiderable time muſt be ſpent e're theſe People could come; and therefore he thought it convenient to take his Retirement in the mean time.

Ay, but 'tis ſtrange, ſays Mr. *Williams*, and he makes that another Objection; he would have my Lord *Howard* to draw in this Accuſation of Mr. *Hambden*, to procure his Pardon, by going further than the other Diſcoverers had gone. It ſeems, ſay they, Mr. *Hambden* was not thought of at firſt; but becauſe *Weſt* and *Keeling* had diſcovered a Plot, my Lord *Howard*, to ſecure himſelf, muſt go a ſtep further than they, and (as the Defendant's Counſel would have it) than the Truth; and that is the Streſs of the Objection. But the weight of the Proof is quite different; for all Men know, in the Plot there were ſeveral Parts. There was the Buſineſs of *Keeling* and *Weſt*, and that was the Aſſaſſination of the King and the Duke; but the Duke of *Monmouth*, my Lord *Howard*, and thoſe other Gentlemen, were for the Buſineſs of the Riſing, though that might be in order to that other purpoſe; but they kept not Company with thoſe that were engaged in that Part of the Deſign. They were the Underlings, the Scoundrel Plotters, that were concerned in the Aſſaſſination. But theſe Gentlemen looked upon themſelves to be Privy Counſellors, not to be the Executioners; they were to be only Adviſers, what was to be done after the other Buſineſs was over; and their Conſultations were for raiſing of Men for an Inſurrection; not the Buſineſs of the Aſſaſſination of the King, that was not their Province. Can it be an Objection againſt my Lord *Howard*, becauſe he gives a Teſtimony *Weſt* and *Keeling* could not give? Could they go further than the killing of the King, which was their Buſineſs? If any Man ſhould have asked my Lord *Howard* about that Matter, he would have made Anſwer, it was not for that Purpoſe that we met together at Mr. *Hambden*'s, and my Lord *Ruſſel*'s; no, that was upon a particular Buſineſs, and to a particular End and Purpoſe.

Then he ſays too, That though my Lord *Howard* comes here upon his Oath, and declares theſe ſeveral Matters that he hath depoſed; yet he has given a different Account of Things elſewhere, and he has called ſeveral Witneſſes to that purpoſe. To whom my Lord *Howard* ſeveral times upon his Honour, upon his Word, with Eyes lifted up, and Hands elevated to Heaven, and many extraordinary Proteſtations, declared, That he knew nothing of the Plot; and ſay they, If a Man will at one time pawn his Honour, and his Reputation, for the Truth of a Thing, and after that, will come again to ſwear againſt all that Matter, that is an Argument that does ſink the Credit and Reputation of that Witneſs; and thereupon they call you ſeveral Witneſſes, ſome whereof are Perſons of great Honour and Quality. I think they begin firſt with *Ducas*, Servant to Colonel *Sidney*, and he tells you, after his Maſter was taken, my Lord *Howard* came thither, and deſired he might lie there; and deſired the Uſe of ſome Plate and Goods of Colonel *Sidney*'s; and then asked, what was become of his Maſter? And when *Ducas* told him what he heard of the Plot, that ſomething was talked of, about the Aſſaſſination of the King and the Duke, my Lord *Howard* lifted up his Eyes, and his Hands to Heaven, and declared he knew nothing of it,

it, but he believed Colonel *Sidney* was a very honeſt Man, and knew nothing at all of any ſuch Matter; and as for himſelf, rather than he would be taken or confined again, he would do any thing. This was the Evidence they gave as to him. Then they come with Mr. *Howard* their 2*d* Witneſs; for I would take them in order as they were produced, and he gives you an Account, That he met with my Lord *Howard*, and my Lord *Howard* told him, he knew nothing at all of any Plot, and did believe that Colonel *Sidney* was innocent, and he did believe likewiſe that my Lord *Ruſſel* was innocent, and for his Part he knew nothing of any ſuch thing as a Plot, but he ſays, when he began to talk to him, why did he make ſuch a Buſtle, and go ſo often into the City and concern himſelf about the making of Sheriffs? He anſwered, I do nothing but what is in a legal way, and he juſtified all that was done to be only in a legal way.

When once People come to believe, that the raiſing of Tumults, and making Seditions, Stirs and Noiſes, is a legal way to obtain their Ends, as we know 'tis the Tenet and Principle of a great many People, what will they not do under that Pretence, that all they do is according to Law? They think it is lawful by the Religion they profeſs, to reſiſt and oppoſe the Government, and the *Old Cauſe* is a *good Cauſe* to this Day in ſome Men's Opinion, and they can die in it, and thank God for being concerned in it. And there are ſome People that ſay, the raiſing of Arms by the King's Authority againſt his Perſon is lawful by the Religion they profeſs, and they call themſelves *Proteſtants* (how juſtly you may imagine) and if Men will make Inſurrections to difficult the Government, it is Rebellion, and no Man can juſtify it, let him pretend Conſcience or what he will, 'tis rank Treaſon. It is not ſaying, I am thus perſuaded in my Conſcience, that will excuſe the Man; if I ſteer my ſelf by the Dictates of a good and regular Conſcience, it can never be thought that I ſhall commit Treaſon, but it is the effect of evil Principles.

Was it not under the Shape of *Religion*, that that bleſſed Martyr King *Charles* I. of ever bleſſed Memory came to the Block? Nay, and I have heard of ſome Men in the late Times that were ingaged on that Side, who finding that the King did prevail at the beginning of the War, becauſe he had Gentlemen of Quality and Spirit to appear for him, were at a loſs to know which way in the World they ſhould put a Spirit into the common People to oppoſe the King; and ſome among them bid them be ſure to put *Religion* to be but the Pretence, and that would make them run headlong to what they would have them. Whoſe Opinion that was is not ſtrange to any that know any thing of the Hiſtory of thoſe Times. So that when once People take it to be the Principle of their Religion to oppoſe and reſiſt all that are not of their Perſuaſion, and for Religion ſake to reſiſt Authority, then they think all is lawful they can do to preſerve their Religion as long as they are wound up to that Opinion.

Their next Witneſs, Gentlemen, is my Lord of *Clare*, and he gives you an Account of his Diſcourſe with my Lord *Howard*. And by the way I muſt obſerve, what I am very ſorry for with all my Heart, to hear, that among Gentlemen of Quality and Honour, Diſcourſes of the Government, and the Male-Adminiſtration of it as they think, ſhould be only Matter of Jeſt fit for their Recreation, and Laughter, only merry Table-talk, as though Government ſo ſacred a Thing, were as mean as any trivial Concern whatſoever. I am ſorry to hear and ſee, that Perſons of great Honour and Quality ſhould eſteem it ſo. And I muſt be pardoned, if I take notice of it: For Matters of Government, and yielding Obedience to Superiours, is a Matter of Religion, 'tis a ſerious Matter, and every Man ought to make Conſcience of it. To talk of Government with Reverence, as well as pay Duty and Obedience to it. And when I find it made a Jeſt, I muſt be permitted to ſay that is not ſo well done, and whoever it is that makes it ſo, ought very much to be blamed.

My Lord of *Clare* comes and teſtifies, That my Lord *Howard* told him, He did not believe my Lord *Ruſſel* was guilty of what he was accuſed of, much leſs did he believe it of Colonel *Sidney*, and when he began to talk about Writings found in *Sidney*'s Cloſet, he ſaid, there can be nothing of his Writings found, that can do him or any Man elſe any hurt. This is the Subſtance of what that Noble Lord has ſaid.

Then there is my Lord *Paget*, and he likewiſe gives an Account, That he had ſome Diſcourſe with my Lord *Howard* about the Plot; and he told him too, That he did not believe any thing of this Plot, or that my Lord *Ruſſel* and others accuſed had any Hand in it. But I would obſerve this one thing upon my Lord *Paget*'s Teſtimony, That ſtill my Lord *Howard* was wiſhed Joy by every body, and I am glad to ſee your Heels at liberty, and the like. So that there was ſome jealouſy of his being concerned; ſome thing or other there was in it. Says my Lord *Howard*, I look upon my ſelf as affronted, that any body ſhould talk ſo of me. He was concerned that they ſhould ſuſpect him. But ſomething there was at the bottom. Says my Lord *Paget*, I am glad to hear you are out of it. For he began to imagine there muſt be ſome Fire for all this Smoak. That, Gentlemen, was the Diſcourſe he had with him. But he ſays, That with my Lord *Paget* there were Diſcourſes of his going beyond Sea, but he did not go.

Then comes Dr. *Burnet*, and he tells you, That there were Proteſtations made to him, and he has got the ſame Words as the *Frenchman* had, That he did it with lifted up Eyes and Hands, he profeſſed ſolemnly he was altogether a Stranger to any ſuch Thing. The Dr. ſays, He had heard there was a Plot, and was perſuaded of the Truth of it, but he was a little ſhaken by what my Lord *Howard* ſaid to him. But now he is ſufficiently ſatisfied there is a Plot, and I am glad he is, for I think it ſcarce does remain a Doubt, with any Men that have any Value for the Religion and Government we live under. And I know not how they could be better ſatisfied, than by the Evidence that has been given of it, a main Part of which was given by my Lord *Howard*. All this before my Lord *Howard* was taken.

Then comes in one Mr. *Gisborne*, and he tells you the ſame Story, That a great while ago my Lord *Howard* told him he knew nothing of the Plot.

The

The next to him is Mr. *Blake*, and he tells you, That after ſuch time as the Plot was diſcovered, and after my Lord *Ruſſel* was tried, and after my Lord *Howard* had given Evidence at the *Old Bailey*, he ſhewed him the Warrant for his Pardon, and *Blake* telling him that was not ſufficient without an actual Pardon; he replied, I think in my Conſcience I ſhall not have a Pardon till the Drudgery of Swearing is over. But is that any Argument? Here is a Man under the Drudgery of Swearing; therefore he did not know any ſuch thing as he ſwears. It carries thus much along with it, That it was uneaſy to him, and there is a kind of a force put upon him to ſwear, as they ſay, in order to his Pardon.

But now, Gentlemen, that will admit of this Anſwer, and a plain one certainly it is, When a Man comes over and over again to tell the World ſuch a Story, and give ſuch an Account of himſelf, it muſt a little grate upon him, though it be his Duty to tell the Truth, and though as Mr. *Williams*, ſays, he is the beſt Martyr that is a Martyr for Truth; even ſo ſay I on the other Side, he is the beſt Penitent that is a Penitent for Truth, and he is the beſt Witneſs that is a Witneſs for Truth's ſake, and he gives the beſt Teſtimony of his Repentance, that by his Teſtimony declares the Truth, though it be harſh and uneaſy to him; for if I have any Ingenuity, and have lived in good Credit in the World, it muſt be a drudgery and irkſome Thing to call my ſelf a Traytor ſo often in a Court of Juſtice. It is true, he might have given it a more moderate Term, and yet withall upon theſe Circumſtances, he might have reaſon to call it in ſome Senſe a Drudgery. But now, Gentlemen, as he did ſwear it, before he had his Pardon from time to time upon all Occaſions when he was called as a Witneſs: So now the Pardon is come, which they would have to be the Reaſon of the continuance of his Drudgery, he ſwears the ſame thing. He has his Pardon under the King's Seal, and though it might be thought they would keep him within the compaſs of his Tether till he had done his Evidence; now he has got that he deſired, he ſwears the ſame Thing. And now his Pardon does not at all influence his Teſtimony, he is not under any fear, but is as free as any Subject the King has, and now he is upon his Oath, he gives you the Account you have had, and he did ſay all the ſame Things, before ſuch time as Colonel *Sidney*, and my Lord *Ruſſel* were tried, that he ſays now.

Then, Gentlemen, you have in the next Place Witneſſes called, ſeveral of them to give you an Account of the Converſation and Diſpoſition of Mr. *Hambden*; for ſays Mr. *Williams*, for a Man to be guilty of a Crime of this nature, there muſt be ſome kind of evil Diſpoſition to it, and ſo Mr. *Williams* would argue and make this Inference. You ſee he is not a Man of a turbulent, ſeditious and factious Spirit and Temper, he is a ſtudious Perſon, very retired, that has been beyond Sea much, and came not Home till ſuch a time. And if there were Interlocutions between my Lord *Howard* and my Lord *Shaftsbury* it was before he came into *England*, and ſo he was not concerned in them. He ſays, That *March* laſt he was to go again, he had a mind to return again to *France* for his Health, and what reaſon have we to imagine he ſhould concern himſelf in the Plot? When he was ſo ſtudious a Man, lived ſo retired a Life, and intended to go Abroad ſo ſuddenly. And for this you have my Lord *Paget*, Mr. *Pelham*, Sir *Henry Hobart*, Dr. *Lupée*, Monſieur *Juſtel*, and one *Murray*.

Mr. *Williams*. *Murray*, my Lord, we did not examine.

L. C. J. 'Tis true, I beg your Pardon. Well then, Theſe others tell you, They have been Perſons very intimately converſant with him, they never knew he concerned himſelf with any thing about Government, but was of a quiet peaceable Demeanor, and was ſo far from that which the Indictment talks of Turbulency and Sedition, that they never had any Diſcourſe with him about any ſuch Thing at all, ſave what Dr. *Lupée* ſays, who it ſeems lived with him about two Years, and kept him Company in his Studies, and that once having ſome Diſcourſe about the *Popiſh* Plot, He ſaid he would venture his Life, and any thing he had to preſerve the King and Government againſt that Plot; He did very well, and if he had ſince declared, he would have ventured his Life to have ſecured the King and Government againſt this Plot, I ſhould have been glad to find him of that Mind, I pray God you may find him to be ſo. But from the Evidence even of that *Frenchman*, it ſeems there was ſome Jealouſy in the World, and that he lay under hard Cenſures as well as other People. For ſpeaking of the Plot, the Advice given him was this. My Lord *Grey* is gone, and the Duke of *Monmouth* is gone, why won't you go? Why ſhould that Advice be given, if there were no Suſpicion of his being concerned? That he ſaid, *I will not go*, and ſo they would make his ſtaying here to be an Inſtance and Proof of his Innocence; Why, Gentlemen, if that ſhould be ſo, then there was the ſame Innocency in my Lord *Ruſſel*, and Colonel *Sidney*, and all of them: For all the Council of Six every one of them ſtay'd, except the Duke of *Monmouth*, and he indeed did abſcond. And the ſame Evidence that made the Duke of *Monmouth* fly, and my Lord *Eſſex* cut his own Throat, convicted my Lord *Ruſſel* and Colonel *Sidney*, and is now brought againſt the Defendant, and has from time to time been given againſt the reſt. We know no reaſon that they had to ſtay more than *Weſt* or *Rumſey* had to ſtay and be taken, and yet that is not uſed by them as an Argument of their Innocency.

Theſe are the Evidences that have been given on the Defendant's Part; and I tell you as I go along what Anſwers are given to it on the Part of the King. As to what is ſpoken of his intention to go again into *France*, if he deſigned to go, why did he not go before all this Miſchief broke out? He came here at *Michaelmas*, and I may ſay he came, it may be at an unlucky Time, when the City and its Neighbourhood was in a Diſtemper, and ſome Men were blown with Fears and Jealouſies. Theſe might animate him, and inſpirit him as they did other People, and put them into a Ferment; but you find him attending in Town conſtantly here till the Matter was diſcovered, whatſoever his Intentions were, 'tis much he did not put them into Action, 'tis ſtrange he did not go all this while, it had been much for his Advantage that he had never

ver came out of *France*, or that he had returned thither much ſooner.

Againſt all this that has been urged for the Defendant about my Lord *Howard*, I will tell you what is the Anſwer to it; and truly firſt I ſay, I am apt to believe my Lord *Howard* did tell theſe Gentlemen what they here teſtify; but was it ever thought, That any Man that was guilty of High Treaſon would preſently proclaim his own Guilt? Is it reaſonable to imagine, my Lord *Howard* would tell Dr. *Burnet* I am in a Plot, and Colonel *Sidney* is in a Plot, and Mr. *Hambden* is in a Plot, and make it his common Talk? Nay, it is ſo far from being an Argument of his Innocency, that more naturally it may be turned upon them as an Argument of his Guilt. For if a Man had not been concerned in the Buſineſs at all, but were an honeſt Man, and free from Suſpicion, what need I talk or concern my ſelf to proclaim my own Innocency not being accuſed? Why muſt I tell Colonel *Sidney*'s Footman, This Man, the other Man, That I know nothing of the Plot, and neither I nor any other Man I am ſure is concerned in it? But that ſhews there was a dread and apprehenſion upon him of ſomething that he was conſcious of, and that lying within muſt have ſome vent, and this over-caution is an intimation that there was ſomething more than ordinary in the Matter. We take notice of it as a great Evidence againſt a Man that is accuſed for an High-way Man, if he comes to ſuch an Ale-houſe or Inn, and bids the People take notice I am here at ſuch a time of the Day, and that is a Circumſtance of Time that will ſerve to anſwer a Proof, it may be, that may be brought againſt him of a Robbery done ſuch a time; but we always look upon that Induſtry of theirs, as a Piece of Artifice deſigned to patch up a Teſtimony to evade a Proof. So that the Argument will turn the other way; and 'tis more for the Advantage of theſe worthy Gentlemen, that it ſhould be turned the other way, for otherwiſe they would be thought to be Perſons ill affected to the Government; that is, Dr. *Burnet*, my Lord *Paget*, my Lord *Clare*, and the reſt. And if they have a mind to be thought otherwiſe, they muſt let the Argument run that way as I ſay, and in Charity we ought to believe the beſt of all Mankind, till we find otherwiſe by them. We ſay then in Charity, we ſuppoſe he thought it not fit to intruſt you with his Confeſſions; for you are all Loyal Men, I know 'tis the beſt Anſwer that can be given, and that which they ought to value themſelves upon for their own Credit and Reputation, and not to make it an Argument againſt my Lord *Howard*, or againſt the Credibility of his Teſtimony in the Matter.

I don't know, truly, Gentlemen, That I have omitted any one Thing that is material, on the one Side or on the other, of which there hath been any Proof, but I muſt only repeat to you this, Here is a Matter of great Concern and Conſequence, a Matter wherein the Peace of the Government and the Kingdom is concerned in a very high degree, a Matter, that if there were another Witneſs as poſitive againſt the Defendant as my Lord *Howard*, would amount to no leſs than High Treaſon. But as there is but one Witneſs, backed with theſe Circumſtances to corroborate his Teſtimony, 'tis but only a Treſpaſs, but I tell you it treads very nigh upon High Treaſon, and the Tendency of it was to bring us all into Confuſion; and what would be the Conſequence of that, but to lay us open to the ſame Miſchiefs that we were under in the Times of the late Rebellion? For though Men pretend never ſo fair, and vail it under the Names of the *Security of the Government and the Proteſtant Religion*; yet they would have done well to have tarried till they had a legal Authority to call them to conſult of theſe high Matters that they pretend to ſecure; that had been well. What had theſe Gentlemen to do to take upon themſelves this Power without Authority?

Gentlemen, You have heard the Evidence, and you ſee what it is. And I muſt ſay, in the late Evidences you have had concerning another Buſineſs of this nature, I wiſh that might be ſaid to preſerve and ſupport the Credit of ſome Perſons, upon whoſe Teſtimonies Lives have been taken away, as has been ſaid, and is evident for the Advantage of my Lord *Howard*. I do not find that he has been guilty of Perjury, as being concerned in taking Oaths one way, and then giving Evidence another. I mean, firſt taking Oaths of Secrecy and then revealing; not but that notwithſtanding all this, they may be believed, and God forbid but they ſhould be believed according to Truth. But I ſay, if Objections of this nature are to prevail, we muſt never expect any great Crime to be puniſhed, becauſe we muſt ſtay till Perſons that are Strangers to the Guilt of the Fact come to give Evidence of it, which is impoſſible to be done.

Therefore, Gentlemen, I muſt reſolve it all into one Head; You have the Caſe of a Gentleman of Quality on the one Side, and the Peace and Preſervation of the Government on the other Side. You hear what is proved againſt him, the Evidence given on his Behalf, the Objections that have been made by the Counſel, which all of them as near as I can remember, I have repeated to you, and I ask your Pardon and theirs if I have omitted any thing, and I deſire to be minded of it. You hear the Anſwers that have been given. And becauſe the Counſel were unwilling to give the Court trouble or themſelves to make long Speeches and Obſervations, Therefore I have been neceſſitated to do it as well as I can.

Upon the whole Matter, my Lord *Howard* has thus poſitively ſworn the Matter of Fact charged in the Indictment againſt the Defendant; he has been ſupported by the Witneſſes that confirm the Circumſtances of *Smith*'s going into *Scotland*, the *Scotchmen*'s being here in *June*, and the Sham and Cant of *Carolina*. All which you have heard, and I make no queſtion obſerved, and is not contradicted by any thing I hear that carries any Probability of an Anſwer. Therefore, Gentlemen, I leave it to you, whether upon this Evidence you will take it upon your Conſciences and Oaths, that my Lord *Howard* is Guilty of wilful and corrupt Perjury, Then you muſt find the Defendant not Guilty; But if you think he has proved the Matter fully, and his Teſtimony is ſupported by thoſe

four Witneſſes, *Atterbury*, Sir *Andrew Foſter*, *Sheriffe*, and *Bell*, then, Gentlemen, you muſt find the Defendant Guilty.

Jury-man. My Lord, We deſire to ask one Queſtion. At the Meeting at Mr. *Hambden's* Houſe, I think my Lord *Howard* ſays they went to Dinner.

Mr. *Juſt. Holloway.* No, it was at Col. *Sidney's* they went to Dinner.

L. C. J. I know not whether you have taken notice of it, but I have, it was at Col. *Sidney's* they dined, not at Mr. *Hambden's*.

Then the Jury withdrew from the Bar, and within half an hour the Jury returned, and being called over anſwered to their Names, and gave in their Verdict thus.

Cl. of Cr. Are you all agreed of your Verdict?

Omnes. Yes.

Cl. of Cr. Who ſhall ſay for you?

Omnes. Foreman.

Cl. of Cr. How ſay you? Is the Defendant Guilty of the Treſpaſs and Miſdemeanor whereof he is impeached, or Not Guilty?

Foreman. Guilty.

Which Verdict being Recorded, the Court roſe.

Martis 12. *Februarii*, *An.* 1683. *B. R.*

L. C. J. MR. Attorney, Have you any thing to move?

Mr. *At. Gen.* I pray your Judgment againſt Mr. *Hambden*, my Lord, who was Convicted the other Day of a great Miſdemeanor.

L. C. J. Let Mr. *Hambden* come into the Court then. [*Which he did.*

Mr. *At. Gen.* My Lord, I need not aggravate the Heinouſneſs of the Offence; for it appears both by the Information, and upon the Evidence to be beyond all Aggravation, wherefore I ſhall only pray your Judgment for the King, That you would pleaſe to ſet a good Fine upon him, and that he find Sureties for his good Behaviour during his Life.

Mr. *Williams.* May it pleaſe your Lordſhip, I am of Counſel for Mr. *Hambden.*

L. C. J. Are the Rules out in this Cauſe?

Mr. *Williams.* Yes, my Lord, they are out.

L. C. J. Well then, what ſay you for Mr. *Hambden?*

Mr. *Williams.* Mr. *Hambden* does attend here according to the Condition of his Recognizance, and ſince Mr. Attorney hath prayed your Judgment, I ſhall not ſtir any thing as to the Indictment or the Verdict, but all I have to ſay for him is this, Mr. *Hambden* is but Heir apparent, his Father is alive; and ſo tho' he has the Proſpect of a good Eſtate, yet he has but little at preſent in Poſſeſſion; Your Lordſhip knows what *Magna Charta* ſays, That there ſhould be a *Salvo Contenemento* in all Fines, and how far that may be an Ingredient into your Lordſhip's Judgment, I leave to your Conſideration.

L. C. J. For that matter I cannot tell what his Eſtate is, I have no Knowledge of him, nor of his Eſtate whether it be great or ſmall, but Mr. *Williams* knows very well, That the Crime, in Conſcience as well as Law in caſe it had been proved by two Witneſſes, would not only have wrought a Forfeiture of all his Eſtate, but a Forfeiture of his Life too, and all his Reputation, would have baſtardized his Children, would have attainted and corrupted his Blood. So that there is no ſort of Imagination but that the Crime was High enough of Conſcience; and certainly deſerves, if we can impoſe it adequate to its Deſert, a very great Puniſhment. Mr. *Hambden* nor his Counſel can deny but that they had a fair and a full Hearing, They had the liberty to ſay and prove all that they could, and you cannot but ſay, Mr. Attorney was very fair in making ſeveral Conceſſions that he might very lawfully and rightfully have inſiſted upon. So that there can be no Exception of that kind. I am ſorry, that Mr. *Hambden*, a Gentleman of good Quality as he is by Birth, tho' he be a Perſon I never ſaw before he came here the laſt Day of the laſt Term upon his *Habeas Corpus*, that I know of. I ſay, I am ſorry one of his Quality and Education, a ſtudious Perſon, as it ſeems, by his own natural Inclination, and a learned Man, ſhould be ſo unhappily engaged in a Deſign of this horridly evil nature. But on the one ſide as well as we muſt take care of the Subject, ſo on the other we muſt take care of the Government. Here was a Deſign of deſtroying the King, and ſubverting the Government and bringing all into Confuſion. Of this Deſign the Defendant is Convicted, and we muſt take care to proportion the Puniſhment, and according to our Conſciences and Oaths, and as we ought to have regard to the Offender, ſo alſo we are to have regard to the Government that he has offended.

Mr. *Juſt. Withins.* Mr. *Williams*, It was Amercements that were ſpoken of there in *Magna Charta.*

L. C. J. Ay, It was never meant of Fines for great Offences.

Then the Judges conſulted together.

Mr. *Juſt. Withins.* Mr. *Hambden*, You know you are convicted of a very great Offence, as great an Offence as can be I think committed, unleſs it were High Treaſon. For the Matter of it would have made you Guilty, if there had been two Witneſſes. It was for Conſpiring to levy War againſt His Majeſty, and for Conſpiring to raiſe an Inſurrection and Rebellion within the Kingdom, a Conſpiracy of which ſome other Perſons being lawfully Convicted, they have ſuffered Death for it. You are a Perſon of an extraordinary good Family, and I am ſorry one of your Family that has flouriſhed ſo long and through ſo many Generations in great Honour and Reputation, and great Proſperity under the Monarchy of *England*, ſhould come to Conſpire to deprive that King of his Government, whoſe Anceſtors have protected and defended your Family, and to ſpoil that Monarchy that has been the Fountain of ſo much Proſperity and Honour to it. I am

ſorry

ſorry it comes to my turn to pronounce the Sentence of the Court upon you, Mr. *Hambden.* I have not any perſonal Knowledge of you, but I have heard of you, and heard heretofore very well of you. You have had a good Education and the Report of a learned and ingenious Perſon, which makes me yet wonder the more that you ſhould engage in ſuch a horrid Deſign as this was. Indeed, Mr. *Hambden,* I am ſatisfied no Fine can be too great, if any can be great enough for ſuch an Offence. We cannot take Cognizance what your Eſtate is, 'tis reported there is a great Eſtate in your Family, it has been always repreſented to be ſo.

Mr. *Hambden.* I have nothing but for Life, and that is but little neither.

Mr. *Juſt. Withins.* I know not what it is truly, Sir. But it was always reported to me to be a very great Eſtate, but whatſoever it is, we are to look after the proportioning the Puniſhment as near as we can to the Offence. My Lord, and the Court have conſidered of the Matter, and they think fit to give this Judgment upon you.

They ſet the Fine of Forty Thouſand Pounds upon you, to be paid to the King, and you muſt be committed till you pay it.

L. C. J. And that you find Sureties for your good Behaviour during your Life.

Mr. *At. Gen.* I pray he may be committed for his Fine.

L. C. J. Let it be ſo. Mr. *Hambden,* If you will apply your ſelf to the King, you may, and there perhaps you may find Mercy; we muſt, according to the Duty of our Places and Oaths, give ſuch Judgment as the Law requires.

Mr. *Juſt. Withins.* Ay, in God's Name. You are in the King's Hands, and he may do what he pleaſes in it.

L. C. J. If a Crime of this nature ſhould have a little Puniſhment, it might encourage Offenders, and if we were to judge according to ſome Verdicts that have been given here for leſs Offences, where Gentlemen have given very much greater Damages than this Fine amounts to, this would be thought a moderate Fine. I am ſorry any Man ſhould bring himſelf into theſe Circumſtances: The King as he is the Fountain of Juſtice, ſo he is alſo of Mercy, and you and all the reſt of his Subjects have cauſe to bleſs God that you live under a Monarch that is very merciful. No doubt, if you give a good account of your Contrition and Sorrow for your great Offence, and decently apply your ſelf to the King, he will think of ſhewing Mercy to you; but Juſtice is our Work that are Judges; and according to the Methods of Juſtice we think we cannot inflict leſs than we have done.

Mr. *Williams.* My Lord, I pray his Bail may be diſcharged.

L. C. J. Ay, His Bail is diſcharged, he being committed.

Mr. *Williams.* And for the High-Treaſon, he is diſcharged by the *Habeas Corpus* Act.

L. C. J. Yes, he is ſo, for there is no Proſecution.

Then Mr. Hambden *was carried by the Marſhal away Priſoner.*

The TRYAL of *Laurence Braddon* and *Hugh Speke*, Gent.

On Thurſday *the 7th of* February, Anno Dom. 1683. Annoq; Reg. Caroli Secundi 36. *A Tryal was had at the* King's-Bench *Bar, in a Cauſe between our Sovereign Lord the King, and* Laurence Braddon *and* Hugh Speke, *Gentlemen; upon an Information exhibited againſt them the laſt Term, by His Majeſty's Attorney General, for an High Miſdemeanor; and to which they the ſame Term pleaded Not Guilty, and the Tryal proceeded in this manner.*

Cl. of Cr. CRyer, Call the Defendants, *Laurence Braddon* and *Hugh Speke.*

Cryer. Laurence Braddon and *Hugh Speke,* come forth, or elſe this Inqueſt ſhall be taken by your Default.

Mr. *Wallop.* They appear.

Cl. of Cr. Gardez votrez Challenges. Swear Sir *Hugh Middleton.* (*Which was done.*) And there being no Challenges, the Twelve Gentlemen ſworn to try this Cauſe, were theſe.

Sir *Hugh Middleton*, *Thomas Harriott*, *Thomas Earsby*, *Joshua Galliard*, *Richard Shoreditch*, *Charles Good* } Jur' { *Samuel Rouse*, *Hugh Squire*, *Nehemiah Arnold*, *John Bisfield*, *William Wait* and *James Supple*.

Who being counted, Proclamation was made in usual Form for Information.

Cl. of Cr. Gentlemen, you of the Jury hearken to the Record. His Majesty's Attorney General in this Court has exhibited an Information against the Defendants by the Names of *Laurence Braddon* of the *Middle Temple*, Gentleman, and *Hugh Speke* of *Lincolns-Inn*, Gentleman.

And the Information sets forth,

That whereas Arthur *Earl of* Essex, *the 12th of* July, *in the 35th Year of the Reign of our Sovereign Lord* Charles *II, by the Grace of God, of* England, Scotland, France *and* Ireland, *King, Defender of the Faith, &c. was committed to the Prison of our Lord the King, in the* Tower *of* London, *for certain High-Treasons by him supposed to be committed. And the said* Arthur *Earl of* Essex *being a Prisoner in the* Tower *of* London *aforesaid, for the High-Treason aforesaid, the 13th Day of* July, *in the aforesaid 35th Year of the Reign of our said Sovereign Lord the King, that now is; not having the Fear of God before his Eyes, but being moved and seduced by the Instigation of the Devil at the* Tower *of* London *aforesaid, in the County of* Middlesex *aforesaid, himself feloniously, and as a Felon of himself, did kill and murther, as by an Inquisition taken at the* Tower *of* London *aforesaid, in the County of* Middlesex *aforesaid, the 14th Day of* July, *in the Year aforesaid, before* Edward Fernham, *Esq; then Coroner of our Lord the King, of the Liberty of the* Tower *of* London *aforesaid, upon the View of the Body of the said* Arthur *Earl of* Essex; *and now in this Court remaining of Record more plainly does appear. They the said* Laurence Braddon *and* Hugh Speke *not being ignorant of the Premises, but contriving, and maliciously and seditiously intending the Government of our said Lord the King of this Kingdom of* England, *into Hatred, Disgrace and Contempt to bring, the 15th Day of* August, *in the aforesaid 35th Year of the Reign of our said Sovereign Lord the King that now is, and divers other Days and Times as well before as after, at the Parish of St.* Clement Danes *in the County of* Middlesex, *with Force and Arms, &c. falsly, unlawfully, maliciously and seditiously did Conspire, and endeavour to make the Subjects of our said Lord the King of this Kingdom of* England, *to believe that the Inquisition aforesaid was unduly taken, and that the said* Arthur *Earl of* Essex *by certain Persons unknown, in whose Custody he was, was killed and murthered. And to perfect and bring to effect their malicious and seditious Contrivances aforesaid; they the said* Laurence Braddon *and* Hugh Speke *at the Parish of St.* Clement Danes *in the County of* Middlesex *aforesaid, the 15th Day of* August, *in the 35th Year aforesaid, falsly, unlawfully, unjustly, maliciously and seditiously did Conspire to procure certain false Witnesses to prove, That the said* Arthur *Earl of* Essex, *was not a Felon of himself, but that the said Earl of* Essex *by the said Persons unknown was killed and murthered: And to perswade other Subjects of our said Lord the King to believe this to be true, they the said* Laurence Braddon *and* Hugh Speke, *falsly, maliciously, and seditiously, then and there in Writing did declare and cause to be declared, the said* Laurence Braddon *to be a Person that would prosecute the Murther of the said Earl of* Essex; *to the great Scandal and Contempt of the Government of our Lord the King of his Kingdom of* England, *to the evil Example of all other in the like case offending, and against the Peace of our Sovereign Lord the King, his Crown and Dignity. To this Information the Defendants have severally pleaded* Not Guilty, *and for their Tryal have put themselves upon the Country; and His Majesty's Attorney General likewise, which Country you are: Your Charge is to inquire, whether the Defendants, or either of them, are Guilty of this great Misdemeanour whereof they are impeached, or Not Guilty? If you find them or either of them Guilty, you are to say so; if you find them or either of them Not Guilty, you are to say so, and no more, and hear your Evidence.*

Then Proclamation was made for Evidence.

Mr. *Dolben.* May it please your Lordship, and you Gentlemen that are sworn: This is an Information preferred by Mr. Attorney General, against the Defendants *Laurence Braddon* and *Hugh Speke*, and the Information does set forth, That whereas *Arthur* late Earl of *Essex* the 12th of *July* last was committed to the *Tower* of *London* for certain Treasons supposed to have been by him done: And the said Earl being so committed Prisoner to the *Tower* for Treason, not having the Fear of God before his Eyes, feloniously and as a Felon did kill and murther himself, as by an Inquisition taken before the Coroner of the *Tower* Liberty may more fully appear; yet the Defendants *Laurence Braddon* and *Hugh Speke* not being ignorant of the Premises, but designing to bring the Government into Hatred and Contempt, the 15th Day of *August* last, at the Parish of St. *Clement Danes* in this County, with Force and Arms falsly, unlawfully, maliciously and seditiously did Conspire together to make the King's Subjects believe, That the Inquisition aforesaid was unduly taken, and that the said Earl of *Essex* did not murther himself, but was by certain Persons unknown, in whose Custody he was, murthered. And it further sets forth, that these Defendants, *Laurence Braddon* and *Hugh Speke*, designing to disturb and disquiet the Minds of the King's Subjects, and to spread false Reports, did Conspire to procure certain false Witnesses to prove, that the said Earl of *Essex* was not a Felon of himself, but was by some Persons unknown, killed and murthered: And to perswade other Subjects of our Sovereign Lord the King to believe the said Report, they did falsly, maliciously, unlawfully and seditiously cause to be declared in Writing, That the said *Laurence Braddon* was the Person that did prosecute the said Earl's Murther. And this was to the great Scandal of the Government, to the evil Example of all Persons in like case offending, and against the Peace of the King, his Crown and Dignity. To this the Defendants have pleaded Not Guilty; if we prove it upon them, we make no question you will find it.

Sir *Robert Sawyer.*

Mr. *At. Gen.* May it please your Lordship, and you Gentlemen of this Jury, Mr. *Speke* and Mr. *Braddon*, these two Gentlemen, are accused of as High Conspiracy as ever has or could well happen in

in our Days, of throwing the Murther of a Perſon that killed himſelf, upon the Government. And I muſt acquaint you, their Deſign was of an higher nature than barely that; for this Gentleman, my Lord of *Eſſex*, was committed to the Tower for the late Plot, and being ſo committed, when he had killed himſelf there, that was more than a thouſand Witneſſes to open the Eyes of the People, and confirm the Belief of the Conſpiracy: And one would have thought, after that there had been an end of the Deſign, that theſe Proteſtant Gentlemen, as they call themſelves, were carrying on; when the Earl of *Eſſex*, a Perſon of that Quality and Worth, ſhould go to murther himſelf upon the ſenſe of what he was Guilty of. So that the Deſign, Gentlemen, was to ſtifle the Plot, and at the ſame time they muſt throw this ill thing that the Earl had committed upon himſelf, upon the Government: That, Gentlemen, was the main Diſgrace in order to ſtifle that great Evidence of the Plot. And Mr. *Braddon* muſt of his own Head, not being put on by any of the Friends of the Earl of *Eſſex*, who were all very ſenſible the Earl had done this Fact, committed this Murther upon himſelf; but I ſay, he, out of a true Principle to manage the Proteſtant Cauſe as they call it, but indeed it was the Plot, he becomes the Proſecutor of this Buſineſs, and you will find him by the Proofs in the Caſe, a Man of many like Projects. For you will find him value himſelf upon theſe Titles, That he is the Proſecutor of the Earl of *Eſſex*'s Murther, and the Inventor of the Proteſtant Flails, an Inſtrument, I ſuppoſe Gentlemen you have all heard of.

Now, Gentlemen, To make this appear to the World, Letters are ſent into all Parts of *England* of this Bruit and Report. He himſelf goes about to find Evidence; for it was ſo great a Truth, and there was ſuch a plain Proof that the Earl of *Eſſex* had killed himſelf, that he muſt labour it to get Evidence. And he goes about it accordingly, and at length he meets with a little Child of twelve Years of Age, and he prepares for him all with his own Hand-writing, a Depoſition, which is a feigned Story all of it, and in every part of it will appear to be falſe, and there he mightily ſollicites this young Boy to ſign it. He comes to his Father's Houſe, carries him in a Coach, forces him away, and forces him to ſign this Paper that he had thus prepared for him, all of his own Invention and Writing; and with the like Confidence as he appears here, (for ſo he does appear with very great Confidence, as you may obſerve,) he atteſts it himſelf. And, Gentlemen, we ſhall ſhew you, that here up and down the Town he makes it his common Diſcourſe, what he was in hand with, and makes his boaſt of himſelf to be the Proſecutor of the Earl of *Eſſex*'s Murther, and he had as good a Confederate as himſelf, Mr. *Speke*, and he having an Intereſt in the Country, whither the News muſt be ſent all abroad, and Mr. *Braddon* muſt go to pick up Evidence, I know not where a great way off, of a Murther committed in the *Tower*. We ſhall prove to you, he had Letters Miſſive and Recommendatory from Mr. *Speke* to a Gentleman with whom Mr. *Braddon* was to adviſe; for they looked upon it to be as dangerous an Enterprize almoſt as the Plot it ſelf, as indeed it was; therefore they muſt be wary, and Mr. *Braddon* is adviſed to go by a wrong Name, ſo this Mr. *Speke* and *Braddon* were to carry on and make up this Tragi-Comedy, for I can call it nothing elſe, for the Ridiculouſneſs as well as the Dangerouſneſs of the Deſign. The Report was to be, that this Murther of the Earl of *Eſſex* was committed by the Officers that attended my Lord, and to fall out in time when His Majeſty was in the Tower, as if the King himſelf had a hand in it. We ſhall trace it in all the Parts of it by ſeveral Witneſſes, and hope you will make them an Example, firſt by finding them Guilty, and the Court afterwards by a ſevere Puniſhment for ſuch a villainous Practice, to ſcandalize the Government with the Murther of a Noble Peer. We ſhall begin with ſhewing you the Inquiſition, or rather firſt with the Conviction of the Earl of *Eſſex* for High-Treaſon, becauſe that is ſaid in the Record by way of Inducement. Call Mr. *Reynolds*. (*Who was ſworn.*) Have you the Warrant of Commitment of my Lord of *Eſſex*?

Mr. *Reynolds*. Yes.

Mr. *At. Gen.* Shew it the Court. Let the Clerk read it.

Mr. *Reynolds*. This is the Commitment that was delivered the Lieutenant of the Tower, together with my Lord of *Eſſex*.

Cl. of Cr. This is directed to *Thomas Check*, Eſq; Lieutenant of His Majeſty's Tower of *London*. Subſcribed *Leolin Jenkins*, and dated ——

Sir *Leolin Jenkins* Knight, of His Majeſty's moſt Honourable Privy Council, and Principal Secretary of State.

THeſe are in His Majeſty's Name to will and require you to receive into your Cuſtody the Perſon of Arthur *Earl of* Eſſex *herewith ſent you, being committed for High-Treaſon, in Compaſſing the Death of the King (whom God preſerve) and Conſpiring to Levy War againſt His Majeſty. And him the ſaid Earl of* Eſſex *to keep in ſafe Cuſtody, until he ſhall be delivered by due Courſe of Law. And for ſo doing this ſhall be your Warrant. Given under my Hand and Seal at* Whitehall *the* 10th *Day of* July, 1683.

To *Thomas Check*, Eſquire Lieutenant of His Majeſty's Tower of *London*. L. Jenkins.

Mr. *At. Gen.* My Lord, We will then read the Inquiſition, that the Earl, being thus in the Tower, killed himſelf.

Mr. *Sol. Gen.* Shew the Inquiſition. Where is Mr. *Farnham*? Mr. *Finch.*

Mr. *Farnham*. Here I am. The Inquiſition is returned here, and is upon Record.

Cl. of Cr. Here it is, Number 11.

[*Hereads.*]

London ſſ. *An Inquiſition indented, taken at the* Tower *of* London *aforeſaid, in the County of* Middleſex, *the* 14*th Day of* July, *in the Year of the Reign of our Sovereign Lord* Charles *II, by the Grace of God of* England, Scotland, France *and* Ireland, *King, Defender of the Faith, &c. the* 35*th; before* Edward

Edward Farnham, *Eſquire, Coroner of our ſaid Lord the King, of the Liberty of the* Tower *of* London, *aforeſaid, upon view of the Body of* Arthur *Earl of* Eſſex, *then and there lying dead; by the Oaths of* Samuel Colwel, *Eſq;* William Fiſher, Thomas Godſel, *Eſq;* Thomas Hunt, Nathaniel Mountney, *Eſq;* Thomas Potter, William How, Robert Burgoine, Eleazer Wickins, Thomas Hogsfleſh, Henry Cripps, Richard Rudder, William Knipes, John Hudſon, John Kettlebeter, Lancelot Coleſon, Morgan Cowarn, Thomas Bryan, William Thackſton, Richard Cliffe, Zebediah Pritchard, William Baford *and* Theophilus Carter, *good and lawful Men of the Liberty of the* Tower of London *aforeſaid, who being charged and Sworn to enquire for our ſaid Lord the King, when, by what means and how, the ſaid* Arthur *Earl of* Eſſex, *came to his Death, upon their Oaths do ſay, that the ſaid* Arthur *Earl of* Eſſex, *the* 13th *Day of* July, *in the Thirty Fifth Year of the Reign of our ſaid Sovereign Lord the King aforeſaid, at the* Tower *of* London *aforeſaid, in the County of* Middleſex *aforeſaid, about the Hour of Nine in the Forenoon of the ſame Day, not having the Fear of God before his Eyes, but being ſeduced and moved by the Inſtigation of the Devil, of his Malice aforethought, at the* Tower *of* London *aforeſaid, in the County aforeſaid, then and there being alone in his Chamber, with a Razor of the Value of one Shilling, voluntarily and felonioufly did cut his Throat, giving unto himſelf one Mortal Wound, cut from one Jugular to the other, and by the* Aſpera Arteria, *and the Wind-Pipe, to the Vertebres of the Neck, both the Jugulars being throughly divided, of which ſaid mortal Wound the ſaid* Arthur *Earl of* Eſſex *inſtantly died; And ſo the Jurors aforeſaid, ſay upon their Oaths, that the ſaid* Arthur *Earl of* Eſſex, *in manner and form aforeſaid, then and there, voluntarily and felonioufly as a Felon of himſelf, did kill and murther himſelf, againſt the Peace of our Sovereign Lord the King, his Crown and Dignity. In Witneſs whereof, as well I the* Coroner *aforeſaid, as the* Jurors *aforeſaid, to this Inquiſition, have interchangeably put our Seals, the Day and Year aboveſaid.*

Mr. *At. Gen.* Call Mr. *Evans* and Mr. *Edwards.* After this, my Lord, we ſhall ſhew you, that Mr. *Braddon* went about the Town, and declared the Earl was murthered, and he was the Proſecutor. There is Mr. *Evans*, Swear him,

[*Which was done.*

Pray will you give an Account to my Lord and the Jury, what you know of Mr. *Braddon*'s going about and declaring he was the Proſecutor of my Lord of *Eſſex*'s Murther?

Mr. *Evans.* My Lord, All that I know of this Matter, is this. About the 17*th* of *July* laſt——

Sir *George Jefferies.*

L. C. J. When is the Inquiſition?

Cl. of Cr. It is the 14*th* of *July.*

L. C. J. Well, go on.

Mr. *Evans.* The 17*th* of *July* laſt, I was at the Cuſtom-Houſe Key, ſhipping off ſome Lead, and the Perſon that brought me the Warrant, I told him I could not Execute it without one of the Commiſſioners Officers; and I bid him go to Mr. *Edwards*, who was the next Officer adjoining to the *Key*, and he went to his Houſe, and told him I was at the Water-ſide, and had a Warrant, which I deſired him to be preſent while I executed it, Mr. *Braddon* it ſeems, was then preſent in the Place with Mr. *Edward*, when this was told him, and hearing my Name, Mr. *Braddon* came down with Mr. *Edwards*, and found me then at *Smith*'s Coffee-Houſe, and Mr. *Edwards* told me, Mr. *Braddon* had been with him examining his Son, in relation to a Matter of a Razor that was thrown out of my Lord of *Eſſex*'s Window, and I preſently replied, I deſired they would not ſpeak of any ſuch Matter to me, for I had ſeen the *Coroner's* Inquiſition upon Oath, where it was declared, the Thing was ſo and ſo, and two Perſons had Sworn what ſeemed to be contrary to this; and therefore I deſired they would forbear any ſuch Diſcourſe to me.

L. C. J. Who they?

Mr. *Evans. Braddon* and he were together.

L. C. J. Who, he? Man.

Mr. *Evans.* Mr. *Edwards.* And withall I made my Application to Mr. *Braddon*, and I deſired him he would not meddle with ſuch a Matter, for I thought it might be prejudicial to him and Mr. *Edwards* too. Mr. *Braddon* made me no Anſwer, but went directly out of the Room.

L. C. J. What do you mean by ſo and ſo, and a Razor thrown out of a Window? We do not underſtand your ſo and ſo.

Mr. *Evans.* Relating to a Matter of a Razor.

L. C. J. Prithee, we don't know what that Matter of a Razor is.

Mr. *Evans.* A Razor that was ſaid to be thrown out of my Lord of *Eſſex*'s Window.

L. C. J. Tell us what the Story was, Man.

Mr. *Evans.* Mr. *Edwards* told me, That Mr. *Braddon* was with him, to examine his Son, relating to a Matter of throwing a Razor out of my Lord of *Eſſex*'s Window: This is that he ſaid to the beſt of my remembrance.

Mr. *Sol. Gen.* Was *Braddon* preſent there?

Mr. *Evans.* Yes, Mr. *Braddon* and Mr. *Edwards* were both preſent.

L. C. J. Well, What was the Diſcourſe between you? Tell us plainly.

Mr. *Evans.* Says Mr. *Edwards* to me, Mr. *Braddon* has been to examine my Son about ſuch a matter, ſo I deſired he would not diſcourſe any thing of that matter to me, and I told him, I adviſe you not to proceed, for I told him, it would be prejudicial both to him, and Mr. *Edwards* too.

L. C. J. What is meant by this Matter? He examined my Son about a Matter, and I deſired him he would not diſcourſe of this Matter, What is all that Matter?

Mr. *Juſt. Holloway.* What did you apprehend by it?

Mr. *Evans.* I apprehended that Mr. *Braddon* had been to examine Mr. *Edwards*'s Son about ſuch a Matter.

L. C. J. What Matter, Man?

Mr. *Evans.* His diſperſing of any ſuch Report.

L. C. J. What Report?

Mr. *Evans.* A Report of throwing a Razor out of my Lord of *Eſſex*'s Window.

L. C. J. Here is a Razor thrown out of a Window, and a Matter of I know not what.

Mr. *Juſt. Withins.* Suppoſe a Man ſhould throw a Razor out of a Window, what ſignifies that?

L. C. J. Where heard he of that Matter?

Mr. *Evans.* This is all I heard, my Lord, I am upon my Oath.

L. C. J. But I wiſh thou would'ſt let us know what it is thou didſt hear.

Mr.

Mr. *Jones.* Was there no Talk of a bloody Razor?

Mr. *Evans.* No, not a Word of it.

L. C. J. How came you to be frighted then, and to be unwilling to hear of that Matter, and to tell him, you thought it might be prejudicial to him and Mr. *Edwards*?

Mr. *Evans.* I told him I had ſeen the Coroner's Inqueſt, where it was proved, that the Razor lay in ſuch a Place; therefore I deſired they would not ſpeak to me of any ſuch Matter, and I deſired Mr. *Braddon* not to proceed in it, for you may do your ſelf and Mr. *Edwards* too, ſome Prejudice.

Mr. *At. Gen.* Look you, Mr. *Evans*, what did you underſtand by the throwing the Razor out of the Window, and giving him Caution not to proceed? The Razor might be found there, what was the meaning of it?

Mr. *Evans.* May it pleaſe your Lordſhip, There was a Report at the *Cuſtom Houſe*, that very Morning the Earl of *Eſſex* cut his Throat, that there was a Razor thrown out of the Window.

Mr. *Jones.* You did adviſe *Braddon*, you ſay, not to proceed in it?

Mr. *Evans.* Yes.

Mr. *Jones.* How came you to adviſe him ſo?

Mr. *Evans.* Becauſe it might be prejudicial to him, and Mr. *Edwards* too.

Mr. *At. Gen.* Was there no Talk between Mr. *Edwards*, Mr. *Braddon*, and you, That Mr. *Braddon* would be a Proſecutor of the Murther of the Earl of *Eſſex*, upon your Oath?

Mr. *Evans.* Not one Word or Syllable. For Mr. *Braddon* ſpake not one Word, good or bad: I gave an Account to Secretary *Jenkins*, of every Word that paſſed.

Mr. *At. Gen.* Did not you adviſe him not to proſecute the Buſineſs?

Mr. *Evans.* I did adviſe him not to diſperſe ſuch a Report.

L. C. J. What Report?

Mr. *Evans.* Of a Razor being thrown out of my Lord of *Eſſex*'s Window.

Mr. *At. Gen.* Why, ſuppoſe there had been a Razor thrown out of the Window, what then?

Mr. *Evans.* Then it was contrary to the Information and Evidence given before the Coroner.

L. C. J. Why ſo? Why might it not be thrown out after it was found in the Place where the Inquiſition ſays? Thou art a wonderful cautelous Man, where is the danger of the Report of a Razor being thrown out of a Window? There muſt be ſomething more in it, if we could but get it out of him.

Mr. *Evans.* Will your Lordſhip be pleaſed to hear me.

L. C. J. Ay, I do hear thee, but I do not underſtand thee.

Mr. *Evans.* May it pleaſe your Lordſhip, I will read the Words *verbatim* that I gave to the Secretary.

L. C. J. Why, I believe you can read, and I make no doubt you can write too, or you are not fit to be a *Cuſtom-Houſe* Officer.

Mr. *Evans.* I put in this Paper to the Secretary, and will repeat what I ſaid then, as near as I can upon my Oath.

L. C. J. I care not a Farthing what you delivered to the Secretary, tell us what thou haſt to ſay plainly.

Mr. *Evans.* May it pleaſe your Lordſhip, I will read it what it is.

Mr. *Sol. Gen.* You may look upon your Paper to refreſh your Memory, but you muſt not read it here.

Mr. *Evans.* If it pleaſe you, I will tell you the Reaſon and Occaſion I had to go to the Secretary.

L. C. J. I know not what Occaſion thou hadſt to go to the Secretary, nor do I care what thou didſt when thou cameſt there, it may be thou madeſt three Legs, it may be never a one; what is that to us? What canſt thou ſay to the Matter here before us?

Mr. *Evans.* That is all I can ſay, my Lord. It was an Accident that they came into my Company. And tell you the manner and the occaſion. That Perſon that brought me the Warrant, ſaying to Mr. *Edwards* that I was below, Mr. *Braddon* hearing my Name named, comes down with Mr. *Edwards*, for he had told Mr *Edwards*, I was related to him, and they both came to the Coffee-Houſe, and there they began to diſcourſe about this Matter.

Mr. *Juſt. Withins.* Who began to diſcourſe?

Mr. *Evans.* Mr. *Edwards.*

L. C. J. Well, What was it he ſaid to thee?

Mr. *Evans.* Mr. *Edwards* began thus. Says he, Mr. *Evans*, this Gentleman has been at my Houſe to examine my Son concerning a Report that is ſpread Abroad concerning a Razor that was thrown out of the Window of the Earl of *Eſſex*'s Lodgings, that Morning he cut his Throat. I hearing of that, ſaid I, Gentlemen, I have read the Coroner's Inqueſt that is in Print, and it is otherwiſe declared there: And therefore let there be no Diſcourſe of any ſuch Matter, for I believe no ſuch Thing. And ſaid I to that Gentleman, Mr. *Braddon*, Pray forbear meddling in any ſuch Thing, for Mr. *Edwards* is a poor Man, and has divers Children, he may be ruined, and you likewiſe may be ruined your ſelf, if you proceed any further in it.

Mr. *At. Gen.* We ſhall interpret this matter by our other Witneſſes.

L. C. J. Ay, ſo you had need, for there is nothing to be made of this Fellow's Evidence.

Mr. *North.* Pray, by the Oath you have taken, when you gave that Advice, did Mr. *Braddon* make you no Anſwer?

Mr. *Evans.* No, none at all.

Mr. *Braddon.* [*Lifting up his Hands in an unuſual manner.*] Mr. *Evans*, Pray will you anſwer one Thing?

L. C. J. Pray, Sir, let us have no elevation of Hands. Your Confidence does not ſo well become you in a Court of Juſtice, this is not a Cauſe wherein you need uſe ſo much Confidence.

Mr. *Braddon.* Sir, pray anſwer, did not I——

L. C. J. What is it you would ask him?

Mr. *Braddon.* My Lord, I deſire he may be asked, Whether I, with a Brother of his, did not come to his Country-houſe, on the *Monday* immediately after my Lord of *Eſſex*'s Death, and whether at his Table there was not a Report then of a Razor being ſeen to be thrown out of my Lord of *Eſſex*'s Window?

L. C. J. Pray ask by your Counſel, they are moſt proper to ask Queſtions for you. Tell them

them what you would have asked, and don't make long Stories your ſelf.

Mr. *Wallop.* Were you not in company with Mr. *Braddon*, the *Monday* after my Lord of *Eſſex*'s Death?

Mr. *Freke.* What was the Report, Sir, at your Table, upon the *Monday* next after my Lord of *Eſſex*'s Death?

Mr. *Evans.* My Lord, if your Lordſhip pleaſe——

L. C. J. Pray Sir, make a ſhort and plain Anſwer to what Queſtions are asked you, and let us have none of your Circumlocutions, and your Diſcourſes of the Matter; but let us underſtand what you ſay.

Mr. *Evans.* I will, my Lord.

L. C. J. What is your Queſtion?

Mr. *Braddon.* Whether I was not upon the *Monday* after the Earl of *Eſſex*'s Death at his Table, where there was a Diſcourſe of a Report that a Razor was thrown out of the Window, before Murther was cried out, and concerning a Boy which went to take it up?

L. C. J. What a Story is here! Pray ask him a fair and a ſhort Queſtion, if he can remember what was ſaid at his Houſe? We are got quite to the Cuſtom-houſe and the Coffee-houſe again, and I know not where.

Mr. *Freke.* What Diſcourſe was there at your Table, Sir, the immediate *Monday* after the Earl of *Eſſex*'s Death, concerning a Razor thrown out of a Window?

Mr. *Evans.* My Lord, This, to the beſt of my remembrance, is what I have to ſay, and remember of the thing, that a Gentleman being with him——

L. C. J. Who?

Mr. *Evans.* Mr. *Braddon.*

Mr. *Wallop.* Where was this?

Mr. *Evans.* In the Country.

Mr. *Wallop.* Where, in what Country?

Mr. *Evans.* In *Eſſex.*

Mr. *Wallop.* What was the Place's Name?

Mr. *Evans.* At *Wanſted*, my Lord; and being there, and he plucking out a Paper.

L. C. J. He, who?

Mr. *Evans.* A Brother of mine, that that Gentleman came down with to ſee me.

L. C. J. What is his Name?

Mr. *Evans.* His Name is Mr. *William Hatſell.*

L. C. J. With whom did he come?

Mr. *Evans.* With this Perſon.

L. C. J. With this Perſon, who is this Perſon?

Mr. *Evans.* Mr. *Braddon.*

L. C. J. Why can'ſt thou not name him, without this wire-drawing? Thou art a moſt exact Cuſtom-houſe Officer, I'll warrant thee, thou can'ſt not make a plain Anſwer to a plain Queſtion.

Mr. *Evans.* My Lord, I beg your Pardon, I do not know the Methods of the Court.

L. C. J. Prithee, I care not for thy Methods, nor thy Matter, but deal plainly with us.

Mr. *Evans.* My Brother Mr. *Hatſell*, came down along with Mr. *Braddon* to my Houſe at *Wanſted* in *Eſſex*, on the *Monday* after my Lord of *Eſſex*'s Death, and coming down, my Brother Mr. *Hatſell* pulled out the Coroner's Inqueſt upon Oath that was printed, and ſhewing of it to me, I read it, and as ſoon as ever I had read it, ſaid I, Mr. *Edwards*, that was at the Cuſtom-houſe that very Morning when the Earl of *Eſſex*'s Throat was cut, did declare to me upon the Cuſtom-houſe *Key*, That his Son did declare that the Razor was thrown out of the Window, which ſeems to contradict this Paper, that ſays, it was found lying by him.

Mr. *Freke.* Was this before Mr. *Braddon* was with Mr. *Edwards?*

Mr. *Evans.* I can't tell that.

Mr. *Freke.* Was it before Mr. *Braddon* and Mr. *Edwards* came to you to the Coffee-houſe?

Mr. *Evans.* Yes, I believe it was.

Mr. *At. Gen.* You ſay Mr. *Braddon* came with Mr. *Hatſell* to your Houſe at *Wanſted?*

Mr. *Evans.* Yes.

Mr. *At. Gen.* Who was the Perſon that told this Story?

Mr. *Evans.* He brought down the printed Paper with him, and upon plucking out that Paper and reading of it, the Story was told.

Mr. *At. Gen.* Pray who was the Perſon that told him it was ſo reported at the Cuſtom-houſe?

Mr. *Evans.* I made that Anſwer my ſelf immediately upon reading the Paper; for I obſerved what the Coroner's Inqueſt had returned, and upon that I made this Obſervation, That it ſeemed to contradict what was declared at the Cuſtom-houſe that Morning my Lord of *Eſſex* cut his Throat.

Mr. *At. Gen.* Pray who declared there that the Razor was thrown out of the Window?

Mr. *Evans.* It was Mr. *Edwards* told me.

L. C. J. Why conſider with your ſelf now, You ſay firſt of all *Edwards* and *Braddon* came to me to the Coffee-houſe.

Mr. *Evans.* That was at another Day.

L. C. J. I am ſure you ſwore ſo at firſt.

Mr. *Evans.* With your Lordſhip's Favour——

L. C. J. And with your Favour too, Sir. Pray will you hear me, I have heard you a great while I am ſure to no purpoſe. But conſider with your ſelf, and pray be pleaſed to reconcile what you ſay now with what you ſaid at firſt, if you can. You ſay firſt of all *Edwards* and *Braddon* came to me to the Cuſtom-houſe, and found me out at the Coffee-houſe, and that *Edwards* ſhould ſay, Some body had been with his Son, in order to examine him about a Razor that was thrown out of my Lord of *Eſſex*'s Window, and that you immediately cryed out, Have a care of that, for that contradicts the Inquiſition that I have ſeen in Print, which declares as tho' the Razor was found in the Room. And after that you ſay, it was that you ſaw the Inquiſition when *Hatſell* came down with *Braddon*, and you told him of the Report at the Cuſtom-houſe. How came you, if you had not ſeen the Inquiſition till then, to give out ſuch Words at the Cuſtom-houſe: Have a care of medling with that, becauſe that contradicts the Inquiſition?

Mr. *Evans.* My Lord, This was ſeveral Days before that.

Mr. *At. Gen.* Yes, my Lord, This Diſcourſe at *Wanſted* was before that at the Cuſtom-houſe.

Mr. *Wallop.* This that he now ſpeaks of is an Anſwer to Mr. *Braddon*'s Queſtion, which was about a Diſcourſe that paſſed before this other at the Cuſtom houſe. This that he ſpeaks of, the Diſcourſe at a Coffee-houſe, was afterward, but indeed he firſt ſpake of it; but theſe were

two distinct Matters at several times. This last of the Custom-house was, when he had made the Examination of the Boy, as that Witness says.

L. C. J. Therefore I think it was fit to explain it, for it looked very inconsistent before, what thou said'st at first, and what thou say'st now; but if thou tellest me thy *Essex*-matter was before thy Coffee-house-matter, it is well, otherwise the Matter, I assure you, looked very ill.

Mr. *Evans.* This is the truth, my Lord, and I can tell no more.

Mr. *At. Gen.* Take the Times, my Lord, and you will see he does speak very notably. The 13th of *July* my Lord of *Essex* murder'd himself, the 14th of *July* the Inquisition was taken before the Coroner, pray what was the Day that *Hatsel* and this Gentleman came down to you to *Essex*?

Mr. *Evans.* I can't tell that, Sir, truly; but it was before this Matter of the Examination of the Boy.

L. C. J. But pray let me ask you one Question, if your Matter about the Inquisition in the Country was before the Matter of your cautious Discourse at the Custom-house, how came you to tell them, I heard this Report of a Razor thrown out of the Window, that Morning the Earl of *Essex* cut his own Throat?

Mr. *Evans.* Mr. *Edwards* reported this same thing that very same Morning to me and several others at the Custom-house Key.

L. C. J. Why did you not tell us this before?

Mr. *Evans.* I beg your Pardon, my Lord, I do not understand the Methods of the Court.

Mr. *Wallop.* Mr. *Hatsel* gave the occasion by pulling out the Inquisition.

L. C. J. Pray, Sir, make your Observations anon, let the King's Counsel go on with their Evidence.

Mr. *At. Gen.* What Discourse had Mr. *Braddon* with you then at that time, when *Hatsel* came down with him to your House you say, and pulling out the Inquisition you read it, and made Answer, You heard at the Custom-house Key such a Report that very Morning the Earl murdered himself.

Mr. *Evans.* Mr. *Braddon* was walking up and down the Room, I did not speak it to him, but I spake it to Mr. *Hatsel*, but I believe *Braddon* over-heard and took notice of it.

Mr. *Just. Withins.* Did he concern himself about it?

Mr. *Evans.* No, not much, I did not hear him say any thing, but he walked up and down the Room.

L. C. J. Now after all this Discourse of the Matter, for ought I can understand, the Matter is but this: He says, *Edwards* before the Meetings either at his House in *Essex*, or at the Coffee-house by the Custom-house, reported to him, as tho' the Earl of *Essex* had not murdered himself, but some body else had done it for him. And this was reported at the Custom-house that Morning the Earl of *Essex* cut his own Throat, and he hearing this Report at the Custom house at that time, afterwards comes *Braddon* and *Hatsel* to his House into *Essex*, and after *Hatsel* had shew'd him the Paper of the Inquisition in Print, he said, I heard some Discourse from Mr. *Edwards* at the Custom-house of a quite other nature, and then he says, *Braddon* and *Edwards* came to the Coffee-house, and there it was he desired them not to talk of that Matter, for, said he, that contradicts the Inquisition I saw before. This is the Substance of what he said.

Mr. *At. Gen.* And hereby it does appear, that *Braddon*, and *Evans*, and *Edwards*, and *Hatsel*, are all of a Gang.

L. C. J. Have you the Information he gave in to the Secretary, Mr. Attorney General, that that was given before the Council?

Mr. *At. Gen.* Yes, 'tis much the same with what he hath said now.

Mr. *Evans.* Yes, my Lord, 'tis *verbatim* as I have declared now.

Mr. *At. Gen.* Only this other part of *Hatsel* and the Meeting in *Essex* was spoken of since, that was not declared before.

Mr. *Evans.* No, my Lord, that I did not speak of, because I was not examined about it.

Mr. *At. Gen.* That was part of the Secret.

Mr. *Evans.* No, it was common Discourse with me. And I did not think any thing of it, what Mr. *Edwards* said at the Custom-house, was spoken to a great many others as well as me, and the People seemed to be surprized with an account of the thing at the first News of my Lord of *Essex*'s Death. And if I had thought it material, I could have brought a great many that were by then; but Mr. *Edwards* is here brought himself, I suppose he will not deny it.

Mr. *Sol. Gen.* Look you, Sir, you say that very Morning my Lord of *Essex* killed himself, Mr. *Edwards* discoursed, and made this Report to you at the Custom house, pray tell what the Discourse was; what he said to you; and then tell us what time of Day it was.

Mr. *Evans.* To the best of my remembrance it was about eleven a Clock; there were several Persons standing together, among the rest Captain *Goodland*, and some of the Searchers, and Mr. *Edwards* was there, and said he, I am informed from home, That my Boy has been at home, and given an account to my Wife, that being in the Tower, he saw a Hand throw a Razor out of a Window, and he named my Lord of *Essex*'s Window; and this Mr. *Edwards* did not only tell me, but to a whole Coffee-house of People, this Matter of Fact.

Mr. *Just. Holloway.* Did not Mr. *Edwards* tell you, That some body had been examining his Boy about that Report?

Mr. *Evans.* That was the second time, when Mr. *Braddon* and Mr. *Edwards* came together.

Mr. *Just. Holloway.* Who was it had been examining his Boy did he say?

Mr. *Evans.* Mr. *Braddon*, he said, had been to examine his Son.

Mr. *Just. Holloway.* That was after the Discourse at *Essex* that *Braddon* came to examine his Son concerning the Razor.

Mr. *Wallop.* Yes, it was after the Discourse at *Essex*, where *Hatsel* plucking out the Paper, *Evans* told Mr. *Braddon* first of this Razor.

L. C. J. Well, Make your Defence by and by, Mr. *Wallop:* Do not make your Remarks now.

Mr. *At. Gen.* Come, Mr. *Edwards.* Cryer swear him. [*Which was done.*

L. C. J. What do you ask him, Mr. Attorney?

Mr. *At. Gen.* Mr. *Edwards*, Pray will you give the Court an account of this Buſineſs; for I don't know whether you heard what that Gentleman that went out laſt ſaid, he ſays, you raiſed this Story, Pray give an account what you know of it.

Mr. *Sol. Gen.* Pray tell what you know of Mr. *Braddon's* coming to your Son, and what Diſcourſe he or you had about the Murder of the Earl of *Eſſex*.

Mr. *Edwards.* The Report that Mr. *Braddon* came to enquire after, was with us ſome three Days before; it was in our Family three Days before, and upon the 17th of *July*——

L. C. J. What was the Report, Mr. *Edwards*, before Mr. *Braddon* came to you?

Mr. *Edwards.* The Report I have already declared before the Council.

L. C. J. But you muſt tell us too what it was.

Mr. *Edwards.* The Report of the Boy the 13th of *July* about 10 a Clock, as I was informed by my Family, and by the Boy afterwards by Word of Mouth, was this, He comes in about 10 a Clock, ſays he, I have been at the Tower (to one of his Siſters,) and have ſeen His Majeſty and the Duke of *York*, and the Earl of *Eſſex* has cut his Throat, and I ſee an Hand throw a Razor out of the Window, and one came out of the Houſe, a Maid, or a Woman in a white Hood and a Stuff-Coat and took it up, and went in again, and then I heard a Noiſe as of Murder cryed out. This was the Boy's Report, and more than as his Report I can't ſpeak to it.

L. C. J. This was your Son, was it not?

Mr. *Edwards.* Yes, the younger of them. The two Boys were that Morning going to *Merchant-Taylor's* School together as they uſed to do, and by the way hearing the King was in the Tower, this younger Boy that was well acquainted with the Tower, gave his elder Brother the ſlip and went into the Tower, and rambled about from place to place.

Mr. *At. Gen.* Did not you examine him?

Mr. *Edwards.* Ay, I did examine him.

Mr. *At. Gen.* Did not you find that he denyed it again?

Mr. *Edwards.* No, I did examine him, and I found no denial of any thing at all that he had reported till Mr. *Braddon* came to make enquiry. Aſſoon as he came to make the enquiry, and I underſtood what Mr. *Braddon's* Buſineſs was, I begged of him that he would not inſiſt upon it by no means; I begged of him as if I had begged for my life, but he was ſo zealous in the Buſineſs, that nothing would ſatisfy him. And after I had told Mr. *Braddon* that which I could not deny, which was the Boy's Report, I left him and went down to the Cuſtom-houſe, and ſome of my Family diſcourſed the Boy at that rate that he began to deny it, and in leſs than half an hour's time recollected himſelf and began to own it again, and ſo the Boy was off and on till the time he was before the Council; and to this Day he ſeems to ſtand in the Denial, whether he will do it now or no I can't tell.

Mr. *At. Gen.* Did you acquaint Mr. *Braddon*, That you had found this Boy to be a lying Boy, and detected him in Lyes ſeveral times?

Mr. *Edwards.* Nay it pleaſe you, Sir, I acquainted him with thus much: Said I, Mr. *Braddon*, As I have dealt ingenuouſly with you, to let you know what the Boy's Report was, ſo I muſt likewiſe tell you, that I cannot nor will undertake to aſſert the truth of it, and preſently upon that my Daughters told me, the Boy had many times excuſed his playing Truant by falſe Stories.

Mr. *At. Gen.* Did you acquaint Mr. *Braddon*, that your Boy was a lying Boy at that time?

Mr. *Edwards.* I think I did not at that inſtant of time.

L. C. J. How old is this Boy you talk of?

Mr. *Edwards.* About 13 Years of Age, my Lord.

Mr. *At. Gen.* What do you know of Mr. *Braddon's* forcing your Boy to ſign any thing that he had prepared after this?

Mr. *Sol. Gen.* When you told him your Boy had deny'd it, what did he ſay? Was he pleaſed and ſatisfied?

Mr. *Edwards.* He was not told it by me, but ſome of my Family.

Mr. *Sol. Gen.* How did he behave himſelf?

Mr. *Edwards.* At the ſame time they told him he denied it, at the ſame time they told him he owned it again.

Mr. *Sol. Gen.* How did Mr. *Braddon* behave himſelf?

Mr. *Edwards.* Like a civil Gentleman. I ſaw nothing elſe by him, but that he was very zealous in the Buſineſs, that is the truth of it, nothing could perſwade him to deſiſt.

Mr. *Juſt. Holloway.* Pray did you ask Mr. *Braddon*, or did he tell you, what was the reaſon that he was ſo inquiſitive about this Razor, and the Report of the Boy?

Mr. *Edwards.* As to that he told me, he would let me know the reaſon of it, which was, out of Conſcience.

Mr. *Jones.* Did not Mr. *Braddon* carry your Son before ſeveral Juſtices of Peace?

Mr. *Edwards.* Before none as I know of, not one truly to my knowledge.

Mr. *At. Gen.* Did you underſtand he had taken your Boy from your Houſe in a Coach?

Mr. *Edwards.* Never till he carried him into His Majeſty's Preſence before the Council, and I knew not that till the Boy came home.

Mr. *Thompſon.* Mr. Attorney, Have you done with him? May I ask him a Queſtion?

Mr. *At. Gen.* Ay, ask him what you will.

Mr. *Thompſon.* If I underſtand you right, Sir, this Report of the Boys was that Morning that the Earl of *Eſſex* was murdered——

L. C. J. Was murdered, murdered himſelf, Man.

Mr. *Thompſon.* My Lord, I mean the Day of his Death. Now I would ask you, Sir, when that was?

Mr. *Edwards.* The Boy's Report was this, Sir,——

Mr. *Thompſon.* I ask you not what his Report was, but when? What Day it was?

Mr. *Edwards.* The 13th of *July*. That Day the Earl of *Eſſex* cut his Throat.

Mr. *Thompſon.* How many Days after that was it when Mr. *Braddon* came to you?

Mr. *Edwards.* It was not till the 17th of *July*.

Mr. *Thompſon.* Had you diſcourſed of the Report of your Boy at the Cuſtom-houſe, or any where elſe, that ſame Day he came to you?

Mr. *Ed-*

Mr. *Edwards.* I cannot ſay that.

Mr. *Thompſon.* Had you diſcourſed it before Mr. *Braddon* ſpake to you, upon your Oath?

Mr. *Edwards.* Yes, I believe I had.

Mr. *Sol. Gen.* Had you diſcourſed it before your Boy told you?

Mr. *Edwards.* I ſhould then indeed have been the Contriver of the Story.

Mr. *At. Gen.* So it is like enough you were.

Mr. *Sol. Gen.* Had you diſcourſed it to any body before you went home to your own Houſe, upon your Oath, Sir?

Mr. *Edwards.* Upon my Oath then I diſcourſed nothing of that nature, not a tittle of it, nor knew nothing of it, till I had it from my own Family.

Mr. *Sol. Gen.* Did you not diſcourſe of it before you went home?

Mr. *Edwards.* No, when I came home they told me of it.

L. C. J. I ask you again, Sir, Did not you tell it before you came home?

Mr. *Edwards.* About 10 a Clock, I having heard the News of the Earl of *Eſſex*'s cutting his Throat, at the Cuſtom-houſe, I ſtepped home, being very near to my own Houſe, and as ſoon as I came in at the Door, the Family began to give me an account what News the Boy brought in.

L. C. J. That was the firſt time you heard of it?

Mr. *Edwards.* Yes, that was the firſt time I heard of it.

L. C. J. And did not you diſcourſe of it till after that?

Mr. *Edwards.* No.

L. C. J. Call Mr. *Evans.* Let him come in again then.

Mr. *At. Gen.* Let Mr. *Evans* come in again.

L. C. J. Mr. *Evans*, I would ask you this Queſtion, There were three times that you ſay, I think, that you had Diſcourſe with *Edwards* about the Matter, as you call it, once at *Eſſex*, and twice at the Cuſtom-houſe?

Mr. *Sol. Gen.* No, not in *Eſſex*, it was *Hatſel* and *Braddon*, my Lord, that came to him there, *Edwards* was not there.

L. C. J. When you firſt had a Diſcourſe with *Edwards* about this Matter, what was it that *Edwards* did ſay to you?

Mr. *Evans.* Being upon Cuſtom-houſe Key, and Captain *Goodland* and ſeveral others ſtanding upon the Key, that very Morning my Lord of *Eſſex*'s Throat was cut, about 11 a Clock Mr. *Edwards* came to us, being ſtanding upon the Key, and told us, That he was informed his Boy had been at the Tower, and came home and told his Mother, he ſaw a Hand throw a Razor out of a Window, and that he went to take it up, and a Maid or a Woman came and took it up, and went in again.

L. C. J. Evans, Did he tell you this as if he had been at home?

Mr. *Evans.* No, I think it was that he had it from home by ſome Hand or other.

Mr. *Edwards.* I was at home.

Mr. *Evans.* My Lord, At two a Clock in the Afternoon, when he came again to the Cuſtom-houſe, he did tell us, he had been at home, and his Boy had told him the ſame Story.

L. C. J. But when he had told you before he had dined, did he ſay, he had been at home?

Mr. *Edwards.* My Family can teſtify I was at home between 10 and 11 a Clock.

Mr. *Evans.* To the beſt of my remembrance he told me he heard ſo from home.

L. C. J. Before he went home, you ſay, he told you of this, and that was 10 a Clock in the Morning, and about 2 a Clock in the Afternoon, he ſaid, he had been at home, and it was true.

Mr. *Evans.* Yes, my Lord.

Mr. *Edwards.* My Lord, I was at home.

L. C. J. Mr. *Edwards*, Did you tell him ſo, or did you not?

Mr. *Edwards.* It is like I might ſay ſo about 10 a Clock, but not before I had received the Report at home.

Mr. *Evans.* I underſtood it ſo, my Lord, That he had heard from home.

L. C. J. I ask you this upon your Oath, mind the Queſtion, and anſwer me plainly, Did you ſpeak to him, that you had ſuch a Report from home, or did you not?

Mr. *Edwards.* When I told it him, I had it from home, for I brought it from home.

L. C. J. Nay, Did you tell him you had ſuch a Report from home at 10 a Clock, or no?

Mr. *Edwards.* I told him that I had met with ſuch a Report.

L. C. J. From whom?

Mr. *Edwards.* From my Family at home, for the Boy came not to me to tell it.

L. C. J. Then did you ſee Mr. *Evans* about 2 a Clock that Afternoon?

Mr. *Edwards.* 'Tis probable I did.

L. C. J. Did you, or did you not?

Mr. *Edwards.* Yes, I believe I might. I beſeech your Lordſhip give me leave to ſpeak. Mr. *Evans* and I am converſant Forenoon and Afternoon every Day, we have Buſineſs together.

Mr. *Evans.* We have Buſineſs, my Lord, about ſhipping off Goods.

Mr. *Edwards.* But, my Lord, if you pleaſe, I will tell you, that is the Occaſion of our being together.

L. C. J. Anſwer me my Queſtion, Did you, or did you not tell him ſo?

Mr. *Edwards.* I did not acquaint him with it before I had been at Home, and received it from my own Family.

L. C. J. Look you, Sir, Don't you go about to evade the Queſtion, nor trifle with the Court, you muſt anſwer me my Queſtion directly, and upon your Oath, Did you tell him you had notice from Home of ſuch a Report, or no?

Mr. *Edwards.* I did not receive notice from Home, but I brought it from Home.

L. C. J. Did you tell him you had it from Home?

Mr. *Edwards.* I told him I had it from my Family, who told me the Boy had made ſuch a Report.

L. C. J. Did you tell him you had it from your Boy, or received notice from Home about it?

Mr. *Edwards.* I did not tell him any thing before I had been at Home.

L. C. J. Well, then, anſwer me this Queſtion. Did you tell him in the Afternoon at two a Clock; Now I have been at Home and examined my Boy, and find it ſo as I told you?

Mr. *Edwards.* I examined my Boy at Dinner, and I found the Boy agreed with the Report of my Daughter, and confirmed it.

L. C. J. I ask you what you told Mr. *Evans*, not what your Boy or your Daughter told you?

Mr. *Edwards*. It is probable I might tell Mr. *Evans* the ſame Story after Dinner at Two a Clock, that I did before.

L. C. J. Now tell us the Paſſage again, Mr. *Evans*, as you heard it.

Mr. *Evans*. To the beſt of my remembrance, at Two a Clock in the Afternoon, Mr. *Edwards* came and told us, he had examined the Boy, and ſays he, the Boy has confirmed all that I told you.

L. C. J. But before that in the Morning, what did he ſay?

Mr. *Evans*. I cannot ſay exactly the Time, but I think it was about Ten a Clock. There were four or five more beſides my ſelf, ſtanding at Cuſtom-Houſe Key, and Mr. *Edwards* came to us, and told us, ſays he, I am informed from Home, as I underſtood it, not that he had been at Home, but that he heard it from Home, that his Boy had been at the *Tower*, had ſeen an Hand throw a Razor out of a Window.

L. C. J. What ſaid he at Two of the Clock?

Mr. *Evans*. He ſaid he had examined his Boy, and he ſaid the ſame thing, that he told us he had heard in the Morning.

Mr. *At. Gen.* My Lord, we are now but upon the Entrance of our Evidence, to ſhew upon what ſlender Grounds, how ſlight a Foundation there was for this Gentleman to undertake this Proſecution.

Mr. *Sol. Gen.* Mr. *Edwards*, Pray let me ask you a Queſtion, Did Mr. *Braddon* tender any Paper to your Son to ſign?

Mr. *Edwards*. I was informed he did do it afterwards, but I ſaw him not do any ſuch Thing.

Mr. *Sol. Gen.* Did you never ſay that Mr. *Braddon* had tendered a Paper to your Son to ſign?

Mr. *Edwards*. I do not believe I ever did ſay ſo, I do not remember any ſuch Thing.

Mr. *Sol. Gen.* Pray recollect your Memory, and tell us, whether you did, or did not.

Mr. *Edwards*. I thank God, Sir, that he has given me my Memory and my Underſtanding, I bleſs him for it.

Mr. *At. Gen.* But it were well if thou hadſt any Honeſty too.

Mr. *Edwards*. And Honeſty too, Sir: I have not lived theſe 39 Years at the Cuſtom-Houſe without Honeſty. I never had my Honeſty queſtioned to this Day. I am ſure no body can tax me with Diſhoneſty.

Mr. *Sol. Gen.* Pray Mr. *Edwards* let your Anger alone for a while, and anſwer the Queſtion that I ſhall ask you: Did your Son refuſe to ſign that Paper?

Mr. *Edwards*. He did ſign it at laſt.

Mr. *Sol. Gen.* Did he refuſe to ſign it?

Mr. *Edwards*. I do not know whether he refuſed it or no.

Mr. *Juſt. Withins*. Did you hear that your Son refuſed it?

Mr. *Edwards*. I did hear that he had ſigned it.

Mr. *Juſt. Withins*. But did you hear that he refuſed to ſign it?

Mr. *Edwards*. The Boy did not tell me he had refuſed to ſign it. I did not hear him refuſe it.

L. C. J. Thou doſt prevaricate very ſtrangely, I muſt tell thee, that notwithſtanding thy Reputation of 39 Years of Honeſty: Prithee, anſwer plainly, Did you hear at any time, that your Son had refuſed to ſign it?

Mr. *Edwards*. No, my Lord, I did not, to the beſt of my remembrance.

L. C. J. That is a plain Anſwer, Man, but thou doſt ſo ſhuffle up and down, one cannot tell what to make of what thou ſayeſt.

Mr. *Thompſon*. Sir, I deſire to ask you one Queſtion, Whether ever Mr. *Braddon* and you had any former Acquaintance?

Mr. *Sol. Gen.* Pray, ſtay, Sir, and if you pleaſe, ſpare your Queſtion a little, for we have not yet done with Mr. *Edwards*. Mr. *Edwards*, pray anſwer me, Did Mr. *Braddon* ever tell you, that he had other Informations to confirm this Report of your Son from others?

Mr. *Edwards*. Truly I do not remember he ſaid any ſuch Thing.

Mr. *Sol. Gen.* Did you ever ſay he told you ſo? Conſider of it, and remember your former Examination.

Mr. *Edwards*. 'Tis like ſince he may have ſaid ſo, but not at his firſt coming.

Mr. *Sol. Gen.* At his firſt coming did your Son ſign his Paper then?

Mr. *Edwards*. No, he did not, as I am informed, I ſaw it not.

Mr. *Sol. Gen.* But afterwards you ſay, Mr. *Braddon* did tell you, he had other Evidence to confirm it.

Mr. *Edwards*. It may be he might, I can't ſay it poſitively.

Mr. *At. Gen.* You ſay he did not ſign the Paper at his firſt coming?

Mr. *Edwards*. No, I am informed he did not.

Mr. *Sol. Gen.* How do you know he did ſign it at laſt?

Mr. *Edwards*. My Wife and Daughters Information.

L. C. J. But how then can you ſay, That you never heard he did refuſe it?

Mr. *Edwards*. My Lord, he did not tender a Paper to him to ſign, till he had been two or three times there, as I have heard, it was not tender'd the firſt time he came.

L. C. J. I wonder how thou haſt eſcaped 39 Years with ſuch a Reputation.

Mr. *Edwards*. My Lord, I never was thought otherwiſe, nor I hope never gave any Occaſion for ſuch a Thought.

L. C. J. I'll aſſure thee, I do not, nor can take thee for one.

Mr. *Edwards*. I hope I have done nothing to make your Lordſhip think the contrary.

L. C. J. Yes, thou haſt. Thou didſt nothing but ſhuffle up and down, thou art to conſider thou art upon thy Oath, and muſt anſwer Queſtions plainly.

Mr. *Edwards*. My Lord, I do anſwer as truly as I can.

Mr. *At. Gen.* Heark you then, Mr. *Edwards*, anſwer me.

L. C. J. Speak the Truth, and nothing but the Truth, that is all that is required of thee; no Court of Juſtice ought to be afraid to hear Truth. Let Truth come out of God's Name.

Mr. *At. Gen.* Did Mr. *Braddon* ever tell you, That he had other Evidence beſides your Son?

Mr. *Edwards*. I do not remember he ſaid any ſuch thing at his firſt coming.

L. C. J. How thou doſt ſhuffle again. Anſwer plainly.

Mr. *At. Gen.* I ask you, Whether ever he did ſay it?

Mr. *Edwards.* Yes, he did ſay ſo afterwards.

Mr. *Sol. Gen.* I muſt ask you one Queſtion more (for I ſee 'tis very difficult to get it out of you) Pray did he tell you, that he had other Evidence beſides your Son, before he ſigned the Paper, or after?

Mr. *Edwards.* It was before, as I take it. I ſpeak to the beſt of my Knowledge, my Lord, I can ſay no more.

L. C. J. If thou haſt a mind to continue the Reputation thou haſt got, as thou ſayeſt, the the way is to anſwer Queſtions, and ſpeak the Truth plainly, let it concern whom it will.

Mr. *Edwards.* I labour to do it, my Lord, to the beſt of my Underſtanding and Capacity.

L. C. J. I would not have thee ſay a Tittle more than the Truth, but let the Truth come out.

Mr. *Freke.* Now, Sir, I would ask you, if they have done with you, Did you ever know Mr. *Braddon* before the 17*th* of *July*? Or did you ever ſee him before?

Mr. *Edwards.* No, I never had any Knowledge of him, nor ever heard a Word of him.

Mr. *Wallop.* Mr. *Edwards*, The Queſtion was asked of you, Whether Mr. *Braddon* did ſay, There was other Evidence beſides your Son; pray when was that?

Mr. *Edwards.* He did not at the firſt time, but afterwards he did.

Mr. *Wallop.* That was a good while after, he had been with the Boy firſt.

L. C. J. Make your Obſervations by and by, Mr. *Wallop.* This is not a Time for them.

Mr. *At. Gen.* Then where is *Edwards*, the Boy? [*Who was brought forthwith into Court.*]

Mr. *Edwards.* I charge you in the Preſence of Almighty God, ſpeak Truth, Child.

Mr. *Sol. Gen.* And ſo ſhould you too.

Mr. *Edwards.* Be ſure to ſay nothing but the Truth.

L. C. J. And Child, turn about, and ſay, Father, be ſure you ſay nothing but the Truth.

Mr. *At. Gen.* My Lord, This is the Boy, he is very little and very young, will your Lordſhip have him ſworn? What Age are you of?

William Edwards. I am 13, my Lord.

Mr. *At. Gen.* Do you know what an Oath is?

William Edwards. No.

L. C. J. Suppoſe you ſhould tell a Lye, do you know who is the Father of Lyars?

William Edwards. Yes.

L. C. J. Who is it?

William Edwards. The Devil.

L. C. J. And if you ſhould tell a Lie, do you know what would become of you?

William Edwards. Yes.

L. C. J. What if you ſhould ſwear to a Lie? If you ſhould call God to witneſs to a Lie, what would become of you then?

William Edwards. I ſhould go to Hell-fire.

L. C. J. That is a terrible Thing. And therefore, Child, if you take an Oath, be ſure you ſay nothing but what is Truth, for no Party, nor Side, nor any Thing in the World, for that God that you ſay will call you to an Account, and caſt you into Hell-fire, if you tell a Lie, and witneſs to a Falſhood, knows and ſees all you do, therefore have a care, the Truth you muſt ſay, and nothing but the Truth.

Cryer. Pull off your Glove, and hearken to your Oath. [*Then he was ſworn.*

Mr. *Sol. Gen.* And now remember you call God to witneſs to the Truth of what you ſay.

Mr. *At. Gen.* Young Man, look upon that Paper, is that your Hand?

William Edwards. Yes.

Mr. *At. Gen.* Did you ſign that?

William Edwards. Yes.

Mr. *At. Gen.* Prithee tell the Court, how thou cameſt to ſign it?

L. C. J. Ay, Child, be not afraid. Tell the Truth, for if thou telleſt the Truth, thou needeſt not be afraid, but if thou telleſt a Lie, thou haſt need to be afraid; let no body, whatever has been ſaid to thee, affright thee from telling the Truth.

Mr. *Sol. Gen.* Don't be afraid of thy Father, or any body, but tell plainly what thou knoweſt, and ſpeak only the Truth.

Mr. *At. Gen.* How came you to ſign that Paper?

William Edwards. Mr. *Braddon* bid me ſign it when he had writ it.

L. C. J. Heark thee, Child, Did he take it from thee what he writ, or did he write it from himſelf? Come hither, Child, be not afraid, no body here will do thee any hurt.

Then the Boy was lifted up upon the Table before the Judges.

L. C. J. Look upon that Paper, didſt thou put thy Name to that Paper, Child?

William Edwards. Yes.

L. C. J. Whoſe Hand-writing is that Paper, beſides thy Name?

William Edwards. Mr. *Braddon's*.

L. C. J. Did he bring it ready written?

William Edwards. He writ it in our Parlour.

L. C. J. How came he to write it?

William Edwards. He ſaid it was for the Earl of *Eſſex*, to give to his Wife.

L. C. J. And what did he ask thee before he writ that?

William Edwards. He asked me, whether I ſaw any Thing at the *Tower*, and ſo I told him, yes.

L. C. J. Ay, tell us what you told him, and be not afraid, Child, but tell the Truth.

William Edwards. I told him, I was in the *Tower*, and ſaw a Razor thrown out of a Window.

L. C. J. You told him ſo, and then what ſaid he to you?

William Edwards. He bid me ſpeak the Truth.

L. C. J. Was that all the Words you had?

William Edwards. I afterwards went with my Brother into the *Tower*, and I ſhewed my Brother the Place, and then afterwards Mr. *Braddon* writ this, and he ſaid, it was to give to the Counteſs of *Eſſex*.

Mr. *Juſt. Holloway.* Did he read it to you after he had writ it?

William Edwards. Yes.

Mr. *Juſt. Holloway.* And did he ask thee, whether it were true?

William Edwards. Yes.

L. C. J. And didſt thou tell him it was true?

William Edwards. Yes.

L. C. J.

L. C. J. And didſt thou tell him all that was in that Paper was true?

William Edwards. Yes.

L. C. J. Did you tell him all that was writ in that Paper before he writ it down.

William Edwards. Yes.

L. C. J. Prithee mind the Queſtion, and ſpeak truth, Didſt thou tell him all that was in that Paper before he writ it down?

Will. Edwards. Yes, I told him, and ſo he writ it down.

Mr. *Juſt. Holloway.* You heard it all read to you, you ſay?

Will. Edwards. Yes.

L. C. J. Then I ask you again, Did you tell him all that was in that Paper was read to you, before he writ it down?

Will. Edwards. Yes.

L. C. J. And after you had told him, he writ it down?

Will. Edwards. I told him as he writ it down.

L. C. J. And after ſuch time as he had writ it down, did he read it to you?

Will. Edwards. Yes.

L. C. J. And then you put your Name to it?

Will. Edwards. Yes.

Mr. *At. Gen.* I pray, my Lord, he may be asked this Queſtion, Whether or no, when he firſt brought it in, the Boy did not deny to ſign it?

L. C. J. Did he bring the Paper thither before thou ſigned'ſt it?

Will. Edwards. It was upon the Table.

L. C. J. Did'ſt not thou refuſe to put thy Name to it?

William Edwards. Yes.

L. C. J. Why?

William Edwards. I was afraid.

L. C. J. Why?

William Edwards. For fear of coming into Danger.

L. C. J. Why, what Danger could there be? There was no Danger if it was Truth.

William Edwards. That was not the Truth.

L. C. J. Which was not the Truth? Was not the Paper that he had written Truth?

William Edwards. No.

L. C. J. How ſo, Child? Was not that thou toldeſt him the Truth?

William Edwards. No.

L. C. J. Tell the Truth now then.

William Edwards. So I do.

Mr. *Sol. Gen.* Then he offered it firſt to you, and bid you ſign it, and you denied to put your Hand to it, becauſe it was not true?

William Edwards. Yes.

L. C. J. And how long after did he offer it to you again?

William Edwards. A little while after.

L. C. J. But did you tell Mr. *Braddon* it was not true, when you refuſed to ſign it?

William Edwards. No, I did not.

L. C. J. Why didſt thou refuſe to ſign it, then?

William Edwards. I was afraid becauſe it was not true.

L. C. J. Didſt not thou tell Mr. *Braddon* it was not true?

William Edwards. I did not tell Mr. *Braddon* it was not true.

L. C. J. Why then, waſt thou afraid to ſign it becauſe it was not true at one time, and yet didſt ſign it, though it was not true at another time?

Mr. *Sol. Gen.* Child, Didſt thou give Mr. *Braddon* any Reaſon, why thou didſt not ſign it at that time?

William Edwards. No, Sir.

Mr. *Sol. Gen.* How didſt thou come to ſign it? Did any any body ſpeak to thee between that firſt Time thou refuſedſt to ſign it, and the ſecond time thou didſt ſign it?

William Edwards. He would fain have got my Aunt to have ſigned it.

L. C. J. Thou ſayeſt, thou didſt firſt refuſe it, becauſe it was not true?

William Edwards. Yes.

L. C. J. And then afterwards thou didſt ſign it?

William Edwards. Yes.

L. C. J. Then I ask thee, who perſwaded thee to ſign it after that time that thou ſtill refuſedſt it?

William Edwards. My Mother was afraid to have me ſign it.

L. C. J. Who perſwaded you to ſign it?

William Edwards. Mr. *Braddon* ſaid, there was no Harm in it, ſo I did it.

L. C. J. Did Mr. *Braddon* then perſwade you to ſign it?

William Edwards. He ſaid there was no Harm in it, that was all.

L. C. J. Did you do it at his Deſire?

William Edwards. Yes.

L. C. J. And you refuſed it at firſt when he deſired it?

William Edwards. Yes.

L. C. J. What, becauſe it was falſe?

William Edwards. Yes.

L. C. J. Why then would'ſt thou ſign it afterwards, if ſome body did not perſwade thee to it?

William Edwards. He told me there was nothing of Harm in it.

Mr. *At. Gen.* Hadſt thou any Money offered thee by Mr. *Braddon*?

William Edwards. No.

Mr. *At. Gen.* Hadſt thou any Money promiſed thee?

William Edwards. No.

Mr. *At. Gen.* Hadſt thou any thing elſe offered or promiſed thee?

William Edwards. No, nothing at all.

L. C. J. You have heard what he has ſaid, Gentlemen?

Jury. No, my Lord, we have not heard a Word.

L. C J. Then I will tell you what he has ſaid exactly. He ſays, that Mr. *Braddon* writ it from him; that he writ it in the Room while he was there; that after ſuch time as he had writ it, Mr. *Braddon* read it to him: He ſays, that he had carried his Brother to ſhew him the Place where he aſſigned that the Razor was found in the *Tower*, he ſays, that after ſuch time as the Writing was finiſhed, Mr. *Braddon* offered it him to ſign, and he refuſed to ſign it, and I asked him the Reaſon why, and he ſays, becauſe it was falſe; he ſays, ſome ſhort time afterwards Mr. *Braddon* came to him again.

William Edwards. No, Sir, it was the ſame time.

L. C. J. Well, the ſame time *Braddon* was at him again, and told him there was no Harm in it, and therefore deſired him to ſign it, and becauſe he would not, he would have had his Aunt to have ſigned it; and he ſays, that *Braddon* telling him there was no Harm in it, he did ſign it.

Mr. *Sol. Gen.* But withall he ſays, that it is falſe.

L. C. J.

L. C. J. Ay, he ſwears now 'tis all falſe.

Mr. *Freke.* Did you tell Mr. *Braddon* it was falſe?

L. C. J. No, he ſays he did not.

Mr. *Freke.* Did your Siſter at all diſcourſe with you after you had dictated to Mr. *Braddon*? Pray what Diſcourſe had you with her after Mr. *Braddon* writ that Paper, before you refuſed to ſign it?

L. C. J. Do not ask any leading Queſtion, Sir, but propoſe a fair plain Queſtion.

Mr. *Freke.* Did you diſcourſe with your Siſter at all, after Mr. *Braddon* had been at your Houſe?

William Edwards. Yes, I had been at School, and when I came Home, they ſaid that a Gentleman that came from the Earl of *Eſſex*'s Brother, had been to enquire of the Truth of the Report I had raiſed.

Mr. *Freke.* What did your Siſter ſay to you?

William Edwards. That was all.

Mr. *Sol. Gen.* Did ſhe name the Gentleman, and did you ſee him afterwards?

William Edwards. Yes.

Mr. *Sol. Gen.* Who was it?

William Edwards. That Gentleman, Mr. *Braddon.*

Jury. My Lord, We don't hear a Word he ſays.

L. C. J. He ſays, he had been at School, and when he came Home, they told him a Gentleman came from the Earl's Brother, to inquire of the Truth of what he had reported: It was asked him who the Gentleman was, and he ſays, it was that Gentleman, Mr. *Braddon.*

Mr. *Thompſon.* Before ſuch time as Mr. *Braddon* came to you, what did you tell your Father about this Razor, and when?

William Edwards. Sir, I told him the King and Duke of *York* were at the *Tower*, and while I was there, I ſaid, I ſaw a Hand caſt out a bloody Razor, and a Maid come out and take it up, and go in again.

Mr. *Thompſon.* Did you ſee any ſuch thing as a bloody Razor caſt out?

William Edwards. No.

L. C. J. What a Duſt has ſuch a trivial Report made in the World! Admit the Boy had ſaid any ſuch thing, what an Age do we live in, that the Report of every Child ſhall blow us up after this rate? It would make a body tremble, to think, what ſort of People we live among: To what an Heat does Zeal tranſport ſome People, beyond all Reaſon and Sobriety? If ſuch a little Boy had ſaid ſo, 'tis not an Halfpenny matter, but preſently all the Government is to be libelled for a Boy, which whether he ſpeaks true or falſe, is of no great Weight, and he ſwears 'tis all falſe.

Mr. *Sol. Gen.* My Lord, We ſhall next call Dr. *Hawkin*'s Son of the *Tower*. Where is *Thomas Hawkins*? [*Who was ſworn.*

Mr. *At. Gen.* My Lord, Agreeable to what the Boy has now ſaid, to ſhew you that what Mr. *Braddon* got him to ſign was all falſe, here is the young Man that truanted with him the ſame Morning, that was with him all the Time, the whole Morning, that ſays, there was no ſuch Thing, and he ſaw no ſuch Thing; and how could it enter into the Boy's Head ſuch a malicious Lie, if it had not been dictated? Pray Mr. *Hawkins*, will you acquaint my Lord, and the Jury, whether you play'd Truant that Morning with this other Boy, and where you were.

L. C. J. Ay, Tell the Truth in God's name, young Man, be it one way or t'other, let the Truth come out.

Hawkins. In the Morning, Sir, I met with him at the *Tower*, going round with the King, and we walked round the *Tower* as long as the King walked, and then the King going into the Conſtable's Houſe, we and ſome more Boys were playing——

L. C. J. Prithee ſpeak out, as tho' thou wert at play at Chuck-Farthing.

Hawkins. After we had been at play, I went Home, and after I had been there a little while, News was brought to my Father, that the Earl of *Eſſex* had killed himſelf. My Father went down, and I followed him, and after I had been there a little while, *William Edwards* came Home, and there we ſtood looking up at the Window an Hour or two at leaſt, and after we had tarried there a great while, I went out of the *Tower* Gate a little after Eleven.

Mr. *At. Gen.* Was there no Razor thrown out of the Window?

Hawkins. No, there was no Razor thrown out.

L. C. J. Didſt not thou ſee a Razor thrown out of the Window? And a Maid come and take it up?

Hawkins. No, there was no ſuch Thing.

L. C. J. Were you there before *Edwards* came?

Hawkins. Yes.

L. C. J. And you went out with him?

Hawkins. Yes.

L. C. J. Did you and *Edwards* go away together?

Hawkins. Yes.

Mr. *Thompſon.* Did he tell you of any ſuch Thing?

Hawkins. No.

Mr. *Sol. Gen.* What time of the Day was it that you went out of the *Tower*?

Hawkins. Almoſt Eleven a Clock.

Mr. *Wallop.* The Boy does ſay, he did tell his Father and Mother, and all the Family of it. And 'tis plain by the Father, that it was known in the Family by Ten of the Clock.

Mr. *Sol. Gen.* Was this young Man with you, all the Time that you was there, *Edwards*?

William Edwards. Yes.

Mr. *At. Gen.* Did not you tell your Father of this Story when you came from the *Tower*?

William Edwards. Yes.

Mr. *At. Gen.* And that was the ſame time you came out of the *Tower* with *Hawkins*?

William Edwards. Yes.

Mr. *At. Gen.* And you *Hawkins*, was this young Man with you all the time you were at my Lord *Eſſex*'s Window?

Hawkins. He came thither while I ſtood there.

Mr. *At. Gen.* My Lord, This is but the beginning of our Evidence, your Lordſhip ſees what a fine Caſe it is, and how all this Noiſe and Buſtle has come to be made in the World. The Rumour did firſt ariſe in a Fanatick Family, and was propagated by that Party.

Mr. *Jones.* Ay, 'tis eaſily known whence it came.

L. C. J. Gentlemen, Pray will you go on with your Evidence, and make no Deſcants.

Mr.

Mr. *Freke.* You, *Hawkins*, when you came from your Father's Houſe, did you find that Boy in the *Tower*?

Hawkins. Yes, Sir, a going round with the King.

L. C. J. That was before this Thing happened.

Mr. *Freke.* Were you with him all the while he was in the *Tower*?

Hawkins. Juſt before my Lord *Eſſex* cut his Throat I went home.

Mr. *Freke.* Were you with him all the time or no? And how long were you with him?

Hawkins. I went with him round the *Tower* with the King. And after we were at play, and then I went Home, and then when I had been at Home a little time, the Rumour and Noiſe came, that the Earl of *Eſſex* had killed himſelf, ſo I went with my Father, and ſtood before the Window, and I tarried there a while before he came Home, and I ſtayed with him looking at the Window a great while, and we went out of the *Tower together.*

Mr. *Freke.* You little Boy, *Edwards*, was this Mr. *Hawkins* with you all the Time that you were in the *Tower*?

William Edwards. Yes, but only a little while that I was at the Mills.

Mr. *At. Gen.* My Lord, We had not laid ſo much Weight upon Mr. *Braddon* for this Matter, but that he could not be quiet, but muſt inform the King of it, and this Matter was all examined before the King, the Boy was ſent for, and before his Face the Boy declared it was a Lie. And after he knew this, and after the Boy had twice in the Preſence of the King denied it, yet notwithſtanding all this, then was the Project between him and *Speke.* We ſhall firſt prove the Examination of this Matter before the Council, and how he was acquainted with it. Pray call Mr. *Blathwaite* and Mr. *Monſtevens.*

Mr. Blathwaite *was Sworn.*

Mr. *At. Gen.* Pray Mr. *Blathwaite* will you give an Account whether you were preſent at the Council, when Mr. *Braddon* brought this Information, and how the Matter was Examined there, and what was done.

Mr. *Blathwaite.* My Lord, It was on the 20*th* of *July*, that Mr. *Braddon* came to *White-Hall*, he may remember I was there, for he could not but ſee me attending on the King. This little Boy was brought before his Majeſty, and was asked what Information he had given Mr. *Braddon?* And whether the Matter of the Information was true? The Boy ſaid it was a Lie, and that upon his Faith it was not true. Mr. *Braddon* knew all this, for he was called in and informed of it; and I believe Mr. *Braddon* will remember, that he heard the Boy deny it. The whole Examination could not but ſhew that it was an Invention of his, as he ſaid, it was to excuſe himſelf for having play'd Truant that Day, and that becauſe he was afraid to go Home, he invented that Lie. After this Mr. *Braddon*, as it appears, did nevertheleſs purſue this Buſineſs.

L. C. J. Pray only tell what you know of your own Knowledge, both before, and after.

Mr. *Blathwaite.* I know, my Lord, that Mr. *Braddon* (having been in the Countrey) came afterwards before the King, and was again Examined upon this Matter, by which it appear'd, that he did continue in his Purſuit, though he was always informed of the Denial the Boy made, and that it was underſtood to be a Lie by the whole Family of the *Edwards*'s, as well as from the Denial of the little Boy; for they did confeſs, that the Boy uſed to tell Lies, and one of the Siſters ſaid he had denied it at firſt, but afterwards was brought to ſay it. And if I remember right, the Words of one of the Siſters were, *BRADDON* COMPELLED THE BOY TO SIGN IT. Thoſe are the Words in the Minutes that I took at the Examination, therefore I believe it was ſo, that the Boy had denied before to ſign it. But this I only mention, as what the Siſter ſaid.

L. C. J. Have you any more Queſtions to ask Mr. *Blathwaite*, Gentlemen?

Mr. *North.* Becauſe we will not trouble Mr. *Blathwaite* to call him again; pray produce the Letter.

Mr. *At. Gen.* Pray, Sir, will you look upon that Letter, and tell the Court what you know of it, and whoſe Hand it is.

Mr. *Blathwaite.* My Lord, This is a Letter that was produced before the King, when Mr. *Speke* attended there. It was then put into my Hands; and I do well remember, and likewiſe I have written upon it, That Mr. *Speke* owned it to be his Letter.

L. C. J. Did he own it to be his Letter, Sir?

Mr. *Blathwaite.* Yes, he did own it to be his Letter.

Mr. *At. Gen.* That is all we have to trouble you with at preſent, Sir: We will now call Mr. *Monſtevens.* [*Who ſtanding up by the Cryer was Sworn.*

And we call him to prove, That Mr. *Braddon* had notice the Boy had diſowned this Matter.

Mr. *Sol. Gen.* You hear the Queſtion, Sir, pray acquaint my Lord and the Jury, what you know of this Boy's Examination before the Council, and this Gentleman's having notice the Boy diſowned the Thing.

Mr. *Monſtevens.* My Lord, About 5 or 6 Days after my Lord of *Eſſex* had murdered himſelf in the Tower, I ſaw Mr. *Braddon* at the Secretary's Lodgings, my Lord *Sunderland*'s Lodgings at *Whitehall*, with a young Woman, and a Boy about 12 or 13 Years old. The Boy was juſt now in Court, I ſaw him there. He came to me, and told me, he had earneſt Buſineſs to ſpeak with my Lord *Sunderland*, That he came from Sir *Henry Capel*, and he told me, he came with an Information, that the Boy had given relating to the Earl of *Eſſex*'s Death. (The Information I believe is in Court.) He gave me the Information, and I read it, and I remember there was ſomething in the Information of a Razor thrown out of a Window, a bloody Razor thrown out of my Lord *Eſſex*'s Window, and after I had read the Information, I told Mr. *Braddon*, I wonder Sir *Henry Capel* had not appeared himſelf in a Matter of that moment, wherein the Reputation of his Family was ſo much concerned, and I took the liberty to tell him, That I believed if Sir *Henry Capel* had thought that to be true, that was contained in that Paper, he would doubtleſs have came to my Lord *Sunderland* himſelf. Thereupon he told me, That Sir *Henry Capel* had not been well,

and

and did not ſtir abroad. Then I told Mr. *Braddon* again, as I very well remember, That I was confident he had been abroad lately, and had been to wait upon the King, ſince the Death of my Lord of *Eſſex*. Then, my Lord, he had little or nothing to ſay to that, but he ſaid, what he did he was obliged to do in Conſcience, and out of the Duty he owed to the Memory of my Lord of *Eſſex*. Upon that, my Lord *Sunderland* came by, and I went with him to my Lord *Sunderland*, and he gave him that Paper, as I ſuppoſe, which I read, and my Lord *Sunderland* took the Information, and afterwards Mr. *Braddon* was committed in Cuſtody, and then the thing was brought before the King, and the Lords of the Council, which Mr. *Blaithwaite* has given you an account of.

Mr. *At. Gen.* My Lord, I pray that a Word of the Information may be read, we will firſt prove the Information taken by him, and then call Sir *Henry Capell*, who will prove that he never had any Order from him, as he ſaid he had, but it was only his own buſy Inclinations.

Cl. of Cr. This is ſubſcribed, *William Edwards.*

L. C. J. Call the Boy in again.

Mr. *Braddon.* May I ask Mr. *Monſtevens* a Queſtion, my Lord?

L. C. J. Ay, ask him what you will.

Mr. *Braddon.* Sir, Did not I come to you the *Thurſday* Evening, and waited at the Dutcheſs of *Portſmouth*'s Lodgings, before I brought the Boy and the Girl to *Whitehall*?

Mr. *Monſtevens.* No, I did not ſee you there.

Mr. *Braddon.* You are poſitive in that, Sir?

Mr. *Monſtevens.* Yes, I will take my Oath again of it, if you will.

Mr. *Braddon.* Then I will prove I was, and that I ſaw you at ten of the Clock that Morning.

Mr. *Monſtevens.* I remember, my Lord, very well, That I was ſurprized to ſee him at the Lodgings at *Whitehall*. I never ſaw him, to the beſt of my remembrance, but once in my Life.

Mr. *Braddon.* What time was it, pray, you firſt ſaw me?

Mr. *Monſtevens.* It was in the Afternoon, as I remember.

L. C. J. Hark you, young Man, do you know my Lord *Gerard*?

William Edwards. Yes.

L. C. J. Which Lord *Gerard* do you know?

William Edwards. My Lord *Brandon Gerard.*

L. C. J. How came you to know him?

William Edwards. By ſight I know him.

L. C. J. Do you know where he lodged in the Tower?

William Edwards. Yes.

L. C. J. Where?

William Edwards. At one Mr. *Sam*'s.

L. C. J. Was you ever in his Lodging?

William Edwards. No.

L. C. J. Never at all?

William Edwards. No.

L. C. J. Did you never tell any body you were in my Lord *Brandon Gerard*'s Lodgings?

William Edwards. Never in my life.

L. C. J. Did you never tell *Braddon*, that you went to ſee his Lodgings?

William Edwards. Into the Houſe I never went.

L. C. J. Did you never tell *Braddon*, That you went to ſee my Lord *Brandon Gerard*'s Lodgings? Never in your life?

William Edwards. No, Sir.

L. C. J. Now read it.

Cl. of Cr. [*Reads.*] —— The Information of *William Edwards*, ſecond Son to *Thomas Edwards*, of the Pariſh of *All-hallows Barkin, London*, taken the 18th Day of *July*, in the 35th Year of the Reign of our Sovereign Lord King *Charles* II. *Anno* 1683. ſays: That this Informant on *Friday* the 13th of this inſtant *July*, as he was going to School, with his Brother *Edward*, he heard that His Majeſty, and His Royal Highneſs the Duke of *York*, were going to the Tower. Whereupon this Informant left his Brother, and went to the Tower to ſee His Majeſty, and His Royal Highneſs. And when this Informant had ſeen His Majeſty and His Royal Highneſs, this Informant about 9 of the Clock in the Morning of the ſame Day, went to ſee my Lord *Brandon Gerard*'s Lodgings; and as this Informant was ſtanding almoſt over againſt my Lord *Gerard*'s Lodgings, between the Lord *Gerard*'s and the late Lord of *Eſſex*'s Lodgings, this Informant ſaw a Hand caſt out a bloody Razor out of the ſaid Earl of *Eſſex*'s Lodgings. And this Informant was going to take up the ſaid Razor, which he ſaw on the Ground to be bloody, but before this Informant came to the Razor, there came a Maid running out of Captain *Hawley*'s Houſe, where the ſaid Lord of *Eſſex* lodged, and took up the ſaid Razor, which ſhe carried into the ſaid Captain *Hawley*'s Houſe. And this Informant believes that it was the ſaid Maid, who he firſt heard cry out Murder. And this Informant further ſaith, That he heard the ſaid Maid ſay to ſome which were about the Door after the Murder was cryed, That ſhe did hear the ſaid Lord of *Eſſex* to groan three times that Morning. The Father, three Siſters and Brother will ſwear, That the ſaid *William Edwards* did declare the Subſtance of this Information to them on *Friday* the 13th inſtant, and never in the leaſt denied it till *Tueſday* after, when being chid and threatened by the elder Siſter, he did deny it, but ſoon after confeſſed it, and ſigned it in the Preſence of five or ſix Witneſſes.

Mr. *Juſt. Withins.* Thus you ſee, he perſwaded him to tell a fine Story, of going to ſee my Lord *Brandon Gerard*'s Lodgings, but the Boy never told any ſuch thing.

L. C. J. No, he never told him a Word of it, he ſwears.

Mr. *At. Gen.* My Lord, Your Lordſhip has heard from Mr. *Monſtevens*, That this Gentleman Mr. *Braddon* made uſe of the Name of an honourable Perſon Sir *Henry Capell*, and ſo at the Secretary's and at *Edwards*'s Houſe, made uſe of the Name of my Lady *Eſſex*. We ſhall now call Sir *Henry Capell*. (*Who was ſworn.*) Sir *Henry Capell*, Will you pleaſe to give an account, Whether ever you employed this Gentleman Mr. *Braddon* about any ſuch Buſineſs as he has here undertaken?

Sir *H. Capell.* I hope you will give me as ſhort a Diſpatch as you can, Sir, for 'tis very uneaſy for me to be here in this Crowd.

Mr. *Sol. Gen.* We give you ſome trouble, Sir *Henry*, but indeed 'tis not we, but this Gentleman, that has been pleaſed to uſe your Name, has neceſſitated it.

Mr. *At. Gen.* We ask you a ſhort Queſtion, Whether you employed Mr. *Braddon* to go to Mr. *Edwards*'s Houſe or to the Secretary's, or

any where elſe to proſecute this Matter of your Brother's Death?

Sir *H. Capell.* My Lord, I know very little of Mr. *Braddon.* He was to ſpeak with me twice. The firſt time he took me in very great Diſorder, both as to the Circumſtance of Time and Place, which are ſo tender with me, that truly I cannot expreſs, nor do I very well know what I did ſay, or what he ſaid to me, but the ſecond time he came to me, I do very well remember what I did ſay. And that which I did ſay the ſecond time is the moſt material thing I have to ſay in the Matter. He came to me and ſpake of ſuch a Buſineſs as the Court is well apprized of already (I hope you will pardon me if I do not repeat it) I made Anſwer to him, Mr. *Braddon*, I am under great Grief and under a great Burthen of Buſineſs in my private Family, whatſoever you have to ſay in the Matter, I deſire you would go to a Secretary of State and acquaint him with it. This is the moſt material thing that was ſaid that I remember.

Mr. *At. Gen.* But you never employed him to go about to proſecute any ſuch thing?

Mr. *Juſt. Withins.* Sir *Henry*, Pray anſwer me, Did you deſire him to go to *Edwards*'s Houſe and ask him any Queſtions about it?

Sir *H. Capell.* I know nothing of *Edwards*, nor his Houſe at all.

Mr. *Braddon.* Sir *Henry Capell*, Will you pleaſe to let me ask you one Queſtion? Do you not remember I came to *Eſſex* Houſe on the *Monday* Night, and that I came and told you of ſuch a Report, and that I had not been with the Father of the Boy as yet, but if you would then ſend one with me I would go, and in his Preſence examine the Boy, and you, Sir, promiſed me that you would, and whether you did not appoint me to tarry at ſuch a Place where you promiſed to ſend one to go along with me?

Sir *H. Capell.* My Lord, I have a groſs Idea of that which he ſpeaks of concerning his having one to meet him, and that I told him ſuch an one ſhould meet him, and the Perſon did deſire to be excuſed, and I did excuſe him, and ſo he did not go, upon which this Gentleman Mr. *Braddon* came to me the ſecond time, which was after Dinner, and I directed him to go to a Secretary of State and acquaint him with what he had to ſay in the Buſineſs.

Mr. *Braddon.* Did not you promiſe, Sir, to ſend one to me to go with me, and deſired me to meet at ſuch a Place?

Sir *H. Capell.* I remember no more but what I have ſaid.

Mr. *Braddon.* Upon the Oath you have taken, Sir *Henry Capell*, I deſire you would recollect your Memory, whether you did not promiſe me in the Morning to meet at ſuch a Place, and was not I twice with you that Day?

Sir *H. Capell.* Sir, I know no more.

Mr. *Juſt. Withins.* Do you think, Sir *Henry Capell* would forſwear himſelf, Mr. *Braddon?*

Mr. *Braddon.* My Lord, I only deſire him to recollect his Memory.

Sir *H. Capell.* Only I do farther remember, He ſeemed to be very willing to go to the Secretary of State.

Mr. *At. Gen.* And if he had acquieſced there he had done very well, and there had been no farther Trouble.

Mr. *Jones.* But that was not the way he intended, that would not do his Work.

Mr. *Sol. Gen.* Pray, Mr. *Blaithwaite*, do you give my Lord and the Jury an account, whether this Information was ever carried before any Juſtice of Peace in order to have it ſworn before him, and the Circumſtance of it.

Mr. *Blaithwaite.* My Lord, I do very well remember, when this Information was before the King, and was ſhew'd to Mr. *Braddon*, he there confeſs'd, That he had gone about to find ſome Juſtice of Peace to take it upon Oath. He named Sir *Robert Clayton*, and Sir *John Lawrence.* And I do very well remember, and 'tis upon my Minutes, That he confeſſed that Sir *Robert Clayton*, being asked by him to take the Information in private alone without Company, being by Sir *Robert Clayton* refuſed to take it unleſs he might take it more publickly, and Sir *Robert Clayton* refuſing to take it alone, in private, he would not let him take it all, but went away with it. I remember this for Sir *Robert Clayton*, and it may be Mr. *Braddon* may remember the ſame of Sir *John Lawrence*, but I can't tell that.

Mr. *At. Gen.* My Lord, Now we are come to the 20th of *July*, when this Buſineſs was heard before His Majeſty, and the Boy declared it was a Lye, and then he had full notice it was a Lye. But after this Mr. *Speke* and he conſult together, and he muſt be ſent as an Emiſſary into the Country to pick up Informations and Evidences, and with this, and ſome other Informations in his Pocket, to poſſeſs the People, that the Government had murdered my Lord of *Eſſex.* And he muſt be ſent I know not how far, as if the further he went from *London* the better Intelligence he was like to have of a thing done at the Tower. The Juſtice of Peace that took him was ſummoned, but is ſince dead. But we will call the Perſons that were preſent when he was taken, where is Mr. *Beech?* (*He was ſworn.*) Mr. *Beech*, Will you acquaint the Court and the Jury with the manner of apprehending this Gentleman, and what Papers were found about him?

Mr. *Beech.* My Lord, I was preſent when Mr. *Braddon* was apprehended in *Wiltſhire*, and ſeveral Papers were found upon him, and upon Examination he was committed to the County Goal, and from thence removed by *Habeas Corpus* hither up to *London.* I have Copies of all the Papers that were taken about him, which I examined with the Originals. The one was the Copy of a Letter ſent by one *Speke* to Sir *Robert Atkyns*, and there were other Papers in the nature of Informations, another was a Letter to one *Cumpten*, Poſt-Maſter at *Frome.* Mr. *Braddon* upon his Examination ſaid, his Buſineſs was to enquire after the Murder of the Earl of *Eſſex*, and that one Mr. *Burgis* had ſent him a Letter to this purpoſe, That it was reported at *Frome* that very Day the Earl of *Eſſex* cut his own Throat, that he had ſo done, the News of which could not ſo ſoon come down thither.

Mr. *At. Gen.* Pray ſpeak out, Sir, Tell us what his Buſineſs he ſaid, was, and as to the Letters he had about him, tell us what he ſaid.

Mr. *Beech.* He told me, that he had a Letter from one Mr. *Burgis* of *Marlebrough*, to go to one *Cumpten* at *Frome*, who is Poſt-maſter there,

to

to inquire about a Report, that it was ſaid was reported in *Frome*, the 13*th* Day of *July*, the ſame Day the Earl of *Eſſex* murdered himſelf, that he was murdered. Mr. *Braddon* had that Letter about him. I went afterwards to that *Compton* at *Frome*, he ſaid, he never heard any thing of it, or that there was any noiſe of the Earl of *Eſſex*'s Murder, untill the *Sunday* following, which was two or three Days after. From thence I went to my Lord *Weymouth*, a Perſon of Quality that lives near *Frome*, and acquainted his Lordſhip with it, and he then ſaid that he had an account on the *Sunday* of my Lord of *Eſſex*'s Murder, and he believed that was one of the firſt Letters of it that was in the Country.

Mr. *Sol. Gen.* Are theſe the Papers you found about him, Sir?

Mr. *Beech.* I examined theſe Copies with the Originals, and they were true Copies.

Mr. *At. Gen.* Well, put them in.

Mr. *Beech.* Truly, Mr. *Braddon* gave a very ill account of his Journey to thoſe that did examine him.

Mr. *At. Gen.* Pray look upon thoſe Papers that are the Originals.

Mr. *Beech.* One Colonel *Airs* was the Juſtice of Peace, before whom Mr. *Braddon* was examined, and by whom he was Committed, he is ſince dead, but I do believe this was the Original Letter that was taken about Mr. *Braddon.*

L. C. J. Do you believe that was the Original?

Mr. *Beech.* I do, I have a true Copy of it.

Mr. *At. Gen.* Beſides, We will prove it otherwiſe to be Mr. *Speke*'s Hand. It was proved by Mr. *Blathwaite* that Mr. *Speke* upon his Examination did own it, what ſay you Mr. *Blathwaite?*

Mr. *Blathwaite.* He did own it, and ſaid in theſe Words, as I remember, he believed it to be his Hand.

Mr. *At. Gen.* What, that Paper?

Mr. *Blathwaite.* Yes, and I have put my Hand upon it, That it was owned by him.

L. C. J. Read it.

Cl. of Cr. This is ſubſcribed by *Hugh Speke*, and dated *London Lincolns-Inn, Auguſt* 15*th*, 1683. *Wedneſday* Night 10 a Clock, and directed, *For the Ever-Honoured Sir* Robert Atkyns, *Knight of the* Bath, *at his Houſe at* Netherſwell *near* Stow *on the* Old *in* Glouceſterſhire.

Honoured Sir,

THE *Bearer hereof is one Mr.* Braddon, *a very honeſt Gentleman, whoſe Father has at leaſt Eight Hundred* per Ann. *in* Cornwall; *It ſeems it is his Fate to be the only Perſon that follows, and Proſecutes the Murder of the Earl of* Eſſex, *and he has made a very conſiderable Diſcovery already of it, notwithſtanding the hard Stream he rows againſt, as things ſtand and are carried on at preſent. But indeed I think it could never have fallen on ſo fit a Man, for he has been a very hard Student, and is a Perſon of a very good Reputation, Life and Converſation, and has a great deal of Prudence, and has as much Courage as any one living whatſoever. He went away on a ſudden hence Poſt towards* Marlebrough *to make ſome farther Diſcovery, and what he has diſcovered he will give you a full Account, and of all the Tranſactions hitherto about it. I lent him my Man to go with him for fear he ſhould come to any Miſchief, for moſt here fear he will either be ſtabbed or knock'd on the head, if he do not take great care of himſelf; ſeeing he came into theſe Parts, I thought it not amiſs to go and adviſe with you how he had beſt to proceed in it, and I did charge him not to let any body know who he was, that it might not be known that he had been with you; for I would not for the whole World that you ſhould come to any Prejudice in the leaſt for your Kindneſs towards us. For we labour under many Difficulties as the Tide runs at preſent.*

Pray call Mr. Braddon *by the Name of* Johnſon *when he is with you, I have given him the ſame Item. We hope we can bring on the Earl of* Eſſex's *Murder on the Stage, before they can any of thoſe in the Tower to a Tryal. He being in great haſte, I have not time to write more, but to aſſure that Mr.* Braddon *is a Perſon of that Integrity and Courage that no body needs fear to truſt him. I was very willing that he ſhould take your Advice in this Caſe which is of ſo great a moment, ſeeing he came within twenty or thirty Miles or thereabouts of your Houſe. He will give you a full and clear Relation of every thing in that Affair, and how hard they have been upon him. Sir* Henry Capell *told him, that it was a thing too great for him,* &c. *All which Mr.* Braddon (*that you are to call* Johnſon *whilſt he is with you at your Houſe*) *will give you a true Relation of. Mr.* Braddon *hath been at a great Trouble and Charge already about it; I know few that would have ventured to have undertaken this Affair beſides himſelf, as Times go. I received yours this Day, with the great pains you took, and the Letter to the Lady* Ruſſel, *which finding unſealed I ſealed, without looking into it, and carried it my ſelf; She returns you ten thouſand thanks, and ſays, ſhe knows not what Return to make you for your moſt extraordinary Kindneſs. I have not time to write any more at preſent by reaſon that Mr.* Braddon *alias* Johnſon *ſtays only for this my Letter. I am, Sir,*

Your moſt obliged Friend
and moſt humble Servant,

Hugh Speke.

I am writing a Letter to ſend to you by the Carrier.

Mr. *At. Gen.* This Gentleman brings in Mr. *Speke* to be the Author of all this Contrivance. But we ſhall prove to you, That at the ſame time this Letter was taken about him, this Gentleman had others that were likewiſe taken. Theſe Examinations which I deſire may be likewiſe read.

Mr. —— My Lord, I came lately from Sir *Robert Atkyns*, He is an utter Stranger to all this, he is now in the Country and knows nothing of it.

L. C. J. If they will uſe his Name, I can't help it.

Mr. —— My Lord, I would not have any Reflection upon him, for he knows nothing at all of this Matter.

Mr. *Sol. Gen.* The Letter was never received by Sir *Robert Atkyns*, but taken before it came to him.

Mr. *At. Gen.* All the matter is, 'tis an unhappy thing to be thought well of by ſuch ſort of People.

L. C. J. I ſee nothing of Sir *Robert Atkyns* in the Caſe, but only his Name is uſed, and notice is taken of the great Obligations ſome People have to him, for his great Kindneſs to his Friends.

Cl. of Cr. Here is an Information.

L. C. J. Was this found about him too?

Mr. *Beech.* Yes, I believe that is the very Paper, I have no Copy of that Paper, but I well remember the Contents of it.

Mr. *At. Gen.* Did you ſign it or mark it?

L. C. J. He may believe it to be without ſigning.

Mr. *Beech.* I preſume Mr. *Braddon* will own it.

Cl. of Cr. The Information of Mrs. *Edwards*, Wife to *Thomas Edwards*, ſaith, *That about* 10 *of the Clock in the Morning on* Friday *the* 13*th of this Inſtant* July, *this Informant's youngeſt Son* William Edwards, *aged about* 13 *Years, came trembling to this Informant, and in great Amazement and Horror told this Informant, that the Lord of* Eſſex *had cut his Throat in the* Tower, *and further ſaid, That he the ſaid* William Edwards *in the Morning about* 9 *of the Clock, did ſee a Hand caſt out a Razor out of the ſaid Lord of* Eſſex's *Lodging Window, which Razor he ſaw on the Ground to be bloody. And the ſaid* William Edwards *was going to take up the ſaid Razor, but before he came to it, there came a Maid running out of Captain* Hawley's *Houſe where the ſaid Earl of* Eſſex *lodged, and took up the Razor, which ſhe the ſaid Maid forthwith carried into the ſaid Captain* Hawley's *Houſe, and ſoon after he the ſaid* William Edwards *heard her, as he the ſaid* William Edwards *did believe, cry out Murder. And this Informant further ſaith, That the Subſtance of which the ſaid* William Edwards *hath ſworn in this Information, he the ſaid* William Edwards *on Friday laſt did declare to this Informant and her whole Family, ſeveral times atteſting it to be true, and ſeveral times ſince.*

Cl. of Cr. Here is the Information of *William Edwards* ſecond Son of *Thomas Edwards.*

Mr. *At. Gen.* That is the ſame with what was read already.

L. C. J. Ay, That is the Boy's Information.

Cl. of Cr. Here is another, 'tis dated *Auguſt* the 8*th*, 1683. The Information of *Jane Lodeman*, aged about 13 Years, did in the Preſence of theſe, whoſe Names are here under-written, declare as followeth, *That the ſaid* Jane Lodeman *was in the* Tower *on Friday Morning, the* 13*th of* July *laſt, and ſtanding almoſt over-againſt the late Earl of* Eſſex's *Lodging Window, ſhe ſaw a Hand caſt out a Razor out of my Lord's Window, and immediately upon that ſhe heard Shrieks, and that there was a Soldier by my Lord's Door, which cryed out to thoſe within the Houſe, that ſomebody ſhould come and take up a Razor which was thrown out of the Window, whereupon there came a Maid with a white Hood out of the Houſe, but who took up the Razor ſhe can't tell.*

This is ſubſcribed

John Boom, *and*
William Smith.

Cl. of Cr. Here is another Paper *Auguſt* the 8*th*, 83. Mr. *William Glasbrooke* does declare, That one *Jane Lodeman*, aged about 13 Years, inhabiting in the ſame Houſe where he the ſaid *William Glasbrooke* lodged, did on *Friday* the 13th of *July* laſt paſt between the Hours of 10 and 11 in the Morning, in the Preſence and Hearing of him the ſaid *William Glasbrooke* declare to her Aunt, *That the Earl of* Eſſex *had cut his Throat, upon which her Aunt was very angry with her, whereupon ſhe the ſaid Girl did declare, that ſhe was ſure of it, for ſhe ſaw him throw the Razor out of the Window, and that the Razor was bloody, and that ſhe heard two Groans or Shrieks (which of the two Words ſhe uſed, he the ſaid* William Glasbrooke *is not certain) of this he the ſaid* William Glasbrooke *is ready to make Oath.*

This is ſubſcribed

William Glasbrooke,
Margaret Smith.

Mr. *At. Gen.* He carried his Stuff about him, it ſeems, wherever he went.

L. C. J. 'Tis Stuff indeed. Good God, what an Age do we live in!

Mr. *At. Gen.* It is not taken upon Oath before any Magiſtrate, but cooked up to amuſe the Country, as if they were formal Informations. Here is another Letter, Mr. *Beech*, was this Letter found about him?

Mr. *Beech.* Yes, This Letter was found about him.

Mr. *At. Gen.* It is from one *Burgis*, a Man of the ſame Kidney.

Cl. of Cr. This is directed for Mr. *Cumpen* at the *Dolphin* at *Frome*, and 'tis ſubſcribed *Jeremiah Burgis*, and dated *Marleb. Oct.* 21.

Mr. Cumpen,

MY kind Love to you. Theſe are to deſire you to call to mind, that I was in Frome *the* 6*th of* July *being Friday, where I heard the Report that the Earl of* Eſſex *had cut his own Throat, I would deſire you to inquire into it, to know who firſt reported it, and give this Gentleman the truth of it. And in ſo doing you will oblige me who am*

Your Friend,

Jeremiah Burgis.

Mr. *Beech.* Under favour, my Lord, This Letter talks of a Report that was the 13th Day, the very Day the Earl of *Eſſex* murdered himſelf, I went directly to *Frome* and ſpake with this *Cumpen*, and he told me, he did not ſpeak with *Burgis* nor ſee him, nor was there any ſuch Report before the *Sunday* Morning. From thence I went to my Lord *Weymouth*'s as I told you.

Mr. *At. Gen.* My Lord, We have gone through our Evidence for the preſent, to ſhew how this Man has endeavoured to ſpread this Matter to the Scandal of the Government. We ſhall end here at preſent to ſee how he has improved his Confidence, by what Defence he will make to all this Proof. Afterwards, if there be occaſion, We ſhall give an account of the Earl's Death, how he murdered himſelf. And for that we have a Cloud of Witneſſes, tho' this Gentleman has taken upon him ſo much Confidence as to conteſt it.

L. C. J. That would be very fit, Mr. Attorney, becauſe they have raiſed a Doubt in ſome People's Minds about it.

Mr. *At. Gen.* I thought it beſt to reſerve it till after I ſee what Defence he will make.

L. C. J. Take your time.

Mr. *Wallop.*

Mr. *Wallop.* May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel for Mr. *Braddon* and Mr. *Speke*, the Defendants here. You see what the Issue is before you, Mr. *Speke* and Mr. *Braddon*, they are in the Information charged, That they did Conspire together to make the People believe, That whereas the E. of *Essex* murdered himself, and so it was found by the Inquisition, yet they would have the People believe, that that Inquisition was taken unduly, and that they did Conspire to procure false Witnesses to make these Things out. Now, Gentlemen, the only Point that you are to inquire of, is this, Whether these two Gentlemen did maliciously, factiously, and seditiously set these Things on Foot. This Report that the Earl was murdered, or whether there were such Intimations offered to them accidentally and casually, without officiousness, or any of their own seeking, that might induce a good Man, or a wise Man to follow the Business upon such Information given. For our Parts that are for the Defendants, we say this for our Clients, we are not so much to make any Men guilty of this Murder, that is not our Business, but to prove our own innocency and fair dealing in this Matter. Now, Gentlemen, if these two Persons had no inducement to lead them on to this, but did it of their own heads, that is Criminal in them, but if they had that which might induce a wise and good Man, though they were much mistaken, yet they are not to be found Guilty of this Offence that is charged on them. I shall leave it Gentlemen, to you, who I question not have observed the Evidence that has been given, and whose proper Work it is to make your Judgment upon it. But in our Defence, the Steps we go are these, and we desire you would please to observe them. First, we say, That the Report of this Murder was the Day before, two or three Days before, and that very Day, so many Miles distant from *London*, that hearing of such a Report, we might very easily be induced to make some inquiry after it; and of this four Instances we shall give in the Course of our Evidence, that this was a great many Miles off *London*, talked of at the Day, and immediately after the Day, before the News could reach those Places, after the Fact committed. Then we shall proceed to those Passages concerning the Boy, and produce Evidence to set forth the true State of that Matter, That this Boy, as he says himself, did tell the Family this Story, that very Day that my Lord murdered himself, immediately upon his coming Home. Now this Original Story is impossible to be contrived by Mr. *Braddon*, be it true, or be it false. Then Mr. *Braddon* coming into *Essex*, to Mr. *Evans*'s House at *Wansteed*, there what was said by the Boy was spoken of. Then Mr. *Braddon* finding this Information of the Boy, which he had given merely of himself, and which contradicted the Inquisition, and put him upon this Enquiry. Now how far this Intimation has weight, and may be an inducement to a good and a wise Man, as I say, that we must leave to you. But besides that, there is a Girl a Stranger to the Boy, that at the same time upon the Matter, and to this same Effect and Substance, delivered such an Evidence, as might very well serve to confirm us in our Enquiry, and this is the Course of our Evidence, in the Substance of it. And we shall apply our selves to your Lordship and the Jury after the Evidence given, and make our Observations upon it, and submit it to you, Gentlemen.

Mr. *Williams.* Will your Lordship please to spare me one Word that is an Objection that we would make from the Record it self. The Information that does recite, That the Earl of *Essex* was imprisoned in the *Tower*, and during his Imprisonment there, cut his own Throat, and became *Felo de se*. And that there was an Inquisition taken before such an one, before *Edw. Farnham* Coroner of the Liberty of the *Tower*: My Lord, I was not here when the Inquisition was read, if I had I should have made the Objection then, but this is that I say, If we can falsifie that part of the Record, if there be a mistake there, that is, if *Farnham* was not Coroner, then they fail in their Proof, and we must be found not Guilty, for so it is in the Information.

L. C. J. It is said to be before him as Coroner of the Liberty.

Mr. *Williams.* Yes, my Lord, They recite that he is Coroner, and that the Inquisition was taken before him as Coroner, and Mr. *Braddon* knowing of it, did thus, and thus.

L. C. J. Why, Is he not Coroner?

Mr. *Williams.* My Lord, I desire the Inquisition may be looked into, I cannot go to contradict the Inquisition, but my Instructions only are that he is Deputy Coroner, and if it be so they are mistaken in their Information.

Cl. of Cr. It is *Coram Edvardo Farnham Coronatore.*

Mr. *Williams.* Then we can't help it. But there are these Things, that we say to it, one Part of the Information is, That we should go about to perswade the People, that this Inquisition was not duly taken, another Part is, That we did procure false Witnesses to prove it; now what Proof is offered as to the matter of perswading the People, I must submit to you, whether it be such as comes up to the Charge in the Information. There is some kind of Proof, but what it is, you see. Then for the other Matter, which is the procuring of false Witnesses, that under Favour I think I may affirm, That there is no Proof at all of, that Mr. *Braddon* or Mr. *Speke* did procure false Witnesses. Gentlemen, we shall endeavour to acquit our selves of all, if we cannot of all, yet of Part, especially that Part which seems to be the most Criminal. And I must needs say, I have not heard any Proof of procuring false Witnesses, by either of the Defendants. Then there is a Third Thing charged, and indeed in the Evidence there is something that looks towards it, That he should go about by Papers, and otherwise to publish it, That he was a Person employed to prosecute the Murder of the Earl of *Essex*. Now as to this Matter, all I shall say for Mr. *Braddon* is this, If he have done something more, it may be by a transport of Zeal, than became him, that must be submitted how far it is Criminal. If he did what did not become a mighty wise and discreet Man; yet if he did what became a rational Man of ordinary Capacity to do, if he had this Information, and so many other Informations, and he did search innocently a little into it, if he did not do it Seditiously and Factiously with an ill Mind, we hope there is no such great Harm done. And indeed, Gentlemen, his Mind is to

be

be try'd in this Matter. And 'tis an hard Matter to try a Man's Mind, *quo animo* a Man did ſuch an Action; that he did it, there is ſome Sort of Evidence, but if he did it not out of an ill Principle, and with an evil Intention, then, under Favour, we take it he is not Guilty of this Information. And we ſhall endeavour to make it out thus, This Gentleman hearing of this Report of the Boy, makes his Application firſt to Sir *Henry Capell*, who was a Perſon well known, to be nearly related to this unfortunate Lord, the Earl of *Eſſex*, and he tells him what Information he had received. Sir *Henry Capell* puts him into an excellent Courſe, and deſires him to go and inform the Secretary of State, and he did ſo, and if he had gone only this way, all that he had done had been innocent. Then the Matter is only this; He has gone a little out of the way, and has taken ſome Informations and Examinations in Writing: Why, though he has gone a Step or two awry, yet if it was with a Deſign to prepare the Matter the better for the Secretary, by laying theſe Papers before him, we hope there is no Crime; if we did it not Seditiouſly, but only with an Intention, That Mr. Secretary might receive a more clear and full Information; I hope the Jury will acquit us.

L. C. J. You ſay well. Come prove your Matter.

Mr. *Thompſon.* Call Mr. *Fielder* and Mrs. *Mewx*, and Mr. *Lewes.*

Lewes appeared.

Cryer. Lay your Hand on the Book.

Lewes. My Lord, I deſire my Charges may be paid, before I Swear.

L. C. J. Prithee, what have I to do with thy Charges? I won't make Bargains between you, If you have any Evidence to give, and will give it, do, if not, let it alone.

Lewes. My Lord, I ſhall not give any Evidence 'till I have my Charges.

L. C. J. Mr. *Braddon*, If you will have your Witneſſes ſwear, you muſt pay them their Charges.

Mr. *Braddon.* My Lord, I am ready to pay it, I never refuſed it, but what ſhall I give him?

L. C. J. Nay, I am not to make Bargains between you, agree as you can.

Mr. *Thompſon.* My Lord, We are willing to do what is reaſonable. You, *Lewes*, What do you demand?

Lewes. He can't give me leſs than Six Shillings a Day.

L. C. J. Why, where doſt thou live?

Lewes. At *Marlebrough.*

L. C. J. Why, can'ſt thou earn 6 *s.* a Day by thy own Labour at *Marlebrough?*

Lewes. My Lord, I am at 40 *s.* or 3 *l.* a Week Charge with my Family and Servants.

L. C. J. What Trade art thou?

Lewes. A Stapler.

L. C. J. And does your Trade ſtand ſtill while you are here in Town?

Lewes. Yes, to be ſure it can't go well on.

L. C. J. Well, I ſay that for you, you value your Labour high enough, I know not what your Evidence may be; but Mr. *Braddon* you muſt pay your Witneſs if you will have him.

Mr. *Braddon.* I will, my Lord, very readily, what will you have? I have paid you ſomething already.

Lewes. Give me Twenty Shillings more then. You can't give me leſs.

Then Mr. Braddon *paid him Twenty Shillings, and he was Sworn.*

L. C. J. Well, what do you ask him, Mr. *Thompſon?*

Mr. *Thompſon*, We ask him, What Report he heard of the Earl of *Eſſex*'s Death, and when?

L. C. J. What is your Name, Friend?

Lewes. Lewes.

L. C. J. Well, what is it you ſay?

Lewes. My Lord, as I was riding up *Husband*, within three or four Miles of *Andover*——

Mr. *Wallop.* How many Miles is that off of *London?*

Lewes. Fifty two.

Mr. *Wallop.* Well, go on.

Lewes. Between the Hours of Three and Five, but it is ſo long ago, that I cannot exactly tell the certain time, a Man asked me what News I heard in the Country, I told him, I heard none. Says he, I hear the Earl of *Eſſex* has cut his Throat: It was upon a *Friday* in the Summer, I forget the Day of the Month, I can't tell what Month it was certainly.

Mr. *Thompſon.* What Day of the Week was it?

Lewes. I remember it was upon a *Friday.*

Mr. *Thompſon.* Can't you tell what Month it was?

Lewes. I can't tell what Month it was, it was in the Summer I know.

Mr. *Braddon.* My Lord, I deſire to ask him a Queſtion.

L. C. J. Do if you will: Ask him what you will.

Mr. *Braddon.* Did not you go to *Marlebrough* on the *Saturday?*

Lewes. I did go to *Marlebrough* the next Day, which was *Saturday.*

Mr. *Braddon.* I deſire to know of him, whether he did meet with the News of it there then?

Lewes. My Lord, as to that, when I came Home, my Neighbours asked me if I had heard any News? I told them, ſays I, I hear the Earl of *Eſſex* hath cut his Throat. Why when did you hear it, ſay they? I heard it yeſterday, ſaid I. Said they, it was done but yeſterday, how could you hear it ſo ſoon? That is all I have to ſay, my Lord.

Mr. *Williams.* By the beſt Conjecture you can make, was it that very Day the Earl of *Eſſex* cut his Throat?

Lewes. I do not know that ever any ſuch Man cut his Throat, but this I heard, and I tell you the Time as well as I can.

Mr. *Williams.* Then pray let us have our Money again.

L. C. J. Thou art well paid, I will ſay that for thee.

Mr. *Williams.* Where is Mr. *Fielder?* Swear him. [*Which was done.*

Pray, Sir, what did you hear, and when, of the Earl of *Eſſex*'s Death?

Mr. *Fielder.* The *Wedneſday* and the *Thurſday* of the ſame Week that the Earl of *Eſſex* cut his Throat, it was reported in our Town of *Andover*, that he had ſo done. The Women as they came

came in and out of the Town talked of it one to another.

L. C. J. What was talked of that *Wedneſday* and *Thurſday*?

Mr. *Fielder.* That my Lord of *Eſſex* cut his Throat in the Tower.

Mr. *Juſt. Withins.* What, before he had cut his Throat?

Mr. *Fielder.* Yes.

Mr. *Juſt. Withins.* That is very ſtrange indeed.

L. C. J. Lord, what a Story is here!

Mr. *Williams.* My Lord, if you pleaſe, I will tell you what Uſe we would make of it——

L. C. J. I know what Uſe you would make of it, the Uſe is juſt the ſame, as you make uſe of all Sorts of ridiculous and ſhamming Stories, to ſet us together by the Ears, and rake into all the Dunghills that can be, to pick up Matter to put us into Confuſion.

Mr. *Williams.* But my Lord, if there was ſuch a Report ſo long before——

L. C. J. Mr. *Williams*, you were here in Town at that time, I am ſure.

Mr. *Williams.* My Lord, I heard it at Eleven a Clock that Day, that is the ſooneſt I heard it.

L. C. J. What an Age do we live in? What Stuff is here picked up, on purpoſe to kindle the Fire, and ſet us all into a Flame!

Mr. *At. Gen.* What Day of the Month was it, *Fielder*, upon your Oath?

Mr. *Fielder.* I did not mind the Day of the Month, I can't tell that.

Mr. *Sol. Gen.* How do you know it was that Week?

Mr. *Fielder.* Becauſe on the *Saturday* night that Week, we had the certain News of it.

Mr. *Sol. Gen.* You ſay ſomebody told you then of it on *Saturday*?

Mr. *Fielder.* Yes, on *Saturday* we had certain News of it.

Mr. *Sol. Gen.* Who gave you the certain Intelligence?

Mr. *Fielder.* Some Clothiers.

Mr. *Williams.* Was *Gadbury* your Countryman?

L. C. J. Ay, Prithee ask him that, whether *Gadbury* told it him, or *Erra Pater*, if you will?

Mr. *At. Gen.* From what Market-people was it reported?

Mr. *Fielder.* Some Women.

Mr. *At. Gen.* It was only Women's Stories then?

Mr. *Fielder.* Yes, they talked of it among themſelves.

Mr. *At. Gen.* Was it the Forenoon or the Afternoon?

Mr. *Fielder.* The *Wedneſday* and *Thurſday* both, it was the common Talk of the Town all Day long.

Mr. *Juſt. Withins.* Name one that ſpake it to you.

Mr. *At. Gen.* Ay, name one of any Credit, if you can.

Mr. *Fielder.* I cannot, it was the Women as they came in and out of my Shop, and as they went up and down the Town.

Mr. *Wallop.* My Lord, we leave it with your Lordſhip and the Jury. He ſwears he then heard ſuch a Report.

Mr. *Juſt. Withins.* Do you believe this, Mr. *Wallop*, your ſelf? You are a Man of Ingenuity, I appeal to you.

Mr. *Wallop.* I believe that Mr. *Braddon* in his Proſecution of this Matter, went upon the ground of this Report, for he had heard the like Evidence was given in my Lord *Stafford*'s Tryal, about the News of Sir *Edmondbury Godfrey*'s being killed, before it was known here what was become of him, and that perhaps miſled him, if he be miſlead.

Mr. *Juſt. Withins.* Do you believe, that this Man can ſpeak Truth, when he ſays it was reported all about their Town, for two Days before it was done, and yet can't name one Perſon that ſpake it?

Mr. *Fielder.* I keep a publick Shop, and don't take notice of every one that comes in and out, to remember particularly.

Mr. *Juſt. Withins.* You heard it up and down the Town you ſay, ſurely you might remember ſomebody.

Mr. *Wallop.* He might hear it, and not take notice of one, but it was the common Fame at *Andover*.

Mr. *Williams.* Let it go as it will. Your Lordſhip and the Jury hear what he ſays——

L. C. J. But under Favour, Mr. *Williams*, it ought not to paſs ſo eaſily, 'tis a contrivance to deceive the King's Subjects, and ſhews a Deſign to pick up Evidence to amuſe the unwary, and fill their Heads with Fears and Jealouſies of I know not what.

Mr. *Wallop.* My Lord, I would excuſe my Client from Malice as well as ever I can, and therefore we produce theſe Witneſſes, to ſhew what grounds he had for what he did.

Mr. *Williams.* We will next call ſome Women that live near the *Tower*, that might give him ſome Occaſion for his concerning himſelf in this Buſineſs, *Jane Lodeman*, and *Margaret Smith*. This Voice and Rumour in the Country, made him to go into the Country, but it ſhews he was no Contriver of the Report.

Mr. *At. Gen.* I would feign know of *Fielder*, when he told Mr. *Bradden* of this.

Mr. *Braddon.* My Lord, I deſire the Family of the *Edwards's* may be called.

L. C. J. Name them, Who are they? How can we tell who your Witneſſes are?

Mr. *Braddon.* Cryer call them, Mrs. *Edwards*, and her Daughter. Will your Lordſhip give me leave to make my own Defence?

L. C. J. Ay, if you will, but then take notice your Counſel are diſcharged from making any Defence for you.

Mr. *Braddon.* May it pleaſe your Lordſhip, and you, Gentlemen of the Jury, Theſe were the Inducements following, that put me upon engaging in this Matter. ——

Mr. *At. Gen.* Call your Witneſſes firſt, and then ſpeak.

Mr. *Braddon.* Mr. *Edwards*, and Mrs. *Edwards*. [*Who came into Court.*

Mr. *Juſt. Withins.* Pray, Mr. *Braddon*, anſwer me this one Queſtion. What was the Matter that incouraged you to proceed after you knew the Boy had denied it, and ſaid it was all a Lie?

Mr. *Braddon.* I was bound to anſwer to an Information after I had been examined at the Council; I had not otherwiſe ſtirred in it again.

L. C. J. Well, What do you ask *Edwards*?

Mr. *Braddon.* What Day was the firſt Day I

ſaw

ſaw you, and had Diſcourſe with you, and what was the Diſcourſe I had with you?

Mr. *Edwards.* It was the ſeventeenth of *July.*

Mr. *Braddon.* What did you tell me then that your Boy reported?

Mr. *Edwards.* I told you what I acquainted the Court withall before, that the Boy had brought Home ſuch a Report.

Mr. *Braddon.* Had the Boy ever denied it before I ſaw you?

Mr. *Edwards.* That Day you came to ſpeak with me about it, as I was informed by my Wife and my Daughter, the Boy did deny it.

Mr. *Braddon.* Was it before I came, or after I came that he denied it?

Mr. *Edwards.* It was after you came.

Mr. *Braddon.* What were the Inducements that made him to deny it?

L. C. J. He tells you himſelf, becauſe it was falſe.

Mr. *Braddon.* I deſire the elder Siſter *Sarah Edwards* may be called.

Mr. *Wallop.* It is apparent the Boy did affirm it——

L. C. J. I thought Mr. *Braddon* would have made his Defence himſelf, Mr. *Wallop,* but you will be breaking in upon him with your Remarks. Make your Remarks by and by, this is a Time for Evidence.

Mr. *Wallop.* My Lord, I only ſay this, 'Tis apparent the Boy did firſt affirm it, and we ſhall ſhew how he came to deny it.

L. C J. 'Tis not proper for you to make Remarks, when you are examining your Witneſſes; but when you ſum up, You may take what Notes you will, and reſerve them till that time, but do not break in upon the Evidence.

Cryer. Here is *Sarah Edwards* now. [*Who was Sworn.*

Mr. *At. Gen.* This is not the Siſter, this is the Mother of the Boy.

L. C. J. Well, what do you ask her?

Mr. *Braddon.* What Diſcourſe had you with your Boy about Ten of the Clock that *Friday* Morning I met you?

Mrs. *Edwards.* I had no Diſcourſe, but what my Child told me.

Mr. *Braddon.* What did your Child tell you?

Mrs. *Edwards.* I gave an Account to my Lord Keeper, he had it in Writing, I gave him an Account in Writing.

Mr. *Braddon.* But you are now called upon your Oath, and are to ſpeak the Truth, and muſt give an Account to his Lordſhip and the Jury upon your Oath, what it was the Boy told you.

Mrs. *Edwards.* What was it Sir he came and told me? Why the Boy told me, Mother, ſays he, I have been at the *Tower,* and ſeen the King's Majeſty, and his Royal Highneſs, and ſays he, the Earl of *Eſſex* has cut his Throat; and Lord Mother, ſays he, and wept. Lord Child, ſaid I, I am afraid, you are going to make ſome Excuſe to me, that I ſhould not beat you, being you have play'd Truant; no Mother ſays he, I did not. He continued in this for a little while, and then afterwards did deny it.

Mr. *Braddon.* What did he deny?

Mrs. *Edwards.* What he had ſaid to me.

Mr. *Braddon.* Did he deny that he had been at the *Tower?* Or that the Earl of *Eſſex* had cut his Throat?

Mrs. *Edwards.* No, he denied what he ſaid he ſaw.

Mr. *Braddon.* What was that?

Mrs. *Edwards.* He ſaid, he ſaw an Hand out of a Window, and a Razor fell down, and he went to take it up, and there came out a Woman, or a Maid, a ſhort fat Woman came out, and took it up, and went in again.

Mr. *Wallop.* And he ſaid this crying and weeping you ſay?

Mrs. *Edwards.* Yes, he did ſo.

Mr. *Braddon.* Did he deny it before ſuch time as I had been there?

Mrs. *Edwards.* No, you was once at my Houſe before, and ſpake to my Husband, and then you came the ſame Day again.

Mr. *Braddon.* Pray, what was the Diſcourſe your eldeſt Daughter had with the Boy between the time of my firſt coming, and the time of my ſecond coming?

L. C. J. 'Tis impoſſible for her to anſwer any ſuch Queſtion, what Diſcourſe two other People had.

Mr. *At. Gen.* Bring the Daughter her ſelf, and let her tell.

L. C. J. Hark you, Mrs. *Edwards,* before you go. The Boy denied it, it ſeems, in two or three Days after he had given out ſuch a Report?

Mrs. *Edwards.* Yes, my Lord, he did.

L. C. J. How came he to deny it?

Mrs. *Edwards.* I will tell you how, When this Gentleman came and acquainted my Husband with his Buſineſs, it put us all into a great Damp; and my Husband ſaid, now both my Boys were gone to School, and ſays he, after the Gentleman was gone, to my Daughter *Sarah,* Don't you ſay any thing to your Brother when he comes in, but let him alone, and we will talk to him. So with that She was ſo grievouſly affrighted, and ſo amazed, that as ſoon as he came in, ſhe ſaid, prithee, *Billy,* deal truly, and don't you tell any Lie to ſave your Breech, for here has been a Gentleman to inquire ſomething about what you ſaid; why, Siſter, ſays he, will any thing of Harm come? Truly Child, ſays ſhe, I don't know, and upon that he did deny it.

L. C. J. Did you tell Mr. *Braddon* he had denied it?

Mrs. *Edwards.* He was told he had denied it.

L. C. J. Did you tell Mr. *Braddon,* before the Paper was ſigned, that he did deny it?

Mrs. *Edwards.* Yes, my Lord, he knew that before the Paper was ſigned.

Mr. *Braddon.* Mrs. *Edwards,* Did not the Boy come to you, and cry out, he ſhould be hang'd, and then did deny it?

Mrs. *Edwards.* Yes, that he did.

Mr. *Braddon.* From whence did he come, that he was in ſuch in a Fright?

Mrs. *Edwards.* I can't tell that, Sir.

Mr. *Braddon.* Did not your eldeſt Daughter chide him and threaten him?

Mrs. *Edwards.* Yes, ſhe did bid him ſpeak the Truth.

Mr. *At. Gen.* And then he denied it?

Mrs. *Edwards.* Yes.

L. C. J. Ay, ſays ſhe to him, *Billy,* do not to ſave thy Breech, tell a Lie, but ſpeak the Truth, why then ſays he, the Truth of is, there was no ſuch Thing.

Mr. *Braddon.* My Lord, ſhe ſays it was after his Siſter had chid and threatened him.

Mr. *Sol. Gen.* You are a little too fierce upon the Woman, Mr. *Braddon,* you do not obſerve what ſhe ſays.

L. C. J.

L. C. J. Yes, he is wonderful zealous flouriſhing his Hands.

Mr. *Sol. Gen.* She ſays, the Daughter did tell the Son that he muſt ſpeak the Truth, and not tell a Lye to ſave his Breech, for there had been a Gentleman to inquire about it, why, ſays the Boy, will there come any harm of it, I don't know, ſays his Siſter, why then, ſays he, I tell you the Truth, there was no ſuch thing.

L. C. J. Ay, when ſhe engaged him to tell the Truth, and not tell a Lye to ſave his Breech, then the Truth comes out.

Mr. *Braddon.* Pray call *Sarah Edwards* the Daughter. My Lord, They told me in the Houſe that ſhe had frighted him into a Denial.

L. C. J. Pray, good Sir, how came you to be a Juſtice of Peace, and to turn Examiner? You live in the Temple, or belong to the Temple, how come you to take Examinations here in *London*, but that ſome People are ſo very zealous and officious in Matters that concern them not, on purpoſe to raiſe a Duſt?

Then Sarah Edwards *the younger was ſworn.*

Mr. *Braddon.* Did not your Brother deny what he had ſaid by your means?

L. C. J. Pray ask a fair Queſtion.

Mr. *Braddon.* Miſtreſs, Pray tell your Knowledge of what the Boy declared?

L. C. J. Ay, ay, Tell what you know, what your Brother ſaid concerning his ſeeing a Razor, and his denying of it afterwards. Tell all from the beginning to the end, and tell Truth in God's Name, and nothing but the Truth. We deſire the Truth may come out, let it be of which ſide it will.

Sarah Edwards. My brother came home and ſaid he had been at the Tower, and that he had ſeen His Majeſty and His Royal Highneſs, and the Earl of *Eſſex* had cut his Throat, and that he ſaw an Hand fling a Razor out of a Window, and that a Maid or a Woman came out and took it up, and went in again, and preſently after he heard the Noiſe of Murder cryed, ſo I knowing he was very apt to tell Lies I did not believe it.

Mr. *Braddon.* Pray, Miſtreſs, Did you prevail with him to deny it afterwards?

L. C. J. You are ſo wonderful full of Zeal and Heat in this Matter, you cannot let your own Witneſſes tell their own Story, but you muſt interrupt them. You have been bred to the Law, and you have been before here preſent, I ſuppoſe, at many Tryals, and what pretence can you have to be more indulged in an extraordinary way of proceeding than others, 'tis not for the Integrity of your Converſation I am ſure that you ought to have it, but only becauſe you have more Impudence.

Mr. *Braddon.* My Lord, I have nothing of Confidence, but what is grounded upon Innocence.

L. C. J. I tell you, you are too confident, and pray know where you are, and behave yourſelf as you ought.

Mr. *Braddon.* My Lord, I hope I do no otherwiſe.

L. C. J. We muſt give ſuch Liberty and Toleration becauſe of the Extravagance of his Confidence, as to let him break in upon all Rules and Methods. When you behave your ſelf as you ought to do, the Court will indulge you and give you all juſt Liberty, but don't expect for your Zeal ſake and the flinging of your Hands to do what you liſt. Go on Miſtreſs.

Sarah Edwards. So, Sir, this Mr. *Braddon* came on *Tueſday* following about one or two of the Clock, and asked for my Father, and coming, my Siſter *Mary* went to the Door, and called my Father out to him. When my Father came to him, he told my Father he came from Sir *Henry Capell*, and the Counteſs of *Eſſex* to know the Truth of my Brother's Report. So my Father told him the Boy had reported ſuch a thing, but he would not aſſert the Truth of it, for he had been informed by us that the Boy was apt to tell Lies to excuſe his playing Truant, ſo the Child was gone to School when Mr. *Braddon* came, and when he came home from School they went to the Child, ſaid I, *Billy*, will you be ſure to tell me the Truth of this Report, why Siſter, ſaid he, will any Harm come of it? Nay, ſaid I, I do not know, for there has been a Gentleman to enquire about it. So then the Child denied it.

L. C. J. Did he know this before he made the Boy ſign the Paper?

Sarah Edwards. Yes. This was on the *Tueſday* after Mr. *Braddon* had been firſt there. And I ſpake to him, ſaid I, *Billy*, ſay nothing but the Truth be ſure, and don't tell a Lye to ſave your Breech. So, Sir, as ſoon as ever the Child denied it Mr. *Braddon* came in again the ſame Day, and coming in found us, my Mother and all of us, daunted hearing the Boy deny it; but he asked the Child and bid him ſpeak the Truth, and told him it was a dreadful thing to be a Liar, and bid him read the 5th of the *Acts*, telling him he would find there two were ſtruck dead for telling of a Lye, and ſeveral other ſuch Expreſſions that I cannot remember. Upon *Wedneſday* about Noon he comes again, and then my Brother did own it again, and he writ down what the Boy owned, and went away, ſaying he would go to Sir *Henry Capell* and the Counteſs of *Eſſex*. And on *Thurſday* he comes again and brings a Paper written over again, not the ſame he writ at our Houſe, and then the Child ſet his Hand to it. The Child was ſomething unwilling, ſo ſays he to him, it will be no harm to you, if any Danger does come of it, it will come to me and not to you.

L. C. J. The Child was unwilling to ſign it you ſay, but by his Perſwaſion?

Sarah Edwards. Yes. Mr. *Braddon* told him it would be no harm to him, all the harm would come to himſelf.

Mr. *Braddon.* When the Child had owned to me what he firſt ſaid, and upon your ſaying that he denied it, I asked him the reaſon why he denied it, pray will you tell what Anſwer he made to that Queſtion. Pray tell the Truth, and nothing but the Truth.

Sarah Edwards. Upon my word, Sir, I can't recollect that.

Mr. *Braddon.* Pray, Miſtreſs, what Anſwer did he make?

Sarah Edwards. I have told you what I know, to the beſt of my remembrance.

Mr. *Braddon.* Did not you hear your Brother run to his Mother, and cry out I ſhall be hanged?

Sarah Edwards. Yes.

Mr. *Braddon.* What was the reaſon of his crying out ſo?

Sarah Edwards. Why the Child had that Fear and Dread upon his Spirits, knowing it was a Lye, I ſuppoſe, he had told.

Mr. *Braddon.* What was the reaſon of his Fear?

L. C. J. She tells you, it was the Falſhood of the Story.

Mr. *Wallop.* Miſtreſs, Did not you tell him, that his Father would be in danger of loſing his Place?

Sarah Edwards. Yes, Sir, we did.

Mr. *Wallop.* Did you tell him, the King will hang your Father if you do not deny it?

L. C. J. Why, you have a mind to have it believed that it was true then, Mr. *Wallop.*

Mr. *Wallop.* My Lord, the Boy beſt knows that.

L C. J. But do you believe that if it had been true, that the King would hang his Father, or turn him out of his Place if he did not deny it, as tho' the King would force People to deny the Truth?

Mr. *Wallop.* My Lord, I do not ſay nor believe any ſuch thing.

L. C. J. But your Queſtion ſeems to carry it ſo.

Mr. *Wallop.* My Lord, I ask the Queſtion of her, whether ſhe did not ſay ſo to him, I ask Queſtions according to my Inſtructions.

L. C. J. Nay, Mr. *Wallop,* be as angry as you will, you ſhan't hector the Court out of their Underſtandings. We ſee plainly enough whither that Queſtion tends. You that are Gentlemen of the Robe, ſhould carry your ſelves with greater Reſpect to the Government, and while you do ſo, the Court will carry themſelves as becomes them to you.

Mr. *Wallop.* I refer my ſelf to all that hear me, if I attempted any ſuch thing as to hector the Court.

L. C. J. Refer your ſelf to all that hear you, refer your ſelf to the Court, 'tis a Reflection upon the Government, I tell you your Queſtion is, and you ſhan't do any ſuch thing while I ſit here, by the Grace of God, if I can help it.

Mr. *Wallop.* I am ſorry for that, I never intended any ſuch thing, my Lord.

L. C. J. Pray behave your ſelf as you ought, Mr. *Wallop*; you muſt not think to huff and ſwagger here.

Mr. *Juſt. Withins.* Mr. *Braddon,* You hear what the reaſon was of his crying out ſo. She ſaid he was afraid, becauſe he knew he had told a Lye.

Mr. *Wallop.* Pray, Miſtreſs, who told him the Family would be ruined by it?

Mr. *Juſt. Withins.* Mr. *Wallop,* I asked this Gentlewoman, whether ſhe did ſay it, and ſhe ſaid ſhe could not tell.

Sarah Edwards. Indeed I cannot tell, my Lord.

Mrs. *Edwards.* She did indeed ſay ſo, my Lord.

Mr. *Wallop.* Pray let it go, my Lord, as it is, what was it ſhe ſaid? Did ſhe ſpeak about turning her Father out of his Place?

Mrs. *Edwards.* I cannot ſay that, but ſhe ſaid, when the Boy asked whether there would be any harm by it, ſhe could not tell, but it may be her Father and Family might be ruined.

L. C. J. And is not this a Reflection upon the Government, to ſay the King would ruin any one if they did not tell a Lye?

Mr. *Wallop.* My Lord, For a falſe Report he might be ruined, but it ſeems upon this Saying he did deny it.

Mr. *Juſt. Withins.* Was there a Word ſaid of his being turned out of his Place?

Mrs. *Edwards.* I cannot ſay there was.

L. C. J. No not a word, but only Mr. *Wallop* is ſo impetuous in the worſt of Cauſes.

Mr. *Wallop.* I am in the Judgment of the Court, whether I do any thing but what becomes an Advocate for his Client, according to my Inſtructions.

L. C. J. Yes, you are ſo, and ſhall know that you are under the Correction of the Court too.

Mr. *Wallop.* My Lord, I know where I am.

L. C. J. Ay, you know well enough, but you would do well to carry yourſelf as you ſhould do.

Mr. *Wallop.* With humble Submiſſion, my Lord, I appeal to all that hear me.

L. C. J. Appeal to whom you will, I know the Buſineſs of the Bar is to appeal to the Court.

Mr. *Juſt. Withins.* What is the matter with Mr. *Wallop,* that makes him ſo earneſt in this Cauſe?

L. C. J. There is ſuch an Heat in this Cauſe, I wonder whence it ſhould come, I am ſure 'tis not from the Honeſty of it.

Mr. *Braddon.* Young Mrs. *Edwards,* If I ſuffer any thing by reaſon of the falſity of your Teſtimony, it will return upon you.

Sarah Edwards. Sir, I do tell you all I know.

Mr. *Braddon.* Then I deſire you to anſwer me this Queſtion, whether or no when the Boy did own what he firſt ſaid, and I asked him the reaſon of his Denial, whether the Falſity of the thing, or Fear cauſed him to deny it, did not he ſay it was Fear through your Diſcouragements and Threatnings?

Sarah Edwards. No, he did not ſay it, did he, Mother?

L. C. J. Why we are got into a way of appealing and appealing, here is appealing to the People, and appealing to the Witneſs, pray keep to the Buſineſs, and within the bounds of Decency. Before ſuch time as the Boy denied it, did you deſire him to ſpeak truth?

Sarah Edwards. Yes, I did.

Mr. *Thompſon.* And when Mr. *Braddon* examined him, did he deſire him to ſpeak Truth?

Sarah Edwards. Yes, he did.

L. C. J. But he knew before he examined him that he had denied it, did not he?

Sarah Edwards. Yes, the ſecond time before he came into the Houſe.

Mr. *Braddon.* I deſire the old Gentleman may be asked this Queſtion.

Mr. *Thompſon.* Call Mr. *Edwards* again.

L. C. J. The Spirit of the Client was got into the Counſel I think juſt now, and now 'tis got into the Client again. 'Tis an hard matter to lay it, I perceive.

Mr. *Wal-*

Mr. *Wallop.* My Lord, I am here of Counſel for Mr. *Braddon*, and I only ask Queſtions as they are in my Breviate.

L. C. J. But, Sir, if you have any thing in your Breviate that reflects upon the Government, you ought not to vent it, nor ſhan't be permitted to vent it as long as I ſit here.

Mr. *Wallop.* My Lord, with ſubmiſſion, I hope I never did, nor never ſhall let any ſuch thing come from me.

L. C. J. Nay, be as angry, or as pleaſed as you will, 'tis all one to me, you ſhall not have liberty to broach your ſeditious Tenets here.

Mr. *Braddon.* Mr. *Edwards*, Pray will you anſwer this Queſtion? Did not your Son, when he was asked why he denied it, ſay that it was Fear and Diſcouragement, through his Siſter's Threats, was the Cauſe? Pray ſpeak the Truth.

Mr. *Edwards.* I cannot tell whether the Child did ſay ſo, ſomething of that nature he did ſay.

Mr. *Thompſon.* Call *Anne Burt.*

L. C. J. We have got ſuch ſtrange kind of Notions now-a-days, that forſooth Men think they may ſay any thing becauſe they are Counſel. I tell you, Mr. *Wallop*, your Queſtions did reflect upon the Government, as tho' the King had a mind to turn a Man out of his Employment, if he did not ſwear a Falſity. What can be a greater Reflection than that? But all the matter is, what has been done muſt be avouched and juſtified, though it be never ſo ill. But we plainly ſee through all. This was the Deſign from the beginning, the King and the Duke of *York* were in the *Tower* at that time, and it muſt be thought and believed that they had deſigned this Matter, and ſo then all People muſt be ruined in caſe they would not ſay the Earl murdered himſelf, tho' indeed others had done it.

Mr. *Wallop.* Mr. *Edwards* did not delight to have ſuch a Report, as might create Trouble, firſt come out of his Houſe.

Mr. *Braddon.* My Lord, As to the making ſuch an Inference, or any Reflection as your Lordſhip mentions, I am as far from it as any body here.

L. C. J. We muſt give a wonderful deal of countenance to ſuch barbarous and horrid Practices, and I warrant you muſt ſuffer the Government to be reflected upon at the Will and Pleaſure of every Man. No, let us hear the Truth, but not in the face of a Court permit Men to aſperſe the Government as they pleaſe, by asking ſuch Queſtions.

Mr. *At. Gen.* And the Witneſſes ſay nothing to it neither.

L. C. J. No, nothing at all like it, but 'tis Aſperſion for Aſperſion ſake. And we muſt ſit ſtill and hear it.

Mr. *Wallop.* My Lord, I think 'tis for the Honour of the Government to have all things fairly inquired into.

L. C. J. And 'tis for the Honour of all Courts of Juſtice not to ſuffer Reflections upon the Government, let them be by whom they will. And in Gentlemen of the Bar 'tis worſe than others.

Mr. *Juſt. Withins.* Truly, I do not ſee, where there is any countenance for asking ſuch a Queſtion.

L. C. J. No, but ſome People are ſo wonderful zealous ——

Mr. *Wallop.* My Lord, Zeal for the Truth is a good Zeal.

L. C. J. It is ſo, but Zeal for Faction and Sedition, I am ſure, is a bad Zeal. I ſee nothing in all this Cauſe but Villany and Baſeneſs. And I believe no Man that has heard it, but will readily acknowledge that it appears to be an untoward malicious ugly thing, as bad as ever I heard ſince I was born, on purpoſe to caſt an Indignity upon the King and Government, and ſet us all in a Flame.

Then Anne Burt *appeared, and was ſworn.*

Mr. *Braddon.* Mrs. *Burt*, I deſire to know what Diſcourſe you had with Mrs. *Edwards*, and that Family?

Mr. *At. Gen.* I beg your Pardon for that, Here Mrs. *Edwards* is her ſelf to tell what ſhe has ſaid.

Mr. *Braddon.* I deſire to know what Diſcourſe ſhe had with any of the Family?

Mrs. *Burt.* I went to make a Viſit to Mrs. *Edwards*, and I had not been there half an hour but in comes this Gentleman, now I had asked no Queſtions about the Buſineſs, but in he comes and deſired to ſpeak with Mr. *Edwards*, Mr. *Edwards* was called, and when he came in with Mr. *Edwards*, the Gentleman ſat down in the Room, and told Mr. *Edwards* he had heard a Report of ſomething his Son had ſpoken, but he deſired to have it from his Son's own Mouth, and the Boy was called in (this is a real Truth, Sir, for I do not know whether I may ſtir from this Place where I am alive or no;) And when the Boy came in, the Gentleman ſaid to him, if it be true that you have reported, own it; if not, do not own it; for, ſaid he, 'tis a dreadful thing to be found in a Lye, I would have you read the 5th Chapter of the *Acts*, where a Man and a Woman were ſtruck dead for telling a Lye. Sir, ſaid the Boy, 'tis true, and what I ſaid I will ſpeak it before any Juſtice of Peace in the World. And then he asked him what he had reported, and the Boy made a Repetition of what he had ſeen and ſaid before, that he went into the *Tower* and came to the firſt Row of Houſes that goes along. And at the firſt Houſe he ſaw no body look out at the Window, nor at the ſecond Houſe, but he looked up at the third Houſe, and he took his Hand and ſhewed thus, ſaid he, I ſaw, a Man's Hand he did not ſay, but an Hand throw a Razor out, of this faſhion, and he imitated it with his Hand. Said the Gentleman, was it not the wrong Window, or the wrong Houſe? I will not take the thing upon this Credit, take your other Brother down, that was a bigger Boy than this, and, ſays he, go down to the Houſe, and ſhew your Brother the Window where you ſaw this. The two Boys went down, and he ſhew'd his Brother the Place where he ſaw the Hand ——

L. C. J. Were you preſent at his ſhewing?

Mrs. *Burt.* Will your Lordſhip pleaſe to give me leave ——

L. C. J. And pray give me leave too, I ask you, Were you preſent? For you tell it as if you knew it your ſelf.

Mrs. *Burt.* Both the Boys came up and ſaid ſo.

L. C. J. You ſhould have ſaid ſo then, that they told you it, for you are upon your Oath, and muſt affirm nothing but your own Knowledge.

Mrs. *Burt.* If I do miſplace my Words I cannot help that ———

L. C. J. You miſplace your Evidence, Woman, you muſt not ſwear that to be true that you don't know to be true.

Mrs. *Burt.* My Lord, I heard what I ſay with my own Ears.

L. C. J. But you talk of a thing you did not ſee with your own Eyes, as if you had ſeen it.

Mrs. *Burt.* I beg your Pardon, my Lord, I can't tell how to place my Words ſo exactly.

L. C. J. I care not how thou placeſt thy Words, tell thy own Knowledge.

Mrs. *Burt.* I tell what is Truth, what I heard and ſaw; for, ſaid Mr. *Braddon*, I believe it was not the right Window, when the Boy came up and ſaid he had ſhewed the Window. And this Gentleman, I cannot hit his Name right (he is a Stranger to me) he and Mr. *Edwards* went down with the Boy, to ſee whether it were the right Window of the Houſe where my Lord died (which where it is I cannot tell any otherwiſe than has been reported, or whether there be one Room or two of a Floor I don't know;) and when he came up again he called for a Sheet of Paper, that he might write from the Boy's Mouth, and that he might not differ one Word from what the Boy had ſaid himſelf. And when I ſaw Mr. *Braddon* begin to write I went away, for I thought it may be the Gentleman might expect I ſhould ſet my Hand to it as a Witneſs, and I did not deſire any Trouble.

Mr. *Braddon.* I deſire this Queſtion may be asked her, my Lord, Do not you remember it was ſaid the Boy denied it?

Mrs. *Burt.* Yes, it was ſaid, the Boy did deny it.

Mr. *Braddon.* What did his Siſter ſay was the reaſon of his denying it?

Mr. *Thompſon.* Ay, what did you hear the Siſter ſay?

L. C. J. I told you before, that was no Evidence what another body did ſay.

Mr. *Wallop.* Miſtreſs, The Boy denied it, for what reaſon?

Mrs. *Burt.* Becauſe his Siſter, as his Mother told me, had been talking to him.

L. C. J. As his Mother told you, prithee, Woman, ſpeak your own Knowledge, and not what another body told thee.

Mrs. *Burt.* Pray, give me leave, my Lord ——

L. C. J. I tell thee, I will not give thee leave to ſay what thou ſhould'ſt not ſay.

Mrs. *Burt.* I heard his Siſter ſay———

L. C. J. It is not Evidence if thou did'ſt hear never ſo many People ſay it.

Mrs. *Burt.* My Lord, I ſpeak nothing but the Truth.

L. C. J. Shall we allow that in this Caſe for Evidence that we allow in no other Caſe, for what reaſon, pray? I do not ſee it deſerves any ſuch extraordinary Favour.

Mr. *Juſt. Withins.* Mr. *Wallop*, We muſt not hear what another ſaid, that is no Party to this Cauſe. You know it is no Evidence, therefore do not preſs it.

Mrs. *Burt.* My Lord, I have done, if that will ſatisfy you.

L. C. J. Prithee ſatisfy thy ſelf, good Woman.

Mrs. *Burt.* My Lord, I have done. I come here to ſpeak the Truth, and ſo I do.

L. C. J. Nay, prithee be not ſo full of Tattle, ſo full of Clack.

Then a little Girl came into Court.

L. C. J. What Age is this Girl of? How old art thou, Child?

Girl. I was 13 laſt Saturday.

L. C. J. Do you know the Danger of telling a Lye?

Girl. Yes.

L. C. J. Why, what will become of you if you tell a Lye?

Girl. The Devil will have me.

L. C. J. Give her her Oath. What is thy Name, Child?

Girl. Jane Lodeman.

Then ſhe was ſworn.

L. C. J. Child, Do not be afraid of any thing in the World, but only of telling any thing but what is true, be ſure you do not tell a Lye, for if, as you ſay, you ſhall be in danger of Hell-fire by telling a Lye, much more will you be in danger if you ſwear to a Lye. Now what do you ask her?

Mr. *Braddon.* What did you ſee in the Tower that Morning the Earl of *Eſſex* died?

Lodeman. I ſaw a Hand out of a Window, but I cannot tell what Window it was, but it was a Hand throw out a Razor.

Mr. *Braddon.* And what did you hear after that?

Lodeman. I can't well remember, but it was either two Shrieks or two Groans that I heard preſently after.

L. C. J. What time of the Day was it, Child?

Lodeman. It was between nine and ten of the Clock.

L. C. J. Who was with you beſides your ſelf there?

Lodeman. There were more beſides me, but they went away.

L. C. J. Who were they Child?

Lodeman. A great many that I did not know.

L. C. J. And how came you to take notice of it?

Lodeman. And there was a Coach ſtood juſt at the Door.

L. C. J. Tell us ſome of them Child that were there beſides thy ſelf, ſpeak the Truth, be not afraid. Thou ſay'ſt a great many People were there, and all the People muſt neceſſarily ſee it.

Lodeman. They were People I did not know.

L. C. J. But they all ſaw it as well as you?

Lodeman. So I ſuppoſe they did.

L. C. J. And you heard a Shriek or two, you ſay?

Lodeman. Two Shrieks or two Groans, I can't well remember which.

L. C. J. How high was the Window?

Lodeman. Not above one pair of ſtairs high.

L. C. J. How high from the Ground might it be?

Lodeman.

Lodeman. Not above one Story.

Mr. *Thompſon.* Where-abouts in the *Tower* was it?

Lodeman. Sir, it was as you go upon the Mount.

Mr. *Wallop.* Whoſe Lodging do you think it was?

Lodeman. I did not know whoſe it was, but Folks ſaid it was the Earl of *Eſſex*'s.

L. C. J. Who did you tell this to?

Lodeman. I told no body till I came to my Aunt, and I told her.

L. C. J. What is her Name?

Lodeman. Margaret Smith.

L. C. J. Did you ever tell this to that Man?

Lodeman. Yes, afterwards I did.

L. C. J. How came he to enquire of you about it?

Lodeman. He came and asked me, and I could not deny it.

L. C. J. Ay, but how came he to ask you?

Lodeman. There was a Gentlewoman that was at our Houſe, and ſhe heard of it, and ſpake of it at a Gentlewoman's at Dinner, and ſo he came to our Houſe to inquire about it.

L. C J. Who is that Gentlewoman? What is her Name?

Lodeman. Suſan Gibbons.

L. C. J. Let me ſee the Information of this Girl, that Mr. *Braddon* had taken.

Cl. of Cr. Yes, my Lord, there it is.

L. C. J. Do you know my Lord of *Eſſex*'s Lodgings?

Lodeman. They ſaid it was his.

L. C. J. Did you know it of your own Knowledge?

Lodeman. No, Sir, I did not.

Mr. *Thompſon.* Pray what became of the Razor that was thrown out of the Window, after it was thrown out?

Lodeman. I ſaw a Woman in a white Hood come out, but I did not ſee her take it up.

Mr. *Sol. Gen.* Girl, you ſay, that when you were at this Place in the *Tower*, and ſaw this Matter, there were a great many People there beſides your ſelf.

Lodeman. Yes, Sir.

Mr. *Sol. Gen.* Did the Razor fall among the People that ſtood there, or did it fall out in the Street, or how?

Lodeman. Sir, it fell within the Pales.

Mr. *Sol Gen.* And was the Paſſage eaſy into the Pales?

Lodeman. Yes.

Mr. *Sol. Gen.* What they muſt climb over, muſt they?

Lodeman. No, you need not climb over, there is a Door to go in. And when People went in the Soldier opened the Door.

Mr. *Sol. Gen.* Who went in with the Soldier? Did you ſee any body go in?

Lodeman. There was a Man went in, but I know not who he was.

Mr. *Sol. Gen.* Did the Soldier ſtand at the Door when this Razor was thrown out?

Lodeman. I can't tell that, a Soldier uſed to be at the Door.

Mr. *Sol Gen.* The Woman came out of the Lodging, did ſhe not?

Lodeman. Yes.

Mr. *Sol. Gen.* Did ſhe go in again?

Lodeman. I did not ſee her go in again.

Mr. *Sol. Gen.* Did ſhe go into the Pale?

Lodeman. I did not ſee her go into the Pales.

Mr. *Sol Gen.* Did you ſee the Razor after it fell upon the Ground?

Lodeman. No.

Mr. *Sol Gen.* Was it bloody?

Lodeman. Yes.

Mr. *Sol. Gen.* Very bloody?

Lodeman. Yes.

Mr. *Sol. Gen.* Did you ſee no body take it up?

Lodeman. No, I did not.

Mr. *Sol. Gen.* Come hither, Child, are you ſure it was a Razor, or a Knife?

Lodeman. I am ſure it was a Razor.

Mr. *Sol. Gen.* Was it open or ſhut?

Lodeman. It was open.

Mr. *Sol. Gen.* What Colour was the Handle

Lodeman. Sir, I can't tell, I ſee it but as it flew out.

Mr. *Sol. Gen.* Was it all over bloody?

Lodeman. No.

Mr. *Sol Gen.* All but a little Speck?

Lodeman. It was very bloody.

L. C. J. Bleſſed God, what an Age do we live in! Girl, you ſay, you did not know it to be my Lord of *Eſſex*'s Window.

Lodeman. No, but as they told me.

L. C. J. Nor you did not ſee any body take up the Razor?

Lodeman. No.

L. C. J. But are you ſure you did not?

Lodeman. I am ſure I did not.

L. C. J. But Child, recollect thy ſelf, ſure thou did'ſt ſee ſome body take it up?

Lodeman. No, I did not.

L. C. J. I ask thee again, Did'ſt not thou know it to be my Lord of *Eſſex*'s Window?

Lodeman. No, but as they told me.

L. C. J. Did you hear no body ſpeak to the Maid that came out?

Lodeman. No body at all.

L. C. J. No, Prithee is that thy Hand, Child? Shew her the Paper, the uppermoſt Part of it.

Lodeman. Sir, I can't write.

L. C. J. Who put thy Name to it?

Lodeman. Sir, I don't know, no more than the Pope of *Rome.*

L. C. J. Whoſe Hand-Writing is that?

Lodeman. I cannot tell, I never could write in my Life.

Mr. *Braddon.* Thoſe are the Names of ſuch as heard her ſay it.

Mr. *At. Gen.* Yes, you have Cooked it up bravely.

L. C. J. You ſhall ſee what a brave Managery you have made of this poor Child. Read the Information.

Cl. of Cr. Reads. —— *The Eight of* Auguſt, 1683. Jane Lodeman, *Aged about* 13 *Years, did in the Preſence of theſe whoſe Names are Under-written, declare as follows, That the ſaid* Jane Lodeman *was in the* Tower *on* Friday *Morning, the* 13th *of* July *laſt, and ſtanding almoſt over-againſt the late Earl of* Eſſex's *Lodging Window, ſhe ſaw a Hand caſt out a Razor out of my Lord's Window, and immediately upon that ſhe heard Shrieks, and that there was a Soldier by my Lord's Door, which cryed out to thoſe within the Houſe, that ſome body ſhould come and take up a Razor, which was thrown out of the Window, whereupon there came a Maid with a white*

Hood

Hood of the Houſe, but who took up the Razor ſhe cannot tell. ——

L. C. J. Here 'tis ſaid *the Soldier cried out*, but now ſhe ſays, the Soldier ſhe does not know was there, and ſhe heard no body ſpeak to the Maid.

Mr. *Braddon.* With Submiſſion, my Lord, I deſire to ask her this Queſtion.

L. C. J. Prithee ask her what thou wilt. We hear what ſhe ſays.

Mr. *Braddon.* Did you hear the Soldier cry out, or did you not?

Lodeman. No, I did not.

Mr. *Braddon.* Did not you ſay, you heard him cry out?

Mr. *Sol. Gen.* My Lord, we cannot admit Mr. *Braddon* ſhould ask ſuch Queſtions, they are leading Queſtions. Ask her a general Queſtion, and you ſhall have an Anſwer, but you ſhall not give her Words to Swear to.

L. C. J. No, upon my Word, you have given her too many Words to Swear to already.

Mr. *Braddon.* My Lord, I only writ what ſhe declared.

Mr. *Sol. Gen.* Were you carried by Mr. *Braddon* before any Magiſtrate, or any Juſtice of Peace?

Lodeman. No.

Mr. *Sol. Gen.* Did he take the Examination himſelf?

Lodeman. Yes.

Mr. *At. Gen.* Did not he deſire you to go before a Juſtice of Peace to be Sworn?

Lodeman. No, Sir.

Mr. *Sol Gen.* Did he write it himſelf?

Mr. *At. Gen.* Ay, he writ it, and took it, and this Woman that is coming here, is a Witneſs to it.

L. C. J. What is this Woman's Name?

Mr. *Braddon.* This is the Aunt *Margaret Smith.* [*Who was Sworn.*

L. C. J. Well, what ſay you to her?

Mr. *Braddon.* I deſire to know, what this Girl ſaid to you, when ſhe returned from the *Tower* the 13*th* of *July*?

Mrs. *Smith.* She ſaid to that effect that ſhe ſpeaks now.

Mr. *Braddon.* What was that? Tell the Court.

Mrs. *Smith.* I chid her, becauſe ſhe had been playing: That is all I can ſay.

Mr. *Juſt. Withins.* Did ſhe tell you, the Soldier cried out for ſome body to come and take up the Razor?

Mrs. *Smith.* I cannot ſay that.

Mr. *Juſt. Withins.* Did ſhe ſay, ſhe ſaw a Razor thrown out of my Lord of *Eſſex*'s Window?

Mrs. *Smith.* She ſaid, ſhe ſaw a Razor thrown out of a Window; I can't tell whether ſhe ſaid out of my Lord of *Eſſex*'s Window.

Mr. *Freke.* Did you ſet your Hand to that Paper?

L. C. J. Were you a Witneſs to that Paper?

Mrs. *Smith.* There were others heard what the Girl ſaid, as well as I.

L. C. J. Who deſired you to ſign it?

Mr. *Freke.* Who writ that Paper, Mrs.?

Mrs. *Smith.* Pray excuſe me, Sir, I do not know.

Mr. *Freke.* Did you ſee it writ?

Mrs. *Smith.* No.

L. C. J. No: It was one got ready drawn by Mr. *Braddon.*

Mr. Juſt. Holloway. Pray let the Boy's Information be read again; for I obſerve there is a difference; ſhe ſays, the Razor fell within the Pales, the Boy ſays, it fell without.

L. C. J. Ay, ay, the one ſays it was the inſide, the other, the outſide of the Pales.

Then the Information was read.

L. C. J. Go on now, and ask your Queſtions.

Mr. *Braddon.* Did the Girl ſay, That after the Razor was thrown out, the Soldier cried to ſome body to take it up?

Mrs. *Smith.* Sir, I can ſay no more than what I have ſaid.

Mr. *Braddon.* Did ſhe, or did ſhe not?

Mrs. *Smith.* Pray, Sir, excuſe me; I have ſpoken what I know.

Mr. *At. Gen.* You may ſee how he has managed this Matter, my Lord, by his urging the Witneſſes with Queſtions they know nothing of.

L. C. J. Yes, yes, we ſee he would fain put Words into their mouths.

Mr. *At. Gen.* Mrs. Did you ſend to Mr. *Braddon*, to inform him of what the Girl had ſaid? Or did he come to you?

Mrs. *Smith.* Sir, I never ſaw him before in my Days.

Mr. *At. Gen.* He came firſt to you then?

Mrs. *Smith.* Yes: He hearing of it, came as a Stranger to me.

Mr. *Braddon.* Did I, directly or indirectly, offer you, or your Neece, any Thing?

Mrs. *Smith.* No, never in this World.

Mr *Braddon.* Did I ever deſire her, or you, to ſay any thing but what was true?

Mrs. *Smith.* No, Sir: You ever encouraged the Girl to ſpeak Truth; and bid her ſpeak nothing but what was Truth.

Mr. *At. Gen.* You need not pay dear for a Lie; you are like to pay dear enough before you have done.

Mr. *Braddon.* My Lord, as to Perſonal Knowledge, I am as much a Stranger to this Matter, as any body here; and in all my Concern in it, I have done nothing but what was very fair.

L. C. J. Mind your Defence, Mr. *Braddon*, and leave commending your ſelf; or if you will, rather commend your ſelf by your Actions, than your Expreſſions: One good Action is worth Twenty good Expreſſions.

Mr. *Braddon.* Swear *William Glasbrooke.* [*Which was done.*

L. C. J. Well, what do ask him?

Mr. *Freke.* My Lord, we deſire to know of him, whether he was by on the 13*th* of *July*, when the Girl gave this Report?

Mr. *Glasbrooke.* I was up two pair of Stairs when ſhe came in.

L. C. J. What is your Name, Sir?

Mr. *Glasbrooke. William Glasbrooke.*

Cl. of Cr. Ay, here is his Information, among thoſe that were taken about *Braddon.*

Mr. *Glasbrooke.* She came in to her Aunt, that went out juſt now before me, and I heard her very loud with her Aunt, ſaying, the Earl of *Eſſex* had cut his Throat in the *Tower.* Her Aunt chid her upon it; and her Aunt chiding her, ſhe ſaid, ſhe was ſure it was true; for ſhe ſaw a bloody Razor, with a bloody Hand thrown out of the Window.

Mr.

Mr. *Freke.* Was this the Day of my Lord of *Eſſex*'s Death?

Mr. *Glasbrooke.* It was the Day the King was in the *Tower*, and, as was reported, the Day he was killed.

Mr. *Braddon.* Were you preſent when I firſt diſcourſed the Girl?

Mr. *Glasbrooke.* Yes.

Mr. *Braddon.* Had you ever ſeen me before, or no?

Mr. *Glasbrooke.* No.

L. C. J. Did ſhe ſay, my Lord of *Eſſex* cut his Throat at that Time?

Mr. *Glasbrooke.* Yes.

L. C. J. Are you a Witneſs to this Paper? Did you ſet your Hand to this Paper?

Mr. *Glasbrooke.* To the Paper Mr. *Braddon* writ, I did: I am a Witneſs to that.

L. C. J. Then read his Information.

Cl. of Cr. Reads, —— *Mr.* William Glasbrooke *does declare, That one* Jane Lodeman, *aged about Thirteen Years, inhabiting in the ſame Houſe where he, the ſaid* William Glasbrooke, *lodged, did on* Friday, *the* 13th *of* July *laſt paſt, between Ten and Eleven in the Morning, in the preſence and hearing of him, the ſaid* William Glasbrooke, *declare to her Aunt, That the Earl of* Eſſex *had cut his Throat; upon which her Aunt was very angry with her; whereupon ſhe, the ſaid Girl, did declare, That ſhe was ſure of it; for ſhe ſaw him throw the Razor out of the Window; and that the Razor was bloody; and that ſhe heard two groans or ſhrieks (which of the two Words ſhe uſed, he, the ſaid* William Glasbrooke, *is not certain:) Of this, he, the ſaid* William Glasbrooke, *is ready to make Oath.*

L. C. J. Now my Lord of *Eſſex* cut his own Throat, and after threw the Razor out of the Window.

Mr. *Glasbrooke.* 'Tis what the Girl did declare.

Mr. *At. Gen.* Does not this Girl uſually tell Lies?

Mr. *Glasbrooke.* I have before that time taken her in a Lie.

Mr. *At. Gen.* Did you acquaint Mr. *Braddon* with that?

Mr. *Glasbrooke.* I cannot tell that I did.

Mr. *At. Gen.* Do you remember that you told Mr. *Braddon*, That ſhe was a Girl that told Truth?

Mr. *Glasbrooke.* No, I never did that; for I was always of another Perſwaſion about her.

Mr. *Sol. Gen.* He never was of that Temper, to praiſe her; he was always of a contrary Perſwaſion.

L. C. J. I'll aſſure him, that I am of his Opinion too: I do believe ſhe is a lying Girl, and hath told us a company of Lies now.

Mr. *Braddon.* Theſe two Children told me, they never ſaw one another till they were examined at the Council.

L. C. J. Well, well: Go on with your Witneſſes.

Mr. *Braddon.* Where is *William Smith.* [*Who appeared and was ſworn.*

I deſire to know of you, Mr. *Smith*, what you heard the Girl ſay, when I was there?

Mr. *Smith.* I heard the Girl tell us, That ſhe ſaw a Hand caſt out a Razor, and either the Hand was bloody, or the Razor, I can't tell which; but ſhe ſaid it was out of the Window, where ſhe ſaid the Earl of *Eſſex* lodged.

L. C. J. Did ſhe ſay the Earl of *Eſſex* did it himſelf?

Mr. *Smith.* She ſaid, ſhe ſaw an Hand caſt out a Razor.

L. C. J. Did ſhe tell you, it was the Earl of *Eſſex*'s Lodging-Window?

Mr. *Smith.* She ſaid it was that Lodging.

L. C. J. Ay, but ſhe ſays now, ſhe does not know it to be his Lodging.

Mr. *Braddon.* My Lord, ſhe ſays ſhe was told it was his Lodging.

L. C. J. But you have made her to ſay poſitively, it was his Lodging, and that he threw out the Razor.

Mr. *Sol. Gen.* Pray, Sir, where did you firſt hear this Report of this Girl?

Mr. *Smith.* There, at the Houſe, where ſhe was.

Mr. *Sol. Gen.* Were you alone when you went to the Girl the firſt time?

Mr. *Smith.* No, I went with Mr. *Braddon.*

Mr. *Sol. Gen.* Did you hear any thing of it before? What did induce you to go along with Mr. *Braddon?* What were the Arguments that prevailed with you to go with him?

Mr. *Smith.* I did not know where he was going; Mr. *Braddon* called me at the Shop, as I ſtood at the Door, and asked me if I was buſie, or would go with him? So I went with him to the Tavern.

Mr. *Sol. Gen.* You never heard one Word before of the Girl's Report?

Mr. *Smith.* No, I did not.

L. C. J. What elſe did the Girl tell you?

Mr. *Smith.* I can't ſay what elſe ſhe ſaid. This I remember, that I have told you.

L. C. J. Did ſhe name the Earl of *Eſſex*'s Lodgings?

Mr. *Smith.* I am ſure ſhe ſaid, the Lodging where the Earl of *Eſſex* lay.

L. C. J. Did ſhe name the Earl of *Eſſex?*

Mr. *Smith.* She did name the Earl of *Eſſex*'s Lodgings.

L. C. J. Did ſhe in ſo many Words ſay, That it was the Earl of *Eſſex*'s Lodgings?

Mr. *At. Gen.* Your Lordſhip ſees, they give one Evidence, and ſhe another.

Mr. *Smith.* I cannot ſay whether ſhe did in ſo many Words ſay ſo, or no; but ſhe ſaid, That ſhe ſaw a Hand toſs out a Razor, and either the Hand was bloody, or the Razor, and it was where my Lord of *Eſſex*'s Lodgings was.

L. C. J. But did ſhe name my Lord of *Eſſex*'s Lodgings?

Mr. *Smith.* Yes, ſhe did.

L. C. J. Well, what elſe did ſhe ſay? Tell us all ſhe ſaid.

Mr. *Smith.* She ſaid, There was a Man ſtood below, and ſhe heard two Shrieks, and the Man did ſay, Here is a Razor; and a Woman came out, or one in Woman's Cloths, with white Head-cloths. Mr. *Braddon* asked if ſhe ſee any Body take it up, and ſhe ſaid, no; but ſhe heard a Man ſay, here is the Razor, and ſhe ſaw a Woman come out.

L. C. J. You are ſure that is all you heard her ſay?

Mr. *Smith.* I think ſo.

L. C. J. Recollect your ſelf, pray good Mr. *Smith.*

Mr. *Smith.* I do not know that I heard any thing elſe.

L. C. J.

L. C. J. Pray read his Information.

Cl. of Cr. Here is *William Smith* ſubſcribed.

Mr. *Smith.* Mr. *Braddon* writ down what the Girl ſaid, and we did read it over all, and then ſet our Hands to it.

L. C. J. Well, Sir, Read the Information then.

Cl. of Cr. Reads the Information as before——

L. C. J. You hear what you have affirmed in this Paper, that the Girl ſaid; you have forgot in your Evidence now this long Buſineſs about the Soldier.

Mr. *Smith.* My Lord, I have told all I did remember.

L. C. J. Why, you have ſet your Hand to it.

Mr. *Smith.* I did read it over, and it was nothing but what the Girl ſaid, I am ſure.

L. C. J. Where do you live?

Mr. *Smith.* In *Throgmorton ſtreet.*

L. C. J. What Trade?

Mr. *Smith.* A Barber.

L. C. J. A notable Shaver upon my Word! a ſpecial Fellow I'll warrant him!

Mr. *Braddon.* Call Mrs. *Mewx* [*Who appeared and was Sworn.*

Pray what Day was it you went from *London* to *Barkſhire?*

Mrs. *Mewx.* The Day before my Lord *Ruſſel* was tried.

Mr. *Braddon.* What Expreſſion did you hear from a Gentleman in the Coach?

L. C. J. We muſt not ſuffer ſuch a Queſtion to be asked, that is not Evidence.

Mr. *Braddon.* My Lord, I ask the Queſtion in general Terms, what ſhe heard ſuch a Day?

L. C. J. Does ſhe know any Thing of her own Knowledge?

Mr. *Braddon.* She can tell what ſhe heard, my Lord.

L. C. J. 'Tis no Evidence.

Mr. *Braddon.* Will your Lordſhip pleaſe to hear what ſhe ſays.

L. C. J. No, I will not hear what I ſhould not hear; let her ſpeak what ſhe knows.

Mr. *Braddon.* She knows this, that a Woman told her——

L. C. J. Ask your Counſel, whether that be Evidence. If you will not be ſatisfied with what I ſay, ask them.

Mr. *Wallop.* She proves a Report.

L. C. J. I ask it of you, Mr. *Wallop*; is what another ſaid to her, Evidence in this Caſe?

Mr. *Wallop.* My Lord, if really there was ſuch a Report——

L. C. J. Is that Evidence?

Mr. *Wallop.* 'Tis Evidence there was ſuch a Talk, and that is Evidence of the probability of the Thing.

L. C. J. I'll leave it to your ſelf, if you as a Lawyer ſay 'tis Evidence, we will hear it, becauſe you ſay ſo; but I believe you, nor no body elſe will offer to ſay any ſuch thing.

Mr. *Wallop.* My Lord, we lay it before the Court, as part of the Ground upon which we went, in our being concerned in this Buſineſs.

L. C. J. Is that a Juſtification of Mr. *Braddon?*

Mr. *Wallop.* Upon theſe Probabilities he ingaged in this Matter, and to prove this Report, he brings this Gentlewoman to tell what ſhe heard.

L. C. J. Why, is what the Woman told her, Evidence? She reported a Report to me, can that be Evidence?

Mr. *Wallop.* My Lord, with Submiſſion, we think it juſtifies Mr. *Braddon*, that he went upon theſe grounds.

L. C. J. Where is the Woman that told her? Why is not ſhe brought?

Mr. *Wallop.* They ſay, ſhe is ſo big with Child ſhe can't come.

L. C. J Why, if that Woman were here her ſelf, if ſhe did ſay it, and would not Swear it, we could not hear her; how then can her ſaying be Evidence before us? I wonder to hear any Man that wears a Gown, to make a doubt of it.

Mr. *Braddon.* I deſire *Jeremy Burgis* may be called. [*Who appeared and was Sworn.*

Mr. *Wallop.* What can you ſay about the Report in the Country?

Mr. *Burgis.* I was at *Frome* about my Buſineſs on a *Friday*——

L. C. J. Why, Gentlemen, what are we doing all this time? Do you think we ſit here for nothing? Is not this the firſt time that a Report was given as Evidence in *Weſtminſter-Hall?*

Mr. *Freke.* My Lord, We are neceſſitated to uſe this Sort of Evidence.

L. C. J. I tell you, Sir, It is no Evidence, be neceſſitated what you will.

Mr. *Freke.* My Lord, They have produced this Man's Letter that was taken about Mr. *Braddon*, that is produced in Evidence againſt him: Now this Man comes to give an Account how he came to write that Letter.

L. C. J. But he ſhall not give an Account by a Report in the Countrey.

Mr. *Burgis.* It was written to the Landlord of the Houſe where I quartered, that he might give notice to Mr. *Braddon* of a Diſcourſe that paſſed in his Houſe that *Friday*, of a Report that was there concerning the Earl of *Eſſex*'s murdering himſelf.

Mr. *At. Gen.* Had the Maſter of the Houſe told you any ſuch thing?

Mr. *Burgis.* No, he had not told me ſo; but I heard it in the Houſe.

L. C. J. Of whom did you hear it? Who told you ſo?

Mr. *Burgis.* Sir, I was a Stranger there.

L. C. J. They can never tell any of them, who it was firſt reported it, nor particularly who told it them; but it was reported by ſome body, we don't know who.

Mr. *Beech.* Under Favour, my Lord, I rode directly to the Poſt-Maſter at *Frome*, whither this Letter was directed; and by the way, there is a Remark in the Letter of an alteration of the Figure, 'tis interlined the *13th*; it was not ſo before, to hit the Day exactly of the murder of the Earl of *Eſſex*; and when I came thither, the Poſt-Maſter told me, There was no ſuch Report in his Houſe, nor in the whole Town at that Time.

L. C. J. I deſire to know, upon your Oath, who told you that Report?

Mr. *Beech.* Sir, I do not know; I was a Stranger there.

L. C. J. Was it a Man or a Woman?

Mr. *Burgis.* He did not tell his Diſcourſe to me.

L. C. J. But thou could'ſt gueſs by the Habit, whether it was a Man or Woman.

Mr.

Mr. *Burgis.* It was a Man.

L. C. J. Who did he tell it to?

Mr. *Burgis.* The Company in the Houſe.

Mr. *At. Gen.* Pray, let him tell how Mr. *Braddon* came to ſpeak to him about it.

L. C. J. Shew him that Letter. Look upon it, Friend; Is that your Hand?

Mr. *Burgis.* Yes, it is.

L. C. J. When did you put that Figure of 13 in? There was another Figure before, and that is blotted out.

Mr. *Burgis.* It was a Miſtake in me, I miſtook the Day, and I corrected it.

L. C. J. When did you correct it? How ſoon did you correct it?

Mr. *Burgis.* Preſently.

L. C. J. What Day had you put in firſt?

Mr. *Burgis.* The 6th Day.

L. C. J. Ay, but that was not the right Day, Man.

Mr. *Burgis.* It was a great while after, and I did not expect to be brought in queſtion for any ſuch thing.

L. C. J. How long after?

Mr. *Burgis.* Six Weeks.

L. C. J. How cameſt thou to recollect, to make it from the 6th to the 13th, ſix Weeks after?

Mr. *Burgis.* Mr. *Braddon* was there when I had writ it.

L. C. J. And he corrected it, did he?

Mr. *Burgis.* He ſaid, that that was not the Day of my Lord's Death.

L. C. J. You had written it the 6th, and he put you in mind of the 13th?

Mr. *Burgis.* Yes.

Mr. *At. Gen.* And he was to be the Meſſenger that carried the Letter himſelf?

Mr. *Burgis.* Yes, he was.

Mr. *Sol. Gen.* That is very well. I ſuppoſe, Gentlemen, you hear what he ſays, He ſays, Mr. *Braddon* was there, and told him that was not the Day.

L. C. J. Ay, Mr. *Braddon* ſaid, You have miſtaken the time, that will not do it, it muſt be the 13th.

Mr. *At. Gen.* Pray let me know one thing, Who recommended *Braddon* to you?

Mr. *Burgis.* Indeed I can't tell.

L. C. J. Who did he ſay he came to you from? Tell the Truth, upon your Oath.

Mr. *Burgis.* Sir, I was at work at my Buſineſs, and knew nothing of his Coming.

L. C. J. What Trade art thou?

Mr. *Burgis.* A Pinmaker.

L. C. J. Where do you live?

Mr. *Burgis.* At *Marlebrough.*

L. C. J. How came Mr. *Braddon* and you acquainted?

Mr. *Burgis.* Sir, I will tell you; I was at work at my Trade, and there came down a Gentleman that lives in our Town to me, and asked me ——

L. C. J. What is that Gentleman's Name?

Mr. *Burgis.* Mr. *Butcher.*

L. C. J. What is that *Butcher?*

Mr. *Burgis.* A Gentleman that lives in *Marlebrough*, a Grazier by Trade. He came and told me, There was a Gentleman come from *London*, about the Buſineſs now in Diſpute——

L. C. J. Prithee, what was ſpoke of?

Mr. *Burgis.* It was concerning the Earl of *Eſſex*'s Death. And he deſired me to ſpeak what I heard at ſuch a time.

L. C. J. Who had you told what you heard firſt to? You muſt have told it to ſome body; who did you tell it to firſt?

Mr. *Burgis.* Indeed I can't directly ſay who I did tell it to.

L. C. J. Had you told that Gentleman of your Town, *Butcher*, as you call him?

Mr. *Burgis.* No, not that I know of.

L. C. J. Well, when he came to you, what then?

Mr. *Burgis.* He deſired me to go to Mr. *Braddon* to the *White Hart.* And ſo I went up to the *White Hart*; and when I came to Mr. *Braddon*, I told him what I had heard at *Frome.*

L. C. J. And what then?

Mr. *Burgis.* Then Mr. *Braddon* asked me the ſame Night, Whether I would go down with him to *Frome*, and I could not; ſo then he deſired me to write a Letter to recommend him to the Houſe where I had heard it.

Mr. *Sol. Gen.* And you did write that Letter?

Mr. *Burgis.* Yes, I did ſo.

Mr. *At. Gen.* Your Lordſhip obſerves, this Houſe was the Poſt houſe, to be ſure to have it ſpread in Publick Places.

Mr. *Sol Gen.* Did you tell *Butcher* of your knowledge, before he carried you to *Braddon?*

Mr. *Burgis.* Yes, Sir, I did.

Mr. *Sol. Gen.* When?

Mr. *Burgis.* Then, at that time.

Mr. *Sol. Gen.* Did he ask you of your Knowledge, or did you tell him voluntarily?

Mr. *Burgis.* He asked me if I remember'd any ſuch thing as I had ſpoken?

Mr. *Sol. Gen.* Why had you ſpoke of it before?

Mr. *Burgis.* Yes, I had.

Mr. *Sol. Gen.* Did he tell you upon whoſe Recommendation he came to you?

Mr. *Burgis.* I do not know upon whoſe Recommendation he came.

L. C. J. When you writ this Letter, did he dictate it to you, or did you write it of your ſelf?

Mr. *Burgis.* I writ it of my ſelf.

L. C. J. Did he tell you what you ſhould write?

Mr. *Burgis.* I ſhewed him what I had written.

L. C J. And when you writ it, of your ſelf you put in the *6th* day?

Mr. *Burgis.* Yes, I did ſo.

L. C. J. What did he ſay then?

Mr. *Burgis.* Mr. *Braddon* ſaid, it was the *13th* day.

Mr. *Sol. Gen.* Why did you ſhew *Braddon* your Letter after you had written it?

Mr. *Burgis.* He came to my Houſe before I had ſealed it.

L. C. J. But why did you ſhew him the Letter?

Mr. *Burgis.* He deſired a Letter to recommend him to that Man at whoſe Houſe I heard it.

Mr. *Sol. Gen.* What was he to be recommended to him for?

Mr. *Burgis.* It was to deſire him to enquire, who brought the News firſt to Town.

Mr. *Sol. Gen.* You ſay, he deſired a Letter of Recommendation?

Mr. *Burgis.* Yes, it was to recommend him to that Man.

Mr. *Sol. Gen.* That you may not be in a Miſtake, pray recollect your ſelf; for there is not one Word of Recommendation in the Letter.

Tell the true Reaſon, why you ſhewed him the Letter?

Mr. *Burgis.* I can't tell any other, but only he came before I had ſealed it.

Mr. *Sol. Gen.* Did he deſire to ſee it?

Mr. *Burgis.* No, but the Letter lay writ upon the Table.

Mr. *Sol. Gen.* Was the Maſter of the Poſt-houſe at *Frome* preſent, when that Report you talk of was made?

Mr. *Burgis.* I cannot rightly ſay, whether he was or no.

L. C. J. How comeſt thou to put it in thus? This bears Date a pretty while ago, *Marlebrough, Aug.* 21. and that was a good diſtance of Time from that Report that thou talkeſt of: How comeſt thou then to ſay, *Theſe are to deſire you to call to mind, That I was at* Frome *ſuch a time, and heard ſuch a Report:* If he was not there, why ſhould he *call to mind?* What did'ſt thou mean by that *calling to mind?*

Mr. *Burgis.* I would have had him called to mind my being at his Houſe at that time.

L. C. J. But if he was not there, why did'ſt thou ask him to call to mind that Report?

Mr. *Burgis.* He might hear of it from ſome other at that time, tho' he might not hear it in that Company where I was.

Mr. *Sol. Gen.* There is a Riddle in it, if we could but ſolve it.

L. C. J. No, no, Mr. Solicitor, the Riddle is unfolded; 'tis a plain Contrivance.

Mr. *At. Gen.* Pray from whom did he tell you he was recommended?

Mr. *Recorder.* How came you to talk ſo to a Stranger, Sir, whom you never ſee before, about ſuch a Buſineſs?

Mr. *Burgis.* He was recommended to me by Mr. *Butcher*, as I told you, who carried me to him.

Mr. *At. Gen.* But who, as *Braddon*, or *Butcher* told you, did recommend him firſt to come down thither to you?

L. C. J. Upon your Oath, Sir, who did *Butcher* tell you he came from?

Mr. *Burgis.* I have forgotten, Sir; I do not remember.

Mr. *Recorder.* Was it not a Non-conformiſt Parſon, Sir, upon your Oath?

Mr. *Burgis.* Sir, I cannot remember.

Mr. *At. Gen.* Mr. *Beech*, Do you know any particular Perſon that *Braddon* ſaid he came recommended from?

Mr. *Beech.* I can tell what Account *Braddon* gave of his Journey himſelf: He ſaid, he had a Letter that came particularly from this Man to *London*, to bring him down into the *Weſt*: Said I, when came you out of *London*? I came on *Thurſday*, ſaid he: Where did you lodge a *Thurſday* Night? At *Ockingham*? Said I, That is not your way to *Marlebrough*: Where did you lie the next Night? He told me, at one *Venables*; and the next Night at *Salisbury*, I think.

L. C. J. Did *Braddon* tell you he had a Letter from that Man?

Mr. *Beech.* He ſaid a Letter from that Man brought him down into the *Weſt*.

L. C. J. Burgis, Did you ſend him e're a Letter?

Mr. *Burgis.* No, I did not.

Mr. *Beech.* He ſaid he came down purpoſely upon this Report.

Mr. *At. Gen.* What ſaid the Poſt-maſter to you, Mr. *Beech?*

Mr. *Beech.* If you pleaſe to give me leave to ſpeak, I'll tell you: I did deſire, that Mr. *Braddon* might have no Pen and Ink, and preſently I rid away to *Frome*, to this Poſt-maſter's Houſe, and ſpake with the Poſt-maſter, and all his Family: We then examined them all, and there was no ſuch Report in that Town till the *Sunday* after.

Mr. *Sol. Gen.* He was perſwaded, ſure, all People would ſay juſt as he would have them.

Mr. *Thompſon.* Well, Mr. *Braddon*, Who do you call next?

Mr. *Sol. Gen.* Nay, I deſire this Man may go on; for methinks he mends e'ery Step he goes.

Mr. *Braddon.* Mr. *Burgis*, Do you remember how it was that you came to recollect your ſelf, and to know it was the 13th, and not the 6th?

L. C. J. He ſays, you told him.

Mr. *Braddon.* Pray, Sir, remember your ſelf, whether you did not ſay yourſelf, you remember'd the true time; for you came from *Frome* to *Marlebrough* on the *Saturday* Night, and then you heard there the Earl of *Eſſex* had cut his Throat the Day before; and when they told you ſo, you cried out, How can that be? It muſt be done before; for yeſterday I heard it at *Frome* before 5 of the Clock.

Mr. *Juſt. Withins.* Did not Mr. *Braddon* himſelf tell you, you had miſtaken the Day?

Mr. *Braddon.* Sir, it was from this, he told this whole Story that I juſt now repeated, that the Saturday Night he was told, that the Earl had cut his Throat, and replied to them, that he had heard at *Frome*, the Day before, that he was murdered, and then I ſaid, that muſt be the 13th.

L. C. J. How came you to tell that Man, you had a Letter from *Burgis?*

Mr. *Braddon.* No, my Lord, I did not tell him any ſuch thing.

L. C. J. Mr. *Beech*, Did not he tell you he had a Letter from *Burgis?*

Mr. *Beech.* He told me he came down upon the Information of this *Burgis.*

L. C. J. And he ſwears he never ſaw him before, nor never writ to him.

Mr. *Braddon.* You ask me, whether I had received any Letter from this *Burgis.* I told you, I had a Letter of Recommendation to Mr. *Butcher*, thinking he had been the Perſon that had reported it, and Mr. *Butcher* went to this Perſon and brought him to me, and he told me what he heard.

Mr. *Beech.* I never heard of the Name of *Butcher* till now he mentioned it.

Mr. *Braddon.* My Lord, I will call no more Witneſſes.

Mr. *At. Gen.* Your Lordſhip and the Jury obſerve, I ſuppoſe, his confident Behaviour.

L. C. J. Ay, He is no more concerned at it, than if he had been doing the moſt juſtifiable thing in the World.

Mr. *Thompſon.* My Lord, I have but one Word to add on the behalf of Mr. *Speke*, who is likewiſe joyned in this Information. Truly, Mr. *Speke*, is a young Gentleman of ſome Quality, his Father is of very good Quality, Mr. *Braddon* was of his Acquaintance, and being his

Acquain-

Acquaintance, and thus concerned, as you have heard in the Profecution of this Buſineſs; he hearing of theſe Reports, and reſolving to go down into the Country about it, deſired Mr. *Speke* to lend him his Man and his Saddle, for he was going into the Country. Mr. *Speke* inquires what his Buſineſs was, thereupon he told him it was to enquire about ſome Perſons that had reported ſomething relating to the Earl of *Eſſex*'s Death. And being to go into the Country where Mr. *Speke*, who was that Country-man, had ſome Acquaintance, upon this he deſires him to write him a Letter, to recommend him to ſome Perſons of Credit. He did write that Letter, but was never concerned in this Buſineſs, either before or after; and this is the whole of the Caſe, as to this Mr. *Speke*.

Mr. *Speke*. My Lord, I deſire I may ſpeak one Word for my ſelf.

L. C. J. Ay, ſay what you will.

Mr. *Speke*. My Lord, One Day, ſometime after Mr. *Braddon* had concerned himſelf in this Thing, I met him caſually and accidentally, and he was telling me ſomewhat of the Matter. And after this one Night as I was going to Bed between 10 and 11 at Night, ſome Body knocked hard at my Door. My Man went to the Door, and opened the Door, and Mr. *Braddon* comes in, and tells me, he deſired the Favour of me, that I would lend him my Man, and lend him my Saddle. He being my Acquaintance, and I knowing him, I was willing to do him that Kindneſs; and asking him, whither he went? He told me he was going down to *Marlborough*, and he told me he had heard that my Lord of *Eſſex*'s Death was diſcourſed of there in the Country, that Day it was done; beſides other Things of a Boy, and of a Girl, that could prove ſuch and ſuch Things. Said I, this is a Thing of great Concernment, and I would have you take good Advice in it, before you proceed, becauſe otherwiſe it may be a Reflection upon the Government; therefore, ſaid I, I would not have you proceed to concern your ſelf further in this Thing, but take the Advice and Judgment of ſome prudent and diſcreet Perſon or other, that you may do nothing but what is according to Law. I was never at all concerned, nor knew any thing of the Buſineſs, but what I heard from Mr. *Braddon* at firſt. And before he came into my Chamber, I knew nothing of his coming; and I writ this Letter, becauſe he ſhould not concern himſelf without the Advice of ſome Perſon, that I thought was able to adviſe him, that he might do nothing that might bring him within the Danger of the Law, or reflect upon the Government.

Mr. *Juſt. Holloway*. And you adviſed him to go by the Name of *Johnſon*, not *Braddon*?

Mr. *Speke*. It was late at Night, and I had been at the Tavern drinking a Bottle of Wine or two with a Friend, and might not ſo well conſider what I did write.

L. C. J. But Mr. *Speke*, You hear what you writ, *We* row again *Stream*, and we thank you for the Countenance you have given to *Us*. And here is a worthy Gentleman, Mr. *Braddon*, who is a very proper Man for the Deſign he has in Hand, and none better than he, and when you are with him, you may diſcourſe freely; and he is a true Man, and a ſtout Man, and fit to be truſted; but he muſt not go by the Name of *Braddon*, but of *Johnſon*.

Mr. *Speke*. My Lord, the Reaſon was, becauſe he was not perſonally known to Sir *Robert Atkyns*; and for him to go down directly, and to have it reported, one of ſuch a Name came to Sir *Robert Atkyns*, who was a Man that had retired himſelf into the Countrey from all Publick Concern, I thought not ſo well.

L. C. J. Why did you trouble him, if he was ſo retired?

Mr. *Speke*. I had particular Concerns of my own, that Sir *Robert Atkyns* was pleaſed to concern himſelf for me, and I knew him a prudent Man, that would adviſe him nothing but according to Law.

L. C. J. You ſhould not have diſturbed him in his Privacies, Mr. *Speke*.

Mr. *Speke*. My Lord, I never was any other way concerned, I knew nothing of the Matter.

L. C. J. You had done well if you had not concerned your ſelf about it at all.

Mr. *Sol. Gen. Moſt here do fear*, you ſay, *That he will be either ſtabbed or knocked on the Head*, and therefore you lent him your Man to guard him, I ſuppoſe.

Mr. *Speke*. He deſired me to lend him my Man, becauſe he did not know the way ſo well himſelf.

Mr. *Sol. Gen.* But why was there ſuch Fear about him?

Mr. *Speke*. I know nothing at all of the Matter, but what I had from Mr *Braddon*.

L. C. J. Ay, we live in ſuch a ſtabbing Age, that ſuch an extraordinary Gentleman as Mr. *Braddon*, that is ſuch an extraordinary good Proteſtant, can't walk the Streets for fear of being murdered.

Mr. *Speke*. My Lord, I writ it at ſuch a time of the Night, after I had been at the Tavern, that I knew not well what I writ.

Mr. *Juſt. Withins*. Mr. *Speke*, You ſee what a Sort of a Man he is, upon the Evidence that hath been given.

Mr. *Speke*. Truly, my Lord, I never knew any thing, but what I had from him.

Mr. *Sol. Gen.* But to make the Country believe, that there were ſuch Endeavours here to ſtifle any Thing that might give light into the Murder of the Earl of *Eſſex*, there muſt be great Caution uſed to conceal his Name.

L. C. J. Yes, being ſuch a vertuous Man, as Mr. *Braddon*, there was great need of all Circumſpection and Care to preſerve him: Why did not he get his Life-guard to keep him from the Danger that was thought ſo near him?

Mr. *Sol. Gen.* They had not raiſed them as yet, but he was contented at preſent with Mr. *Speke*'s Man.

Mr. *Speke*. My Lord, I am wholly innocent in all this Matter.

L. C. J. Would to God you were Innocent. You are a Man of Quality, Mr. *Speke*, I know; I ſhould be glad you were Innocent with all my Heart. But when Men forget their Studies and their own Buſineſs, and take upon them the Politicks without being called to it, That puts them into Frenzies, and then they take all Opportunities of ſhewing themſelves Men of Zeal.

Mr. *At. Gen.* We need but read the Letter which Mr. *Speke* has owned, and you will ſay it is ten times worſe than what Mr. *Braddon* has done.

L. C. J. Nay, I will not have Mr. *Braddon* topped upon for all that, I aſſure you.

Mr. *At. Gen.* My Lord, if you read it once again, you will find, that he therein owns it all, and pins the Basket upon himſelf.

L. C. J. Indeed, Mr. *Attorney*, I will not have ſuch a Reflection put upon Mr. *Braddon*, That any Man ſhould be a greater Actor in the Buſineſs than he.

Mr. *Speke.* My Lord, I writ it at Night after a Bottle of Wine, and other People may be miſtaken, as well as I.

L. C. J. If ſome of theſe Gentlemen, that now and then think themſelves better headed than others, and that are ſo extraordinarily concerned to preſerve our Religion, but are generally much miſtaken, were, and I obſerve their Miſtakes, are always on the wrong Side. I wiſh you could have gone and recollected your ſelf next Morning, Mr. *Speke*, and then the Miſtake had been more pardonable.

Mr. *Speke.* I writ nothing as to matter of Fact, but what he told me, and I could hardly recollect it next Morning, when he was gone away.

Mr. *Recorder.* My Lord, We ſhall prove he has bragged, that is, Mr *Braddon*, That he was the only inventor of the Proteſtant Flails, an Inſtrument you have heard of, Gentlemen, and for what Uſe deſigned.

L. C. J. But, Brother *Jenner*; that is nothing to the Purpoſe now, what he was before this Buſineſs, or what he was after. You are, Gentlemen, to Try him upon this Indictment only, and are not to mind any other Thing at all.

Then Mr. Speke's *Letter was read again.*

Mr. *At. Gen.* You ſee, Gentlemen, in what Strain it runs, *We* and *We*, He makes himſelf a conſiderable Party in the Deſign.

L. C. J. Ay, *We* thank you for your Kindneſs towards *Us*, and *We* hope to bring on the Tryal of the Earl of *Eſſex*, before they can any of thoſe in the *Tower*.

Mr. *Speke.* He told me, Sir *Henry Capell* ſaid it was a Thing too great for him to meddle with. And I knew nothing, but what I had from him.

L. C. J. He was a Man of Integrity, and could tell you nothing but what was true, Mr. *Speke.*

Mr. *Wallop.* My Lord, All I can ſay for Mr. *Speke*, is this, He did believe Mr. *Braddon*'s Grounds, as he told him, were probable to go upon, but he knew nothing himſelf, and concerned himſelf no further. I hope the Jury will conſider of it, that there is no Contrivance proved againſt him.

L. C. J. Nay, Mr. *Wallop*, though we interrupted you in making Remarks upon every Witneſs, yet now make what Remarks upon what hath been ſaid that you will.

Mr. *Wallop.* My Lord, I ſhall leave it to your Lordſhip and the Jury, how far they think the Defendant Guilty of this Information.

Mr. *At. Gen.* My Lord, We have indeed given as great an Evidence as ever was given I think of any Offence. But to clear up the Matter that it was impoſſible for any Man, unleſs the moſt maliciouſly and villanouſly inclined againſt the Government and Peace of the Kingdom, that can be, to imagine ſuch a Thing, much leſs ſpread ſuch a Report, we will call you two or three Witneſſes to prove, that the Earl of *Eſſex* murdered himſelf.

L. C. J. 'Tis neceſſary, Mr. *Attorney*, I think, for you ſo to do, to ſatisfy the World, though to a diſcerning Eye there is enough given from the Evidence this Day, to make it appear to be a moſt malicious and ſcandalous Contrivance, to hawk about for every idle Rumour, to pick up Children of ſuch tender Years, and make them Swear any thing to ſerve a Turn.

Mr. *At. Gen.* My Lord, We do not call theſe Witneſſes, as if there were any Doubt of it in the World.

L. C. J. But we live in an Age, when Truth paſſes for nothing in the World, and Swearing and Forſwearing is taken for a Thing of courſe. Had his Zeal been half ſo much for Truth as it was for Falſhood, it had been a commendable Zeal. But when Men are ſo zealous and fierce for ſuch vile Things as theſe are, 'tis time of my Word for the Government to interpoſe.

Mr. *At. Gen.* 'Tis not to ſatisfy the Court nor the Jury, who I believe are all of them already ſufficiently ſatisfied, but 'tis to ſatisfy the World, that may have entertained ſome Prejudices from this Conſpiracy. Call Mr. *Bomeney* in.

Mr. *Sol. Gen.* Not as if there were any doubt, whether Mr. *Braddon* were the malicious Inventor of this Report at the beginning, and went down into the Countrey to ſpread it. The Evidence has been full, and by his own Management of his Defence, he has proved it himſelf, and ſeems by his Confidence to juſtify it. But we ſhall, to give the World ſome Satisfaction, call ſome that waited upon the Earl in the *Tower*, and others that ſaw him when dead, that will give a Confutation to any thing that could be ſuppoſed, as if my Lord of *Eſſex* had not murdered himſelf.

Then Bomeney *was Sworn.*

L. C. J. Did you wait upon this unfortunate Gentleman, my Lord of *Eſſex*?

Mr. *Bomeney.* Yes, my Lord.

L. C. J. Well, what do you know of his Death?

Mr. *Bomeney.* I went with him from *White Hall*, and I ſtayed with him all the while he was in the *Tower*.

L. C. J. How came he by that unhappy End, pray?

Mr. *Bomeney.* When we were at his Lodging, my Lord uſed to call for a Pen-knife to cut his Nails of his Hands and Feet, and he then had long Nails, and ſaid he to me, give me your Pen-knife to cut my Nails; ſaid I, my Lord, I have none, I came in haſte, but I will ſend to Morrow for one; and therefore I ſent our Footman, one *William Turner*; to whom I gave a little Note for Proviſions, and among other Things which I writ Directions to the Steward to ſend, there was a little Line; *Pray ſend a Pen-knife for my Lord.* He brought ſome Proviſions, but he did not bring a Pen-knife on the *Thurſday*, becauſe he ſaid he had none, but he would ſend one the morrow after; I ſent *William Turner*, the Morning after very early, and gave him another little Note for Proviſions; and,

and, among other Things, I writ in the Note, *Do not forget the Pen knife for my Lord.* He went, and when he was in the way, my Lord ſent the Warder to me, to call me. I came to my Lord, and my Lord asked, Is the Footman come? Has he brought the Pen-knife? No, my Lord, ſaid I, but I hope he will not ſtay long, becauſe I ſent him early. Then I was turning to come down from the Chamber, and I ſaw my Lord walking in the Room, and picking of his Nails with the Pen-knife. ——

L. C. J. How? With a Pen-knife?

Mr. *Bomeney.* No, with the Razor that I gave him. For I went to my Lord, and when my Lord asked me, if I had gotten him a Pen-knife. I ſaid, the Footman was not come, but I hoped it would come immediately, becauſe I ſent him early. And I was turning from the Chamber, thinking I had done with my Lord, and my Lord called me again, Hark, you, *Bomeney*, ſaid he, I can do it with one of your Razors. My Lord, ſaid I, I will fetch one, ſo I went into my Cloſet and fetched one. And I went to my Lord, and when he had it, he did as if he picked his Nails with it, and was walking in the Chamber. I looked a little while upon him, and turned out of the Chamber into the Paſſage, where I talked with the Warder, *Ruſſel* his Name was, and when I looked out of the Window, His Majeſty was in the *Tower*, and there was a great Buſtle in the Street; and when I had talked a little while with the Warder, I went down into my Cloſet again, and at the ſame time that I was in my Cloſet, there came the Footman, and one with him, that brought the Proviſions, and he gave me the Pen-knife, and gave me a little Note, that he had brought with the Proviſions, which, he ſaid, Mr. *Billingsly*, that was our Steward, bid me to ſhew that to my Lord. I took it, and went up to ſhew it to my Lord; I found no body in my Lord's Chamber. There was a Cloſet there, in which was a Cloſe-Stool, and that I found ſhut, and thinking my Lord was there, I would not diſturb my Lord, but came down again, and ſtayed a little while, in ſo much as I thought my Lord by that time might have been come out. I went up again, and found no body in the Chamber, but the Cloſet Door ſhut ſtill, I went againſt the Door, and knocked three times, and ſaid, my Lord, my Lord, and no body anſwered: Then I looked through the chink of the Door, between the Door and the Wall, and I could ſee Blood, and a little part of the Razor. Then I called to the Warder, and the People of the Houſe, and they came up and found him there.

Mr. *At. Gen.* Had you much ado to open the Door, or could you open the Door eaſily?

Mr. *Bomeney.* No, the Door could not be opened eaſily, I know not how they opened the Door, but I think *Ruſſel* the Warder, when he came up, puſhed at the Door, but could not open it very far, becauſe my Lord's Foot was againſt the Door, and ſo they had much adoe to open the Door.

Mr. *At. Gen.* Which way does the Door open, out of the Room, or into the Room?

Mr. *Bomeney.* Inward, into the Room.

L. C. J. And ſo his Feet being againſt it, it could not eaſily be opened.

Mr. *At. Gen.* How big is the Cloſet?

Mr. *Bomeney.* A very little Cloſet, I believe no wider than that; and the length of a Man, and a Cloſe-Stool at the upper end would fill it up. My Lord lay all along on his Side.

Mr. *At. Gen.* Did you obſerve your Lord melancholy, Mr. *Bomeney*?

Mr. *Bomeney.* Yes, he was melancholy. But we took no notice of it, for he was uſed to be ſo, and we had no reaſon to ſuſpect any thing more than ordinary.

Mr. *At. Gen.* Did you find the Razor?

Mr. *Bomeney.* Yes, it lay by him.

Mr. *At. Gen.* What became of the Razor?

Mr. *Bomeney.* The Coroner's Jury had it.

L. C. J. Was there any Window in that Room, where the Cloſe-Stool was?

Mr. *Bomeney.* Yes, there was a Window.

L. C. J. Was there a Caſement to that Window?

Mr. *Bomeney.* Yes, I think there might.

Mr. *Juſt. Withins.* Which way does that Window look?

Mr. *Bomeney.* I can't very well remember, my Lord.

Mr. *Juſt. Withins.* Which way do you think?

Mr. *Bomeney.* I believe it is upon a Yard.

L. C. J. He ſays, he does not well know. But, Mr. *Bomeney*, you ſaw Mr. *Ruſſel* the Warder in the ſame Place, as you came up again, that you left him in when you went down?

Mr. *Bomeney.* My Lord, I went down but a little while.

Mr. *Sol. Gen.* Where did you find *Ruſſel* the Warder, when you came up again?

Mr. *Bomeney.* At the Guard.

Mr. *Sol. Gen.* Did you find him in the ſame Poſture, when you went up again, that you left him when you went down?

Mr. *Bomeney.* Yes.

Mr. *Sol. Gen.* Did you hear of any body that went up elſe?

Mr. *Bomeney.* No, my Lord.

Mr. *Sol. Gen.* Then we will call Mr. *Ruſſel* the Warder he ſpeaks of. [*Who was Sworn.*

Mr. *At. Gen.* Pray will you give my Lord an Account at that Time where you were, and what was done.

Mr. *Ruſſel.* I was in the Chamber next oppoſite againſt my Lord's Chamber, there is but a little ſtep betwixt the Doors, the Stairs come up betwixt the two Doors, no body could paſs backwards or forwards, but I muſt ſee them; for I was then Waiter at that time, and ſtood upon the Guard; and my Lord asked Mr. *Bomeney*, Whether the Pen-knife was come; and he told my Lord, No. Then, ſays he, lend me your Razor, that will do it. And my Lord took the Razor in his Hand, and the Door was open, and he went two or three Turns in the Room, with the Razor ſo. This I ſaw, the Door being open, as I ſtood in the Paſſage. My Lord, by and by Mr. *Bomeney* goes down, and my Lord ſhut the Door to him, and Mr. *Bomeney* ſtaid below a little while, and afterwards comes up again. And my Lord was gone to the Cloſet to Stool, as he ſuppoſed. So away he comes down again, and ſtaid about a quarter of an Hour, or there-abouts. And this I ſee all my ſelf, my Lord.

L. C. J. Had any Perſon been there, from the time *Bomeney* went down, to the time he came up again?

Mr. *Ruſſel.* No, my Lord, there was no body went

went up or down all the time, but *Bomeney*. He came up, and seeing my Lord was not come out of his Closet (this I did stand and hear) so he puts by the Hanging, and looks in, and sees my Lord in his Blood, lying in the Closet; and he makes an Oration, a great Noise, with that I stepped two or three Steps, hearing him make such an Oration, and I found the Key was on the out-side of the Door, and I opened the Door, and saw him lie in his Blood.

L. C. J. Could you open the Door with ease?

Mr. *Russel.* Yes, I could put it a little way open, and there saw him.

L. C. J. But you could not put it quite open?

Mr. *Russel.* No, for his Legs lay against the Door.

L. C. J. Was it a narrow Closet?

Mr. *Russel.* Yes, a very narrow Closet.

L. C. J. In what Posture did my Lord lie?

Mr. *Russel.* He lay all along on one Side.

L. C. J. Where lay the Razor?

Mr. *Russel.* By him. But I did not take so much notice of the Razor, for I was surprized with the sight.

Mr. *Just. Holloway.* Was there any Window in the Closet?

Mr. *Russel.* Yes, that looks into Captain *Hawley*'s Yard. And the Window is quite Northward.

L. C. J. Which way does that Window look?

Mr. *Russel.* Quite the other way, into the Back-yard.

L. C. J. Then there is no Way out, nor Light, nor Casement out into the Fore-yard?

Mr. *Russel.* No, my Lord, 'tis backward, and 'tis Paled in, only into the House there is a Door.

Mr. *At. Gen.* Was there any Door out of the Street, that way?

Mr. *Russel.* No, there is one Door that goes out from the Entry to go into the Yard.

L. C. J. Has any body else access to come to the Yard, but what must come through *Hawley*'s House?

Mr. *Russel.* No, no body.

Mr. *Sol. Gen.* We will call Captain *Hawley* himself.

L. C. J. Warder, Do you remember there was any Coach that stood there?

Mr. *Russel.* No, there was no such thing.

L. C. J. I ask you for this reason, because here was a Girl that spake of a Coach, that came through the House I suppose, and so through the Entry out of that Door into the Yard.

Mr. *At. Gen.* Where is *Lloyd* the Soldier? For, my Lord, as there was a Warder above, so there was a Soldier that stood at the Door below. And while he staid there, there could not any one come in, nor near, but he must observe them.

Mr. *Sol. Gen.* Pray, my Lord, be pleased to ask Mr. *Bomeney*, how long he lived with my Lord.

L. C. J. How long had you lived with my Lord of *Essex*?

Mr. *Bomeney.* Six Years.

Mr. *Just. Withins.* You waited on him in his Chamber, I suppose?

Mr. *Bomeney* Yes, in the Nature of his *Valet de Chambre.*

Then Lloyd *was Sworn.*

Mr. *Recorder.* Hark you, *Lloyd*, you were the Sentinel. Give an Account where you stood that Day that my Lord of *Essex* murdered himself?

Lloyd. At my Lord's Door.

Mr. *At. Gen.* Which Door?

Lloyd. At my Lord of *Essex*'s Door.

Mr. *At. Gen.* Were you above Stairs, or below at the Street Door?

Lloyd. Below at the Street Door.

Mr. *Just. Withins.* Did any body come into the House that Morning?

Lloyd. No body came in, all the while I stood there, that I knew of.

Mr. *Just. Withins.* Were you there at that time, when my Lord killed himself?

Lloyd. I was there when the noise was made of it above Stairs.

L. C. J. Did you see e're a Coach there?

Lloyd. Not to stand at the Door at all.

L. C. J. Did'st thou see e're a Coach in Captain *Hawley*'s Back-yard?

Lloyd. No, no.

L. C. J. Why, could not the Coach go through the Door and the Entry into the Yard?

Mr. *Sol. Gen.* Had you seen my Lord of *Essex* that Morning?

Lloyd. Yes, he spake to me, and asked me What a Clock it was?

Mr. *Sol. Gen.* Where was he?

Lloyd. At the Casement.

Mr. *Sol. Gen.* What did he say to you?

Lloyd. He said, Centry, What a Clock is it?

Mr. *At. Gen.* Did you see him, when my Lord *Russel* went by?

Lloyd. Yes, I saw him then.

Mr. *At. Gen.* How long after was the Cry of my Lord's having killed himself?

Lloyd. I believe, not half an Hour after.

Mr. *At. Gen.* Did any Maid go out of the House?

Lloyd. None at all.

L. C. J. What, not in a white Hood?

Lloyd. No.

L. C. J. Why did'st not thou call to the Maid to come and take up the Razor, that was thrown out of the Window of Captain *Hawley*'s House?

Lloyd. There was no Razor at all thrown out, that I saw?

L. C. J. Did not you open the Pales for her to go in, and take up the Razor?

Lloyd. No.

L. C. J. Was there any other Soldier there besides you?

Lloyd. No.

L. C. J. Then you must be he that cried out, or no body?

Lloyd. I saw no Razor, nor did not cry out to any body.

Mr. *Sol. Gen.* Could you open the Pales? Is there a Door to the Street-side, out of the Pales into the Yard?

Lloyd. 'Tis no Yard, but there is a Door that all pass through that come to the House.

Mr. *Sol. Gen.* What else did my Lord of *Essex* say to you?

Lloyd. He only examined me, what a Clock it was? That was all.

Mr. *At. Gen.* My Lord, We have here two Women, who were the only Women that were in the House, they will tell you what they saw.

L. C. J.

L. C. J. Pray, Gentlemen, do not miſpend your Time unneceſſarily, becauſe I am to ſit this Afternoon at *London*.

Mr. *At. Gen.* My Lord, We will then only call Capt. *Hawley*. [*Who was Sworn.*

Mr. *Sol. Gen.* Pray, Captain, tell what you know of this Matter?

Capt. Hawley. My Lord, All the Account I can give, is, That about 4 or 5 a Clock in the Morning, I went to open the Gates, that being the uſual Hour to open the Gates. And I was at the Gate then, when a Warder came, and told me, my Lord of *Eſſex* had killed himſelf, and that was between 9 and 10 of the Clock. When I came into the Houſe, I went up Stairs, and ſaw no body in the Room, nor no Blood; ſaid I, to the Warder, What do you make a Fool of me? Here is nothing: Says one of the Warders, look into the Cloſet, I went to the Cloſet, and could not open the Door above this wideneſs, and I looked in, and ſaw the Razor all in Blood, and my Lord lay on his Arm in this faſhion. I could not tell, whether he was dead or no, but I thought it was not my Buſineſs to ſtir him. Then my Lord Conſtable was ordered to come and Secure, and Examine all the Servants.

L. C. J. Pray, Captain *Hawley*, where does the Caſement look into?

Capt. Hawley. The Houſe, ever ſince I came to it, is juſt as it was; and the Houſe having ſettled, the Caſement won't open above thus far: and 'tis ſo low, and the Pales are 9 or 10 Foot high, that 'tis impoſſible for any one to throw any thing out of the Window 3 Foot hardly. It is one of the horrideſt Reports that ever was heard of, and the unlikelyeſt Thing, they cannot throw any thing out of the Window to be ſeen.

Mr. *At. Gen.* My Lord, I think it is not neceſſary to call any more Witneſſes.

L. C. J. Have they any thing to ſay further, on the other Side?

Mr. *Speke.* I deſire, my Lord, to call my Man.

L. C. J. Call your Man, for what Purpoſe?

Mr. *Speke.* My Lord, If your Lordſhip pleaſe, I will call my Man to prove, that I knew nothing of Mr. *Braddon*'s coming to me.

Then Mr. Speke's *Man was Sworn.*

L. C. J. Ask him what you will?

Mr. *Speke.* Did you ever ſee Mr. *Braddon* with me?

Servant. Never but once, before that time he came to my Maſter's Chamber, which was the Night before he went out of Town; and when he came, after he had been there a little while, my Maſter ordered me to get me ready to go into the Country with him. And after I had been with him a little time, he got another to go with him, and ſent me Home again.

Mr. *Speke.* I was going to Bed, was I not?

Servant. Yes, you was.

L. C. J. Have you done of both Sides?

Mr. *Speke.* Was it not a Surprize to me, when he came to me?

L. C. J. How does he know that?

Mr. *Speke.* I tell you, why, my Lord, I ask it; Becauſe when I go out of Town, I always tell him to prepare himſelf.

Servant. It was a Surprize to me; I knew nothing of it.

L. C. J. Well, have you done now? Have you a mind to ſay any thing to the Jury, you that are of Counſel for the Defendants; or you, Mr. *Braddon*?

Mr. *Braddon.* No, I will ſay nothing.

L. C. J. Have you, Mr. *Speke*?

Mr. *Speke.* My Lord, I have proved it here, That I had no Hand in what I am accuſed of. It is put down in the Information, that I Conſpired, with Mr. *Braddon*, to endeavour to procure falſe Witneſſes. I have proved, I never had any Hand at all in any Thing of it. It was an accidental Thing, his coming to me; and it was a great Surprize to me, when he came; and I never concerned my ſelf in it more, than the Writing of that Letter: And I had no ill intent in it; I did it not deſignedly; for I knew nothing of his coming; and I had not writ the Letter if he had not come to me. And 'tis plain, it was a Surprize, for I always give my Man notice, when I go out of Town, beforehand to prepare himſelf. I thought nothing at all of ill in the Letter: I writ it late at Night, when I had been with ſome Company at the Tavern. And he made me believe that to be True, which was not; I hope the Gentlemen of the Jury will conſider that. I have nothing to ſay of the Thing, I did not concern my ſelf in it any further at all, than writing the Letter, which I did not well know what I writ.

L. C. J. Well, have you any more to ſay, Mr. *Speke*?

Mr. *Speke.* No, my Lord.

L. C. J. Have you any more, Mr. *Braddon*?

Mr. *Braddon.* My Lord, I have only this to ſay for my ſelf. It has not been proved directly, or indirectly, That I uſed any evil Arguments, to perſwade theſe Witneſſes to teſtify what was falſe; but I dealt with them with all the Candor, that any Perſon in the World could uſe; and uſed all the Caution that I could, to hinder them from ſpeaking any thing that is falſe. There has been nothing proved of evil Practice uſed by me; and I deſire the Gentlemen of the Jury to take no other notice of any Thing that has been, or ſhall be ſpoken, but what has been proved.

L. C. J. Gentlemen, of the Jury. The Evidence has been very long, that has been given both for and againſt the Perſons, againſt whom this Information is exhibited. 'Tis an Information exhibited by the King's Attorney General, in His Majeſty's Name, againſt *Lawrence Braddon*, and *Hugh Speke*. And the Information does ſet forth, That the late Earl of *Eſſex* murdered himſelf in the *Tower*, and that thereupon there was an Inquiſition taken before the Coroner, that did find that he had ſo murdered himſelf, he being before that Time committed for High Treaſon, in Conſpiring the Death of the King, and levying War to diſturb the Government. And theſe Perſons did render that Inquiſition, as though it had been fraudulently and irregularly obtained; and alſo to breed ill Blood, and ſpread falſe Rumours among the King's Subjects, by endeavouring to perſwade them to believe, That the Earl of *Eſſex* was murdered by ſome other Hand, and had not murdered himſelf, and had procured falſe Witneſſes to teſtify ſome ſuch Matter,

Matter, in order to the ſpreading about that falſe Rumour. This is the Subſtance of the Information. To this Information they have both pleaded, Not Guilty; and the Evidence, as I was telling you, has been ſomewhat long; but according to the beſt of my Memory, and for the aſſiſtance of yours, I will mind you of as many Things, as occur to me, that have been ſaid againſt them, and what has been ſaid on their Behalf, I mean ſo much of it, as is Evidence. For I muſt tell you, all Hear-ſays, and common Diſcourſes of other Perſons are not Evidence, and I will give you that Reaſon, that is ſufficient to ſatisfy any Man, that is unbiaſs'd, That if in caſe the Perſon, that ſo told the Story had been here, if he had not told it upon Oath, you could not have believed that Perſon: Therefore, ſurely there is leſs Credit to be given to him, that tells a Tale out of another bodies Mouth. And I tell you this, becauſe there have been great Allowances given, and ought to be when People are accuſed of ſuch great and weighty Crimes; for theſe are monſtrous Crimes that theſe Gentlemen are accuſed of; but 'tis you, that are to try, whether they are Guilty or not: Certainly there is ſcarce in Nature a greater Crime that can be committed, than this that is now before you; for I think Robbery, or any other ſuch Felonies, are not ſuch monſtrous Crimes in their true real Weight, though in conſideration of Law, in reſpect of Puniſhment they are greater; yet in Point of Crime, they are ſurely leſs, for to ſpread falſe Reports, in order to raiſe Sedition, Ill-will, Heart-burnings, and Jealouſies in the King's Subjects againſt the Government, and to ſuborn Witneſſes to that evil Purpoſe, is ſurely a much greater Crime than robbing on the High-way. Now, Gentlemen, 'tis not unknown to moſt of you, what Endeavours have been of late made, to poſſeſs the Minds of the King's Subjects, of great Injuries deſigned to be done them by the King, or His Authority: And in order to foment Differences and Miſapprehenſions between the King and his People, and among the People between one and another, all Arts have been uſed, to proſcribe People that they are minded to expoſe. Thoſe, they bear ill will to, muſt be called Papiſts, or Papiſts in Maſquerade; but They and their Confederates are the Sober Party, the true Proteſtants, as if there were none Sober or True Proteſtants but ſuch as are Factious and Troubleſome in the Government. But by theſe Things they bring an Odium upon the Name of a Proteſtant, their Aim is, by diſtinguiſhing to divide us; whereas if they were Proteſtants in Truth, the Church of *England* Proteſtants, they would have another Behaviour, they would learn to obey, and ſubmit to Authority, and not go buzzing from Houſe to Houſe, and ſpreading falſe Reports, *but ſtudy to be quiet, and do their own Buſineſs.* And though Mr. *Braddon* made uſe of the *5th Chap.* of the *Acts*, to the Child, he would have done well to have taken notice of ſome other Parts of Scripture, that are as much Scripture as that, That enjoin Obedience and Submiſſion to the Magiſtrate; and, being quiet and minding his own Buſineſs, it's odds, he had never come to that Trouble, he is now likely to meet with. But the Crime he is accuſed of, carries all the Venom and Baſeneſs, the greateſt Inveteracy againſt the Government that ever any Caſe did, that I have met with. For its inſinuated, That becauſe the King and the Duke were walking in the *Tower*, that Day, and near that Time, when this unfortunate Thing happened, now it muſt be whiſpered, as though the King and the Duke had deſigned this Murder. How Baſe? How Deviliſh and Helliſh a Deſign is this? But yet, this muſt be ſpread about, and endeavoured to be diſtilled into the Minds of the King's Subjects. But beſides, Gentlemen, you are to conſider, as was opened by the King's Counſel, to what this Thing tended; for in as much as there was an horrid bloody Conſpiracy, to take away the Life of the King, and of his dear Brother, His Royal Highneſs the Duke of *York*. And foraſmuch as ſeveral Perſons have been duly executed for that Conſpiracy, who were concerned along with this unfortunate Lord; (I cannot help the naming of it, though I am ſorry for his Misfortune, for the Sake of that Honourable Family) but rather than he would abide his Tryal, God knows what other reaſon he had, but the probability of the Thing ſpeaks it, he being conſcious, the great Guilt he had contracted, in being concerned in ſuch a Conſpiracy, made him deſtroy himſelf. And 'tis eaſy to imagine, how far that might prevail upon him, it being done immediately after my Lord *Ruſſel*, who was one of the Conſpirators with him, was carried to his Tryal. It cannot be thought, but it was to prevent the Methods of Juſtice in his own particular Caſe. And, Gentlemen, there was *Digitus Dei* in it, and it is enough to ſatisfy all the World of the Conſpiracy; though we live in an Age, wherein Men are apt to believe only on one Side, they can believe the greateſt Lie, if it makes for the Advantage of their Party, but not the greateſt Truth, if it thwarts their Intereſt.

But becauſe Mr. *Attorney* has produced his Proofs, to manifeſt, that this Lord murdered himſelf, I will take notice a little of it, becauſe it may have ſome good effect to undeceive ſome that have been impoſed upon. Not for my own Satisfaction, I thank God I am ſatisfied, and ſo I believe are moſt honeſt Men: But that ſilly People may not be impoſed upon by every buſie Fellow for the future, that takes the liberty to run about and ſpread falſe News, and that Men may be aware of ſuch Fellows, and may not be decoyed any more by ſuch falſe Pretences; it was therefore fit that Evidence ſhould be given of the Truth of the Fact, that that Gentleman did murder himſelf. And the Evidence is this.

Beſides the Inquiſition, which was taken upon the Oaths of ſeveral Perſons of Quality (as you hear upon the reading their Names, ſeveral of them were Eſquires, and Men of Note) 'tis here alſo proved by the Teſtimony of his Servant that attended him, how he came to this untimely End. And, Gentlemen, I would obſerve, 'tis Sworn by his Servant, one that had lived ſix Years with him, not an upſtart, or a wandering Fellow, but one whoſe Integrity and Fidelity to my Lord, was confirmed by ſix Years Experience of his Service. Then here is the Warder that was at the Door, here's the Soldier, here's the Maſter of the Houſe, who are all the Perſons that probably can give any Account of the Matter, and they tell you poſitively

tively that no one did go up and down, but this *Frenchman*, who was his *Valet de Chambre*. And the Warder tells you, that he coming to the Door, and knocking at the Door, and hearing no one anſwer, did endeavour to open the Door, but it was ſo faſt by my Lord's Feet, that he could open it but a little, and looking in, diſcerned Blood, and that made him make Acclamations, as the Warder calls it, Orations, which brought all the People in the Houſe thither, and they gave the ſame Account that he does.

And 'tis likewiſe fit to be taken notice of, that the Window of this Cloſet looks into a private Yard, where no Strangers uſually come, and where no Coach could come; and that the Pales were ſo high, that in caſe a Man were deſirous to throw any thing out, it were impoſſible to caſt it above three Foot. And if there could no Coach at all come into the Yard, as it is plain there could not (for there is no Door, ſave only a back Houſe-door) then this muſt needs be a Lie, that was ſpread A, broad. And 'tis beyond all peradventure true that my Lord of *Eſſex* did murder himſelf.

Now to have ſo great a Truth as this to be perverted, and to reproach the Government with Falſities, is the moſt malicious Thing in the World. If in caſe the Law has made it Penal for any Man to ſcandalize any one private Perſon as it has; and if it be by Law, much more Penal to ſcandalize a Noble Man: How much more ought it to be, when the King and the whole Government is thus ſcandalized?

Now to come to the Fact, as near as I can recollect, I will give you an Account of what Evidence has been given of the one Side and of the other. But this I thought fit to premiſe, becauſe there will ſome Circumſtances fall out fit to be taken notice of in the Evidence, eſpecially about the Window in Captain *Hawley*'s Yard and Houſe, which may be cleared this way.

In the firſt Part of the Evidence for the King, they call a Witneſs to prove the Earl of *Eſſex*'s Commitment, which is Part of the Inducement in the Information.

But for the Information it ſelf, there is this Evidence. Firſt, *Evans* he comes and tells you, how that he had heard at the *Cuſtom-Houſe*, from *Edwards*, the Father of this Boy, as though there had been a Report came to him from Home, at Ten a Clock that Morning my Lord *Eſſex* cut his Throat, of a Razor thrown out of my Lord of *Eſſex*'s Window; That he came to him in the Afternoon again, and in the Afternoon told him, He had examined the Matter further, and his Boy confirmed the Truth of it. He ſays, That after this, Mr. *Braddon* and another Man, one Mr. *Hatſell*, if I am not miſtaken in his Name, came to the Place where he was in *Eſſex*, and there they had ſome Diſcourſe about my Lord of *Eſſex*'s Death, and there *Hatſell* took out of his Pocket a printed Copy of the Inquiſition; and Mr. *Braddon* was then in the Room, but he ſays, he thinks Mr. *Braddon* at that time took no manner of notice of it, but walked about the Room, but he ſays, the Inquiſition was read while he was in the Room, and *Evans* ſaid ſomething about the Report he had heard, which did ſeem to contradict that Inquiſition. But ſome time after, he ſays, That he being at the Coffee houſe, *Braddon* and *Edwards* came to him into the Coffee-Houſe, and there they began to talk; *Edwards* ſaid, that *Braddon* had been with his Child to examine him, to bear Teſtimony about flinging the Razor out at Window. He was very full of the Word [Matter] and toſſed that to and fro, but at length the Subſtance of his Matter was, that Report of the Boy's, and he adviſed them to forbear talking any farther to him about the Matter, for it might do *Edwards* and *Braddon* both an Injury; and he had read the Inquiſition which was quite contrary. That was all he could ſay.

Then comes *Edwards*, and the Subſtance of what he ſays, is this, That he firſt heard it from his Family, and afterwards the Boy confirmed the Truth of it; but then afterwards he heard he had denied it, which was after *Braddon* had been there to inquire about it. And then he ſays, *Braddon* came to him again, and then he had got a Note dictated by himſelf and not by the Boy, but at firſt he tendered it to the Boy, and the Boy refuſed to put his Hand to it, and Mr. *Braddon* came again another time (though he was told the Boy had denied it as he heard) and then the Boy did ſet his Hand. This is the Subſtance of what *Edwards* ſays. He does ſay indeed, the Boy uſed to tell Lies very often, to make excuſes when he played Truant, and that his Family told him, the Boy was often guilty of telling of Lies.

Then the next Evidence is the Evidence of the Boy himſelf. He it ſeems is thirteen Years of Age: Certainly any Man that had been of an upright Mind and Conſcience, as Mr. *Braddon* pretends to be, and would have you, Gentlemen, think them ſo; would have it thought that he was full of Honeſty and Integrity to the Boy, when he baited his Hook with a Text of Scripture, about the Danger of telling a Lie, and, *Have a care, Child, of telling a Lie*; if he had done no more, but given him this Advice, it had been worthy of Commendation: But when the Boy had refuſed to ſign it, for him to go and make ſuch a ſtir, without examining further into the Particulars, but only taking a ſlight Report from ſuch a Child, and to make ſuch a Diſturbance in the Nation, and ſuch a Noiſe, not only here, but Abroad, as this has done, ſure argues neither Uprightneſs nor Conſcience. Had the Boy ſtood in it and perſevered in it, it had become him, in regard of the tenderneſs of the Boy's Age, to have been more inquiſitive into Circumſtances, before he gave ſuch Credit to what he ſaid, as to make all this adoe.

But what ſays the Boy when he comes here, he is now upon his Oath, and he tells you, He did tell his Mother ſo at firſt, and he did tell Mr. *Braddon* ſo at firſt; but afterwards when his Siſter ſpake to him, and bid him be ſure to tell nothing but what was Truth, then he ſaid truly, it was not Truth. He tells you, Mr. *Braddon* offered him the Paper to ſign, but he would not ſign it; and being asked the Queſtion, Why he would not ſign it? He ſays, becauſe it was not true; and being asked, Whether *Braddon* had notice of this? The Mother and Siſters, all tell you, He had notice the Boy had denied it.

How came Mr. *Braddon*, what Authority had he to take this Examination? He is no Juſtice of Peace, no Magiſtrate that had any Authority to take Examinations. What Concern had

he in it more than other People? The Boy could tell him there were abundance of People there beſides himſelf, tho' it was a Lye he told then, and that the Girl told now. Why did not he ſtay to have it confirmed by ſome of thoſe People? Why did not he carry theſe Children before ſome Magiſtrate or Juſtice of Peace, ſome body that had Authority to take Examinations? There was a Spirit that prevailed with Mr. *Braddon* to engage and make a Stir in this Buſineſs; and you may eaſily gueſs what a kind of Spirit it was which gave him this Authority that he had not before.

Gentlemen, Another thing is this, 'Tis plain, and the Boy now ſwears it directly, That whereas he put it into his Information, How that he told him he was going to ſee my Lord *Brandon Gerard*'s Lodgings, but now he is upon his Oath, he ſwears directly, he never told him any ſuch thing, and yet he hath put it into the Paper he made him ſign.

He tells you a ſecond time, Mr. *Braddon* came to him, which was after the Boy had refuſed and declared himſelf unwilling, and that then he was perſwaded by Mr. *Braddon*, who told him there was no harm in it; if there be any harm, it would be to him, and not to the Boy, and ſo by virtue of that, he inſinuated himſelf, and got the Child to ſign that Paper, which is every tittle of it falſe, as the Boy now ſwears directly. And he tells you, how he was impoſed upon by Mr. *Braddon*, pretending there was no Harm to him, all the Harm would come to himſelf, and by reaſon of theſe Inſinuations he was prevailed upon to put his Name to that which was notoriouſly falſe.

The next Witneſs (to make it appear that it was notoriouſly falſe, not only by the Boy himſelf, but by other Circumſtances) is *Hawkins* the Miniſter's Son, Dr. *Hawkins*'s Son of the Tower. And he tells you, I play'd Truant as well as he that Day, and I ſaw the King and the Duke at the Tower, and when I had ſeen them I went about as they did, and afterwards I went home, and there came a Report, that my Lord of *Eſſex* had cut his Throat, which made me go back again to the Tower, and there was I a conſiderable time gaping among other People, and there did I ſee this Boy *Edwards*; when he came there, I was there; I was there all the time that he was there, and we went out of the Tower together, and there was no ſuch thing, nor any pretence or ground for ſuch a Story. And *Edwards* himſelf being asked the Queſtion, upon his Oath, doth likewiſe ſay, *Hawkins* was with him all the time there. So that that ſhews not only by what the Boy ſays, that it was falſe, but it is alſo proved falſe by the Teſtimony of this other Witneſs *Hawkins*.

Then next comes Mr. *Blathwaite*, who was preſent when Mr. *Braddon* was before the King, and what does he ſay? He ſays, there was the Boy fetched, and the Girl fetched, and all Perſons examined there, and then 'tis told him, all the Boy had ſaid to him was falſe, and it was told him with all its Circumſtances. So that Notice ſufficient, if you will believe Mr. *Blathwaite*, was given to this Mr. *Braddon*, That the Boy had denied it then, as he had before to his Siſter: So he knew it was falſe.

But what does Mr. *Braddon* do now? He is ſo far from being ſatisfied in the Matter, that inſtead of ſtopping there, his Zeal tranſported him to purſue it further: And ſo he tells you, that Mr. *Braddon* confeſſed he would have got ſome Juſtice of Peace to have the Boy examined; and he applied himſelf to Sir *Robert Clayton*, and Sir *John Lawrence*. There were many Juſtices of the Peace beſides them, in *London*, to whom he might have applied himſelf. But when he comes to Sir *Robert Clayton*, and acquaints him with the Matter, he would not do it alone; it was thought a Matter of that Importance. Then ſays Mr. *Braddon*, you ſhan't do it at all. He muſt have the Kindneſs of having it done in private; to have it examined when any body was by, was not ſo well for his purpoſe; which ſhews you ſtill, Gentlemen, his Deſign was to contrive privately, to effect that which the Light ſhould not eaſily diſcover.

Then the next thing is the Evidence of Mr. *Monſtevens*, And he gives you an account, That he came to him, and he read the Information, and gave him a Caution, that he wondered at him: Says he, Why do you concern your ſelf about this Buſineſs, there is Sir *Henry Capell*, he does not concern himſelf? Then he pretended to come in his Name, but at length, when Mr. *Monſtevens* began to diſpute it with him, why Sir *Henry* did not appear himſelf in it; then truly Sir *Henry Capell* was very ill, and could not poſſibly come himſelf, but I am to go to him, and give him ſatisfaction about what I do, and ſo alſo to the Counteſs of *Eſſex*. No, ſays Mr. *Monſtevens*, that cannot be, for Sir *Henry Capell* is not ſo ill, but that he has been with my Lord *Sunderland*, and with the King too, ſince the Death of my Lord of *Eſſex*. To which he made him no Anſwer. So that that was but an Excuſe and a Subterfuge; but yet notwithſtanding all this Caution, he continues on his Zeal in the thing: Whereupon Mr. *Monſtevens* brought him to my Lord *Sunderland*, and what Diſcourſe has paſt between them, he has given you an account of.

The next Evidence is Sir *Henry Capell*, who tells you, That *Braddon* comes officiouſly and tells him, he had ſome Diſcovery to make about the Death of the Earl of *Eſſex*, and you hear that poor Gentleman being related to this unfortunate Noble Lord, was at the firſt time very much under Surprize (being in ſuch great Affliction as one Brother muſt needs be for another, Nature obliges People to a great Concern for ſuch Accidents) and he ſays, he is not able to give an account what he ſaid or did at that time, or what *Braddon* did particularly ſay to him. But when he came the ſecond time to him, he was a little more ſedate and calm, and then (he does remember) he told him, If you have any thing of this nature to ſay, go to a *Secretary of State*, it is his Buſineſs to enquire into this Affair, and 'tis not the Buſineſs of every particular private Man, becauſe theſe are Matters that concern the Government. But *Braddon* pretended (forſooth) it was his Zeal and his great Conſcience that made him to be thus tranſported, and to be ſo eager for carrying on this Proſecution.

The next Witneſs, Gentlemen, that you hear of, is the Gentleman that ſeized upon Mr. *Braddon* in the Country; and that is Mr. *Beech*, who brought

brought him before a Juſtice of Peace (one *Aires* that it ſeems is ſince dead) and in his Pocket he found a Letter from the other Defendant *Speke*, which is the only thing indeed in the Evidence that does affect that Gentleman; and what that Letter is, you have heard it read, and for your better ſatisfaction, becauſe the Language of the Letter is pretty extraordinary, if you have a mind to have it to peruſe while you are here in Court, you may have it with you. I ſuppoſe you remember the Subſtance of it, commending the great Integrity, Courage, and Magnanimity of this Gentleman Mr. *Braddon*, thanking the Perſon to whom it was writ, for his great Kindneſs to him and his Friends, how they did hope to be able to get the Murder of my Lord of *Eſſex* tryed before any in the Tower could come to their Tryal; That the Tide ran ſtrong againſt them: And, pray, you muſt take notice, I have given him a hint he muſt go by another Name, by the Name of *Johnſon*, and not by the Name of *Braddon*; for alack-a-day he would be ſtabbed in theſe dangerous Times, or knocked on the head, if he be known by his own Name. Mr. *Braddon* would be thought a Man ſo conſiderable in the World for his Zeal for Truth, and the *Proteſtant* Religion, that there was very great Hazard of his being murdered, we live in ſuch perilous Times.

Gentlemen, This is to amuſe and affright People, and to put odd Thoughts and Jealouſies and Fears into the Minds of the King's Subjects, which was the Beginning and Riſe of the late Rebellion, which we have All reaſon to remember with Horror; that Rebellion that in the Iſſue of it brought the late King of bleſſed Memory to the Scaffold: And therefore we muſt have a great care of ſuch things growing upon us now.

And pray, Gentlemen, mind the Style of the Letter: *We* have many Thanks to give you, for your Care of *Us*, and Countenance you have given to *Us*, and *We* don't doubt *We* ſhall be able to carry on the Buſineſs of the Earl of *Eſſex*, notwithſtanding that the Tide runs ſtrong againſt *Us*; *We* hope this, and *We* hope that, and t'other, and ſo makes himſelf a Party. And he recommends him in particular to Sir *Robert Atkyns*, to whom the Letter was written, to adviſe him in the Matter he went about (which by the way, you ſee, was to pick up falſe Evidence) to carry on this wicked Deſign. And I muſt tell you, Gentlemen, If Mr. *Speke* was given to believe a Lye, and did write that Letter, with a Deſign to have that Lye ſpread abroad, he makes himſelf a Party, and he is as guilty in every Circumſtance as the other, as to the Deſign in general laid in the Information, tho' not equally guilty about the Management of the Witneſſes: And it is the Letter only that particularly affects him. But I tell you, If in caſe you think he was ſurprized in the thing, or did it ignorantly or innocently, without any Concern (tho' he ſeems to have a wonderful Concern in his Letter, and very zealous he ſeems to be in the Proſecution of this Buſineſs) you are to acquit him. But, if he did contribute to the Deſign of ſpreading this falſe Report, he is as guilty of that part as Mr. *Braddon*, tho' he be not guilty of Suborning the Witneſſes. But the Evidence againſt *Braddon* goes farther; There is not only the Evidence of this Letter, which ſpeaks plain enough, as to this Deſign, but you find alſo about him all the Informations that have been read. The Information of this Boy of 13 Years of Age; the Information of the Girl of 13 Years of Age: There was alſo taken in his Pocket a Letter from one *Burgis* a famous Pin-maker of *Marlebrough*, written to one *Cumpen* a Poſt-maſter at *Frome*, in this manner: "Pray call to mind "ſuch a Buſineſs of hearing ſuch a Report, "of my Lord of *Eſſex*'s cutting his Throat "upon *Friday* the 13th of *July* laſt. Pray recol- "lect ſuch a thing, and impart it to this Gen- "tleman the Bearer. This likewiſe was intruſted with Mr. *Braddon*: But it ſeems the Man had gone and writ his Letter, and had put in the 6th Day, which happened to be a Week too ſoon, and this muſt be rectified by Mr. *Braddon* himſelf, he being a great Companion of Mr. *Braddon*'s; for it ſeems he had ſuch a Confidence in him, that upon his Report, he came down from *London* to *Marlebrough*, tho' now indeed they pretend they never knew one another before: But it is proved he confeſſed he had ſuch a Regard to his Report, that that brought him down from *London*. He had (as I was ſaying) put it down the 6th at his firſt writing; and I believe as to the thing it ſelf, it was as true the 6th as any other time, and the 16th and the 26th is all one to ſuch People. And this Letter, he tells you himſelf, was written ſix Weeks after, but Mr. *Braddon* muſt correct it: No, ſays he, you miſtake, it muſt be the 13th, it muſt not be the 6th; the 6th would not do the Buſineſs, for the 13th was the Day that he was murder'd, and ſo he was forced to interline it, the 13th, to make it to humour the Story; for the Lye would not paſs ſo well if it had been put upon a Day ſo long before; but to make the Lye a correct Lye, and to humour the reſt of the Evidence, Mr. *Braddon* comes and informs him, it muſt be the 13th.

That was the next piece of Evidence that was given, and I think the Subſtance of the Evidence of the whole Matter given againſt the Defendants for the King, except it be ſome Remarks out of the Evidence that has been given on the other ſide, which it will be material for you to take notice of.

Now, Gentlemen, for the Defendants they bring this Evidence: Firſt, They bring a Man, I think his Name was *Lewes*, to whom they gave the Money before he would give his Evidence. And he ſays, one Day he was going up a Hill near *Andover*, and going up the Hill, he heard the News of my Lord of *Eſſex*'s cutting his Throat; but what Day, Week or Month it was, he cannot tell, that he heard this. And, Gentlemen, Let me tell you, 'tis as bad as the Caſe it ſelf, and worſe if poſſible, the endeavouring to pick up Witneſſes to put a Colour and Countenance upon ſo black a Villany as this is. Then the next Evidence is *Fielder*, and he tells you, that at their Town of *Andover* the *Wedneſday* before my Lord murder'd himſelf, it was all the Talk about the Town, that he had cut his Throat; it was in every body's Mouth, the Market-people, Men, Women and Children, all over the Town had it, when the Earl of *Eſſex* did it not till the *Friday* following.

We asked him to name any one; no truly he could not, the Town was ſo full of People, and yet he cannot remember one, whence he had it: But, Gentlemen, here is the malicious Deſign of the Matter. 'Tis to make it believed it was a deſigned Buſineſs to murder my Lord, and caſt it upon himſelf, and they knew of the Deſign at *Andover*, two Days before the Fact was done: As tho' the Perſons that deſigned to murder him, would go to make it publick, as ſuch a Report was likely to do. But the Deſign of this, beſides the Falſhood and Baſeneſs of the thing it ſelf, does ſpeak Malice and Sedition, and all the Diſtempers of a diſloyal Man's Heart; and to go about to get Witneſſes to ſupport the Credibility of a thing that is notoriouſly falſe, is ten times worſe than the ſpreading of ſuch a Report it ſelf.

Then comes Mrs. *Edwards* the Mother, ſhe is the next Witneſs, and ſhe tells you at firſt, the Boy did tell this ſtrange Story, but afterwards denied it, but ſhe likewiſe tells you, how Mr. *Braddon* came, and how he dealt with the Boy. He is a buſy Man, you ſee, a great Reformer that does mightily concern himſelf in the Reformation of the Government. I never knew that Mr. *Braddon* had any great ſhare in it: He has not ſuch a prodigious Eſtate I ſuppoſe, that for fear of loſing his great Eſtate he ſhould be ſo wondrous buſy and active in reforming the Government; but I have always obſerved it for a Rule, that your beggarly inconſiderable Fellows are the warmeſt People in the Buſineſs of Reformation, and for defending Liberty and Property as they call it; and then they put it under the Diſguiſe of Religion, when alas thoſe that have no Religion are generally the greateſt Pretenders of taking care of it; and thoſe that have no Eſtates nor Properties, are uſually the fulleſt of Noiſe about Liberty and Property. But the meaning of it is plain, if they can but exaſperate the People into a Rebellion, that is the way to get a Property: And if they can but have Liberty to do what they pleaſe, that is all the Liberty they contend for. They are ſuch mean inconſiderable Fellows only that make all this ado among us: For no Perſons of any Intereſt or Quality will offer to engage in any ſuch thing. But I hope the Snare is ſeen, and we ſhall avoid it; for God be thanked we live under a regular Government, where the Laws are duly executed; we need not be afraid of wrong from the Government. The Courts of Juſtice are open where they may have Security; and the beſt Security to good Subjects, is that which the Law gives them.

Mrs. *Edwards*, ſhe tells you, When *Braddon* came to inquire about it, it made them all a little concerned; and the Daughter was affrighted, and ſhe comes to the Boy, and ſays, *Billy*, *Billy*, here has been a Man about ſuch a thing, pray ſpeak the Truth: Why, ſays he, will any harm come of it? Says ſhe, I can't tell, but tell you the Truth. And then when the Boy comes to tell Truth, he then ſays, all the Story was falſe. Beſides this, ſays ſhe, We told Mr. *Braddon*, before the Boy ſigned it, That he had ſaid it was falſe; and he was told it again before the King and Council, that it was falſe. But nothing would ſerve him, but he muſt have a Horſe and a Man, and he muſt go his Circuit to pick up ridiculous Stories. Letters muſt be contrived from one to another to give a Colour to the Matter, and all this to ſpread about his malicious Reports and falſe News.

And by this means, Gentlemen, I muſt tell you, The Matter is fixed as to the ſecond part of the Information, which is the corrupting of Witneſſes; for tho' he did not get any Witneſſes ſworn, and ſo 'tis no Subornation of Perjury, ſtrictly, yet however 'tis a Miſdemeanor to labour any one, much more ſuch a Child, into a Falſity, as apparently he did; for as the Boy ſwears now, He never did make mention of going to my Lord *Gerard*'s Lodgings.

The next Evidence is young Mrs. *Edwards*, *Sarah* the Daughter, and ſhe comes and gives an account of the ſame. That the Boy did tell ſuch a Story at firſt, but, ſays ſhe, I knew him to be ſuch a lying Boy, and I had ſo often found him in Lies, that I did not mind what he ſaid. And he uſed to tell Lies when he had been playing Truant. Then comes Mr. *Braddon* to inquire about the Buſineſs, and when he began to proſecute it, the Girl began to be affrighted, and ſhe calls the Boy to her, and engaged him to tell her the Truth, and then immediately upon that, he did ſay it was all a Story, and Invention of his own.

And then 'tis very material to obſerve, That the Boy in that Paper of Information (which is all of Mr. *Braddon*'s Hand-writing) makes the Circumſtance of the Razor's falling down, to be caſt of the inſide of the Pales, and the Girl ſays, it was of the outſide, and there was a Coach, and abundance of People by, and a great many fine Circumſtances, and not one of them true.

The next piece of Evidence is, ſhe does ſay, That after he told her it was falſe, ſhe gave notice to *Braddon*, and being asked, Whether ſhe did not frighten him by threatening his Father would be turned out of his Place? She ſwears, No. But all thoſe kind of Queſtions were by a Side-Wind, to make Reflections upon the Government; as tho' the King would turn Men out, becauſe they would not ſwear what was falſe. It carries, I tell you, a Sting towards the Government ſtill, and ſhews the Malice of the Deſign. But, Gentlemen, you hear what is ſaid about that, there was no ſuch thing ſaid; They did apprehend ſome Fear, but from whom their Fear came, that they can't tell. But ſhe poſitively ſwears, when the Boy had denied it, he had notice of it; and when he refuſed to ſign it, yet he preſſed him, by telling him, there was no Harm in it like to come, but only to Mr. *Braddon* himſelf, and ſo he was perſwaded to ſign it.

The next Witneſs is Mrs. *Barton*; She comes and tells you, that ſhe was at Mr. *Edwards*'s Houſe, and what ſhe tells you of her own Knowledge, you are to take for Evidence, and nothing more. She ſays, *Braddon* did engage the Boy to tell Truth, and put him in mind of that Chapter in the *Acts*, of the great Diſpleaſure of God againſt the two Witneſſes that forſwore themſelves, and bid him ſpeak nothing but the Truth. And after he had talked thus awhile, ſhe obſerved he was going to take Pen, Ink, and Paper, and ſhe was afraid ſhe might be drawn in for a Witneſs, and ſo ſhe went out of the Room. But before that time,

Mr.

Mr. *Braddon* did go to ſee the Window, and the Place where the Boy ſaid the Razor was thrown out.

Then there is the Evidence of the little Girl, who is the next Witneſs, *Jane Lodeman* I think her Name was, and that is likewiſe written by Mr. *Braddon*. Now you hear what that young Wench ſays. She comes and would give ſome ſort of Countenance to the thing, How ſhe was looking up at the Window of my Lord of *Eſſex*'s Lodgings, and that there was a bloody Razor thrown by a Hand out of the Window, but whether it was half bloody, or all over bloody, ſhe can't tell, but bloody it was; and it was, as ſhe ſays, thrown on the outſide, though the Boy ſaid, it was thrown of the inſide. But the Wench being asked, Whether ſhe knew that was my Lord of *Eſſex*'s Lodging? She anſwered, No, ſhe did not, when they come and make her ſwear in her Information, that ſhe ſaw the Razor thrown out of my Lord of *Eſſex*'s Lodgings: And then ſhe ſays, ſhe heard no Soldier ſpeak a Word at all; but in the Information, it is ſet down, that the Soldier cried out to the People of the Houſe, Go and fetch up the Razor. And this was all done in the open Day, and there were abundance of People, but ſhe could not tell any particular body. So that of one hundred People, which, if ſhe ſay true, were there, Mr. *Braddon* could not ſatisfy himſelf to enquire after ſome of them, but only he muſt pick up a Child of 13 Years of Age to practiſe upon in this villainous manner. And it carries the greater Venom, and Malice, and Virulency, and Baſeneſs, to endeavour to corrupt young People to that heighth, as to come and ſay, and ſwear thoſe things in the Face of a Court, that are impoſſible to be true. It is impoſſible to be true, that ſhe ſaw a Coach in the Yard; for you hear what account Captain *Hawley* gives of his Houſe. It is impoſſible to be true, that there ſhould be a Crowd of People, becauſe that there was a Sentinel at the Door, who muſt ſee all that go out, and that come in; and there is no way to go into the Yard, but through the Back-door, and the Pales are ſo high, that nothing can be flung over, that could be eaſily diſcerned. So that the very Thoughts of ſuch a thing as this are ridiculous in themſelves, and not only the Falſity of the Story is apparent, but there is alſo apparent a great Villany, in endeavouring to get Witneſſes to prove that Falſity. For you ſee who Mr. *Braddon* employs; he gets a Barber to go along with him on purpoſe to teſtify what idle Reports he could pick up. But this Barber, and the other Witneſſes, when they come here, can't tell any thing. For the Barber, he ſays, ſhe ſaid, *There lay a Razor*; but the Information ſays, (to which he is a Witneſs) that the Soldier cried, *Take up the Razor*; and ſhe now upon her Oath denies any thing of that.

The next Evidence is the Aunt, and ſhe tells you, ſhe does not remember ſuch and ſuch Particulars, but ſomewhat to that purpoſe ſhe does; but whether ſhe named my Lord of *Eſſex*, or no, in particular, as to his Lodgings, ſhe cannot give an account.

Then you have *Glasbrooke*, that comes to give an account concerning this Girl's Story, and he plainly is quite different from what the others had teſtified before; for his Evidence is, That the Girl had ſaid my Lord of *Eſſex* cut his own Throat, and afterwards flung the Razor out of a Window: After he had committed this horrid Murder upon himſelf, he got to life again, and threw away the Inſtrument he did it with, that is plainly his Teſtimony, that this Child ſhould ſay ſo. So that, as in the Caſe of *Suſanna*, which I heard cited here upon another occaſion, the wicked Elders were diſcovered by the different Circumſtances of Time and Place; ſo here you have Circumſtances of Time and Place, and of all things in the World that can contribute to prove the Falſity of this Report, and to prove the malicious Deſign of theſe People that were engaged in this Buſineſs.

The next Witneſs is one *Smith*, and he ſpeaks much to the ſelf ſame purpoſe. He was the Barber that went with *Braddon* to examine this Girl.

Now, Gentlemen, You are to conſider of theſe Contrivances of *Braddon*, in buſying himſelf to ſollicite theſe Children to teſtify theſe Stories, after a Denial by the Boy to ſign the Paper, To tell him there was no Harm could come to him, to dictate what he ſhould ſay, and put Words into his Mouth, about going to ſee my Lord *Gerard*'s Lodgings, which he never ſpake of; for him to dictate to the other Witneſs the Pinmaker of *Marlebrough*, what the right Day ſhould be, to ſet up ſuch a ſenſleſs Story that he heard ſuch a thing at the Poſt-houſe, but he cannot tell from whom, or name any one that heard it or ſpake it beſides himſelf: It is ſtrange how he ſhould meet with this Man, for even the Man himſelf tells you, he knows not who he had diſcourſed of it to; and never ſaw *Braddon* till that time he writ the Letter. But you may obſerve, that to be ſure the Report might be ſpread, it was ſo contrived that the Scene ſhould be laid in the Poſt-houſe, and then it was like to run abroad quickly; for alas it was not their Buſineſs to make Truth of it, but to make the diſcontented Rabble believe it to be a Truth. And ſo they began to conſult with themſelves where it was beſt to lodge it, and upon deliberation the Place muſt humour the Deſign as well as the Time, and that muſt be at the Poſt-maſter's Houſe, in order to diſperſe the Noiſe of it, and then Mr. *Braddon* takes his Circuit to *Salisbury* unto Sir *Robert Atkyns* at *Stow* in the *Hold*, and to other People, filling the Country with his braded Ware; and 'tis time to look after ſuch Pedlars, for they vent the worſt of Ware.

Then, Gentlemen, you may obſerve this Fellow is eaſily perſwaded to ſwear any thing, for he gives no manner of account how he came to hear what he ſpeaks of, or from whom, or how Mr. *Braddon* came to him: He had never ſeen him before that time, he ſays; (tho' Mr. *Braddon* had ſuch a value for this worſhipful Pinmaker, whom he never ſaw, that he came from *London* upon the leaſt intimation of this Man, ſo zealous he was for the carrying on this weighty Affair, which I may call this impudent and intolerable Lye.)

Gentlemen, I muſt tell you, if any Proof in the World be ſufficient to prove Malice, you have ſufficient Proof of it before you now. If it had been a thing of Indiſcretion only without Malice, if there had been nothing of Caution given to him about it as a thing that concerned

cerned not him, there might have been ſomething ſaid to alleviate it; but for him to come as if he had Authority from the Counteſs of *Eſſex*, and Sir *Henry Capell* who denies it, ſhews the Malice of his Deſign.

Gentlemen, 'Tis a Concern of an High Nature, and if you do believe theſe Perſons that are Defendants, or either of them to be guilty; ſuch as you believe to be guilty, you muſt find guilty, and of ſo much as you believe them guilty. And if in caſe they ſhall by you be found guilty, the Court is to take care to inflict a Puniſhment, if it be poſſible, ſuitable to their Offence.

Then the Court aroſe, and the Jury afterwards gave in a private Verdict, which the next Morning was repeated in Court and recorded. And by that Verdict they found the Defendant Laurence Braddon *guilty of the whole Matter charged upon him in the Information, and the Defendant* Hugh Speke *guilty of all but the Conſpiring to procure falſe Witneſſes, and of that they found him Not Guilty.*

Lunæ 21. *Aprilis*, 1684. *Termino Paſchæ*, 36 *Caroli Secundi Regis.* B. R.

Dominus Rex verſus Braddon *and* Speke.

Mr. *At. Gen.* MY Lord, Here are two Perſons to receive your Judgment.

L. C. J. Who are they?

Mr. *At. Gen. Braddon* and *Speke.* But it being late, I know not whether you will give it now, or appoint ſome other time.

L. C. J. No, no, let them come in, They will ſay we are afraid of giving Judgment elſe.

Then Mr. Braddon *and Mr.* Speke *came into Court.*

Mr. *At. Gen.* My Lord, We pray your Judgment for the King, that you will ſet a good Fine.

Mr. *Williams.* We are retained to move in Arreſt of Judgment.

Mr. *At. Gen.* Judgment is enter'd already, and there is nothing but a Fine in the Caſe.

Mr. *Williams.* My Lord, If it be enter'd, it is enter'd but this Term, and 'tis in the Breaſt of the Court, if they pleaſe to admit us to ſpeak in Arreſt of Judgment.

L. C. J. When were the Rules out?

Mr. *Williams.* My Lord, It was put off by Conſent to this Day.

L. C. J. But when were the Rules out, I ask?

Cl. of Cr. The Rules were out the laſt Day of the laſt Term, and then Judgment was entered.

L. C. J. Well then, Judgment is entered, what ſay you againſt a Fine?

Mr. *Williams.* We were retained to move in Arreſt of Judgment, I am ſure I was, and inſtructed to that purpoſe.

L. C. J. I cannot tell what you were retained to do, but now Judgment is entered, what ſay you as to the Fine?

Mr. *Williams.* We cannot ſay any thing as to that, we are not inſtructed; I am ſure I am not.

Mr. *Wallop.* My Lord, We took it, and I was told ſo, That it was put off by Conſent to this Day.

L. C. J. I know nothing of your Conſent, nor what you conſented to. If you conſent among your ſelves at the Bar, that is nothing to the Court. Here we find Judgment entered, and we muſt proceed upon what is before us.

Mr. *Wallop.* Your Lordſhip will pleaſe to remember, what the Evidence was.

L. C. J. I do remember it very particularly.

Counſel. My Lord, Mr. *Speke* is found Guilty of nothing but writing that Letter.

Mr. *At. Gen.* He is found Guilty of all but the Suborning.

L. C. J. We do very well know there is a difference between them.

Then the laſt Rule was Read.

L. C. J. Well, Judgment is regularly entered, What ſay you to it for the Defendants?

Mr. *Wallop.* My Lord, we conceive we have very good Matter upon the Verdict, to move in Arreſt of Judgment.

L. C. J. Yes, no doubt what you have to ſay is extraordinary material, but you come too late, we cannot hear you. Sir *Samuel Aſtrey*, is Judgment entered according to the Courſe of the Court?

Cl. of Cr. Yes.

L. C. J. Then we muſt proceed to fine them.

Mr. *Braddon.* Pray, my Lord, Let Mr. *Ward* be asked, whether they did not agree we ſhould move to Day?

Mr. *Ward.* That was only an Agreement on *Saturday*, that they might appear to Day, and I would not take them in Execution.

Mr. *Braddon.* This was the Day I was to move in, my Lord; Mr. *Burton* knows very well, he agreed to it.

Mr. *Burton.* I know nothing more of it, my Lord, but that indeed I did conſent on *Saturday*, that whatſoever they could move then, they ſhould move on *Monday*.

Mr. *Ward.* That was only that they ſhould appear to Day, inſtead of *Braddon*'s being taken up by a *Capias pro Fine.*

L. C. J. Well, well; I know nothing of your Agreements, here is Judgment entered regularly, as we find it, you had beſt bring your Action againſt Mr. *Burton*, if he have done you any wrong, but I did not know that Mr. *Burton* was the King's Attorney. But I find here is Judgment againſt you, and 'tis for a very foul Offence, as notorious an Offence as any Perſon, under

under that which is Capital, could be guilty of; baſe Aſperſions of the Government, in order to promote Sedition, and Faction, and for that End, made uſe of all villanous Means to corrupt Infants, and then juſtify that Villany with a brazen Face, to that degree of Impudence, as I never before ſaw, That all the Juſtice of the Nation muſt be affronted by ſuch audacious Fellows, for it ſeems his Confidence has not left him, but here he ſmiles, and ſeems as if he done no harm.

Mr. *Braddon.* My Lord, I know my own Innocency, and therefore have no reaſon to be troubled.

L. C. J. Your Innocence! Your Impudence, you mean. I tell you, had you been in any other Countrey, but this, the Innocence you brag of, would have ſent you to the Gallies.

Mr. *Juſt. Withins.* Then you think, Mr. *Braddon*, you have done very well in what you have done?

L. C. J. Ay, I aſſure you, does he. And the Zeal of his Party has gone ſo far, that at *Winchester*, when I was there in the Circuit, I was told that his Doctrine had obtained ſo much in that Countrey, eſpecially about that Place, whence ſome of his Witneſſes came, I mean, *Andover*, that there was a Woman that was here the other Day, Mrs. *Drake*, being at Conventicle, held forth, That my Lord of *Eſſex* was murdered while the King was in the *Tower*, and that God was the Avenger of Murder, and had found out a proper Perſon for the Proſecution of it, that was Mr. *Braddon*; and this ſnivelling Cant prevailed at the Conventicle. It is no ſuch ſmirking Matter as you make it, Mr. *Braddon*, I aſſure you.

Mr. *Braddon.* My Lord, if I did know my ſelf to be under any Guilt, I would very readily and humbly acknowledge it.

L. C. J. Well, I ſee a great many of the Party about you, I can ſpy them out, though they think they are not ſeen; but they ſhall know we will not ſuffer ſuch Monſters as theſe to go without due Puniſhment.

Mr. *Juſt. Withins.* He ſtands upon it, he is innocent ſtill, notwithſtanding all that was proved, and the Juries Verdict.

L. C. J. Yes, alack a Day, he wipes his Mouth, and has not ſo much as eaten, I'll warrant you.

Mr. *Juſt. Withins.* I expected you would have been ſorry, Mr. *Braddon*, for what you had done, and expreſſed ſome Penitence, but, it ſeems, you are very innocent.

Mr. *Braddon.* I did not directly, nor indirectly, offer any thing to induce the Children to give their Teſtimony, nor was any ſuch thing proved: I know my own Innocency.

Mr. *At. Gen.* The Jury have found it otherwiſe.

L. C. J. And that upon a fair, a full, and a convincing Evidence, and no Man in the World can make any doubt of the Truth of that Verdict; but he that had a ſhare in your Guilt, or in that it had a tendency towards, I mean that horrid Conſpiracy. And I aſſure you, Mr. *Braddon*, you tread upon the very Heels of it; ſmirk at it, and be as merry about it as you will.

Mr. *Braddon.* If I did not know my own Innocency, then I had reaſon to be troubled.

L. C. J. Your own Innocency! If you did not know your own Impudence, you mean; 'tis that only that makes you ſmirk and ſmile at ſuch Things as theſe.

Mr. *Juſt. Withins.* Mr. *Braddon*, when you were adviſed by Sir *Henry Capell* to take a prudent and a good courſe, to go and leave it with a Secretary of State, you would not take that Advice, but you would go your own way, and you would turn Examiner, and Proſecutor your ſelf; when he that was the Earl's Brother, and was ſure more concerned than you, thought it fitter to go that way.

L. C. J. We remember what Sir *Samuel Bernardiſton*, in his Letter, ſpeaks of this Matter, Mr. *Braddon*, he was got off; why, they dare not meddle with Mr. *Braddon*, he is ſuch a dreadful Man, and his Party are ſo conſiderable, that we dare not meddle with them; and the *TORIES* are all caſt down; alack a day! becauſe theſe Fellows can't caſt down the Government, therefore all honeſt Men muſt be caſt down, and not dare to meddle with them; but they ſhall ſee we are not ſo much caſt down, but we are able to reach the higheſt of them. What Condition is this Man in? I ſpeak in Point of Eſtate, for his other Conditions, we know what they are, his Tryal will ſatisfy any Man of that.

Mr. *At. Gen.* He is the eldeſt Son of a Father that has a good Eſtate.

Mr. *Williams.* He is then but Heir Apparent.

Mr. *Braddon.* No, I am a younger Brother.

Mr. *Williams.* It ſeems he is but the Second Son, and a young Gentleman.

Mr. *Braddon.* My Father has an elder Son alive.

L. C. J. I remember particularly 'tis ſaid in one of the Letters, That he was a Man of 7 or 800 *l.* a Year.

Cl. of Cr. That was in Mr. *Speke*'s Letter. He ſays his Father had ſo much.

Mr. *Braddon.* That is in Mr. *Speke*'s Letter; but that is not true.

L. C. J. I don't know truly, that may be as falſe as any thing elſe you went about to have theſe Children Swear, but I'll undertake it, if thou had'ſt told the little Girl that he had 800 *l.* a Year, ſhe would have been as ready to have Sworn it as the other.

Mr. *Juſt. Withins.* 'Tis a wonderful Thing, Mr. *Braddon*, you could bring no body to come and teſtify theſe Things, but thoſe two little Children.

L. C. J. But oh! What a Happineſs it was for this Sort of People, that they had got Mr. *Braddon*, an honeſt Man, and a Man of Courage, ſays Mr. *Speke*, a Man *à propos*; and pray, ſays he to his Friend, give him the beſt Advice you can, for he is a Man very fit for the Purpoſe, and pray ſecure him under a ſham Name, for I'll undertake there are ſuch Deſigns upon pious Mr. *Braddon*, ſuch Contrivances to do him a Miſchief, that if he had not had his Proteſtant Flail about him, ſomebody or other, would have knocked him in the Head, and he is ſuch a wonderful Man, that all the King's Courts of Juſtice, muſt needs conſpire to do Mr. *Braddon* a Miſchief; a pretty ſort of a Man, upon my Word, and he muſt be uſed accordingly; Men that arrogate and aſſume to themſelves a Liberty to do ſuch kind of Things, muſt expect to fare accordingly.

Mr.

Mr. *Juſt. Withins.* Mr. *Speke* is not found Guilty of the Subornation.

Mr. *At. Gen.* He is found Guilty of all but the Subornation, he is found Guilty of Conſpiring to ſpread the Report. The Subornation will require another Sort of Puniſhment.

L. C. J. Ay, but there is a Difference between them. The Crime was very great in Mr. *Speke*, though not ſo great as in Mr. *Braddon*, and I am ſorry that Mr. *Speke* ſhould be concerned in it, and ſhould take ſuch care about ſuch a Buſineſs, with all that Piety and Zeal for Religion he expreſſes in his Letter to Sir *Robert Atkyns* (Mr. Juſtice *Atkyns* that was) that he ſhould recommend him to have a wonderful Care of him, and then thank him for his Kindneſs ſhewed to *Our Party*: So he makes himſelf to be of the Party, and makes this the Buſineſs of the Party, and ſo makes himſelf to be a Sharer in the Buſineſs; for 'tis *We thank you for your Kindneſs to Us, and the Tide is ſtrong againſt Us; and We hope we ſhall be able to bring the Buſineſs of my Lord of* Eſſex *upon the Stage, before they do any of thoſe in the Tower.* So Mr. *Speke* makes himſelf a Party in the Buſineſs. And I am mighty ſorry that when he comes to be asked the Queſtion, How he came to write this Letter, he ſhould tell us, He had been at the Tavern, and did not know what he writ, but does not ſay, he recollected afterwards. It ſeems he uſed to be often at the Tavern, and had been there when he writ this pious Letter, and ſo his Saintſhip broke out in a Fit of Drunkenneſs, for moſt of our Reformers of Religion now a-days want common Morality. And yet they are wonderfully Zealous for Reformation and Religion. All the Villany that has been thought of, nay, more than ever could enter before into the Imagination of Mankind, has been wrought by theſe Men, that pretend to be Reformers of Religion, and amongſt the reſt Mr. *Braddon*; and indeed I look upon *Braddon* to be the Daringeſt Fellow of the Party, he and his Brother *Smith*. If there were any Reluctancy, or any Senſe of any Guilt they had contracted, and would ſhew it by acknowledging their being ſurprized into it, and teſtified Repentance by a ſubmiſſive and dutiful Behaviour, that were ſomething to encline the Court to Commiſeration; but when we ſee, inſtead of that, they are more obdurate and ſteeled in their Oppoſition to the Government, they muſt be reclaimed by Correction, and kept within due Bounds by condign Puniſhment, otherwiſe it will be thought by the ignorant Sort of People, that all Courts of Juſtice are afraid of them.

Mr. *Juſt. Withins.* Nay, Mr. *Braddon*'s Zeal was very extraordinary in the Caſe, going on in this Buſineſs, not only without, but contrary to the Advice of Sir *Henry Capell*, who ſurely was moſt concerned about the Death of his Brother.

Then the Judges between themſelves conſulted about the Sentence, which Mr. Juſtice Withins *pronounced thus.*

Mr. *Juſt. Withins.* Mr. *Braddon*, You ſee what it is you are convicted of, It was for as foul an Offence, as any can be imagined, that is not Capital, wherein the King is very much concerned, for the Inſinuations were ſuch, as that the King was mightily concerned, for in as much as you ſay the Earl of *Eſſex* ſhould be murdered at that time the King was in the Tower, it was an implied Accuſation of the King, and an Inſinuation that the King ſhould deſign to take away an innocent Man's Blood, and ſo downright be guilty of murdering an innocent Perſon, which how great an Offence that is, let any Man that has any Loyalty, or Reverence for the King in him conſider, and you cannot ſay you are innocent, Mr. *Braddon*. Your Proſecution was moſt pertinacious, and you would proceed after the Boy had denied it, and proceed in ſuch a manner, when Sir *Henry Capell* had told you what you ſhould do; and what did you go upon? You had got a little Girl, a Child of 11 or 12 Years old, to tell a Story of I know not what, and no body elſe knew any thing of it, and this muſt be a ground ſufficient for you to go up and down, and ſpread ſuch a Report, when Sir *Henry Capell* gave you Advice to go to a Secretary of State, and let him examine it; indeed you did go to him, but would not reſt ſatisfied with what the King and Council did; no, Mr. *Braddon*, you thought that would not gratify your own Paſſion, and Malice, againſt the King and the Government, but you muſt take Ways of your own. This is to ſcandalize the whole Juſtice of the Nation, and not only make the King a Murderer, but you would have all the Plot hereby quite loſe its Credit; and you would make it, as Sir *Samuel Bernardiſton* would inſinuate, a Sham Plot, to take away innocent Proteſtants Lives. But as to the Plot, there has been freſh Proof of it beyond all Contradiction this Day, a Man here in the Face of the whole Court has owned the whole Thing, he would not take the liberty of defending himſelf, that was offered him, if he would try it, but confeſſed that Conſpiracy, which you had a great Mind to be an Inſtrument of making the World to believe, was nothing but a Sham. I ſhall not make any long Speech to you, The Court for this Offence,

Sets upon you, Mr. Braddon, *the Fine of* 2000 l. *and Order that you find Sureties for your good Behaviour during your Life, and that you be Committed till this be Performed. And for you Mr.* Speke (*we have conſidered that you are not ſo highly Guilty as Mr.* Braddon, *you are Guilty of a great Offence, but not ſo Guilty as he, and therefore*) *we think fit to ſet upon you the Fine of* 1000 l. *and that you find Sureties for your good Behaviour during your Life, and be Committed till you perform it.*

L. C. J. Marſhal, Take them in Cuſtody, and uſe them as they ought to be uſed.

Counſel. My Lord, Mr. *Speke*'s Bail is diſcharged, I ſuppoſe?

L. C. J. Ay, they muſt be, as to this Matter, but nothing elſe but this.

Then they were carried away to the King's Bench.

THE

THE

TRYAL

OF

Sir *SAMUEL BERNARDISTON*, Bar.

The 14*th* of *February*, 1683.

THERE being in *Hillary* Term laſt, an Information in the Court of King's-Bench preferred by His Majeſty's Attorney-General againſt Sir *Samuel Bernardiſton*, for a very great Miſdemeanor; upon Oath made, that he was ſo extreamly indiſpoſed, that he could not appear in Perſon without danger of his Life: The Court were pleaſed to reſpite his Recognizance, (which he by order of the Lords of His Majeſty's moſt Honourable Privy Council, entered into the laſt Vacation, to appear in Court the Firſt Day of this Term) and to allow him the liberty of Pleading to the Information by Attorney, which he did. And *Thurſday* the 14*th* of *February*, 1683. being the Seſſion of *Niſi Prius*, after the Term holden for the City of *London*, and County of the ſame, was appointed for the Tryal of this Cauſe, and accordingly then the ſame came on, and was tried before the Right Honourable Sir *George Jefferies*, Knight and Baronet, Lord Chief Juſtice of His Majeſty's Court of King's-Bench, in this manner.

Clerk. Call away *Cryer*.

Cryer. You good Men of *Niſi Prius*, ſummoned to appear here this Day between our Sovereign Lord the King, and Sir *Samuel Bernardiſton*, Baronet, anſwer to your Names, and ſave your Iſſues.

Cl. Thomas Vernon and his Fellows. *Vous avez plein Inqueſt*. Call the Defendant Sir *Samuel Bernardiſton*.

Cryer. Sir *Samuel Bernardiſton*, come forth, or this Inqueſt ſhall be taken by your Default.

Mr. *Williams*. He appears.

Cl. Gardez voſtres Challenges. Swear *Thomas Vernon*.

Cr. You ſhall well and truly try this Iſſue, between our Sovereign Lord the King, and Sir *Samuel Bernardiſton* according to your Evidence. So help you GOD.

Cl. Percival Gilburn. Who was Sworn, and ſo the reſt.

The NAMES of the Twelve were theſe.

Thomas Vernon		*Samuel Newton*
Percival Gilburn		*George Torriano*
Edward Bovery		*Kenelm Smith*
William Withers, Sen.	Jur'	*Thomas Goddard*
James Wood		*Thomas Amy*, and
Robert Maſters		*Richard Blackburn*.

Then they were counted, and Proclamation made for Information, in uſual manner.

Mr. *Poultney*. May it pleaſe your Lordſhip, and you, Gentlemen of the Jury; this Cauſe is between the King and Sir *Samuel Bernardiſton*, and it is upon an Information exhibited by Mr. *Attorney General*, wherein he ſets forth, That there having been lately a horrid Plot diſcovered (as appears by the Convictions of thoſe that have ſuffered juſtly for it, and by the Evidence that has been given of it, has been made ſo apparent, that I do not queſtion, but that no Man, but who either has a Hand in it, or elſe bears a good Will to it, doth at all ſcruple the belief of it) Sir *Samuel Bernardiſton* the Defendant intending to ſcandalize and vilifie the Evidence, wrote a Letter, wherein are contained theſe Sentences.

The return of the Duke of Monmouth *to* White-Hall, *and his being received into extraordinary Favour of His Majeſty, hath made a ſtrange alteration of Affairs at Court; for thoſe that before ſpake of him very indecently, now court, cringe and creep to him. His Grace complained to the King of the ſcandalous Miſrepreſentation that was made of him in the* Monday's *Gazette, upon which the Gazetteer was called to Account for it, who alledged for himſelf, that a Perſon of great Quality ſent him in Writing the Words therein recited, commanding him to put them in the Gazette. Yeſterday being the laſt Day of the Term, all the Priſoners that were in the* Tower *upon the late Sham Proteſtant Plot, were diſcharged upon Bail. Mr.* Braddon *who proſecuted the Murther of the Earl of* Eſſex, *the Information put in againſt him in the King's Bench by Mr.* Attorney, *for a pretended Subornation*, &c. *was not proſecuted, and his Bail was diſcharged.*

And the passing Sentence upon the Author of Julian *the Apostate, and the Printer of the late Lord* Russel's *Speech was passed over with silence. Great Applications are made to His Majesty for the pardoning Mr.* Sidney *in the Tower, which is believed will be attained, and that he will be banished. The Lord* Howard *appears despicable in the Eyes of all Men; he is under Guard at* Whitehall, *and 'tis believed will be sent to the Tower, for that the Duke of* Monmouth *will accuse him concerning the Testimony he hath given, and the Papists and High Tories are quite down in the mouth, their Pride is abated, themselves and their Plot confounded, but their Malice is not asswaged. 'Tis generally said the Earl of* Essex *was murthered. The brave Lord* Russel *is afresh lamented. The Plot is lost here, except you in the Country can find it out amongst the Addressers and Abhorrers. This sudden Turn is an Amazement to all Men, and must produce some strange Events, which a little time will shew.*

And then he goes on further, and says in another Letter these Words.

I am to answer yours of the 27th and 29th past, and truly I cannot but with great Sorrow lament the Loss of our good Friend honest Mr. John Wright, *but with patience we must submit to the Almighty, who can as well raise up Instruments to do his Work, as change Hearts, of which we have so great an Instance in the Business of the Duke of* Monmouth, *that no Age or History can parallel. I am now throughly satisfied, that what was printed in the* Monday's Gazette *is utterly false, and you will see it publickly declared so shortly. The King is never pleased but when he is with him, hath commanded all the Privy Council to wait upon him, and happy is he that hath most of his Favour. His Pardon was sealed and delivered to him last* Wednesday. *'Tis said, he will be restored to be Master of the Horse, and be called into the Council Table, and to all his other Places, and 'tis reported he will be made Captain General of all the Forces, and Lord High Admiral, &c. he treats all his old Friends that daily visit him with great Civilities, they are all satisfied with his Integrity, and if God spares his Life, I doubt not but he will be an Instrument of much Good to the King and Kingdom. He said publickly, That he knew my Lord* Russel *was as Loyal a Subject as any in* England, *and that His Majesty believed the same now. I intend shortly to wait on him my self. It would make you laugh to see how strangely our High Tories and Clergy are mortified, their Countenances speak it. Were my* Shesorary *to be moved for now, it would be readily granted. Sir* George *is grown very humble: 'Tis said Mr.* Sidney *is reprieved for* 40 *Days, which bodes well.*

And then, Gentlemen, he goes on further, and in a third Letter says,

The late Change here in Publick Affairs is so great and strange, that we are like Men, in a Dream, can hardly believe what we see, and fear we are not fit for so great a Mercy as the present Juncture seems to promise. The Sham Protestant-Plot is quite lost and confounded. The Earl of Mackensfield *is bringing Actions of* Scandalis Magnatum *against all the Grand Jury-men that indicted him at last Assizes.*

L. C. J. That is the only true thing in the whole. Sir George Jefferies.

[*Mr.* Poultney *reads.*] —— *And the several Gentlemen that were indicted in* Cheshire *and* Northampronshire *will bring their several Actions at Law against them.*

And, Gentlemen, then in a fourth Letter are contained these Expressions.

Contrary to all Men's Expectations, a Warrant is signed at last for beheading Col. Sidney *at* Tower-Hill *next* Friday. *Great Endeavours have been used to obtain his Pardon, but the contrary Party have carried it, which much dasheth our Hopes, but God still governs.*

Gentlemen, All this the Information says, he has done against the Peace of the King, his Crown and Dignity. To this he has pleaded Not Guilty. We will call our Witnesses, and if we prove it, we question not but you will find him Guilty.

Mr. Recorder. May it please your Lordship, and you Gentlemen of the Jury; I am of Counsel for the King in this Cause. Upon the opening of these Letters to you, you cannot but wonder much more than he does that wrote them. His matter of Wonder was one way, and I suppose your matter of Wonder is another way, that a Man, such an one as he is, should have that confidence to write such Letters as these are. Gentlemen, I do not doubt but you observe in the Series of these Letters how he hath travelled through all the Transactions of this horrid Conspiracy, that was of late contrived against the Life of the King, and the Life of His Royal Highness, and for the Destruction of the Government; and how he does endeavour to turn it all into ridicule, and to magnify the Men that have come to Publick Justice for being concerned in that horrid Conspiracy, as being very brave Men. The brave Lord *Russel* he is lamented as a brave Man lost; The Earl of *Essex* he forsooth was murthered, and Mr. *Braddon*, who prosecuted that Murther, he is a brave Man, whom I suppose some of you have heard of, and what is become of him, how he is convicted of one of the most notorious Facts that ever was acted by Man in any Civil Government, which was that *Braddon* should go up and down to get Witnesses to make it appear to the World, as tho' some body had murthered that Earl. Thus you see he goes through the Conspiracy from one thing to another, and calls it a Sham Protestant-Plot, and all to ridicule the Discovery, which by these very Letters you may easily be satisfied of the Reality and Extent of. You see how he magnifies his *Julian*, but he likewise is come to condign Punishment for that most pernicious and scandalous Libel. In the next place he comes to the Duke of *Monmouth*, and tells you what a brave Man they have in him to be their Captain General, and he did not doubt but to see him come to it; and sets forth that he has denied all the Plot, and how he doth persist in that Denial. And this Gentleman has raised his Confidence in these Letters to that degree, that I think any Man, that has lived any time in this Nation, cannot but wonder,

der, that ever there ſhould be ſuch an impudent Action committed in it. Gentlemen, We ſhall call our Witneſſes and prove it poſitively upon him, that theſe Letters he did write, and then I ſuppoſe he will give an account how he came to write them.

Mr. *Herbert.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury; I have but one Word which I deſire to obſerve; for the opening of the Caſe, and a right Underſtanding of the Matter will have a great Influence upon the Proofs. And I ſhall not inſiſt upon any thing that has been opened at large out of the Letters, but one thing I would obſerve to you, and that is out of the laſt Letter. *Great Endeavours have been uſed to obtain his Pardon, but the contrary Party have carried it, which much daſheth our Hopes.* So it ſeems by this that the Faction, the Party, have their Hopes ſtill, and it ſeems likewiſe the Writer of theſe Letters hath a very great ſhare in them. We have, Gentlemen, nothing to do here before you, but to prove that Sir *Samuel Bernardiſton* was the Author, Writer and Publiſher of the Letters, which contain that which is charged in the Information, and that we queſtion not but to prove clearly without contradiction. Call Mr. *Blathwaite.* (*Who was ſworn.*) Pray give in the Letters.

[*Which was done.*

Mr. *Recorder.* Pray, Sir, look upon thoſe Letters, and give the Court and the Jury an account where you had them.

Mr. *Blathwaite.* Gentlemen of the Jury, Theſe three Letters Sir *Samuel Bernardiſton* upon the 10th of *December*, before the King and the Lords of the Council, did own to be of his Hand-writing. I marked them at that inſtant of time, and I am well aſſured they are the Letters he owned to be of his Hand-writing.

Mr. *Williams.* Did he own them to be of his Hand-writing?

Mr. *Blathwaite.* Yes.

L. C. J. Did he own them all three?

Mr. *Blathwaite.* Yes, my Lord, he did.

Mr. *Williams.* Pray, Sir, who are they directed to?

L. C. J. Mr. *Williams*, He is informed againſt for writing, not for ſuperſcribing.

Mr. *Williams.* My Lord, I ask that Queſtion for this reaſon, He is indicted for writing and publiſhing, therefore I would know who they are directed to. Did he ſay they were publiſhed by him, or ſent to any one?

Mr. *Blathwaite.* He did not deny but that he had publiſhed and ſent them.

Mr. *Williams.* Did he confeſs it?

Mr. *Blathwaite.* He did not deny it.

L. C. J. I ſuppoſe they on the other ſide will give an account where they were taken.

Mr. *Herbert.* Yes, my Lord. Swear Mr. *Atterbury.* [*Which was done.*

Mr. *Recorder.* Heark you, Mr. *Atterbury*, Do you know any thing of theſe Letters?

Mr. *Atterbury.* If you pleaſe to let me ſee them, Sir.

Mr. *Recorder.* Shew him them.

Which was done, and he looked upon them, and gave them in again.

Mr. *Herbert.* Did you hear Sir *Samuel Bernardiſton* own them to be his Letters?

Mr. *Atterbury.* My Lord, and you Gentlemen of the Jury, I had a Warrant from Mr. Secretary *Jenkyns*, about two Months, or ten Weeks ago, to apprehend Sir *Samuel Bernardiſton*, and I did, according to Order, by virtue of that Warrant, apprehend him, and carry him before His Majeſty. When he was there, thoſe three Letters I had juſt now in my Hand, were then ſhewn to Sir *Samuel Bernardiſton.* I marked them, and know them to be the ſame; Sir *Samuel Bernardiſton* did own he wrote them Letters all three.

L. C. J. Were the Superſcriptions upon them all, as they are now?

Mr. *Atterbury.* Yes, They were all as they are now.

L. C. J. What ſay you, Mr. *Blathwaite?*

Mr. *Blathwaite.* Yes, They were juſt ſo, the ſame Superſcriptions.

Mr. *Atterbury.* His Majeſty asked him, Who ſubſcribed them?——

L. C. J. Superſcribed them, thou meaneſt, they are not ſubſcribed.

Mr. *Atterbury.* Yes, my Lord, ſuperſcribed them; and he looked on them again, and ſaid, They were ſuperſcribed by one of his Servants, and ſo ordered to be carried to the Poſt-houſe.

Mr. *Recorder.* Where is *Nehemiah Oſland?*

Jury-man. My Lord, We would ask the Witneſs, Whether he did own that he ſent them to the Poſt houſe?

L. C. J. He ſays, he order'd his Man to ſuperſcribe them, and ſo to carry them to the Poſt-houſe.

Mr. *Williams.* Look you, Mr. *Atterbury*, Did he ſay he directed any of his Servants to carry them to the Poſt-houſe, upon your Oath?

Mr. *Atterbury.* I am upon my Oath, Sir; I ſay, that he did ſay, that they were ſuperſcribed by ſome of his Servants, he could not ſay which of his Servants it was, and then they were ſent to the Poſt-houſe.

Mr. *Williams.* Pray, Sir, mind, and anſwer my Queſtion, Did he ſay, he directed any of his Servants to carry them to the Poſt-houſe?

L. C. J. Did he take any notice to you, or did you underſtand by him, that they were ſent to the Poſt-houſe by his Conſent?

Mr. *Atterbury.* Yes, my Lord, I did underſtand him ſo.

L. C. J. Did he write theſe Letters to keep them in his Pocket, do you think, Mr. *Williams?*

Mr. *Williams.* I do not know what he deſign'd them for, my Lord; nor do I yet know till they are read, what is in them: But I ask him this Queſtion, Did he ſay he ſent them to the Poſt-houſe?

Mr. *Atterbury.* With your Leave, I remember one thing more, my Lord; while he was in my Houſe, (for there he was in Cuſtody two Days or more) talking about theſe Letters, ſays he, I wonder how they were taken, they were ſent to Sir *Skippon*, or ſome ſuch Name he named.

Mr. *Recorder.* Swear *Nehemiah Oſland.*

[*Which was done.*

Mr. *Herbert.* Look upon thoſe Letters, Sir. Shew him them. [*Which was done.*

L. C. J. Is this Man's Name *Oſland?*

Mr. *Recorder*. Yes, *Nehemiah Oſland*, Do you know any thing of thoſe Superſcriptions?

Oſland. Two of thoſe Superſcriptions I writ by his Order as his Servant.

Mr. *Recorder*. Which are thoſe two? Then he gave them into the Court.

L. C. J. Can you tell whoſe Hand is the other Part?

Oſland. I did not ſee it writ, but the Hand is ſomewhat like Sir *Samuel Bernardiſton*'s Hand.

L. C. J. You believe it to be his Hand?

Oſland. Yes, I do.

Mr. *Williams*. Did you ever ſee the Inſide of thoſe Letters that you ſay you ſuperſcribed?

Oſland. No, I never ſaw the Inſide.

L. C. J. What Directions had you about them, after you had ſuperſcribed them?

Oſland. I had no Direction, but to leave them where I uſed to leave his Letters, and that was in a Window that Sir *Samuel Bernardiſton* always left his Letters in, and from thence one of the Boys uſed to carry them to the Poſt-Houſe.

Mr. *Williams*. Sir, Did Sir *Samuel* order you to ſuperſcribe thoſe three Letters, and ſend them to the Poſt-Houſe?

L. C. J. He ſaid he ſuperſcribed them by his Command, and left them in the Place that Letters uſed to be laid that were to go the Poſt-houſe.

Mr. *Recorder*. Pray, Sir, look upon thoſe Letters again.

L. C. J. Whoſe Hand is the Superſcription? Is that Sir *Samuel*'s too?

Oſland. I believe it Sir *Samuel*'s Hand.

L. C. J. Shew that other Letter to Mr. *Blaithwaite*: What ſay you to it, Sir?

Mr. *Blaithwaite*. Gentlemen of the Jury: This is another Letter that was ſeized and brought before the King and the Lords of the Council, and this Letter was afterwards owned by *Oſland*, to be writ by him by Sir *Bernardiſton*'s order.

L. C. J. Did Sir *Samuel* own this Letter to be his Hand writing too?

Mr. *Blaithwaite*. No, he did not, but *Oſland* did own it.

Mr. *Recorder*. My Lord, We prove it otherwiſe to be Sir *Samuel*'s Letter, becauſe it is not his Hand, but his Man's. You *Oſland*, Do you know who writ that Letter?

Oſland. I writ it.

Mr. *Recorder*. By whoſe Order?

Oſland. I tranſcribed it out of a Copy given me by Sir *Samuel Bernardiſton*, as I was his Servant.

L. C. J. And did you write the Superſcription too?

Oſland. Yes, I writ the Superſcription.

L. C. J. In order to what? To go down into the Countrey too?

Oſland. In order to go where it was directed, my Lord.

L. C. J. Where was that?

Oſland. Into *Suffolk*, to Sir *Philip Skippon*.

L. C. J. This Letter was written at *London*, was it not?

Oſland. In *Biſhopſgate-ſtreet*, at Sir *Samuel*'s Houſe.

Mr. *Williams*. What is your Name, Sir?

Oſland. My Name is *Oſland*.

Mr. *Williams*. Your Chriſtian Name?

Oſland. *Nehemiah*.

Mr. *Williams*: Then, *Nehemiah Oſland*, I ask you this Queſtion upon your Oath, when theſe Letters were ſuperſcribed by you, did you lay them in that Window you ſpeak of, or did you give them back again to Sir *Samuel*?

Oſland. Sir, I am not ſo certain as to ſwear to theſe particular Letters; but his uſual Cuſtom was, He would write a Letter, and then give it me to Copy: His Cloſet-door was near another Window, and there he would leave it. If it were but one Letter, he would uſe to ſay, direct ſuch a Letter to ſuch a Perſon, or ſuch a Place, and when it was ſo directed, I was uſed to put my Letters there, and thence one of the Boys came and fetched them to carry them to the Poſt-houſe. But ſometimes he would ſend me down directly with it away to the Poſt-houſe, if he had not any other Buſineſs for me to do.

Mr. *Williams*. But, Sir, mind the Queſtion. I ask you again: Did you deliver theſe Letters, or any of them back again to Sir *Samuel Bernardiſton*, or no?

Oſland. I cannot tell for theſe particular Letters. I tell you what the uſual Cuſtom was in the Houſe.

Mr. *Williams*. Pray when you had ſuperſcribed them, or Sir *Samuel*, what became of them Letters?

Oſland. They went to the Poſt-houſe, as I believe.

Mr. *Williams*. How long have you ſerved Sir *Samuel Bernardiſton*?

Oſland. Five Months.

Mr. *Williams*. Did you ſerve any body before?

Oſland. No.

Mr. *Recorder*. Why, do you think he doth not ſerve him well now, Mr. *Williams*?

Mr. *Williams*. I know very well what I think of it, Mr. *Recorder*.

L. C. J. Well, come read them.

Clerk reads —— *This is directed to Sir* Philip Skippon, *Knight, at* Ipſwich, *and dated* Novemb. 29. 83.

(Reads) *Sir, The Return of* ——

Mr. *Williams*. That is not Sir *Samuel*'s Hand, I think.

L. C. J. No, but writ by his Order.

Oſland. I tranſcribed it by his ſpecial Order: For he came to me and gave me a Letter, ſays he, Go and make a Copy of this Letter.

Mr. *Recorder*. And you did tranſcribe it exactly as it was in the Paper he gave you?

Oſland. I examined it after I had writ it my ſelf, and read it over again.

L. C. J. What did you write it out of?

Oſland. A Copy he gave me.

L. C. J. Was that Copy his Hand-writing?

Oſland. I did not ſee him write it, but I believe it to be his writing.

L. C. J. Come read it.

Clerk reads——

SIR,

THE *return of the Duke of* Monmouth *to* White-Hall, *and his being received into extraordinary Favour of His Majeſty, hath made a ſtrange alteration of Affairs at Court: For thoſe that before ſpake*

ſpake of him very indecently, now court, cringe, and creep to him. His Grace complained to the King of the ſcandalous Miſrepreſentation that was made of him in the Monday's Gazette, *upon which the* Gazetteer *was called to Account for it, who alledged for himſelf, That a Perſon of great Quality ſent him in writing the Words therein recited, commanding him to put them in the* Gazette.

Yeſterday being the laſt Day of the Term, all the Priſoners that were in the Tower *upon the late ſham* Proteſtant Plot, *were diſcharged upon Bail. Mr.* Braddon, *who proſecuted the Murder of the Earl of* Eſſex, *the Information put in againſt him in the* King's Bench *by Mr.* Attorney (*for a pretended Subornation*) &c. *was not proſecuted, and his Bail was diſcharged. And the paſſing Sentence upon the Author of* Julian the Apoſtate, *and the Printer of the late Lord* Ruſſel's *Speech, was paſſed over in Silence. Great Applications are made to His Majeſty for the pardoning Mr.* Sidney *in the* Tower, *which is believed will be attained, and that he will be baniſhed.*

The Lord Howard *appears deſpicable in the Eyes of all Men, he is under a Guard at* White-Hall, *and believed he will be ſent to the* Tower, *for that the Duke of* Monmouth *will accuſe him concerning the Teſtimony he hath given,* &c.

The Papiſts *and high* Tories *are quite down in the Mouth, their Pride is abated, themſelves and their Plot confounded, but their Malice is not aſſwaged. 'Tis generally ſaid, the Earl of* Eſſex *was murdered, the brave Lord* Ruſſel *is afreſh lamented. The Plot is loſt here, except you in the Country can find it out amongſt the Addreſſors and Abhorrers.*

This ſudden Turn is an Amazement to all Men, and muſt produce ſome ſtrange Events, which a little Time will ſhew.

Mr. *Recorder.* Now, go on to the next. The Second Letter.

Clerk Reads—— *This is directed, To Sir* Philip Skippon, *Knight, at* Ipſwich, Suffolk.

L. C. J. That is one of his own writing.

Mr. *Recorder.* Yes, my Lord.

Clerk. It is dated *London* the firſt of *December*, 1683.

Dear Sir,

I AM to anſwer yours of the 27th *and* 29th *paſt, and truly I cannot but with great Sorrow lament the Loſs of our good Friend, honeſt Mr.* John Wright, *but with Patience we muſt ſubmit to the Almighty, who can as well raiſe up Inſtruments to do his Work, as change Hearts, of which we have ſo great an Inſtance in the Buſineſs of the Duke of* Monmouth, *that no Age or Hiſtory can parallel. I am now throughly ſatisfied, that what was printed in the* Monday's Gazette *is utterly falſe, and you will ſee it publickly ſo declared ſhortly. The King is never pleaſed but when he is with him, hath commanded all the Privy Council to wait upon him, and happy is he that hath moſt of his Favour. His Pardon was ſealed and delivered to him laſt* Wedneſday. *'Tis ſaid, he will be reſtored to be Maſter of the Horſe, and be called into the Council Table, and to all his other Places. And 'tis reported, he will be made Captain General of all the Forces, and Lord High Admiral,* &c. *He treats all his old Friends that daily viſit him, with great Civilities; they are all ſatisfied with his Integrity, and if God ſpares his Life, doubt not but he will be an Inſtrument of much good to the King and Kingdom. He ſaid publickly, that he knew my Lord* Ruſſel *was as Loyal a Subject as any in* England, *and that His Majeſty believed the ſame now. I intend ſhortly to wait on him my ſelf. It would make you laugh to ſee how ſtrangely our high* Tories *and Clergy are mortified, their Countenance ſpeaks it. Were my Sheſorary to be moved, for now it would be readily granted. Sir* George *is grown very humble. 'Tis ſaid Mr.* Sidney *is reprieved for Forty Days, which bodes well.*

Mr. Kedder *ſat with me ſometime this Evening.*

L. C. J. There is no more in the Record.

Mr. *Recorder.* No my Lord. Then go on to the Third.

Clerk. This is directed, For Mr. Edward Gael, *Linnen-Draper at* Ipſwich.

Mr. *Williams.* It is likely he ſhould write theſe Letters to a Draper?

L. C. J. It is, it ſeems, the ordinary riff-raff he writes. He thinks it not below him to keep a Correſpondence with all the Scoundrels of his Party in the Country.

Mr. *Recorder.* Ay, all Sorts of Trades he is acquainted with.

Clerk. It is dated the firſt of *December*, 1683.

Reads——Mr. Gael,

This Evening Mr. Kedder *came and ſat with me*——

L. C. J. Will you have it all read?

Mr. *Williams.* No, my Lord, we do not deſire it.

L. C. J. Then read what is in the Record.

Mr. *Recorder.* Look where that Paſſage begins, *The late Change*——

Clerk. Where is it, Sir? It is not marked.

L. C. J. If you cannot find it out, then read the whole.

Clerk Reads——

Mr. *Gael,*

THIS Evening Mr. Kedder *came and ſat with me, when acquainted him what you and others writ me in reference to himſelf, as alſo of the Death of Mr.* Wright, *which he was ſorry for. He proteſted, if could perſwade his Wife, he would accept of* Ipſwich *choice, notwithſtanding all the Diſcouragement he had met with. One more he acquainted me with, that had ſeen a Letter from Mr.* Cutliffe *to Dr.* Clegat, *extreamly diſcouraging him from coming to* Ipſwich, *where if he did come, ſaid, would find himſelf miſtaken, for that would never enjoy quietneſs or peace, notwithſtanding his Balſamick Temper,* &c. *as he called it. Theſe Things frights Mr.* Kedder, *who I am now perſwading ſo ſoon as is up again, to go down for a Month or two, and then if doth not like the Place and People, may return hither again. This I reſolve to preſs hard on* Monday, *when have promiſed to Dine with me, as alſo Mr.* Hodges. *Be confident, I ſhall think nothing too much to effect this Buſineſs, though one or other ſtill pulls down as faſt as I build up*—— *Here is now a Door of Incouragement opened for ſober Men to come into publick Employment. You will undo the Town of* Ipſwich *if you bring not ſober Men into play: For God's ſake conſider of it. Perſwade Mr.* Snelling, *or ſome ſober Men, to come in their two Ports-mens Places void for other Matters, refer*

refer you to Sir P. *the late Change here in Publick Affairs, is ſo great and ſtrange.*

L. C. J. There begins the Paſſage in the Record.

Clerk reads —— *The late Change here in Publick Affairs is ſo great and ſtrange, that we are like Men in a Dream, can hardly believe what we ſee, and fear we are not fit for ſo great a Mercy as the preſent Juncture ſeems to promiſe. The Earl of* Mackenſteild *is bringing Actions of* Scandalis Magnatum *againſt all the Grand Jury men that Indicted him at laſt Aſſizes. And the ſeveral Gentlemen that were Indicted in* Cheſhire *and* Northamptonſhire, *will bring their ſeveral Actions at Law againſt them. Acquaint Mr.* Snilling——

L. C. J. There is all that is in the Record.

Mr. *Recorder.* There are but two Lines more.

Clerk reads—— *Acquaint Mr.* Snilling *we received the two Barrels of Oyſters, and two Couple of Ducks, and deſire him to take Money of* Buckle *for them.*

I reſt, yours.

Mr. *Recorder.* Now go on to the next.

Clerk. This is the Fourth Letter: It is directed to Mr. *William Cavell*, at *Brightwell* near *Ipſwich* in *Suffolk*, and dated *London* the 4*th* of *December*, 1683. Shall I read it all?

L. C. J. No, no: If you can find that Part that is in the Record, *Contrary to moſt Men's expectations*, there it begins.

Clerk Reads——*Contrary to moſt Mens expectations, a Warrant is Signed at laſt for Beheading Colonel* Sidney *at* Tower-hill *next* Friday. *Great Endeavours have been uſed to obtain his Pardon, but the contrary Party have carried it, which much daſheth our Hopes, but God ſtill governs. Acquaint* Buckle——

L. C. J. There is all.

Clerk. Here is but a Line more (reads) *Acquaint* Buckle, *here is no News of* Crafton Hoy, *notwithſtanding the Wind is fair, 'tis his Practice always to loyter by the way.*

I reſt,

Your loving Friend.

Mr. *Williams.* Pray let me ſee that Letter.

Mr. *Recorder.* We have done, my Lord, we leave it here.

L. C. J. Well, What ſay you to it that are for the Defendant?

Mr. *Williams.* May it pleaſe your Lordſhip, and you, Gentlemen of the Jury, I am of Counſel here for the Defendant, Sir *Samuel Bernardiſton*, and the Queſtion now before you is, Whether this Gentleman be knowingly guilty of the writing and publiſhing theſe four Letters that have been read here to you, and which of them he is guilty of writing, and which not? I do not ſee that his Name is put to any of them, nay, the Letters are not ſubſcribed by any body, and that, Gentlemen, you may ſee by looking upon the Letters. For the Evidence that hath been given, I beſeech your Lordſhip to obſerve what it is. As to his publiſhing of them, I ſee no Evidence at all to prove him any way concerned in that: Some of them indeed are his own Hand-writing, and proved to be his Letters, by his own Confeſſion before the King and Council; that Mr. *Blathwaite* and Mr. *Atterbury* the Meſſenger ſwear directly, That Sir *Samuel Bernardiſton* did own the Letters, but for the fourth they ſay he did diſown that to be his Letter, and it is not ſo much as his Hand; but what Proof is it they have brought to apply this to him? You ſee what a Sort of Proof is made: They produce you here a young Man that was (as it happened) his Servant at this time, and lived in his Family with him in the nature of a Secretary, it ſeems; and how fit he was to be entertained in that Quality, you I queſtion not obſerve. He ſays, he did copy this Letter by the Direction of his Maſter. It is well if he did not keep a Copy himſelf by him of ſuch a Letter as this for a particular Uſe, as ſome honeſt Servants have done before now, that have deſigned ſomewhat of Advantage to themſelves: But that is his Evidence about this fourth Letter. That then Gentlemen which we would offer on behalf of the Defendant, is this, Whether there be any Evidence of the publiſhing of theſe Letters by Sir *Samuel Bernardiſton*, either of all, or any, and which of them? All the Proof that I hear, comes from *Atterbury*, and the Clerk of the Council Mr. *Blathwaite*, which is but this: *Atterbury* ſays, That Sir *Samuel* ſhould ſay, they were ſent to the Poſt-houſe; and Mr. *Blathwaite* ſays, he did not deny the publiſhing of them, but he does not ſay, he confeſſed it. As to the ſending to the Poſt-houſe, if it be true, I ſhall leave it to your Lordſhip, how far that, my Lord, can be a publiſhing of a Libel; whether that be a publiſhing within the Information, or no? A Gentleman writes a Letter to a private Friend, and ſends it to the Poſt-houſe; whether that be a publiſhing of a Libel, I leave it to you? For the fourth Letter, this ſame truſty Secretary cannot tell you, whether he delivered it back again to Sir *Samuel*, or no; or whether he put it in the Window; or whether he delivered it in at the Poſt-houſe, only, as he believes, he laid it in the Window as he uſed to do other Letters. But whatever he believes muſt not paſs for Evidence, eſpecially in Matters of this nature, it being a great Crime, as the Information has ſet it forth. If then there is no Proof (as with Submiſſion I hope there is not) of the Publication of theſe Letters, I ſuppoſe, Gentlemen, you will not take it upon your Oaths, that he is Guilty of what he is here accuſed of without Evidence. This Information, Gentlemen, doth mention ſeveral Things which do very much aggrave the Matter, if they were proved. Many Things are laid in it to induce the Information, and which may much enhance the Crime, but of which I ſee no manner of Proof at all. Many Things are mentioned as Facts leading to the main Fact, which is the great Offence; but theſe not being proved upon him, I deſire he may be acquitted of that Part.

L. C. J. What do you mean Mr. *Williams*?

Mr. *Williams.* Of all your Preamble.

L C J.

L. C. J. What Preamble do you mean?

Mr. *Williams.* That he being a Perſon of a turbulent and unquiet Spirit——

L. C. J. Why, Mr. *Williams:* Would you have the Jury find that he is not ſo?

Mr. *Williams.* My Lord, There is no Proof of it; or that he did do it with a Deſign ſeditiouſly to diſturb the Peace, that he did it with a ſeditious Intent.

L. C. J. You would have the Jury find, I warrant, that he did it piouſly, and with a good Intent.

Mr. *Williams.* My Lord, There is a middle way——

L. C. J. No, no, Mr. *Williams.* Let us have none of that Doctrine, we muſt have a care of that, and your middle ways. For certainly the Law ſupplies the Proof, if the thing it ſelf ſpeaks Malice and Sedition. As it is in Murder, we ſay always in the Indictment, He did it by the Inſtigation of the Devil: Can the Jury, if they find the Fact, find he did it not by ſuch Inſtigation? No, that does neceſſarily attend the very nature of ſuch an Action, or Thing. So, in Informations for Offences of this nature, we ſay, He did it falſly, maliciouſly, and ſeditiouſly, which are the formal Words; but, if the nature of the Thing be ſuch as neceſſarily imports Malice, Reproach, and Scandal to the Government, there needs no Proof but of the Fact done, the Law ſupplies the reſt. If the Fact were indifferent in it ſelf, then to make a Crime of it, the accidental Circumſtances muſt be proved, but it needs not where the Thing implies Malice in its own nature. You would have the Jury find he had no ill Deſign in it; he did it with a good Intent, I warrant you.

Mr. *Williams.* All I would ask, my Lord, is but this——

L. C. J. Do you think he did it to ſerve the Crown? If the Jury will take it upon their Oaths that Sir *Samuel Bernardiſton* wrote theſe Letters to ſerve the Crown you ſay ſomething. Pray ask them that Queſtion. Try, if you can make them believe that, Mr. *Williams.*

Mr. *Williams.* There is no Evidence given about his Malice.

L. C. J. Yes, The very thing is Evidence of it ſelf.

Mr. *Williams.* Pray, my Lord, let the Fact lie upon its own weight: There is no Proof given of any of theſe aggravating things.

L. C. J. How ſhall any Man prove another Man's Malice, which is a thing that lies only in a Man's Mind? How ſhould any Man know that I am malicious againſt the Government, but by my Actions?

Mr. *Williams.* I lay it before your Lordſhip and the Jury.

L. C. J. No Proof can be expected, but what the nature of every thing will bear.

Mr. *Williams.* Then I pray this, my Lord, that I may be at liberty next Term, if we be convicted, to urge this, and obſerve in mitigation of the Puniſhment, that there was nothing of theſe things proved.

L. C. J. Urge what you can in its proper time, but offer nothing here but what is fit to be offered.

Mr. *Williams.* Here are mentioned in this Information, (tho' it be by way of Inducement, yet they muſt be proved) things that are Matters of Record, but they have proved none of them.

L. C. J. Have you any of thoſe Records here, the Convictions of my Lord *Ruſſel* and Colonel *Sidney?*

Mr. *Recorder.* Thoſe things are ſo well known, I ſuppoſe they will not conteſt them.

Mr. *Williams.* Sir, I muſt lay hold on all Advantages for my Client. You have made them part of your Caſe, pray prove them.

Mr. *Recorder.* Truly, my Lord, We did not think they would have made that any Queſtion, and we have them not here. They know it well enough to be true.

L. C. J. If you have them not here, go and find them; if they inſiſt upon it, you muſt prove them. I will ſtay till you ſetch them.

Mr. *Williams.* My Lord, We would not hinder your Lordſhip's Buſineſs.——

L. C. J. No, no, It will be no hindrance, I will do ſomething elſe in the mean time. This is a Cauſe of publick Example and Conſequence, and I will give it all the fair Hearing I can.

Mr. *Williams.* My Lord, If you pleaſe, there is, I ſuppoſe, no ſuch haſte of Trying this Cauſe now, to hinder Buſineſs and keep you here longer than needs. This Cauſe may as well be Tryed the beginning of next Term.

L. C. J. No, no, I will make an end of it now, if I ſtay never ſo long for it; indeed the Defendant ſays, *I am down in the Mouth:* 'Tis true, I have got a little Hoarſneſs, but I thank God, my Heart is not down, nor I hope never will be to ſerve the Government.

Mr. *Williams.* If they will, they ſhall find the Letters without the Records.

Mr. *Jones.* No, no, We muſt have the Records, tho' it is true it is but matter of Form, yet we muſt prove our whole Caſe.

L. C. J. Well, I will ſtay till they are fetched. Let the Jury ſtand by, and I will go on and Try another Cauſe, and in the mean time fetch theſe Records. Do not make two Journeys, but bring all that are mentioned in the Record.

Then the Jury were ſet by, and the Court went on in ſome other Cauſes. and about an hour and an half after the Records were brought, and this Cauſe was reſumed, and proceeded thus.

L. C. J. Well come, Have you thoſe Records now?

Mr. *Recorder.* Yes, ſwear Mr. *Tindal.* (*Which was done.*) Is that a true Copy?

Mr. *Tindal.* Yes, It is a true Copy of the Indictment, Conviction and Attainder of my Lord *Ruſſel.* I examined it with Mr. *Tanner.*

L. C. J. Well, put it in. (*And then a Word of it was read by the Clerk.*)

Mr. *Recorder.* And here is the Record it ſelf of the Attainder of Colonel *Sidney.*

[*Which was ſome part of it read alſo.*

L. C. J. What ſay you now to it, Gentlemen, for the Defendant?

Mr. *Thompſon.* My Lord, I have nothing more to ſay than has been ſaid.

L. C. J. All this was well enough known.

Mr. *Jones.*

Mr. *Jones.* Ay, but they would give the Court all the trouble they could by making them ſend for that which they could not deny.

L. C. J. Gentlemen of the Jury, Here is an Information exhibited againſt Sir *Samuel Bernardiſton*, and the Information ſets forth this Matter. It doth take notice of a horrid Conſpiracy, a damnable Conſpiracy, lately hatched and ſet on foot for the Deſtruction of the King, and for the Subverſion of the Government, That there were divers Perſons who were Indicted, and ſtood Convicted, and were afterwards Executed for this horrid Conſpiracy. Among the reſt, there is notice taken of my Lord *Ruſſel* for one, and Colonel *Sidney* (he went by that Name, *Algernone Sidney* I mean) for another, to be two of thoſe Conſpirators that were engaged in that damnable Conſpiracy for the Deſtruction of the King, and Subverſion of the Government.

Now, Gentlemen, That theſe Perſons according to the Inducement of this Information, were ſo Indicted, ſo Attainted and Executed (as far forth as is recited in the Information) is proved to you by the two Records, which the Counſel on the other ſide inſiſted to have ſhewn, and which have been now produced. The one is ſworn to be a true Copy of the Conviction and Attainder of my Lord *Ruſſel*, and the other which they produced, was the Record it ſelf of the Conviction and Attainder of *Sidney*. So that, as to that part it is plain, they were Convicted and Attainted, both the one and the other, as Actors in that Helliſh Plot.

The next thing, Gentlemen, and which was ſo much inſiſted upon by the Defendant's Counſel, is this: The Information takes notice that the Defendant Sir *Samuel Bernardiſton*, being a Man of a factious, ſeditious, diſaffected Temper towards the Government, a Man of ill Principles, in order to diſturb, diſquiet, and diſcompoſe the Government, he did cauſe ſeveral Letters, Four in Number, to be Writ and Publiſhed, which Letters have been read unto you.

It hath been objected, That in as much as the Words, Falſly, Seditiouſly, Maliciouſly, Factiouſly, and the like Words are in the Information, they would have you believe, That there being no Evidence of any ſuch thing as Faction, Malice and Sedition, or that the Man did it Maliciouſly, and Adviſedly and Seditiouſly (which are the Words in the Premiſes, as I may call them, or the Preamble of the Information) therefore they muſt be acquitted of that part. Now as to that, I told them then, and tell you now, Gentlemen, That no Man living can diſcover the malicious evil Deſigns and Intentions of any other Man, ſo as to give Evidence of them, but by their Words and Actions. No Man can prove what I intend, but by my Words and Actions. Therefore if one doth compaſs and imagine the Death of the King, that by our Law is High Treaſon; but whether or no he be guilty of this Treaſon, ſo as to be convicted of it by another, is not proveable, or diſcoverable, but by ſome Words or Actions, whereby the Imagination may be manifeſted. And therefore my Imagining, my Compaſſing, which is private in my own Mind, muſt be ſubmitted to the Judgment that Reaſon and the Law paſſeth upon my Words or Actions, and then the Action it ſelf being proved, that diſcovers with what mind the thing was done; as in the Caſe I put before to the Counſel. Suppoſe any Man without Provocation kill another, the Words of the Indictment are, That he did it Maliciouſly, Feloniouſly, not having the Fear of God before his Eyes, but being moved and ſeduced by the Inſtigation of the Devil. Now all theſe things, whether he had the Fear of God before his Eyes, or not; or whether he were moved by the Inſtigation of the Devil, and of his Malice forethought, or no; theſe cannot be known, till they come to be proved by the Action that is done.

So that in caſe any Perſon doth write Libels, or publiſh any Expreſſions which in themſelves carry Sedition and Faction, and ill Will towards the Government; I cannot tell well how to expreſs it otherwiſe in his Accuſation, than by ſuch Words, that he did it Seditiouſly, Factiouſly, and Maliciouſly. And the Proof of the thing it ſelf proves the evil Mind it was done with. If then, Gentlemen, you believe the Defendant, Sir *Samuel Bernardiſton*, did write and publiſh theſe Letters, that is Proof enough of the Words, Maliciouſly, Seditiouſly, and Factiouſly, laid in the Information.

The Letters are Factious, Seditious, and Malicious Letters, and as baſe as the worſt of Mankind (tho' he had had all the Provocation that ever could be given a Man to libel another) could ever have invented. And let Sir *Samuel Bernardiſton* put it under the Countenance, or under the Umbrage, or under the Enamel of his Zeal for the true Proteſtant Religion, if he will; or if he have a mind to it, to give himſelf any Fine Name, by calling himſelf one of the Sober Party, or the Godly Party, or the Upright Party; let him gild himſelf, and paint himſelf as he pleaſeth, yet the inſide is rotten, and 'tis Factious and Seditious at the bottom to all Intents and Purpoſes whatſoever. And if he be Guilty of it, as you Gentlemen are to Try and Conſider; the greater the Man is, the greater the Crime, and the more Underſtanding he has, the more Malicious he ſeems to be: For your little ordinary ſort of People, that are of common mean Underſtanding, they may be wheedled and drawn in, and ſurprized into ſuch things; but Men of a publick Figure, and of ſome Value in the World, that have been taken to be Men of the greateſt Intereſt and Reputation in a Party, it cannot be thought a ſudden Surprize upon them, no, 'tis a Work of Time and Thought, 'tis a thing fixed in his very Nature, and it ſhews ſo much Venom, as would make one think the whole Maſs of his Blood were corrupted. I had thought the Act of Oblivion might have put Sir *Samuel Bernardiſton* in mind, That it was not fit any more to go down to *Whiteball*, to make Uproars, and Tumults, and Hubbubs.

But here is the Matter that he now is accuſed of, and here is in it Malice againſt the King, Malice againſt the Government, Malice againſt both Church and State, Malice againſt any Man that bears any Share in the Government, indeed Malice againſt all Mankind that are not of the ſame Perſwaſion with thoſe bloody Miſcreants, (I cannot give them a milder Name) I mean the Conſpirators in the late damnable Conſpiracy, ſome of whom have been Attainted and

and Executed for it. Here is the Sanctifying of Traitors, that were juſtly Sentenced to Execution according to the Law of the Land, and at the ſame time there is joyned with it the moſt inveterate Inſinuation againſt the Government that can be, as tho' the King was prevailed with, upon a Sham Proteſtant Plot, to do things in order to deſtroy the Government it ſelf, and every one of the *Sober Party*, as they call themſelves. For theſe Perſons could not have ſuffered, but as Condemned according to the Rules of Law, but theſe Letters carry an Inſinuation as if they were cut off by a Sham Trick and Deſign. For after the good News of the Reprieve of *Sidney* was contradicted, the Warrant for his Execution is taken notice of, and you ſee the manner of Expreſſion that is uſed, *their Party has prevail'd*, as tho' the putting the Laws in Execution, and hanging of Traitors, were ſuch a thing that a Party muſt be ſet up to prevail to do it, and Mankind muſt be divided into Parties, their Party and our Party, and the contrary Party, they have prevailed; and truly now our Party, the *Sober Party* as he calls it, are in a very ſad Condition.

Then here is, as I ſaid, the Sainting of Two horrid Conſpirators, here is the Lord *Ruſſel* Sainted, that bleſſed Martyr, my Lord *Ruſſel*, that good Man, that excellent Proteſtant, he is lamented, and what an extraordinary Man he was, who was fairly Tryed, and juſtly Convicted and Attainted, for having a hand in this horrid Conſpiracy againſt the Life of the King, and his deareſt Brother His Royal Highneſs, and for the Subverſion of the Government. And here is Mr. *Sidney* Sainted, what an extraordinary Man he was? Yes ſurely, he was a very good Man, becauſe you may ſome of you remember, or have read the Hiſtory of thoſe Times, and know what Share Mr. *Sidney* had in that black and horrid Villany, that curſed Treaſon and Murder, the Murder I mean of King *Charles* I. of Bleſſed Memory, a Shame to Religion it ſelf, a perpetual Reproach to the Iſland we live in, to think that a Prince ſhould be brought by pretended Methods of Law and Juſtice to ſuch an End at his own Palace. And 'tis a Shame to think, that ſuch bloody Miſcreants ſhould be Sainted and Lamented, who had any hand in that horrid Murder and Treaſon, and who to their dying Minutes, when they were upon the brink of Eternity, and juſt ſtepping into another World, could confidently bleſs God for their being engaged in that Good Cauſe, (as they call it) which was the Rebellion which brought that Bleſſed Martyr to His Death. It is high time for all Mankind, that have any Chriſtianity or Senſe of Heaven or Hell, to beſtir themſelves, to rid the Nation of ſuch Caterpillars, ſuch Monſters of Villany as theſe are.

Nay, In theſe very Letters is contained the very Language of that curſed Murderer and Traitor *Walcot* himſelf, *That God Almighty in his own time would raiſe up Inſtruments.* I know, Gentlemen, you have heard and read what that bloody Traitor ſaid to that effect; and you hear what Expreſſions like it are in theſe Letters, *I am ſorry for the Death of our Friend, honeſt Mr.* John Wright, *but God can eaſily raiſe up Inſtruments to do his own Work*; the very Language of *Walcot*. And I would have you take notice of it, Mr. *Blackerby*, for I would have you take warning by theſe things.

[*Speaking to a Gentleman that was taking Notes.*

Mr. *Blackerby*. My Lord, I have neither ſaid nor done any thing that ſhould give you occaſion to ſpeak thus to me.

L. C. J. Theſe Letters tell you, *God will be ſure to raiſe up Inſtruments*, but what Inſtruments do they mean? Inſtruments of Rebellion, and Faction, and Sedition, which they moſt falſly call, *his own Work*. For it is that monſtrous Sin Rebellion that they mean by it, Inſtruments of Treaſon, under pretence of fighting for God Almighty they would fain be fighting againſt the Government. It was the Language of the former Times, wherewith they deſtroyed the beſt of Kings, and ſubverted the beſt of Governments for a time, and were very near having totally deſtroyed Three Kingdoms, under pretence of doing God good Service. And when once a People purſue ſuch Principles, and, under the Pretence of Religion, endeavour to deſtroy Monarchy and Government it ſelf, it is high time for all honeſt Men to look about them.

Nay, and you may obſerve, Gentlemen, another thing in theſe Letters, it is not only the Deſtruction of the Civil Government, the King and thoſe that are in Authority near Him that are aimed at; but all Perſons that come with humble Repreſentations of their Loyalty to Him, all that Addreſs themſelves to the King to ſhew their Duty, and their Diſlike of that damnable Deſign and Conſpiracy againſt Him. *For now* (ſays Sir *Samuel Bernardiſton*) *all the Sham Plot is quite blown off, and we cannot find any here, 'tis loſt except you can find it among the Addreſſers and Abhorrers in the Country, or among a parcel of Clergymen.* —— So that all Mankind, that ever thought themſelves obliged to congratulate that bleſſed and happy Deliverance, either to own our Thankfulneſs to God for it, to whom we owe more than we are able to pay for his great Mercy to us therein, or to expreſs our Joy to the King, in humble Addreſſes, Congratulating His Deliverance from the horrid Conſpiracy lately deſigned againſt Him, His Brother and the Government; theſe Gentlemen, becauſe they are Loyal Subjects, and deſire to ſhew themſelves ſo, muſt be branded with the Names of *Abhorrers*, *Tories*, *Addreſſers*, *Sham-Plotters*, and all the Ignominy they can lay upon them. This ſhews it was not only aimed at the Civil Magiſtracy, but at all that dare be honeſt and oppoſe Faction and Rebellion.

As for any thing that he has ſaid of me, Sir *Samuel Bernardiſton* ſhall write and ſpeak of me as long as he pleaſes. But tho' he ſays, *I am down in the Mouth*; it is true, I have a little loſt my Tongue by my Cold, yet I hope I ſhall never loſe my Heart nor Spirit to ſerve the Government, nor forbear to uſe my utmoſt Diligence to ſee that ſuch Offenders as theſe Perſons, that entertain Principles ſo deſtructive to the Government, be brought to condign Puniſhment. And be they who they will, were they my own Brothers, I ſhould be of the ſame mind, and in that mind I hope in God I ſhall live and dye.

Gentlemen, the Queſtion before you is, whether the Defendant be guilty of writing theſe

Malicious, Seditious Letters; for that they are Malicious and Factious, no honeſt Man can doubt in the leaſt, and I do not find that the Counſel for the Defendant do offer to ſay any thing in defence of the Letters, or can ſay, but that they are as venomous, malicious, ſeditious, factious, tumultuous Letters, as can be written, and I muſt tell you, tread very near upon the Borders of High Treaſon it ſelf. I am ſure I may venture to call it *Cozen German* to *High Treaſon.*

Now that he did write and publiſh them, you have this Proof before you: Mr. *Blathwaite* tells you, That Sir *Samuel* did own three of them, acknowledge them to be his own Writing, before His Sacred Majeſty in Council. *Atterbury* the Meſſenger ſays, he was by too when he did before the King acknowledge the Writing of thoſe Three Letters. As to the Superſcription to one of thoſe Three Letters, you have the Teſtimony of *Oſland*, the young Man that lived with Sir *Samuel Bernardiſton*, he Swears he writ it by his Direction, being his Servant. And as to the Fourth Letter, this young Man does directly ſwear, that the Original he copied it by (for it is his Writing) he had from Sir *Samuel Bernardiſton*, and 'twas of Sir *Samuel*'s own Writing (which he knows well, being acquainted with his Hand) and that Sir *Samuel* expreſly directed him to Copy it out, which he did by his Command, and this is the ſame Letter; and ſo though 'tis not under his Hand, yet it is under his Man's, and written by his Direction. And he ſays, he does believe the other Three to be his Hand-writing. So as to the Dictating and Writing of theſe Letters, you have as full and as plain a Proof as can be made.

And as to his Publiſhing of them, which is another Part of the Information, and of which Mr. *Williams* ſaid there was no Proof, I would ſay but this to you. Is it not very prepoſterous, abſurd and ſenſeleſs, to think that ever it ſhould enter into any Man's Imagination, That Sir *Samuel Bernardiſton* would take ſuch a wonderful deal of Pains and Care to write theſe Letters to Sir *Philip Skippon*, and to the other two Men, to tell them of his Endeavours to take off Mr. *Kedder*'s Scruples, and perſwade him to go down to *Ipſwich*, and to deſire them to *take care* of the *Sober Party*, and endeavour to get *Sober Men* into play, and *all will do well*, and that the Duke of *Monmouth* had *denied* all the Plot, and ſo given the Lie to the King and the Courts of Juſtice, and now there was a Door opened for *Sober Men* to come in, and God would *raiſe up Inſtruments*, and the *Sober Party* will up again? Do you think, I ſay, he would write all this Fuſtian Stuff (for I can call it no better than Stuff, though it be very malicious Stuff) and carry to his Man to Copy out, and Superſcribe them and Seal them, only to put them in his Pocket? If you can believe this, upon my Word you have a Faith able to remove great Mountains; but I aſſure you my Faith cannot get to that Strength.

But for further Proof of the publiſhing, you hear what the young Man that was the Defendant's Servant ſays. He tells you, the uſual way of dealing with Sir *Samuel*'s Letters was this, There was a Window near Sir *Samuel*'s Cloſet, and when the Letters were Sealed up, they were uſed to be put there, in order that the Boy, according to the uſual courſe, might carry them to the Poſt-Houſe. And he doth believe theſe Letters (though he cannot particularly and poſitively ſpeak to them) were ſo uſed.

Beſides all this, you have it by *Atterbury* poſitively Sworn, that about the ſame time that Sir *Samuel Bernardiſton* did acknowledge before the King, that he writ thoſe Letters, being in his Cuſtody, he did ſay they were ſent to the Poſt-houſe, and he wondered how they came by 'em. That proves it was done by his Privity. And beyond all there is this Circumſtance, that the Thing ſpeaks it ſelf, they are directed to Men at *Ipſwich*, where Sir *Samuel Bernardiſton* is known to have a Correſpondence, they take notice of the receipt of Letters from thence, and of the Death of Mr. *Wright*, mentioned in thoſe Letters, which ſhews them to be Anſwers to Letters received, and muſt not theſe think you be ſent, but kept ſtill in his Pocket? There is notice alſo taken in them, of their Country Affairs: Though they ſeemed to have met with ſome Diſappointment in ſuch a Buſineſs about Mr. *Kedder*, yet they were reſolved *to go on*, and deſires them to communicate this Buſineſs of Mr. *Kedder* and Dr. *Clegitt*, to *ſuch* and *ſuch* of our *Friends*, and deſire them to *beſtir* themſelves, and get in *Sober Men*, ſuch as Mr. *Kedder*, among them. For it is mightily for our *Advantage*, that there ſhould be *Sober Men* brought into play at *Ipſwich*, and pray be *ſure* to keep the *Sober Party* up. Theſe Things in their own nature ſpeak, that theſe Letters were intended and written, in order to preſerve a Correſpondence between thoſe of the *ſober Party* in *Ipſwich*, and their Friends here, and therefore you may eaſily conclude what was to be done with them.

So that, *Gentlemen*, this Information ſurely (if ever any was) is fully proved, as it is laid in all the Parts of it.

I would not have given you ſo much Trouble at this Time, in an Affair of this Nature, that has been ſo evidently proved, becauſe your Queſtion that you are to Try, is only, Whether the Defendant be Guilty of this Offence, or not Guilty? (You are not to inflict the Penalty, that is the Province of the Court above;) but only becauſe I ſee it is a Matter of great Expectation and Conſequence. I would not we ſhould be gulled twice in one Age, by the ſelf-ſame Men, and the ſelf-ſame Way, into the ſame Treaſon and Rebellion, and all thoſe other Miſchiefs, that dreadful Chaos and State of Confuſion, Miſery and Deſtruction, that we were brought into in the late Times. And that has made me take ſo much notice now in this Place of the Tendency of Things of this Nature, that we may learn to beware of, and know theſe Men that carry Sheep's cloathing, pretend Zeal and Religion, but their Inſides are Wolves. They are Traitors in their Minds, whatſoever they are in their outward Pretences.

Then the Jury *laid their Heads together in the Place where they ſtood, and being preſently after agreed upon their Verdict, the Foreman gave it in,*

That the Defendant Sir Samuel Bernardiſton *was Guilty of the Offence and Miſdemeanour, Charged on him by the Information.*

Which Verdict was Recorded by the Clerk.

PRO-

PROCEEDINGS on the OUTLAWRY againſt *James Holloway*, for High Treaſon.

Die Lunæ 21 April. 36 Car' *Secund. Regis. Anno Dom'* 1684. *B. R.*

Dominus Rex verſus Jacobum Holloway.

HIS Majeſty's Attorney General having on *Friday* laſt, moved the Court of King's Bench for an *Habeas Corpus* Returnable this Day, directed to the Keeper of His Majeſty's Goal of *Newgate*, to bring thither the Body of *James Holloway*, then in his Cuſtody, to ſhew Cauſe why Execution ſhould not be awarded upon an Outlawry for High-Treaſon againſt him. The Keeper of *Newgate*, according to the Command of the Writ, brought him this Day to the Bar of the ſaid Court, where he was proceeded againſt in this Manner.

The Return of the Writ of Habeas Corpus *was firſt Read.*

Cl. of Cr. James Holloway, Hold up thy Hand, [*Which he did.*

Thou haſt been Indicted in *London*, by the Name of *James Holloway*, late of *London*, Merchant, for High Treaſon by thee committed, touching the King's Majeſty's Perſon, and the Government of this His Kingdom of *England*, and for not appearing and anſwering that Indictment, by due Proceſs of Law, upon the Indictment thou ſtandeſt Outlawed, and upon that Outlawry thou ſtandeſt Attainted of the ſame High Treaſon; What haſt thou to ſay for thy ſelf why Execution ſhould not be awarded againſt thee upon that Attainder by this Court according to Law?

Holloway. My Lord, I have been a great while Abſent, and know not what hath been done in this Matter, or proved againſt me.

Sir *George Jefferies.* *L. C. J.* Yes, you have been abſent ſo long it ſeems, that you now ſtand Outlawed, and thereby Attainted of High Treaſon; there is nothing now remains with the Court, but only to make a Rule for your Execution.

Holloway. If an ingenuous Confeſſion of the Truth will merit the King's Pardon, then ſure I have done it.

L. C. J. For that Matter we are not to diſpoſe of the King's Mercy, he will diſpoſe of his own Mercy as he ſhall think fit. Is Mr. Attorney in the Hall?

Cryer. Yes, my Lord, he is.

L. C. J. Then pray ſend for him.

Which was done, and in a little time after he came into Court.

L. C. J. Mr. Attorney, here is the Priſoner at the Bar, *Holloway.*

Sir *Robert Sawyer.* Mr. *At. Gen.* Yes, my Lord, I ſee he is. Sir *Samuel Aſtry*, have you the Record there?

Cl. of Cr. Yes, Sir.

L. C. J. It has been read to him, Mr. Attorney.

Mr. *At. Gen.* My Lord, I would know what he ſaith that Execution ſhould not be Awarded.

L. C. J. He talks of Diſcoveries and Confeſſions which we, you know, cannot take any notice of; Ask him again.

Cl. of Cr. Haſt thou any thing to ſay for thy ſelf why Execution ſhould not be awarded againſt thee according to Law?

Holloway. My Lord, I know not what hath been proved againſt me, but I have made ſuch an ingenuous Confeſſion to His Majeſty of what I know———

L. C. J. Proved againſt you? You are Outlawed upon an Indictment for High Treaſon; what can you ſay againſt the Court's awarding Execution?

Mr. *At. Gen.* My Lord, has he heard the Indictment upon which the Outlawry was grounded?

Cl. of Cr. No, Sir, only the Subſtance was told him, That he was Indicted of High Treaſon, and Outlawed for it, and ſtands Attainted by that Outlawry.

Mr. *At. Gen.* If your Lordſhip pleaſe, the Indictment may be read to him, that he may underſtand what it is, and may not go blind to Execution.

L. C. J. Ay, Mr. Attorney, if you pleaſe, let it be ſo.

Cl. of Cr. Reads. The Jurors being Sworn to enquire for our Sovereign Lord the King, and the Body of the County of the City of *London*, upon their Oaths preſent, That——— [*And ſo the whole Indictment was read.*

Cl. of Cr. That is the Indictment, Mr. Attorney, and upon this he is Outlawed.

Mr. *At. Gen.* And ſo ſtands Attainted. What hath he to ſay to it?

L. C. J. Ay, why ſhould not we award Execution againſt him according to Law?

Cl. of Cr. Have you any Thing to ſay?

Holloway. I have ſaid what I have to ſay.

Mr. *At. Gen.* Pray what is that, my Lord, that he has ſaid, for I was not here?

Holloway. I beg His Majeſty's Mercy.

Mr. *At. Gen.* If the King be ſo Gracious as to admit you to your Tryal, can you make a Defence againſt the Indictment? Have you any Thing to ſay that you can defend your ſelf by, if the King do admit you to be tryed, and that is a Mercy and a Grace, for at Law you are gone.

L. C. J. It is ſo, indeed, Mr. Attorney; if you will on the King's Behalf indulge him ſo far, as I ſuppoſe you have Authority from the King to Conſent unto, that if he has a mind to try the Fact, and can defend himſelf, he ſhall have that Liberty, that is a great Mercy, I aſſure you.

Mr. *At. Gen.* My Lord, That is the only reaſon why I did cauſe the Indictment to be read that he might hear it; that ſuppoſing he were not Outlawed, but that were out of the Caſe, if he hath any thing to ſay that could defend him from it, the King would not exclude him, but admit him to his Tryal, and extend his Mercy ſo far to him.

L. C. J. Mr. Attorney, it is exceeding well. Now you underſtand what is ſaid by the King's Attorney, you have heard the Indictment read, it is an Indictment of High Treaſon, that you with other falſe Traytors, *Hone*, *Rumball*, the *Goodenough*'s, and the reſt, did Conſpire the Death of the King. Now though you are in Law actually Attainted, as much as if you had been Tryed and Convicted, and received Judgment of Death upon that Conviction, to all intents and purpoſes, and there is no more for the Court to do, but to award Execution upon this Attainder, and be dealt with as a falſe Traytor. Yet however in as much as you have heard the Indictment read, if you think you have any thing to ſay that would ſatisfy the World, or a Jury, that you are not Guilty of what you are Indicted and Accuſed of, it ſeems the King is pleaſed to ſignify His Gracious Intention towards you by Mr. Attorney General, that he is contented to wave that other Part the Attainder by Outlawry, and you ſhall have the Liberty to try it, if you think you can defend your ſelf.

Holloway. My Lord, I cannot undertake to defend my ſelf, for I have Confeſſed before His Majeſty that I am Guilty of many Things in that Indictment, and I throw my ſelf on the King's Mercy.

L. C. J. Then he Confeſſeth it, and will not undertake to defend himſelf; as for the King's Mercy, that we muſt leave to His Majeſty, who is the Diſpenſer of his own Grace, we are to execute his Juſtice, and muſt give a Rule accordingly.

Mr. *Juſt. Withins.* But I hope every body here takes notice of his open Confeſſion, when he might try it if he would. Surely none but will believe this Conſpiracy now, after what this Man hath owned.

L. C. J. We were well enough ſatisfied about it before, and ſo was every honeſt Man, I dare ſay.

Mr. *Juſt. Withins.* Yet, perhaps, though he ſaith it, and others have confeſſed it, and the Evidence hath been made Publick, there are many People that ſay they will not believe it.

L. C. J. We do not mightily concern our ſelves what the People ſay. I am ſure not one of all that were concerned in this Conſpiracy, have dared to deny it abſolutely, though ſome have been prevailed upon by ill Advice, to Prevaricate about it, and ſhuffle it off. But none of them have had the Confidence abſolutely to deny the Truth of the Fact, notwithſtanding all the Calumnies and Reproaches caſt upon the Government, and all the Arts that have been made uſe of to ſtifle it.

Mr. *Juſt. Withins.* My Lord, I ſpeak it the rather, becauſe we ſee what work Sir *Samuel Bernardiſton* has made of it in his Letters, where he calls it a Sham Plot, and ſays it is loſt, except it be found among the Abhorrers and Addreſſers.

L. C. J. But now the Plot is found among the Conſpirators and Traytors, he may write to his Correſpondents in the Country the next time: It is found among the Reformers of Government and Religion, that can ſwallow all Things, that can kill Kings, and levy War, and do the worſt of Villanies to promote Religion and Reformation, as they call it —— Let us think of ſome convenient Day, and give ſuch Order that the Sheriffs ſee Execution done according to Law.

Mr. *At. Gen.* You muſt firſt pronounce the Judgment, my Lord.

Mr. *Juſt. Withins.* It is never pronounced in ſuch a Caſe, Mr. Attorney.

L. C. J. No, we only give a Rule for Execution, the Outlawry is the Judgment, and that is upon the Record already.

Cl. of Cr. Yes, my Lord, we always enter it ſo.

L. C. J. Captain *Richardſon*, I think, *Wedneſdays* and *Fridays* are your uſual Execution Days in *London*, are they not?

Cap. *Richardſon.* Yes, my Lord, either of them.

L. C. J. Then *Wedneſday* ſeven-night.

Cap. *Richardſon.* Does your Lordſhip appoint *Wedneſday* next?

L. C. J. No, that will be too quick; *Wedneſday* ſeven night.

Cap. *Richardſon.* What Day your Lordſhip pleaſeth, I ſuppoſe I ſhall have a Rule.

Cl. of Cr. You ſhall have a Rule, and an *Habeas Corpus* to deliver him, as the Courſe is.

L. C. J. In the mean time take your Priſoner back again.

And accordingly he was carried back to Newgate.

The

The manner of Executing a Writ of Inquiry of Damages: Between His ROYAL HIGHNESS *James* Duke of *York*, &c. and *Titus Otes.*

Die Mercurii 18. Junii, *An. Dom.* 1684. B. R. *Dux* Ebor' *verſus* Otes.

HIS Royal Highneſs the Duke of *York*, having brought an Action againſt *Titus Otes*, grounded upon the Statute *de Scandalis Magnatum*, for very Slanderous and Opprobrious Words, the Defendant ſuffered Judgment to go againſt him by Default, and thereupon a Writ of Inquiry was taken out, directed to the Sheriff of the County of *Middleſex*, to enquire by a Jury of that County, what Damages the Plaintiff had ſuſtained thereby, and upon a Motion made at the Court of King's Bench, a Day was given to the Defendant, to ſhew Cauſe why that Writ of Inquiry ſhould not be executed at the Bar of that Court, which he not doing, it was ordered, That it ſhould be executed at the Bar on this Day, and that the High Sheriff ſhould appear and attend the Execution of the Writ in Perſon. Accordingly this Day Sir *Peter Daniel*, Knight, and *Samuel Daſhwood*, Eſquire, the preſent Sheriff of the County of *Middleſex*, came into this Court, and being placed at the Table at the Judges Feet, were during the Execution of the Writ, covered. Mr. *Thomas Rous* the preſent Under-Sheriff managed it, and proceeded in this manner.

Mr. *Under-Sheriff.* Cryer, Call Sir *Charles Lee.*

Cryer. Vous avez Sir *Charles Lee.* [*Who was ſworn thus*

Mr. *Under-Sheriff.* You ſhall well and truly enquire of Damages, between the moſt Illuſtrious Prince JAMES Duke of *York* and *Albany* Plaintiff, and *Titus Otes* Defendant, and therein a true Verdict give according to your Evidence. So help you GOD.

The reſt were Sworn thus,

Mr. *Under-Sheriff.* Sir *William Hill*, Sir *Richard Downton*, and Sir *John Berry*; the ſame Oath your Foreman hath for his Part taken, you and every of you for your Parts, ſhall well and truly keep. So help you GOD.

Mr. *Under-Sheriff. Thomas Harriott*, *Thomas Row*, and *Walter Brydall*; the ſame Oath, *&c. Edward Guiſe*, *Thomas Done*, and *William Wood*; the ſame Oath, &c. *John Sharp*, and *Nehemiah Arnold*; the ſame Oath, *&c.*

Will you pleaſe to have any more than Twelve ſworn?

L. C. J. How many do you uſe to have? Pray ſwear an odd Number as you uſed to do. Sir *George Jefferies.*

Mr. *Under-Sheriff.* Then I will ſwear three more, and that will be juſt fifteen.

Francis Stevens, *Nicolas Baxter*, and *John Kirk.* The ſame OATH, *&c.*

The NAMES of them that were upon the INQUIRY.

Sir *Charles Lee*, Kt.	*Thomas Done*, Eſq;
Sir *William Hill*, Kt.	*William Wood*, Eſq;
Sir *Richard Downton*, Kt.	*John Sharp*, Eſq;
Sir *John Berry*, Kt.	*Nehemiah Arnold*, Eſq;
Thomas Harriot, Eſq;	*Francis Stevens*, Eſq;
Thomas Row, Eſq;	*Nicolas Baxter*, Eſq;
Walter Brydall, Eſq;	*John Kirk*, Gent.
Edward Guiſe, Eſq;	

Mr. *Under Sheriff.* Gentlemen, You that are ſworn, hear the King's Writ.

L. C. J. Ay, read it to them.

Mr. *Under Sheriff.* 'CHARLES II. by the 'Grace of God, of *England*, *Scotland*, *France* and '*Ireland* King, Defender of the Faith, *&c.* to 'the Sheriff of *Middleſex*, Greeting; Whereas 'the moſt Illuſtrious Prince JAMES Duke of '*York* and *Albany*, one of the Nobles and Peers 'of *England*, our moſt dear and only Brother, 'who as well *&c.* lately in our Court before 'Us at *Weſtminſter*, by Bill without our Writ 'impleaded *Titus Otes*, then in the Cuſtody of 'the Marſhal of our Marſhalſea, before us be'ing: For that whereas in a Statute made in 'the Parliament of *Richard* II. late King of *Eng*'*gland* after the Conqueſt, held at *Glouceſter* in 'the Second Year of his Reign, amongſt other 'Things: It is ordained and ſtrictly prohibi'ted, *That from thence none ſhould be ſo hardy to de*'*viſe, tell or relate of the Prelates, Dukes, Earls,* 'Barons and other Nobles and Great Men of England, 'nor of the Chancellor, Treaſurer, or Clerk of the Pri-

vy

'vy Seal, Steward of the King's Houſhold, Juſtices 'of the one or of the other Bench, nor of other great 'Officers of the Kingdom aforeſaid, any falſe News, 'Lyes, or any ſuch falſe things, whereby Scandal or 'Diſcord within the ſaid Kingdom might ariſe; and 'whoſoever ſhould do this, ſhould incur and 'have the Penalty otherwiſe thereon ordained 'by the Statute of *Weſtminſter* the firſt, as in 'the Statute aforeſaid is more fully contained. 'And whereas the 4th Day of *December* in the 'Five and Thirtieth Year of our Reign, and 'long before the yearly Rents, Iſſues and Pro'fits ariſing, or due and payable for or by 'reaſon of the General Poſt-Office within this 'Kingdom of *England*, for the Carriage of Let'ters, before were erected and yet are eſtabliſh'ed upon the ſaid moſt Illuſtrious Prince 'JAMES Duke of *York*, and *Albany*. The 'aforeſaid *Titus Otes* the Statute aforeſaid not 'conſidering, but the good Name, State, Cre'dit, Dignity, and Honour of the ſaid JAMES 'Duke of *York* and *Albany*, our Brother, devi'ſing and maliciouſly intending to hurt and 'detract, and Him the ſaid JAMES Duke of 'York and *Albany*, our Brother, into the great 'Diſpleaſure and Hatred of Us and of the 'Peers of this Kingdom of *England*, and alſo 'divers other venerable Perſons our Subjects, 'to bring, out of his meer Malice and Envy had 'and forethought the aforeſaid 4th Day of *De'cember*, in the Year of our Reign the Five and 'Thirtieth, at the Pariſh of St. *Martin* in the 'Fields in the County of *Middleſex* aforeſaid, 'upon a certain Diſcourſe then had and moved 'by and between the aforeſaid *Titus Otes* and 'divers of our Liege People, of and concern'ing the aforeſaid JAMES Duke of *York* and 'Albany*, our Brother, and of and concerning a 'certain Letter in the Hand of the aforeſaid 'Titus Otes* at that time, being divers falſe 'News and horrible Lies of the aforeſaid 'JAMES Duke of *York* and *Albany*, our Bro'ther at that time, and yet being of the Peers 'and Nobles of this Kingdom, in the Preſence 'and Hearing of divers venerable Perſons, pub'lickly, falſly, maliciouſly, and ſcandalouſly ſaid 'and related; and with a loud Voice publiſh'ed in theſe Engliſh Words following, *viz. This 'Letter* (the Letter aforeſaid, ſo in the Hands 'of the aforeſaid *Titus Otes* as is beforeſaid be'ing, meaning) *coſt me* (the ſaid *Titus Otes* mean'ing) *nine Pence, and might have been brought for a 'Penny, I* (himſelf the aforeſaid *Titus Otes* mean'ing) *know no body is the better for it, but that 'Traitor* JAMES *Duke of* York (the aforeſaid 'JAMES Duke of *York* and *Albany* our only 'Brother meaning) And the aforeſaid *Titus* fur'ther deviſing and maliciouſly intending the 'aforeſaid JAMES Duke of *York* and *Albany* 'our Brother into the Hatred of us, and of 'the Peers of this Kingdom of *England*, and 'alſo of divers other venerable Perſons, and 'our Subjects to bring; out of his meer Malice 'and Envy, had and forethought, the 4th Day 'of *December*, the Year aboveſaid, at the Pariſh 'of St. *Martin* in the Fields aforeſaid, in the 'County of *Middleſex* aforeſaid, upon a certain 'other Diſcourſe then had and moved by and 'between the aforeſaid *Titus Otes* and ſeveral 'of our Liege People of and concerning the 'aforeſaid JAMES Duke of *York* and *Albany*, 'our Brother, and of and concerning a certain 'Letter in the Hands of the aforeſaid *Titus 'Otes* at that time being, divers other falſe 'News and horrible Lies of the aforeſaid 'JAMES Duke of *York* and *Albany*, our Bro'ther at that time, and yet being one of the 'Nobles and Peers of this Kingdom of *England*, 'and our only Brother, in the Preſence and 'Hearing of ſeveral venerable Perſons, pub'lickly, falſly, maliciouſly and ſcandalouſly 'ſaid, related and with a loud Voice pub'liſhed, *viz. This Letter* (the aforeſaid Letter ſo 'in the Hands of the aforeſaid *Titus Otes*, as 'is beforeſaid being, meaning) *coſt me* (the 'aforeſaid *Titus Otes* meaning) *nine Pence, and 'might have been afforded for a Penny, I* (himſelf 'the aforeſaid *Titus Otes* meaning) *know no body 'is the better for it, but that Traitor* JAMES 'Duke of York (the aforeſaid JAMES Duke 'of *York* our only Brother meaning) And af'terwards, to wit, the 5th Day of *December* in 'the thirty fifth Year aboveſaid; the aforeſaid 'Titus Otes* further deviſing and maliciouſly in'tending the ſaid JAMES Duke of *York* and 'Albany* our Brother to ſcandalize, and into 'the further Diſpleaſure and Hatred of us, and 'of the Great Men of this Kingdom of *Eng'land*, out of his meer Malice and Envy, had 'and forethought, at the Pariſh of St. *Martin* 'in the Fields aforeſaid, in the County of *Mid'dleſex* aforeſaid, the ſaid 5th Day of *Decem'ber*, in the Year aboveſaid, upon certain other 'Diſcourſe of the ſaid JAMES Duke of *York* 'and *Albany*, divers falſe News and horrible 'Lies of the aforeſaid JAMES Duke of *York* 'and *Albany*, publickly, falſly, and maliciouſly 'ſaid, related and with a loud Voice publiſhed, 'to wit, that the Letter in the Hands of the 'aforeſaid *Titus* at that time being, coſt him 'the aforeſaid *Titus* nine Pence, but might have 'been brought for one Penny, and that he 'knew *no body to be the better for it but that Traitor* 'JAMES *Duke of* York. And the aforeſaid 'Titus Otes* further contriving and maliciouſly 'intending the aforeſaid JAMES Duke of 'York and *Albany*, our only Brother, into the 'further Diſpleaſure and Hatred of us, and of 'the Great Men of this Kingdom of *England*, 'and alſo of divers other venerable Perſons, and 'our Subjects, to bring, out of his meer Malice 'and Envy, had and forethought the 6th Day 'of *December*, in the Five and Thirtieth Year 'aboveſaid, at the Pariſh of St. *Martin* in the 'Fields aforeſaid, in the County of *Middleſex* 'aforeſaid, upon a certain Diſcourſe at that 'time had and moved by and between the afore'ſaid *Titus Otes* and ſeveral of our Liege People, 'of and concerning the aforeſaid JAMES 'Duke of *York* and *Albany*, our Brother, divers 'other falſe News and horrible Lies of the 'aforeſaid JAMES Duke our only Brother, 'at that time, and yet being one of the No'bles and Peers of this Kingdom of *England*, 'in the Preſence and Hearing of divers vene'rable Perſons, publickly, falſly, maliciouſly 'and ſcandalouſly ſaid, related, and with a 'loud Voice publiſhed in theſe Engliſh Words 'following, to wit, *The Duke of* York (the afore'ſaid JAMES Duke of *York* and *Albany* our 'only Brother meaning) *is a Traitor*. And the 'aforeſaid *Titus Otes* further contriving, and 'maliciouſly intending the ſaid JAMES Duke 'of *York* our Brother, into the Hatred of us,

'and

'and of the great Men of this Kingdom of *England*, and alſo of divers other venerable Perſons, and our Subjects, to bring, out of his meer Malice and Envy, had and forethought the aforeſaid 6th Day of *December* the Year aboveſaid, at the Pariſh of St. *Martin* in the Fields, in the County of *Middleſex* aforeſaid upon certain other Diſcourſe at that time had and moved by and between the aforeſaid, *Titus Otes* and divers of our Liege People, of and concerning the aforeſaid JAMES Duke of *York* and *Albany* our only Brother, divers other falſe News and horrible Lies of the aforeſaid JAMES Duke of *York* and *Albany* our only Brother, and at that time and yet being one of the Nobles and Peers of this Kingdom of *England*, in the Preſence and Hearing of divers venerable Perſons, publickly, falſly and maliciouſly ſaid, related, and with a loud Voice publiſhed; to wit, *That the ſaid Duke of* York *was a Traitor*. By reaſon whereof the ſaid JAMES Duke of *York* and *Albany* our only Brother, in his Reputation, Honour and Dignity is very much hurt and ſcandalized. And the ſaid JAMES Duke of *York* and *Albany*, the Grace, good Opinion and Eſteem which we and others the great Men of this Kingdom of *England* before towards him JAMES Duke of *York* and *Albany*, did bear, utterly loſt, and divers Rumors and Scandals between very many Nobles and Peers of this Kingdom of *England*, and other our Subjects, by the Occaſions aforeſaid, within this Kingdom of *England*, are ariſen and divulged, and great Scandals and Diſcords by occaſion of the Premiſes between him the aforeſaid JAMES Duke of *York* and *Albany*, and divers Nobles and great Men, and other Subjects of this Kingdom of *England* are ariſen; and daily more and more in the like may ariſe, to the great Diſturbance of the Peace and publick Tranquillity of this Kingdom of *England*, and in Contempt of us and our Government of this Kingdom of *England*, and to the great Scandal and Grievance of him JAMES Duke of *York* and *Albany*, to the Damage of him the ſaid JAMES Duke of *York* and *Albany*, our moſt dear Brother, a Hundred Thouſand Pounds: As he then ſaid, and thereupon in our Court before us it was ſo proceeded, That the aforeſaid JAMES Duke of *York* and *Albany* our only Brother his Damages againſt the ſaid *Titus Otes* by occaſion of the Premiſſes ought to recover: But becauſe it is not known to our Court before us, what Damages the aforeſaid JAMES Duke of *York* and *Albany* our Brother hath ſuſtained, as well by occaſion of the Premiſſes, as for his Coſts and Charges by him about his Suit in this behalf expended. Therefore We command you, that by the Oaths of good and lawful Men of your Bailiwick, you diligently enquire what Damages the aforeſaid JAMES Duke of *York* and *Albany* hath ſuſtained, as well by occaſion of the Premiſſes, as for his Coſts and Charges by him about his Suit in this behalf expended, and the Inquiſition which thereupon you ſhall take, you ſhall have before Us at *Weſtminſter* on *Wedneſday* next after three Weeks of the Holy Trinity, under your Seal, and the Seals of them by whoſe Oath you take that Inquiſition, diſtinctly and openly you ſend, and this Writ. *Teſte* Sir *George Jefferies*, Knight and Baronet, at *Weſtminſter* the Thirtieth Day of *May*, in the Year of our Reign the Six and Thirtieth.

Ri. Swift. *Henley.*

You are to enquire what Damages his Royal Highneſs the Plaintiff has ſuſtain'd, by means of the Premiſſes; As alſo, what Coſts he has been at in this Suit.

Mr. *Hanſes.* May it pleaſe your Lordſhip, you Mr. Sheriffs, and Gentlemen of the Jury, His Royal Highneſs the Duke of *York* is Plaintiff, and *Titus Otes* is the Defendant; And this is in an Action of Treſpaſs and Contempt, grounded upon the Statute of *Scandalum Magnatum*, wherein His Royal Highneſs ſets forth, That whereas ſuch a Statute was made, prohibiting the Slandering the great Men and Peers of the Kingdom, and the Plaintiff being the King's only Brother, and a Peer, the Defendant upon a Diſcourſe between him the Defendant and ſome other Perſons, about a Letter that the Defendant had then in his Hands, publickly, falſely, and with an intent to ſcandalize the Plaintiff, ſpoke theſe *Engliſh* Words:

This Letter (meaning the Letter then in the Defendant's Hands) *coſt me* (meaning the Defendant) *nine Pence, and might have been brought for a Penny*; *I* (meaning the Defendant) *know no body is the better for it, but that Traytor* JAMES *Duke of* YORK, meaning the Plaintiff.

Gentlemen, This is not all, the Declaration goes on further, and ſays, That the Defendant intending further to ſcandalize the Plaintiff, the Sixth of *December* in the Thirty fifth Year of this King, upon a Diſcourſe had and moved by and between him the Defendant and ſome other Perſons, in the Preſence of divers venerable Perſons, ſaid theſe Words of the Plaintiff:

The Duke of York (meaning the Plaintiff) *is a Traitor*; And this is laid to the Plaintiff's Damage of One Hundred Thouſand Pounds: The Defendant has not pleaded, and the Plaintiff has ſigned his Judgment; and now you, Gentlemen, are to enquire of the Damages.

Sir *Robert Sawyer.*

Mr. *At. Gen.* You obſerve, Gentlemen, the Words are acknowledged by the Defendant's Default, and not pleading; ſo that they were ſpoken is owned by him, and you are to enquire only of the Damages: And, I think, there will need nothing to be ſaid for the Aggravation of them, they are Words of the higheſt nature, in reſpect of Slander and Scandal, that can be ſpoken or thought of, Accuſing him of Treaſon. We ſhall only call you ſome Witneſſes to prove this way of Diſcourſe to be his conſtant habit in all Places, and among all Perſons and Company, inveighing againſt the Government, and particularly againſt His Royal Highneſs the Plaintiff; and then you will, I know, give ſuch Damages, as may be fit to repair the Plaintiff's Honour.

Mr. *Finch.*

Mr. *Sol. Gen.* We will call ſome Witneſſes, to give you an Account how he uſes to treat the Plaintiff in all Companies, and we ſhall begin with Mr. *Smith*. And the Truth is, the proving of the Words, will demonſtrate the Malice of them; and the Manner and Circumſtances of ſpeaking, will make them appear to be ſuch, as need nothing to be

ſaid

ſaid for their Aggravation at all. Swear Mr. *James Smith.*

Mr. *Under-Sheriff. The Evidence that you ſhall give to the Sheriffs and the Jury, ſworn about the Matter in Queſtion, ſhall be the Truth, the whole Truth, and nothing but the Truth.*

Mr. *Sol. Gen.* Mr. *Smith*, pray will you tell the Court and the Jury, what you have heard the Defendant *Otes* ſay of his Royal Highneſs.

Mr. *Smith.* At the laſt *Weſtminſter* Parliament, as I was ſitting in a Coffee-houſe, I ſaw Mr. *Otes*, he had a Letter in his Hand, and he ſaid, *This Letter coſt me nine Pence, it might have been brought for a Penny, I know no body that is the better for it but a Traytor*, to the beſt of my remembrance he ſaid, *the Duke of* York.

Mr. *At. Gen.* Swear Mr. *Penniſton Whaley* (which was done) What Words did you hear Mr. *Otes* ſay of his Royal Highneſs?

Mr. *Whaley.* The Time was either the *Eaſter* or *Whitſontide* after Sir *Thomas Gaſcoigne*'s Tryal.

Mr. *Sol. Gen.* What were the Words you then heard him ſay?

Mr. *Whaley.* It was at the Biſhop of *Ely*'s Table at *Ely* Houſe. I had received the Sacrament at the Chappel there that Day, and ſo had the Doctor too; it was upon *Eaſter*-day or *Whitſunday*, I ſuppoſe, becauſe I never uſed to receive the Sacrament here in Town, but one of thoſe two times; and Dr. *Otes* and I were ſitting there, and ſome Diſcourſe happened about Sir *Thomas Gaſcoigne*'s Tryal, and he fell very foul upon the Jury, and ſaid, *They were a Company of profligate Villains* (or ſome ſuch Expreſſion as he was wont to uſe) and ſaid, *He would have them Attainted.* Then ſaid I to him, Doctor, you are a good Man at a Matter of Fact, but, I doubt, you are not ſo at a Matter of Law. Upon that, we came to ſome high Words about that and other Things, and among the reſt of the Diſcourſe, he ſaid, *The Duke of* York *was a Traytor.* Upon that, I ſaid to him, Doctor you lie under a great Error in that, I ſuppoſe, by miſtaking a Statute made againſt Popery; ſays he, *No matter for that, I ſay he is a Traytor.* Then there were ſome other Diſcourſes happened afterwards, and I began to reply, and growing both of us pretty warm, the Doctor called to his two Men, his Myrmidons, that uſed to be always with him, and follow him up and down: Said I to him, Nay, Doctor, you need not call your Men to your Aſſiſtance, there is no body here will hurt you: Do you think the Biſhop of *Ely*'s Table is not a Protection good enough for any body that comes here?

L. C. J. Where was this, Sir, pray do you ſay?

Mr. *Whaley.* At the Biſhop of *Ely*'s Table.

L. C. J. Was the Biſhop there, then?

Mr. *Whaley.* He was at the Table, but at a great diſtance from us, the Doctor and I ſat at the lower end of the Table. Afterwards I begged the Biſhop of *Ely*'s Pardon, for being ſo hot and loud at his Table; ſays the Biſhop to me, *I thank you kindly for it, none of us dare talk with him.*

L. C. J. And this you ſay was at Dinner, after the Sacrament was over?

Mr. *Whaley.* Yes, it was ſo.

Mr. *North.* Then ſwear *Edward Johnſon.*

[*Which was done.*

Mr. *At. Gen.* Mr. *Johnſon*, Pray will you give the Court and Jury an Account, what Diſcourſe you have heard from the Defendant, Mr. *Otes*, againſt the Plaintiff.

Mr. *Johnſon.* Upon the Three and twentieth of *Auguſt*, 1680. I met Dr. *Otes*, and ſaid, Good morrow Doctor, all Things will go well now—

L. C. J. You mean him they call Dr. *Otes*, I ſuppoſe.

Mr. *Johnſon.* Yes, they uſed to call him ſo; ſaid I, Good morrow Doctor, all Things will go well now, for there is a Parliament to meet in a little time. *No*, ſaid he, *not till* YORK *is either Baniſhed or Hanged; but of the two, Hanging is the fitteſt for him.* Said I, Do not talk ſo, Doctor: Says he, *I ſpeak nothing but what is true; he has a good Brother, but he takes all the Courſes in the World to undo him:* And then the Doctor and my Lord *Howard* went away together.

Mr. *Sol. Gen.* Swear *Randall Bowring.* [*Which was done.*

What have you heard Mr. *Otes* ſay of the Duke of *YORK*?

Mr. *Bowring.* About the middle of *October*, 1679. there were ſeveral Perſons at Dinner with the Doctor.

L. C. J. What Doctor, prithee?

Mr. *Bowring.* Mr. *Otes.*

L. C. J. Mr. *Otes* we know very well, but we do not ſo well know who this Doctor is.

Mr. *Bowring.* They uſed to call him Doctor, or I ſhould not have taken upon me to give him the Title.

L. C. J. Well, go on: There were ſeveral Perſons at Dinner with him, and what then?

Mr. *Bowring.* There happened ſome Diſcourſe concerning His Royal Highneſs.

L. C. J. Where was this?

Mr. *Bowring.* At his Lodgings at *White-Hall*: And a Gentleman that was there, ſaid, In caſe His Royal Highneſs were a Papiſt, how ſhould we be ſecured, that in caſe he come to the Succeſſion of the Crown, he would not bring in Popery among us? Then the Doctor replied, *I would not have you trouble your ſelf about that, for he ſhall be hanged before that time.*

Mr. *At. Gen.* What have you heard him ſay any where elſe, at *Foſter-Lane*, or any other Place?

Mr. *Bowring.* After the Sermon he had preached there at *Foſter-Lane* Church, the Churchwardens, and ſome of the Pariſh, invited him into the Veſtry to drink a Glaſs of Wine.

L. C. J. What? He made as if he would preach there?

Mr. *Bowring.* He did preach there, and then the Church-wardens invited him to Dinner; but then he asked them, *If ever any of them had dined with* JAMES *Duke of* YORK, *at any of the Feaſts of the City, where the Duke uſed to come ſometimes?* To which none of them anſwering a Word, he replied, *He would not dine with any Man that had eat with the Devil*: And ſo would not go to dine with them, but went and dined at a private Braſier's by *London-wall.*

L. C. J. An excellent Goſpel-Preacher, upon my word.

Mr *At. Gen.* What Braſier was that?

Mr. *Bowring.* Truly I do not well know his Name.

Mr. *At. Gen.* Where did he live?

Mr. *Bowring.* By *London-wall.*

Mr.

Mr. *Sol. Gen.* Then Swear Mr. *Fairfax.* [*Which was done.*

Pray, Sir, tell my Lord and the Jury, what Words you heard this Man ſpeak of his Royal Highneſs.

Mr. *Fairfax.* May it pleaſe your Lordſhip, in *Auguſt* 1679. I happened to come into the Company of *Otes* the Defendant, upon the account of an Election that was to be of Parliament-men for *Grinſtead* in *Suſſex*, by the means of one *Aukland*; *Otes* was to go down thither in my Lord *Wharton's* Coach, and then we came firſt to be acquainted, and afterwards we frequently did eat together, and became very well acquainted. And in my Lord *Scrogg's* Time, when he was Lord Chief Juſtice, there was ſome Preſentment intended to be brought in by the Grand Jury here at the Term, againſt His Royal Highneſs for being a Papiſt, and not coming to Church, and this *Otes* was the main Proſecutor of it. He was uſed often to come up to me, and ſpeak to me when he met me; and I was about that time walking in the Court that was built up here for the Tryal of the Lords in the *Tower*, it was after that Grand Jury were diſmiſſed, which was done a Day or two before they uſed to be diſmiſt in the ordinary courſe, and walking there I met *Otes*, and ſaid I to him, Doctor, Now you are Nonſuited, what will you do now? *Oh*, ſays he, *We will do well enough; there will be a Seſſions after the Term, and there we will at him again; and we will have no more regard for him, than if he were Scavinger of* Kent-ſtreet: And upon that he was called away from me, and he went away.

Mr. *Sol. Gen.* Swear Mr. *Philips.* [*Which was done.*

Mr. *At. Gen.* Come, Mr. *Philips*, will you acquaint my Lord and the Jury, what you have heard *Otes* ſay of the Duke of *YORK*?

Mr. *Philips.* In or about *January* (78.) may it pleaſe your Lordſhip, I was in the Company of one *Deacon*, at *Otes's* Lodgings at *White-Hall*, where Mr. *Otes* ſaid, *He hoped to ſee your or our Maſter* JAMES (meaning the Duke of *YORK*, His Royal Highneſs I ſuppoſe) *at the Bar of the Houſe of Commons; and it would be no diſparagement to him to appear there, for there were better Men Members of that Houſe than he was.*

L. C. J. Pray what was the Occaſion of this Diſcourſe?

Mr. *Philips.* Truly it was a Diſcourſe of his own; he ran it on, we talked but little to him.

L. C. J. Who did he apply himſelf to in that Diſcourſe?

Mr. *Philips.* To us two, Mr. *Deacon* and I.

L. C. J. How came he to mention your Maſter *JAMES*, had you any relation to the Service of His Royal Highneſs?

Mr. *Philips.* No, my Lord, we had not; but he ſaid, either our Maſter, or your Maſter: He run on in ſuch kind of Diſcourſe as he uſed to do.

L. C. J. But do you think he intended His Royal Highneſs, when he named your Maſter *JAMES*?

Mr. *Philips.* I could not imagine he did mean any body elſe.

Mr. *At. Gen.* Then ſwear *William Aſhlock.* [*Which was done.*

Pray will you acquaint my Lord and the Jury, what Words you have heard him ſpeak of his Royal Highneſs.

Mr. *Aſhlock.* May it pleaſe your Lordſhip, in *Eaſter* Term, 1682. Dr. *Otes*——

Mr. *At. Gen.* Mr. *Otes*, you mean.

Mr. *Aſhlock.* Mr. *Otes* went out one Morning, with *Dolben* and *Robin Nichols*, two of his Men, from his Lodgings at *White-Hall*, and while he was dreſſing, he ſaid he went out, in order to draw up a Bill of Indictment againſt the Duke of *YORK*; but he did not do it, becauſe he was otherwiſe adviſed by ſome Perſons, as I heard. Then at *Michaelmas*, 1682. when he was going to dreſs him, I held the Baſon to him to waſh, as he commonly had two or three every Day to wait upon him to dreſs him, there came in a Gentleman, that came newly out of *Suſſex*, I cannot remember his Name: He asked him how all Friends did in *Suſſex*, and then fell a talking about the Election of Sheriffs, and abuſing them that were then choſen, and reflected very much upon Sir *John Moor*, and called him Rogue, and ſaid he deſerved to be hanged up as an Example. And afterwards, he ſaid, the City of *London* was fired by the Duke of *YORK's* Order, and Sir *Thomas Bludworth* had a Hand in it; and the Forces at *Black-Heath* were to have plundered the City, and killed all the honeſt Proteſtant Diſſenters in *London*: And this he would prove, if ever they had a Parliament to their mind that ſhould ſit. At another time there was one *Starkey*, *Henry Starkey*, that was concerned in *College's* Buſineſs at *Oxford*, and one Mr. *Paſchall*, and I think, Capt. *Clare*, and ſome others that uſed to keep him Company, and Mr. *Otes* ſtepped up on a ſudden, and ſaid, *The Duke of* YORK *was a Son of a Whore, and he ſhould live to ſee him hanged; and if they could but get a Parliament to their mind, they would ſoon ſend the Duke and all his Gang out of* England, *for he muſt never expect to ſucceed to the Crown.*

Mr. *Sol. Gen.* Pray who did he ſay was to head the Forces at *Black-Heath*, that you talk of were to plunder the City?

Mr. *Aſhlock.* *The Duke of* YORK, *and* London *was fired by his Order; and this he would prove, if they could but get a Parliament to their mind*: And he ſaid, *They ſhould take away the Poſt-Office from the Duke of* YORK, *and give it to the Duke of* Monmouth.

Mr. *Sol. Gen.* Then call Captain *Creſſett*, and ſwear him. [*Which was done.*

Mr. *At. Gen.* Capt. *Creſſett*, Pray do you remember what Diſcourſe you had with *Otes*, when the Duke went into *Flanders*, what he ſaid of His Royal Highneſs?

Capt. *Creſſett.* It was the laſt time the Duke went into *Scotland* with her Royal Highneſs, I think it was in *October* 1680. I was commanded over Night to wait at the Duke's Lodgings, till a Paper ſhould be delivered me by my Lord *Rocheſter*; I ſtay'd there till Twelve a Clock at Night, and not ſeeing my Lord come out, I went away, and came early the next Morning. And when the Duke and Dutcheſs went to take Water at the *Privy-Stairs*, I came down through the Guard Chamber, and Dr. *Otes* was in the Gallery that leads betwixt that and the Gate; when he ſaw me, I bid him, good Morrow Doctor, or he bid me, good Morrow; one of the two, I cannot exactly tell which: Says he to me, *You will never leave, till you have loſt your Reputation.* Why,

what is the matter now, Doctor, said I, I hope my Reputation is not hung upon so slender a Thread, as to be lost for my going any where? Says he, *You have been with* JAMES: Who do you mean by *JAMES*, said I? *YORK*, says he. Surely, said I, it might have been the Duke of *YORK*, or his Royal Highness: No, said he, *he is a Rascal, a Papist, and a Traytor, and I hope to live to see him hanged.* Truly Doctor, said I, now let me give you a little Advice to govern your Tongue and your Passions, I assure you, they will do neither you nor your Cause good; it may do you a great deal of hurt in time, if you do not take care.

Mr. *Sol. Gen.* Call Sir *William Jennings.*

Mr. *At. Gen.* Truly, my Lord, I think we need call no more, though we have Multitudes of them, it is his daily Discourse.

L. C. J. Call whom you will, Mr. Attorney; for though it be the last Day of the Term, and it is an unusual thing to have a Jury at the Bar on that Day, and more unusual to have them to execute a *Writ of Enquiry* here; yet in regard of the Greatness of the Person that is concerned, and the extraordinary nature of the Cause, We have ordered it thus, *That all the World may see how his Royal Highness has been abused and scandalized by this Person.*

Mr. *At. Gen.* The Defendant, my Lord, has been a Person pretty much talked of too.

L. C. J. Yes, truly, it is done with regard to him too; for he has been an eminent Man *in his way.*

Mr. *Sol. Gen.* Then swear Sir *William Jennings.* [*Which was done.*

Mr. *At. Gen.* Now, Sir *William Jennings*, speak out, you hear the Question, What have you heard *Otes* say of the Duke of *YORK*?

Sir *William Jennings.* My Lord, at the Time of the Sitting of the Parliament at *Oxford*, I was in a Tavern there with Mr. *Cranfield*, one of the King's Gentlemen-Ushers, who seeing Mr. *Otes* going along by the Room, invites him to drink a Glass of Wine, there were a matter of some eight or nine at the Table; there was a little Partition Curtain, it being a long Room, and there was some Company beyond that Curtain, and some body in that Company named *James* Duke of *YORK*, and the KING's Health being drunk at our Table, Mr. *Cranfield* began a Health to the DUKE: Says Mr. *Otes*, *Do not you Drink* YORK's *Health.* Why should we not, says Mr. *Cranfield*, and a Gentleman or two more in the Company: *Why*, says he, *he has ruined the Nation; and if the Devil has a place in Hell more hot than others, I hope he will bestow it upon him.* Several Words past between Mr. *Cranfield* and him upon it, and the KING was told of it presently.

Mr. *At. Gen.* Swear Justice *Warcup.* [*Which was done.*

Pray tell what you know of this Man's discoursing concerning the Duke.

Mr. *Warcup.* My Lord, I went into the Company where Sir *William Jennings* was that he spoke last of, and being desired to drink a Glass of Wine with them, I did so, and they told me what Dr. *Otes* had said there.

L. C. J. Mr. *Otes*, *Titus Otes* you mean?

Mr. *Warcup.* Yes, my Lord, the Room had a Partition by a Hanging or Curtain, and I was first in the other Company beyond the Partition, and there some body began a Health to his Royal Highness the Duke of *York*; this Health went round, and *Otes* was, it seems, in the next Room, and heard this Health I suppose: When I came into Sir *William Jennings* Company, *Otes* was gone; the Company there told me what *Otes* had said, as Sir *William Jennings* has declared, they all agreed those to be the Words, *That he had ruined or betrayed the Nation; and if the Devil had a hotter place in Hell than other, he hoped he would bestow it upon him.* I met *Otes* afterwards, and asked him why he would speak such irreverent Words of the DUKE? His Answer was, *He was a Traytor, and was in the Plot*; and he told me, *I was a* Yorkist, *and he would remember me for it.*

Mr. *At. Gen.* Did not that affright you, Mr. *Warcup*, to have him threaten you so?

Mr. *Warcup.* I had then an Impeachment against me, and truly I think I might well be afraid.

L. C. J. You say, he owned the Words they told you of?

Mr. *Warcup.* They did all agree those to be the Words; and I met him afterwards, and asked him why he would speak so irreverently of the Duke, considering he was the King's Brother, and as virtuous a Prince as trod upon the Earth? Says he, *He is a Traytor, and in the Plot; and you are a* Yorkist, *and I will remember you for it.*

Mr. *Sol. Gen.* We shall only call one more, to shew in what mind he continues to be, ever since this Action brought. Swear Mr. *Charles Chapman.* [*Which was done.*

Pray, Sir, Tell what you know.

Mr. *Chapman.* My Lord, I met Mr. *Swift*, the Duke of *York*'s Attorney, when he was going over, as he told me, to demand a Plea of the Defendant Mr. *Otes*, and he desired me to go along with him, I did so; and when we came to him, Mr. *Swift* told *Otes* the Rules were out, and desired to know what he intended to do, whether he would plead or no. *Otes* asked him, *If he were the Duke's Attorney?* He answered him, Yes; Says he, *I do not value the Duke, nor his Attorney neither, I will plead as I shall see Cause according to Law; I declare I neither love the Duke, nor fear him:* And so turned his back, and was going away, and comes up again, and says to him, *It may be I may be in for One hundred thousand Pounds here, but if ever a Parliament sit, I do not question but to have some body else in my place.* Mr. *Swift* asked him to explain himself who he meant, says he, *Do you come to Trapan me?* And away he went.

Mr. *At. Gen.* My Lord, we have now done, if the Jury please to consider of it.

L. C. J. Is there any body here for Mr. *Otes*, to offer any thing to lessen the Damages?

[*To which no body answered.*

Then, Gentlemen of the Jury, your Business now is to enquire what Damages you think fit to assess to His Royal Highness, by reason of the speaking of the Words mentioned in the Declaration, there being in this Action Judgment by Default obtained by His Royal Highness; and you have nothing now to do, but only to assess to the Plaintiff such Damages as you shall think fit.

Now, Gentlemen, tho' the Acknowledgment of this Judgment (for so it is in effect, it being by Default) be a sufficient Confession of the

Words

Words being ſpoken as they are laid in the Declaration, yet they have given you Proof of the very Words.

The Declaration is in an Action grounded upon the Statute *De Scandalis Magnatum*, taking notice that His Royal Highneſs is a great Peer of this Kingdom, and His Majeſty's only Brother; and that *Otes* the Defendant knowing him to be ſo, to bring him under Reproach and Calumny, and to cauſe Diſcord to ariſe between the King and him, and between him and other Great Men, did ſpeak the Words laid in the Declaration which you have heard read, and which are theſe.

The firſt are, *This Letter (Otes* having a Letter in his Hand) *coſt me nine Pence, and might have been brought for a Penny; I know no body is the better for it, but that Traitor* JAMES *Duke of* York. This is laid over again with a very little Variation, *This Letter coſt me nine Pence, and might have been afforded for a Penny, I know no body is the better for it, but that Traitor* JAMES *Duke of* York; which are Words of the ſame ſound, and to the ſame purpoſe with the former; they differ only in ſome minute Circumſtances a Word or ſo, but import the ſame thing.

The next Words are theſe, *The Duke of* York *is a Traitor*; and theſe Words too are laid two ſeveral ways, differing but in very ſmall Circumſtances (*Is a Traitor*, and *Was a Traitor*) the Subſtance of the Words is the ſame.

Now I ſay, Gentlemen, Tho' it is not your Buſineſs to enquire whether or no *Otes* ſpoke theſe Words, for by letting Judgment go againſt him by Default, he doth in Law confeſs the Words, but you are to enquire what Damages may be fit to be given to the Plaintiff by reaſon of theſe Words; yet in as much as this Caſe is a Caſe of an extraordinary Nature, Weight and Moment, having relation to ſo great a Prince, His Royal Highneſs the King's only Brother, requires this extraordinary Solemnity, it having not been uſual heretofore, that is to have Writs of Enquiry executed at the Bar. But the Occaſion is extraordinary, ſuch as has not happened before this Age, this Corrupt Age, this Profligate Age, wherein we live, and wherein common ordinary Fellows, the meer Scum and Scoundrels of the Factious Party, have taken a Liberty to reproach and calumniate Magiſtracy and Government, and the greateſt Perſonages concerned in it, not ſparing even Majeſty it ſelf, nor Him, who is next in Degree to His ſacred Perſon, His only Dear and Royal Brother. And therefore as the Caſe is extraordinary in its Nature, ſo ought the Example of it to be made as publick as can be, in order to ſatisfy all People what a ſort of Fellow this Defendant is, who has been ſo much adored and looked upon with an Eye of Admiration, courted with ſo wonderful an Affection, and ſo, I had almoſt ſaid, *Hoſanna'd* among People that have been Factious and Tumultuous to the Government.

Such as he ought to be made publick Examples of; and therefore the King's Counſel have deſired that this Cauſe might be canvaſſed here at the Bar, and the Defendant, as he has made himſelf eminent for ſome particular Qualifications, might be made a publick Example for this Offence

Thus this Writ comes to be executed here. Now tho' the Words laid in this Declaration are Words that do import in themſelves ſo much Scandal and Reproach, ſo much Malice and Venom, that they need no Aggravation beſides themſelves, and his ſuffering it to go by Default ſhews they are no way to be extenuated, but are thereby acknowledged. Yet however to ſatisfy all People that deſire or have any Inclination to be ſatisfied, that this Proſecution is highly reaſonable, nay abſolutely neceſſary; they come here and give you an account that theſe in the Declaration are but a ſmall Part of the ſcandalous and malicious Words that the Defendant uſeth concerning the Plaintiff. And indeed it doth plainly appear, that the Malice of the Defendant is attended with all the moſt unchriſtian and uncharitable as well as diſloyal and diſobedient Circumſtances that any thing can be, with deſign to traduce and diſparage a Subject ſo Loyal, and a Perſon ſo Great and Illuſtrious as His Royal Highneſs.

As to the firſt Words, you have the firſt Witneſs Mr. *Smith*, and he gives you this Account, He was in a Coffee houſe where he met the Defendant *Otes*; and the Defendant in a vainglorious huffing ſort of manner, takes occaſion, tho' none was offer'd him by any thing ſpoken to him by any body, but only on ſet purpoſe to expreſs his Malice and Venom againſt the Plaintiff. He takes up a Letter that it ſeems came to him by the Poſt, and to gratify his own malicious Inclination, and to give it vent, he proclaims, *This Letter coſt me nine Pence, it might have been brought or afforded for a Penny; and I know no body is the better for it, but that Traitor* JAMES *Duke of* York.

So you ſee, Gentlemen, he takes hold of every little Occaſion, if he can but happen upon an Opportunity, ſuch as this was in an open Coffee-houſe, to reek his Malice upon His Royal Highneſs. And ſure there can be no greater Imputation of Scandal brought upon any Man than this upon the Plaintiff. That the firſt and greateſt Subject of the King of *England*'s ſhould be taxed with the greateſt Crime in the Law, Diſloyalty and Treaſon to his Sovereign. And ſo at once not only chargeth him with being perfidious to his only Brother, againſt that Affection which by Nature he is obliged to pay him, and which all that know any thing, cannot but obſerve to have always been extraordinary; but alſo touches that which is much dearer to him than his Life, his Honour, by charging him with the foulſt of Crimes, Treaſon and Breach of his Allegiance, which as a Subject he owes to his Sovereign. And thus beſides the Defendant's Confeſſion, by this Judgment you have the very Words proved that are in the Declaration.

The next Witneſs is one Mr. *Whaley*, and he gives you an account of another Paſſage which I cannot but take notice of by the way, to ſhew you what a wonderful Chriſtian Temper this Man is endued with. Mr. *Whaley* ſays, That being at the Biſhop of *Ely*'s Houſe upon a Publick Feſtival either of *Eaſter* or *Whitſuntide* (and he is ſure it was one of thoſe two, *Becauſe*, ſays he, *I never uſe to receive the Sacrament in* London, *but upon one of thoſe two Days; and therefore I take it upon me to ſay, it was one of thoſe two Days that I heard theſe Words)* *Otes* having, it ſeems, recei-

received the Holy Sacrament at the Biſhop of *Ely*'s Chappel with Mr. *Whaley* that Day. When a body would have thought that if Mr. *Otes* would have been believed to be ſo hearty and pious a Proteſtant as he pretends to be, he ſhould have remember'd that he ought, according to the Proteſtant Doctrine, to have left behind him at his Approach to the Altar, all Malice and Rancour and ill Will and Hatred to every body: But you ſee what kind of Deportment his was.

For after ſuch time as he had been at the Sacrament, he takes occaſion without any Provocation to fall foul immediately upon His Royal Highneſs, giving him the Name of *a Profligate Wretch*; and then particularly he comes to ſay, *The Duke of* York *was a Traitor*. This Gentleman being concerned, as every honeſt and loyal Man ought to be, and I hope every good Subject is, and ever will be, to hear ſo great a Prince, the King's only Brother, ſo traduced and vilified, reproved him for it; but ſo far was he from taking the Correction due to his extravagant Tongue in a becoming manner, that he preſently (as the Gentleman phraſeth it) calls for his Myrmidons, two Fellows that he had along with him to come to him, upon which the Gentleman was pleaſed to ſay to him, *Nay, good Mr.* Otes, *you need not be in ſo very much Fear of your ſelf as to call for your Men, no body here intends you any Harm.* Nay certainly, Mr. *Otes* did apprehend himſelf to be ſecure from all manner of Correction, or he would never have been ſo impudent to ſpeak ſuch Words.

But you will no doubt take notice, as all Men cannot but do, of what an excellent Goſpel Spirit, what a delicate Chriſtian Temper the Man is of, after the receiving the Sacrament, that very Morning to come and belch out ſuch extravagant Words of Calumny and Reproach.

And it ſeems this Perſon had obtained to make ſuch a wonderful Figure in the World, that every body was afraid to ſpeak to him; for you hear what the Witneſs ſays when he came to beg the Biſhop of *Ely*'s Pardon for being ſo loud and hot at his Table, the Biſhop gave him Thanks for it, and told him, *None of us dare ſpeak to him.* Such a Conſiderable Man hath he been, that he might rail againſt the King, and the Duke, and the Government without Controul. He was got into ſuch a Poſt that no body durſt meddle with him, but he muſt have liberty to ſay any thing of any body. To what an height of Corruption were we grown, that we could ſuffer ſuch a Fellow's Inſolence, at which no Man living that has any ſpark of Modeſty or Loyalty left in him, but muſt bluſh and tremble.

Then they produce to you one Mr. *Johnſon*, who gives you an account that after ſome Diſcourſe between him and the Defendant *Otes*, about the Duke of *York*, he immediately told *Johnſon*, That *the Duke was either to be hanged or baniſhed*; it ſeems he was ſo ill a Man in his Eye, *but of the two, hanging was the fitter for him.* So the Doctor ſheweth what a wonderful Kindneſs and Affection he has for the Duke, and what Thoughts he has of his great Deſerts.

Mr. *Bowring* is the next Witneſs, and he comes and tells you, That the Doctor could not be prevailed with to dine with the Gentlemen of the Pariſh of *Foſter-lane*, becauſe ſome of them had dined with the Duke, which he calls *Dining with the Devil.* It ſeems he made as tho' he would preach there to them, he got up into the Pulpit and took a Text, and pretended to preach, and if he would have preached according to the Duty of a Church of *England* Divine, he was by that to have preached not only Obedience and Submiſſion to Authority; but Reſpect to Superiors, and Charity among all Subjects towards one another; and if he did preach it, it was worſe in him not to practiſe it. But you ſee after he had performed his painful laborious Preachment, after he had taken ſuch a wonderful deal of pains, as no doubt he did in inſtructing his Auditors, what his Language is in anſwer to a Civil Invitation to Dinner by the Church Wardens: *Have any of you dined with* York *at the City Feaſts?* And they not anſwering, but being ſilently amazed at the impertinent Impudence of the Queſtion, *why truly he would not dine with thoſe that had dined with the Devil.* It ſeems His Royal Highneſs had been pleaſed to honour ſome Societies of Loyal Men in the City of *London* with his Company at ſome Entertainments they made, and that is a great Offence to the Defendant; and as for thoſe that had received that Royal Favour from His Highneſs, he takes notice of them as ſuch whom he would neither eat nor drink with, for *truly they had eaten and drunk with the Devil*; but immediately the Doctor, in his great Zeal and wonderful Concern for the Proteſtant Religion, broke up from the Company, would neither eat nor drink with them, but choſe rather to dine at a private *Braſier*'s by *London-Wall*; a properer Place in good Truth for him, than any ſuch Converſation they offer'd him.

Then further to ſhew what mean Thoughts he had of the Plaintiff, Mr. *Fairfax* he comes comes and teſtifies, That there being ſome Talk of a Preſentment or Indictment againſt the Duke of *York* by the Grand Jury here, but that meeting with a Diſappointment, he met *Otes*, and asked him, *What he would do, for*, ſays he, *now you are Non-ſuited?* That is, You have happened not to obtain the End that you deſigned: *Oh*, ſays *Otes*, *No matter for that, that is all one, we will at him next Seſſions; and for my part, I will have no more regard to him than I would to a Scavenger.* Nay, and becauſe they ſhould ſee the very utmoſt of his Malice, and the low Thoughts he had of His Royal Highneſs, as if it had not been malicious enough to have compared him to a Scavenger of *London* or *Weſtminſter*, no, that was a Station too honourable for him in his Thoughts, but he muſt neceſſarily be compared to a Scavenger of *Kent ſtreet*; which we all know to be one of the meaneſt, filthieſt, and moſt beggarly Parts of the Town.

The next piece of Evidence is, that which is given by one Mr. *Philips*, and when he came to him, he began to have ſome Reflexions about the Houſe of Commons and the Duke; *and truly he did not doubt but he ſhould ſee him at the Bar of the Houſe of Commons; and it would be no Diſparagement to him to come there, for there were a great many Members there that were as good Men or better than he.* And even by this Fancy of his he would fain degrade His Royal Highneſs;

for

for in case he had him in no other Consideration but as a Peer, he should know that no Peer of this Realm can be forced by any Vote or Order of the House of Commons to come to their Bar. But he had a mind to take off his very Privilege of Peerage, and it would be no lessening of his Greatness, since that House had in it many Members better Men than the Duke himself. I presume he meant some particular Friends of his own in that House.

The next Man is one Mr. *Ashlock*, and he tells you, That because he would engage all People into an Hatred of the Duke's Person, he must, as a thing of the greatest consequence in order to it, make it be believed, that the Duke had a great Hand and Concern in the dismal Fire of *London* in Sixty six, that thereby he might make him obnoxious to the Rancour and Malice of all that suffered in that dreadful Calamity. And with what handsom Expression he cloaths it? *He fired the City of* London, *he is the Son of a Whore, and we will have him hanged or sent out of* England *for it, whenever a Parliament meets.*

So that here is not only a Personal Reflection, and Malicious Indignity done to His Royal Highness, but carries in it a great Reflection upon His Sacred Majesty himself in his Relations, and he is not contented only to belch out his Venom and Malice against those that are alive, but even against those that are dead too. For you see it is a most foul Imputation and Slander against Her late Majesty the Queen Mother to our Sovereign and His Brother, by calling him the *Son of a Whore*; which is an Expression of that impudent and insolent Nature, as is not fit to be mentioned in a Civil Government.

These things I think my self obliged to take notice of for Example's sake, and to induce all People to consider to what a height of Corruption we were grown when such Scoundrel Fellows as this dare to take such base Words into his Mouth, of the Royal Family.

Then comes Captain *Cressett*, and he gives you an account, That when His Royal Highness and the Dutchess were going last to *Scotland*, as the Captain return'd from the Duke's Lodgings, he met with the Defendant, who fell upon him, *What, you have been with* JAMES? It seems he was one of his intimate Acquaintance, and very familiar he was with his Name. Indeed a Man would have thought, if in case he had spoke as one Man ought to speak of another, that he had been speaking of one of his Myrmidons, and it would have been a very hard matter to have known who else he meant by that familiar Appellation. Says the Captain, *What* James? *Why* York. And he was very kind that he gave him that Addition to let him know what JAMES he meant; but when the Captain chid him, and told him, *Sure you might either say the Duke of* York, *or His Royal Highness*, then immediately, instead of that, he flies out, *He is a Papist, he is a Traitor, and I hope to live to see him hanged, and you will go near to lose your Reputation if you go so often thither.*

So that I perceive, if he will not be advised by this Gentleman, he should lose all his Credit; and yet I presume it is wonderfully for the Advantage of Mr. *Cressett* to lose the Credit he could get by any Characters or Commendations such an one as he could give him.

Then Captain *Cressett* kindly advised him to take care of injuring his Party by his Passion and his indecent Behaviour, and told him, it would turn to his Prejudice at last. And truly now, I think, if all his Party were in his Condition, and made to smart for the Lavishness of their Tongues, I think it were a good Accomplishment of his Prophecy, and if we were rid of them, we should be more at Peace. And we may without offence hope to see that sooner, than what the Defendant says he hoped to see.

The next is Sir *William Jennings*, who tells you of a Passage at the Parliament at *Oxford*, which shews his wonderful Gospel and Christian Temper. When a Company of Gentlemen were met together to drink a Glass of Wine, and were wishing Health and Long Life to His Sacred Majesty, His Royal Highness, and the Royal Family, he would not be contented to refuse the Glass, but to shew how wonderful a Christian Spirit he was of, and to evidence his true Protestant Charity (and by his Carriage who was one of the Heads of the Faction, we may guess at the Temper of all the Party) he cries out, *He has ruined the Nation, and if there be any hotter Place in Hell than other, I hope the Devil will preserve it for him.*

I presume his great Conversation with him he spoke of, hath given him some Intelligence there is in Hell some hotter Places than others, and who they are reserved for. But, Gentlemen, I speak not this that I think any thing that is thus proved by the by, doth in the least aggravate the Damages, for the Words in the Declaration are as bad as bad can be; but to let you see the Disposition of this Man that has been so much admired and courted.

After him comes Mr. *Warcup*, who tells you, he was not in the Room with *Otes* when the last Words were spoken, but coming in immediately after, they all told him the same Words, and he afterwards meeting with *Otes*, and reproving him for his indecent Behaviour and Expression, instead of any Remorse or Concern that he had upon him, by reason of his having spoken such Words, he doth still add to it, *The Duke of* York *is a Traitor, he is in the Plot; and because you take his Part you are a* Yorkist, *and we will be even with you for it at one time or another.* So he threatens him only for asking him why he behaved himself in such an indecent manner towards his Royal Highness.

The last Witness Mr. *Chapman*, is produced to shew what Mind he continues in. After all this is past, and a body would have thought he might by this time have been brought to some Consideration and Submission to Authority; yet you see how the Man is. The Witness tells you since the beginning of this Term, the Declaration being delivered, and by the Course of the Court he ought to Plead within such a Time, the Attorney goeth to him for a Plea, in order to make his Defence if he could in the Action now before you, but he lets Judgment go by Default; and so far is he from repenting of what he had formerly done, that he persists in it, and tells him, *Are you the DUKE's Attorney*? Yes. *Well, I care not a Farthing for the DUKE nor his Attor-*

ney

ney neither; it may be I may be in here for 100000 *l.* (and that I believe is one of the trueſt Things he ever ſpoke in his Life) *but ſuppoſe I be, I do not doubt but when a Parliament meets, a Time will come, when ſome other People may come in my Place.* But truly ſince he has declared his Hopes, I think it may not be amiſs for us to declare ours too; and for my Part, to ſay I hope I ſhall never ſee ſuch a Parliament.

Mr. *Under-Sheriff.* Lay your Heads together, Gentlemen, and conſider of your Verdict.

They did ſo ſtanding at the Bar.

Mr. *Under-Sheriff.* Are you all agreed of your Verdict?

Omnes. Yes.

Mr. *Under-Sheriff.* Who ſhall ſay for you?

Omnes. Foreman.

Mr. *Under-Sheriff.* What Damages do you find?

Sir *Charles Lee.* Full Damages, an Hundred Thouſand Pounds.

Mr. *Under-Sheriff.* What Coſts?

Sir *Charles Lee.* Twenty Shillings.

Which VERDICT, *being Recorded in an Inquiſition indented, taken under the Hands of all the Jury, was afterwards annexed as the Return to the Writ of Inquiry.*

PROCEEDINGS on the OUTLAWRY againſt Sir *THOMAS ARMSTRONG.*

De Term. S. S. Trin. Anno Regni Regis Carol. II. xxxvi. *Die Sabbati,* 14. Junii, *An. Dom.* 1684. *B. R.*

Dominus Rex verſus Thom. Armſtrong. *Mil.*

THIS Day Sir *Thomas Armſtrong* was brought to the Bar of the Court of *King's-Bench* at *Weſtminſter*, by Vertue of a Writ of *Habeas Corpus*, directed to the Keeper of the Goal of *Newgate*; which Writ was on His Majeſty's behalf moved for on *Thurſday* laſt by Mr. Attorney General.

The Return of the Writ was read by the Clerk of the Crown, by which it appeared he was in the Cuſtody of the Keeper of *Newgate*, by a Warrant from the Honourable *Sidney Godolphin*, Eſq; one of His Majeſty's Principal Secretaries of State; which Warrant followeth *in hæc verba.*

Sidney Godolphin, *Eſq; of His Majeſty's moſt Honourable Privy Council, and Principal Secretary of State.*

THESE are in His Majeſty's Name to Authorize and Require you to receive into your Cuſtody, from on Board His Majeſty's Yatch the *Catherine*, Captain *Davis* Commander, the Perſon of Sir *Thomas Armſtrong*, Kt. Outlawed for High-Treaſon, and him ſafely to keep in His Majeſty's Priſon of *Newgate*, till His Majeſty's Pleaſure be farther known. And for ſo doing this ſhall be your Warrant. Given under my Hand and Seal at *White-Hall*, this 10*th* Day of *June* 1684. In the 36*th* Year of His Majeſty's Reign.

S. Godolphin.

To Captain Richardſon *Keeper of His Majeſty's Priſon of* Newgate.

L. C. J. What would you have, Mr. Attorney? Sir *George Jefferies.*

Mr. *At. Gen.* Have you the Outlawry there? Sir *Robert Sawyer.*

Cl. of Cr. Yes, Sir, here it is.

Mr. *At. Gen.* That which I humbly pray, my Lord, is, an Award of Execution for the King againſt Sir *Thomas Armſtrong*, upon the Outlawry.

L. C. J. Firſt, we muſt file this Return.

Mr. *At. Gen.* I pray it may be filed.

L. C. J. Let it be filed: Now what do you deſire, Mr. Attorney?

Mr. *At. Gen.* My Lord, I pray an Award of Execution upon the Outlawry.

L. C. J. Arraign him upon the Outlawry.

Cl. of Cr. Thomas Armſtrong, Hold up thy Hand, [*Which he did.*

Thou haſt been Indicted in *London*, by the Name of *Thomas Armſtrong*, of *London*, Knight of High Treaſon, for Conſpiring againſt the King's Majeſty's Life, and the Government: For not appearing to Plead and Try that Indictment by due Proceſs of Law iſſued againſt thee, upon that Indictment thou ſtandeſt Outlawed, and thereby Attainted of the ſame High Treaſon. What haſt thou to ſay for thy ſelf why Execution ſhould not be awarded againſt thee upon that Attainder according to Law?

Sir *Thomas Armſtrong.* My Lord, I was beyond Sea at the Time of the Outlawry; I beg I may be Tried.

L. C. J. That is not material at all to us; we have here a Record of an Outlawry againſt you, Sir *Thomas.*

Sir

Sir *Thomas Armſtrong*. I deſire to be put upon my Tryal, my Lord.

L. C. J. We cannot allow any ſuch Thing, we have nothing to do upon this Record before us, but to award Execution. Captain *Richardſon*, Which are your uſual Days of Execution?

Capt. *Richardſon*. *Wedneſdays* and *Fridays*, my Lord.

Mrs. *Matthews*. Here is a Statute, my Lord.

L. C. J. What is the matter with that Gentlewoman?

Sir *Thomas Armſtrong*. Hold your Tongue. My Lord there is a Statute made in the *6th* Year of *Edward* the *6th*, which I deſire may be read.

L. C. J. To what Purpoſe would you have it read, Sir *Thomas*?

Sir *Thomas Armſtrong*. It giveth the Priſoner, or Perſon Outlawed for High Treaſon, a Years time to reverſe the Outlawry, if he were beyond Sea. I deſire it may be read.

L. C. J. Ay, let it be read. Where is it, do you ſay?

Sir *Thomas Armſtrong*. It is in the 6th Year of *Edward* VI.

Mrs. *Matthews*. Here is a Copy of it——— [*Shewing a Paper.*

L. C. J. Why, how now? We do not uſe to have Women plead in the Court of *King's Bench*; pray be at quiet, Miſtreſs.

Sir *Thomas Armſtrong*. Pray, hold your Tongue. My Lord, I could not come to alledge this before, becauſe I have been a cloſe Priſoner, and no body permitted to come at me. I deſire Counſel to be aſſigned me at this Bar.

L. C. J. For what, Sir *Thomas*?

Sir *Thomas Armſtrong*. To argue whether this Outlawry ought not to be reverſed.

L. C. J. Read the Statute he deſires.

Mr. *At. Gen.* Ay, let it be read. Sir *Thomas* will not find it to his Purpoſe.

Cl. of Cr. What Chapter is it?

L. C. J. You may eaſily find it about Outlawries for Treaſon.

Cl. of Cr. Reads. *Provided always, and be it Enacted by the Authority aforeſaid, That if the Party*———

Mr. *At. Gen.* Read the Clauſe before that, Sir *Samuel*.

Cl. of Cr. Reads. *And that all Proceſs of Outlawry hereafter to be made and had within this Realm, againſt any Offenders in Treaſon, being Reſiant or Inhabitant out of the Limits of this Realm, or in any the Parts beyond the Sea, at the time of the Outlawry pronounced againſt them, ſhall be as good and effectual in the Law, to all Intents and Purpoſes, as if any ſuch Offenders had been Reſident and Dwelling within this Realm, at the time of ſuch Proceſs awarded and Outlawry pronounced.*

L. C. J. Read on the next Paragraph.

Cl. of Cr. Reads. *Provided alway, and be it enacted by the Authority aforeſaid, That if the Party ſo hereafter to be Outlawed, ſhall within one Year next after the ſaid Outlawry pronounced, or Judgment given upon the ſaid Outlawry, yield himſelf unto the Chief Juſtice of* England *for the time being, and offer to Traverſe the Indictment or Appeal, whereupon the ſaid Outlawry ſhall be pronounced as is aforeſaid: That then he ſhall be received to the ſaid Traverſe, and being thereupon found not Guilty by the Verdict of Twelve Men, he ſhall be clearly acquitted and diſcharged of the ſaid Outlawry, and of all Penalties and Forfeitures by reaſon of the ſame, in as large and ample manner and form, as though no ſuch Outlawry had been made, any herein contained to the contrary in any wiſe notwithſtanding.*

Mr. *At. Gen.* Sir *Thomas*, I ſuppoſe, now will ſhew he yielded himſelf to your Lordſhip.

L. C. J. This is the firſt time I have ſeen Sir *Thomas*.

Sir *Thomas Armſtrong*. My Lord I have been a Priſoner, and the Year is not yet out; I now render my ſelf.

Mr. *At. Gen.* Before he went out of *England* he might have rendered himſelf, and been Tried, if he pleaſed.

Sir *Thomas Armſtrong*. I am within the benefit of the Statute, I conceive, my Lord.

L. C. J. We think otherwiſe, Sir *Thomas*.

Sir *Thomas Armſtrong*. I think, my Lord, the Statute is plain in the Caſe.

L. C. J. We are of another Opinion than you are; it doth not reach your Caſe.

Sir *Thomas Armſtrong*. The Year is not yet out, and therefore I come time enough now; and here I am, and deſire the Benefit of this Act.

L. C. J. Sir *Thomas*, you ſhould have rendered your ſelf to me.

Sir *Thomas Armſtrong*. I do it now, my Lord, and the Year is not yet out.

L. C. J. We cannot take notice of that; we have nothing but the Outlawry, and you did not render your ſelf according to that Act, but are brought as a Priſoner before us now.

Sir *Thomas Armſtrong*. My Lord, I beg I may have Counſel to Plead for me in this Caſe.

L. C. J. For what reaſon? We are of Opinion it is not a Matter of any doubt. For you muſt not go under the Apprehenſion that we deny you any thing that is right; there is no Doubt nor Difficulty at all in the Thing.

Sir *Thomas Armſtrong*. Methinks, my Lord, the Statute is plain.

L. C. J. So it is very plain that you can have no Advantage by it. Captain *Richardſon*, you ſhall have a Rule for Execution on *Friday* next.

Sir *Thomas Armſtrong*. I would only take notice of one Thing, my Lord, may I ſpeak?

L. C. J. Ay, Sir *Thomas*, very freely what you pleaſe.

Sir *Thomas Armſtrong*. A little while ago there was one in this Place had the benefit of a Tryal offered him, if he would accept of it; that is the Thing I deſire now, and I thank God, my Caſe is quite another thing than his, I know my own Innocence; and I deſire to make it appear by a Tryal.

L. C. J. Sir *Thomas Armſtrong*. You may go away with what Opinion you pleaſe, of your own Innocency: But you are here Attainted by Outlawry. That which was done, to him you ſpeak of, was the Grace and Mercy of the King, and he may, if he pleaſe, extend the ſame Grace and Favour to you; but that is not our Buſineſs: We are ſatisfied that according to Law we muſt award Execution upon this Outlawry.

Mrs.

Mrs. *Matthews.* My Lord; I hope you will not murder my Father; this is murdering a Man.

L. C. J. Who is this Woman? Marſhal, take her into Cuſtody. Why, How now? Becauſe your Relation is Attainted for High Treaſon, muſt you take upon you to tax the Courts of Juſtice for Murder, when we grant the Execution according to Law? Take her away.

Mrs. *Matthews.* God Almighty's Judgments light upon you.

L. C. J. God Almighty's Judgments will light upon thoſe that are Guilty of High Treaſon.

Mrs. *Matthews. Amen,* I pray God.

L. C. J. So ſay I. But Clamours never prevail upon me at all; I thank God, I am Clamour Proof, and will never fear to do my Duty.

[*Then She was carried away.*

Mr. *At. Gen.* My Lord, I would only acquaint you with one Thing, in reference to what Sir *Thomas Armſtrong* has ſaid: The King did indulge *Holloway*, that he ſpeaks of, it is true, ſo far as to offer him a Tryal, and His Majeſty perhaps might have ſome reaſon for it, but the Priſoner truly deſerves no Sort of Indulgence or Mercy from the King. For it has appeared by the Evidence that has been given of this late horrid Conſpiracy, that after the Diſappointment that was given by the Providence of God, by the Fire at *New Market*, to the meeting at the *Rye*; this Gentleman was one of the Perſons that actually engaged to go upon the King's haſty coming to Town, and to deſtroy him by the way as he came to Town. And this appears upon a full and clear Evidence, as poſitively teſtified as any thing can be. And when he was taken beyond Sea, Letters of Communication with foreign Miniſters and other People were taken about him, and will be——

L. C. J. We are not to meddle at all with the Evidence, Mr. Attorney; that is not our Buſineſs; here is an Outlawry, upon this Outlawry he is Attainted; we have nothing more to do, but to do the Duty of the Court upon this Record before us, to award Execution upon that Attainder, and we muſt give a Rule for it. If the King will be pleaſed to do for Sir *Thomas Armſtrong* what he did for *Holloway*, and indulge him a Tryal, and wave the Outlawry, with all our Hearts. We are not Diſpoſers of his Grace and Favour, but the Miniſters of his Juſtice. If the King will pardon him, he may; that is not our Buſineſs; but all we have to do upon what is before us, is to conſider the Record, and what the Priſoner ſays againſt our awarding of Execution. We have conſidered whether this be a yielding within the Proviſo of this Statute, and we think it is not, nor can be, by any means.

Sir *Thomas Armſtrong.* My Lord, I am within the Statute, I was Outlawed while I was beyond Sea, and I come now here within the Twelve Month. That is all I know, or have to ſay in this Matter.

L. C. J. We think quite the contrary, Sir *Thomas.*

Sir *Thomas Armſtrong.* When I was before the Council, my Lord, they ordered that I ſhould have Counſel allotted me, but I could have no benefit by that Order; for when I was taken, I was robbed of all the Money I had, and have not had one Penny reſtored to me, nor any Money ſince, I know not whether the Law allows Perſons in my Condition to be robbed and ſtripped.

L. C. J. I know nothing at all of that Matter, Sir *Thomas.*

Sir *Thomas Armſtrong.* My Lord, I know Lawyers will not plead without Money, and being robbed I could not have wherewithall to Fee them.

L. C. J. Sir *Thomas Armſtrong.* You take the Liberty of ſaying what you pleaſe; you talk of being robbed, no body has robbed you that I know of.

Sir *Thomas Armſtrong.* No body ſays you do know of it; but ſo it is.

L. C. J. Nay, be as angry as you will, Sir *Thomas*, we are not concerned at your Anger. We will undoubtedly do our Duty.

Sir *Thomas Armſtrong.* I ought to have the benefit of the Law, and I demand no more.

L. C. J. That you ſhall have by the Grace of God. See that Execution be done on *Friday* next according to Law. You ſhall have the full benefit of the Law.

Then the Priſoner was carried back to Newgate, *and afterwards upon a Petition, the* Court *ordered Mrs.* Matthews *to be releaſed out of Cuſtody without Fees.*

This Attainder was Reverſed in B. R. *on a Writ of Error,* 6 W. III. 4 *Mod.* 366.

Paſchæ xxxvi Caroli Secundi Regis.

London ſſ. WIlhelmus Pritchard Miles nuper Major Civit. prædict. quærit de Thoma Papillon in Cuſtod. Marem, &c. pro eo videlicet quod cum duodecimo die Februarii Anno noſtri Domini Caroli Secundi nunc Regis Angliæ, &c. triceſimo quinto ipſe idem Wilhelmus Pritchard ac antea & abinde pro ſeparat. menſes ex tunc prox. ſequend. extitit. Major Civitat' London. prædict. in Officium Majoratus illius debito modo elect. præfect. & jurat. ac ſecundum Conſuetudinem Civitat. London. prædict. à tempore cujus contrar. memoria hominum non exiſtit in eadem uſitat. & approbat. Officium ſuum Majoratus illius indies intendere debuit pro aſſiduam diligent. ipſius Wilhelmus in regimine Civitat. illius pro ipſum ſecundum debitum Officii ſui prædict. exequend. & performand. ad honorem & dignitat. ad Officium illud ſpectant. & pertinen. prædictus tamen Thomas exiſtens unus de Comitat. Civitat. prædict. & ſub regimine dicti Wilhelmi virtute Officii ſui prædicti præmiſſor. non ignarus, ſed machinans & falſe, ac malitioſe, invidens felici ſtatui ipſius Wilhelmi in Officio ſuo prædict. necnon ipſum Wilhelmum in executionem Officii illius minus juſte inquietare & diſturbare prædicto duodecimo die Februarii Anno triceſimo quinto ſuperdicto idem Thomas Papillon pro vexatione præfat. Wilhelmo adhibend. (eodem Thoma ad tunc non habente aliquam legitimam vel probabilem Cauſam Actionis verſus ipſum Wilhelmum) falſe & malitioſe proſequut. fuit extra cur. dicti Domini Reg. coram ipſo Rege nunchit. ſcilicet apud Weſtmon. in Com. Middleſex adtunc & adhuc tent' exiſten. quoddam Breve ipſius Dom. Reg. de alias Capias verſus ipſum Wilhelmum per nomen Wilhelmi Pritchard Militis adtunc Coronator. Civitat' London. præd. direct' per quod quidem Breve idem Dominus Rex nunc eidem tunc Coronatori præcepit quod capiet ipſum Wilhelmum Pritchard ſi invent' foret in Civitat' London. præd. & ea ſalvo cuſtodiret, ita quod haberet Corpus ejus coram Domino Rege apud Weſtm. die cur' prox. poſt quindenam Paſchæ ex tunc prox. ſequend. ac reſpondend. præfat' Thomæ Papillon præ nomen Thomæ Papillon Armiger. de placito trangreſ. & quod idem tunc Coronator haberet ibi tunc Breve illud Et prædictus Thomas Papillon ex ulteriori nequitia & malitia ſua præcogitat' verſus ipſum Wilhelmum poſtea & ante retorn' Brevis prædicti ſcilicet viceſimo quarto die Aprilis Anno triceſimo ſuperdicto apud London. præd. videlicet in Parochia Sanctæ Mildredæ Virginis in Pulletria in Warda de Cheap. London. prædictum Breve de alias Capias cuidam Johanni Brome Gent. adtunc Coronator. Civit' London. præd. exiſten. deliberavit exequend. ac adtunc & ibidem apud Wilhelmum adtunc Major' Civitat' London. præd. ut præfert' exiſten. prætextu Brevis illius pro Corpus ſuum capi & arreſtari ac in Priſona ſub Cuſtod. ejuſdem tunc Coronator. per ſpatium ſex horarum ex tunc prox. ſequen. detineri malitioſe & minus juſte procuravit in vituperation' derogation' & vilipendium prædicti Wilhelmi & Officii Majoratus ipſius Wilhelm. præd. necnon ad damnum præjudicium & gravamen ipſius Wilhelmi manifeſt' ubi revera & de facto prædictus Thomas Papillon prædicto tempore captionis arreſtionis & detentionis ipſius Wilhelm. in Priſona ſit ut præfert' fact' non habuit aliquam juſtam vel probabilem Cauſam Actionis verſus ipſum Wilhelmum in Præmiſſis præd. unde idem Wilhelmus dic' quod ipſe deteriorat' eſt & damnum habet ad valent' decem mille librarum & inde produc' ſectam, &c.

Die Jovis 6. Nov. Anno Dom. 1684. Mich. Ter. 36 Car. 2. B. R.

At the Seſſion of *Niſi Prius* for the City of *London*, held at *Guild-hall.*

Pritchard verſus *Papillon.*

London ſſ. SIR *William Pritchard*, late Lord Mayor of the City of *London*, having in *Eaſter Term* laſt brought an Action upon the Caſe, for falſly, maliciouſly, and without probable Cauſe, procuring him to be arreſted and impriſoned in his Mayoralty, againſt *Thomas Papillon*, Eſq; The Defendant pleaded Not Guilty, and thereupon Iſſue being joyned, it came this Day to be tryed before the Lord Chief Juſtice *Jefferies*; and the Jury ſworn to try this Cauſe were theſe,

Bartholomew Ferryman, *Thomas Blackmore*, *Thomas Symonds*, *William Whatton*, *John Green*, *Thomas Amy*, } Jur' { *Joseph Baggs*, *Daniel Chandler*, *John Reynalds*, *John Allen*, *Joseph Caine*, and *William Withers*, Jun.

Mr. *Mundy*. May it please your Lordship, and you Gentlemen of this Jury, Sir *William Pritchard*, Knight, late Lord Mayor of the City of *London*, is Plaintiff, and *Thomas Papillon*, Esq; is the Defendant: And this, Gentlemen, is in a special Action upon the Case, wherein the Plaintiff does declare, That whereas the 12th of *February* in the 35th Year of this King, and before and after for several Months then next ensuing, he was Mayor of the City of *London*, being duly elected and sworn into the Office af Mayoralty of the said City, and according to the Custom of the said City time out of mind, he ought daily to attend the said Office in the diligent Government of the said City, according to the Duty of his said Office, which he was to execute to the Honour and Dignity belonging thereunto; That the Defendant, *Thomas Papillon*, being one of the Commonalty of the said City, and under the Government of the Plaintiff, by virtue of his Office aforesaid, not being ignorant of the Premisses, but contriving, and falsly, and maliciously envying the happy Estate of the Plaintiff in his said Office, as also unjustly to disturb the Plaintiff in the Execution of his said Office, the said 12th Day of *February* in the 35th Year aforesaid, the Defendant for Vexation to the Plaintiff, not having any lawful or probable Cause of Action against the Plaintiff, falsly and maliciously did prosecute the King's Writ of *Alias Capias* out of the Court of *King's Bench* against the Plaintiff, by the Name of Sir *William Pritchard*, Knight, directed to the then Coroner of the City of *London*; by which Writ it was commanded the said Coroner to take the Plaintiff, if found within the said City, and safely keep him, so as to have his Body before that Court at *Westminster* upon Wednesday next, after 15 Days of *Easter* then next following, to answer the now Defendant in a Plea of Trespass: And that the Defendant of his further Malice against the Plaintiff, afterwards and before the Return of the Writ, to wit, upon the 24th Day of *April* in the 35th Year aforesaid, at *London*, to wit, in the Parish of St. *Mildred* the Virgin, in the *Poultry*, in the Ward of *Cheap*, *London*, delivered the said Writ of *Alias Capias* to one *John Brome*, Gent. then being Coroner of the said City, to be executed; and then and there the Plaintiff, then being Mayor of the said City, by virtue of that Writ, maliciously and unjustly did procure to be taken, and arrested, and detained in Prison under the Custody of the said Coroner for the space of six Hours, to the Disgrace and Scandal of the Plaintiff and his said Office, as also to the manifest Damage, Prejudice, and Grievance of the Plaintiff: Whereas in Truth and in Fact the Defendant at the time of the taking, arresting, and detaining of the Plaintiff in Prison, as aforesaid, had not any just or probable Cause of Action against the Plaintiff in the Premises, whereby the Plaintiff says he is injured, and which he lays to his Damage 10000 *l.* To this the Defendant has pleaded Not Guilty. If we that are of Counsel for the Plaintiff shall prove this Matter unto you, Gentlemen, that we have laid in the Declaration that has been opened unto you, you are to find for the Plaintiff, and I hope will repair him in Damages for this Affront and Injury.

Sir *Robert Sawyer*.

Mr. *At. Gen.* May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel in this Case for the Plaintiff; and this Action is brought, Gentlemen, to vindicate the Honour of the Chair from such Affronts as these, which in no Age, till of late days, our Times of Faction and Confusion it ever met with; That by a Person that is a Citizen of *London*, and one of the Commonalty, that ought to have paid Submission to the Lord Mayor as his Chief Magistrate, and was bound so to do by his Oath as a Freeman should, without Cause of Suit, arrest the Lord Mayor of the City. That there was no probable Cause, is evident by his not proceeding in the Action that he had thus brought. But, Gentlemen, we shall shew you in the Course of our Evidence, that there lay a further Malice in this Case, and that there was a Design in it against the Government. For we shall give you Evidence that this Design was laid to carry on the great Plot against the Lives of the King and his Brother, and for the Subversion of the Government. For they contrived it so, that they would imprison the Mayor, and then, thought they, the Loyal Citizens will interpose to rescue him, and then the Party should rise to assist the Officer, he having the Countenance of Authority, and being in the Execution of the King's Writ (especially if it be considered then who was Coroner) and so a publick Commotion would be made, a general Mutiny, and that would be a fit Opportunity, in the Confusion of the City wanting its Chief Governor, of doing what they designed. Gentlemen, We shall prove all that is laid in the Declaration; and likewise that the End of this Business was to have had a Commotion for the accomplishing their great Conspiracy as has been opened. That Sir *William Pritchard* was arrested in his Mayoralty, I suppose, will be agreed, or else we shall prove it.

Mr. *Ward*. Yes, yes, we agree it.

Mr. *Finch*.

Mr. *Sol. Gen.* Then we will go on and prove the manner of it. Swear Mr. *Gorges*, and Mr. *Keeling*. (*Which was done.*) Mr. *Keeling*, Pray, will you tell my Lord, and the Jury, were you made a special Bailiff to arrest Sir *William Pritchard* when he was Lord Mayor, and what did you do upon it? Tell all you know of it, and what was designed by it.

Keeling. My Lord, All that I do know of it is this: It was upon the 24th Day of *April*, I have the Warrant here to shew, I met with Mr. *Goodenough* at Mr. *Russel*'s the Cook in *Ironmonger lane*, and several others were there; and I went away a little while and came again: While I was gone from them, they put my Name into the Warrant, and upon that Warrant I did arrest Sir *William Pritchard*, who was then Lord Mayor, at the Suit of Mr. *Thomas Papillon*, I suppose this is the Gentleman. (*Pointing to the Defendant.*) I had no Order for it from Mr. *Papillon*, nor ever spoke with him about it; but I had Order from the Coroner, who upon the arrest-

arresting of him took my Lord Mayor into his Custody.

Mr. *At. Gen.* Where was my Lord Mayor then?

Keeling. At *Grocers-hall.*

Mr. *At. Gen.* Was that the Place he kept his Mayoralty in?

Keeling. Yes, it was so.

Mr. *Sol. Gen.* What was he doing when you arrested him?

Keeling. There was some Disturbance upon it among the Officers and People there. The Coroner came up to him and said, Sir, I have a Writ against you, I pray you would please to give an Appearance at the Suit of Mr. *Thomas Papillon*, and another at the Suit of Mr. *John Dubois*, and some Words there pass'd between him and the Coroner; and my Lord Mayor refusing to give any Appearance, the Coroner Mr. *Brome* bid us execute our Warrants, upon which I came up to my Lord Mayor and touched him upon the Shoulder, and said, I arrest you at the Suit of *Thomas Papillon* Esq; and one *Ferdinando Burley* arrested him again at the Suit of Mr. *John Dubois.*

Mr. *At. Gen.* What did you do with him when you had arrested him?

Keeling. The Coroner dismiss'd us, and, as I take it, carried him home to his House.

Mr. *At. Gen.* What Instructions had you what to do, in case he made any Resistance, and did not submit to the Arrest?

Keeling. I know of no Instructions about any such thing.

Mr. *Sol. Gen.* Who was by, pray, when Orders were given you to arrest my Lord Mayor?

Keeling. Both the *Goodenoughs.*

Mr. *At. Gen.* He in the Proclamation, you mean, and his Brother?

Keeling. Yes, *Richard* and *Francis Goodenough.*

Mr. *Sol. Gen.* And who else, pray?

Keeling. Several that I did not know.

Mr. *At. Gen.* Can you remember any body besides the *Goodenoughs*, in particular?

Keeling. There was one a Tallow-Chandler, and a great many that I did not know.

Mr. *Sol. Gen.* How many do you think there were? And where was it?

Keeling. I believe there were about thirty or forty, and it was at *Russel*'s the Cook's in *Ironmonger lane.*

Mr. *At. Gen.* Did they all come along with you to *Grocer's Hall* to arrest my Lord Mayor?

Keeling. No, my Lord, they did not.

Mr. *Sol. Gen.* Did any of them, and which, pray?

Keeling. Sir, I will tell you who did come to my Lord Mayor's. There was the Coroner, *Francis Goodenough*, *Ferdinando Burley*, and my self: And after my Lord was arrested, the Coroner bid us be gone, and he would look after my Lord Mayor.

Mr. *Sol. Gen.* Whither did you go after that?

Keeling. I went to Sir *Harry Tulse*'s directly.

Mr. *At. Gen.* Did not you expect an Opposition? And had you not some Discourse what you should do in case there was an Opposition?

Keeling. No, I cannot tell any thing of that.

Mr. *At. Gen.* You say, there was a Meeting, or Consult, at *Russel*'s, of forty People; Had you not there some Consultation what was to be done if my Lord Mayor did not obey the Arrest?

Keeling. I do not remember any thing about that at that time.

Mr. *At. Gen.* Was there at any other time before? Or did you hear any of those People discourse the *Goodenoughs*, or any of them, what they would have done in case they were resisted?

Keeling. I do not remember any Discourse of any such thing, before or after.

Sir *George Jefferies.*

L. C. J. Pray, Mr. *Keeling*, let me ask you a Question or two. Were you ever employed by the Coroner to be a special Bailiff to arrest any body before this time you speak of, that you arrested Sir *William Pritchard?*

Keeling. No, my Lord, I never was.

L. C. J. Then, pray recollect your self, who were at that Meeting, when, as you say, your Name was put into the Warrant for this Arrest?

Keeling. My Lord, When I went away for a little while, I left these Persons particularly that I did name, the two *Goodenoughs*, and one *Burton*, I think, and one *Crompton*, and that Tallow-Chandler; there were to the Number of thirty or forty that I did not know their Names.

L. C. J. But, pray, how came you to be employed in this Service then? Were you a Tradesman in Town then?

Keeling. Yes, in *Wapping.*

L. C. J. Good now, how came you to be employ'd in arresting my Lord Mayor more than any other of those thirty or forty that you say were there then?

Keeling. I went there among them, but did not know then that I should be concerned in this Business; and I went away a little while, and when I came back, they told me, that my Name was put into the Wrarant.

L. C. J. Pray tell us the whole Story, How you that were a Tradesman at *Wapping*, should come to be employed as a Bailiff to the Coroner of *London* to arrest my Lord Mayor? There must be some particular End in it.

Mr. *At. Gen.* Mr. *Keeling*, Tell the Court and the Jury the whole Story, and what it was that brought you into this.

Keeling. My Lord, Mr. *Goodenough* told me I must be concerned.

L. C. J. Ay, prithee tell us what *Goodenough* desired you to be concerned in?

Keeling. Upon my coming back to the Company that was at *Russel*'s, Mr. *Richard Goodenough* told me, I must be concerned in the Business of arresting my then Lord Mayor, Sir *William Pritchard:* Said I to him, Mr. *Goodenough*, This is foreign and remote to my Business, to be concerned in such a Matter as this, it will seem very strange for me to do it. He press'd it upon me to do it; and, says he, if you will not do it, you will be a Man look'd ill upon, and it will be taken strangely from that Party; he meant, I suppose, the Discontented Party, the Faction, or what you please to call it, that were not contented with the Administration of the Government in the City at that time; and he urged it upon me with a great many Arguments. I opposed it with much Vigour a good while,

while, but at laſt he prevailed upon me to go along with the Coroner; and *Frank Goodenough* his Brother ſaid he would go with me, and he did ſo; and we came and arreſted my Lord Mayor, as I told you before.

L. C. J. Where did Mr. *Goodenough* preſs you to be concerned in this Buſineſs, as you ſay?

Keeling. At Mr. *Ruſſel's* a Cook's in *Ironmonger-Lane.*

L. C. J. How came you thither?

Keeling. He ſent me a Letter to meet him there. He was at me before to be concerned in it, but I did not comply with him in it. Mr. *Richard Goodenough* it was, and Mr. *Aſhurſt*, I think it was Alderman *Corniſh's* Son in Law was by.

L. C. J. Was *Nelthrop* there?

Keeling. No, my Lord, he was not there, but they did not proceed then, becauſe my Lord and his Brethren were gone out of Town to wait upon the King, I think; And this was ſix Weeks or two Months before this Meeting at *Ruſſel's.*

Mr. *Sol. Gen.* Pray, Mr. *Keeling*, recollect your ſelf. Had you any Diſcourſe with *Goodenough*, or any body elſe, what the Conſequence of ſuch an Arreſt would be?

Keeling. They told me, my Lord Mayor, and Court of Aldermen, had made an ill Return to the *Mandamus's* that were ſerved upon them for the ſwearing of Mr. *Papillon* and Mr. *Dubois* Sheriffs, and therefore Mr. *Papillon* and Mr. *Dubois* had good Cauſe of Action againſt them; and *Goodenough* ſaid, he had order from them to arreſt my Lord Mayor upon an Action, and deſired me to be concerned.

Mr. *Sol. Gen.* But pray remember what you ſaid before, Mr. *Keeling*, Why ſhould the diſcontented *Party*, as you call them, be concerned, and be angry with you if you did not arreſt my Lord Mayor?

Keeling. The particular Argument that he uſed with me to perſwade me to it, was this, That I having a Trade and Dealing among that Sort of People, they would think ill of me if I did not do it.

Mr. *Sol. Gen.* But why ſhould the Party be angry with you, if you were not a Bailiff to arreſt my Lord Mayor, at the Suit of Mr. *Papillon?*

Keeling. I did not know the reaſon of their Anger, he might have ſomething in his Head that he did not reveal to me. But that was the Argument he uſed, The Party would think ill of me.

Mr. Serj. *Maynard.* If you have done with this Witneſs, I would ask him a Queſtion. You ſay, Sir, that *Goodenough* told you, the Diſcontented Party would be angry with you, if you did not do it? Upon your Oath, was the Diſcontented Party named?

Keeling. No, Sir, but that Party of which Mr. *Goodenough* and I then was, and they were the Diſcontented Party, I think, for they were ſo diſcontented, that they would have killed the King and the Duke.

Mr. *At. Gen.* That is an Anſwer, I hope, to your Queſtion, Mr. Serjeant.

L. C. J. I think, when he names the *Goodenoughs* to be of the Party, no body queſtions but they were diſcontented.

Mr. *Sol. Gen.* He has explained well enough ſure what he meant by the Diſcontented Party, thoſe that were ſo diſcontented that they would have killed the King and the Duke. Thoſe were the Promoters of this Action, and Mr. *Keeling* muſt engage in it, or they would be diſpleaſed. Now, my Lord, we ſhall call Sir *Henry Tulſe*, and Sir *Robert Jefferies*, to ſhew what the Coroner did.

Keeling. I arreſted Sir *Harry Tulſe* afterwards.

Then Sir Harry Tulſe *was called.*

Mr. *Ward.* My Lord, we deſire Sir *Harry Tulſe* may not be ſworn, we have an Exception to his Teſtimony.

L. C. J. What is your Objection?

Mr. *Ward.* We are informed, he and the reſt of the Court of Aldermen, have joined their Purſes to carry on this Suit, and then, with Submiſſion, he is not a good Witneſs.

L. C. J. Ask him that Queſtion upon a *Voyer dire.*

Then he was ſworn upon a Voyer dire.

Mr. *Williams.* Pray, Sir, is there any Order of the Court of Aldermen to lay out Money for this Cauſe out of their Joint Purſes, or the Publick City Stock?

Sir *Harry Tulſe.* Not that we know of.

Mr. *Williams.* Pray, Sir, do you know whether Sir *William Pritchard* laid out Money in it, or who elſe doth?

Sir *Harry Tulſe.* I cannot give a poſitive Anſwer to that, who layeth out Money upon it, nor do I know of any ſuch Order as you ſpeak of.

Mr. *Ward.* Sir *Harry Tulſe*, though you know of no ſuch formal Order of the Court of Aldermen, yet is there not ſome Direction by the Court of Aldermen about expending Monies in a joint way?

Sir *Harry Tulſe.* I aſſure you, Sir, I know nothing of it.

L. C. J. Come, he has given a full Anſwer to your Queſtion, ſwear him.

[*Which was done.*

Mr. *Holt.* Sir *Harry Tulſe*, now you are ſworn, Pray, will you give an Account of what happened about this Matter within your knowledge: Pray tell the whole Story.

Sir *Harry Tulſe.* My Lord, about four of the Clock in the Afternoon, this Gentleman, and two more, came to me to my own Houſe, and he did arreſt me (I mean, Mr. *Keeling*, that was ſworn here before me) at the Suit of Mr. *Papillon*; and another of them did arreſt me at the Suit of Mr. *Dubois*: Said I to them, I do not know that I owe them, or either of them, a Farthing. But, what muſt I do? He told me, It was only to give an Appearance. Said I, Gentlemen, I ſhall conſider of that. Then, ſays he, you muſt go to my Lord Mayor: Why, where is he, ſaid I? Said he, He is in the Cuſtody of the Coroner at his Houſe. Where, ſaid I? He is gone to *Skinner's Hall*, ſaid he. This is well, ſaid I. So I called for my Man to bring my Cloak. Then they told me, If I pleaſed, they would take my Word till to morrow Morning, if I would promiſe to appear. I told them, they might do as they pleaſed. So they left me; and I went firſt to my Lord Mayor's Houſe, but found

found him not there; so I went down to *Skinner's Hall*, and there I found my Lord Mayor all alone, and no Alderman, only the Officers. I asked his Lordship how he came there? He told me, he was arrested by the Coroner. I asked him how long he had been detained? And, he said, but a little time: And indeed I think it could not be long, for I met his Coach coming back, from *Skinner's Hall* when I went. After that he was detained there till about Eleven of the Clock, or thereabouts. This is all that I know of it.

L. C. J. What became of the Government of the City all that Time?

Sir *Harry Tulse.* There was presently a great Noise all about the City concerning my Lord Mayor's being arrested, and abundance of People were gathered together about the Door, but there came a Company of Soldiers of the Trained Bands, and they kept all quiet. There were great apprehensions of an Uproar. I saw nothing of hurt done though. And I asked Mr. *Brome* the Coroner, who was by, Am I a Prisoner too? For I was arrested to Day by a Warrant pretended to be from you. Says he, I have a Writ against you, and now you are here, I cannot let you go till you have given an Appearance. So I took my self to be detained there with my Lord Mayor in Custody, and staid as long as he staid, and went away with him.

Mr. *Recorder.* Swear Mr. *Wells*, the Common Cryer, and Sir *John Peak.*

Mr. Wells *was Sworn.*

Mr. *Recorder.* Mr. Common Cryer, were you at my Lord Mayor's House when this Hubbub was made? Pray tell my Lord and the Jury what you know of it.

Mr. *Wells.* Yes, I was there.

Mr. *Holt.* Then tell what past.

Mr. *Wells.* I was not in the Hall where my Lord Mayor was, but in another Room by: And the Officers came running in to me, and told me, I must come to my Lord Mayor quickly, for he was arrested by some People. When I came, I found there were none of the Sheriffs Officers that used to arrest People; but the Room was full of other Persons. My Lord Mayor bid me take the Sword and go along with him, for the Sword-bearer was not then just at hand. I asked his Lordship whither he was going? The Coroner said, he was his Prisoner, and must go along with him to his House. My Lord Mayor bid me presently send out the Officers to summon a Lieutenancy, which I did. I desired the Coroner and his Men to be gone; said I, Cannot you let my Lord alone, and go about your Business? No, he said, except my Lord would give an Appearance, he must go along with him. I then asked him whither my Lord must go? He said, he had no Place but his own House to carry him to, and thither we went; where when we came, my Lord was put up into a little Room by himself, where were none but my self, and the Coroner, as I remember. My Lord Mayor bid me go and see for Sir *James Edwards* and Sir *Harry Tulse*, and my Lord Mayor that now is, and so I went, but I found they were arrested too before I came.

L. C. J. How did my Lord go away from thence?

Mr. *Wells.* In his Coach.

Mr. *At. Gen.* Were you by when he went away? And who was there?

Mr. *Wells.* Mr. *Brome* the Coroner was not there when my Lord Mayor went away, but there was *Goodenough.*

L. C. J. Ay, he was in trusty Hands upon my Word.

Mr. *At. Gen.* The Soldiers prevented the Design, and so they let him go again.

Mr. *Recorder.* Swear Sir *John Peak.* [*Which was done.*

Sir *John*, what can you say to this Business?

Sir *John Peak.* My Lord, I had order from the Lieutenancy to raise my Regiment upon the News of my Lord Mayor's being arrested; which I did in a very little time, and came with my Soldiers to *Skinner's Hall*, where I heard my Lord Mayor was, and prevented any Stir, as it was feared there would have been. But Mr. *Keeling*, I believe, can tell something more of the Design than he has spoken; for I remember at the Tryal of the Traitors at the *Old Bailey*, he did say, That after my Lord Mayor was arrested, they did intend something, but their Hearts misgave them when the Regiment was up.

L. C. J. That is nothing to this Cause, what he said there, now he remembers nothing of it. Have you done, Gentlemen, or will you call any more Witnesses?

Mr. *At. Gen.* We rest it here, my Lord, till we hear what they say to it.

L. C. J. Come then, what have you to say that are for the Defendant?

Mr. Serj. *Maynard.* May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel in this Case with the Defendant, Mr. *Papillon.* I see, Gentlemen, it is a Cause of great Expectation, and by that means they would make it greater by far than indeed it is in it self. But, I suppose, you who are upon your Oaths, to try this Issue, will duly weigh and consider what it really is. Gentlemen, the Record tells you what it is, an Action upon the Case, wherein the Plaintiff declares, that the Defendant did arrest him, being then Lord Mayor, without any probable Cause, and out of Malice. Now as to that, Gentlemen, I conceive and think, I may appeal to my Lord Chief Justice in it, for Direction in Point of Law, that my Lord Mayor, if he do mistake in his Office, and do not do that which belongs to him to do, he is as much subject to the Process of Law and Actions, as any private Person in the City of *London.* If he does any Man an Injury, or does that which is not right in his Office, by which another Person is grieved, he is liable to the Prosecution of any particular Subject the King has, that is so grieved by him. Then they alledge, that this particular Action and Arrest thereupon was prosecuted and done out of Malice, and without probable Cause. Now what have they proved of that? They prove the Thing done, that he was arrested at the Defendant's Suit, and that he was kept in Custody six Hours. But if we can give you any Account of a probable Cause for it, that is sufficient to justify us from this Action. Gentlemen, the Question that you are to try is not, Whether this Man or that Man were duly chosen into such an Office, but whether there were any probable Cause for the Defendant to contest about the Choice. And herein the

the Caſe will fall out to be thus. There was a difference in the City of *London*, as is very well known to every body, about the Choice of Sheriffs for the City, wherein the Defendant was one of the Competitors; there were upon the Nomination and Election in the Hall, a great many more Voices or Suffrages for one than for the other, which was certified to the Court of Aldermen and Lord Mayor, as is uſual; but ſome Conteſt being, a Poll was demanded and granted, and upon that Poll my Lord Mayor was pleaſed to declare the Election on one Side againſt Mr. *Papillon*, who yet was apprehended by the firſt Choice, to be one that had moſt Suffrages. But ſeveral Meetings there were, and ſeveral Common Halls aſſembled, ſo that it was a conteſted Matter, and as I ſaid, there had been a Report made on the Defendant's behalf. We inſiſt not upon the Right of Election, that has been otherwiſe determined. But when he is put in Nomination by the Electors in the City, and has many Suffrages, and he conceives himſelf rightly choſen, and they that are the Managers of the Election give ſuch an Account, that in their Judgment he was choſen; that ſurely was a probable Cauſe for him to proceed upon it. And if there be but a probable Cauſe to bring this to a Queſtion, no doubt he might very well take the Courſe the Defendant took. Here is no Arreſt without legal Proceſs; nay, their own Witneſſes ſay, there was an Offer to take an Appearance without putting it on ſo far as an Arreſt: If my Lord Mayor would have but given an Appearance, there had been an end, but he did not think fit to do that, and ſo the Proceſs of Law was executed upon him. Then here is the Caſe in ſhort: A Man thinks himſelf rightly and duly choſen into an Office, and has probable reaſon ſo to think, for the Judges of the Election think ſo too, and deliver that as their Opinion; ſo that though he is miſtaken, as the Event proves, yet he is not alone in his Miſtake, nor without ground of his Apprehenſion; then if it be (under favour) ſuch a Man has no other Proceedings to take in the World for ſettling this Matter, but to appeal to your Lordſhip, and that great Court where your Lordſhip ſits, to have a Writ to command the Mayor, or other proper Officer to ſwear ſuch a Man into the Office, or ſhew good Cauſe why he doth not. If the Mayor upon the Receipt of the Writ thinks fit to obey it, and ſwears the Man, all is well: If not, he muſt make a Return of the Writ, with the Cauſe why the Command of the Writ is not obeyed. Now the Suggeſtion of the Writ is, that he was duly choſen into ſuch an Office, and therefore he had a fair way to put this Matter to an end; if he would have returned he was choſen, or not choſen, there had been an end of the buſineſs, which he ought (under favour) to have done in Obedience to the King's Writ. What then follows upon his not doing ſo? The Party that is grieved hereby, has no other Courſe to take, but to bring his Action againſt the Mayor for it. This Courſe the Defendant took, by taking out a Writ againſt the Plaintiff: And what was the Effect of that Writ? It is indeed charged here by the Counſel on the other Side, That there was a Deſign of a diſcontented Party in it, and I know not what, and a great deal of Stir made, that a Coroner of the City of *London* ſhould arreſt my Lord Mayor. It may be it was not ſo reverently done; but yet if he thought he had good Cauſe of Action againſt him, he might do it lawfully. Doth this prove to you, that this was maliciouſly and unreaſonably done? Malice muſt be to the Perſon; Zeal and Earneſtneſs to have Right done to a Man's ſelf or another, in a legal Courſe of Juſtice, is not Malice, nor will make the Proſecution of the Action unreaſonable and groundleſs. Have they proved, to you, Gentlemen, any particular Diſcontent and Malice that is between the Plaintiff and Defendant? No truly, I think, by all the Proof that has been offered, the quite contrary does appear. The Defendant took out a *Mandamus*, directed to the Plaintiff, which was not duly returned: What then doth he do next? Doth he moſt violently arreſt him? That, with Submiſſion, he might do, and no Offence in Law: No, but he doth not do it, but only deſired from time to time, as we ſhall prove anon, that he would but give an Appearance, that would have put a Concluſion to this Diſpute. There is no Appearance given: Whereupon he is arreſted and detained in Cuſtody ſix Hours. If a Man be once in the Officer's Hands taken upon legal Proceſs, how long ſoever the Officer keeps him, is not at all to be laid upon the Perſon that brings the Suit, that is to be looked after by the Officer himſelf. Whatſoever was the Uſage in that Matter, we are not to anſwer for (though it is plain an Appearance would have done all preſently) we ſhall prove we gave order to uſe all Deference and Reſpect in the World. And beſides (though I would not ſpeak it to invalidate any of the Evidence given about the Right of Election one way or other, yet) there being a Return of the Defendant's Election by the Sheriffs to the Court of Aldermen; but they being of another Opinion, gave Order, that thoſe that thought themſelves aggrieved ſhould take their Remedy at Law: Which Order we have purſued in that regular Courſe that the Law has preſcribed. And I hope it will never come to that, that a Man (though miſtaken) conceiving himſelf to have a Right of Action, and ſuing out the King's Writ, ſhall ſuffer for ſo doing, unleſs particular Malice be made to appear. Here is a great Noiſe of Damage, and Diſrepute, and Diſgrace to the Plaintiff and his Office, and he has been pleaſed to reckon his own Damages at 10000 *l.* We ſay he has ſuſtained no Damage by any thing we have done, but we are quite not guilty of this unreaſonable and malicious Proſecution laid to our Charge. And that we are not guilty, the Matter that has been opened, we think will ſufficiently declare. For if there was a Conteſt about the Election, and the Sheriffs returned it as their Opinion, that the Defendant was choſen, though they and he too were miſtaken; yet that might give a probable Ground for his purſuing the Courſe he did take; and the very Court of Aldermen, and the Lord Mayor bidding them take their Courſe at Law, we ſure ſhall not be puniſhed for it. We did not proſecute our Queſtion in any malicious way, but in that Courſe that the Law allows, by taking out the King's Writ; and we hope the Law will protect us for it.

Mr. *Williams*. Will your Lordſhip be pleaſed to ſpare me a Word on the ſame ſide with Mr. Serjeant *Maynard*. I am of Counſel, Gentlemen, with

with Mr. *Papillon* the Defendant in this Action. We do not insist upon it, nor now offer any thing to assert our Election; We did apprehend we were Elected, but that is ruled against us, and we rested satisfied with it. But we come here now before you upon this Question; Whether we had any probable Cause of Action, upon which we might take out this Process mentioned in the Declaration, which is a *Capias* upon a *Latitat*. And we do insist upon it, that this Action of the Plaintiff's must fall upon the Issue joined, if we can satisfy you, and shew that it was not malicious, and without probable Cause. And tho' our Cause of Action against the Plaintiff falls out in the Event not to be a good and sufficient Cause; yet if it were probable, it will evade this Action, and that is all we labour for. They do not attempt to prove, at least-wise I have not heard any thing of it, that there was any express Malice, any thing either said or done by the Defendant, more than the causing him to be arrested upon this Writ. It is very well known, it was in the City of *London* a very much controverted Question, Whether Mr. *Papillon*, and Mr. *Dubois*, or Sir *Dudley North*, and Mr. *Rich*, were chosen Sheriffs of *London*? I would not run over the History of it, it is but too well known and remember'd the Divisions that were in the City about it. Some were so much dissatisfied with the swearing Sir *Dudley North*, and Mr. *Rich* Sheriffs, as thinking them not duly Elected, that they would have the Court of *King's-Bench* moved, for the Writ of *Mandamus* to swear Mr. *Papillon*, and Mr. *Dubois*. This *Mandamus* was moved for, and granted; and to this Writ the Mayor and Aldermen, to whom it was directed, made a Return that we were not Elected Sheriff of *London*; which Return was apprehended to be false; and really to try the Truth of this Return, was the Action brought against the Plaintiff. A Man that is injured by a False Return, hath indeed no other way to right himself, but by bringing an Action against them that made it. Upon this Action brought, I hope you are satisfied, Gentlemen, from the Evidence that has been already given, the Defendant proceeded regularly and orderly, in a decent manner, applying himself to get an Appearance to his Action. And we shall prove he did so; For, first, he took out a *Latitat* against my Lord Mayor, and by the Attorney gave him notice of it, and desired an Appearance; so that the Question in dispute might come to some Determination. But he was not pleased to give us an Appearance to that Writ; so we took out a *Capias*, gave him notice of it, and desired an Appearance, but could have no Appearance; whereupon we took out an *Alias Capias*, which is the Writ mentioned in the Declaration; and the Coroner who has been named, was then told, he should be called upon to make some Return to his Writ; which he acquainted my Lord Mayor with, and desired him to give an Appearance; which he refusing to do, the Officer was constrained to arrest him, to execute the King's Writ; and you hear how he treated him, with all the respect, and carried him to his own House, where he staid some Hours and then went away. All this time were we satisfied with what was done, we expected no more than an Appearance, which at last was given. Upon that Appearance we did declare, in the Beginning of *Hilary* or *Easter* Term (83.) But it fell out, that in *Easter* Term (83.) there was an Information for a Riot upon *Midsummer-Day* before, about this contested Election, came to be tryed. And that coming to Tryal, 10. *Maii*, and being found to be a Riot, and the Sheriffs sworn to be duly Elected; thereupon we were abundantly satisfied that we were mistaken, and under Misapprehensions, and that our Cause of Action would not hold, and we did discontinue it. Indeed, if we had prosecuted our Action after that, it would have been more like an angry and a silly Prosecution, and the whole have had a worse Construction, than the thing in it self would bear. But when we found the Opinion of the Court to be against us about our Election, we immediately discontinued our Action. Gentlemen, We shall prove these to have been our Proceedings, and that, I hope, will satisfy you we are not guilty according as we have pleaded.

Mr. *Ward*. May it please your Lordship, and you, Gentlemen of the Jury, I am of Counsel on the same side, for the Defendant, and desire to be heard one Word as to some Things that have been said on the other side in this Cause. There have been some Questions asked that do very much reflect upon the Defendant, and which I would take out of this Cause. I shall take notice, first, what the Questions were, and then give them that Regard and Answer which they deserve. That which is urged, Gentlemen, by way of Crimination, in this Case against the Defendant, and an unjust as well as foreign Reflection (not at all concerning the Cause) is, as if the Defendant were acquainted with the Insurrection and Conspiracy that was intended against the King's Life, and for Subversion of the Government, and procured the Plaintiff, then Lord Mayor, to be arrested, to further and promote that Insurrection. But as that was insinuated only for Reflection's sake, so I hope you, Gentlemen, will be pleased to take notice, that not one Word of any such thing is proved at all, that the Defendant ever knew of any intended Insurrection, nor that this was done with any such Design: For even their first Witness, *Keeling*, from whose being employed by the Coroner in the Execution of the Writ upon Sir *William Pritchard* the Plaintiff, they would argue that somewhat else was designed in it, doth give a positive Denial of any such thing now upon his Testimony here. And Mr. *Papillon* the Defendant never knew him in his Life, nor employ'd him in this Business, nor ordered that he should be employed in it, nor ever saw him; but the Coroner gave him his Warrant to execute. If therefore *Keeling* and *Goodenough* were concerned in any ill Business, and have taken upon them to do that which they ought not to have done, that doth not signify any thing in this Case, nor ought to turn to the Defendant's Prejudice. Nor if any thing were done by the Officers that were to execute this Process, that were a *Misfesance*, or a Male-execution of their Office, that ought not to be imputed as a Fault in the Defendant. But for this Matter now before you, the Case will depend upon this Point chiefly, Whether the now Defendant had a reasonable Cause, or probable Ground, to bring an Action against the

the Plaintiff at the time when it was brought, and this Arreſt made: For there is many a Man that, at the Commencement of his Action, doth conceive in himſelf he has a good probable Cauſe of Action againſt another Man, that in the Event of Things finds he was miſtaken, and hath no ſuch Cauſe; and thereupon deſiſts the Proſecution of it. Therefore the Probability of the Cauſe at the time when this Fact was done, is the Queſtion you now are to try. For we are not now conſidering, whether that probable Cauſe did continue and prove a good Cauſe; the Event of this Matter has proved it quite otherwiſe. Indeed the original Queſtion of this whole Cauſe was, Who were only Elected Sheriffs? And that at the time of ſuch Election made, a great Number of Votes paſſed for the Defendant, is, I think, very notorious, both upon the lifting up of Hands, and upon the Poll. Theſe things we ſhall offer to you, and ſhall make it out that theſe gave occaſion to the Defendant to conteſt the Election, and conſequently to the bringing of the Action that the Plaintiff was thus arreſted upon. If then there were ſuch things as theſe that we have opened, which gave a colour to controvert the Right, and the Defendant purſued the Method preſcribed by the Law to bring it to a Determination; and there was no particular Diſreſpect or Incivility offered to my Lord Mayor, then ſure there was no reaſon to bring this Action againſt us. And that there was no indecent Behaviour uſed towards the Plaintiff, doth appear from the Evidence that hath been given of the whole Tranſaction. All that was deſired of my Lord Mayor, was but an Appearance. For this was indeed an Action that did not require Bail, but an Appearance; tho', I muſt needs ſay, I never knew any one ſo averſe to give an Appearance to an Action as the Plaintiff was; for after a *Latitat* and *Capias* taken out, and being frequently acquainted with it, and at length upon application after the taking out of the *Alias Capias*, and many Attendances, with all the Deference and Reſpect imaginable, both to his Perſon and Office, not ſo much as a bare Appearance could be obtained. Upon the opening of the Declaration and the Cauſe, you have been told of the great Dangers that were in the Caſe, as to the Infringement of Publick Peace, and the Government, which has been very much aggravated on the other Side. But had the reaſonable Requeſt of the Defendant by his Attorney, or the Officer, ſo often repeated, been but complied with, it had been but ſending to any Attorney, and ordering an Appearance; and then, I hope, the Peace of the Kingdom had been in no Peril from ſuch a Deſign as this Arreſt. Which I would not have mentioned, nor ſhould have taken to be at all concerned in the Iſſue now before you to be tryed, but that I find them to be taken into the queſtion, when I hope you will conſider they are no way material to the Point in Controverſy. Now, Gentlemen, in our Defence againſt this Suit of the Plaintiff's, we ſhall call our Witneſſes to prove what we have opened. And our Defence will be in theſe Steps: Firſt, To ſhew the Inducement to our Action againſt the Plaintiff, which will ſhew there was a probable Cauſe. Secondly, Give an account of the reverent Carriage and Behaviour towards the Plaintiff in the Proſecution; how with reiterated Applications it was only deſired that the Plaintiff would give an Appearance, which he was not pleaſed to do; and that thereupon, with great Civility, the King's Writ was executed, as indeed I ſee no Proof to the contrary. For neither the Coroner, nor thoſe other People that gave their Aſſiſtance to him, were at all rude in their Carriage to my Lord Mayor; but as ſoon as the Arreſt was made, they were all turned off, and the Coroner ſtaid alone with my Lord, and went with him, in his Lordſhip's own Coach, to the *Skinner's Hall*, which was the Coroner's Houſe. Neither was there any thing ill done after all this was paſt: For upon the Plaintiff's Appearance, the now Defendant declared in his Action, and intended to purſue it; but it happened that afterwards, in a ſhort time, theſe things ſuffered ſome Debate in a Tryal that was here about a Riot at this Election, where the Queſtion of the Right and Election, was determined on the other ſide, which gave the Plaintiff in that Action, the Defendant in this, ſatisfaction that he was in a Miſtake, and ſo he thought fit to diſcontinue that Action, and proceeded no further——

L. C. J. No, Mr. *Ward*, that was not the Queſtion determined then.

Mr. *Ward.* My Lord, I humbly conceive the Iſſue of that Cauſe did determine that Queſtion——

L. C J. No, no, I tell you it was not the Queſtion.

Mr. *Ward.* I muſt ſubmit it to your Lordſhip.——

L. C. J. I perceive you do not underſtand the Queſtion that was then, nor the Queſtion that is now. You have made a Long Speech here, and nothing at all to the purpoſe; you do not underſtand what you are about; I tell you it was no ſuch Queſtion.

Mr. *Ward.* My Lord, I was only giving an account of what we ſhould prove as to the Fairneſs of our Proceedings——

L. C. J. But I muſt interrupt you, and tell you, all you have ſaid ſignifies nothing. And as to what you mention of the Tryal for the Riot; I ſay, if there be any Election to an Office at any time that is controverted or doubtful, you have Forms and Methods of Law to determine the Controverſy——

Mr. *Ward.* And we ſay, with Submiſſion, my Lord, we have only purſued ſuch Form and Method.

L. C. J. You are not to try Rights by Club-Law, by Riots, by Noiſe, and by Tumults. Therefore you are miſtaken, to ſay, that was the Queſtion upon the Tryal of the Riot. No, it was not the Queſtion; but the Defendants there were tryed for a notorious Offence, and diſorderly tumultuous Aſſembly, an Aſſembly that had like to have ſet us together by the Ears. Therefore you muſt not talk after that rate. If you will ſpeak, apply to the Buſineſs in hand. Do not make ſuch Excurſions, *ad captandum Populum* with your Flouriſhes, for that is all that is deſigned by your long Harangues. But I muſt not ſuffer it, I will have none of your Enamel, nor your Garniture. The Buſineſs of the Court is, and by the Grace of God it ſhall always be my Buſineſs, and ſo it ſhould be

be the Counsel's too, *Servare jus illæsum.* But I see you do not understand the Question, and that makes you ramble so much in your Discourse.

Mr. *Ward.* My Lord, I desire always to do my Duty; and do it as well as I can. I know very well, and hope to apply it to this Case, that in a Question of Right there are Forms and Methods of Law to be pursued, and I would defend my Client from this Action, by proving he did pursue that Method; and when he apprehended he had been before mistaken, he desisted from what he had begun ——

L. C. J. I tell you, I perceive you do not understand the Question.

Mr. *Ward.* If your Lordship will give me leave to explain my self, I hope I shall satisfy your Lordship.

L. C. J. Indeed, Mr. *Ward*, you do not understand the Question at all, but lanch out into an Ocean of Discourse that is wholly wide from the Mark. I see you do not understand it.

Mr. *Ward.* Will your Lordship please to hear me ——

L. C. J. Ay, if you would speak to the purpose; but I cannot sit here all Night to hear you make florid Speeches about Matters that are foreign to the Point before us. Come to the Question, Man; I see you do not understand what you are about.

Mr. *Ward.* My Lord ——

L. C. J. Nay, be as angry as you will, Mr. *Ward*, I do tell you agen, all you have said is nothing to the purpose, and you do not understand the Business.

Then there was a little Hiss begun.

L. C. J. Who is that? What in the Name of God! I hope we are now past that time of day, that *Humming* and *Hissing* shall be used in Courts of Justice; but I would fain know that Fellow that dare to *hum* or *hiss* while I sit here; I'll assure him, be he who he will, I'll lay him by the Heels, and make an Example of him. Indeed, I knew the time when Causes were to be carried according as the *Mobile* hiss'd or humm'd; and I do not question but they have as good a Will to it now. Come, Mr. *Ward*, pray let us have none of your Fragrancies, and fine Rhetorical Flowers, to take the People with.

Mr. *Ward.* My Lord, I do not do any such thing; but if your Lordship would please to hear me, I would explain my self, I hope, to your Lordship's Satisfaction, and the Satisfaction of the Gentlemen of the Jury.

L. C. J. Hear you? Why, I did not interrupt you, Man, till you came to lanch out into extravagant things that did not at all concern the Cause. Keep close to the Question we come here to try, and I will hear you as long as you will. The single Question is here, Whether there were a probable Cause for your arresting the Plaintiff, or not?

Mr. *Ward.* My Lord, We did apprehend, I say, that we had a probable Cause; but when we found our Mistake, we discontinued our Action, paid Costs, and have a Receipt for them. This was it I was saying ——

L. C. J. Say what you can, in God's Name, that will conduce to the Point in hand, but do not make the People believe as tho' the Right of Sheriffs, or not Sheriffs, were determined upon the Tryal of a Riot.

Mr. Serj. *Maynard.* There are these things that are proper to be considered in this Question. Whether the Cause were probable, or not probable? And if not probable, whether malicious or not?

L. C. J. True, Brother; If People will but understand their Business, it is reduced to a narrow Compass; but if they will not understand what it is they come about, they will ramble from the Point, and who can help it? But we must keep to what is before us.

Mr. *Williams.* We shall make it out, that nothing was done but very civilly.

L. C. J. You must make it out, that nothing was done but what you had probable Cause at least for.

Mr. *Williams.* We will, my Lord, apply our selves to that which your Lordship directs. Call Mr. *Brome*, Mr. *Courthope*, and Mr. *Cornish*.

Mr. Brome *sworn.*

Mr. *Ward.* Mr. *Brome*, Are you sworn?

Mr. *Brome.* Yes, Sir.

Mr. *Ward.* Have you the Writs here? The *Latitat* and the *Capias?*

Mr. *Brome.* Truly, Sir, I have not; I did not bring them with me, they are at home at my House; if you please, I will fetch them.

Mr. *Ward.* Pray, can you tell, Sir, when the first Writ was returnable?

Mr. *Brome.* In *Hilary* Term.

Mr. *Ward.* When you had that Writ brought to you, Sir, what did you say to my Lord Mayor about it?

Mr. *Brome.* I went to my Lord Mayor with Mr. *Goodenough*, and desired my Lord that he would appear to it, as Mr. *Goodenough* told me he had desired of him himself before. But he said he would give no Appearance. If I would take him upon the Writ, I might do as I pleased, and he would consider and do as he should think fit, but he would not give any Appearance. I told him, I had Writs against several of the Aldermen upon the same account, and that I would wait upon them also; and I did so, and desired them to appear, and offered to take an Appearance from them, and gave my Lord Mayor and them time to consider of it, and came again; but they told me, they had considered of it, and would give no Appearance.

Mr. *Williams.* When was this, Sir?

Mr. *Brome.* In the beginning of *Hilary* Term, to the best of my remembrance.

Mr. *Williams.* What time did you give my Lord Mayor to consider of it?

Mr. *Brome.* About a Week, or some nine or ten Days time, as I remember.

Mr. *Ward.* Where was it that you had that Answer, that he had considered of it, and would give no Appearance?

Mr. *Brome.* It was at the Court of Aldermen.

Mr. *Williams.* Were the Writs brought agen to you?

Mr. *Brome.* There was not time to make a Return then, and so they let all alone till a little before the beginning of *Easter* Term, and

then, one Day, Mr. *Goodenough* the Attorney brought me the Writs again, and threatened to complain to the Court of me, and acquaint them, that I had neglected the Execution of the King's Writs, two of them.

Mr. *Ward.* Upon your Oath, Sir, Did he threaten you, that if you did not make a Return of the Writ, he would complain?

Mr. *Brome.* He ſaid I had expoſed him to the Complaint of his Client; and if I did not do it, he would complain to the Court of me: If I would make a Return as I ought to do, well and good, if not——

Mr. *Williams.* If not, what then? Did he uſe any other Threatnings, pray Sir, but that he would complain to the Court?

Mr. *Brome.* He did threaten to complain of me.

Mr. *At. Gen.* You ſay, Sir, he threatened you; what Anſwer did you make to him?

Mr. *Brome.* I did not uſe to execute Writs my ſelf, I told him: Thereupon he did propoſe two Perſons to me, Mr. *Keeling*, and one Mr. *Burleigh*; for he told me the Sheriff's Officers would not do it.

Mr. *At. Gen.* Pray, Sir, did you endeavour to get any of the Sheriff's Officers to do it?

Mr. *Brome.* He told me he could not get any of them to do it.

Mr. *Ward.* Mr. *Brome*, What did you do after he had propoſed thoſe two Perſons to you?

Mr. *Brome.* After I had given thoſe Warrants to the Officers he had named, I told him, I was willing to go once more to my Lord Mayor, to ſee if I could get an Appearance of him without arreſting him; ſo I waited on him at his Houſe at *Grocers-hall*, but found him then at Dinner; ſo I went away, and came again about four a Clock, and I firſt ſpoke to Mr. *Gibſon*, and intreated him to let my Lord Mayor know, that I deſired to ſpeak with his Lordſhip at his leiſure: Afterwards when I came up to my Lord Mayor, he asked me, what was my Buſineſs? I told him the Writs were renewed, at the Suit of Mr. *Papillon* and Mr. *Dubois*, and I was preſſed to make a Return; and I deſired his Lordſhip that he would be pleaſed to give an Appearance. He told me he was ready to ſubmit to the KING's Writ, but would not give an Appearance; thereupon the Officers named in the Warrant by my Command did arreſt him.

Mr. *Ward.* How often did you wait upon my Lord Mayor for an Appearance upon both the Writs, before he was arreſted?

Mr. *Brome.* Several times, I cannot exactly tell how often.

Mr. *Williams.* Had you Directions, if he would pleaſe to give an Appearance, to take an Appearance, and not to arreſt him?

Mr. *Brome.* I had Directions to take an Appearance, if he would give it.

Mr. *At. Gen.* From whom had you that Direction, Mr. *Brome*?

Mr. *Brome.* From the Attorney *Goodenough*.

L. C. J. Now, Mr. *Brome*, let me ask you a Queſtion or two; how long had you been Coroner before?

Mr. *Brome.* About two Years before, or thereabouts.

L. C. J. Had you ever made any Warrants upon Writs of *Capias* before?

Mr. *Brome.* Yes, my Lord, ſeveral.

L. C. J. Who did you uſe to make your Warrants to, to be executed?

Mr. *Brome.* I never keep my Warrants, they that execute them have them.

L. C. J. But anſwer me, To whom did you make them?

Mr. *Brome.* To one of the Sheriff's Officers commonly.

L. C. J. Then I ask you, upon your Oath, did you before this Time ever make any Warrants to any other Perſon, till ſuch time as you made theſe Warrants to arreſt Sir *William Pritchard*?

Mr. *Brome.* I have made ſeveral to the Sheriff's Officers, that I cannot remember now particularly.

L. C. J. But mind my Queſtion, Man, and anſwer me directly, for I expect you ſhould anſwer me poſitively to it. Have you ever at any time made any Warrants to any other but the Sheriff's Officers till this time?

Mr. *Brome.* I cannot remember that I have.

L. C. J. How then came you at *Ruſſel*'s Houſe to diſcourſe with Mr. *Goodenough*, about who would be fit to execute the Writ, when you uſed to employ the Sheriff's Officers, and there were ſo many of them?

Mr. *Brome.* He told me he could get no one of them to execute it.

L. C. J. But there muſt be ſomething more in it than ordinary, that you and *Goodenough*, and all thoſe other People ſhould come to meet about ſuch a thing as this, to diſcourſe and conſider who ſhould be fit to be put into a Warrant to make an Arreſt upon a *Capias*, when before that time you uſed to make it to thoſe that are verſed in thoſe Matters.

Mr. *Brome.* When the Attorney came with a Writ, and deſired a Warrant upon it, it is uſual to take whom he nominates, and make him the Officer to execute it.

L. C. J. Then give me, if you can, any one ſpecial Inſtance wherein you have taken the Direction of the Attorney, whoſe Name to put into the Warrant.

Mr. *Brome.* Yes, my Lord, I can.

L. C. J. Do then, let's hear it, when was that?

Mr. *Brome.* I did it in the Caſe of His Royal Highneſs againſt Mr. *Pilkington*: Mr. *Swift* came for a Warrant, and directed me whom to put into it.

L. C. J. What Directions did he give you?

Mr. *Brome.* He gave me the Names in writing.

L. C. J. Where is *Keeling*?

Keeling. Here, my Lord.

L. C. J. What was the meaning of that Word that was uſed by you, that the Party would be angry if you did not arreſt my Lord Mayor; for that is it which makes me ſo inquiſitive into this Matter, how theſe People came to be imployed?

Mr. *Sol. Gen.* Ay, pray conſider with your ſelf, and recollect, Mr. *Keeling*; when you were firſt mentioned to be a ſpecial *Bayliff* to arreſt my Lord Mayor, you ſay you oppoſed it: How then came you to be drawn in, and engaged to do it?

Keeling. I will tell you, my Lord.

L. C. J. Ay, and tell us what number of People were there.

Keeling. There were about thirty or forty.

L. C. J. Was *Brome* among them?

Keeling. He was there some part of the time.

L. C. J. Well, what was the reason that you should be engaged about this Thing?

Keeling. I went away a while, and came again: Mr. *Brome* came in, and I was away an Hour and half, as I remember, or some considerable time. Mr. *Brome* cannot forget, that when I came again, I found my Name inserted in the Warrant, as a *Bayliff* to the *Coroner*, to arrest Sir *William Pritchard*, then Lord Mayor. I disputed it, as being never concerned in any such thing before, and was very unwilling to be imployed in the Affair. Says Mr. *Goodenough* to me thereupon, you will disoblige the Party in case you do not do it.

L. C. J. Was Mr. *Brome* in the Company when *Goodenough* said so to you?

Keeling. I know not that truly, but he was before in the Company.

L. C. J. How many were then in the Room?

Keeling. About Twenty, or more, as near as I can remember.

L. C. J. You *Brome*, did you ever, when you received a Writ to arrest a Man, and were to give a Warrant upon it, call a Consult of Twenty or Thirty, how to do it, before this time?

Mr. *Brome.* I did not do it now.

L. C. J. No, no, a-lack-a-day, thou wert as innocent in all this Matter as a sucking Child.

Mr. *Williams.* Was Mr. *Papillon* in the Company, Mr. *Keeling*?

Keeling. No, he was not.

Mr. *At. Gen.* Mr. *Brome*, pray answer me; When you had my Lord Mayor in your Custody, how came you to discharge him out of Custody?

Mr. *Brome.* I was taken into Custody myself.

Mr. *Ward.* Did my Lord Mayor give an Appearance?

Mr. *Brome.* I was Committed to the *Compter* my self.

Mr. *Williams.* Were you by when it was agreed that my Lord would give an Appearance?

Mr. *Brome.* I believe not; it was afterwards as I have heard.

L. C. J. A-lack-a-day, it went strangely against Mr. *Brome*'s Stomach, all this did. I know it very well, he had no mind to it at all.

Mr. *At. Gen.* Mr. *Keeling*, did you hear any Discourse between the Twenty or Thirty that were in that Company about this Business?

Keeling. I cannot say who in particular discoursed of it, or what was said.

Mr. *Sol. Gen.* Was it discoursed of in the whole Company?

Keeling. There was some Discourse about it in the Company.

L. C. J. You *Brome*, were you ever acquainted with *Keeling* before?

Mr. *Brome.* I had the Misfortune, my Lord, to be concerned with him about some Coal Works.

L. C. J. Did you know that Mr. *Burleigh* before, that was the other *Bayliff*.

Mr. *Brome.* I knew him by sight, I had no great Acquaintance with him.

L. C. J. Pray where lived *Keeling*?

Mr. *Brome.* At *East-Smith Field.*

L. C. J. And where lived *Burleigh*?

Mr. *Brome.* Truly, my Lord, I know not, I think at the other end of the Town.

L. C. J. But prithee, how came you to join these two People together in this Business; the one from *Wapping*, the other from *Westminster*?

Mr. *Brome.* Where the Sheriffs were concerned, as they were in this Matter, and therefore it came to me, I thought it not so proper to pitch upon the Sheriffs-Officers, nor would they do it, as he told me; and especially it being to arrest my Lord Mayor, I did not think proper to imploy any one that lived in the City.

L. C. J. But there were abundance of People that were not Citizens, that were nearer at hand, and nearer together, and fitter for such a Purpose than a Tradesman fetched out of the *East*, and I know not who out of the *West*, to arrest a Man: There must be some other meaning in it.

Mr. *Brome.* I gave them the Nomination, as I used to do in like Cases.

L. C. J. Upon your Oath, Sir, was it you or the Attorney that named these Persons?

Mr. *Brome.* He told me he could get none of the Sheriffs-Officers to do it, and I did not think it indeed proper for any of them.

L. C. J. And why, good Sir?

Mr. *Brome.* I did think so, truly, my Lord.

L. C. J. Why? Why? What reason had you for it?

Mr. *Brome.* It was reasonable, as I apprehend, my Lord, for me to think so, it being in a Matter wherein the Sheriffs were so much concerned.

Mr. *Sol. Gen.* But did you propose it, or any one else in the Company, upon your Oath? And who was it?

Mr. *Brome.* The Attorney named them.

Mr. *Com. Serj.* It seems here were a great many Persons met at *Russel*'s about this Business, I desire, my Lord, that Mr. *Brome* may name as many of them as he can that were there.

L. C. J. Ay, as near as you can, name the twenty or thirty Persons that were there; for you living in the City, and having an Acquaintance among that Sort of People, must needs know most of them.

Mr. *Brome.* Why, my Lord, there were both the *Goodenoughs*, and Mr. *Nelthorp*, and who in particular else, I cannot well remember.

L. C. J. Yes, yes, I am sure you can tell more of them.

Mr. *Brome.* My Lord, I cannot swear that I remember any other in particular.

Mr. *Com. Serj.* It seems he has named some of those that are in the Proclamation; pray, Sir, do you remember any others were there that were in the Proclamation?

Mr. *Brome.* I do not remember any other of those in the Proclamation were there.

Mr. *At. Gen.* Can you remember any that were not in the Proclamation?

Mr. *Brome.* There were several People that I knew by sight, but I cannot remember their Names.

L. C. J. Nay, nay, pray open your Eyes a little, and recollect your Memory, and tell us who were there, I know you can do it.

Mr. *Brome.* My Lord, there were many Citizens that I knew by sight, but had no particular Acquaintance with them.

Mr. *Sol. Gen.* Did you know any of the Company beſides the *Goodenoughs*, and *Keeling*, and *Nelthorp*?

Mr. *Brome.* I had a little Acquaintance with him.

Mr. *Sol. Gen.* How come you to remember him ſo particularly?

Mr. *Brome.* I verily believe he was there.

Mr. *Recorder.* Was Mr. *Weſt* there?

Mr. *Brome.* I cannot poſitively ſay whether he was or not.

Mr. *Williams.* Swear Mr. *Corniſh* then.

[*Which was done.*

L. C. J. You *Brome*, was Mr. *Corniſh* there?

Mr. *Brome.* Not that I know of.

Mr. *At. Gen.* It is ſtrange we cannot learn who thoſe Perſons were that met there.

L. C. J. Oh theſe Fellows have ſtrange Memories for their Purpoſes. Well, what do you call him for?

Mr. *Ward.* My Lord, we call Mr. *Corniſh* to give an Account what he knows of this Matter, what Directions were given by the Plaintiff to his Attorney, how he ſhould carry on this Matter.

Mr. *Corniſh.* My Lord, That which I particularly remember, I ſhall fully and very faithfully declare. I was with Mr. *Papillon*, and Mr. *Dubois* at my Houſe. The Occaſion of their coming thither I knew not, nor did expect either of them there; I my ſelf came from *Guild-Hall*, either from a Court of Aldermen, or from a Committee, and when I came Home, I found them there. We had not been many Minutes together, but in comes Mr. *Goodenough* the Attorney, and he applied himſelf particularly to Mr. *Papillon* and Mr. *Dubois*, to receive their Orders what he ſhould do, for he ſaid the Time was almoſt ſpent, and he had addreſſed himſelf from time to time to my Lord Mayor, and ſome of the Aldermen to get them to appear, but they would not. They told him then, they had given him what Orders they had to give him already; that it was fit the Matter ſhould be brought to ſome Tryal or Iſſue, that there might be an end of it. He preſſed them then earneſtly to know what he ſhould do: Said they, you are to deſire an Appearance to the Action, and if he will give it, take it, and remember my Lord Mayor is the chief Magiſtrate of the City, and pray, carry it with all reſpect and regard imaginable to him.

Mr. *Williams.* You ſay, Sir, they bid him to take an Appearance, if he could get it.

Mr. *Corniſh.* Yes, and they declared, That their Deſign was only to bring it to an Iſſue to be Tried, and they would not inſiſt upon any thing but an Appearance, if it might be had.

L. C. J. Wonderful careful and civil they were, no doubt of it.

Mr. *Corniſh.* This is the Truth, and the whole of the Truth, that I know of, relating to this Matter.

L. C. J. Mr. *Corniſh*, you ſpeak of ſome of the Aldermen, that he ſaid he had been with, What Aldermen were thoſe?

Mr. *Corniſh.* There were ſeveral of them, that he ſaid he had Writs againſt.

L. C. J. You were an Alderman then, pray had he any Writ againſt you?

Mr. *Corniſh.* I know not whether he had or no.

L. C. J. But he did not require an Appearance of you, I ſuppoſe.

Mr. *Corniſh.* If he had, I muſt have taken notice of it to defend to my ſelf as well as I could.

L. C. J. Ay, no queſtion but you would, but were you asked for an Appearance or no?

Mr. *Corniſh.* I was told I ſhould be ſued among the reſt.

L. C. J. But was there any Writ ſhewn to you?

Mr. *Corniſh.* No, my Lord.

L. C. J. Then pray let me ask you a Queſtion or two. Did you ever know any Man before bring an Action, or ſue to be Sheriff of *London*? You have been Sheriff your ſelf we know.

Mr. *Corniſh.* This was a Matter that had been much diſputed in the City, and a Queſtion had been depending upon it, whether the Right was to my Lord Mayor, or in the Sheriffs.

L. C. J. But the Queſtion of Right between my Lord Mayor and Sheriffs, what was that to Mr. *Papillon*? Did you ever know a Man bring an Action, or ſue to be Sheriff?

Mr. *Corniſh.* Truly he that experienceth the Trouble of it, will, I believe, never be deſirous of it.

L. C. J. But that is no Anſwer to my Queſtion, anſwer me directly: Did you ever know any ſuch thing before?

Mr. *Corniſh.* I never did hear of any ſuch, that I know of.

L. C. J. How then came Mr. *Papillon* ſo officiouſly to deſire it?

Mr. *Corniſh.* I cannot anſwer; what his Reaſons were I know not.

Mr. *Williams.* It was an Action to determine the Queſtion that was at that time ſo much litigated in the City of *London*.

Mr. *At. Gen.* Mr. *Corniſh*, Pray, will you anſwer me one thing; Were you never in no Company, wherein it was agreed this Suit ſhould be brought and carried on in their Names?

Mr. *Corniſh.* Mr. *At. Gen.* I never meddled nor managed it.

Mr. *At. Gen.* Did you never hear it was ſo agreed?

Mr. *Corniſh.* It is known to Thouſands, as much as I know of it; the Matter was diſputed of in all Companies in the City.

Mr. *At. Gen.* But you do not anſwer to my Queſtion, were you ever in any Company when it was agreed that ſo it ſhould be?

Mr. *Corniſh.* Sir, I tell you as well as I can, the Matter that was to be diſputed by that Action, was the general Diſcourſe of all Societies of Men whatever, in the City at that time.

L. C. J. It is a ſtrange thing, that one cannot get a direct Anſwer from theſe People, to any thing one asks them; I deſire to know one thing of you, Mr. *Corniſh*; You have known Mr. *Papillon* the Defendant before this time.

Mr. *Corniſh.* Yes, my Lord, I have known him ſeveral Years.

L. C. J. Was he ever choſen Sheriff of *London* before?

Mr. *Corniſh.* Yes, my Lord, I ſuppoſe he was.

L. C. J. How chance he did not hold then?

Mr. *Corniſh.* I have heard he Fined, as was common and uſual, when Perſons Occaſions would not permit them to attend the Service of the Place.

L. C. J.

L. C. J. He did ſo, it is known to Thouſands, as you ſay, that he did. Now, pray let me ask you another Queſtion; was Mr. *Bethel* ever choſen Sheriff before that time you and he were Sheriffs together?

Mr. *Corniſh.* I do not know that he was choſen before.

L. C. J. How is that?

Mr. *Corniſh.* My Lord, I do not underſtand what the Queſtion is, or elſe I know nothing of it.

L. C. J. How, did you never hear of that before? For, Mr. *Corniſh*, I do not ſpeak of a thing that no body knows; alas thouſands, and ten thouſands of People know that too.

Mr. *Corniſh.* My Lord, upon my Oath, I do not know that ever he was.

L. C. J. Did you ever hear it?

Mr. *Corniſh.* I do not know that ever I did.

L. C. J. Did you never hear that Mr. *Bethel* ſwore himſelf off, as they call it; you know what I mean.

Mr. *Corniſh.* I do not remember any thing of it.

L. C. J. Nay, nay, it is to the matter, I aſſure you, Mr. *Corniſh*, whatever you think of it. I ask you then another Queſtion that lies ſomething nearer your memory: Upon your Oath, when you two were elected upon *Midſummer-day*, was not that Election vacated, and you choſen again within a Week, or ſome little time after? And was it not becauſe you had not taken the Sacrament, and the Corporation-Oath?

Mr. *Corniſh.* My Lord, I do remember there was a ſecond Election.

L. C. J. And we remember it too well enough.

Mr. *Corniſh.* That was ſo lately, that any Citizen of *London*, or any one that lived here, may remember the Paſſages of thoſe Times.

L. C. J. And you have as much Cauſe to remember it as any Man, I aſſure you, for ſeveral Reaſons that I know.

Mr. *Corniſh.* My Lord, I think I have reaſon to remember it.

L. C. J. Leaſt you ſhould forget it, I will enlighten you, and refreſh your Memory a little, I ask you again, upon your Oath, Was not your firſt Election ſet aſide, becauſe you had not taken the Oaths and the Sacrament?

Mr. *Corniſh.* There were two Elections, my Lord, I ſay I do remember.

L. C. J. Sir, do not prevaricate with me; I expect a poſitive Anſwer: Was not that the reaſon, upon your Oath?

Mr. *Corniſh.* I cannot ſay that was the poſitive reaſon.

L. C. J. Then I ask you upon your Oath, had you taken the Oaths and the Sacrament as the Law requires?

Mr. *Corniſh.* My Lord, Mr. *Bethel* was a Stranger to me, I did not know him before that time.

L. C. J. Gentlemen, Men muſt not think to dance in a Net, and blind all the World. As to my own ſelf, I know theſe Things very well, without any of their Aſſiſtance, and I only ask theſe things by the by, to let the World be ſatisfied what ſort of Men theſe are, that pretend to Saintſhip, and yet, you ſee, one can hardly get one Word of Truth out of them: Let the Law, in God's Name, take place, and let every Man proſecute his legal Actions; but when, under the Umbrage and Countenance of Law, Men ſhall deſire to put themſelves into Offices, and Places of Truſt, on purpoſe to diſturb the Government: Do you think the Government will ever ſuffer it ſelf to be ſnivelled at, and overthrown by a Company of ſuch whining Fellows? Let them hiſs and hum, and make a Noiſe and a-do as they will; Thanks be to God, 'tis not that time of day now: Such things have paſs'd too much uncontroul'd in the Body of this City heretofore. What, Gentlemen, are you baffling the Law with ſuch pretences as theſe now-a-days, and do you think to ſham People into Offices? No, I tell you, Villany was the Foundation of it, and Knavery the Superſtructure; and it is high time it ſhould be told out, ſince I hear People begin to doubt of it as a queſtion.

Mr. *Ward.* Where is Mr. *Serjeant*? Swear him. [*Which was done.*

L. C. J. Do not I know, as ſure as I ſit in this Place, that *Bethel* did once before ſwear himſelf off; and that there were two Elections of theſe two very Men that Year, and that one of the Reaſons was, becauſe they had not taken the Oaths and the Sacrament according to Law; nor would they ever have done it, we know them, neither *Bethel*, nor that very Fellow that ſtands there, *Corniſh*, neither, till they found it would contribute to the Deſign of Subverting the Government; then theſe Raſcals could qualify themſelves for an Office, only to put the Kingdom into a Flame.

Mr. *Corniſh.* When the City choſe me, I had good reaſon for what I did.

L. C. J. Reaſon; I tell you, the City was in great happineſs and quiet, ever ſince the late Times of Rebellion and Confuſion; every one knew his Duty to his Superiors, and did it chearfully and conſcientiouſly, till ſuch time as a couple of buſie Fellows came to get into the publick Offices. Let the whole Party go away with that in their Teeth, and chew upon it if they will.

Mr. *Williams.* Mr. *Serjeant*, will you pleaſe to tell my Lord and the Jury, what Directions you heard the Defendant, Mr. *Papillon*, give about the Plaintiff, how they ſhould treat him.

Mr. *Serjeant.* My Lord, I was in the Counting houſe at Mr. Alderman *Corniſh*'s Houſe, when Mr. *Papillon* and Mr. *Dubois* were there; I went into the Parlour to them, and *Goodenough* coming in, they fell into a Diſcourſe about this Action, that was brought by them againſt Sir *William Pritchard*, then Lord Mayor, and ſome of the Aldermen; and *Goodenough* gave them an Account how far he had proceeded in it; he ſaid, he could not get any of them to give an Appearance, and the Time was near ſpent, and he deſired to know of them what he ſhould do. Mr. *Papillon* and Mr. *Dubois* both, did declare to him over and over again, that it was their mind only to have the matter brought to a fair Tryal; and they charged him to look to it, to do nothing but what was Legal, and carry it with all reſpect imaginable to my Lord Mayor, as the chief Magiſtrate of the City; that he ſhould by all means get an Appearance from him if he could, and get the Coroner, who was an Officer of the City, to go with him, and carry all Things fairly and decently.

Mr. *At. Gen.*

Mr. *At. Gen.* Who gave theſe Directions, Sir, do you ſay?

Mr. *Serjeant.* Mr. *Papillon*, and Mr. *Dubois*, both of them did.

Mr. *Ward.* Now, my Lord, we ſhall ſhew that we proceeded ſo far in the Action, as to declare, but afterwards apprehending our ſelves to be under a Miſtake, we diſcontinued our Action.

Mr. *Williams.* And the Coſts upon the Diſcontinuance were received by my Lord Mayor's Attorney. Here is the Declaration as it was filed.

L. C. J. Ay, it may be there was a Declaration filed, but not regularly.

Mr. *Williams.* My Lord Mayor after appeared.

L. C. J. How doth that appear in Evidence? For the Coroner ſays he himſelf was in Cuſtody, and knows no more of the matter afterwards.

Mr. *Williams.* I believe your Lordſhip doth remember there were many Motions made in Court about this matter, on the one ſide and the other, and at length in Court it was compromiſed, and my Lord Mayor promiſed to give an Appearance.

L. C. J. Prove what you can; prove the Appearance enter'd, and Declaration received.

Mr. *Williams.* My Lord, I only offer this as an Evidence of an Appearance.

L. C. J. A Record, I know, is a good and fair Evidence, ſhew that if you can.

Mr. *Ward.* It is not uſual to declare till the Defendant appears.

L. C. J. A Declaration may well be upon an Appearance, but becauſe it cannot be good without an Appearance, therefore it cannot be a ſufficient Evidence of it.

Mr. *Ward.* We will prove the Coſts of the Diſcontinuance paid and accepted. Swear Mr. *Baker.* (*Which was done.*) What do you know, Sir, of any Coſts that were taxed and paid for a Diſcontinuance in this Caſe?

Mr. *Baker.* My Lord, Mr. *Aſton* told me he appeared for Sir *William Pritchard*, then Lord Mayor, and had a Declaration from the now Defendant's Attorney: So I enter'd up a Diſcontinuance, and paid the Coſts, and have Mr. *Aſton*'s Receipt for them.

L. C. J. He ſays well. Go on then.

Mr. *Williams.* My Lord, It is a thing that hath frequently happened, that after a Man has brought an Action againſt another, he finds he was miſtaken, and hath no Cauſe of Action, and thereupon relinquiſheth his Suit: But ſure that will not make him liable to a Suit.

L. C. J. Well, pray go on with your Evidence.

Mr. *Ward.* My Lord, We are not now offering to try the Right of Election, tho' that really was the Foundation of the Action that we brought, but we apprehended that Queſtion to be determined, and we acquieſced in it when that Tryal was over. Now, my Lord, we ſhall ſhew that apprehending our ſelves really choſen, we did in a due Courſe of Law ſue forth our *Mandamus*, directed to the Plaintiff and the Aldermen; and there is a Return made. I pray theſe may be read.

The Mandamus *and* Return *were read.*

Mr. *Williams.* Then that which we ſhall next ſhew, is the Grounds and Reaſons why we thought this Return was falſe, and thereupon brought our Action. We ſhall ſhew that at a Common Hall, held for the Election of Sheriffs, the Defendant was in Nomination, and had a great number of Hands and Voices for him. Pray call Mr. *Gilbert Nelſon*, Mr. *William Wightman*, and Mr. *Leonard Robinſon*.

Who all appeared, and were ſworn.

Mr. *Ward.* Mr. *Nelſon*, Pray, were you at the Common Hall for Election of Sheriffs, in the Year 1682.

Mr. *Nelſon.* I was at the Common Hall in *June* 1682. on *Midſummer-day.*

Mr. *Williams.* Pray, Sir, will you tell us who were then in Nomination, and how they did proceed.

Mr. *Nelſon.* There were in Nomination for Sheriffs, he that is now Sir *Dudley North*, then Mr. *North*, Mr. *Box*, Mr. *Papillon*, and Mr. *Dubois.*

Mr. *Ward.* Pray, Sir, who had the Majority of Hands?

Mr. *Nelſon.* I did ſee the Poll-Books after they were caſt up.

Mr. *Williams.* But did you obſerve the holding up of the Hands?

Mr. *Nelſon.* Upon the holding up of the Hands, the Election was by the Sheriffs given to Mr. *Papillon* and Mr. *Dubois.*

Mr. *Williams.* Put pray, Sir, upon your View, and in your Judgment, were there many Hands for Mr. *Papillon?*

Mr. *Nelſon.* I gueſs there were the moſt Hands for him and Mr. *Dubois.*

Mr. *Ward.* What ſay you then to the ſumming up of the Poll-Book that you ſpoke of.

Mr. *Nelſon.* I did ſee the Books after they were caſt up.

Mr. *Ward.* Was there a great Number for Mr. *Papillon?*

Mr. *Nelſon.* Yes, there was the greateſt.

Mr. *Com. Serj.* What Books do you mean, Mr. *Nelſon?*

Mr. *Nelſon.* The Books in the Sheriffs Cuſtody, Sir.

Mr. *Com. Serj.* But did you ſee my Books?

Mr. *Nelſon.* That was upon the ſecond Poll.

Mr. *Ward.* Then which is Mr. *Wightman?*

Mr. *Wightman.* Here I am, Sir.

Mr. *Ward.* Were you preſent at this Common Hall? Did you ſee this Election?

Mr. *Wightman.* I can ſay nothing to the Election.

Mr. *Williams.* Were you at the Common Hall on *Midſummer-day*, 1682?

Mr. *Wightman.* I cannot ſay that, Sir.

Mr. *Ward.* Then what is it you can ſay to this Matter in queſtion? Did you take any Poll?

Mr. *Wightman.* I did take the Poll in one of the Books.

Mr. *Williams.* Was there any Number for Mr. *Papillon?*

Mr. *Wightman.* There were 2400 and odd for *Papillon* and *Dubois.*

Mr. *Thompſon.* Who were in Nomination, Sir? Who were the Perſons poll'd for?

Mr. *Wightman.* Sir *Dudley North*, Mr. *Papillon*, Mr. *Dubois*, and Mr. *Box.*

Mr. *Ward.*

Mr. *Ward.* What ſay you, Mr. *Robinſon*, Were you at this Common Hall in 1682?

Mr. *Robinſon.* Yes, I was.

Mr. *Williams.* Who were named to be Sheriffs then?

Mr. *Robinſon.* Mr. *North*, now Sir *Dudley North*, Mr. *Ralph Box*, Mr. *Thomas Papillon*, and Mr. *John Dubois*, they four.

Mr. *Williams.* What Number had Mr. *Papillon* for him?

Mr. *Robinſon.* I never ſaw the Poll.

Mr. *Ward.* But upon the View in the Hall, in your Opinion, did you look upon it as a doubtful Caſe which was Elected?

Mr. *Robinſon.* By the Hands, I judged the majority was much more for Mr. *Papillon*, and Mr. *Dubois*, than for the other two.

Mr. *Williams.* So you think in your Judgment?

Mr. *Robinſon.* Upon my Oath, that was my Opinion.

Mr. *Williams.* Well, my Lord, we muſt reſt it here unleſs they give us further Occaſion.

Mr. *At. Gen.* You ſay, the majority was for *Papillon* and *Dubois*: Pray, was the Election declared at that time by the Mayor and Aldermen, or was there a Poll demanded?

Mr. *Robinſon.* Mr. Attorney, Firſt the Queſtion was put for the Perſons; then the Sheriffs declared their Opinion, and a Poll was demanded, and a Poll was granted, and the Sheriffs went with the Common Serjeant up to the Court of Aldermen, and acquainted them with it, and then they all came down again, and declared that there ſhould be a Poll.

Mr. *Sol. Gen.* Who were Sheriffs then, pray, Sir?

Mr. *Robinſon.* Mr. Alderman *Pilkington*, and Mr. *Samuel Shute*; and in the Evening, after the Poll was cloſed, the Books were number'd up, the Sheriffs came down upon the Huſtings and declared the Numbers, and then, as I remember, the Number declared for Mr. *Papillon*, and *Dubois*, was above 2000, and the Number declared for the other two, was ſome Hundreds under 2000.

Mr. *Ward.* My Lord, We leave it here.

L. C. J. Will you that are for the Plaintiff, ſay any thing more to it?

Mr. *At. Gen.* Yes, my Lord, We have more Evidence to bring in anſwer to what they have brought here. My Lord, that which they would excuſe themſelves by, is, that there was a probable Cauſe; but that will fail them, if it be but obſerved what doth appear upon their own Evidence. It is true, where a Man hath a probable right he may ſue. But this matter here contended for, was never ſuch a right as a Man may ſue for. No Man can ever ſhew that for the Shrievalty, an Office of Burthen, an Office of Hazard, and an Office of Charge and Expence, any Man did ever ſue; ſo little ground of Reaſon had they to bring this Action for this Office. And then for their Title to the Office, that will appear but very weak. They pretend that my Lord Mayor and Aldermen could not try the right who was Elected truly and rightfully; and they bring this Action to try it; and then they produce ſome of the Men that held up their Hands, and in their Opinions, Gentlemen, they ſay, the Election fell upon *Papillon* and *Dubois*. But, Gentlemen, that my Lord will tell you is nothing at all of Title, but a Poll was demanded, and by that it muſt be decided. Then one of their Witneſſes tells you a Story of what the Sheriffs did upon the Poll: But all that is nothing too. For we tell you, and ſhall prove it, That thoſe Sheriffs did in a riotous manner, aſſume, and take upon themſelves the Supreme Government of the City, and would have excluded my Lord Mayor from it. But all their Proceedings, and all that they call a Poll, was void, and can make no Title to any thing at all. It was a bare Diſpute of a factious Party, to ſubvert the orderly Government of the City. There was no probability of Title or Right could be gained by it. For the Chief Magiſtrate of the City, for the time being, ever did direct the Poll, and all the Proceedings upon Election of Officers. And when he did ſo in this Caſe, we ſhall prove to you there was not any conſiderable Number (that is, not twenty Men) to give any pretence of Title to this Gentleman that thus ſued for this Office. But indeed in that moſt riotous Aſſembly one of them that ever was, they do pretend to be Elected: But we ſhall ſhew that for that riotous Aſſembly they were Convicted here as Rioters upon an Information, and fined to the King for it. And I could tell them of a like Caſe of an illegal Title, a Man goeth by a falſe Oath to get a Poſſeſſion of Goods, takes out a *Capias*, and with others, getting into a Houſe to arreſt the Party, he then carries away all the Goods, and upon this Poſſeſſion would ſet up a pretence of Title. But upon an Information for a Riot, he was ſeverely puniſhed for it. Mr. *Papillon*, if he had thought he had had a good Title or Cauſe to bring this Action, he would have employed better Inſtruments to have proceeded in it. The Attorney he makes uſe of, who is it but Mr. *Goodenough*? One who did not live within the City, nor had any thing to do in it, till brought into Office as the great Inſtrument of Mr. *Bethel* in his Actions, and a great Plotter in the late horrid and dreadful Conſpiracy. And this Cauſe, how is it managed? Not by any Counſel of worthy Men of the Robe, or grave Citizens; but by a Cabal of thirty or forty Rioters, moſt of them in the Proclamation, proſcribed as Traitors, and run away from Juſtice upon the Diſcovery of the Plot. All this ſpeaks Malice, and the worſt of Malice; the thing it ſelf ſpeaks it, to pretend a Title with ſo little or no ground. For you plainly obſerve, there is no Title but this riotous Aſſembly to ground their pretences upon. In the Proſecution of this Action, there was no Order, whatſoever they pretend, for to take an Appearance; I mean by thoſe that really were at the bottom of the Deſign. For the forty Men at the Conſult at *Ruſſel*'s, did not meet to be ſure to give Order for an Appearance. No, they had other Work to do. An Appearance would not do their Work: For, as Mr. *Keeling* at large could explain it, they took all Opportunities to riſe and make a Mutiny, and take Advantage of the *Mobile* and Diſturbances to bring about their main Plot. They did not care five pence for the Appearance: But when the Soldiers were up, then the Plot was ſpoiled, and then my Lord Mayor may go home if he will. Gentlemen, We ſhall prove what I have opened to you, tho' I am perſwaded not one of you but know it as well as I.

Mr. *Sol. Gen.*

Mr. *Sol. Gen.* Shew the Records of the Conviction of the Riot.

L. C. J. Hold Mr. *Sollicitor*, I tell you before hand, that as I ſtopped them from urging the Tryal for the Riot, as any Determination of the Right of Election, or as any ways tending to the Queſtion now before us; So I muſt not let you neither enter into that matter. The Buſineſs of the Indictment, Conviction and Sentence upon the Rioters makes nothing, either to the Right of Election, or this Right of Action. And therefore, as I ſaid to Mr. *Ward*, it was nothing to the Purpoſe to mention it on that ſide: So it is to no Purpoſe, I muſt tell you, to mention it on the other ſide. For it was no Determination of the Point of Right one way or other. And he could not give it in Evidence, that that was a *Litigation* of the Matter in Diſpute, and upon the Deciſion of that Indictment (till which he apprehended he had a Right) he found it was againſt him, and ſo deſiſted. No, the Right I ſay was not at all affected by that Tryal one way or other. For admitting they had a Right, or you had a Right; yet the gaining your Right muſt not be attempted in a wrongful manner; but they had a lawful Way to come by their Right; and if they purſued that, well and good; if not, then they muſt take what comes of it.

Mr. *At. Gen.* My Lord, that Right was inſiſted on by them as the probable ground of their Action, and that we ſay was no Right.

L. C. J. Therefore it is to no Purpoſe to urge it.

Mr. *Sol. Gen.* But, my Lord, with Submiſſion, our Anſwer to their Title is, That there was no Colour of Pretence, and this Conviction proves it.

L. C. J. No, Mr. *Sollicitor*, that is not any Evidence one way or other.

Mr. *Sol. Gen.* If your Lordſhip pleaſe, it deſtroys their very Title, which is the Number of the Poll.

L. C. J. Lord! the thing is as plain, Gentlemen, as any thing can be. You or they may have a good Title, and yet do a thing that is unlawful to bring the Title into Poſſeſſion. But then the puniſhing you for that unlawful Act, is not an Evidence, either againſt or for the Title, nor doth determine it for you, or againſt you.

Mr. *Sol. Gen.* My Lord, we ſubmit to your Lordſhip's Directions in it. But then this we ſay to it; the Queſtion now is reduced to this Point: Whether there were any probable Cauſe for the Defendant's Suit againſt the Plaintiff? They have inſiſted upon it that there was, from two grounds. They call Witneſſes, who declare they were of Opinion, that the Defendant had the Right of Election by the holding up of the Hands. That is one of the probable Cauſes of their Suit. Now that is clearly gone by this ſingle Point, whether the Election was determined upon that holding up of the Hands, or they went to a Poll to decide it? If they went to a Poll, then it is clear the Right of Election was not determined; and he could have no Right to be Sheriff upon the holding up of the Hands. Then they went a little further, and offered in Evidence the Sheriff's Poll-books, or the Numbers taken out of them; wherein they ſay, the Majority was for Mr. *Papillon*; and ſo thereupon, ſay they, we brought our Action. Now, to that Objection it is proper for us, with Submiſſion, my Lord, to anſwer it, that that can be no manner of Cauſe of Action in the World; becauſe, ſay we, that was no Part of the Election at all, nor was it at all to govern the Queſtion of Right one way nor other; 'twas a Number of Names taken out of the regular Courſe upon Elections by Perſons that had no legal Authority; nor was it ſuch a Method, as was a Foundation to ground any Opinion upon one way or other; much leſs, ſuch a one, as would be a Cauſe of Action. Theſe are all the grounds they went upon. The firſt, by their own ſhewing, was no ground at all; for there was no Determination of the Right upon the View, but a Poll was agreed upon: The other, we ſhall call Witneſſes to prove was irregular, and ſo not legal. Swear Mr. Town-Clerk.

[*Which was done.*

Mr. *At. Gen.* Pray, Sir, will you give my Lord and the Jury an Account, who is to govern the Poll upon the Election of Sheriffs, or other Officers at the Common-Hall?

Mr. *Town Clerk.* My Lord, I never knew a Poll about Sheriffs till about five or ſix Years ago, and that was the firſt Poll that ever I knew, and it was between Mr. *Jenks* and Sir *Simon Lewis*; and indeed, it was the firſt that ever I did read of in any time within the City of *London*. I think, I have ſeen the Entry of all the Elections of Sheriffs, that are extant in our Books in all times; and I think, I did never ſee in any of thoſe Entries one Poll that was ever taken for Sheriffs; it is only mentioned, Such an one elected by the Mayor, by Prerogative; and ſuch an one, by the Commonalty. Among other Books of the City's, there is an old Book, that is called by the Name of *Liber Albus*, which, ſpeaking of the Conſtitution of the Common-Hall for Election of Sheriffs, ſays, *Firſt of all the Mayor ſhall chuſe one of the Sheriffs for* London *and* Middleſex, *for whom he will anſwer; and then the Commonalty ſhall chuſe another to join with him, for whom they will anſwer. And if there ariſe any Difference between them, who is elected, or not elected, it ſhall be determined in the ſame manner, as it is in Common-Council.* This is all the Notice, that I find in any of the City-Books, that looks like a deciding the Election, when diſputed, by a Poll: Now in another Chapter of that Book where the Common-Council is mentioned; it is ſaid, *If there be any Diviſion of Opinions in the Common-Council, the Common-Serjeant and the Town-Clerk, ſhall examine every Man ſeverally, what their Opinion is, which is by way of Poll at this Day when we had a Common-Council.* But till that time that the Poll was between Mr. *Jenks* and Sir *Simon Lewis*, I never knew any Poll for Sheriffs, and that Poll was taken immediately by telling one and the other. For my Lord Mayor and Aldermen as ſoon as ever they come upon the Huſtings, make Proclamation to have the Liveries attend for ſuch Elections; and then withdraw and leave the Sheriffs and the Common Serjeant.

Mr. *At. Gen.* Sir, the Courſe is very well known, I ſuppoſe, to the Gentlemen of the Jury. But pray, did any Perſons poll at my Lord Mayor's Books for *Dubois* and *Papillon*?

Mr. *Town-Clerk.* Not that I know. As to this Poll, my Lord Mayor cauſed the Common-Hall

to

to be adjourned to ſuch a Time; and after that ſent for the Common Serjeant, and my ſelf, and required us to go get Books, to take the Poll for Mr. *Box*, Mr. *Papillon* and Mr. *Dubois*; as for Sir *Dudley North*, he was not to be Polled for, he being choſen before, by the Prerogative of the Lord Mayor, and my Lord Mayor and Aldermen declared him fully Elected, and upon that he was called out by publick Proclamation upon the Huſtings, to come and take the Office upon him, as is uſual in ſuch Caſes. But we had Directions to provide Books to take the Poll for Mr. *Box*, Mr. *Papillon* and Mr. *Dubois*; and we did ſo, and took the Poll for theſe three Gentlemen, and upon cloſing of the Poll, we all of us ſealed up our Books, and delivered them to my Lord Mayor; and at a Common-Hall afterwards, he did declare Mr. *Box* to be choſen the other Sheriff, to be joined with Sir *Dudley North*: The Poll was, as it always ought to be, by the Direction of my Lord Mayor; and the Sheriffs are but Officers, and not the Judges and Managers of the Poll, without my Lord Mayor's Direction.

L. C. J. What ſay you to it, Gentlemen? Have you any more Evidence?

Mr. *Serj. Maynard.* My Lord, and Gentlemen, Here has been much ſaid in this Cauſe that is nothing to the Purpoſe. As particularly, that which the Plaintiff's Counſel did laſt inſiſt upon, who took the Poll, and who had right to take the Poll or not, is not any thing to this Queſtion: This Action is not at all concerned in that matter. For whatſoever the Diſpute was, and which ſoever had the right (and becauſe it was a Diſpute, ſome it may be could not poll at the one, and others would not poll at the other) yet the lifting up of two Thouſand Hands, might make him think that he was choſen Sheriff; and there lies the Cauſe of his Action, his apprehenſion of a Right: Your Lordſhip did object this to us, Who ever before brought ſuch an Action as ours, and did ſue to be Sheriff of *London*, a Place of Charge and Trouble? ——

L. C. J. No, I did not make it as any Objection. I asked your Witneſs *Corniſh*, that Queſtion indeed, for ſome Reaſons that I know.

Mr. *Serj. Maynard.* That may be objected indeed to the Prudence of my Client, Mr. *Papillon*, to deſire ſuch an Office: But that proves nothing of Malice in him againſt the Plaintiff; for if he were never ſo unwiſe as to deſire it, if he had a Right to it, or thought he had, it is not a malicious thing in the Eye of the Law, for him to take his Legal Courſe for it; and then the Objection that is made of the Inſtruments that were uſed. Our Attorney *Goodenough* is in a Plot: What is that to us? There is not the leaſt Suſpicion upon us. He is a bad Man: But that doth not make all his Clients bad. But the Queſtion now before you is, Firſt, Whether there were any probability of a Cauſe of Action. Secondly, If there were not a probable Cauſe; yet whether that Action was grounded upon Malice? What Malice I pray is there in this againſt my Lord Mayor, to deſire an Appearance of him, when it is conceived, though upon miſtake, that there is Cauſe of Action againſt him? We did not preſs him to give us Bail to our Action, or threaten elſe to arreſt him: No, it was a decent rather than an irreverent Application to him. If then there be not both concurring, want of Title, or probable Cauſe and Malice too, this Action of the Plaintiff's is without ground. No Man that has any Senſe, if he knows he has a clear Title againſt him, will bring an Action; but though it ſhould be clear againſt him, yet if he do bring an Action, but not vexatiouſly and maliciouſly, that cannot ſubject him to an Action; that would frighten Men from bringing Actions upon doubtful Matters, which certainly is lawful for any Man to do. Now what Malice is proved in the Defendant againſt the Plaintiff, the Jury here are Judges of. If we were Criminal in the manner of our Proceedings, they might come before your Lordſhip in another way; but ſure this is not the way; and if it ſhould be actionable, and we likewiſe ſubject to be puniſhed as a Criminal, then we ſhould ſuffer twice for the ſame Fault. Now, Gentlemen, upon this Action we are not to be fined; but they, if they can, are to ſhew what Damages the Plaintiff ſuſtained by our Action; and if what we have ſaid do not ſatisfy you, that we had probable Reaſon for what we did, then you upon your Oaths, are to give him what Damages you in your Conſciences think he has received by it.

Mr. *Williams.* My Lord, if your Lordſhip pleaſe, I would ask one Queſtion of Mr. Town-Clerk, as to the Right of managing the Election. Sir, You have obſerved many Common Halls for Elections.

Mr. *Town-Clerk.* Yes, Sir, I have for this twelve Years.

Mr. *Williams.* Did the Common-Hall ever go to a Poll upon an Election, before this time, that you know of?

Mr. *Town-Clerk.* Never but once for the Election of Sheriffs, I ſay.

Mr. *Williams.* I ſpeak, Sir, of any ſort of Poll; for I ſuppoſe you do not call the holding up of Hands a Poll.

Mr. *Town-Clerk.* Mr. *Jenks*'s Poll was the firſt that ever I knew for Sheriffs.

Mr. *Williams.* Well, Sir, Was that managed by the Sheriffs, or by my Lord Mayor, or by you, and the Common Serjeant; or who was it by?

Mr. *Town Clerk.* Sir, The Mayor and Aldermen withdraw, and leave the Sheriffs to view the Election by the Hands; and the Common Serjeant propounds the Queſtion, *So many of you as will have*, &c. ——

Mr. *Williams.* By whoſe Direction doth he propound the Queſtion, pray?

Mr. *Town-Clerk.* By the Direction of the Common-Hall, I take it.

Mr. *Williams.* But if a Queſtion do ariſe upon an Election, ſo that it cannot be decided by the view, but they go to a Poll, Who is to manage that Poll?

Mr. *Town Clerk.* The Officers of the City, by Direction of the Lord Mayor.

Mr. *Williams.* That Poll you ſpeak of, for *Lewis* and *Jenks*, Was that managed by any body but by the Sheriffs?

Mr. *Town Clerk.* It was managed by the Sheriffs and the Common Serjeant, in the accuſtomed manner.

Mr. *Williams.* How! in the accuſtomed manner, when you ſay that was the firſt that ever you knew?

Mr. *Town Clerk.* It was ſo for Sheriffs; but there have been Polls for other Officers.

L. C. J. Why Mr. *Williams*, every body knows that well enough, that the Sheriffs are concerned in the management of the Election or the Poll, as all the reſt of the Officers of the City are, under my Lord Mayor, and the Common Serjeant conſults with the Sheriffs Officers and People about him, upon the view.

Mr. *Williams*. Pray, Sir, do you remember the Election of Mr. *Bethel*, and Mr. *Corniſh*?

Mr. *Town Clerk*. Yes, Sir, There was a Poll there too, that was the Year after.

Mr. *Williams*. Who managed that Poll?

Mr. *Town-Clerk*. The Sheriffs, and the Common Serjeant, and I, did agree to take it thus in two Books, whereof one was with the one Sheriff, and the other with the other Sheriff, at the two ends of the Hall.

Mr. *Williams*. That was taken in Writing, Sir, Was it not?

Mr. *Town-Clerk*. Yes, Sir, That other of *Jenks* was only by telling.

Mr. *Williams*. Were you concerned in taking that Poll?

Mr. *Town-Clerk*. I did aſſiſt at it one Day.

Mr. *Williams*. Who ordered you to take the Poll that Day?

Mr. *Town-Clerk*. Truly, I did concern my ſelf as little as I could in thoſe Things: What Report was made to the Court of Aldermen, I cannot tell; but one Day coming into the Hall, I had no mind to concern my ſelf in it; but ſome Gentlemen, did pray me to go up to the Poll; and I did go up.

Mr. *Williams*. Sir, upon your Oath, Did the Sheriffs direct you to take it?

Mr. *Town-Clerk*. I really think they did not.

Mr. *Williams*. Did my Lord Mayor direct you?

Mr. *Town-Clerk*. No, Sir.

Mr. *Williams*. Did the Sheriffs manage it?

Mr. *Common-Serj*. I did it by Sir *Robert Clayton*'s Order, who was then Lord Mayor.

Mr. *Williams*. My Lord, all that we ſay to it is this, We are not now proving our Right upon which we brought our Action, that we ſubmit unto, it is againſt us, we muſt agree it: But be the Right one way, or other; yet we might from a ſuppoſed Right, have a probable Cauſe of Action. It ſeems to be a doubtful Buſineſs, by all that Mr. Town-Clerk has ſaid, who has the Right, for all he knows of the Conſtitution, is from *Liber Albus*, and that is ſomewhat dark. You, Gentlemen, hear what is ſaid; the Thing was a Queſtion of five or ſix Days, and a puzzling one it ſeems, and therefore we might be miſled into an apprehenſion, that what the Sheriffs did was right, and ſo not at all concern our ſelves with what my Lord Mayor did. ——

L. C. J. Mr. *Williams*, you talk of that you do not underſtand; for my Lord Mayor was not there at that time of *Jenks*'s Poll: I was Common Serjeant my ſelf, and I know the Sheriffs have nothing to do with it.

Mr. *Williams*. It ſhould ſeem by Mr. Town-Clerk to be doubtful, ſometimes one, and ſometimes another did direct the taking of the Poll.

L. C. J. But you are out ſtill: But for all that, this is nothing to your Right of Action, one way or other.

Mr. *Williams*. My Lord, I muſt lay it here, it was a doubtful Thing, and we brought our Action to try the Right; but afterwards conceiving we were out, and had no Right, we diſcontinued and deſiſted.

L. C. J. It was ſo far from being their Right, that I deſire you to call me any one Witneſs, that can ſay, before *Jenks*'s time, there was ever a Poll for Sheriffs, or ſuch a thing thought of.

Mr. *Williams*. We were under an apprehenſion of a Right in them.

L. C. J. There could be no Colour for any ſuch apprehenſion in the World.

Mr. *Williams*. We muſt ſubmit it to your Lordſhip's Directions.

Mr. *At. Gen.* So do we.

Mr. *Serj Maynard*. Whether this Action brought by us, was malicious.

Mr. *Ward*. My Lord, Mr. Attorney doth challenge the Defendant, to ſhew that his Action was brought by advice of Counſel; we ſhall ſhew it was with good Authority of Counſel. Mr. *Baker*, can you tell whether it was by any Advice, and whoſe?

Mr. *Baker*. It was by the Advice of Mr. *Thompſon*, Mr. *Pollexfen* and Mr. *Wallop*, as I have heard.

Mr. *At. Gen.* But you hear what *Keeling* ſays, there was a Party that were at a Conſult about it, and that were concerned in it.

Mr. *Sol. Gen.* My Lord, We have done on both Sides, I think, and ſubmit to your Lordſhip's Direction in it.

L. C. J. Will any of you ſay any thing more?

Mr. *Williams*. No, my Lord, we have done, we leave it upon this Evidence to your Lordſhip and the Jury.

Mr. *At. Gen.* My Lord, We have no more to ſay for the Plaintiff.

L. C. J. Then, Gentlemen of the Jury, as my Brother *Maynard* ſaid in the beginning of his Defence in this Cauſe; ſo I ſay now to you, to ſet all Things ſtrait and right; God forbid, that any heat or tranſport of the Times, ſhould bring us into that Condition, but that every Subject of the King's that hath a right of bringing an Action at Law againſt another, ſhould have free Liberty ſo to do. And the Courts of Juſtice are now, and I hope always will be ſo open, that every one that would take a Remedy preſcribed by the Law for a Wrong done him, may be received to bring his Action, which is a legal Remedy.

And I am to tell you, Gentlemen, that much has been ſaid in this Caſe (which I perceive is by the Concourſe of People a Cauſe of great Expectation as my Brother likewiſe ſaid) which is not at all to the Caſe. I am ſorry truly at this time of Day, that we ſhould ſtand in need of ſuch Cauſes as theſe, to ſettle and keep People in their due Bounds and Limits. But though many Things have been ſaid in the Caſe that are quite beſides the natural Queſtion; yet, they having been made Dependancies upon that Queſtion, and becauſe it ſeems to be a Caſe of ſuch Expectation, I think it will become me in the Place wherein I am, to ſay ſomething to you, and according to the beſt of my Underſtanding, tell you what I apprehend to be the legal Part of it, ſtripped of what hath no Relation at all to it. And if I ſhall omit any thing that is material on the one Side or the other, here are Gentlemen that are learned in the Law, who

who are of Counsel both for the Plaintiff and the Defendant; and I shall not think my self under any sort of Prejudice in the World, if they take the liberty, as they may freely do, to interrupt me and enmind me of what I forget, or wherein I may mistake.

For, Gentlemen, I assure you for my own part, I would not have the Law made subservient to any Purpose, but the exact Rule of Justice. I would to the best of my understanding in all Cases *servare jus illæsum*, preserve the Law and the Right of every Man inviolable. I would have the Law of the Land to be the Measure of my own and all other Men's Actions. And I hope no Man can justly (I am sure I do not know they can) complain of any Breach or Invasion that is made in the Courts of Justice, either upon Law or Right. But all those that have the Administration of Justice committed to them by the Government, do behave themselves with all Equity and Impartiality towards all the King's Subjects; And the Law has as full and free a Course, and Justice doth every where take place as much as can be desired by any honest and good Man.

Gentlemen, In this Case that you now are to try, I must first of all tell you, that this Business of the Right of Election one way and the other, hath been too much insisted on on both sides. And I speak it, because tho' I my self in my own mind know what of it is true, and what not; yet I conceive it not so proper to be mentioned in this Case, it being no legal Evidence to the Point in question. Now it is a Duty incumbent upon you to observe; and upon the Court to suffer nothing to be urged so as to have any weight with you, but what is legal Evidence. That you are only to mind, Gentlemen. So that if I mention to you any Point of Fact that hath not been given in Evidence, as having a true Relation to this Issue, you are not to mind what I say to you about it. On the other side, I must likewise acquaint you, if there be any Difficulty in Point of Law in the Case; you are to observe the Directions of the Court, who will be always ready to assist and direct you in it. Or the Gentlemen that are of Counsel on the one side, or the other may have the Matter found; specially, if they think there is Fact enough to be found to ground a Question upon.

Therefore, Gentlemen, for the Customs of the City of *London*; As to the manner of Elections, or who hath the Right to manage them, they are not at all material to this Business; and if they were, there is never a one of you but know it as well as we or any body doth. I my self had the Honour to serve the City of *London* in the Places of Common-Serjeant and Recorder several Years: So long ago, that not above one or two that sit upon the Bench in the Court of Aldermen have been longer conversant in *Guild-hall*, or know the Customs of *London* in those matters better than I do.

It is notoriously known to all that have had any Dealing in *London*, or been acquainted with any thing there, that till within these six or seven Years last past, the Lord Mayor and Court of Aldermen, and the Common Hall used to go a birding for Sheriffs, (you very well know what the Phrase means) and perhaps it was not once in ten times, that those that were chosen Sheriffs, held; but generally every Year there were I know not how many Elections upon fining off, or swearing, or some reason or other; so that now and then there was but one Sheriff chosen for a great while together; and now and then never a one from *Midsummer-day* till near *Michaelmas*. And the way was, to consider, such a one hath most Money in his Pocket; Oh, then put him up for Sheriff: And then, if he went off, then another would be found out. And there was one old Deputy *Savage*, that used to keep a black Book that would furnish Names for I know not how many Elections. And who should be Sheriff, so as to divide into Parties, and Poll, was never a Question before such time as Mr. *Jenks* that they speak of came to be put up, and there the Dispute began; then the Faction began to appear.

Now, if any Man offers to tell me, I apprehended always it was the Sheriff's Right to manage the Poll; I would ask him how that can be a Right that never was done before? Let them shew me any one Instance of a Poll for Sheriffs before that time. No, it was notoriously known when the Polls began, Persons did not think the Shrievalty such an Office, that it was so earnestly to be coveted and desired. Polls indeed used to be heretofore for the Bridgemasters Places, that are Places of Profit and Advantage; and so for Aleconners and the like, those have been often in your Time and mine, Gentlemen, we may very well remember them. But this Office of Sheriff, People were not heretofore so ambitious of as to poll for it; but the City was glad if they could get any worthy and fit Person to accept of it.

And for the Management of the Election, we all can tell the manner of it as well as any thing in the World. After my Lord Mayor and the Aldermen were gone off the Hustings and retired to this Place, the Common-Serjeant staying there with the Sheriffs, used to make a Speech to the Common Hall, a Rehearsal of what had been before said by the Recorder; and then received the Nomination of such Persons as were to be put to the Question for Election from the Common Hall. And upon the putting of the Question, every Man held up his Hand for those that he desired should be chosen; and if it could be decided by view of the Hands, well and good; and the Common Serjeant consulting with the Sheriffs and those about him, declared their Opinion, that the Election fell so and so, on the one side or on the other; but if doubtful, or a Poll demanded by any one; then they used to acquaint my Lord Mayor what was done in the Common Hall; and thereupon they gave Order for declaring the Election, or granting the Poll, and used to come down to the Hustings for that purpose; and no one ever thought that either the Common-Serjeant or the Sheriffs, or any body else but my Lord Mayor had the Power of those Courts. For the Common Hall was always summoned by Precept from the Lord Mayor, and when the Business was done, or was to be put off to another Day, the Common Cryer by Command from the Lord Mayor makes Proclamation, You good Men of the Livery, *&c.* may depart for this time, and give your Attendance here again such a Day, or upon further Summons. No body ever talked of summoning

a Common Hall by any body but my Lord Mayor. He did it by virtue of his Office, and he diſſolved it, or adjourned it by virtue of his Office. All this is as notoriouſly known to all Men that know any thing of *London*, as the Faces of you of the Jury are to the People here, or to one another. And this never came to be a Queſtion, till the Buſineſs of the Poll between Sir *Simon Lewis* and *Jenks* came about, which you have heard of. Mr. *Papillon* himſelf, when he was choſen Sheriff before, and fined for it, was choſen in this manner and no other.

Mr. *Corniſh*, he comes and gives Evidence that the Common Serjeant was reckoned to be the Man that managed the Choice by Command and Direction of the Sheriffs. And ſome of thoſe Gentlemen, that have been produced on the Defendant's ſide, they ſay, they have looked upon it as the Sheriff's Buſineſs. But alas-a day it belongs to neither of them, they are but Officers to the Lord Mayor. The Common Serjeant's Buſineſs is but to put the Queſtion into the Mouth of the Common Cryer. In ſo much, that when I my ſelf was Common Serjeant, as I uſed to paſs by the Shops in *London*, they uſed to cry, There goes *So many of you as would have.* It was as plain a Road of things, that every body knew it before theſe things untowardly have come to be imbrangled by our Factions and Diviſions, and the Heat of ſome buſy Fellows. Here are a great many ancient Citizens, that I ſee that know, and ſo you do all, Gentlemen, that this is true. So that all the Diſcourſe of this Matter is but Flouriſh and Garniture, and doth not affect this Caſe at all one way or other.

Another thing, Gentlemen, hath been mightily talked of, and urged and inſiſted upon both by Plaintiff and Defendant; and that is the Defendant's Right, or not Right of Election to the Office of Sheriff, and that the majority was on his ſide, ſay his Counſel: On the other ſide, ſay the Plaintiff's Counſel. And for the ſetling that Right, he brought his Action againſt the Plaintiff; but it being determined upon the Conviction for the Riot. There is no ſuch thing, Gentlemen, as that it was therein determined: That cannot be a Determination of any Right at all. For tho' I may have a Right to an Office, or any ſuch thing; yet I muſt purſue a legal Method to attain to that Right, and not go irregular Ways to work.

As if I have a Right to come into your Houſe, becauſe you have not paid me your Rent, (to make my Thoughts and Meaning intelligible to you by a familiar Inſtance, which will ſhew what I intend) I muſt not make a Riot, and turn you by Violence out of Poſſeſſion. For I have a legal Courſe to come by my Right; to wit, by bringing an Action and evicting you. But if any Man attempt to get a Right in an unjuſt manner, and he be puniſhed for it by an Indictment or Information, that, I ſay, doth not determine the Queſtion of Right one way or other.

To come then to the Iſſue that here you are to try, the Point of this Action before us reſolves it ſelf into a narrow Compaſs, and is only this in ſhort, which you are to enquire of, Whether or no the Plaintiff was arreſted by the Defendant without probable Cauſe, and maliciouſly?

Now matters of Malice are things that remain in a Man's Heart, and it is impoſſible for me to diſcover whether another Man hath a Malice againſt me, if I do not ſee it in his Actions. Malice being a thing that is internal, is not elſe diſcernible.

Therefore you muſt conſider the Circumſtances that do attend this Action of the Defendant, and if ſo be they are malicious, then you are to find for the Plaintiff: But if they for the Defendant have offered to you any Circumſtances that can prove or convince you, that he had any Probability of a Cauſe of Action, and that not attended with a malicious Proſecution of that probable Cauſe, then the Iſſue is with the Defendant.

This is the right Queſtion, and the Law of this Action; and the Fact to make it out one way or other is now in Judgment before you, upon the Evidence that hath been given on both ſides.

Now, in point of Law, I am to tell you, and that you muſt obſerve, That tho' I have a probable conjectural Cauſe of Action againſt another Man; yet if, to obtain my End in that, I proſecute him maliciouſly, with a Deſign to ruin him, or to put an Indignity upon him, or the Character he bears in the Publick, or put a Hardſhip or Difficulty upon him (I mean Hardſhip and Difficulty in point of time) when it is probable the Remedy may be had at another time, and the ſame thing done with leſs Injury and leſs Trouble; then an Action will lie againſt me, for bringing my Action in ſuch a manner; tho' it be true, that I had a conjectural Cauſe of Action againſt him.

As in the Caſe that was here in this Court the other Day, of Mr. *Swinnock* againſt the Serjeant, that came to him and told him in his Ear, that he had an Action againſt him, and this was upon the Exchange; thereupon Mr. *Swinnock* brings his Action for this againſt this Man, for whiſpering this in his Ear: If he had proved any malicious Intention to diſgrace him, no doubt the Action would have lien. For tho' there might be a Cauſe of Action againſt *Swinnock*; yet if that be maliciouſly purſued to get him arreſted, and held to Bail, where no Bail is required by Law; or with an intent to diſgrace him upon the Exchange, when it might have been done elſewhere, or at another time, this irregular malicious Proceeding will bear an Action. The purſuing malicious ways to obtain a Right, makes a Man obnoxious to the Action of the Party ſo proſecuted. I deſire to expreſs my ſelf by Words, that may declare my Meaning as plainly as can be: And I hope I do ſo.

Then, Gentlemen, taking it thus as the Counſel for the Plaintiff ſay, to ſhew that the Defendant had no probable Cauſe of Action againſt the Plaintiff; they endeavour to anſwer what is alledged on the other ſide, as their probable Cauſe. And therefore that we muſt conſider firſt what is ſaid by the Defendant.

They tell you, here was an Election for Sheriffs of *London* at *Guild-hall*, where thoſe Perſons that they have nominated, were Candidates, and put in Nomination for that Office. And upon that Nomination, as ſay thoſe three Witneſſes; we were the Perſons that had the majority of Voices, and thereupon we apprehended

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our ſelves choſen, which gave us the Right of Action: So the Defendant, ſay they, ſheweth ſome Probability of a Cauſe of Action; and if he have not purſued it with Malice, but in a regular way, the Probability of the Cauſe doth take off from the Malice, that elſe the very bringing of an Action without Cauſe would imply in it ſelf. And they ſay true, for I muſt repeat it again; if I have *prima facie*, a probable Cauſe, and purſue it legally, no Action will lye againſt me for it.

But then ſay they on the other ſide for the Plaintiff, That is no probable Cauſe; for you could from thoſe Tranſactions have no ſuch Apprehenſions of a Right; for that is not the meaſure of a Right of Election, or a Rule to gueſs who is elected by: For there being no Deciſion of the Election upon the holding up of the Hands, and a Poll being demanded, whereas the uſual method is to have by the Lord Mayor's Order and Direction, the Poll taken by ſuch as he ſhall appoint; you went another way to work, you go your ways and take Books to your ſelves, and come not to the fair Determination of the Queſtion: And they bring Mr. Town-Clerk to prove. You have heard what the Evidence is, and you are Judges of it.

Now take it, that this were in the Caſe of an Office of Profit; as ſuppoſe it were a Queſtion between me and *John a Styles*, for the Place of Bridgemaſter, for the purpoſe, and a Poll is demanded, and granted; if they that have no Authority ſhall go after the Court is adjourned by him that has Power, and take a Number of Names in the way of a Poll by themſelves, and upon that come and ſay, *J. S.* has four and twenty hundred, and I have but ſo many; that ſure is not any probable Cauſe, nor a Right; for you have gone here out of the known and uſual method of ſuch Matters, and depend upon that which can give no Foundation of Right at all. This is the Anſwer that is given to that by the Counſel for the Plaintiff.

You may have fifty thouſand Names for you after that rate, and yet not to be Elected, nor have probable Cauſe of any ſuch Apprehenſion. We all remember Sir *Samuel Sterling*'s Caſe, which was upon the Denial of a Poll for a Place of Profit, that is to ſay, the Bridgemaſter's Place: But this is upon a wrong Poll.

Suppoſe there had been a Poll granted (as there was) in this Caſe, and upon that Poll thus managed, Sir *Dudley North* and Mr. *Box* had had the majority but by a very few, and there had been an Action brought in ſuch a Caſe; here was a probable Cauſe as good as in this Caſe, as it now ſtands, becauſe ſome of them might happen not to have legal Suffrages; yet the taking the Poll by Perſons of their own Heads, after the Court was adjourned, avoids all: ſo that that would have ſignified nothing. You are to conſider of this Anſwer of theirs.

Then the great thing, Gentlemen, that you are to obſerve, is this: To bring an Action alone, will ſcarce amount to a Proof of Malice; therefore Malice being in this Iſſue a great Point of Fact, you muſt weigh the Evidence whether the Circumſtances do ſhew it, that there was Malice in Mr. *Papillon*. If the Circumſtances are enough to amount to a Proof of Malice, you then are to find for the Plaintiff; and you are the Judges what Damages it is fit to give him for that Injury: He has laid Ten Thouſand Pounds; but you muſt do what you that are Judges of it think fit in it.

Come, Gentlemen, it is beſt to be plain; and no Man needs to be thought wanting of an Apprehenſion, what is the meaning of all theſe things. It is commonly and univerſally known to all Mankind:

Firſt, That no Man ever did purſue ſuch an Action as this is, to be Sheriff, till theſe unhappy Times wherein we are, and wherein we have loſt that Quiet and Felicity, which I pray God we may be reſtored unto. And tho' it is true, a Man may lawfully ſue for ſuch an Office, and it is no Offence; yet it looks ſomewhat extraordinary, and that a Man has a mind to do ſomething unuſual in the Place; 'tis for ſome ſtrange purpoſe or other, eſpecially when a Man has fined for the Office once before, as we all know Mr. *Papillon* did.

Again, It is notoriouſly known, That for ſeveral Years laſt paſt, the Government hath been beſet: And that which is a baſer Thing than ever was thought of, or acted in the higheſt times of Villany in theſe Kingdoms (I mean thoſe of the late Rebellion) the very Methods of Juſtice have been corrupted, and all to ſerve the main Deſign of ſubverting the Government.

Gentlemen, This is ſo black a Wickedneſs, that no honeſt Man that has any Senſe of Loyalty, Religion, or common Juſtice, but muſt tremble at the very thoughts of it: When we ſee ſuch Fellows as are obnoxious to the Government, known Diſſenters from the Eſtabliſhed Worſhip, and that never thought of conforming to the Government, or the Laws Civil or Eccleſiaſtical, or complying with the Church, but only to capacitate them to deſtroy it; nay, when Men that are taken notice of to be common Reproaches to the Government under which they live, ſhall get into Office to make *Ignoramus Juries*, and to enable People to commit and be guilty of all the Falſities and Baſeneſſes that Human Nature is capable of; no Man living, that has any Ingenuity or Goodneſs in him, but muſt cry out againſt it.

When Men begin to take Oaths to ſanctify Villany, and enter into Clans and Clubs, and Cabals, to deſtroy the moſt Merciful of Kings, and to diſturb, diſtract, and overthrow the beſt of Governments, What ſhall we ſay? And all this you, All of you, Gentlemen, know to be true. Was it not more ſafe to commit Treaſon in the City, than to ſit upon a Bench of Juſtice to bring the Traitors to Judgment? Was it not more ſafe to Conſpire the Death of the King and his Brother, than to give the leaſt Frown or Look of Diſpleaſure againſt one of theſe ſnivelling Saints? Did not we know that Men were ſanctified to be Jury-men, to enquire of Conſpiracies againſt the King's Life and Government, that before that time were never thought fit to be truſted with the common Diſcourſes or Society of honeſt Men?

When Men were thought fitteſt for Offices of ſuch high Truſt, according to their being thought capable of, and well-intended to the overthrow of the Government: Do not we all know this to be as true, as that the Sun ſhines at Noon day? When Traitors at the Bar were in leſs danger of being convicted of their Treaſons, than the Judges were of their Lives?

Mr. *Pa-*

Mr. *Papillon* knows all this to be true eminently. When pack'd Juries were grown to that heighth, that though ſeven or eight Witneſſes came and ſwore poſitive down-right Treaſon, the Traitor could not be by theſe Men ſo much as thought fit to be accuſed by an Indictment; to that Stupidity in Villany were Things brought by theſe Fellows: Nay, ſo far were the Proceedings in Courts of Juſtice tainted, that in no common Action whatſoever that came here to be Tried, but cropp'd Hair, and a demure Look were the beſt Signs of a good Evidence; and the Buſineſs of an Oath ſignified nothing, provided the Party were to be prop'd up, and the Faction to receive an Advantage by it.

For God's ſake, Gentlemen, let any Man but ſeriouſly conſider and believe that there is a God in Heaven, and a dreadful Day of Judgment, when every one of us muſt anſwer for every Thought of our Hearts, every Word of our Mouths, and every Action of our Lives; and then tell me what horrid Impieties theſe are, ſuch as any ordinary ingenuous Perſon would bluſh and tremble at.

And I would have Mr. *Corniſh* to conſider, whether ever till that Time of famous, or rather infamous Memory, that he and his Fellow-Sheriff Mr. *Bethel* came into that Office, there were ever in *London* ſuch Things as Tavern-Returns of Juries, or Clans and Cabals how to pack Fellows together, for ſuch wicked Purpoſes as theſe?

Do not moſt of you here know this? And doth not every one of your Hearts and Conſciences agree with me in it? How far unlike the Proceedings of thoſe Times, in reference to Juries, were from what they anciently were? I have had the Honour to practice in this Place among you in my Profeſſion, when without any diſturbance or mixture of Faction and Sedition, we were all quiet, and every one knew his Duty; and Juſtice was done in this Place ſo regularly, that it was grown to a common Proverb, if there were any Cauſe of any Difficulty, they would uſe to ſay to one another, *Come, we will be ſo fair with you, as to try it by a* London *Jury*. So far was it then from being thought, that in the City of *London*, Juſtice ſhould be corrupted, that the Ordinary Juries of *London* were thought the beſt Judges, and moſt impartial of any in the Kingdom. I appeal to all the Practicers of thoſe Times that hear me, if what I ſay be not true.

But when once they had begun to pick and cull the Men that ſhould be returned for a Purpoſe, and got this *Factious Fellow* out of one Corner, and that *pragmatical, prick'd ear'd, ſnivelling, whining Raſcal,* out of another Corner, to prop up the Cauſe, and ſerve a Turn; then truly Peoples Cauſes were Tried according to the Demureneſs of the Looks on the one Side or the other, not the Juſtice of the Cauſe.

Gentlemen, I take my ſelf bound to tell you of theſe Things, and I wiſh I had no reaſon for it; and eſpecially in this Caſe I ſhould not do it, it being a private Action between Man and Man, were it not for the Ingredients that are in the Caſe, and that any Man that has any Senſe may perceive.

Now then for this Caſe before you, Gentlemen, I deſire if poſſible to be ſatisfied in one Thing or two: My *Lord Mayor of* London, it is true, is not, nor no Perſon whatſoever, be he of never ſo great Quality, is exempt from the Law: If he owe any Man any thing, he is bound to anſwer it to him, as much as any the meaneſt Citizen of *London*, or pooreſt Subject the King has: But is he to be arreſted juſt at ſuch a Time, becauſe he is chief Governor of the City, and the Action will ſound the greater? And the Court of Aldermen, are they to be arreſted, becauſe they are his Miniſters, and neceſſary ſubſervient Aſſiſtants to him in his Government, in a ſuch time as this was, when the Government both in the City and elſewhere, was ſurrounded with Difficulties, and in great Danger on all Sides? What occaſion was there for ſuch haſt and ſpeed in this Action to be done juſt then? Would Mr. *Papillon* and Mr. *Dubois* have ſtarved, if this Action had been ſuſpended for a while? Sir *William Pritchard* would have been as anſwerable to this, or any Man's Action, when the Year of his Office had been out: But it carrieth Vengeance and Malice in the very face of it; it ſpeaks, that therefore they would do it, becauſe he was then *Lord Mayor*, the chief Perſon in the City for the Time; and thereby they ſhould affront the Government, in arreſting and impriſoning the King's Lieutenant, in one of the higheſt Places both of Truſt and Honour. And this would be ſure to make a great noiſe, and the Triumph of the Action would make their Party then to be uppermoſt, having got the chief Governour of the City in their own Clutches.

Nay, and becauſe they would be ſure their Malice and Revenge ſhould take place, they take the very *Scoundrels* of the Party to be employed in this great Work. For before that time, the Coroner (as he tells you himſelf) uſed to make his Warrants to the Officers that uſually are verſed in that Buſineſs; but here he muſt have the Direction of the Attorney, and who is that but *Goodenough*, a Man we have all heard enough of; and then *Burleigh* and *Keeling* muſt be employed; and by whoſe Advice, but by *Goodenough*'s and *Nelthorp*'s? And all theſe Raſcals, who now ſtand attainted of Treaſon, muſt be fetched in to conſult about a fit Man to make an Arreſt. And there they pitch upon this Man *Keeling* for one, who was one of the principal Conſpirators in that damnable, helliſh Plot againſt the King's Life, and that of his Royal Brother; but by the Bleſſing and Providence of Almighty God, was made uſe of as a great Inſtrument of preſerving thoſe precious Lives, and with them our Government and Religion, and all that is dear to us, which by that Conſpiracy was undermined; and I wiſh we had not Reaſon to ſay, and think the Conſpiracy ſtill to be going on. But I hope in God, the Government, as eſtabliſhed both in Church and State, will always be able to prevail, maugre all Deſigns, and thoſe that are engaged in them for its Deſtruction.

Now *Keeling* tells you he ſcrupled the Imployment; No, ſaid he, I deſired not to have my Name put in, becauſe I was never concerned in any ſuch Thing before, and my Buſineſs was of another Sort. But then, Mr. *Goodenough* (and Mr. *Brome* the Coroner no doubt had a Hand in it, though now he has a very treacherous Memory, and has forgot all that was done) comes and tells him, you muſt concern your ſelf, and

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do this thing; for you have a Trade with the Party, and it will be ill taken if you do not do it. And being asked whom he meant by the Party? He tells you, the discontented Party, and he explains their Discontent to be such, that they would have killed the King and the Duke. Now how far he was engaged with that Party is pretty well known; and therefore if he boggled at such a thing as this, which that Party it seems was engaged in, they would suspect him; and so, for the Parties sake he was drawn in.

But then, when this Thing is done; Pray, Gentlemen, do but consider what the Consequences might have been, and which perhaps (nay upon what has happened to be discovered since, doubtless) they did design it. But God be thanked, those Consequences were prevented, and they themselves have Cause to be thankful to God Almighty for it. For here all the Magistrates of the City, that had any Care for the good Government of it, were to be taken up; and then, here was a Body without a Head, a Town full of Faction without any Government; and if the heady Rabble had been once up, without those that had Authority to restrain them, where then had been your Liberties or Properties, Gentlemen, or any Man's; Nay, theirs that were engaged in this Design, if they had any, for those were Things much talked of by them? In what Danger had you, and all you had, for Life, Estate, Relations, and every thing been? But it pleased God in his infinite Mercy to showre down upon us, and upon this City, and the Government, in a mighty Preservation, putting it into the Hearts of some in Power, to bring the City-Militia some of them together, and prevent this Mischief; or else God knows, this whole City might have been by this time once more in Ashes, and most of the King's Subjects wallowing in their own and one another's Blood. And their Party too would have felt the sad Effects of it, no doubt, as well as others. So that the Consequence of it was to destroy the Government, and that appears by the Parties being engaged in it; it could not be to gain a Right, to make this Hubbub, and Ado to arrest the Magistrates of the City; and then take Advantage for some other wicked Purpose.

Another Point of Circumstance, that is considerable in this Case, is the particular Persons that were to be sued. The *Mandamus*, that was directed to the Lord Mayor and Aldermen; and there is a Return made, not by this, or that, or the other Man, but in the Name of them all, the whole Court. How comes it then to pass, that my Lord Mayor, Sir *Henry Tulse*, and those other Gentlemen, must be sued and arrested; but I warrant you, Mr. *Cornish*, or his Party, were not to be meddled with? No, he had so much Zeal for Justice, and to do the Defendant Right, that if he should have been called upon to appear, he would not have stood out an Arrest; so just a Man he is, and such a lover of Right without all doubt; but he was in no danger I dare say, they loved one another too well to sue one another. That, I say, Gentlemen, is another Circumstance, that carrieth Malice in it. For I must tell you, these Things cannot be smothered, they are as apparent as the Light: And though it falls to my Turn in this Cause, to enmind you of them; yet, they are as well known to you all, as the Passages in your own Families.

No, Gentlemen, there was not a Pursuit of Right in the Case; it was a designed Piece of Villany, on purpose to affront the Government; nay, to destroy it, and set us all together by the Ears. And if he were ten thousand times Mr. *Papillon*, I would and must tell him so; and if it were not for some such deviliſh End and Purpose, he would never have been so greedy of an Office, he had before declined and fined for; and which he was only called to by a turbulent, seditious, factious Party, that had further Aims in it. Otherwise, I know Mr. *Papillon*'s Humour so well, that I am confident, he would much rather have been contented to sit in his Counting house, than in *Guild Hall* in a Scarlet Gown. Alack a day, I know Mr. *Papillon* knows how to spend his Time to better Advantage to himself.

Ay, but say the Counsel for the Defendant, We did go on very tenderly and civilly, and respectfully; for there met at Mr. *Cornish*'s House, Who, I pray? Mr. *Papillon*, and Mr. *Dubois*, and *Goodenough*, the prime Attorney in this Cause: And there, forsooth, they tell *Goodenough*, be sure you do nothing, but what is exactly according to Law; and be sure you carry it very civilly and respectfully to my Lord Mayor, good Mr. *Goodenough*. Alack-a-day, how wonderful pious and considerate these People are! If Mr. *Cornish* had gone to my Lord Mayor, as it was his Duty to do, being then an Alderman, (we know it full well) and said to my Lord Mayor, there were such Persons at my House talking of such a matter, and I come to advertise you of it, and desire you would consider of it, he had shewn his Piety and Zeal, and Love for Justice, much more in that than in admitting such Cabals in his House. But we know very well, as well as if we were in them, that they must go hand in hand in all these seditious and factious Businesses.

It is plain, Gentlemen, what the Design was from the Beginning to the End, nothing but to cause a Tumult and Confusion in the City, in Order to put that damned hellish Conspiracy for the Destruction of the King and his Brother, and every Man that was honest and loyal in Execution. This is certainly known to you all; and that there should be such a Parcel of People untowardly linked together in this Matter, not one Man of which that they can pretend to be in any wise a Well-wisher to the Government, or to any that have any share in it: No, they are all Persons that are obnoxious to the Government that had any Hand in it; but none of them Church of *England-men*, or Friends to her Established Worship; notorious Dissenters, or profligate Atheistical Villains that herd together.

This, Gentlemen, is plain English, and necessary to be used upon all these Occasions: So that it remains now upon your Consciences, whether upon all these Circumstances that have been mentioned, you think, the bare obtaining of a Right in a Legal Course, or some worse Thing was designed.

We all know Mr. *Papillon* to be a wealthy Man, an able Merchant; one that had rather have minded his Affairs Abroad, or at the Exchange, than

than the expenſive, troubleſome Office of Sheriff of *London*; but, that ſomething was to be done to wreak a damned Malice and Revenge upon the Government. And ſure, he muſt think, as his Party it ſeems did, that they would not be ſufficient to ſubvert the Government, unleſs he could get into that Office.

This I tell him openly, and let him or his Party make their Remarks upon it as they pleaſe. But you are to Judge whether theſe Things be a ſufficient Evidence of Malice, to ſupport the Plaintiff's Action.

There was queſtionleſs a *Deviliſh Malice* fixed in his Heart and Mind, and he wanted an Opportunity to effect it; and he thought it for his own Security to be beſt to take this Courſe, and nothing elſe was in it. For abundance of People have a mind to do Miſchief, but want Opportunity and ſafe Ways to do it in: And, Oh, they rejoyce, if they hit upon a Project, that ſhall carry a ſpecious Pretence and Colour of Law, for then they think they are ſafe enough.

As in Caſe, I have a mind to do any particular Man an Injury in his Reputation and Buſineſs; the Buſineſs muſt not be done down-right, by going to every body, and ſaying, Such an one is Poor, or a Beggar, and do not truſt him; but I muſt cunningly and ſlyly inſinuate it, I am ſorry for ſuch a Man, I believe he is an honeſt Man, but however he oweth Money; and under this Sort of *Sniveling*, *Canting*, *Whining*, *ſly rate*, do a Man an Injury whatſoever: And yet forſooth he ſhall have no Advantage againſt me for it: I ſhall ſtrike a Dart into the very Heart of that Man's Credit, and yet he have no Remedy.

So if I have a mind to talk againſt the Government, I will not do it aloud, and ſpeak what I mean openly; but I will *Whine*, and *Sniveel*, and *Cant*, and make People believe I have dreadful Apprehenſions of what is deſigning, and yet not bring my ſelf in any Danger; for I will keep within Bounds all the while, though I do more Miſchief than if I dealt fairly and above-board. *Alack-a-day* (as Mr. *Pilkington* ſaid) *I am for the Preſervation of the Liberty and Properties of the Subject, and I am for the Law*; but I find the City is ſtrangely run down in their Rights and Privileges, and there are very Arbitrary Proceedings. And I am a Citizen, and have taken my Oath to preſerve the Privileges of the City, and I will rather ſubmit to the Inconvenience of a troubleſome Office, than let all run thus: And immediately he ſets himſelf *Cock-a-hoop*, as if there were no one that took care of the City beſides himſelf, and he were ſuch a Patriot that there were none like him: And he and Mr. *Bethel* and Mr. *Cornish* forſooth, are the only Men of the Times, the only good Men; Men that are for the Liberties and Properties of the Subject, and the Rights of the City: Whereas theſe are the only Men that have made an Invaſion upon them, and done what they could to deſtroy them; and God knows we might all of us have enjoyed very quietly every Man his own, if theſe conteſting Riotors, and buſy *Factious Fellows* had not come among us. Every honeſt Man, I tell you, knows this to be true.

Gentlemen, As to the Buſineſs concerning the Damages, that, if you find for the Plaintiff, is left to your Judgments to conſider of, and give what you ſhall think fit upon ſuch an Occaſion. It is very true, it is not ſo eaſie a matter to aſcertain particular Damages in ſuch a Caſe; nor is it in an ordinary way ſo eaſie to prove, that becauſe Sir *William Pritchard* was in Priſon but five or ſix Hours there, he could ſuffer ſo much Damage as comes to ten thouſand Pounds. As in the Caſe of a Perſon of great Quality and Honour, it is not eaſy to prove his particular Damage; nor in the Caſe of any of you, that are wealthy, able, ſufficient Citizens, to ſay you are a Bankrupt, when we all know it is impoſſible to be true, and ſo no particular Damage doth enſue that can be proved; yet however, if the thing for which the Action is brought were deſigned with Malice, tho' the ill Deſign be not effected, that is no thanks to the Party, nor is to weigh with you, but the malicious Deſign muſt govern you.

Now, here I have taken notice to you, that the Malice of this Deſign here, was not againſt Sir *William Pritchard* as ſuch a particular Man, but againſt my Lord Mayor, that this Clan that met at *Ruſſel*'s was an Overflowing of that *Gall* or *Malice* that was in his Heart.

If Mr. *Papillon* had brought an Action upon a Bond only, certainly it had been nothing but what he might very well do; or if he had pretended to ſue for a bad Debt, that if he had ſtaid would have been loſt, it had been ſomething: But you ſee what it was, and it is as apparent why it was, in that Mr. *Goodenough* ſaid to *Keeling*, threatening him with the Diſpleaſure of the Party, if he did not do it; and Mr. *Goodenough* and Mr. *Brome* were ſuch Strangers to one another, that he muſt threaten *Brome* to complain of him, if he did not execute his Writs preſently. Do they think all Mankind are ſo dull or blind, as not to ſee through ſuch thin artificial Stuff as this?

Gentlemen, this is the Matter, The Government is a Thing that is infinitely concerned in the Caſe, that makes it ſo popular a Cauſe: The Government of the City, the Honour of your Chief Magiſtrate, and indeed the Honour of the King, whoſe Subſtitute he was, is concerned, and that puts a Weight upon your Inquiry into the Damages of this Caſe. You are to conſider you give Damages to the Plaintiff, not as Sir *William Pritchard*, but as Lord Mayor: And your Severity in this Caſe, will deter all People from entering into Clans and Cabals, to make Diſturbances, and affront the Government.

It is a thouſand times better to keep within their own Bounds, mind their Callings and Imployments, and concern themſelves with their own Affairs, and leave the Adminiſtration of the Publick to them to whom it belongs, and is intruſted with. And according as we ſay in the Law, *Maxime*; ſo ſay I to Mr. *Papillon* and all the Party, *Ad Conſilium ne accedas antequam voceris.* And do not be ſcared with imaginary Dangers, and groundleſs Jealouſies, into tumultuous and diſorderly Courſes. You had much better keep in your Counting-Houſe, I tell you again, and mind your *Merchandize*. Nay, and I do not doubt but you would much rather have done ſo, if there had not been ſome further fetch in it. It was not, I dare ſay, out of a frank, generous Humour to oblige the City, that Mr. *Papillon* would

would have ſpent his Time and Money in the Office of Sheriff; no, I know he had better ways to employ both.

It was not the generous Mind of Mr. *Bethel*, that called him on to be Sheriff of *London*, to entitle him to ſpend his Money; but on purpoſe to be one of the firſt that ſhould turn all things upſide down in the City, and diſturb the Government: And they that ſucceeded him, carried on the Project, and they that would have been in, but could not, had a mind no doubt to follow ſo Worſhipful an Example as he laid before them.

Then the Jury withdrew to conſider of their Verdict, and after half an hour's Stay, returned, and found for the Plaintiff, and aſſeſſed Damages to Ten Thouſand Pounds, *and Coſts to* Four Marks.

L. C. J. Gentlemen, You ſeem to be Perſons that have ſome Senſe upon you, and Conſideration for the Government, and I think have given a good Verdict, and are to be greatly commended for it.

The TRYAL and PROCESS of High Treaſon, and Doom of Forfaulture againſt Mr. *Robert Baillie* of *Jerviſwood* Traitor.

Curia Juſticiariæ S. D. N. *Regis tenta in prætorio Burgi de* Edinburgh *vigeſimo tertio die menſis* Decembris 1684. *Per Nobilem & Potentem Comitem* Georgium *Comitem de* Linlithgow, *Dominum* Livingſtoun, *&c. Juſticiarium generalem totius Regni* Scotiæ, *& honorabiles viros, Dominos* Jacobum Foulis *de* Colintoun *Juſticiariæ Clericum*, Joannem Lockhart *de* Caſtlehill, Davidem Balfour *de* Forret, Rogerum Hoge *de* Harcarſs, Alexandrum Seaton *de* Pitmedden, *&* Patricium Lyon *de* Carſs, *Commiſſionarios Juſticiariæ dicti* S. D. N. *Regis.*

Curia legitime affirmata.

Intran

Mr. Robert Baillie *of* Jerviſwood *Priſoner*,

INdited and accuſed, that where notwithſtanding by the Common Law of this, and all other well-governed Nations, the Conſpiring to overturn the Government of the Monarchy, or of the Eſtabliſhed Government of this Kingdom, or the concealing, and not revealing of any Treaſonable Deſign, Project, or Diſcourſe tending thereto; or the aſſiſting, aiding, or abaiting ſuch as have any ſuch Deſigns, does infer the Pains and Puniſhment of Treaſon. And by the third Act of the firſt Parliament of King *James* I, *The Rebelling openly againſt the King's Perſon*; and by the thretty ſeventh Act of His ſecond Parliament, *The Reſetting, Maintaining, or doing Favours to open, or notour Rebellers againſt the King's Majeſty, is declared Treaſon, and puniſhable by Forfaulture.* And by the hundred fourty and fourth Act of the twelfth Parliament of King *James* VI, *It is declared Treaſon to Reſet, Supply, or Intercommune with Traitors.* And by the firſt Act of the firſt Seſſion of His Majeſty's firſt Parliament, *It is declared, That it ſhall be High Treaſon for the Subjects of this Realm, or any number of them, leſs or more, upon any ground or pretext whatſomever, to riſe, or continue in Arms, to make Peace or War, without His Majeſty's ſpecial Approbation.* And by the ſecond Act of the ſecond Seſſion of His Majeſty's ſaid firſt Parliament, *To Plot, Contrive, or Intend Death, or Deſtruction, or to put any Reſtraint upon His Majeſty's Royal Perſon, or to Deprive, Depoſe, or Suſpend Him from the Exerciſe of His Royal Government, or to levy War, or take up Arms againſt His Majeſty, or any Commiſſionated by Him, or to intice any Strangers or others, to Invade any of His Majeſty's Dominions, or to Write, Print, or Speak any thing that may expreſs or declare ſuch their Treaſonable Intentions, is declared Treaſon, and puniſhable as ſuch.* Likeas, by the ſecond Act of His Majeſty's third Parliament, *It is declared High Treaſon in any of the Subjects of this Realm, by Writing, Speaking, or any other manner of way to endeavour the Alteration, Suſpenſion, or Diverſion of the Right of Succeſſion, or debarring the next lawful Succeſſour.* Nevertheleſs, it is of verity that the ſaid Mr. *Robert Baillie* of *Jerviſwood*, ſhaking off all Fear of God, Reſpect and Regard to His Majeſty's Authority and Laws; and having conceived moſt unjuſtly, a great and extraordinary Malice and Hatred againſt His Majeſty's Perſon and

and Government, and having deſigned moſt Traiterouſly to debar His Royal Highneſs, His Majeſty's only Brother, from His due Right of Succeſſion, did amongſt many other Traiterous Acts, tending to promove that wicked Deſign, endeavour to get himſelf Elected one of the Commiſſioners for negotiating the Settlement of a Colony of this Nation in *Carolina*, in one or other of the Days of the Moneths of *January*, *February*, *March*, *April*, or *May*, One thouſand ſix hundred and eighty three Years; and that he might thereby have the freer and better Acceſs to treat with the Earls of *Shaftsbury* and *Eſſex*, the Lord *Ruſſel* and others, who had entered into a Conſpiracy in *England* againſt His Majeſty's Perſon and Government, and with Colonel *Rumſay*, *Walcot*, *Weſt*, and *Ferguſon*, and others who had likewiſe Conſpired the Murder of his Majeſty's Sacred Perſon, and of the Perſon of His Royal Highneſs; and finding that he could not get himſelf Elected one of the ſaid Commiſſioners, he reſolved to go to *London* upon his own Expences, and declared to ſeverals (whom he took great pains to draw in to be his Accomplices) that his Deſign was to puſh foreward the People of *England* who did nothing but talk, that they might go on effectually; and after he had ſettled a Correſpondency here, he did go up to *London* in one or other of the ſaids Moneths, with Sir *John Cockran* and Commiſſar *Monro*, and did then, and there, tranſact with the ſaids Conſpirators, or one or other of them, to get a Sum of Money to the late Earl of *Argyle*, a Declared Traitor, for bringing home of Men and Arms, for raiſing a Rebellion againſt His Majeſty, and Invading this his Native Countrey; and ſo earneſt was he in the ſaid Deſign, that he did chide thoſe *Engliſh* Conſpirators, for not ſending the ſame timeouſly, and lamented the Delayes uſed in it; and perſwaded the late Earl of *Argyle* and others in his Name to accept of any Sum, rather than not to engage; and amongſt the many Meetings that he had at *London*, for carrying on the ſaid Traiterous Deſign, there was one at his own Chamber, where he did meet with the Lord *Melvil*, Sir *John Cockran*, and the *Ceſſnocks* Elder and Younger, and amongſt others, with Mr. *William Veitch* a Declared Traitor, and there he did treat of the carying on of the ſaid Rebellion, and of the Money to be furniſhed by the Engliſh for *Argyle*, for buying of Arms. And that if the *Scots* would attempt any thing for their own Relief, they would get Aſſiſtance of Horſe from *England*; and from that Meeting, he or ane or other of them did ſend down Mr. *Robert Martin* to prevent any riſing, till it ſhould be ſeaſonable for carying on of their Deſigns which Mr. *Robert*, after he came to *Scotland*, did treat with *Polwart* and others, for carving on of the ſaid Rebellion, by ſecuring His Majeſties Officers of State, his Caſtles and Forces, and by putting his Correſpondents here, and their Aſſociates, in readineſs to aſſiſt the late Earl of *Argyle*; and after the ſaid Mr. *Baillie* had engaged many of his Countrey-men in *England*, and had aſſured his Correſpondents here, that the *Engliſh* were reſolved to ſeclud His *Royal Higneſs* from his due Right of Succeſſion, thereby to encourage them to concur in the ſaid Rebellion, and Excluſion, he flew to that hight, that he did particularly and cloſly correſpond with Mr. *Robert Ferguſon*, Sir *Thomas Armſtrong*, Colonel *Rumſay*, and *Walcot*, who were acceſſory to that horrid Part of the Conſpiracy, which was deſigned againſt the ſacred Life of His Majeſty, and the Life of His Royal Highneſs, and did ſit up ſeveral Nights with them, concerting that bloody Maſſacer; at leaſt the ſaid Mr. *Robert Baillie* of *Jerviſwood* was, and is guilty of having Correſpondence with the late Earl of *Argyle*, and Mr. *William Veitch* declared Traytors, and of being art and part of an Conſpiracy, for aſſiſting of theſe who were to riſe in Arms againſt His Sacred Majeſty, and for Excluſion of His Royal Brother, and of concealing and not revealing the Acceſſion and Propoſals of others for that effect. Wherethrow he has committed, and is guilty of the Crymes of High Treaſon, Rebellion, and others above ſpecified, and is art and part of the ſamine, which being found by ane Aſſize, he ought to be puniſhed with Forfaulture of Life, Land and Goods to the Terror of others to commit the like hereafter.

His Majeſty's Advocat produced an Act, and Warrand from the Lords of His Majeſty's moſt Honourable Privy Council, for purſuing, and inſiſting againſt the ſaid Mr. *Robert Baillie* of *Jerviſwood*, whereof the Tenor follows: *Edinburgh*, the twenty two Day of *December*, one thouſand ſix hundred and eighty four Years. The Lords of His Majeſty's Privy Council, do hereby give Order and Warrand to His Majeſty's Advocat, to purſue a Proceſs of Treaſon and Forfaulture, before the Lords of His Majeſty's Juſticiary, againſt Mr. *Robert Baillie* of *Jerviſwood*, to morrow at two a Clock in the Afternoon preceiſly, and the ſaid Lords do hereby Require and Command Sir *George Lockhart* of *Carnwath*, and Sir *John Lauder* Advocats, to concur, and aſſiſt in the ſaid Proceſs with His Majeſty's Advocat, from the intenting until the End thereof, as they will be anſwerable upon their Alledgance. Extract by me, *ſic ſubſcribitur*,

Colin Mackenzie, Cls. *Sti. Concilii.*

Purſuers.	Procurators in Defence.
Sir *George Mackenzie* of *Roſhaugh*, Our Sovereign Lord's Advocat.	Sir *Patrick Hume*
	Mr. *Walter Pringle*
	Mr. *James Graham*
	Mr. *Will. Fletcher*
Sir *George Lockhart*, Sir *John Lauder* } Advocats.	Mr. *William Baillie* Advocats.

The Pannal's Procurators produced ane Act of His Majeſty's Privy Council, in their favours, whereof the Tenor follows: *Edinburgh*, the twenty third of *December*, one thouſand ſix hundred eighty four Years, The Lords of His Majeſty's Privy Council having conſidered ane Addreſs made to them, by Mr. *Robert Baillie* of *Jerviſwood*, now indited at the Inſtance of His Majeſty's Advocat, before the Lords Commiſſioners of Juſticiary, of Treaſon, do hereby Require and Command Sir *Patrick Hume*, Mr. *Walter Pringle*, Mr. *James Graham*, Mr. *William Fletcher*, Mr. *James Falconer*, Mr. *William Baillie* Advocats, to Conſult, Compear, and Debate for the Petitioner, in the Proceſs of Treaſon, mentioned in his Addreſs, without any hazard, as they will be anſwerable at their Peril; Extract by me, *ſic ſubſcribitur.*

William Paterſon, Cls. *Sti. Concilii.*

After

After reading of the Inditement, the Lord Juſtice General required the Pannal to make anſwer thereto.

The ſaid Mr. Robert Baillie *Pannal pleaded Not Guilty.*

Mr. *Walter Pringle* Advocat, as Procurator for the ſaid Mr. *Robert Bailie* of *Jerviſwood* Pannal, alleadges that he ought not to paſs to the knowledge of an Aſſize; becauſe he had not got a Citation upon fyfteen Days, or at leaſt on a competent time, which is uſual, and abſolutely neceſſary in all Actions, and much more in Criminal Purſuits, eſpecially, ſeeing, if a competent time be not allowed to the Pannal, he is precludit of the Benefit of ane Exculpation, without which he cannot prove his Objections againſt Witneſſes, or Aſſyzers, or any other legal or competent Defences; And by the late Act of Parliament concerning the Juſtice Court, all Pannals are allowed to raiſe Precepts of Exculpation, and thereupon to cite Witneſſes for proving the Objections againſt Witneſſes, and Aſſyzers, which neceſſarily preſuppoſeth, that a competent time muſt be allowed to the Pannal to execut his Diligence, or otherwiſe, how is it poſſible he can prove a Defence of *alibi*, or any other juſt Defence; and as this is moſt conſonant to that clear Act of Parliament, and to material Juſtice, and to the Rules of Humanity, ſo this Point has been already fully and often decided, and lately in the Caſe of one *Robertſon* in *July* 1673. the Inſtance whereof is given by His Majeſty's Advocat in his Book of Criminals, and Title of Libels, where the Lords found, that albeit *Robertſon* got his Inditement in Priſon, yet he behoved to get it upon fyfteen Days.

His Majeſty's Advocat oppons the conſtant Tract of Deciſions, whereby it is found, that a Perſon incarcerated may be Tryed upon twenty four Hours; and the late Act of Parliament is only in the Caſe where a Summons or Libel is to be raiſed; but here there is no Libel or Summons, but only an Inditement; nor was any Exculpation ſought in this Caſe, before the Tryal, which is the Caſe provided for by Act of Parliament.

The Lords, Juſtice General, Juſtice Clerk, and Commiſſioners of Juſticiary, repel the Defence, in reſpect the Pannal is a Priſoner, and that it has been the conſtant Cuſtom of the Court, and that the Pannal made no former application for an Exculpation.

Sir *Patrick Hume* for the Pannal alleadges (always denying the Libel, and whole Members, and Qualifications thereof) that in ſo far as the Libel is founded upon harbouring, maintaining, and intercommuning with the Perſons mentioned in the Dittay, the Pannal ought to be aſſoylzied, becauſe it is *res hactenus judicata*, he having been formerly purſued before the Lords of His Majeſty's Privy Council for the ſame Crimes, and fined in a conſiderable Sum; and therefore that Crime cannot now be made uſe of as a ground of Treaſon againſt the Pannal.

His Majeſty's Advocat anſwers, That he reſtricts his Libel to the Pannal's entering in a Conſpiracy, for raiſing Rebellion, and for procuring Money to be ſent to the late Earl of *Argyle*, for carrying on the ſaid Rebellion; and for concealing, and not revealing; neither of which is referred to his Oath; and conſequently was not *res judicata*, there being nothing referred to his Oath; but his Converſe and Correſpondence with ſome Miniſters, and others within the Kingdom, and his own Gardiner, and his writing Letters to my Lord *Argyle*; and oppons the Decreet of Council it ſelf, and reſtricts the Libel to all the Crimes not inſiſted on in the Decreet.

Sir *Patrick Hume* replies, That as to the Correſponding with the late Earl of *Argyle* at any time ſince his Forfaulture, was expreſly propoſed as an Interrogator to the Pannal in that Purſuit, at His Majeſty's Advocat's Inſtance againſt him, before the Lords of His Majeſty's Privy Council, and that not only his own Correſpondence by himſelf; but alſo by Major *Holms*, Mr. *Carſtares*, *Robert Weſt*, *Thomas Shepherd*, *Richard Rumbold*, and Colonel *Rumſey*, as the Interrogator bears, as appears by a double of the Act of Council, written by the Clerk of Council's Servant, and is offered to be proven by my Lord Advocat's Oath: And as to any Correſpondency with Mr. *Veitch*, it is not relevant, ſince he was not declared Rebel.

Sir *John Lauder* for His Majeſty's Intereſt, anſwers, That he oppons the Decreet of Privy Council, where no ſuch Interrogator was put to the Pannal, and the Decreet muſt make more Faith than any pretended Scroll, and cannot be taken away by His Majeſty's Advocat's Oath, to His Majeſty's Prejudice; and for Mr. *William Veitch*, he ſtands expreſly Forfault *in anno* 1667. and the Doom of Forfaulture, is ratified in the Parliament 1669.

Sir *Patrick Hume* oppons the Reply, That as to the Correſponding with Mr. *Veitch*, it does not appear that he is the Perſon mentioned in the Act of Parliament; and albeit he were, as he is not, he having thereafter come home to *Scotland*, all the Puniſhment inflicted upon him was Baniſhment, not to return under the Pain of Death, which did take off any former Puniſhment; and it was no Crime in any Perſon to intercommune with him, eſpecially in another Kingdom; and by the late Act of Council in *anno* 1683. even the Converſing and Intercommuning with declared Traitors, is reſtricted to an Arbitrary Puniſhment.

His Majeſty's Advocat oppons the ſtanding Doom of Forfaulture againſt *Veitch*, and the Proclamation, or Act of Council it ſelf.

The Lords, Juſtice General, Juſtice Clerk, and Commiſſioners of Juſticiary, having conſidered the Libel purſued by His Majeſty's Advocat, againſt Mr. *Robert Baillie* of *Jerviſwood*, with my Lord Advocat's Declaration, whereby he reſtricts the ſame to the Crimes not inſiſted on in the Decreet of Council formerly pronounced againſt the Pannal: They find the ſame Relevant as it is reſtricted, to infer the Pain of Treaſon, and remits the ſame to the knowledge of the Aſſize, and repels the remnant Defences pro-

proponed for the Pannal, in reſpect of the Decreet of Council produced, bearing no ſuch thing as is alleadged, and of the Anſwers made by His Majeſties Advocat thereto.

ASSISA.

The Earl of *Strathmore.*
The Earl of *Belcarras.*
Sir *George Skeen*, Provoſt of *Aberdene.*
Sir *James Fleming*, late Provoſt of *Edinburgh.*
Sir *John Ramſay* of *Whitebill.*
Adam Hepburn of *Humby.*
Andrew Bruce of *Earleſhall.*
John Stuart, Tutor of *Alpin.*
Alexander Miln of *Carrin.*
Mr. *James Elies* of *Stenhopſmilns.*
Sir *William Drummond* of *Halthornden.*
Major *Andrew White*, Lieutenant of *Edinburgh Caſtle.*
Mr. *David Graham*, Sheriff of *Wigtoun.*
Colin Mackenzie, Collector of *Roſs.*
David Burnet, Merchant.

THE Aſſize lawfully Sworn, no Objection of the Law in the contrary.

His Majeſty's Advocat for Probation adduced the Witneſſes and Writs aftermentioned; and firſt,

Walter Earl of *Tarras.*

Sir *Patrick Hume* Procurator for the Pannal, objects againſt the Earl of *Tarras*, that he cannot be a Witneſs, becauſe he is *ſocius & particeps criminis*; and it is clear by the 34. *Chap. Stat.* 2. *Rob.* 1. Concerning theſe that are excluded from bearing of Teſtimony, that *Socij & participes ejuſdem criminis, vel incarcerati & vinculati*, cannot bear Teſtimony: As alſo, the Earl of *Tarras* being preſently under an Inditement of High Treaſon, and under the Impreſſions of Fear, and Death, no Perſon in his Circumſtances can be admitted a Witneſs, as is not only clear from the foreſaid Statute, but from the Common Law.

His Majeſties Advocat anſwers, That it is an exception from that Rule, both by the Common Law, and ours, that in the Crime of leſe Majeſtie, and eſpecially that Branch thereof, which we call a Conſpiracy, *ſocius criminis* may be a Witneſs, and which is introduced very reaſonably by Lawyers, to ſecure the common Intereſt of Mankind, which is the chief of all Intereſts; and becauſe Conſpiracies cannot be otherwayes proved, and not to allow this manner of Probation, were to allow Treaſon, ſince no Man can prove a Plot, but he that is upon it, and how can a Man object againſt him as a Witneſs, whom himſelf truſted with his Life, his Fortune, and their common Plot, nor is the intenting of the Lybel any ſtronger Qualification, ſince every Man that is *ſocius criminis*, is under the ſame Impreſſion, and it would rather ſeem the greater and nearer apprehenſions a Man has of Death, he will be the more ſincere and faithful; nor has the Earl of *Tarras*, nor did he ever ſeek any Security, in order to his deponing. And this has been conſtantly, and latlie, conform to the Common Law, as may be ſeen in the hundreds of Citations ſet down by *Maſcard, de probationibus, Vol.* 4. *concluſ.* 1318. *Num.* 21. and the contrary Citations prove only, that regularly *ſocius criminis* cannot be a Witneſs.

Sir *Patrick Hume* replies, That the Statutes of *Robert* the firſt is opponed, and *non eſt diſtinguendum ubi lex non diſtinguit*, and not only was he *ſocius criminis*, which is acknowledged, but he is *incarceratus*, and lying under an Indytment of High Treaſon, and has thrown himſelf on the King's Mercy, and it is not proper he ſhould be a Witneſs, ſeeing he is in the King's Mercy, who may give him his Life or not, and there was never a Perſon in theſe Circumſtances, that ever was admitted a Witneſs.

Mr. *Walter Pringle* adds, That the Earl of *Tarras*, is not only in the Caſe of a Perſon who ſtands Indyted for High Treaſon; but muſt be looked upon, as a Perſon condemned for the ſaid Crime, ſeeing he fully, and amply confeſt the Crime; *& confeſſus habetur pro convicto*, and never any Lawyer aſſerted, That *damnatus criminis læſæ Majeſtatis* could be admitted as a Witneſs, and there is nothing more clear, then that by the Common Law, and the Law of all Nations, this Objection ought to be ſuſtained, for the Civil Law is clear, *leg.* 11. *cod. de teſtibus* and *Matheus* in his Title, *de probationibus, cap. de teſtibus*, doth aſſert poſitivlie, that the Cryme of leſe Majeſtie, Hereſie, and generally all theſe Crymes *quæ ſine ſociis non poſſunt facile admitti*, are not accepted. And he aſſerts, that the Lawyers, *viz. Gomeſius, & Decianus*, who are of another Opinion, do acknowledge, *nominatum à reo damnandum non eſſe*, and that they contravert only, *An nominatio rei ſit indicium ſufficiens ad torquendum nominatum.*

Sir *George Lockhart* repeats, and oppons the Anſwer, and the Cryme lybelled, being a Conſpiration of Treaſon, which of it's own nature is managed, and carried on by Secreſie and Contrivance; and which is only known to the Complices of the Treaſon, and which cannot be committed *ſine ſociis*, the Law of this Kingdom, and of all Nations, do allow *ſocios criminis* to be *teſtes habiles*, and not only are they admitted in the Caſe of ſuch Conjurations, but generally *in omnibus criminibus exceptis*, amongſt which the Crime of *Perduellion*, and leſe Majeſtie is the chief, and it is abſolutely impoſſible, that Plots, and Conſpirations of Treaſon can be otherways proven, then *per ſocios*, and ſuch as are *participes criminis*, and which is the common Opinion of all Lawyers, as may appear by *Farin. Queſt.* 45. And the Authorities cited by him, and which is the inviolable practique of this Kingdom: And as to that Pretence, That the Earl of *Tarras* is under a Proceſs of Treaſon, and has ſubmitted to His Majeſties Mercy, and that *confeſſus habetur pro convicto*, it imports nothing, and infers no more then that he is *ſocius criminis*, and is ſtill a habil Witneſs, as to Conjuration of Treaſon *ſocius criminis hoc ipſo*, that it is acknowledged, or proven, being ſtill under the hazard of Proceſs, or Condemnation, which Law regards not in regard of the Secrecie involved in the nature of the Crime, that either Witneſſes *neque actu neque habitu*, can be preſent, ſo that the Objection amounts to no leſs then

that

that Conjurations of Treason cannot at all be proven: And as to the Law cited from the Majestie, it imports no more than that the Objection *regulariter procedit*, in Crimes, which of their own nature are not *perdifficilis probationis*, and are not *inter crimina excepta*, such as the Cryme of Conspiracy and Treason is.

Mr. *William Fletcher* oppons the Objection, and Reply, and further adds, that albeit *crimen læsæ Majestatis* be reckoned *inter crimina excepta*, and so have some Priviledge, as to the qualification of Witnesses; yet it cannot be denied, but there are some Objections competent against Witness adduced for proving Conspiracies, and Treason, *verbi causa*, that a Witness is a Capital Enemy, or that he is *sub potestate accusatoris*, and the Objection now pleaded, being taken complexlie, *viz.* That the Earl of *Tarras* is not only *socius criminis*, but also, that he is *publico judicio reus*, upon the same Crime, and that as means to procure His Majesties Favour, he has submitted himself, and come in His Majesties Mercy, by an acknowledgment of the Cryme, before the Dyet of Citation, he is obnoxious to a most just Objection, *viz.* That he is *sub potestate*, and by the Submission and Confession, his Life and Estate is now in His Majesties Hands, so that he is not only in the Case of a *reus confessus*, but in the Case of a Witness, who does absolutely depend upon His Majesties Advocate the Pursuer; and as a private accuser could not adduce his own Servants to be Witnesses, because they are *testes domestici*, and depend upon him, so far less ought a Witness to be adduced, who not only depends, as to his Estate, but as to his Life, and the Law gives a very good reason, and which is mentioned by *Paulus*, *Lib.* I. *receptarum sententiarum*, *cap.* 12. *parag. ult.* in these Words, *De se confessus non est audiendus ut testis, ne alienam salutem in dubium deducat qui de sua desperavit*; and as to the Pretence that a Conjuration is a Crime so occult, that it must either be proven by such Witnesses, or otherways the guilty Person will escape: It is answered, That in this Case, His Majesties Advocate had an easie Remedy, for he might have pursued the Pannal, before he pursued the Witness, and the Terror and Apprehension of the event of a Process for Treason cannot be constructed otherways, then to have influence upon the Deposition of the Witness; and as to the Citation out of *Farinacius*, it is only in the Case of *socius criminis*, but when he comes to treat *de teste accusato vel carcerato*, *Quæst.* 56. *articulo quarto*, he says, *Regula sit in accusato quod is pendente accusatione à testimonio repellitur.* And by the second Rule of the same Article, he says, it is a Principle *quod carceratus testimonium ferre prohibetur*, and he gives this reason, *quia præsumitur, quod falsum testimonium diceret pro aliquo qui ei promiserit se liberare à vinculo*, and limits this Rule, that he must be *carceratus propter crimen.*

Sir *Patrick Hume* adds, That it is a certain Principle, that any Person that is guilty *infamia juris*, cannot be a Witness, no more than a Person that is Convict, and Condemned of Treason; and if he were Convict, and Condemned of Treason, he could not be a Witness, even in the Case of Treason: So neither can the Earl of *Tarras* in this Case be received a Witness, for he being adduced a Witness after he received his Inditment, and confessed the Crime, is equivalent as if he had been actually Convict; and whatever may be pretended, that *testes infames* may be admitted; yet it was never asserted by any Lawyer, that a Person Convict of Treason can be admitted a Witness.

Nota, *That the Earl of* Tarras *deponed nothing against* Jervisswood, *but what the other two Witnesses deponed against himself before the Tryal, and upon which thereafter they being renewed, the Earl was forefaulted, so that there could be no ground of Suspicion from his Circumstances.*

The Lords Repelled the Objection against the Earl of Tarras, *and ordains him to be received a Witness.*

Walter Earl of *Tarras*, aged forty Years, married, purged, and sworn; being Interrogat, if about the Time that Sir *John Cockram*, and Commissar *Monro* got their Commission from the *Carolina* Company for *London*, the Pannal Mr. *Robert Baillie* of *Jervisswood* did not desire the Deponent to speak to Commissar *Monro*, to try if he could get him the said Pannal added to that Commission, Depones affirmative. Being Interrogat, if the said *Jervisswood*, the Pannal, did not tell the Deponent that he was resolved to go to *London* however upon his own Expenses, and that his and their going about the *Carolina* Business, was but a Pretence, and a blind; but that the true Design was, to push forward the People of *England*, who could do nothing but talk, to go more effectually about their Business, Depones affirmative. Depones that the Pannal did settle a Correspondence with the Deponent whereby he was to give an Account to the Deponent of what should pass betwixt the Countrey Party in *England*, and the *Scotsmen* there: And on the other Hand, the Deponent was to write to him what occurred here; Depones that the Pannal did say to the Deponent, if the King would suffer the Parliament of *England* to sit, and pass the Bill of Seclusion, that that was the only way to secure the Protestant Religion. Depones that the Pannal said to him, that the King might be induced to do so, if the Parliament would take sharp, or brisk Measures with him, or the like. Depones these Words were spoke to him by the Pannal, since the holding of the last Session of this current Parliament; and before the Pannal and Commissar *Monro* went for *London*. Depones that after the Pannal went to *London*, he did give the Deponent an Account by Letters, that Things were in great Disorder there, and that he hoped there would be effectual Courses taken to remeid them. Depones that Mr. *Robert Martin* did come to Mr. *Pringle* of *Torwoodlies* House in *May* 1683. or thereby, and brought a Letter to the Deponent's Lady unsubscribed, but the Deponent knows it was *Jervisswood*'s Hand-writing, who was then at *London*, and that Mr. *Martin* told the Deponent, that Things in *England* were in great Disorder, and like to come to an hight, and that the Countrey Party were considering on Methods for securing the Protestant Religion.

And

And that *Archibald*, ſometime Earl of *Argyle*, was to get Ten thouſand Pounds *Sterling*, whereas Thirty thouſand Pounds *Stirl.* was ſought by the *Scotſmen* at *London*, which was to be ſent over to *Holland* to provide Arms; and that the late Earl of *Argyle* was to Land with theſe Arms in the *Weſt-Highlands* of *Scotland*, and that the Deponent's Friend *Jerviſwood* the Pannal, was to be ſent over with the Money. Depones that *Philiphaugh* and he went to *Gallowſhiels* Houſe, where they met with *Polwort* and *Gallowſhiels*, and that it was talked amongſt them there, that in caſe thoſe in *England* ſhould riſe in Arms, that it was neceſſary in that Caſe, that ſo many as could be got on the Borders, ſhould be in a readineſs to deal with Straglers and ſeize upon Horſes, and that thereafter they ſhould joyn with thoſe that were in Arms on the Borders of *England*. Depons, That in the Caſe foreſaid, it was ſaid, it was convenient the Caſtle of *Stirling*, *Berwick*, and ſome other Strengths ſhould be ſeized upon; and it was likewiſe ſpoke amongſt them, That ſome Perſons ſhould be employed, to inquire what Arms was in that Countrey. Depons, That it was ſpoke then, that the beſt time for *Argyle* was to land in the Weſt, when there was a Stur in *England* or *Scotland*, or Words to that purpoſe. Depons, That every one deſired another to ſpeak to ſuch particular Perſons as they could truſt, by letting a Word fall indirectly upon ſuppoſition, in caſe of the Riſing in *England*, concerning the Affair for preparing of them: And that he was told by *Philiphaugh* thereafter, that there was a Word and Sign to be uſed amongſt them, *viz.* the Sign was by looſing a Button on the Breaſt, and that the Word was Harmony. Depons, the Pannal ſpoke to the Deponent, to advertiſe *Torwoodlie*, that he might acquaint Mr. *William Veitch* a forfault Traytor, who was in *Northumberland*, that he might keep himſelf cloſe, and be on his Guard, leſt he ſhould be catched; which was ſince the Pannal was Priſoner in the Tolbooth of *Edinburgh*. And this is the Truth, as he ſhall anſwer to GOD.

Sic ſubſcribitur,

Tarras.

Linlithgow. I. P. D.

Alexander Monro of *Bear-crofts*, aged forty five Years, or thereby; *ſolutus*, ſolemnly ſworn and purged. Depons, That the Earl of *Tarras* propoſed to the Deponent, that *Jerviſwood* might be made one of the Commiſſioners for the Affair of *Carolina*, for that he could not ſafely ſtay at Home; and that the Deponent's anſwer was, that he had no Intereſt in the Affair, and ſo could not be a Commiſſioner. Depons, That the Pannal did wait for the Deponent at *Wooller*, and did go alongſt with him to *London*, and that by the way he heard him regrate his own hazard and others, becauſe of *Blackwood*'s Sentence; and that he heard him regrate the hazard our Laws, and Liberties, and the Proteſtant Religion were in. Depons, That the Pannal ſpoke to the Deponent and others, more than once at *London* for getting of Money from the *Engliſh*, to be ſent to the late Earl of *Argyle*, for bringing home Arms for the ſaid Earl's Uſe, as he underſtood, for carrying on an Inſurrection and Rebellion in *Scotland*. Depons, That at the time libelled, in *Jerviſwood*'s Chamber in *London*, Mr. *William Veitch*, a forfault Traytor was preſent; and that Sir *John Cochran* did at that Meeting, expreſsly ſpeak of Money to be ſent to *Argyle*, for bringing home Arms for invading the Kingdom of *Scotland*; and that at another Occaſion he heard ſome of them ſay, That there would be twenty Thouſand Men in *Scotland* who would aſſiſt the Rebellion, and that he heard Sir *John Cochran* and *Jerviſwood* ſpeaking of it, but cannot be poſitive which of the two ſaid it. Depons, That at the Meeting he heard *Jerviſwood* ſpeak, but did not hear him oppoſe that Treaſonable Propoſal, or contradict the Overture propoſed by Sir *John Cochran*. Depons, That Mr. *Robert Martin* was ſent down from that Meeting which was at *Jerviſwood's* Chamber, to *Scotland*, to try what the People of *Scotland* would do for their own Safety: And that it was underſtood that the People of *Scotland* ſhould not riſe till there ſhould be a riſing in *England*, and that the Commiſſion was granted to Mr. *Robert Martin*, by all the Perſons preſent, whereof *Jerviſwood* was one, and that there were preſent the Lord *Melvill*, Sir *John Cochran*, *Ceſſnocks* elder and younger, Mr. *William Caſtares*, Mr. *William Veitch*, *Jerviſwood*, and the Deponent; and Depons they did contribute Money for Mr. *Martin*'s Journey. Depons, That at his return, he meeting with the Deponent, told him, that Matters were in that Condition in *Scotland*, and that the Countrey was in ſuch a Condition, as little would kindle the Fire in order to the Rebellion. And this is the Truth, as he ſhall anſwer to GOD.

Sic ſubſcribitur,

Alexander Monro,

Linlithgow, I. P. D.

James Murray of *Philiphaugh*, aged 30 Years, married, purged and ſworn, produces four Leaves of Depoſitions, emitted by him before the Lords of the Secret Committie, and all written and ſubſcribed with his own Hand, which being publickly read, in Preſence of the Juſtices, and Aſſize, he adheres thereto, in all Points, whereof the Tenor follows. Upon the Day of *May*, 1683. Upon a Letter from Mr. *Pringle* of *Torwoodlie*, I came to his Houſe in the Morning, and he preſently led me to a Chamber, where I found Mr. *Robert Martin*, who was lately come from *London*, with whom we ſtayed a little, and diſcourſed of the News, and about the preſent Condition, and Temper of *England*, and in particular of *London*, which Mr. *Martin* ſaid, was much irritated through ſome Attempts upon their Priviledges, either as to the Concern of the Sheriffs, or their Charter, but that all honeſt Men were of good Heart and very briſk, and after ſome general Diſcourſes to this purpoſe, *Torwoodlie* and I left him and walked out a little, and he told me, he was expecting the Earl of *Tarras* preſently, for he had ſent to him; and Mr. *Martin* had a Letter to him from *Jerviſwood*, then he told me that there were great Matters in agitation at *London*, and that Mr. *Martin* had come down with a Commiſſion from our Friends there (I do remember he named any) but

but that I behoved not to expect he would impart his Instructions to me, for he was to communicat them only to *Polwart* and himself, (at least for these Shyres) and they were to pitch on such as they thought fit to intrust with the Affair, whereupon he assured me, that he had great Confidence in me, and his Kindness to me oblidged him to send for me, to acquaint me that Matters were now come to a *crisis*, and that he had reason to think *England* would shortly draw to Arms, and stand by them, till they were satisfied anent the Bill of Exclusion, and what other Security they could propose for the Protestant Religion, and their Liberties, and that it was no Project of any inconsiderable Party but a Design through the Kingdom, and that many of the finest Men, and of the greatest Interest and Credit there, had adjusted almost every thing necessar for the purpose, and had concerted Matters with our Friends there, in order to Concurrens from this, and had agreed to advance Money for furnishing Arms here, (I do not remember he told me more Particulars at this time) but said, *Polwart* would be at *Gallow-sheils* that Night, and it would be necessar that the Earl of *Tarras* and I should confer with him fully on the Business, about this time the Earl of *Tarras* lighted, and *Torwoodlie* having left us for a little time, being gone to bring Mr. *Martin*, the Earl of *Tarras* asked me, what News, I told him of Mr. *Martin*'s being there, but that he had given me no account of the Design of his down-coming, which perhaps he would acquaint him with, but by what I had heard from *Torwoodlie*, I understood it to be, to engadge us to rise in Arms shortly, whereat the Earl of *Tarras* hummed, and said, he would look ere he leapt such a Leap, or some such Expressions, presently Mr. *Martin* came, and the Earl of *Tarras* and he retired a little, after the reading an Letter he gave him, the Contents whereof was (as the Earl of *Tarras* informed me) only an Order from *Jervis-wood*, to deliver some Money to the Bearer, which he had left with him, and the Earl of *Tarras* called for his Servant, and bad him bring up the Money; in the mean time, *Torwoodlie* asked me, if I had acquainted the Earl of *Tarras* with what he spoke to me, and I told him, I had let something of it fall to him, but it was not to be thought, that Persons of Sense and Quality would engadge in such Designs at random; so *Torwoodlie* said, that (tho' Mr. *Martin* would not commune with us upon his Commission directly) yet he thought it would be fit we conferred, and without taking notice of his Commission, discoursed of things upon Suppositions, and as our own privat Notions, abstract from any Prospect of a present Design, so after Dinner we four went to a Chamber, and after some general Discourses of the Discontents of both Kingdoms, these Suppositions following were discoursed, (and as I remember Mr. *Martin* started them all, or the most part) *viz.* What if the Countrey-Party in *England* should have Thoughts of going to Arms (whereof he knew nothing but only supposed such a thing, for discoursing a little freely, and to know our Sentiments, what we thought could be expected here in such a Case) would it not be expedient to have a settled Correspondence betwixt that Party there and here, and might not Matters be so adjusted, that both Kingdoms should draw out in one day, and might not as many be expected to undertake in these Shires, and about *Edinburgh*, as would serve to surprize, and seize our Rulers (I do not remember any named, but the then Chancellor and Treasurer) and some to joyn with these on the *English* Borders, to assist them to surprize *Berwick*; and if for that effect, any Horse, or Dragoons, that should be in the Bounds might not be surprized, that their Horse and Arms might be gotten to furnish the Country People, and *Stirling* Castle; and if *Argyle* should at the same time land in the *West*, and raise that Countrey, would not these Measures contribute much to the Advancement and Security of the Interest of that Party here, since thereby the Government would be disordered, and such Steps would encourage all that had an Inclination to the Countrey-Party, to draw to them frankly, and scar many of the other side to act against them, and so they might have leasure to joyn from all Places; and might it not be expected, there would be as many in this Kingdom, as would be able to deal with the Forces here, at least divert them from troubling *England*. This is the Sum, as I remember, of what was proposed, and discours'd of, tho' I cannot distinctly say, it was in this Method and Expression, nor was all moved at once, but droped now and then, as the Discourse seemed to give Rise to it; and tho' I cannot fully recount all that was spoke on these Heads, and tell distinctly what this and that Man said; yet I remember these following Answers were giving, and (as I judged) acquiesced to by the whole Company; and they were certainly the Earl of *Tarras* his Sentiments and mine, and every one that spoke, used this or some such Precaution, that if they were concerned, or to give Counsel in any such Case, (as they were not, *&c.*) 1. As to the settling a Correspondence, it was confess'd to be very convenient for those of a common Interest; but the present Circumstances of Affairs were such (as we thought) that none could be found here who was fit to mannage it, and would undertake it. 2. As to the trysting at the same time it could not be done without the devulging the Design to all Ranks of People, which none would undertake, except these already in desperat Circumstances, and they could not have generally much Influence. 3. The thing was not at all adviseable for this Kingdom, since if any of *England*'s own Measures miscarried, they would not stur for any such Trust; and the spring of their Motions being always at *London*, there might happen an Interruption near the Appointment, whereof these here could have no timous Notice, and so might keep Tryst, whereby they would be exposed a Prey; and if they should subsist any time, or prevail (which was hardly possible) the multitude that must be employed, are tainted with such wild and unruly Principles, that if once they got the Sword in their Hands, they would never be brought to Order without a greater Force to over-awe them; neither would any Expectation of *Argyle*'s landing, be a just ground for such a Tryst, considering the Uncertainty of Sea-Voyages; and if *Argyle* were to be the Head, undoubtedly many People would conclude that he were to be suspected of private Designs, and that re-

storing

ſtoring him might lay him aſide: As alſo, that Deſpair might blind his uſual Prudence, and prompt him to unſolid, and undigeſted Methods; and ſo it was to be expected, that few of the Gentry (except ſuch as he had ſpecial Influence on, or ſuch as were under hard Circumſtances) could embarque with him. 4. As to the ſurprizing Rulers, *&c.* It was inveigh'd againſt, as an Action not to be thought of amongſt Proteſtants (eſpecially when the very Deſign of it was pretended to ſecure that Religion, which taught its Profeſſors to abhor and deteſt ſuch Principles as Popiſh, yea Unchriſtian) ſince it could not be effectuat without Bloodſhed of People, ſecure in Peace, which being by all approven Divines and Caſuiſts condemned as unlawful, and meer Aſſaſſination; it was not to be doubted, that as ſuch a Practice would caſt a blot upon the whole Affair, and quite take off any pretence of Defenſive Arms, ſo it would ſcar many from joyning. Theſe things were reaſoned again and again; but I do not remember there was any formal Concluſion made, but the Diſcourſe was let fall; and Mr. *Martin* told us, if any of us had a mind for a Suit of Armour, he could provide as many as we pleaſed, from one who had made a great many lately to honeſt Men at *London*, of a new faſhion, very light, and at an eaſy rate; ſo *Torwoodlie* and I gave him our Meaſures, Earl of *Tarras* told he had a Suit already; then *Torwoodlie* ſaid to the Earl of *Tarras* and me, we would meet *Polwort* at *Gallowſheils*, and deſired we might commun with him, anent what we had been diſcourſing, ſo we haſted away, that if poſſible we might both get home that Night, it being *Saturnday*, and we unfurniſhed for ſtaying abroad, and *Torwoodlie* whiſpered me juſt as I was mounting (as I think) that he was not clear we ſhould commune before *Gallowſheils*, for he was ſometimes too much Good-fellow, or the like; ſo the Earl of *Tarras* and I rod away together, and upon the way we were both of Opinion, that the Suppoſitions we had diſcourſed of, were in effect Propoſitions, and reſolved if they were inſiſted on by *Polwort* as we ſuſpected, we would adhere to the former Anſwer, and would undertake nothing in theſe Methods. When we came to *Gallowſheils*, the Laird was abroad, and *Polwort* was not come, ſo we had Thoughts to go away, being both damped with what had paſſed, and inclining to be free of farder medling; but the Lady would by no means hear of our going till her Husband came, who, ſhe aſſured us, was about the Doors, and ſhe having ſent to call him, he would be in preſently; yet it was ſo late ere he came, that the Earl of *Tarras* could hardly have day enough to go home with; ſo *Gallowſheils* would not let him go, and he would not ſtay, unleſs I ſtayed, ſo we both ſtayed; and not being reſolv'd to diſcourſe with *Gallowſheils* on what paſſed, we went to the Tavern, on pretence I might call the Baillie, and ſeek Horſes or Lime, and ſtayed there till *Polwort* came (which ſeemed unknown to *Gallowſheils*) then we returned to *Gallowſheils* Houſe, and after Supper *Polwort* whiſpered the Earl of *Tarras* and me, and enquired if we had ſeen Mr. *Martin*; and we having told him we had, he enquired if we were free to commun on the Affair before *Gallowſheils*, we told, as he thought fit, for we could truſt him; Then he whiſpered *Gallowſheils*, and (as I underſtood afterwards) asked if he was free to commune on Matters of great Secrecy and Importance with that Company, to which he aſſented, then we ſat down cloſs together, and as I remember, *Polwort* began the Diſcourſe; but ſince I am not able to follow exactly the Method of our Conference, or keep the very Expreſſions uſed, or repeat all that was ſpoke, or to tell diſtinctly what was every Man's part of the Diſcourſe; I ſhall ſet down the Heads, and moſt remarkable Paſſages thereof, that I remember in ſome Articles following; 1. *Polwort* ſignified that he was credibly informed (but I do not remember he named his Informer) that the Countrey Party in *England* would draw to the Fields ſhortly, as he heard before *Lambaſs*, wherewith *Gallowſheils* ſeem'd viſibly ſurprized; and being asked, if his Heart fail'd him already, he ſaid he did love it better truly to be walking in his own Parks in Peace and Quiet, than to be meddling in ſuch Matters; however he aſſured the Company, that if there came any troubleſome World, he would joyn with them firmly; and the Earl of *Tarras* ſaid, he wondered to hear of any ſuch Reſolution in *England*, for he took it for a Principle amongſt that Party there, that they ſhould make no Stir in the King's Life (which the whole Company owned to be their Opinion and Deſire) becauſe that might ſtrengthen the Duke's Intereſt; and he ſuſpected it was the Project of the Commonwealth's Men, with whom he believed few *Scots* Gentlemen would joyn; and he was almoſt perſwaded the Duke of *Monmouth* would not concur in any Riſing during the King's Life, to which it was anſwered by *Polwort*, That he had indeed heard that Principle had been generally agreed to, but it ſeem'd they found they behoved either to do their Buſineſs now, or lay aſide Hopes of doing it hereafter, which might be, that if the Charter of *London* were let fall, they would not only loſe all ſafe opportunity of digeſting Matters; but a great part of their Strength, and he heard all things were concerted mutually, betwixt *Monmouth*'s Friends and the Heads of the Commonwealth Party; and tho' he heard *Monmouth* was ſhy on that account, yet it was hop'd he would engage, for otherways he would be deſerted by that Party. 2. *Polwort* told us the Suppoſitions above-written as Overtures concerted betwixt our Friends at *London*, and the principal Men of that Party there; ſo the Earl of *Tarras* and I renewed our former Anſwers alſo above-written, and maintained them with all our Vigour, wherein *Gallowſheils* joyned forwardly with us; and *Polwort* aſſerted, we went on very good grounds, and he was fully of our Opinion, if things were entire, but referr'd it to be conſidered, whether it were better to comply with ſome of theſe Methods, tho' not ſo proper and juſtifiable as were to be wiſh'd, than to diſappoint the Buſineſs totally, which might be of the beſt conſequence to all the Party, yet we did not condeſcend as I remember to undertake any of theſe Methods. And there was a further Argument adduced againſt the tryſting above-written, *viz.* That it was talked there was a Day appointed in *England* lately in *Shaftsbury*'s Time, which did not hold, ſo they were not to be relyed upon. 3. It was propoſed to be

be conſidered what Methods were moſt proper in the Company's Opinion for *Scotland* to follow in caſe of *England*'s Riſing, whereanent it was ſaid, that all that could be expected or deſired from *Scotland*, was, that upon the certain News of *England*'s being in the Fields, thoſe in the Southern Shyres who would own that Party, ſhould preſently riſe, and (how ſoon they could get as many conven'd as would be able to deal with ſtragling Parties, or any ſudden Riſing in the Countrey) march to joyn them, and that it would be fit theſe in the Northern Shyres of *England* waited near the Borders for ſuch, and that they had Officers tryſted there to command, and that then it would be ſeaſonable for *Argyle* to land in the *Weſt*, and theſe Parties on the Borders might divert the Forces till he had time to put himſelf in a Poſture. Theſe things ſeem'd to be the Sentiments of the whole Company, but were not finally determined till the Opinion of others who were to be communed with by *Polwort* were known: And it was repreſented, there behoved not to be any wilful and obſtinate adhering to our own Thoughts of things, (but an mutual Condeſcendance to others concerned) otherwiſe it were not poſſible to bring a publick Deſign to any good Iſſue. 4. All the Company ſeem'd to agree, that they ſhould undertake nothing or move in that Affair, till they had a full and certain account what *England* propoſed, what Methods they reſolved to follow there, who were to be their Heads, and that if they deſign'd any Attempt on the King's Perſon, or overturning Monarchy, they would not be forward or clear to joyn: And it being here inſinuated, that the moſt they could do (at leaſt for which there could be any plauſible pretence to juſtify) was to draw together, and without any Act of Hoſtility, ſend Addreſſes to His Majeſty for Redreſs of the preſent Abuſes of the Government, and for obtaining ſufficient Security againſt the Hazard they apprehended to their Religion and Liberties. It was ſaid by *Polwort*, that he was apt to think, that was their very Deſign, for he had heard it was generally believed by that Party in *England*, that if once they were in a Body, the King would be prevailed with to quite the Duke, to be tryed for Popery, Correſpondence with *France*, and Acceſſion to the Popiſh Plot, and then if the King were once free from the Influence of the Duke's Counſels, they were confident he might be moved to reform their Abuſes, and ſecure their Religions and Liberties for the future to their Contentment. 5. It was reſolved, that till we got the foreſaid Account from *England*, and were ſatisfied thereanent, and knew others here (who were to be communed with) their Sentiments of what Methods were moſt proper for us, in caſe we ſhould undertake, we ſhould not meddle further; only it was left to the Earl of *Tarras* and me, if we thought fit to acquaint Sir *William Scot* younger with ſome of the Matter of this Conference overly, without taking notice of our Informers, or ſuch an Conference; and it was recommended to all to be enquiring (at ſuch as they had ſome Truſt in) indirectly about the Affection of our Neighbours, and what Arms there was amongſt them; that if we ſhould get an ſatisfying account, and reſolve to joyn, we might know where to ſeek Men and Arms ſuddenly; here it was ſaid by *Polwort*, as I think, that if the Earl of *Tarras*, *Torwoodlie*, *Gallowſheils*, and I once took Horſe, he thought the moſt part of the *Weſt* end of *Tiviotdale* and *Selkirkſhyre* would ſoon come to us, eſpecially, when they heard *England* was riſen, then we tryſted to meet there againſt *Midſummer* Fair, betwixt and which the forſaid Account was expected, but in caſe it came to any of our Hands ſooner, we promiſed to advertiſe the reſt, that we might meet preſently, if the Caſe required; this is the Subſtance and Sum of what paſſed at the forſaid Conference, that I can now remember; but I remember, I was likewiſe told theſe following Particulars in privat, by *Polwort* or *Torwoodlie*, (which of them, I cannot diſtinctly tell) the Day of the forſaid Conference, or within a ſhort time after. 1. That *Polwort* keeped the Correſpondence with our Friends at *London*, I remember not poſitively of any of them that was named, to be on the Entrigue there, except my Lord *Melvil*, Sir *John Cochran*, *Jerviſwood*, and Commiſſar *Monro* (for I hardly knew any of the reſt) and, as I think, Commiſſar *Monro* was call'd his Correſpondent there. 2. That the Money to be advanced by the *Engliſh* Partie to *Scotland* was ready when Mr. *Martin* came from *London*, and it was expected, that within few Days after, it would be diſpatched with ſome Confident to *Holland* (whether by Bills, or in Caſh, I cannot ſay) it was call'd Ten Thouſand Pound Sterlin, and was to be employed (as I was told) by that Confident, at *Argyle*'s Sight, for buying Arms, providing Ships to tranſport them with *Argyle*, to the *Weſt* here, and ſuch other Charges. 3. That how ſoon our Friends at *London* got notice of the ſafe Arrival of the Confident forſaid, and all other things were finally concluded there (which was expected would be about the middle of *June*, as I remember) they would come home, and, as they paſſed, would give them, or one of them, an particular Account of all Reſolutions taken to be communicat to the reſt, that it was not to be expected by Letters, that behoved to be under Figures and dark Expreſſions, and, as I remember, they were written as it were about the *Carolina* Buſineſs, or ſome Houſhold Furniture, as I was told, for I never remember I ſaw any Letter, either direct to *London*, or ſent from it on that Head. 4. I was told there was a Sign and a Word agreed on by that Party, ſo that Men might know with whom they might uſe Freedom, the Word, as I remember, was *Harmony*, and the Sign, *the opening two Buttons in the Breaſt-coat and ſhutting them preſently*; this I communicat to the Earl of *Tarras*, but does not mind I ever ſaw it uſed, except when I viſited *Park-Hay* here in Town, about the End of *June*; we diſcourſing a little freely, he asked if I had the Word and Sign of the *Carolina* Men, and I having given them, he ſaid ſomething to this purpoſe, that he was afraid that the *Carolina* Buſineſs did not go well, for there had been ſome of the Managers expected here (as I think he named *Jerviſwood* or Commiſſar *Monro*) theſe eight Days paſt, but there was none come, nor could he learn that any of their Friends had heard from them for ſeveral Poſts. *Polwort*, *Torwoodlie*, and I met at *Gallowſheils*, on *Midſummer* Fair, but I mind nothing paſſed but private *Whiſperings*. Dated *September* 15. 1684. and ſubſcrived thus,

James Murray.

Edinburgh, December 23. 1684.

The Depoſition above written being read to the ſaid *James Murray* of *Philiphaugh*, in preſence of the Juſtices and Aſſizers, he adheres thereto in all Points upon Oath.

Sic ſubſcribitur,

James Murray.

Linlithgow, I. P. D.

The ſaid *James Murray* further Depons, That at their meeting at *Gallowſheils*, it was reſolved, that they ſhould keep up their Ceſs unpayed till their next meeting at Midſummer, which was to be at *Gallowſheils*, and ſhould deal with all theſe they had influence upon to do the like, and that upon the Suppoſition mentioned in his Oath given in. It was ſpoke amongſt them, that the Troopers Horſes ſhould be ſeized upon when they were graſing. And this is the Truth, as he ſhall anſwer to GOD.

Sic ſubſcribitur,

James Murray.

Linlithgow, I. P. D.

Hugh Scot of *Gallowſheils*, aged 36 Years, married, purged, *&c.* and ſworn. Depons, That the Earl of *Tarras* and *Philiphaugh* did come to the Deponent's Houſe, in *May*, 1683. and *Polwart* came likewiſe there, where there were Diſcourſes and Propoſals, that if the *Engliſh* would riſe in Arms, their Friends in the South Shires ſhould riſe with them; and that they ſhould ſeize the Horſes belonging to the King's Troops where they grazed; and the Town of *Berwick*, and the Caſtle of *Stirling*: And likewiſe it was there diſcourſed anent the late Earl of *Argyle*'s coming to invade *Scotland*, but becauſe of the uncertainty of Sea Voyages, there was not much ſtreſs laid upon it. Depons, It was alſo propoſed, that ſome of the South Countrey whom they truſted in ſhould be acquainted with it, and that Endeavours ſhould be uſed to learn what Arms was in the Countrey. Depons, There was ſome ſuch Diſcourſe there, as that the Earl of *Tarras*, *Philiphaugh*, *Torwoodlie*, *Polwart*, and ſome others ſhould draw to Horſe with the firſt when the riſing ſhould be in readineſs, that it might be expected that the South Parts of *Teviotdale* and *Selkirk* Shire would joyn with them. And this is the Truth, as he ſhall anſwer to GOD.

Sic ſubſcribitur,

Hugh Scot.

Linlithgow, I. P. D.

His Majeſties Advocat produced other Depoſitions, emitted by *Gallowſheils*, before the Lords of the Secret Committee, whereof the Tenor follows.

Edinburgh, the [illegible] *ember*, 1684.

Gallowſheils D[illegible]e Earl of *Tarras* and *Philiphaugh*, being in his Houſe in *May*, 1683. Diſcourſed of an intended riſing in *England*, and of Propoſals made to *Scotſmen*, to riſe with them, and of *London* in particular, and that *Polwort* was preſent at that Meeting, and told he was ſure the *Engliſhmen* intended ſo, and that it was Diſcourſed at that Meeting amongſt them, that it were fit to ſeize *Berwick* and *Stirling*; and that it was talked amongſt them of bringing the Duke of *York* to Tryal, and that the King would abandon him.

Sic ſubſcribitur,

Hugh Scot.

Perth Cancel.

Queensberry. *Jo Drummond.*
George Mackenzie. *George Mackenzie.*

Edinburgh, *October* 29. 1684.

Sederunt

Lord Chancellour. *Lord Preſident.*
Lord Secretary. *Lord Advocat.*

The Laird of *Gallowſheils*, Priſoner in the Tolbuith of *Edinburgh*, being called and examined upon Oath, Depons, That in the Moneth of May, 1683. The Earl of *Tarras*, *Hume* of *Polwort* Elder, and Laird of *Philiphaugh*, came to the Deponent's Houſe, himſelf being abſent, at his coming Home, they were ſpeaking of the Security of the Proteſtant Religion; and of a Party in *England*, who would ſecure, or ſeize the King or Duke, and that if any ſhould riſe in Arms to defend them, or to reſcue the King and Duke: There was another Party who would riſe in Arms againſt them, it was propoſed, that ſome Countrey-men ſhould be ſpoken to, to try their Reſolutions, and that the Reſolutions of *England* ſhould be told them, to ſee if they would concur. But the Deponent does not remember that this Propoſition was approven, or undertaken to be done by any preſent; nor does he remember who managed the Diſcourſe. It was likewiſe propoſed, to ſeize the Officers of State, eſpecially the Chancellor and Theſaurer, and the ſaid Sir *John Cochran* was to come to the Weſt from *England*, for advancement of the Deſign; and that the Earl of *Argyle* was to land in the Weſt-Highlands, and to raiſe that Countrey. Of theſe Matters, all theſe who were preſent diſcourſed, as of an Affair that they were agitating, and wherein themſelves were particularly concerned, though at that time they did not conclude what their Carriage ſhould be; The reaſon why the Deponent cannot be more particular is, becauſe he was ſometimes going out, and ſometimes walking up and down the Room; and though the Deponent cannot be poſitive of the very Words; yet he is poſitive they were either theſe Words, or Words to that purpoſe.

Sic ſubſcribitur,

Hugh Scot.

Perth Cancellarius.

Edin-

Edinburgh, December 23. 1684.

Hugh Scot of *Gallowſheils*, being ſolemnly Sworn, in preſence of the Juſtices and Aſſize, adheres to the Depoſitions within, and above-written in all Points,

Sic ſubſcribitur,

Hugh Scot.

Linlithgow, I. P. D.

His Majeſties Advocat in fortification of the former Probation, adduces the Printed Copy of Mr. *William Carſtares* Depoſitions, emitted before the Officers of State, and other Lords of Privy Council, and leaves the ſame to the Aſſize, and uſes it as an Adminicle of Probation; for though it was capitulat, that he ſhould not be made uſe of as a Witneſs; yet it was agreed, that the Depoſition ſhould be publiſhed: And likewiſe produces the principal Depoſition ſigned by himſelf, and the ſaid Lords.

The Lords Juſtice-General, Juſtice-Clerk, and Commiſſioners of Juſticiary, admit the Paper produced as an Adminicle, and refers the Import thereof to the Inqueſt, and ordains the Printed Paper as it is collationed, to be taken in, and conſidered by the Inqueſt.

Sir *William Paterſon*, and Mr. *Colin Mackenzie*, Clerks of His Majeſties Privy Council being Interrogat, if they heard Mr. *William Carſtares* own the Depoſitions read, Depons they ſaw and heard him Swear, and own the ſame upon Oath, and they collationed the Printed Copy with the Original formerly, and now they heard it collationed.

Sic ſubſcribitur,

William Paterſon.

Colin Mackenzie.

The Depoſition of Mr. William Carſtares, *when he was examined before the Lords of Secret Committee, given in by him, and renewed upon Oath; upon the* 22*d. of* December, 1684. *in preſence of the Lords of His Majeſties Privy Council.*

Edinburgh Caſtle, September 8. 1684.

Mr. *William Carſtares* being examined upon Oath, conform to the Condeſcention given in by him, and on the Terms therein mentioned; Depons, That about *November*, or *December*, 1682. *James Steuart*, Brother to the Laird of *Cultneſs*, wrote a Letter to him from *Holland*, importing, That if any conſiderable Sum of Money could be procured from *England*, that ſomething of Importance might be done in *Scotland*: The which Letter, the Deponent had an inclination to inform *Shepherd* in *Ab-Church-Lane*, Merchant in *London* of; but before he could do it, he wrote to Mr. *Steuart* above-named, to know from him, if he might do it; and Mr. *Steuart* having conſented, he communicat the ſaid Letter to Mr. *Shepherd*, who told the Deponent that he would communicat the Contents of it to ſome Perſons in *England*; but did at that time name no body, as the Deponent thinks: Sometime thereafter, Mr. *Shepherd* told the Deponent, that he had communicat the Contents of the Letter above-named, to Colonel *Sidney*, and that Colonel *Danvers* was preſent, and told the Deponent, that Colonel *Sidney* was averſe from imploying the late Earl of *Argyle*, or medling with him, judging him a Man too much affected to the Royal Family, and inclined to the preſent Church-Government; yet Mr. *Shepherd* being put upon it by the Deponent, ſtill urged, that one might be ſent to the Earl of *Argyle*; but as Mr. *Shepherd* told him, he was ſuſpected upon the account of his urging ſo much; yet afterwards he preſſed, without the Deponent's knowledge, that the Deponent being to go to *Holland* however might have ſome Commiſſion to the Earl of *Argyle*, which he having informed the Deponent of, the Deponent told him, that he himſelf would not be concerned, but if they would ſend another, he would introduce him; but nothing of this was done: Upon which the Deponent went over, without any Commiſſion from any body to *Holland*, never meeting with *James Steuart* above-named: He was introduced to the Earl of *Argyle*, with whom he had never before converſed, and did there diſcourſe what had paſt betwixt Mr. *Shepherd* and him; and particularly about remitting of Money to the ſaid Earl from *England*; of which the ſaid Mr. *Steuart* had written to the Deponent, namely of 30000 Pounds *Sterling*; and of the raiſing of 1000 Horſe and Dragoons; and the ſecuring the Caſtle of *Edinburgh*, as a matter of the greateſt Importance: The Method of doing this was propoſed by the Deponent, to be one Hour, or thereby, after the relieving of the Guards: But the Earl did not reliſh this Propoſition, as dangerous; and that the Caſtles would fall of conſequence, after the Work Abroad was done. *James Steuart* was of the Deponent's Opinion for ſeizing the Caſtle, becauſe it would ſecure *Edinburgh*, the Magazines and Arms; as to the 1000 Horſe and Dragoons, my Lord *Argyle* was of Opinion, that without them nothing was to be done; and that if that number were raiſed in *England* to the ſaid Earl, he would come into *Scotland* with them; and that there being ſo few Horſe and Dragoons to meet them, he judged he might get the Country without trouble, having ſuch a ſtanding Body for their Friends to Rendezvous to; and the ſaid Earl ſaid he could ſhow the Deponent the convenient Places for landing, if he underſtood; and as the Deponent remembers, where the Ships could attend. The Deponent remembers not the Names of the Places. The Deponent ſpoke to the Lord *Stairs*; but cannot be poſitive that he named the Affair to him, but found him ſhy: But the Earl of *Argyle* told him, he thought *Stairs* might be gained to them: And that the Earl of *Lowdoun* being a Man of good Reaſon, and diſobliged, would have great influence upon the Countrey, and recommended the Deponent to Major *Holms*, with whom the Deponent had ſome Acquaintance before, and had brought over a Letter from him to the

Earl of *Argyle*; but the Deponent had not then communicate any Thing to the ſaid *Holms*, *James Steuart* laid down a way of Correſpondence by Cyphers and falſe Names, and ſent them over to *Holms*; and the Deponent, for their uſe (which Cyphers and Names, are now in the Hands of his Majeſties Officers, as the Deponent ſuppoſes) and did deſire the Deponent earneſtly to propoſe the 30000 Pound *Sterling* abovenamed to the Party in *England*, and did not propoſe any leſs; for as the Earl told the Deponent, he had particularly calculate the Expence for Arms, Ammunition, *&c.* But *James Steuart* ſaid, that if ſome leſs could be had, the Earl would content himſelf, if better might not be; but the Earl always ſaid, that there was nothing to be done without the body of Horſe and Dragoons above-mentioned. During the time of the Deponent his abode in *Holland*, tho' he had ſeveral Letters from *Shephard*, yet there was no ſatisfactory Account, till ſome time after the Deponent parted from the Earl of *Argyle*, and was making for a Ship at *Rotterdam*, to tranſport himſelf to *England*. *James Steuart* wrot to him that there was hopes of the Money. The next Day after the Deponent came to *England*, he met with Sir *John Cochran*, who, with Commiſſar *Monro*, and *Jerviſwood*, was at *London* before he came over; and Depons, That he knows not the account of their coming, more then for the perfecting the Tranſaction about *Carolina*: And having acquainted Sir *John Cochran* with the Earl's Demands of the 30000 Pound *Sterling*, and the 1000 Horſe and Dragoons, Sir *John* carried him to the Lord *Ruſſel*, to whom the Deponent propoſed the Affair, but being an abſolute Stranger to the Deponent, had no return from him at that time; but afterwards having met him accidentally at Mr. *Shephard*'s Houſe, where he the Lord *Ruſſel* had come to ſpeak to *Shephard* about the Money above-named, as Mr. *Shephard* told the Deponent. The Deponent (when they were done ſpeaking) deſired to ſpeak to the Lord *Ruſſel*, which the Lord *Ruſſel* did, and having reiterate the former Propoſition for 30000 Pound *Sterling*, and the 1000 Horſe and Dragoons, he the Lord *Ruſſel* told the Deponent, they could not get ſo much raiſed at the time, but if they had 10000 Pound to begin, that would draw People in, and when they were once in, they would ſoon be brought to more; but as for the 1000 Horſe and Dragoons, he could ſay nothing at the preſent, for that behoved to be concerted upon the Borders. The Deponent made the ſame Propoſal to Mr. *Ferguſon*, who was much concerned in the Affair, and zealous for the promoving of it. This Mr. *Ferguſon* had in *October* or *November* before, as the Deponent remembers in a Converſation with the Deponent in *Cheap ſide*, or the Street ſomewhere thereabout, ſaid, That for the ſaving of innocent Blood, it would be neceſſary to cut off a few, inſinuating the King and Duke, but cannot be poſitive whether he named them or not, to which the Deponent ſaid, that's Work for our wild People in *Scotland*, my Conſcience does not ſerve me for ſuch Things; after which the Deponent had never any particular Diſcourſe with *Ferguſon*, as to that Matter; but as to the other Affair, *Ferguſon* told the Deponent that he was doing what he could to get it effectuate, as particularly that he ſpoke to one Major *Wildman* who is not of the Deponent his acquaintance. *Ferguſon* blamed always *Sidney*, as driving Deſigns of his own. The Deponent met twice or thrice with the Lord *Melvil*, Sir *John Cochran*, *Jerviſwood*, Commiſſar *Monro*, the two *Ceſſnocks*, *Mongomery* of *Landſhaw*, and one Mr. *Veitch*, where they diſcourſed of Money to be ſent to *Argyle*, in order to the carrying on the Affair, and though he cannot be poſitive the Affair was named; yet it was underſtood by himſelf, and as he conceives by all preſent, to be for riſing in Arms, for rectifying the Government. Commiſſary *Monro*, Lord *Melvil*, and the two *Ceſſnocks* were againſt medling with the *Engliſh*, becauſe they judged them Men that would talk, and would not do, but were more inclined to do ſomething by themſelves, if it could be done. The Lord *Melvil* thought every thing hazardous, and therefore the Deponent cannot ſay he was poſitive in any thing, but was moſt inclined to have the Duke of *Monmouth* to head them in *Scotland*, of which no particular Method was laid down. *Jerviſwood*, the Deponent, and Mr. *Veitch*, were for taking Money at one of theſe Meetings. It was reſolved, that Mr. *Martin*, late Clerk to the Juſtice-Court ſhould be ſent to *Scotland*, to deſire their Friends to hinder the Countrey from riſing, or taking raſh Reſolutions upon the account of the Council, till they ſhould ſee how Matters went in *England*. The ſaid *Martin* did go at the Charges of the Gentlemen of the Meeting, and was directed to the Laird of *Polwart* and *Torwoodlie*, who ſent back Word that it would not be found ſo eaſie a matter to get the Gentry of *Scotland* to concur: But afterwards in a Letter to Commiſſar *Monro*, *Polwart* wrote that the Countrey was readier to concur than they had imagined, or ſomething to that purpoſe. The Deponent, as above-ſaid, having brought over a Key from *Holland*, to ſerve himſelf and Major *Holms*: He remembers not that ever he had an exact Copy of it, but that ſometimes the one, ſometimes the other keeped it, and ſo it chanced to be in his Cuſtody, when a Letter from the Earl of *Argyle* came to Major *Holms*, intimating, that he would joyn with the Duke of *Monmouth*, and follow his Meaſures, or obey his Directions. This Mr. *Veitch* thought fit to communicate to the Duke of *Monmouth*, and for the underſtanding of it was brought to the Deponent, and he gave the Key to Mr. *Veitch*, who as the Deponent was informed, was to give it and the Letter to Mr. *Ferguſon*, and he to ſhew it to the Duke of *Monmouth*; but what was done in it, the Deponent knows not. The Deponent heard the Deſign of killing the King and Duke, from Mr. *Shephard*, who told the Deponent ſome were full upon it. The Deponent heard that *Aaron Smith* was ſent by thoſe in *England* to call Sir *John Cochran*, on the account of *Carolina*, but that he does not know *Aaron Smith*, nor any more of that Matter, not being concerned in it. *Shephard* named young *Hambden* frequently as concerned in theſe Matters.

Signed at *Edinburgh* Caſtle, the 8*th* of *September*, 1684. and renewed the 18*th* of the ſame Month.

William Carſtares.

PERTH Cancell. *I. P. D.*

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Edinburgh-Caſtle, 18*th September*, 1684.

Mr. *William Carſtares* being again examined, adheres to his former Depoſition, in all the Parts of it, and Depones he knows of no Correſpondence between *Scotland* and *England*, except by *Martin* before named; for thoſe Gentlemen to whom he was ſent, were left to follow their own Methods. *Veitch* ſometimes, as the Deponent remembers, ſtayed ſometimes at *Nicolſon*, Stabler's Houſe at *London-wall*; ſometimes with one Widow *Hardcaſtle* in *Moor-fields*. The Deponent did communicate the Deſign on foot to Doctor *Owen*, Mr. *Griffil*, and Mr. *Mede*, at *Stepney*, who all concurred in the promoting of it, and were deſirous it ſhould take effect; and to one Mr. *Freth* in the *Temple*, Councellor at Law, who ſaid that he would ſee what he could do in reference to the Money, but there having gone a Report, that there was no Money to be raiſed, he did nothing in it; nor does the Deponent think him any more concerned in the Affair. *Neltbrop* frequently ſpoke to the Deponent of the Money to be ſent to *Argyle*, whether it was got or not, but the Deponent uſed no freedom with him in the Affair. *Goodenough* did inſinuate once, that the Lords were not inclined to the Thing, and that before, they would ſee what they could do in the City. The Deponent ſaw Mr. *Ferguſon*, and Mr. *Rumſay*, lurking after the Plot broke out, before the Proclamation, having gone to *Ferguſon*, in the back of *Biſhopsgate-ſtreet*, at ſome new Building, whether he was directed by *Jerviſwood*, who was deſirous to know how Things went. *Rumſay* was not of the Deponent his Acquaintance before, but they knew as little of the Matter as the Deponent. This is what the Deponent remembers, and if any thing come to his Memory, he is to deliver it in betwixt the firſt of *October*. And this is the Truth, as he ſhall anſwer to GOD.

William Carſtares.

PERTH Cancell. *I. P. D.*

At *Edinburgh*, the 22*d* of *December*, 1684.

Theſe foregoing Depoſitions, Subſcribed by Mr. *William Carſtares* Deponent, and by the Lord Chancellor, were acknowledged on Oath by the ſaid Mr. *William Carſtares*, to be his true Depoſitions; and that the Subſcriptions were his, in Preſence of us Underſubſcribers.

William Carſtares.

David Falconer. PERTH Cancell.
George Mackenzie. *Queensberry.*
Athol.

His Majeſties Advocat for further Probation, adduces the Examinations of Mr. *Shepbard*, taken before Sir *Leolin Jenkins*, Secretary of State for *England*, with the Information or Depoſition of Mr. *Zachary Bourn*, relating to the Plot, ſigned by him and Secretary *Jenkins*, of which Depoſitions the Tenors follow.

The Examination of Thomas Shephard *of* London, *Merchant, taken upon Oath, before the Right Honourable Sir* Leolin Jenkins *Knight, His Majeſties Principal Secretary of State, the* 23*d. Day of* December, 1683.

The Deponent ſaith, That *Ferguſon* told him, on, or about the Moneth of *April* laſt, that an Inſurrection was intended both in *England* and in *Scotland*, and that for the ſettling that Affair betwixt the two Nations, Mr. *Baillie*, Mr. *Monro*, Sir *John Cochran*, Sir *Hugh* and Sir *George Campbels*, with ſome others (whoſe Names this Deponent heard not) were come to *London*.

That the Deponent had ſome acquaintance with Mr. *Baillie*, Mr. *Monro*, and Sir *John Cochran*, and none at all with Sir *Hugh* and Sir *George Campbels*; that Mr. *Baillie* told the Deponent, that the Earl of *Argyle* demanded thirty Thouſand Pounds of the *Engliſh* to capacitat him to begin the Buſineſs effectually in *Scotland*, and that he the ſaid *Baillie* likewiſe told the Deponent, that having concerted Things with the Lord *Ruſſel* and others, he the ſaid *Baillie* found an impoſſibility of raiſing that Sum; after which the ſaid *Baillie* had acquainted the Deponent, that they were certainly promiſed ten Thouſand Pounds, which Sum was agreed to be payed into the Deponent's Hands, in order to be remitted into *Holland*, for the providing of Arms; and that the ſaid *Baillie* told the Deponent at divers times, that the ſaid Sum, or at leaſt one half of it would be payed ſuch a Day, and ſuch a Day; and ſometimes asked the Deponent, if he had received any Part of the ſaid Money, to which the Deponent replied that he had not, and that he the Deponent ſcarce thought any would be payed.

And the Deponent alſo ſaith, that having had ſome little Converſation with Sir *John Cochran*, he remembers well, that both of them did ſometimes lament the Delays in not paying in the Money, and ſaid, that although the ſaid ten Thouſand Pounds were payed in, they, the ſaid Sir *John Cochran* and Mr. *Monro*, feared it would be too little; and this Deponent further ſayeth not as to any new Matter. But the Deponent being asked to explain what he thought was meant by the Words above-written, *viz.* to capacitat him (the Earl of *Argyle* to begin the Buſineſs) he, this Deponent ſayeth, that he did underſtand by the Word *Buſineſs*, an Inſurrection in *Scotland*.

Sic ſubſcribitur,

Thomas Shephard.

Jurat' coram
L. Jenkins.

The Information of *Zachary Bourn*, of *London*, *Brewer*, taken upon Oath, the tenth Day of *December*, 1683. before the Right Honourable Mr. Secretary *Jenkins*.

The Informant Depoſeth, and ſayeth, That Mr. *Baillie* ſet up one Night, if not two, with Mr. *Ferguſon*, and went ſeveral times in the Even-

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ing with him to the Duke of *Monmouth*, and the chief Managers of the Conſpiracy; That *Ferguſon* told the Deponent, that he the ſaid *Baillie* was the chief Man for the *Scots*, next to the Lord *Argyle*; that the ſaid *Baillie* did ſit up the greateſt part of one Night with the ſaid *Ferguſon*; at which time this Deponent believeth they were buſie in preparing the intended Declaration, which the Deponent has the more reaſon to believe, in as much as the ſaid *Ferguſon* did go about to ſhow him the Deponent ſuch a Paper, wherein the ſaid *Ferguſon* was hindered by the coming up ſtairs of ſome Perſon, to ſpeak with the ſaid *Ferguſon*, that the ſaid *Ferguſon* told the Deponent, that the main Buſineſs of the ſaid *Baillie*, in meeting the ſaids Conſpirators, was in order to get from them the ten thouſand Pounds, promiſed for the buying of Arms, for the Inſurrection intended in *Scotland*.

That the Deponent ſaw Mr. *William Carſtares* come often to the Lodgings of the ſaid *Ferguſon*; but that the ſaid *Ferguſon* never told the Deponent of any Diſcourſe held by him with the ſaid *Carſtares*; and further this Deponent ſaith not.

Sic ſubſcribitur,

Zac. Bourn.

Jurat' coram
L. Jenkins.

His Majeſty's Advocat likewiſe produced ſeveral Warrands, and Papers to prove, that thoſe Depoſitions are ſign'd by Sir *Leolin Jenkins*.

His Majeſty's Advocat alſo produced the Books of Adjournal, bearing Mr. *William Veitch* to be a Forfault Traitor, and the Act of Parliament whereby the Forfaulture is ratified.

His Majeſty's Advocat's Speech to the Inqueſt.

My Lords and Gentlemen,

YOU have now a Conſpiracy againſt His Majeſty's Sacred Perſon and Royal Government, ſo fully diſcover'd, that they muſt want Reaſon as well as Loyalty, who do not believe the Diſcovery; and they muſt be Enemies to Sincerity, as well as to the King, who do not acknowledge it. Beſide, That the Councils of all the three Nations thought the Proof ſufficient for Indicting a General Thankſgiving through all theſe Nations; and that the Judges of *England* thought the ſame ſtrong enough to infer Forfaulture of Life and Eſtate againſt ſome of all Ranks there; you have a Diſcovery made here from the late Earl of *Argyle*'s own Letters, and the Confeſſion of his own Emiſſaries, the two ſureſt Proofs that Law ever invented, or the Nature of Humane Affairs can allow; and I am this Day to add to all this, a new Sett of Proofs in the Proceſs that I now lead againſt this Pannal, from the Confeſſions of Noblemen and Gentlemen, who have been engaged in this wicked Conſpiracy; and who, from a Senſe of their Guilt, are content freely to depoſe againſt their neareſt Relation, and their moſt intimate Friend, in which having thus cleared to you, that there was really ſuch a Conſpiracy, I ſhall, in the next place, proceed to prove this Pannal's Acceſſion to it.

It cannot be imagined, that we would willingly involve our Countrey-men in it, without a Conviction ſtronger than our Kindneſs to *Scotland*; nor did His Majeſty's Servants accuſe this Pannal, without the Opinion of the ableſt Lawyers of the Kingdom, who did with them concur to think that there was not the leaſt occaſion of doubting left to the moſt indifferent Inqueiſt of his Guilt, after they had ſeriouſly, and with Reflection read over and pondered the Probation now laid before you.

The Perſon accuſed of Acceſſion to this Cryme, is the Ringleader of all thoſe who in this Kingdom concur'd with the *Engliſh* Conſpirators, as you may ſee by the Teſtimonies of all who have depoſed; and it was indeed fit and juſt to begin with the moſt guilty, ſo that if he be not convicted, there ſhould no Man be puniſhed for this Conſpiracy; all the Noiſe we have heard of it, is but a Cheat, the King's Judges have been Murderers, all the Witneſſes have been Knaves, and ſuch as dyed for it have been Martyrs.

The Acceſſion charged on the Pannal, is not an accidental Eſcape, nor is it proved by Witneſſes who can be ſuſpected of Unkindneſs to his Perſon, or his Cauſe, for it is a long Tract of a continued Deſign, gone about with the greateſt Deliberation and Concern imaginable, and proved by his neareſt Relations, and Perſons ſo deeply engadged in that Cauſe, (for which he ſuffers,) that they were content with him to venture their Lives and Fortunes in that Quarrel. He is not accuſed of a Crime that can amount only to a ſingle Murder, tho' that be a dreadful Cryme, but a Rebellion, which was to draw upon us a Civil War, that Murder of Murders, in which hundreths of thouſands were to fall; and to crown all, he was to begin, and to be the chief Promoter of a Rebellion, in which one of the firſt Steps was to kill His Sacred Majeſty, and His Royal Brother; and one of the chief Witneſſes which I have led againſt him, is *Bourn*, which *Bourn* confeſſed that he was to kill the King, and who confeſſes the Pannal ſat up ſeveral Nights with *Ferguſon*, the other Contriver of the King's Murder, and ſo familiar was he with him, that *Bourn* depons, that the ſaid Pannal had been with *Ferguſon* at the drawing of the *Manifeſto*, whereby he was not only to be an Actor, but to be the Juſtifier of that horrid Villany; and therefore *Bourn* depons, that *Ferguſon* (the beſt Judge in that Caſe) looked upon him as the chief Man, next to *Argyle*; but becauſe no Man is preſumed to go to ſuch a hight, without previous Inclination and Motives, I ſhall, to convince you that this Gentleman was very capable of all that was lybelled againſt him, remember you, that he is Nephew and Son in Law to the late *Wariſtoun*, bred up in his Family, and under his Tutory; about the time of this Plot it was undenyably known, and is now ſufficiently proved

proved by two preſent Witneſſes, the Earl of *Tarras* and Commiſſar *Monro*, that he thought himſelf deſperat, knowing himſelf to be guilty of Treaſon by *Blackwood*'s Caſe; and as it's preſumable, that a Man that's guilty of one Point of Treaſon, will commit another; ſo when a Man is deſperat as to his Life and Fortune, he is capable of any thing; he was likewiſe animated to commit this Cryme, by the Intelligence he had that there was a Plot in *England*, carryed on by Men of ſo great Parts, Fortune and Influence, and by the too probable Hopes, that they would get all the *Weſtern* Shyres to joyn with them here, becauſe of the common Guilt in which they had engadged themſelves, by their late Extravagances, they made an account of an Aſſiſtance of twenty thouſand Men; and by *Philiphaugh*'s Depoſition, that theſe Gentlemen expected the Concurſe of the *Southern* Shyres; and thus I am to prove to you a Cryme, which is in it ſelf ſo probable and liklie, that it ſhould need little Probation, tho' I have adduced for your Conviction ſufficient Evidences, albeit the Cryme were in it ſelf very unliklie.

The Crymes which I hope I have proved, are, That *Ferviſwood* the Pannal tranſacted for Money to the late Earl of *Argyle*, a declared Traitor. 2. That he deſigned to raiſe a Rebellion. 3. That he intercommuned with the Earl of *Argyle* and Mr. *Veitch* declared Traitors. 4. That he was preſent, where it was treated, either that *Argyle* ſhould have Money from the *Engliſh*, and Aſſiſtance from *Scotland*, or that a Rebellion ſhould be raiſed, and that he did not reveal the ſamine; and all theſe being found relevant *ſeparatim*, it is ſufficient for me to have proved any one of them. And if a Gentleman was lately found guilty of High Treaſon by the Opinion of all the Lords of Seſſion, for not revealing, that Sir *John Cockran* ſought fifty Pounds *Sterling* from him, tho' he refuſed the ſame, and tho' he believed it was ſought for a charitable Subſiſtance to preſerve him from ſtarving; what deſerves this Pannal, who ſought thirty thouſand Pounds *Sterling*, to buy him Arms, to invade his Native Countrey?

That *Ferviſwood* was deſigning to carry on a Rebellion, or at leaſt was acceſſory, or (as our Law terms it) was *Art and Part* thereof, is clearly prov'd; but that in this occult and hidden Crime, which uſes not to be prov'd by clear Witneſſes, I may lead you thorow all the Steps of the Probation, which like the Links of a Chain, hang upon one another: You will be pleaſed to conſider, that 1. It is proved that he deſired a blind Commiſſion to go to *England*, not to manage the Affairs of the *Carolina* Company, as he confeſs'd, *but to puſh the People of* England *to do ſomething for themſelves, becauſe they did only talk and not do*; and what he would have them to do, appears too clearly, becauſe he tells the Earl of *Tarras* it was probable, *that if the King were briskly put to it by the Parliament of* England, *he would conſent to exclude the Duke from the Succeſſion*; here is not only a Treaſonable Deſign, (tho' a Deſign be ſufficient in Treaſon) but here are expreſs Acts of Treaſon proved, *viz.* The treating with the Earl of *Tarras* upon this Deſign, the ſettling a Correſpondence with him for the Proſecution of it, and the writing Letters from *London* to him concerning it, and the ſending down Mr. *Martin* to compleat it by a general Riſing; As he deſign'd to puſh on the *Engliſh*, ſo he proſecutes cloſely this Deſign upon all occaſions. On the Road he complains cunningly and bitterly, that our Lives, Laws and Liberties, and the Proteſtant Religion were in Danger, the Style and Method of all ſuch as deſign to rebel; after he arrives at *London*, he engages the Conſpirators there to aſſiſt the late Earl of *Argyle*, a declared Traitor, with Money to buy Arms; this was indeed to puſh the *Engliſh* to do the moſt dangerous things by the moſt dangerous Man, and in the moſt dangerous methods. He enters alſo in a ſtrict Correſpondence with *Ferguſon* the Contriver, with *Shephard* the Theſaurer, and *Carſtares* the Chaplain of the Conſpiracy.

Alexander Monro another preſent Witneſs, proves that he argued with him that it was neceſſary to give *Argyle* Money expreſsly for carrying on the Rebellion, and that they did meet at *Ferviſwood*'s Chamber where this was ſpoke of, and from which Mr. *Robert Martin* was ſent to their Friends in *Scotland* to know what they would do; and tho' the ſilly Caution was, that they ſent him to prevent their Riſing, yet a Man muſt renounce Common Senſe, not to ſee that the Deſign was to incite them to Rebellion, and to prevent only their doing any thing in this rebellious Deſign, by which they might loſe themſelves in a too early and abortive Inſurrection here, till things were ready in *England*. For, 1. This Commiſſion was given him in a place, and by a Company who had been themſelves treating immediatly before of ſending Money to the late Earl of *Argyle* to buy Arms, and certainly thoſe Arms were to be bought for Men, and not for a Magazine. 2. They were treating how many Men could be raiſed in *Scotland*. 3. *Carſtares* Depoſition bears, that *Martin* was ſent to hinder raſh Reſolutions, till they ſaw how Matters went in *England*, and the Return to their Embaſſy bore, that it would not be an eaſie matter to get the Gentry of *Scotland* to concur; but afterwards better Hopes of their Riſing was given, which could not have been, if the true Commiſſion had not been to raiſe *Scotland*. 4. That Sir *John Cochran* made a Speech to that purpoſe, is expreſsly prov'd, and that *Ferviſwood* ſpoke to the ſame purpoſe, is prov'd by a neceſſary conſequence; for ſince it's prov'd that he ſpoke, and that he did not ſpeak againſt it, it muſt neceſſarily follow that he ſpoke for it, tho' the Witneſs is ſo cautious, that he cannot condeſcend upon the Words now after ſo long a time; and it is againſt Senſe to think, that *Ferviſwood* who in privat preſs'd the ſame ſo much upon Commiſſar *Monro*, and who was the Deacon-Conveener here, and who, as Mr. *Martin* their Envoy declared, was the Perſon who was to be ſent for the Arms, ſhould not himſelf have been the moſt forward Man in that Deſign, but above all *exitus acta probat*, this Commiſſioner, (who being a meer Servant, durſt not have propoſed any thing from himſelf, being a mean Perſon, and being one, who, as the Earl of *Tarras* depoſes, would ſay nothing, but what was in his Paper:) does expreſsly declare, that he came from *Ferviſwood* and others; and in the meeting with him, a Rebellion is actually formed, and it is reſolved, they ſhould ſeize the King's Officers of State, Garriſons, and Forces, and that they

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ſhould joyn with the late Earl of *Argyle*, and put their own Forces in a Condition to joyn with theſe Forces that were to come from *England*, and they gave a Sign, and a Word, which uſes only to be done in actual War? ſo here is Treaſon clearly prov'd, by two preſent Witneſſes, from the firſt Deſign to its laſt Perfection.

Nor can it be objected, that they are not concurring Witneſſes, but *teſtes ſingulares* upon ſeparat Acts, for in reiterable Crimes, Witneſſes depoſing upon different Acts, do prove if the Deeds tend to the ſame end; as for inſtance, if one Witneſs ſhould depoſe, that they ſaw a Traitor ſit in a Council of War, in one place, and in another place, they ſaw him in Arms, or that one ſaw him aſſiſt at a Proclamation in one place, and ſaw him in Arms in another; or that one ſaw him writ a Treaſonable Paper, and another ſaw him uſe it; Theſe Witneſſes are ſtill conſidered as Conteſtes, or concurring Witneſſes, and ten or twelve Inqueiſts have ſo found, and upon their Verdict, Rebels have been lately hang'd. The learn'd Judges of *England* being all met together did expreſly find, that one Witneſs proving, that *A. B.* ſaid, that he was going to buy a Knife to kill the King, and another depoſing, that he ſaw him buy a Knife, without telling for what, that theſe two Witneſſes were Conteſtes, and prov'd ſufficiently the Cryme of Treaſon, yet there the one Witneſs prov'd only a remote Deſign, and the other an Act, which was indifferent of its own nature, and became only Treaſonable by the Connexion; but no Witneſſes ever depoſed upon things ſo coherent, and ſo connected together, as theſe do, for they depoſe ſtill upon the ſame Perſon, carrying on the ſame Deſign of a Rebellion; as to which, in one place, he is exciting his own Nephew, and telling him his Reſolutions, and ſettling a Correſpondence with him, at another time, he preſſes Commiſſar *Monro* to the ſame Rebellion. At a third, He holds a Meeting at his own Chamber, and ſpeaks concerning it, and from that Meeting he ſends a Truſty, who forms the Rebellion. Beſides all this, tho' two Witneſſes be ſufficient, I have adduced Mr. *William Carſtares* Chief Conſpirator, and who choos'd rather to ſuffer violent Torture, than to diſcloſe it, he likewiſe depoſes upon all theſe Steps, and connects them together, and this his Depoſition is twice reiterated, upon Oath, after much Premeditation. And I likewiſe adduce two Depoſitions taken upon Oath, by Sir *Leolin Jenkins*, who was impower'd by the Law of *England*, and at the Command of the King, and the Council of *England*, upon a Letter from His Majeſty's Officers of State here, in which Depoſition, *Shepard*, one of the Witneſſes, depoſes, that *Baillie* came frequently to him, and deſired him to advance the Money, *and lamented the Delays*, and that there was ſo little to be advanced; and who ſhould be better believed than one who was his own Truſty, and a Perſon who was able to advance ſo great a Sum? *Bourn*, another of the Witneſſes, depoſes, that *Ferguſon* told him, that the Pannal ſpoke frequently to him concerning the ſame Money, and that he ſat up ſeveral Nights with *Ferguſon* upon the ſaid Conſpiracy; and who ſhould be better believed than *Ferguſon*'s Confident, and one who was ſo far truſted in the whole Affair, that he was to take away that Sacred Life, which Heaven has preſerved by ſo many Miracles?

Againſt theſe three Depoſitions, you have heard it objected, that *non teſtimonia ſed teſtes probant*, eſpecially by our Law, in which, by an expreſs Act of Parliament, no Probation is to be led, but in preſence of the Aſſiſe and Pannal. To which it is anſwered, that theſe Depoſitions are not meer Teſtimonies; for I call a Teſtimony a voluntar Declaration, emitted without an Oath, and a Judge; but theſe Depoſitions are taken under the awe of an Oath, and by the Direction of a Judge. 2. *Shepard* was confronted with the Pannal himſelf, and he had nothing to ſay againſt him; whereas the great thing that can be objected againſt Teſtimonies (and by our Statute eſpecially) is, that if the Party who emits the Teſtimony had been confronted with the Pannal; the Impreſſion of ſeeing a Perſon that was to die, by his Depoſition, would have made him afraid to depoſe laxly; and the Pannal likewiſe might, by propoſing Interrogators and Queſtions, have cleared himſelf and ſatisfied the Judges in many things depos'd againſt him: But ſo it is that Mr. *Shepard* having been confronted with the Pannal, before the King Himſelf, who is as far above other Judges, in His Reaſon and Juſtice, as He is in His Power and Authority; He depoſes that the Pannal was the chief Mannager of this Conſpiracy, next to *Argyle*, and that he was ſo paſſionate to have this Money to buy Arms, that he lamented the Delays; and can it be imagined that Mr. *Shepard* whom he truſted with his Life and his Fortune, and whom all their Party truſted with their Caſh, would have depos'd any thing againſt him that was not true, eſpecially when he knew that what he was to depoſe, was to take away his Life and his Fortune; or that if the Pannal had been innocent, he would not, when he was confronted with Mr. *Shepard* before the King Himſelf, have roar'd againſt Mr. *Shepard*, if he had not been conſcious to his own Guilt? There is a Surprize in Innocence, which makes the Innocent exclaim, and it inſpires Men with a Courage which enables them to confound thoſe who depoſe falſly againſt them; and in what occaſion could either of theſe have appeared, more than in this, wherein this Gentleman was charg'd to have Conſpir'd with the greateſt of Raſcals, againſt the beſt of Princes; and that too in Preſence of the Prince himſelf, againſt whom he had Conſpir'd? But Guilt ſtupifies indeed, and it did never more than in this Gentleman's Caſe, whoſe Silence was a more convincing Witneſs than Mr. *Shepard* could be. Mr. *Carſtares* likewiſe knew when he was to depone, that his Depoſition was to be uſed againſt *Jerviſwood*, and he ſtood more in awe of his Love to his Friend, than of the Fear of the Torture, and hazarded rather to die for *Jerviſwood*, than that *Jerviſwood* ſhould die by him: How can it then be imagin'd, that if this Man had ſeen *Jerviſwood* in his Tryal, it would have altered his Depoſition; or that this Kindneſs, which we all admir'd in him, would have ſuffer'd him to forget any thing in his Depoſition, which might have been advantageous in the leaſt to his Friend: And they underſtand ill this hight of Friendſhip, who think that it would not have been more

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nice and careful, than any Advocate could have been: And if *Carſtares* had forgot at one time, would he not have ſupplied it at another; but eſpecially at this laſt time, when he knew his Friend was already brought upon his Tryal? And that this renewed Teſtimony was yet a further Confirmation of what was ſaid againſt him; and albeit the King's Servants were forced to engage, that *Carſtares* himſelf ſhould not be made uſe of as a Witneſs againſt *Jerviſwood*; yet I think this kind ſcrupuloſity in *Carſtares* for *Jerviſwood*, ſhould convince you more than twenty ſuſpect, nay than even indifferent Witneſſes; nor can it be imagined, that the one of theſe Witneſſes, would not have been as much afraid of GOD, and his Oath at *London*, as at *Edinburgh*; and the other in the Council-Chamber in the Forenoon, as in the Juſtice-Court in the Afternoon.

3. The Statute founded on, does not diſcharge the producing of Teſtimonies, otherways than after the Jury is incloſed; for then indeed they might be dangerous, becauſe the Party could not object againſt them: But ſince the Statute only diſcharges to produce Writ, or Witneſſes, after the Jury is incloſed; it ſeems clearly to inſinuat, that they ought to prove when they are produced in Preſence of the Party himſelf, as now they are. And though the Civil Law did not allow their Judges to believe Teſtimonies, becauſe they were confined to obſerve ſtrict Law; yet it does not from that follow, that our Juries, whom the Law allows to be a Law to themſelves, and to be confined by no Rule, but their Conſcience, may not truſt intirely to the Depoſitions of Witneſſes, though not taken before themſelves, when they know that the Witneſſes, by whom, and the Judges, before whom theſe Depoſitions were emitted, are Perſons beyond all Suſpicion, as in our Caſe. But yet for all this, I produce theſe Teſtimonies, as Adminicles here only to connect the Depoſitions of the preſent Witneſſes, and not to be equivalent to Witneſſes in this legal Proceſs; albeit, as to the Conviction of Mankind, they are ſtronger than any ordinary Witneſſes.

When you, my Lords, and Gentlemen, remember, that it is not the revenge of a privat Party, that accuſes in this Caſe; and that even in privat Crimes, ſuch as Forgery, or the murder of Children, *&c.* many Juries here have proceeded upon meer Preſumptions, and that even *Solomon* himſelf, founded his illuſtrious Deciſion, approved by God Almighty, upon the preſumed Aſſertion of a Mother; I hope ye will think two Friends Depoſing, as preſent Witneſſes, adminiculated and connected by the Depoſitions of others, though abſent; ſhould beget in you an intire belief, eſpecially againſt a Pannal, who has been always known to incline this way, and who, though he was deſired in the Tolbooth to vindicate himſelf from thoſe Crimes, would not ſay any thing in his own Defence, and though he offers to clear himſelf of his acceſſion to the King's Murder; yet ſays nothing to clear himſelf from the Conſpiracy entered into with the late Earl of *Argyle*, for invading his Native Countrey, which is all that I here Charge upon him, and which he inclines to juſtifie, as a neceſſary mean for redreſſing Grievances; I muſt therefore remember you, that an Inqueſt of very worthy Gentlemen did find *Rathillet* guilty, though there was but one Witneſs led againſt him, becauſe when he was put to it, he did not deny his Acceſſion: And two Rogues were found guilty in the late Circuit at *Glaſcow*, for having murdered a Gentleman of the Guard, though no Man ſaw them kill him; but the Murderers having been purſued, they run to the Place, out of which the Pannals then accuſed were taken, none having ſeen the Face of the Runaways; and the Pannals being accuſed, and preſſed to deny the Acceſſion, ſhuned to diſown the Guilt, but deſired it might be proved againſt them. This may convince you that there are Proofs which are ſtronger then Witneſſes; and I am ſure that there were never more proving Witneſſes then in this Caſe, nor were the Depoſitions of Witneſſes ever more ſtrongly adminiculated. Remember the Danger likewiſe of emboldening Conſpiracies againſt the King's Sacred Life, and of encouraging a Civil War, wherein your ſelves and your Poſterity may bleed, by making the leaſt Difficulty to find a Man Guilty, by the ſtrongeſt Proofs that ever were adduced in ſo latent a Crime as a Conſpiracy is. And I do juſtly conclude, that whoever denys that a Conſpiracy can be thus proved, does let all the World ſee, that he inclines that Conſpiracies ſhould be encouraged and allowed. Our Age is ſo far from needing ſuch Encouragements, that on the other hand in this, as in all other Crimes, becauſe the Guilt grows frequent and dangerous, the Probation ſhould therefore be made the more eaſie, though in this Caſe, the King needs as little deſire your Favour, as fear your Juſtice. And I have inſiſted ſo much upon this Probation, rather to convince the World of the Conſpiracy, than you that this Conſpirator is Guilty.

Thereafter the Lords Ordained the Aſſize to incloſe, and return their Verdict to Morrow, by Nine-a-Clock in the Morning.

Edinburgh, December 24. 1684.

The ſaid Day, the Perſons who paſt upon the Aſſize of Mr. *Robert Baillie* of *Jerviſwood*, returned their Verdict in Preſence of the ſaids Lords; whereof the Tenor follows. The Aſſize, all in one Voice, finds the Crimes of Art and Part in the Conſpiracy, and Plot Libelled; and of concealing, and not revealing the ſame, clearly proven againſt Mr. *Robert Baillie* the Pannal, in reſpect of the Depoſitions of Witneſſes and Adminicles adduced.

Sic ſubſcribitur,

Strathmore, Chancellor.

After opening and reading of the which Verdict of Aſſize, The Lords, Juſtice General, Juſtice Clerk, and Commiſſioners of Juſticiary, therefore by the Mouth of *James Johnſtoun* Deimpſter of Court, Decerned and Adjudged the ſaid Mr. *Robert Baillie* of *Jerviſwood* to be taken to the

Mercat-Croſs of *Edinburgh*, this twenty fourth Day of *December* inſtant, betwixt Two and Four a Clock in the Afternoon, and there to be hanged on a Gibbet till he be dead, and his Head to be cut off, and his Body to be Quartered in four, and his Head to be affixed on the Nether-bow of *Edinburgh*, and one of his Quarters to be affixed on the Tolbooth of *Jedburgh*, another on the Tolbooth of *Lanerk*, a third on the Tolbooth of *Air*, and a fourth on the Tolbooth of *Glaſgow*; and ordains his Name, Fame, Memory, and Honours to be extinct, his Blood to be Tainted, and his Arms to be riven forth, and delate out of the Books of Arms, ſo that his Poſterity may never have Place, nor be able hereafter to bruik, or joyſe any Honours, Offices, Titles or Dignities, within this Realm in time coming; and to have Forfaulted, Ammitted and Tint, all and ſundry his Lands, Heritages Tacks, Steadings, Rooms, Poſſeſſions, Goods and Gear whatſoever, pertaining to him, to our Sovereign Lord's Uſe, to remain perpetually with His Highneſs in Property, which was pronounced for Doom.

Sic ſubſcribitur,

LINLITHGOW.
James Foulis.
J. Lockart.
David Balfour.
Roger Hog.
A. Seton.
P. Lyon.

Extracted forth of the Books of Adjournal, by me Mr. Thomas Gordon, *Clerk to the Juſtice Court,*

Sic ſubſcribitur,

THO. GORDON.

In purſuance of which Sentence, His Majeſties Heraulds, and Purſevants, with their Coats diſplay'd (after ſound of Trumpets) did publickly, in face of the Court (conform to the Cuſtom, in the Sentences of Treaſon) in His Majeſties Name and Authority, Cancel, Tear and Deſtroy the ſaid Mr. *Robert Baillie* his Arms, threw them in his Face, trampled them under foot; and ordained his Arms to be expunged out of the Books of Herauldry, his Poſterity to be ignoble, and never to injoy Honour and Dignity in time coming: And thereafter went to the Mercat-Croſs of *Edinburgh*, and ſolemnly Tore and Cancelled the ſaid Mr. *Robert Baillie* his Arms, and affixed the ſamine on the ſaid Mercat-Croſs Reverſed, with this Inſcription; *The Arms of Mr.* Robert Baillie *late of* Jerviſwood *Traytor.*

The Tryal of *TITUS OTES.*

Die Veneris oct' Maii 1685. *in* Banco Regis.

De Term. Paſch. Anni Regni Regis *Jacobi* Primi.

Dominus Rex verſus Titus Otes.

THIS Day being appointed for the Tryal of one of the Cauſes between our Sovereign Lord the King, and *Titus Otes* for Perjury; the ſame began between eight and nine in the Morning, and proceeded in the manner following.

Firſt, Proclamation was made for Silence, then the Defendant was called, who appeared in Perſon, being brought up by Rule from the King's-Bench Priſon, where he was in Cuſtody, and was adviſed to look to his Challenge to the Jury that were impannelled to try the Cauſe.

Otes. My Lord, I am to manage my own Defence, and have a great many Papers and Things which I have brought in order to it, I pray I may have ſome Conveniency for the managing my own Tryal.

Sir *George Jefferies.* *L. C. J.* Ay, ay, let him ſit down there, within the Bar, and let him have Conveniency for his Papers.

Clerk of Cr. Cryer, Swear Sir *William Dodſon.*

Otes. My Lord, I except againſt Sir *William Dodſon.*

Mr. *At. Gen.* What is the Cauſe of Exception, Mr. *Otes?* Sir *Robert Sawyer.*

L. C. J. Why do you challenge him?

Otes. My Lord, I humbly conceive in theſe Caſes of Criminal Matters, the Defendant has liberty of excepting againſt any of the Jurors, without ſhewing Cauſe, provided there be a full Jury beſides.

L. C. J. No, no, that is not ſo, you are miſtaken in that Mr. *Otes.*

Otes. My Lord, I am adviſed ſo, I do not underſtand the Law my ſelf.

L. C. J. But we tell you then, it cannot be allowed; if Mr. *Attorney* will conſent to wave him, well and good.

Mr. *At. Gen.*

Mr. *At. Gen.* No, my Lord, I know no reaſon for it, I cannot conſent to any ſuch thing.

L. C. J. Then, if you will not have him ſworn, you muſt ſhew your Cauſe preſently.

Otes. My Lord, I cannot aſſign any Cauſe.

L. C. J. Then he muſt be ſworn.

Cl. of Cr. Swear him.

Cryer. Sir *William Dodſon* take the Book, You ſhall well and truly try this Iſſue between our Sovereign Lord the King, and *Titus Otes*, and a true Verdict give according to the Evidence; ſo help you God.

Cl. of Cr. Swear Sir *Edmund Wiſeman*. [*Which was done.*

Richard Aley, Eſq; [*Who was ſworn.*

Benjamin Scutt.

Otes. My Lord, I challenge him.

L. C. J. For what Cauſe?

Otes. My Lord, he was one of the Grand Jury that found the Bill.

L. C. J. Was he ſo, that is an Exception indeed; what ſay you, Mr. *Attorney*?

Mr. *At. Gen.* My Lord, I believe he was upon one of the Indictments, but I think it was not this.

L. C. J. But if he were in either of them, he cannot be ſo impartial.

Mr. *At. Gen.* My Lord, we will not ſtand upon it, we'll wave him.

Cl. of Cr. Thomas Fowlis.

Otes. Pray let me ſee that Gentleman. [*Who was ſhown to him.*

Are you not a *Goldſmith* in *Fleet-ſtreet*, between the two *Temples*?

Fowlis. Yes, I am.

Otes. Very well, Sir, I do not except againſt you, only I deſire to know, whether it were you or not.

Cl. of Cr. Swear him. [*Which was done.*

Thomas Blackmore,
Peter Pickering,
Robert Beddinfield,
Thomas Rawlinſon,
Roger Reeves, } Sworn.

Edward Kempe, Sworn.

Otes. My Lord, I challenge him.

L. C. J. You ſpeak too late, he is ſworn already.

Otes. My Lord, they are ſo quick, I could not ſpeak, but he was one of the Grand Jury too.

L. C. J. We cannot help it now.

Mr. *At. Gen.* I did not know that he was ſo, but to ſhew that we mean nothing but fair, we are content to wave him.

L. C. J. You do very well, Mr. *Attorney General*; let him be withdrawn.

Cl. of Cr. Mr. *Kempe*, you may take your eaſe; ſwear *Ambroſe Iſted*. [*Which was done.*

Henry Collier,
Richard Howard, } Sworn.

Cl. of Cr. Cryer, count theſe.

Cryer. One, *&c.* Sir *William Dodſon.*

Cl. of Cr. Richard Howard.

Cryer. Twelve good Men and true, hearken to the Record, and ſtand together, and hear the Evidence.

The NAMES of the Twelve ſworn, were theſe.

Sir *William Dodſon*, Sir *Edmund Wiſeman*, *Richard Aley*, *Thomas Fowlis*, *Thomas Blackmore*, *Peter Pickering*. } Jur' { *Robert Beddingfield*, *Thomas Rawlinſon*, *Roger Reeves*, *Ambroſe Iſted*, *Henry Collier*, and *Richard Howard*.

Otes. Before the Counſel opens the Cauſe, I deſire to move one Thing to your Lordſhip.

L. C. J. What is it you would have?

Otes. My Lord, I have three Witneſſes that are very material ones to my Defence, who are now Priſoners in the King's-Bench, for whom I moved yeſterday, that I might have a Rule of Court to bring them up to Day, but it was objected, that they were in Execution, and ſo not to be brought; I humbly move your Lordſhip now, that I may have a *Habeas Corpus* for them, to bring them immediately hither.

L. C. J. We cannot do it.

Otes. Pray, good my Lord, they are very material Witneſſes for me, and I moved yeſterday for them.

L. C. J. You did ſo, but we told your Counſel then, and ſo we tell you now, we cannot do it by Law, it will be an Eſcape.

Otes. My Lord, I ſhall want their Teſtimony.

L. C. J. Truly we cannot help it, the Law will not allow it, and you muſt be ſatisfied.

Cl. of Cr. Gentlemen, you that are ſworn of this Jury, hearken to the Record, by Virtue of an Inquiſition taken at *Juſtice-Hall* in the *Old-Bailey*, in the Pariſh of St. *Sepulchre*, in the Ward of *Faringdon* without, *London*, upon *Wedneſday* the 10*th* of *December*, in the 36*th* of the Reign of our late Sovereign Lord *Charles* II. by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, *&c.* Before Sir *James Smith*, Knight, Mayor of the City of *London*; Sir *George Jefferies* Knight and Baronet, Lord Chief Juſtice of this Honourable Court; Sir *Thomas Jones* Knight, Lord Chief Juſtice of the Court of Common Pleas; *William Montague*, Lord Chief Baron of the Exchequer; Sir *James Edwards* Knight; Sir *John Moore* Knight, Aldermen of the ſaid City; Sir *Thomas Jenner* Knight, one of His Majeſties Serjeants at Law, and Recorder of the ſame City, and others, their Companions, Juſtices of *Oyer* and *Terminer*, by the Oaths of Twelve Jurors, honeſt and lawful Men of the City of *London* aforeſaid, who then and there being ſworn and charged to enquire for our ſaid Lord the King, and the Body of the City aforeſaid, upon their Oaths preſent, that at the Seſſion of our Sovereign Lord the King, holden for the County of *Middleſex*, at *Hicks's Hall*, in St. *John's* Street, in the County aforeſaid, on *Monday*, to wit, 16 *December*, in the Year of the Reign of our late Sovereign Lord, *Charles* II. of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the Faith, *&c.* the thirtieth before Sir *Reginald Forſter*, Baronet, Sir *Philip Matthews*, Baronet, Sir *William Bowls*, Kt. Sir *Charles Pitfield*, Knight; *Thomas Robinſon*, *Humphrey Wyrley*, *Thomas Hariot*, and *William Hempſon* Eſquires, Juſtices of the ſaid Sovereign Lord the King, to enquire by the Oath of Honeſt and Lawful Men of the County of *Middleſex* aforeſaid, and by other ways, manners, means, by which they might better know, as well with-

in Liberties, as without, by whom the Truth of the Matter may be better known and enquired, of whatſoever Treaſons, Miſpriſions of Treaſons, Inſurrections, Rebellions, Counterfeitings, Clippings, waſhings and falſe makings of the Money of this Kingdom of *England*, and of other Kingdoms and Dominions whatſoever; and of whatſoever Murders, Felonies, Manſlaughters, Killings, Burglaries, and other Articles and Offences in the Letters Patents of our ſaid Sovereign Lord the King, to them, or any four, or more of them therefore directed, ſpecified, as alſo the Acceſſaries of the ſame within the County aforeſaid, as well within Liberties as without, by whomſoever, howſoever had, made, done or committed; and the ſaid Treaſons, and other the Premiſſes, to hear and determine, according to the Law and Cuſtom of this Kingdom of *England*, being aſſigned by the Oath of *Ralph Wain*, *John Vaughan*, *Richard Foſter*, *Thomas Paget*, *Robert Newington*, *Henry Tompkins*, *Robert Hays*, *John Greenwood*, *Peter Stimpſon*, *Joſias Croſley*, *Richard Richman*, *Auguſtine Bear*, *John King*, *Nathaniel Brett*, *Francis Fiſher*, and *Samuel Linn*, Honeſt and Lawful Men of the County aforeſaid, ſworn, and charged to enquire for our ſaid Sovereign Lord the King, and the Body of the County aforeſaid upon their Oaths. It was preſented, That *Thomas White*, otherwiſe *Whitebread*, late of the Pariſh of St. *Giles* in the Fields, in the County of *Middleſex* Clerk, *William Ireland* late of the Pariſh aforeſaid, in the County aforeſaid Clerk, *John Fenwick*, late of the Pariſh aforeſaid, in the County aforeſaid, Clerk, *Thomas Pickering* of the Pariſh aforeſaid, in the County aforeſaid, Clerk, *John Grove* of the Pariſh aforeſaid, in the County aforeſaid, Gent. as falſe Traytors againſt the moſt Illuſtrious, Serene, and moſt excellent Prince, our ſaid late Sovereign Lord *Charles* II. by the Grace of God, of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the Faith, *&c.* Their Supreme and Natural Lord, not having the Fear of God in their Hearts, nor weighing the Duty of their Allegiance, but being moved and ſeduced by the Inſtigation of the Devil: The Cordial Love, and True and Natural Obedience, which faithful Subjects of our ſaid Sovereign Lord the King towards him, ſhould, and of right ought to bear, utterly withdrawing, and contriving, and with all their Might intending the Peace and Tranquillity of this Kingdom of *England* to diſturb, and the true Worſhip of God within this Kingdom of *England* uſed, and by Law eſtabliſhed, to ſubvert, and Rebellion within this Kingdom of *England* to move, ſtir up, and procure, and the Cordial Love, and true and due Obedience, which faithful Subjects of our ſaid Lord the King, towards him, the ſaid Sovereign Lord the King, ſhould, and of right ought to bear, utterly to withdraw, put out, and extinguiſh, and our ſaid Sovereign Lord the King, to Death and final Deſtruction, to bring and put, the four and twentieth Day of *April*, in the Year of the Reign of our late Sovereign Lord *Charles* II. by the Grace of God, of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the Faith, *&c.* the thirtieth, at the Pariſh of St. *Giles*'s in the Fields, in the County aforeſaid, falſly, malicioufly, ſubtilely, adviſedly, and trayterouſly did purpoſe, compaſs, imagine and intend, Sedition and Rebellion within this Kingdom of *England* to move, ſtir up and procure, and a miſerable Slaughter among the Subjects of our ſaid Lord the King to procure and cauſe, and our ſaid late Lord the King from the Regal State, Title, Power and Government of his Kingdom of *England*, utterly to deprive, depoſe, caſt down, and diſ-inherit, and him our ſaid late Sovereign Lord the King to Death, and final Deſtruction to bring and put, and the Government of the ſaid Kingdom, and the ſincere Religion of God, rightly by the Laws of the ſaid Kingdom eſtabliſhed, at their Will and Pleaſure to change and alter, and the State of this whole Kingdom of *England*, throughout all its Parts, well inſtituted and ordained, wholly to ſubvert and deſtroy, and War againſt our ſaid late Sovereign Lord the King, within this Kingdom of *England* to levy, and thoſe their moſt wicked Treaſons, and Traiterous Imaginations and Purpoſes aforeſaid to fulfil and perfect, They the aforeſaid *Thomas White*, alias *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, and *John Grove*, other falſe Traytors to the Jurors not known, the ſaid four and twentieth Day of *April*, in the Year of the Reign of our ſaid late Sovereign Lord the King, the Thirtieth, with Force and Arms, *&c.* at the Pariſh of St. *Giles* in the Fields, in the County of *Middleſex*, aforeſaid, falſly, malicioufly, ſubtilely, adviſedly, deviliſhly, and traiterouſly did aſſemble themſelves, unite and meet together, and then and there falſly, malicioufly, ſubtilely, adviſedly, deviliſhly, and trayterouſly, did conſult and agree our ſaid late Sovereign the Lord the King to Death, and final Deſtruction to bring and put, and the Religion within this Kingdom of *England*, rightly, and by the Laws of the ſame Kingdom eſtabliſhed, to the Superſtition of the *Romiſh* Church, to change and alter, and the ſooner to fulfil and perfect their ſaid moſt wicked Treaſons, and Traiterous Imaginations, and Purpoſes, they, the ſaid *Thomas White*, alias *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering* and *John Grove*, and other falſe Traytors of our ſaid late Sovereign Lord the King, to the Jurors unknown, afterwards, to wit, the ſame 24*th* Day of *April*, in the ſaid 30*th* Year of our ſaid late Sovereign Lord the King, at the ſaid aforeſaid Pariſh of St. *Giles* in the Fields, in the County aforeſaid, falſly, ſubtilely, adviſedly, deviliſhly, and trayterouſly among themſelves, did conclude and agree, that they the aforeſaid *Thomas Pickering*, *John Grove*, him, the ſaid late Sovereign Lord the King ſhould kill and murder, and that they the ſaid *Thomas White*, alias *Whitebread*, *William Ireland*, *John Fenwick*, and other falſe Traytors to the Jurors unknown: A certain number of Maſſes between them, then and there agreed for the Health of the Soul of him the ſaid *Thomas Pickering*, therefore ſhould ſay, Celebrate and Perform, and therefore ſhould pay unto the ſaid *John Grove* a certain Sum of Money between them, then and there agreed; and the Jurors aforeſaid, upon their Oath aforeſaid, did further preſent, That the ſaid *Thomas Pickering* and *John Grove*, upon the Agreement aforeſaid, then and there falſly, ſubtilely, adviſedly, malicioufly, deviliſhly and trayterouſly did take upon them, and did promiſe to the ſaid *Thomas White*, alias *Whitebread*, *William Ireland*, *John Fenwick*, and other

other falſe Traytors of our late ſaid Sovereign Lord the King, to the Jurors aforeſaid unknown, then and there, falſly, ſubtilely, adviſedly, maliciouſly, deviliſhly, and traiterouſly, did promiſe that they the ſaid *Thomas Pickering* and *John Grove* would kill and murder our ſaid late Sovereign Lord the King, and they, the ſaid *Thomas White*, aliàs *Whitehead*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, *John Grove*, and other falſe Traitors of our ſaid late Sovereign Lord the King afterwards, to wit, the ſaid four and twentieth Day of *April*, in the thirtieth Year aforeſaid, at the ſaid aforeſaid Pariſh of St. *Giles* in the Fields, in the County of *Middleſex* aforeſaid, ſubtilely, adviſedly, maliciouſly, deviliſhly, and traiterouſly, did ſeverally every one of them give their Faith each to the other, and upon the Sacrament then and there traiterouſly did ſwear and promiſe, to conceal, and not to divulge their ſaid moſt wicked Treaſons and traiterous Compaſſings, Conſultations and Purpoſes ſo between them had, him, our ſaid late Sovereign Lord the King, traiterouſly to kill and murder, and the *Romiſh* Religion in this Kingdom of *England* to be uſed, to introduce, and the true Reformed Religion in this Kingdom of *England* rightly, and by the Laws of the ſame Kingdom eſtabliſhed, to alter and change; and that the ſaid aforeſaid *Thomas Pickering*, and *John Grove*, in Execution of their traiterous Agreement aforeſaid afterwards, to wit, the ſame four and twentieth Day of *April*, in the thirtieth Year aforeſaid; and divers other Days and Times after, at the ſaid aforeſaid Pariſh of St. *Giles* in the Fields, in the County aforeſaid, Muskets, Piſtols, Swords, Daggers, and other offenſive and cruel Weapons, him, the our ſaid late Sovereign Lord the King to kill and murder, falſly, ſubtilely, adviſedly, maliciouſly, and traiterouſly did prepare, and obtain for themſelves, had and kept, and that they the aforeſaid *Thomas Pickering* and *John Grove* afterwards, to wit, the ſaid four and twentieth Day of *April*, in the thirtieth Year aforeſaid, and divers Days and Times afterwards, with Force and Arms, *&c.* at the Pariſh aforeſaid, in the County aforeſaid, and in other Places within the County of *Middleſex* aforeſaid, falſly, ſubtilely, adviſedly, maliciouſly, deviliſhly and traiterouſly did lie in wait, and endeavour our ſaid late Sovereign Lord the King to murder, and that the ſaid *Thomas White*, aliàs *Whitebread*, *William Ireland*, *John Fenwick*, and other falſe Traitors to the Jurors unknown, afterwards, to wit, the ſame four and twentieth Day of *April*, in the thirtieth Year aforeſaid, at the Pariſh aforeſaid, in the County of *Middleſex* aforeſaid, falſly, ſubtilely, adviſedly, maliciouſly, deviliſhly and traiterouſly did prepare, perſwade, excite, abet, comfort and counſel four other Perſons, Men to the Jurors unknown, and Subjects of our ſaid late Sovereign Lord the King, him our ſaid late Sovereign Lord the King, traiterouſly to kill and murder againſt the Duty of their Allegiance, againſt the Peace of our ſaid late Sovereign Lord the King, his Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided, and thereupon it was ſo far proceeded, that afterwards, to wit, at the Court of Goal-delivery of our Sovereign Lord the King, of *Newgate*, at Juſtice-Hall in the *Old Bailey*, in the Suburbs of the City of *London*, in the Pariſh of St. *Sepulchre*, in the Ward of *Faringdon* without, *London* aforeſaid, the ſeventeenth Day of *December*, in the thirtieth Year aforeſaid, before the Juſtices of our ſaid Lord the King, then and there being preſent, held by Adjournment for the County of *Middleſex* aforeſaid, before whom the Indictment aforeſaid was then depending, came the aforeſaid *William Ireland*, *Thomas Pickering*, and *John Grove* under the Cuſtody of Sir *Richard How*, Kt. Sir *John Chapman* Knight, Sheriffs of the County of *Middleſex* aforeſaid, into whoſe Cuſtody, for the Cauſe aforeſaid before that were committed, being there brought to the Bar in their proper Perſons, and immediately being ſeverally ſpoken unto concerning the Premiſſes above charged upon them, how they would acquit themſelves thereof; the aforeſaid *William Ireland*, *Thomas Pickering*, and *John Grove* did ſay that they were not thereof guilty, and for the ſame, for good and bad, they ſeverally put themſelves upon the Country, and by a certain Jury of the Country on that behalf, in due manner impannel'd, ſworn and charged, then and there, in the ſame Court before the Juſtices of Goal-delivery aforeſaid were tryed, and that upon that Tryal between our ſaid late Sovereign Lord the King, and the aforeſaid *William Ireland*, *Thomas Pickering*, and *John Grove* at *London* aforeſaid, to wit, at *Juſtice-Hall* in the *Old Bailey* aforeſaid, in the Pariſh and Ward aforeſaid, the Defendant *Titus Otes*, by the Name of *Titus Otes*, late of the Pariſh of St. *Sepulchre* aforeſaid, in the Ward aforeſaid, Clerk, was a Witneſs produced on the behalf of our late Sovereign Lord the King upon the Tryal aforeſaid, and before the aforeſaid Juſtices of Goal-delivery in the Court aforeſaid, then and there held, upon the Holy Evangeliſts of God, to ſpeak and teſtify the Truth, the whole Truth, and nothing but the Truth, of, and in the Premiſſes between our ſaid late Sovereign Lord the King, and the aforeſaid *William Ireland*, *Thomas Pickering*, and *John Grove*, put in Iſſue, was duely ſworn, and that he, the aforeſaid *Titus Otes*, then and there, in the Court of Goal-delivery aforeſaid, upon his Oath aforeſaid, upon the Indictment aforeſaid, at the Pariſh and Ward aforeſaid, by his own proper Act and Conſent, of his moſt wicked Mind, falſly, voluntarily, and corruptly did ſay, depoſe, ſwear, and to the Jurors of the Jury aforeſaid, then and there ſworn, and impannel'd to try the Iſſue aforeſaid, between our ſaid late Sovereign Lord the King, and the aforeſaid *William Ireland*, *Thomas Pickering*, and *John Grove*, did give in Evidence, that there was a traiterous Conſult of Jeſuits that were aſſembled at a certain Tavern, called the *White Horſe* Tavern in the *Strand*, (in the *White Horſe* Tavern in the *Strand*, in the County of *Middleſex* aforeſaid, meaning) upon the four and twentieth Day of *April*, in the Year of our Lord 1678. At which Conſult, *Whitebread*, *Fenwick*, *Ireland*, (the aforeſaid *Thomas White*, aliàs *Whitebread*, *John Fenwick*, and *William Ireland*, meaning) and he the ſaid *Titus Otes*, were preſent, and that the Jeſuits aforeſaid did ſeparate themſelves into ſeveral leſſer Companies, and that the Jeſuits aforeſaid came to a Reſolution to murder the ſaid our late Lord the King, and that he, the ſaid *Titus Otes*, did carry the Reſolution aforeſaid from Chamber to Chamber,

and

and did ſee that Reſolution ſigned by them (the aforeſaid Jeſuits meaning) whereas in truth and indeed, the aforeſaid *Titus Otes* was not preſent at any Conſult of the Jeſuits at the *White Horſe* Tavern aforeſaid in the *Strand*, in the County of *Middleſex* aforeſaid, upon the 24th of *April*, in the Year of our Lord 1678. nor did carry any Reſolution to murder our ſaid late Lord the King, from Chamber to Chamber by any Perſons to be ſigned; and ſo he, the aforeſaid *Titus Otes*, on the 17th Day of *December*, in the thirtieth Year aforeſaid, at the *Juſtice-Hall* aforeſaid, in the Court aforeſaid, upon the Tryal aforeſaid, upon the Indictment aforeſaid, between our ſaid late Lord the King, and the aforeſaid *William Ireland*, *Thomas Pickering*, and *John Grove*, ſo as aforeſaid, had by his own proper Act and Conſent, and of his moſt wicked Mind, falſly, voluntarily, and corruptly in Manner and Form aforeſaid, did commit voluntary and corrupt Perjury, to the great Diſpleaſure of Almighty God, in manifeſt Contempt of the Laws of this Kingdom of *England*, to the Evil and Pernicious Example of all others in like caſe offending, and againſt the Peace of our ſaid late Sovereign Lord the King, his Crown and Dignity. Upon this Indictment he has been arraign'd, and thereunto hath pleaded not Guilty, and for his Tryal hath put himſelf upon the Country, and His Majeſty's Attorney General likewiſe, which Country you are, your Charge is to enquire, whether the Defendant be guilty of this Perjury and Offence whereof he is now indicted, or whether not guilty: If you find him guilty, you are to ſay ſo, if you find him not guilty, you are to ſay ſo, and no more, and hear your Evidence. *Cryer*, make Proclamation.

Otes. Hold, Sir, I beg one Favour of your Lordſhip, to give me leave to have that part of the Record, wherein I am ſaid to have ſworn ſuch and ſuch things, read diſtinctly in Latin.

L. C. J. Let it be read in Latin.

Cl. of Cr. *Juravit & jur' jurat' prædict' ad tunc & ibidem jurat' & impanelat' ad triend' exitum prædict' inter dict' Dn'um noſtrum Regem & præfat'* Will'm Ireland, Thomam Pickering, & Johannem Grove *in Evidentiis dedit, quod fuit proditoria Conſultatio, Anglice, Conſult' Jeſuit' qui Aſſemblat' fuer' apud quandam Tabernam, vocat'* the White Horſe Tavern *in le Strand*, (*Le* White Horſe Tavern *in le Strand in Com' Mid' prædict' innuendo*) *ſuper viceſimum quartum diem April' Ann. Dom. milleſimo ſexcenteſimo, ſeptuageſimo octavo, ad quam quidem Conſultationem*, Whitebread, Fenwick, Ireland *prædict'* Thomam White *aliàs* Whitebread, Johannem Fenwick, & Will'm Ireland *innuendo*) *& præfat'* Titus Otes *fuer' præſent' & quod Jeſuitæ prædict' ſeſe ſeparaver' in ſeperales minores Conventus quodque Jeſuitæ prædict' venerunt ad Reſolutionem ad murdrand' dictum Dn'um Regem, & quod ipſe idem* Titus Otes *portavit Reſolutionem prædict' à Camerâ ad Cameram, & videbat Reſolutionem illam ſignat' per ipſos (præfat' Jeſuitas innuendo.)* That is the Perjury that you are ſaid to have ſworn.

Otes. Pray go on, Sir, *Ubi revera*———

Cl. of Cr. *Ubi revera & in prædict'* Titus Otes *non præſens fuit ad aliquam Conſultationem Jeſuit' apud le* White Horſe Tavern *prædict' in le Strand, in Com' Mid' prædict' ſuper viceſimum quartum diem Aprilis Anno Domini milleſimo ſexcenteſimo ſeptuageſimo octavo, nec portavit aliquam Reſolutionem ad dict' Dn'um Regem murdrand' à Camerâ ad Cameram per aliquas Perſonas ſignand'.*

Mr. *Juſt. Withins.* Now, you have read it, go on, Sir, to make your Proclamation.

Cl. of Cr. Cryer, make an Ho-yes.

Cryer. Ho-yes, If any one can inform our Sovereign Lord the King, the King's Serjeant, the King's Attorney General, or this Inqueſt now taken concerning the Perjury and Offence, whereof the Defendant *Titus Otes* ſtands indicted; let them come forth, and they ſhall be heard, for now he ſtands upon his Diſcharge.

Mr. *Phipps.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury———

Otes. My Lord, I deſire your Lordſhip and the Court would be of Counſel for me in one thing, which I take to be a Fault and Error in my Indictment.

L. C. J. Look you, Mr. *Otes*, Whatever you have to ſay of that nature, you muſt not ſpeak to it now, you will have your time as to that hereafter, in caſe you be Convicted.

Otes. My Lord, I have but one ſmall Exception to open to you.

L. C. J. We are now upon the Fact only.

Otes. My Lord, I beg you would give me leave only to tell you of a Miſtake in the Indictment, which I hope, when I have opened, will ſatisfy your Lordſhip, that it ought not to be put upon me or the Court to try this Cauſe; or to be ſure, if there ſhould be a Conviction, I hope I may move an Arreſt of the Judgment.

L. C. J. So I tell you you may, but not now.

Otes. Good my Lord, hear me but a few Words, the Indictment charges me to have given ſuch and ſuch Evidence, that there was ſuch a Conſult of the Jeſuits at the *White Horſe* Tavern in the Strand, the 24th of *April* 1678. that the Jeſuits did afterwards divide themſelves in ſeveral leſſer Companies, that they came there to a Reſolution to murder the late King, and that I ſwore that I carried that Reſolution from Chamber to Chamber, and ſaw the Reſolution ſigned by them, ſo the Word is, *Signat'*; now the Perjury aſſigned is, that I was not preſent at that Conſult, nor did carry the Reſolution from Chamber to Chamber to be ſigned, and there the Word is *Signand'*; now I conceive if *Signat'* be the Word, that is uſed in ſetting forth the Oath that I made, The Aſſignment of the Perjury ought to follow that Form, and the Word there ought to be *Signat'* too, being *Signand'*, I take that to be an Error.

L. C. J. Look, that is not proper at this time, as I told you at firſt, but withal I do not think there is any great Matter in what you ſay.

Mr. *At. Gen.* Either I do not underſtand Mr. *Otes*, what he means by the Objection, or he will find himſelf much miſtaken in it.

L. C. J. Well, well, We have nothing to do with that now, go on with the Cauſe.

Mr. *Phipps.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, this is an Indictment againſt *Titus Otes* for Perjury, which Indictment ſets forth, that *Thomas White*, aliàs *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*

Pickering and *John Grove*, the 16th of *December*, in the thirtieth Year of the late King, at the *Old Bailey*, were indicted of High Treaſon for Conſpiring the Death of the King, and that *Ireland*, *Pickering*, and *Grove* were tryed the 17th of *December* in that Year, and upon that Indictment *Titus Otes* was produced as a Witneſs on the behalf of the King againſt the ſaid *Ireland*, *Pickering* and *Grove*, being ſworn to give Evidence to the Jury that were impannelled and ſworn to try that Cauſe; he did ſwear and give in Evidence that there was a treaſonable Conſult of the Jeſuits at the *White Horſe* Tavern in the *Strand*, meaning the *White Horſe* Tavern in the *Strand*, in the County of *Middleſex*, the 24th of *April*, 1678. at which Conſult, *Whitebread*, *Fenwick*, and *Ireland*, and the ſaid *Titus Otes* were preſent, and that they ſeparated themſelves into ſeveral leſſer Clubs, and came to a Reſolution to murder the King, and that he, the ſaid *Titus Otes*, carried the ſaid Reſolution from Chamber to Chamber, to be ſigned by them, meaning the Jeſuits; whereas in truth and in fact, he, the ſaid *Titus Otes*, was not preſent at any ſuch Conſult, the four and twentieth of *April*, 1678. nor carried any ſuch Reſolution from Chamber to Chamber to be ſigned, and he, the ſaid *Titus Otes*, the 17th Day of *December*, in the thirtieth Year aforeſaid, at the *Old Bailey* aforeſaid, upon the Tryal aforeſaid, on the Indictment aboveſaid, between the King, and the ſaid *Ireland*, *Pickering*, and *Grove*; ſo as aforeſaid had by his own proper Act and Conſent of his moſt wicked Mind, falſly, voluntarily and corruptly in manner and form aforeſaid, did commit wilful and corrupt Perjury, and this is laid to be to the Diſhonour of God, in Contempt of the Law, to the evil Example of others in the like caſe offending againſt the King's Peace, Crown and Dignity; to this he has pleaded not Guilty, and that is the Iſſue that you are to try; if we prove him Guilty, we queſtion not but you will find him ſo.

Mr. *At. Gen.* May it pleaſe your Lordſhip, and you Gentlemen that are ſworn, I am of Counſel in this Cauſe for the King, and our Caſe ſtands thus; The Defendant ſtands indicted for corrupt and wilful Perjury, for what he ſwore at the Tryal of *Ireland*, and that which he ſwore was this, in order to convict the Priſoners then at the Bar of the High Treaſon they were accuſed of; *Otes* did ſwear, that upon the 24th of *April*, 1678. there was a Conſult of Jeſuits held at the *White Horſe* Tavern in the *Strand*, where *Ireland* and ſeveral other Jeſuits were preſent, and their Buſineſs was to conſult how they might murder and deſtroy the King, and ſubvert the Government, and there they came to a Reſolution that *Pickering* and *Grove* ſhould kill the King; and he was preſent at the Debate, and he carried the Reſolution from Chamber to Chamber, where they had ſeparated themſelves in leſſer Numbers; and there he ſaw the Reſolution ſigned; and this is the Matter that he ſwore, upon which this Indictment is founded. And, Gentlemen, we do charge that this was a falſe Oath, and in a point expreſsly to the Matter then in Controverſy before that Court, for we ſhall prove he was beyond Sea at that time, and on that day, and in order to his Conviction we ſhall make out by clear Evidence to you as full and plain as ever was given, that from *Chriſtmas* before, which was in *December*, 1677. till *Midſummer* after, which was the latter end of *June*, 1678. *Otes*, that ſwears this Conſult in *April*, was at St. *Omers*, and in all that time was not abſent from the College there above 24 Hours, and that but once only, which was in *January* when he played Truant, and went to *Watton*, which is about two Miles from St. *Omers*, but otherwiſe he was all along in the College. And, my Lord, that we may give ſuch a ſatisfactory Evidence as may make it undeniably plain to the Jury, I deſire your Lordſhip, and you Gentlemen of the Jury, would pleaſe to obſerve ſome particular Periods of Time, that I ſhall open for the better clearing our Evidence methodically; and the firſt Period of Time is from Mr. *Hilſley*'s leaving St. *Omers*; now he left St. *Omers* the 14th of *April* Old Stile, which is the 24th of *April* New Stile, and then when he came away, he left *Otes* there at St. *Omers*; Mr. *Hilſley*, when he came into *England*, in *Kent* in his Journey to *London*, meets one Mr. *Burnaby*; this was I ſay in Mr. *Hilſley*'s Return into *England* from St. *Omers*, which he left ten Days before the time aſſigned by *Otes* for this Conſult, at the *White Horſe* Tavern in the *Strand*, and the next Period is, Mr. *Burnaby* was going to St. *Omers*, and there he arrives in Time the 21ſt of *April* Old Stile, and there he finds Mr. *Otes*, who ſwore he was then in *London*; and by the Evidence you will hear, that Mr. *Otes*, according to his uſual Cuſtom, and according to that Virtue he is endowed with, very boldly inſinuates himſelf into this Gentleman's Company, as he uſes to do with all new Comers; and you will hear from Mr. *Burnaby* himſelf, and many others, that from the time of his coming to St. *Omers*, which was the 21ſt of *April*, he convers'd with Mr. *Otes* ſeveral Days, every Day till after the 24th of *April* Old Stile at St. *Omers*. Then, my Lord, another Period of Time that I would deſire you to obſerve, is, from Mr. *Pool*'s coming from St. *Omers*, which was in Time the 25th of *April* Old Stile, the very Day after the Day that this Conſult was ſworn to be on, and when he came from St. *Omers*, you will hear from many Witneſſes that he left *Otes* there, and there he ſtayed. For, my Lord, we ſhall, beſides theſe particular times of theſe Gentlemen's coming over who left him there, prove the very Day when he left St. *Omers*, and that was the end of *Midſummer-day* following, which was the 23d of *June*; then was the time when *Otes* came firſt from St. *Omers* to *England*, and we ſhall prove he took his leave of them then: My Lord, We have many other Circumſtances that will unanſwerably ſtrengthen this Evidence, and ſhew that our Witneſſes teſtify nothing but the Truth; one particularly is this; this Gentleman being a Novice of the Houſe, was Reader in the *Sodality*, as they call it, we ſhall prove that, for every *Sunday* and *Holiday* throughout all *April* and *May*, he did officiate in that place, and did read to the Society according as the Cuſtom there is; and we ſhall prove another particular thing, that upon this 24th of *April* he was in the College, by a particular Circumſtance, and that by ſeveral Witneſſes; ſo that, Gentlemen, n[illegible] any long Opening of the

the Matter, if we prove this that I have opened, as we ſhall with a Cloud of Witneſſes, it will make an end of the Queſtion. We ſhall firſt call our Witneſſes to prove that he ſwore at that Tryal, that ſuch a Conſult was, and he was at it, and then if we prove that he was at another Place beyond Sea, at ſuch diſtance that it is impoſſible for him to be here; I do not doubt but the Court and the Jury will conclude, he hath wilfully and corruptly forſwore himſelf; the ſaid effects of which we are all Witneſſes of; it was to take away the Lives of his fellow Subjects wrongfully; and it will appear to the World, he has been one of the greateſt Impoſtors that ever did appear upon the Stage, either in this Kingdom, or in any other Nation.

Mr. *Finch.* Mr. *Sol. Gen.* We will now go on with our Evidence, and prove all the Parts of the Indictment, and firſt produce the Record of the Tryal of *Ireland*, and then by Witneſſes, *Viva voce* that were preſent at that Tryal, we ſhall prove what he ſwore, and then prove that Oath of his to be falſe; ſwear Mr. *Swift.* [*Which was done.*

Where is the Record of *Ireland*'s Tryal?

Mr. *Swift.* Here it is, my Lord.

Mr. *Recorder.* Is that a true Copy, Sir?

Mr. *Swift.* Yes, I examined this from the Record, it is a true Copy.

L. C. J. Read it.

Mr. *At. Gen.* If Dr. *Otes* does deſire the whole may be read, let it be ſo; otherwiſe a Word of it may ſerve, it being only an Inducement.

Otes. Yes, I deſire it may be all read.

L. C. J. It muſt be read, if he will have it.

Mr. *Sol. Gen.* Well I ſubmit it, I did only offer it to ſave the time of the Court.

Otes. I would ſave the time of the Court too all that I can; but I think it may be material for me to have the whole read.

L. C. J. In God's name let it be read, we will not hinder you in any thing that may be for your Defence.

Cl. of Cr. Memorandum quod———

Mr. *At. Gen.* Now this long Record in Latin is read, I would fain know whether it be to any great purpoſe, but only to ſpend Time?

L. C. J. Nay, I think it has not been very edifying to a great many; do you think, Mr. *Otes*, that the Jury, who are Judges of this Fact, do underſtand it?

Otes. I cannot tell, may be they may, my Lord.

Mr. *Juſt. Withins.* Do you underſtand it your ſelf, Mr. *Otes*?

Otes. That's not any Queſtion here; but to oblige the Court and the Jury, I deſire it may be read in Engliſh too.

L. C. J. No, the Court underſtands it well enough, and they can tell the Jury what it is, it is only the Copy of a Record, to prove that *Ireland* was tryed for High Treaſon at the *Old-Bailey*, the 17*th* of *Dec.* 1678.

Mr. *Sol. Gen.* Now, my Lord, we will call our Witneſſes, to ſwear what *Otes* did at that Tryal ſwear: Pray ſwear Mr. *Foſter.* [*Which was done.*

Mr. *At. Gen.* Pray Mr. *Foſter*, will you acquaint the Court and the Jury, whether Dr. *Otes* was produced as a Witneſs at *Ireland*'s Tryal, and what he did there depoſe about a Conſult in *April* 78.

Mr. *Foſter.* My Lord, I was ſo unhappy as to be one of that Jury, by whom Mr. *Ireland*, Mr. *Pickering*, and Mr. *Groves* was try'd.

Jury-men. My Lord, we deſire that Mr. *Foſter* would lift up his Voice, for we cannot hear him.

Mr. *Foſter.* Truly my Lord, I have been very ſick of late, and am not now very well, and therefore cannot ſpeak louder than I do.

L. C. J. Go nearer the Jury, and ſpeak as loud as you can.

Mr. *Foſter.* My Lord, I ſay, I did ſee Mr. *Otes* produced as an Evidence at the Seſſions in the *Old Bailey*, where I was ſo unhappy as to be a Jury-man, when Mr. *Pickering*, Mr. *Ireland*, Mr. *Grove*, and Mr. *Whitebread* were try'd.

Mr. *At. Gen.* When was that?

Mr. *Foſter.* It was in *December* 78.

Mr. *At. Gen.* And what did *Otes* then ſwear?

Mr. *Foſter.* I did ſee Mr. *Otes* ſworn as an Evidence there, in behalf of the King, againſt the Priſoners; and he did then ſwear, that there was a Meeting of ſeveral Jeſuits at the *Whitehorſe* Tavern in the *Strand*, upon the 24*th* of *April* 78. and that Mr. *Whitebread*, Mr. *Ireland* and Mr. *Fenwick* were preſent at the Meeting, and there they did conſult the Death of the King, and the altering of the Religion; and ſome went away and others came; at laſt they reduced themſelves into ſeveral ſmaller Companies or Clubs, and they came to a reſolution, that *Pickering* and *Grove* ſhould go on to aſſaſſinate the King, for which the one was to have 1500 Pound, and the other 30000 Maſſes, and that this Reſolution was drawn up by one *Mico* (if I am not miſtaken in his Name) I have it in my Notes I then took of the Evidence; and he ſwore further, that he himſelf went with this Reſolution to ſeveral of their Chambers, he went to *Whitebread*'s Chamber, and ſaw *Whitebread* ſign it, he went to *Fenwick*'s Chamber, and ſaw *Fenwick* ſign it, and went to *Ireland*'s Chamber, and ſaw *Ireland* ſign it, and this was upon the 24*th* of *April* 78. My Lord, I am poſitive in this, for I had the good hap to take the Notes at the Tryal, for my own help, being a Jury-man, and I never looked upon thoſe Notes afterwards, till the printed Tryal came out, and then I compared my Notes with the Print, and found them to agree, and I have kept them ever ſince by me, and this is all under my own Hand as I have teſtified.

Otes. My Lord, may I ask this Gentleman a Queſtion?

L. C. J. Ay, if the King's Counſel have done with him.

Mr. *At. Gen.* Yes, my Lord, we have done with him.

Mr. *Foſter.* Pray my Lord, give me leave to ſit down, for I am not able to ſtand.

Otes. My Lord, I deſire you to ask that Gentleman, whether in the Oath that I took, I called it a Conſult, or I called it a Traiterous Conſult.

Mr. *Foſter.* Truly I think you called it both, if I am not miſtaken, but if your Lordſhip pleaſe, I will look upon my Notes.

L. C. J. You may look upon your Notes to refreſh your Memory, if you will.

Mr. *Juſt.*

Mr. *Juſt. Withins.* Truly I think if it were a Conſult to murder the King, it muſt be a traiterous one without doubt.

Otes. Sir, that is not to the Purpoſe, my Queſtion is, what I ſwore it was.

L. C. J. He tells you, he believes you did ſwear both ways.

Mr. *Foſter.* At that Conſult he ſaid ſuch a Reſolution was taken, and I think he called it a Traiterous Conſult.

Otes. If you pleaſe, I'll tell your Lordſhip the Reaſon, why I asked that Queſtion.

L. C. J. No, you may ſave your ſelf the trouble of that, you beſt know the reaſon of your own Queſtions; he has given you a ſatisfactory Anſwer.

Otes. Then if your Lordſhip pleaſe, ask him this Queſtion, whether I ſwore that all theſe three Jeſuits were preſent at one time, or how many of them?

L. C. J. You hear the Queſtion, what ſay you to it?

Mr. *Foſter.* Sir, you ſwore that *Ireland*, *Fenwick* and *Whitebread* were at that Conſult, but whether they were all three of them there at one time, I cannot tell, or which of them were together; but this you did ſwear, that they were there, and came to ſuch a Reſolution, and you carried it to all their Chambers, and did ſee them ſign it.

Mr. *Juſt. Withins.* He gives you a plain Account, what you did ſwear, I think, Mr. *Otes.*

Otes. Very well, my Lord, I would ask him a third Queſtion, if you pleaſe.

L. C. J. Ay, in God's Name ask him as many Queſtions as you will.

Otes. Whether did I ſwear that it was reſolved to kill the King at the *White Horſe* Tavern, or whether that Reſolution was made after they ſeparated themſelves into leſſer Clubs?

L. C. J. Mr. *Foſter*, this is his Queſtion, whether you did apprehend by what he ſwore, that he affirmed, the Reſolution to kill the King was made at the *White Horſe* Tavern, or afterwards when they were divided?

Mr. *Foſter.* They came to a Reſolution, you ſaid, at the *White Horſe* Tavern, and the Reſolution was there drawn up by one *Mico*, I think, and it was carried by you, for every one to ſign it from Chamber to Chamber; for I remember you were asked the Queſtion, whether you ſaw them ſign it, and you anſwered that you did carry it, and ſaw them ſign it.

Mr. *Juſt. Withins.* He ſpeaks very plain, Mr. *Otes.*

L. C. J. He anſwers your Queſtion very fully.

Otes. Ay, my Lord, ſo he does, I am glad of it.

L. C. J. Have you any more Queſtions to ask him?

Otes. I would ask him another Queſtion; whether I did ſwear, that I did carry this Reſolution from Chamber to Chamber to be ſigned, or that I carried it from Chamber to Chamber and ſaw them ſign it?

Mr. *Foſter.* You did ſwear, that you carried the Reſolution from Chamber to Chamber, and ſaw them ſign it.

Otes. But did you remember it ſo particularly, as to ſay which you ſwore, whether I did carry it to be ſigned, or carried it, and ſaw them ſign it?

Mr. *Foſter.* You ſaid, you carried it to be ſigned, and you ſaw it ſigned.

L. C. J. He tells you for a Satisfaction in that Point, that he does remember you did ſwear it both ways.

Otes. He does ſay ſo indeed, but whether it was ſo or no, is a doubt.

L. C. J. That will be a Queſtion by and by it may be, if he be in the wrong, I ſuppoſe you can rectify him.

Otes. We are now my Lord upon my Oath, and therefore it concerns me to enquire whether I ſwore as is laid in the Indictment.

L. C. J. You ſay right, it does ſo.

Otes. And I the rather ask theſe Queſtions, my Lord, becauſe it is ſix Years ago ſince that Tryal.

L. C. J. I hope you have not forgot what you ſwore, have you?

Otes. My Lord, I think it is fair for me to ask the Witneſſes what they remember after ſo long a time.

L. C. J. 'Tis very fair, no body ſays any thing to the contrary.

Otes. Then my Lord, I hope I may ask this Gentleman how he comes to remember all this after ſo long a time?

L. C. J. He has told you already, but tell it him again Mr. *Foſter.*

Mr. *Foſter.* Truly it is ſo long ago, that had I not taken all theſe Notes at the Tryal, I had not been able to have given ſo good an Account.

L. C. J. 'Tis a very good reaſon.

Otes. 'Tis ſo my Lord, I have ſubpœna'd others of the Jury, and they will, I ſuppoſe, give you as good an Account.

L. C. J. Have you done with him then?

Otes. I have one Queſtion more to ask Mr. *Foſter*, and that is, whether I ſwore they met all in one Room, at the *White Horſe* Tavern, or in more than one?

Mr. *Foſter.* You ſwore they were in ſeveral Rooms.

Otes. Then I would ask him this Queſtion, my Lord, whether he were then ſatisfied that *Ireland* was guilty of the High Treaſon he was then indicted?

L. C. J. The meaning of the Queſtion is, I ſuppoſe, whether you did believe Mr. *Otes* at that time.

Mr. *Foſter.* Yes, my Lord I had no reaſon to the contrary.

L. C. J. But I would ask you a Queſtion then Mr. *Foſter.* Do you believe him now? Do you think, Mr. *Otes*, he would have found him guilty, if he had not believed the Evidence againſt him?

Otes. We know how Juries have gone alate.

L. C. J. Ay, very ſtrangely indeed, Mr. *Otes*, and I hope ſo as we ſhall never ſee them go again.

Mr. *Foſter.* My Lord, I have lived ſo long in the City of *London* without any Blemiſh, that I hope it will not be thought I would give corruptly a Verdict againſt my Conſcience.

Otes. My Lord, I ſpeak of later Times than *Ireland*'s Tryal.

L. C. J. He is an honeſt Man, I know him.

Otes. Good my Lord, be pleaſed to hear me.

L. C. J. Nay, you ſhall hear me, as well as I ſhall hear you; I'll aſſure you that, Mr. *Otes* in plain *Engliſh*, ask as many Queſtions of the Witneſſes as you will, that are proper to be asked; but I'll have no Deſcants, nor Reflections: I know him, and he is very well known in the City of *London*, he is a Man of very conſiderable Quality, and very good Repute.

Otes. I beſeech your Lordſhip to forgive me, if I miſtake in my Queſtions, I do aſſure you I deſign no Reflections on Mr. *Foſter*.

L. C. J. Ask what Queſtions you will, but do not reflect.

Otes. I deſire to ask Mr. *Foſter* one Queſtion more, and that is, that he would be pleaſed to tell the reaſon why at the beginning of his Evidence he ſaid, it was his unhappineſs to be a Juryman at that time?

Mr. *Foſter.* Really Sir, I think it not a happineſs for any Man to be of a Jury, where the Life of a Man is in Queſtion. I aſſure you for my ſelf, I never accounted it ſo, and if I could have avoided it, I ſhould have been very glad to have been excuſed.

Otes. I have done with Mr. *Foſter*.

Mr. *At. Gen.* My Lord, thus we prove what Mr. *Otes* ſwore at the Tryal, which Mr. *Otes* himſelf will not deny, for the Fact, Mr. *Otes* has printed in his Narrative, as we have now proved it.

Otes. I intend to produce ſome others of the Jury-men by and by.

Mr. *Sol. Gen.* Now we ſhall call our Witneſſes to prove, that what he then ſwore was falſe.

Mr. *At. Gen.* We call no more to the Point, what he did ſwear; but go on to diſprove what he did then ſwear.

Otes. My Lord, I would put this Queſtion to the Court, whether this be a Proof ſufficient for this Point?

L. C. J. I leave that to the Jury, it is a Point of Fact that they are to try.

Otes. I beſeech your Lordſhip, that the Court would be pleaſed to give me an Anſwer.

L. C. J. If you ask impertinent Queſtions, the Court is not obliged to anſwer them. Go on Mr. Attorney.

Mr. *At. Gen.* Call *Martin Hilſley*, Eſq; and *Henry Thornton*, Eſq; Swear Mr. *Hilſley*. [*Which was done.*

Come Mr. *Hilſley*, pray acquaint my Lord and the Jury what time you came from St. *Omers*, in the Year 78.

Mr. *Hilſley.* My Lord, I came from St. *Omers*, the 24*th* of *April* New Stile, where I left the Priſoner, Mr. *Otes*.

L. C. J. From whence did you come, ſay you?

Mr. *Hilſley.* From St. *Omers* the 24*th* of *April*, New Stile.

L. C. J. What Year?

Hilſley. In the Year 78. that is the fourteenth of *April* here, and the three and twentieth of *April* New Stile; I ſaw the Priſoner at St. *Omers*, and went to School with him, and on the four and twentieth I came from St. *Omers*, and went to *Calais*, and from thence into *England*; but he was never in my Company all the while I was coming for *England*, though he ſwore he came over with me.

L. C. J. The three and twentieth of *April* you ſay you ſaw him?

Mr. *Hilſley.* Yes, I was with him, that was the Day before I came from St. *Omers*.

L. C. J. You left him there the Day before you came away, you ſay?

Mr. *Hilſley.* I did not ſee him that Morning that I came away, but here are others that did.

Mr. *At. Gen.* Was he a Scholar there?

Mr. *Hilſley.* Yes, my Lord, he was.

Mr. *At. Gen.* Did you know him very well?

Mr. *Hilſley.* Yes, my Lord, I did.

Mr. *At. Gen.* Did he come over into *England* with you?

Mr. *Hilſley.* My Lord, I came from St. *Omers* to *Calais*, and never ſaw him, from *Calais* to *Dover*; I never ſaw him from *Dover* to *London*, I never ſaw him all the way, and I am confident, he was not in the ſame Ship I came over in, for I ſhould have ſeen him if he had.

Mr. *At. Gen.* Was he for ſome time before that conſtantly at St. *Omers*?

Mr *Hilſley.* We went perpetually to School together.

L. C. J. What time did you take ſhipping after you went from St. *Omers*?

Mr. *Hilſley.* The very next Day; the Day I went from St. *Omers* was on the *Sunday* morning: On *Monday* I took ſhipping from *Calais* to *Dover*, and I arrived at *England* at Ten of the Clock the ſame Night.

Otes. When does he ſay he arrived in *England*?

L. C. J. He ſays, he went from St. *Omers* on the *Sunday*, he came that Night to *Calais*, and the next Day went on Board from *Calais*, and came that Night to *Dover*, that was *Monday* night.

Mr. *Hilſley.* Yes, I came that Night to *Dover*, and I lay there that *Monday* night, the next Day was the 26*th* of *April* New Stile.

Mr. *At. Gen.* Where came you then, from thence?

Mr. *Hilſley.* I came as far as *Bockton-ſtreet*, and there I lay 4 or 5 Days, and then I came to *Cittenbourn*, and by long Sea from thence to *London*.

Mr. *At. Gen.* Where did you meet Mr. *Burnaby*?

Mr. *Hilſley.* I met him hard by there, at a Relations of mine.

Mr. *At. Gen.* Do you remember what Day you met him?

Mr. *Hilſley.* I think it was a Day or two before I came away from thence to *London*.

Mr. *Juſt. Withins.* Had you any Diſcourſe with Mr. *Otes*, about your coming into *England*?

Mr. *Hilſley.* Nothing at all, Sir *Francis*, that I remember.

L. C. J. What time did you come to *London*?

Mr. *Hilſley.* I came within a few Days to *London*, I ſtayed 4 or 5 Days there by the way; and I ſaw Mr. *Burnaby* within 4 Days, I think, after I came into *England*. It was about *Monday* ſeven-night after I came from St. *Omers*, that I came to *London*.

Mr. *At. Gen.* That was *May* New Stile.

Mr. *Hilſley.* That is their Stile. It was ſo.

Mr. *Sol. Gen.* In our Stile it was the 21. of *April*.

Mr. *Hanſeys.* Pray did you give an account to any body, after you came to *London*, that

that you left *Otes* at St. *Omers* when you came away.

Mr. *Hilsley*. What say you, Mr. *Hansey*s, I did not well understand your Question.

L. C. J. Then mind me, Sir, It was asked of you whether you had any Discourse with any body, after you came hither, that you had left Mr. *Otes* behind you at St. *Omers*?

Mr. *Hilsley*. I did tell some Persons I left an *English* Parson there, at the same time I came away.

L. C. J. Did you not name him, who it was?

Mr. *Hilsley*. Yes, I named him by the Name he went by there, and that was *Sampson Lucy*.

Mr. *At. Gen.* To whom did you tell it?

Mr. *Hilsley*. To one Mr. *Osbourn*.

Mr. *Sol. Gen.* Did he go by that Name of *Sampson Lucy* in the College?

Mr. *Hilsley*. Yes, he did sometimes, he had three or four Names, he was called sometimes *Titus Ambrosius*.

Otes. Now, my Lord, I desire I may ask that Gentleman a Question or two.

L. C. J. Ay, if they have done with him.

Mr. *At. Gen.* We have, my Lord.

L. C. J. Then ask him what you will.

Otes. I desire, my Lord, that you would be pleased to ask that Gentleman what Religion he is of; for it is a fair Question, and an equitable one, and that which very nearly concerns me; and I desire to know where he lives.

L. C. J. What Religion are you of, Sir?

Mr. *Hilsley*. I am a Roman Catholick.

L. C. J. Where do you live?

Mr. *Hilsley*. I live in *London*, I am of the *Inner Temple*.

L. C. J. He says that he is a Roman Catholick, and Lives in *London*.

Otes. Pray be pleased, my Lord, to ask him when he went to St. *Omers* first, and how long he stayed there?

Mr. *Hilsley*. My Lord, I was there about six Years, I presume it was about the Year 1672. when I went there first.

Otes. Pray ask him what he did there, what was his Business?

Mr. *At. Gen.* That is not a pertinent Question at all, with submission, my Lord.

Otes. I beseech you, Mr. Attorney, give me leave to ask my own Questions.

L. C. J. Ay, but you must ask fair and pertinent Questions.

Otes. My Lord, I would know what was his Employment there at St. *Omers*?

Mr. *Hilsley*. I know not my self of any particular Employment I had, any more than any of the rest that were there.

L. C. J. But, Mr. *Otes*, you must not ask any such Questions; what know I, but by asking him the Question, you may make him obnoxious to some Penalty, you must not ask him any Questions to ensnare him.

Otes. My Lord, It tends very much to my Defence to have that Question truly answered.

L. C. J. But if it tends to your Defence never so much, you must not subject him to a Penalty by your Questions.

Otes. The nature of my Defence requires an Answer to that Question.

L. C. J. But shall you make a Man liable to Punishment, by ensnaring Questions? If a Man should ask you what Religion you are of,——

Otes. My Lord, I will tell you by and by my Reason, and I hope a good one, why I ask it.

L. C. J. I do not believe you can have any Reason, but to be sure we must not suffer any such entangling Questions to be asked.

Otes. Pray ask him, my Lord, when I came to St. *Omers*?

L. C. J. When did *Otes* come to St. *Omers*?

Mr. *Hilsley*. As well as I remember, he came to St. *Omers* either the latter end of *November*, or the beginning of *December*, in the Year 1677. I think it was that Year.

Otes. I desire you would ask him, whether they were not Priests and Jesuits that govern'd that House?

L. C. J. What a Question is that, I tell you 'tis not fit to be asked.

Otes. I demand an Answer to it, upon the Oath he has taken.

L. C. J. And I tell you, upon the Oath you have taken, you are not bound to answer any such Question.

Otes. Good my Lord, let my Questions be answered.

L. C. J. No, Sir, they shall not: How now, do not think to put Irregularities upon us, if you will behave your self as you ought to do, and keep to that which is proper, well and good?

Otes. If your Lordship pleases, I think this very proper for me.

L. C. J. What, to ask such improper Questions as these are?

Otes. Truly, my Lord, I think they are fit Questions to be asked.

L. C. J. But we are all of another Opinion.

Otes. My Lord, I desire to know, whether they are not set on by their Superiours to do this?

L. C. J. That is not a fair Question neither.

Otes. Give me leave to make my Defence, my Lord, I beseech you.

L. C. J. Ay, in God's Name; but I pray you then make it in a regular and becoming way; for I know of no Privilege you have more than other People, to use Witnesses as you do.

Otes. My Lord, I look upon my self as hardly used in the Case.

L. C. J. I care not what you look upon your self to be, if you will ask Questions, ask none but fair Questions, and while you keep within Bounds you shall be heard as well as any of the King's Subjects; but if you will break out into Questions that are impertinent, extravagant, or ensnaring, we must correct you, and keep you within proper Limits.

Otes. Then, my Lord, I ask whether he was not a Witness at the Tryal of the five Jesuits, and at *Langborn*'s Tryal?

L. C. J. Ay, that is a proper Question, what say you to't, Sir?

Mr. *Hilsley*. I was so, Sir.

Otes. Pray, my Lord, ask him what Credit he received at those Tryals?

L. C. J. What a Question is that to ask any Man!

Otes. My Lord, I think it is a fair Question.

L. C. J. No, indeed, it is not a fair one at all.

Otes. My Lord, I desire to know what induces him to come here as a Witness now, since it appears that now he comes to give an Evidence that he gave six Years ago, and was not believed?

Mr. *Hilsley.* My Lord, I am subpœna'd.

L. C. J. He has given you an Answer to the Question, tho' I think it was an idle Question, and not at all to the purpose.

Otes. It may be he may have some particular reason to induce him to it now.

L. C. J. Well, he tells you he came because he was subpœna'd, and that is sufficient: He is not compellable to be a Witness, unless he be subpœna'd; but if a Man will come without a Subpœna, and give Evidence in a Cause; that is no Objection to his Testimony.

Otes. My Lord, I desire to know of him, whether he is to have any Reward for swearing in this Cause?

L. C. J. What say you, Sir, are you to have any Reward for your Evidence?

Mr. *Hilsley.* None at all as I know of, my Lord, I assure you.

Mr. *Just. Withins.* He is not paid for his Evidence, Mr. *Otes.*

Otes. If he be or be not, I cannot tell, nor do I know who ever was paid for it.

L. C. J. Have you any more Questions to ask him?

Otes. Pray my Lord, I desire to know what was the occasion of his coming away from St. *Omers*?

Mr. *Hilsley.* I had finished my Studies.

Otes. Pray, my Lord, be pleased to ask him, if he never heard of any Consult of the Jesuits here in *England*, in the Month of *April* 78. and from whom he did hear of it?

Mr. *Hilsley.* I did hear of it among the rest of the Students of the College.

L. C. J. What did you hear of?

Mr. *Hilsley.* I did hear of a Consult of the Fathers in *April* 1678.

Mr. *At. Gen.* Yes, there was, but not such an one as Mr. *Otes* speaks of, nor was he at it.

Mr. *Just. Holloway.* For what was that Consult, I pray you?

Mr. *Hilsley.* It was nothing but a Triennial Congregation about the Affairs of the Society.

L. C. J. What were they to do there?

Mr. *Hilsley.* My Lord, I was informed among them there, that it was only what they used to have once in three Years for ordinary Affairs.

Otes. My Lord, He pretends to tell when I came thither, I desire to know of him from what time it was he saw me there, and how often?

Mr. *Hilsley.* Generally every day, as near as I can remember, I think, Mr. *Otes*; you and I, Mr. *Otes*, went to School in the same place.

Otes. Pray, how many Days was I absent from thence in that time you were there?

Mr. *Hilsley.* You were there generally as often as I, I do not know whether ever you miss'd a Day or no.

Otes. Pray, my Lord, will you ask this Gentleman one Question more, whether he can particularly tell that he did see me every Day at St. *Omers*? For 'tis not enough for him to swear that he saw me there; but he ought to give an account how he comes to know it by some particular Circumstances.

L. C. J. He has given you several Circumstances of his Knowledge, for he says he was there all the while from your coming, till the 23d of *April* New Stile, that he came for *England*; he says he was a Scholar in the same Form and Class with you, and because he does not remember himself to have been absent, he does not remember you to be absent neither.

Mr. *At. Gen.* And he swears particularly to the very time he came over, which was *April* the 14th Old Stile.

Otes. Well, I have no more Questions to ask this Gentleman.

L. C. J. Then call another.

Mr. *Sol. Gen.* Cryer, Call Mr. *John Dorrel.*

[*Who was sworn.*

L. C. J. Look ye, Mr. Attorney, you did open things at the first for Method's sake by Periods of Time; the first was *Hilsley*'s coming over, the next was the meeting with *Burnaby*, now pray observe that Method, and call that *Burnaby* next.

Mr. *At. Gen.* My Lord, We shall call him by and by; but we have not done with this Business about *Hilsley*, we have some Witnesses that will give an Evidence to strengthen and back his Testimony. Come, Mr. *Dorrel*, What have you to say to this Matter?

Mr. *Dorrel.* My Lord, In *April* 1678. I came from *Brussels* to *England*, where presently after I came, I was with one Mr. *Osbourn* and my Mother, and there was a Discourse between my Mother and him about Religion.

L. C. J. Where was that?

Mr. *Dorrel.* It was here in *England.*

Mr. *At. Gen.* Now tell the time when that was.

Mr. *Dorrel.* As near as I can guess, it was the 15th or 16th of *April* Old Stile, in the Year 1678.

Mr. *At. Gen.* Well, Sir, go on with your Story.

Mr. *Dorrel.* My Mother was laughing at his Religion, and telling him some ridiculous Stories, and he replied, there are a great many that are so ignorant, that are bred up in the Religion of the Church of *England*, that they are forced to be sent to the Colleges abroad to be taught, even some of the Clergy of that Church, and particulariz'd in one *Sampson Lucy* aliàs *Otes*, that was a Scholar at that time at St. *Omers*, as he was assured by a Gentleman that was newly come from thence: My Mother is now sick, or else she would have been here, and would have testified the same I now do.

Mr. *Sol. Gen.* This Gentleman is a Protestant, Mr. *Otes.*

Otes. What is your Name, Sir, I pray?

Mr. *Dorrel.* My Name is *John Dorrel*, Sir.

Otes. Were you never at St. *Omers* a Student there?

Mr. *Dorrel.* I was there, but before your time, Doctor; I had not the Happiness to be there, while you were there.

Otes. I pray, Sir, what Religion are you of?

Mr. *Dorrel.* I am a Papist now.

Otes.

Otes. I desire, my Lord, the Court would be pleased to take notice of it, he owns he was reconciled to the Church of *Rome.*

Mr. *Dorrel.* Mr. *Otes,* To satisfy you, I went over when I was a Child of 12 or 13 Years old, and so was bred in that Perswasion.

L. C. J. Well, well, We all observe what he says.

Mr. *Sol. Gen.* Pray swear Mr. *Osbourn.*

[*Which was done.*

Mr. *At. Gen.* My Lord, We call'd this Person only to this Matter. Pray, Sir, will you give the Court and the Jury an account what Discourse you had with Mr. *Hilsley* about *Otes,* and pray, Sir, tell the time when it was.

Mr. *Osbourn.* My Lord, I went out of Town the 30th of *April,* the Year before the pretended Plot was discovered by Mr. *Otes,* and I met with Mr. *Hilsley* two or three Days before, and enquiring of him about the Affairs of St. *Omers,* he told me of a Minister of the Church of *England* that was come thither to be a Student there, who went under the Name of *Sampson Lucy,* but his right Name was *Otes*; I asked him what he pretended to; did he intend to be of that Order? He told me, he did believe that he would not be admitted for his irregular and childish Behaviour, and that he had left him in the College; and this I afterwards in Discourse told to Madam *Dorrel,* who is a Protestant, and to my Mother, who is since dead?

Mr. *At. Gen.* Will Mr. *Otes* ask this Gentleman any Questions?

Otes. I only ask him what Religion he is of?

L. C. J. What Religion are you of, Sir?

Mr. *Osbourn.* I am a Roman Catholick, my Lord.

Mr. *Sol. Gen.* Now, my Lord, we come to call Mr. *Burnaby.* Pray swear him.

[*Which was done.*

Mr. *At. Gen.* Mr. *Burnaby,* Pray will you acquaint my Lord and the Jury, of the time when you came from St. *Omers* to *England*; and when you met with Mr. *Hilsley*?

Mr. *Burnaby.* I met with *Hilsley* on the 18th of *April* Old Stile, in the Year 78. then I pursued my Journey the following Day to St. *Omers.*

L. C. J. Where did you meet him?

Mr. *Burnaby.* Between *Cittenbourn* and *Canterbury,* and afterwards I pursued my Journey from *Canterbury* to *Dover,* from thence to *Callis,* and from thence to St. *Omers.* I arrived at St. *Omers* the 21st of *April* Old Stile, which was the 1st of *May* New Stile, upon the 2d of *May* Mr. *Otes* was in my Company, I was walking in the Garden, and he came into my Company.

L. C. J. When was it?

Mr. *Burnaby.* The 2d of *May* New Stile, and the 3d of *May* again I went into the Garden, and there he was with me again, and the 5th of *May* I saw him again.

L. C. J. Where?

Mr. *Burnaby.* In the *Rhetorick* Form.

L. C. J. But where, in what place?

Mr. *Burnaby.* At St. *Omers.*

L. C. J. You speak of your own Knowledge, you are sure you saw him there at those times?

Mr. *Burnaby.* Yes, in the *Rhetorick* School and in the Garden.

Mr. *At. Gen.* What more do you know of him?

Mr. *Burnaby.* I saw him again the 8th of *May* New Stile, that is the 28th of *April* Old Stile; I mean by New Stile, that Stile which was used in the Place where I was then.

Mr. *At. Gen.* How long was he there before he went away?

Mr. *Burnaby.* I know he was there from the 2d of *May,* the Day after I came thither, to the 20th of *June,* and then I went away, or thereabouts.

L. C. J. Did you see him daily all that time?

Mr. *Burnaby.* Yes, from Day to Day he was not out of the House.

L. C. J. Were you a Scholar there with him?

Mr. *Burnaby.* Yes, I was.

L. C. J. What Year was that?

Mr. *Burnaby.* In the Year 78.

Mr. *At. Gen.* Mr. *Otes* may ask him what Questions he will.

Otes. My Lord, He says he went away; I desire to know whither he did go?

Mr. *Burnaby.* I went away the 20th of *June* from St. *Omers,* it is no matter whither I went.

Otes. I desire he may give an account what Religion he is of.

Mr. *Burnaby.* I am a Roman Catholick.

Otes. My Lord, I desire to know whether he be not of that Order?

L. C. J. That I will not ask him, I'll assure you.

Otes. Truly, my Lord, I think it is a very hard matter for me to have Jesuits admitted as Witnesses in such a Cause against me.

L. C. J. I have told you already, you are not to ask any Questions of any Witnesses that may subject them to any Penalty, or make them accuse themselves of any Crime.

Otes. My Lord, I humbly desire he would give an account, whether he were not admitted into the Society.

L. C. J. I tell you, he is not to be ask'd that Question.

Otes. He has own'd it before.

L. C. J. Do you take your Advantage of it, if you can prove it.

Otes. Then, my Lord, I desire to ask him, whether or no he did appear as a Witness at the Tryal of the five Jesuits?

Mr. *Burnaby.* No, my Lord, I did not.

Otes. Pray, my Lord, ask him whether he was not summon'd to appear then?

Mr. *Burnaby.* No, I was not.

Otes. Pray, my Lord, ask him what Reward he is to have for coming, and giving this Evidence?

L. C. J. Are you to have any Reward for being a Witness in this Cause?

Mr. *Burnaby.* None, my Lord, that I know of.

L. C. J. That was a proper Question to be asked, and you have a fair Answer to it.

Otes. Pray, Mr. *Burnaby,* by what Name did you go at St. *Omers?*

Mr. *Burnaby.* By the Name of *Blunt.*

Mr. *At. Gen.* And what Name did he go by there?

Mr. *Burnaby.* Who, Sir?

Mr. *At. Gen.* Mr. *Otes.*

Mr. *Bur-*

Mr. *Burnaby.* By the Name of *Sampſon Lucy.*

Otes. My Lord, I deſire you to ask him whether he did know of any Conſult that was to be held here in *London*, in *April* 78. and by whom he knew it?

L. C. J. What ſay you, Sir, did you know of any Conſult?

Mr. *Burnaby.* No, I neither heard of it, nor knew any thing of it.

Mr. *At. Gen.* Now my Lord, we ſhall go on to another Period of Time, and that is concerning *Pool.* Swear Mr. *Pool.* [*Which was done.*

Mr. *Sol. Gen.* Pray will you acquaint my Lord and the Jury, whether you knew Mr. *Burnaby* at St. *Omers.*

Mr. *Pool.* Yes, I did, Sir.

Mr. *Sol. Gen.* Do you know the time when he came to St. *Omers?*

Mr. *Pool.* No, I do not remember it.

Mr. *At. Gen.* When did you come over from St. *Omers?*

Mr. *Pool.* The 25*th* of *April.*

Mr. *At. Gen.* What Stile?

Mr. *Pool.* Old Stile.

Mr. *At. Gen.* In what Year?

Mr. *Pool.* In the Year 78.

Mr. *At. Gen.* Did you know Mr. *Otes* at St. *Omers?*

Mr. *Pool.* Yes, I did know that Gentleman there.

Mr. *At. Gen.* Was he at St. *Omers* that time you were there?

Mr. *Pool.* Yes, he was.

Mr. *Sol. Gen.* Did you leave him there when you came away?

Mr. *Pool.* Yes, I did leave him there when I came away.

Mr. *Sol. Gen.* Pray tell the Court ſome particular Thing why you remember it, and upon what account you came away.

Mr. *Pool.* Upon the Occaſion of my Brother's Death I came over, and I can tell ſeveral Particulars of my Journey, I came away upon the *Thurſday*, and I came to *London* upon the *Sunday* following.

Mr. *At. Gen.* You are ſure you left Mr. *Otes* there then?

Mr. *Pool.* Yes, I am ſure I did leave Mr. *Otes* there when I came away, and I came away thence the Fifth of *May* New Stile, the Twenty Fifth of *April* Old Stile.

Mr. *Sol. Gen.* Pray how long did you know Mr. *Otes* there?

Mr. *Pool.* I knew him there from *Chriſtmas* before that.

L. C. J. You were of the Colledge, were you not?

Mr. *Pool.* Yes, I was a Student there.

L. C. J. You are ſure he was there all the while?

Mr. *Pool.* I do not remember he was a Day abſent, and if he had gone away, particular notice would have been taken of it.

L. C. J. Did you ſee him there two or three Days before you came away.

Mr. *Pool.* I ſaw him that Morning I came away?

L. C. J. And what time before?

Mr. *Pool.* I ſaw him two or three Days before that.

L. C. J. Can you name any particular Days?

Mr. *Pool.* I ſaw him the firſt of *May*, and the ſecond of *May*, and the fifth of *May*, which was the 25*th* of *April* Old Stile; and then I came away.

L. C. J. Are you ſure you left him there, then?

Mr. *Pool.* I am ſure I left him there, I can ſwear it without any Difficulty at all.

L. C. J. What do you ask him, Mr. *Otes?*

Otes. I deſire to know what Religion he is of?

L. C. J. What Religion are you of?

Mr. *Pool.* I am a *Roman* Catholick.

Otes. I deſire your Lordſhip would ask him, whether he was a Witneſs at the Tryal of the 5 Jeſuits, or at *Langhorn*'s Tryal?

Mr. *Pool.* No, I was never an Evidence before in my Life.

Otes. Pray my Lord ask him, whether he was not admitted into the Sodality of the Virgin *Mary?*

L. C. J. No, indeed, I ſhall ask him no ſuch Queſtion.

Otes. Pray my Lord, let him anſwer it.

L. C. J. Prove what you can when it comes to your Turn, but ask him no entangling Queſtions.

Otes. He has made himſelf liable to a Penalty by being in that Seminary.

L. C. J. I hope a Man may be at St. *Omers*, and yet not be puniſhed for it, Mr. *Otes.*

Otes. It is my Defence to diſable the Witneſſes againſt me.

L. C J. But they muſt not be asked what may make them accuſe themſelves.

Otes. My Lord, it is hard that the Witneſſes ſhall not be made to anſwer my Queſtions.

L. C. J. Pray Sir be quiet, we have told you often enough already, you muſt not think to govern us, it muſt not be allowed.

Otes. My Lord, I deſire he may be asked then, what Reward he has to come, and ſwear in this Cauſe?

Mr. *Pool.* My Lord, I do not know that I am ſo much as to have my Charges born.

L. C. J. Are you to have any Reward?

Mr. *Pool.* No, my Lord, that I know of.

Otes. Pray my Lord, I deſire he may be ask'd, what was the Occaſion of Mr. *Hilſley*'s coming away from St. *Omers?*

Mr. *Pool.* Indeed I did not examine into the Occaſion at all, for I was never a Man that meddled or made on any Side, but lived quietly in the Colledge, and minded my Studies.

Otes. My Lord, I deſire your Lordſhip to ask him whether he did know of any Conſult of the Jeſuits in *April* 78. and from whom he knew it?

Mr. *Pool.* I know not of any particular Conſult, I heard ſomething in general of a Triennial Congregation, but I cannot ſpeak any thing of my own Knowledge.

Otes. My Lord, I deſire to know of him, if he can tell when I came to St. *Omers?*

L. C. J. Do you know when *Otes* came to St. *Omers?*

Mr. *Pool.* About *Chriſtmas*, as near as I can remember, it was the latter end of *November.*

Otes. How much before or after *Chriſtmas* was it?

Mr. *Pool.* I cannot tell exactly.

Otes. What Year was it in?

Mr.

Mr. *Pool.* In the Year 77.

Otes. I desire to know of him, my Lord, whether he saw me every Day at St. *Omers* at Dinner?

Mr. *Pool.* I cannot say, that ever I knew he was absent any one Day, never three Days I think I may affirm, but only when he was in the Infirmary.

Mr. *At. Gen.* That's the Place where they go when they are sick?

Otes. Pray, my Lord, ask him by what Name he went, when he was there in the College.

Mr. *Pool.* By the Name of *Killingbeck.*

Mr. *Sol. Gen.* By what Name did he go by, I pray you?

Mr. *Pool.* By the Name of *Sampson Lucy.*

Mr. *Sol. Gen.* Swear Mr. *Henry Thornton.*

[*Which was done.*

Mr. *At. Gen.* Mr. *Thornton,* Pray where were you in the Year 78?

Mr. *Thornton.* At St. *Omers,* my Lord.

Mr. *At. Gen.* Do you remember Mr. *Otes* there, do you know him?

Mr. *Thornton.* Yes, I know him very well.

Mr. *At. Gen.* When did he come thither?

Mr. *Thornton.* He came there about *Christmas* 77.

Mr. *At. Gen.* How long did he continue there?

Mr. *Thornton.* He staid there till St. *John Baptist's* Eve in *June* 78.

Mr. *At. Gen. Midsummer* you mean?

Mr. *Thornton.* Yes, the Eve of St. *John Baptist.*

Mr. *At. Gen.* What Stile?

Mr. *Thornton.* New Stile.

Mr. *Sol. Gen.* Did you see him there all the while?

Mr. *Thornton.* Yes, I did see him every Day, I believe, in the Refectory at Dinner time, and at Night in the Dormitory, where all the Collegians have their Beds: I lay over against him every Night, I saw him particularly upon the Day of *Hilsley's* Departure, which was the 24th of *April* New Stile, and I saw him the 1st of *May* New Stile, upon the coming of Mr. *Burnaby* to the College; and particularly again I remember him there the 2d of *May,* when my Schoolfellows exhibited an Action or Play.

Mr. *At. Gen.* Was Mr. *Otes* there then?

Mr. *Thornton.* Yes, I saw him present at it, and I know it by this particular Circumstance, there was a Scuffle between him and another about a Place to see the Play.

Mr. *Jones.* Did you see him the 23d of *April* Old Stile, that is, the 3d of *May* New Stile, which was the Day after your Play, that you remember?

Mr. *Thornton.* I do not remember that I did see him that Day, by any particular Circumstance, tho' I believe I did.

Mr. *Jones.* Do you remember when Mr. *Pool* came away from St. *Omers?*

Mr. *Thornton.* Yes, I do.

Mr. *Jones.* When was that?

Mr. *Thornton.* The 5th of *May* New Stile.

Mr. *Jones.* Was *Otes* at St. *Omers* at that time?

Mr. *Thornton.* Yes, he was there then, I am sure.

Mr. *At. Gen.* Was not he Reader there in the College?

Mr. *Thornton.* He was Reader in the Sodality, and to my knowledge, he did not miss once from the 24th of *April* New Stile, to the 24th of *May* New Stile, from being there, and reading in the Sodality.

L. C. J. What did he use to read?

Mr. *Thornton.* Some spiritual Book or piece of Divinity, or the like, as it was usual to have read every *Sunday* and *Holiday.*

L. C. J. And that is one reason why you conclude he was there all that while, because every *Sunday* and *Holiday* he was to read, and did read.

Mr. *Thornton.* Yes, my Lord.

Otes. Pray, my Lord, be pleased to ask this Gentleman, what Religion he is of?

Mr. *Thornton.* A Roman Catholick.

Otes. Where does he live?

L. C. J. Where do you live, Mr. *Thornton?*

Mr. *Thornton.* I am a *Northumberland* Man, that's my Country.

Otes. My Lord, I desire to know of him, when he did come from St. *Omers?*

Mr. *Thornton.* I came from St. *Omers,* my Lord, about two Years after that *Otes* went away from thence.

Otes. Pray, my Lord, be pleased to ask him, who it was that was Rector or Governour of that House or College?

Mr. *Thornton.* It was one Mr. *Richard Ashby.*

Otes. Pray, my Lord, be pleased to ask him, what School he was in there?

Mr. *Thornton.* I was in *Syntax,* my Lord.

Otes. Then, my Lord, I would ask him another Question, and that is this, whether he was not a Witness in behalf of the five Jesuits and Mr. *Langhorn?*

Mr. *Thornton.* No, I was not, my Lord.

Otes. My Lord, I desire to know, if he can tell the occasion of Mr. *Hilsley's* coming away from St. *Omers?*

Mr. *Thornton.* It never concerned me at all, and I never enquired into it.

Otes. Then, my Lord, I would ask him this Question, why he is so precise as to his Remembrance of what was done in *April* and *May,* when he does not give any account of any other time, nor did the other Witnesses?

L. C. J. Yes, but they do; they give you a particular account from the time of your coming thither, which was about *Christmas,* some say the latter end of *November,* or the beginning of *December,* they are not positive to any particular time, but thereabouts, and so from that time all along till *June.*

Otes. I beg your Lordship's Pardon, I did not hear that he said any such thing.

L. C. J. If you will, I'll ask him that Question again for your satisfaction.

Otes. If you please, my Lord.

L. C. J. Then mind what is said; Do you remember that *Otes* was there in *March* before, and in *February* before?

Mr. *Thornton.* Yes, I particularly remember in *March* before, he did read a ridiculous Book in the Sodality, and he was remarkable in the House by twenty ridiculous Passages.

Otes. I do acknowledge I did in *March* read a pleasant Book, called, *The Contempt of the Clergy.*

L. C. J. By whose Order did he read that Book in the Sodality?

Mr. *Thorn-*

Mr. *Thornton.* I do not know, whether it was by his own Election that he was Reader there, or by the Command of the Prefect of the Studies, that has the Care of the Students, and appoints them their Buſineſs.

Otes. Pray, my Lord, be pleaſed to ask him how long he was reſident at St. *Omers*?

Mr. *Thornton.* I was there ſeven Years.

L. C. J. You ſaid he was there in *June* till *Midſummer* Eve.

Mr. *Thornton.* Yes, he was ſo.

Otes. I own that I was there in *June*, but that was after I returned from *England.*

L. C. J. When do you ſay he left the College firſt?

Mr. *Thornton.* He never left the College from the time of his coming thither firſt till *Midſummer* Eve, only one time that he was at *Watton*, and that was but a Day or two at moſt, which is not a League out of Town.

L. C. J. Do you remember him there about *Chriſtmas* time?

Mr. *Thornton.* Yes, my Lord, very well.

L. C. J. When was it he went to *Watton*?

Mr. *Thornton.* About the latter end of *January*, as I do remember, and in *February* above *Shrovetide* I remember him particularly to be there.

L. C. J. Now, Mr. *Otes*, you ſee he ſpeaks to other times beſides *April* and *May*, and he brings, upon my Word, very notable Circumſtances.

Otes. He ſays he went to School with me there, I think, my Lord?

Mr. *Thornton.* No, I ſay he was in the ſame College.

L. C. J. But not in the ſame Claſſis, for it ſeems you were in the Rhetorick Form, and he in the Syntax.

Mr. *Thornton.* My Lord, He went there by reaſon of his Age, and upon no other account; he might have gone elſewhere with us who were of a lower Form, for any great Store of Learning he had.

L. C. J. You hear him, I ſuppoſe, Mr. *Otes*, he gives no great Commendation of your Scholarſhip.

Otes. That is nothing to this Queſtion; but pray, my Lord, be pleaſed to ask him, whether he did not hear of a Conſult of the Jeſuits held here in *England* in *April* 78?

L. C. J. What ſay you, Sir? Did you hear of any ſuch Conſult?

Mr. *Thornton.* Yes, my Lord, I did hear of a Triennial Congregation, ſuch as uſed to be held by them, but that did not belong to me to enquire into it.

Otes. My Lord, I deſire to know of whom he did hear it?

L. C. J. How do you know there was ſuch a Conſult, who told you of it?

Mr. *Thornton.* I heard of it in the Houſe, and I had read that it was the Cuſtom of that Society of People, to have ſuch a meeting once in three Years.

Mr. *At. Gen.* Pray for what purpoſe did they ſo meet?

Mr. *Thornton.* As I have been told, It was to ſend a Procurator to *Rome*, and for their managing their other Affairs, which concern'd their Society.

Mr. *Sol. Gen.* Have the Jeſuits uſually ſuch a Conſult once in three Years, Sir?

Mr. *Thornton.* I was never preſent at any ſuch Congregation, I was not capable of it.

L. C. J. But was it us'd to be ſaid ſo?

Mr. *Thornton.* Yes, my Lord, I have heard it ſaid ſo, and read of it.

L. C. J. Mr. *Otes*, Will you ask him any more Queſtions?

Otes. No, my Lord.

L. C. J. Well then, go on Mr. Attorney, and call another Witneſs.

Mr. *At. Gen.* Swear Mr. *William Conway.*

[*Which was done.*

Mr. *Sol. Gen.* Mr. *Conway*, Pray will you give my Lord and the Jury an account where you were in the Year 1677, and in the Year 1678.

Mr. *Conway.* I was then at St. *Omers*, my Lord.

Mr. *Sol. Gen.* Do you remember Mr. *Otes* there at any time?

Mr. *Conway.* Yes, my Lord, I do.

Mr. *Sol. Gen.* Pray, at what time was he there, as you remember?

Mr. *Conway.* He came in *December* before *Chriſtmas* 1677, and did not go away till *June* 1678.

Mr. *Sol. Gen.* What time in *June* did he go away?

Mr. *Conway.* About the twentieth of *June*, I think.

Mr. *Sol. Gen.* Were you there all that Year?

Mr. *Conway.* Yes, I was there a Scholar in the College.

Mr. *Jones.* Was he all the time you ſpeak of in the College?

Mr. *Conway.* He lay out one Night.

Mr. *Sol. Gen.* What time was that?

Mr. *Conway.* In *January*, to the beſt of my remembrance.

Mr. *Sol. Gen.* Could he be out of the College any time and not be miſs'd?

Mr. *Conway.* No, my Lord, he could not.

Mr. *Sol. Gen.* Did you miſs him at any time?

Mr. *Conway.* No, my Lord.

Mr. *Sol. Gen.* Was he there in *April* 1678?

Mr. *Conway.* Yes, my Lord.

Mr. *Sol. Gen.* Can you tell any particular Paſſages that can make you remember it?

Mr. *Conway.* Yes, my Lord, I can.

Mr. *Sol. Gen.* Tell my Lord and the Jury how you can remember it.

Mr. *Conway.* I remember Mr. *Hilſley*'s Departure, which was the 24th of *April* New Stile, and ſoon after Mr. *Burnaby* came, but I do not know the time exactly, I was deſirous to know of Mr. *Burnaby* whether he met Mr. *Hilſley* upon the way, and he told me he did meet him, and the next Day I ſaw Mr. *Otes* and Mr. *Burnaby* walking together very familiarly, and I took particular notice of it at that time, Mr. *Burnaby* being but newly come, ſo that I took him to have known Mr. *Burnaby* before, or elſe I concluded him to be a little impudent by his intruding into his Company.

Mr. *Sol. Gen.* Do you remember him in *March* before?

Mr. *Conway.* Yes, Sir.

Mr. *Sol. Gen.* What Particulars do you remember of his being there then?

Mr. *Conway.* I remember him to be there on the *Thurſday* in *Mid-Lent*, the Scholars in the College had a particular Recreation, which they

they call, *Sawing of the Witch*, and Mr. *Otes* was among them, and I was one of them that broke a Pan about his Head for Recreation.

Mr. *Sol. Gen.* Do you remember the 1ſt of *May*, that there was in your College a Play acted?

Mr. *Conway.* As for the Play, I remember what Part Eſquire *Pool* acted in it, but I remember not any Particulars that can make me ſo ſure as to ſwear that *Otes* was there.

Mr. *At. Gen.* Do you remember any ſcuffling for a Place there?

Mr. *Conway.* I do not remember it of my own Knowledge, I heard of it afterwards.

Mr. *Sol. Gen.* You ſay that you ſaw Mr. *Burnaby* and him walking together the next Day after he came.

Mr. *Conway.* Yes, I did ſo, Sir.

Mr. *Sol. Gen.* Did *Otes* uſe to read in the *Sodality*?

Mr. *Conway.* My Lord, There was another choſen according to the Cuſtom to read, but Mr. *Otes* took the Book, and did read.

Mr. *Sol. Gen.* Did he read conſtantly?

Mr. *Conway.* I did never miſs him any *Sunday* or *Holiday* all the time.

L. C. J. From what time to what time did he read?

Mr. *Conway.* From a little after *Eaſter* till he went away.

Mr. *At. Gen.* Is it uſually taken notice of in the College when any Perſon who is a Student goes away from the College?

Mr. *Conway.* There is nothing more diſcourſed of among Scholars, than that when it happens any one goes out of the College.

L. C. J. And pray when did he go away?

Mr. *Conway.* In *June*, about the twentieth, as near as I can remember.

Mr. *Sol. Gen.* Did you obſerve him at Dinner there conſtantly?

Mr. *Conway.* Yes, he ſat by himſelf.

Mr. *Sol. Gen.* How came that to paſs?

Mr. *Conway.* He ſat at a little Table in the Hall by himſelf, for he pretended, being a Man in Years, he could not diet as the reſt of the young Students did, and therefore obtained leave to ſit alone at a little Table by himſelf, and he ſat next to the Table of the Fathers, to which all the Students were to make their Reverence before they ſat down.

L. C. J. He was a very remarkable Man by his ſitting by himſelf; Did he ſit there always?

Mr. *Conway.* He changed his Table once, and I took notice that he ſat on the other ſide of the Refectory.

Mr. *Sol. Gen.* When was that I pray, can you remember?

Mr. *Conway.* That was a little after *Eaſter*.

Mr. *At. Gen.* Will Mr. *Otes* ask him any Queſtions?

Otes. Pray, my Lord, will you ask this Gentleman what Religion he is of?

Mr. *Conway.* I am a Roman Catholick.

Otes. Pray, ask him where he lives?

L. C. J. Where do you live, Sir?

Mr. *Conway.* Where now at preſent, my Lord?

L. C. J. Where do you uſually live?

Mr. *Conway.* I am a *Flintſhire*-man, my Lord?

Otes. Pray, ask him what Name he did go by at St. *Omers*?

Mr. *Conway.* By the Name of *William Parry*.

Otes. Pray ask him by what Name he gave his Evidence in at the five Jeſuits Tryal?

L. C. J. Were you a Witneſs at the Tryal of the five Jeſuits?

Mr. *Conway.* Yes, I was.

L. C. J. By what Name did you give your Evidence there?

Mr. *Conway.* By the Name of *Parry*.

Otes. Then I deſire the Court to take notice he repreſented himſelf by a feigned Name in a Court of Record.

Mr. *Conway.* I went by both Names, my Lord.

L. C. J. Well, make what Advantage you can of it by and by.

Otes. Pray, my Lord, ask him, if ever he heard of any Conſult of the Jeſuits held here in *England* in *April* 1678?

Mr. *Conway.* Yes, I did.

Otes. Pray, my Lord, ask him, who inform'd him of that Conſult?

Mr. *Conway.* I heard it among the reſt of the Scholars, and ſeeing ſome of the Fathers go over to it, I was told ſo.

Mr. *At. Gen.* Is it an uſual thing for them to have ſuch Meetings?

Mr. *Conway.* They have a Congregation ordinarily once in three Years.

Mr. *Sol. Gen.* Does it go by the Name of a Conſult, or what Name has it?

Mr. *Conway.* Some call it a Congregation, and ſome a Conſult.

Mr. *Sol. Gen.* What is the end of ſuch Meeting, as you have heard?

Mr. *Conway.* They ſay it was to chuſe a Procurator to ſend to *Rome*, and give an account of the Province.

Otes. My Lord, I would ask him another Queſtion, whether he is to have any Reward for giving this Evidence here?

Mr. *Conway.* No, not that I know of, but what I expect from Almighty God.

Otes. Pray, ask him how long he lived at St. *Omers*?

Mr. *Conway.* Five Years.

Otes. My Lord, I have done with him.

Mr. *Sol. Gen.* Then call Mr. *Haggerſtone*, and ſwear him. [*Which was done.*

Mr. *At. Gen.* Mr. *Haggerſtone*, Pray will you acquaint my Lord and the Jury, were you at St. *Omers* in the Year 1678 with Mr. *Otes*?

Mr. *Haggerſtone.* Yes, I was, my Lord, I had the Honour to be of the ſame Bench with the Doctor of *Salamanca*.

L. C. J. You mean you were of the ſame Claſs with him.

Mr. *Haggerſtone.* Yes, my Lord, of the ſame Claſs.

L. C. J. In what Year was it?

Mr. *Haggerſtone.* In the Year 1678.

Mr. *At. Gen.* In what Form were you?

Mr. *Haggerſtone.* In the ſame Bench with Dr. *Otes* in the Rhetorick Form.

Mr. *At. Gen.* Do you remember Mr. *Otes* in *April* 1678?

Mr. *Haggerſtone.* Yes.

Mr. *At. Gen.* What time?

Mr. *Haggerſtone.* He ſpoke unto me on the 25th of *April*.

Mr. *At. Gen.* What Stile do you mean?

Mr. *Haggerſtone.* New Stile, Sir; to avoid Confuſion, I ſpeak of the Stile of the Place where

where I was; he asked me concerning our School-fellow Mr. *Hilsley*, who was then gone from the College, whether I had heard any thing from him since he went away, and he spoke of an Indisposition he had, for which he prescribed him a Medicine of Poppy, and he thought it would do his Business effectually.

L. C. J. Who said so?

Mr. *Haggerstone.* The Doctor of *Salamanca*, he was called *Sampson Lucy* in the College, and likewise he forbid him to chew Tobacco, which he us'd to do very much; he was called *Titus Ambrosius*, he had twenty Names.

Mr. *At. Gen.* Was he there all *April*, Sir?

Mr. *Haggerstone.* Yes, he was, Sir.

Mr. *At. Gen.* Did you know him in *March* before?

Mr. *Haggerstone.* Yes, he was there all *March* before.

Mr. *At. Gen.* Was he there in *February*?

Mr. *Haggerstone.* Yes, as near as I can remember, he was absent but one Day, and then he went to *Watton* in *February*, or else in *January*.

L. C. J. Do you remember when he came thither first?

Mr. *Haggerstone.* Yes, my Lord, he came in *December* near *Christmas*, as I remember.

L. C. J. Was it about that time, upon your Oath?

Mr. *Haggerstone.* I speak it upon my Oath, it was.

L. C. J. When did he go away?

Mr. *Haggerstone.* About the latter end of *June*.

L. C. J. Was he absent any time between *December* and *June*?

Mr. *Haggerstone.* I do not remember that he was absent, save only in *January* or *February*, and that was not for above a Night, when he went to *Watton*.

L. C. J. Might not he be absent, and you not mind it, or know it?

Mr. *Haggerstone.* Sure if he had been absent, we could not but have known it.

L. C. J. How so, pray you?

Mr. *Haggerstone.* If any goes away, 'tis so publick, that it cannot be without notice being taken of it.

Mr. *At. Gen.* Can you remember by any particular Token he was there in *April* or *May*?

Mr. *Haggerstone.* He spoke to me on the 29th of *April* New Stile, and told me, that there was a Craving Englishman had been there to beg an Alms, and there was a Collection made for him among the Scholars, but he said he would give him nothing, for he told me he had been cheated by such an one of some Pieces of Eight in *Spain*; this I remember was the 28th or 29th of *April* New Stile, I saw him there the 1st of *May*, upon the 2d of *May* there was an Action of the Scholars, and he was present at it; the 5th of *May* I was at School with him, when Mr. *Pool* went away for *England*, and I heard him about that time preach a pleasant Sermon, for he would undertake sometimes to preach, and he said in it, That the late King *Charles* II. halted betwixt two Opinions, and a Stream of Popery went between his Leggs.

L. C. J. Was this in *May*?

Mr. *Haggerstone.* Yes, just after Mr. *Pool* went away for *England*, and he had some pretty Reflections in his Sermon about *Toby*'s Dog wagging his Tail.

L. C. J. Well, Do you ask this Witness any Question, Mr. *Otes*?

Otes. Pray be pleased to ask him, my Lord, what Religion he is of?

Mr. *Haggerstone.* I am a Papist, my Lord, I am not asham'd of it.

Otes. Pray, my Lord, ask where he lives?

Mr. *Haggerstone.* At *London*.

Otes. Pray ask him what Country-man he is?

Mr. *Haggerstone.* I am a *Northumberland*-man, my Father is Sir *Thomas Haggerstone*, a Man better known than your Father, Dr. *Otes*.

L. C. J. Nay, nay, do not be in a Passion, Man.

Otes. Pray ask him, how long I was with him at St. *Omers*?

Mr. *Haggerstone.* For half a Year at least.

Otes. My Lord, I desire to know, how long he stayed there himself?

Mr. *Haggerstone.* I studied my whole Course of Humanity there.

L. C. J. How long were you there in all?

Mr. *Haggerstone.* Seven Years.

Otes. Pray, my Lord, ask him, whether he knows of any Consult held, or to be held here in *England* in *April*, 1678?

Mr. *Haggerstone.* Yes, my Lord, I saw two of the Fathers go from St. *Omers* to the Congregation, and was there at their Return, but all that time I frequented Dr. *Otes*'s Company, and he remained in the College.

Otes. Pray, who were these two Fathers?

Mr. *Haggerstone.* Mr. *Williams* and Mr. *Marsh*; and when they return'd, *Otes* asked me about it, whether they had been at the Consult, and I told him there was such a thing, but he never knew it till afterwards; but this I am sure of, he was never missing all the while, I sat on the same Bench with him.

Otes. Pray, my Lord, ask him, what Name he went by at St. *Omers*?

Mr. *Haggerstone.* I went by the Name of *Harry Howard*, my Mother was a *Howard*, Doctor.

Otes. Pray ask him, whether he came into *England* when he went away from thence?

Mr. *Haggerstone.* No, I went and studied my Philosophy at *Doway*.

Otes. I desire to ask him one Question more.

Mr. *Haggerstone.* Twenty, if you please, Doctor.

Otes. I desire to know of him the occasion of Mr. *Hilsley*'s coming away?

Mr. *Haggerstone.* I do know it, but truly I cannot tell whether it be fit for me to speak of it, it was upon some unhandsome account, but I must not blemish any Gentleman, I think.

Otes. My Lord, I will ask him one Question more, whether ever he was admitted into the Society?

L. C. J. I will not ask him that Question, how often have I told you no such Questions are to be ask'd? Must I make him liable to Penalty? No, ask Questions that are fair, and you shall have a fair Answer.

Otes. My Lord, I have done then with him.

Mr. *Sol. Gen.* Then swear Mr. *Robert Beeston*.

[*Which was done.*

Mr. *At. Gen.* Pray, Sir, were you at St. *Omers* in the Year 77 and 78?

Mr. *Beeston.*

Mr. *Beeſton.* Yes, my Lord, I was.

Mr. *At. Gen.* Did you ſee Mr. *Otes* there then? Do you know him?

Mr. *Beeſton.* Yes, I know him very well, I did ſee him there.

Mr. *At. Gen.* What Months did you ſee him there?

Mr. *Beeſton.* He came there in *December*, the beginning as I remember, and he ſtayed there to *June* the latter end.

Mr. *At. Gen.* What Year was that in?

Mr. *Beeſton.* He came in 77, and went away in 78.

Mr. *At. Gen.* Did you obſerve him to be there in *April* and *May* 78?

Mr. *Beeſton.* The latter end of *April*, and the beginning of *May* I did.

Mr. *At. Gen.* Tell the Court particularly how you remember it.

Mr. *Beeſton.* My Lord, I ſaw him the 1ſt of *May* at St. *Omers*, where he played at Nine-pins, and I laid a Wager upon the ſame ſide that he did, and loſt my Money as well as he.

L. C. J. Do you remember any other time?

Mr. *Beeſton.* I ſaw him the 2d of *May*, by the ſame token that I met him in the College that Day, when our School exhibited an Action in the Hall, and I met him after Supper; now in this Action I had both acted and ſung, and they came and congratulated me for my ſinging; Mr. *Otes* ſaid, If I had paid for learning to ſing, I had been baſely cheated; and then in the Morning I was choſen Reader in the *Sodality*, the 25th of *April*, or thereabouts, for a Fortnight, and Mr. *Otes* by his own Submiſſion was admitted to read, only with this Condition, that if ever he were wanting, I was to read again; but this I ſay, I never ſupplied the Place; therefore I am ſure he did continue there all the while, and if he had been out, I muſt have been called upon to read.

L. C. J. Were you in the College all the time he was there?

Mr. *Beeſton.* Yes, my Lord, I was.

L. C. J. Did you miſs him at any time?

Mr. *Beeſton.* No, I never miſs'd him.

L. C. J. Are you ſure he was not away all that time?

Mr. *Beeſton.* I am ſure, as much as a Man can be certain of one that is of the ſame Family with himſelf; nay, I am as ſure of it, as that I was there my ſelf.

L. C. J. Can you ſpeak any thing particularly of his reading?

Mr. *Beeſton.* My Lord, I was to have read, if he was abſent, but I was never called upon to read, and therefore I may well conclude he was there all the while.

L. C. J. He gives a material Evidence.

Mr. *Sol. Gen.* Was Mr. *Otes* ſuch a remarkable Man that he muſt be miſs'd?

Mr. *Beeſton.* He was very particular, both for Age, and that he had a particular Table to eat at.

Mr. *Sol. Gen.* Can you remember any thing elſe?

Mr. *Beeſton.* I remember too, that when Mr. *Burnaby* came firſt, he was often with him the 2d, 3d, and 4th of *May*, I ſaw him there with Mr. *Burnaby*, and I took particular notice of the Friendſhip between them, which I thought ſtrange between Perſons that I ſuppoſed never ſaw one another before.

L. C. J. Have you any Queſtions to ask this Man, Mr. *Otes*?

Otes. My Lord, I deſire to ask this Gentleman what Religion he is of?

Mr. *Beeſton.* I am a Roman Catholick.

Otes. Pray, my Lord, be pleaſed to ask him, when he went to St. *Omers*, and when he came away from thence, and how long he was reſident there?

Mr. *Beeſton.* I know not exactly what Year it was I came, but I ſtayed the greateſt Part of ſeven Years there.

Otes. Pray, my Lord, ask him, what Jeſuits went from St. *Omers* to the Conſult of *April* 78?

Mr. *Beeſton.* There was ſome that paſs'd by, I did not take much notice of them.

Otes. Pray, my Lord, ask him, who it was informed him of that Conſult?

Mr. *Beeſton.* I do not know who particularly, I only heard of ſuch a Rumour.

Mr. *At. Gen.* Was it an extraordinary thing?

Mr. *Beeſton.* No, it was but an ordinary thing as they uſed to have once in three Years.

Otes. You ſay you ſaw me every Day there?

L. C. J. He ſays he believes he might, becauſe you were Reader in his ſtead, and if you had been abſent, he muſt have been called upon to read, which he was not, he ſays.

Otes. Very well, my Lord, I deſire you would ask him, whether he does not remember ſuch a thing as an Eight-day's Exereiſe, wherein thoſe that perform the Exerciſe, are ſeparated from all Company during that time.

Mr. *Beeſton.* Yes, my Lord, I do remember that he was once in that Eight-day's Exerciſe, and during the eight Days I ſaw him walk in the Garden ſeveral times.

Otes. Pray, my Lord, ask him, if he were an Evidence at the Tryal of the five Jeſuits, or *Langhorn*, and whether he gave this Evidence long ago?

Mr. *Beeſton.* No, I did not, I was not there.

Otes. Pray, my Lord, ask him what Reward he is to have?

L. C. J. Are you to have any Reward for your Teſtimony, Mr. *Beeſton*?

Mr. *Beeſton.* No, my Lord.

Otes. My Lord, I deſire to know of him, how he comes to be pick'd out among the reſt of the Students there, to come here, and be an Evidence in this Cauſe?

Mr. *Beeſton.* My Lord, I was ſubpœna'd by His Majeſty, if I knew any thing of this Matter, that I ſhould come here and teſtify my Knowledge.

Otes. Pray, by what Name did he go by at St. *Omers*?

Mr. *Beeſton.* By the Name of *Beeſton*, as I do now.

Otes. And is that his own Name?

Mr. *Beeſton.* Yes, my Lord.

L. C. J. Pray, go on, Mr. Attorney.

Mr. *At. Gen.* Swear *Clement Smith*.

[*Which was done.*

Mr. *Sol. Gen.* Pray, Sir, were you at St. *Omers* in the Year 77 and 78?

Mr. *Smith.* Yes, I was.

Mr. *Sol. Gen.* Do you remember Mr. *Otes* there at that time?

Mr. *Smith.* Yes, I was in the ſame Claſs with him.

Mr. *At. Gen.* Pray when came he thither, and how long did he ſtay there?

Mr. *Smith.*

Mr. *Smith.* He came a little before *Chriſtmas*, and ſtayed till *June*.

Mr. *At. Gen.* Was he not abſent at any time all that while?

Mr. *Smith.* No, he was not, except one Day.

Mr. *At. Gen.* Do you remember *Watton*'s Buſineſs, his going thither in *January*?

Mr. *Smith.* He told me of it, and that he deſign'd to ask the Rector leave to go.

L. C. J. Was he abſent any other time till *June*?

Mr. *Smith.* No, my Lord, for I will tell you, I every Day dined with him, eat a Collation with him in the Afternoon, and breakfaſt and ſupp'd in the ſame Refectory, during all that time, except when he or I was in the Infirmary.

L. C. J. When ever he was abſent, he was in the Infirmary, was he?

Mr. *Smith.* Yes, my Lord.

L. C. J. Did not he miſs his Breakfaſt at any time all that while?

Mr. *Smith.* If he did, we us'd to enquire after him.

Mr. *At. Gen.* Pray when were you in the Infirmary?

Mr. *Smith.* The 21ſt of *April* New Stile, I fell ſick, and I remained ſick till *May* the 7th, and was in the Infirmary, and then he viſited me almoſt daily, or every other Day in the Infirmary; and on the 2d of *May* I ſaw him and one Mr. *Burnaby* together, and on the Day Mr. *Pool* departed, which I take to be the 5th of *May*, Mr. *Otes* came to me as ſoon as he was gone out of the Houſe, and told me of it; and he did the ſame too that Day that Mr. *Hilſley* went away, which was the 24th of *April* New Stile.

Mr. *At. Gen.* Was not he in the Infirmary himſelf?

Mr. *Smith.* Yes, during this time he came into the Infirmary, and was ſick there.

Mr. *At. Gen.* When was that?

Mr. *Smith.* A Day or two after Mr. *Hilſley* went away, and continued there two or three Days, and I remember it particularly by this Circumſtance, that he propoſed a Queſtion to the Phyſician about himſelf in Latin, and ſpoke a Solleciſm, which was this, he ſaid, *Si placet Dominatio veſtra.*

Otes. Who did ſay ſo?

L. C. J. You did, he ſays, ſpeak that falſe Latin to the Doctor.

Otes. That's falſe Latin indeed.

L. C. J. We know that, but it ſeems it was your Latin.

Mr. *At. Gen.* When came he away from St. *Omers*?

Mr. *Smith.* About the 20th of *June*, ſomething after the 20th of *June*, as I remember.

L. C. J. Are you ſure he was not out of the College ſo long as to make a Journey to *London*, and back again?

Mr. *Smith.* No, I am ſure he could not without being miſs'd; and going to School with him, and eating Dinner and Supper with him conſtantly always at the ſame place, I muſt needs know if he had gone.

Otes. When went I away from St. *Omers* does he ſay?

Mr. *Smith.* After the 20th of *June* 78.

L. C. J. He is your old Acquaintance and School-fellow, Mr. *Otes*; you viſited him when he was ſick.

Otes. What Religion is this Gentleman of, my Lord, I would know?

Mr. *Smith.* I am a Roman Catholick.

Otes. I deſire your Lordſhip to ask him how long he liv'd at St. *Omers*?

Mr. *Smith.* Above ſix Years.

Otes. Pray ask him, when he came away?

Mr. *Smith.* A little after Dr. *Otes* came away.

Otes. Did he come directly for *England*?

Mr. *Smith.* No, I did not.

Otes. Whither did he go then?

Mr. *Smith.* I went about a little. ——

Otes. Where, my Lord?

Mr. *Smith.* I went about to take ſome Turns in the Low-Countries; I went to *Watton*, and up and down.

Otes. He is a Jeſuit, my Lord, and that the World knows, and muſt know.

L. C. J. I know nothing of it, I do aſſure you.

Otes. Pray, my Lord, be pleaſed to ask him, whether he did not hear of a Conſult of Jeſuits in *April* 78, and what Jeſuits went from St. *Omers* to it?

Mr. *Smith.* I heard it as a Rumour in the College, that there was to be a Congregation at that time, but I know not where particularly it was to be kept; but I know that then there paſs'd by St. *Omers* two Fathers, Mr. *Marſh*, and Mr. *Williams*.

Otes. What were they?

Mr. *Smith.* Jeſuits.

L. C. J. He told you they were Fathers.

Mr. *At. Gen.* Pray, was it an extraordinary, or an ordinary Meeting that?

Mr. *Smith.* They us'd to ſay in the College, that it was an ordinary thing to have ſuch a Congregation every three Years.

Mr. *Sol. Gen.* Pray, ſwear Mr. *Edward Price*.

[*Which was done.*

Mr. *At. Gen.* Pray, Mr. *Price*, will you give my Lord and the Gentlemen of the Jury an account, whether you were at St. *Omers* in the Year 77, and 78.

Mr. *Price.* I was there both theſe Years.

Mr. *At. Gen.* Do you remember Mr. *Otes* there?

Mr. *Price.* Yes, my Lord, I do.

Mr. *At. Gen.* When did he come, and when did he go away?

Mr. *Price.* He came there about *December* 77, and he continued there till *June* 78.

Mr. *At. Gen.* Was he abſent from St. *Omers* at any time all that while?

Mr. *Price.* Never, that I know of, but one Night at *Watton*, when he came back the following Day, and that was in *January*.

Mr. *At. Gen.* Do you remember particularly that he was there in *April* and *May* 78?

Mr. *Price.* I remember Mr. *Hilſley*, according to the foreign Stile, left St. *Omers* upon the 24th of *April* 78. I was told the following Day that Mr. *Otes* went into the Infirmary, which was *Monday* the 25th, and ſtayed there a Day or two, and upon *Wedneſday* the 27th I ſaw him going to Maſs; then upon the Sunday following, which was the 1ſt of *May* New Stile, came Mr. *Burnaby* to St. *Omers*, and I ſaw him in *Otes*'s Company that Day, and I ſaw him on *Monday*

Monday again the 2d of *May* in his Company; I saw him the 3d of *May* at the Table, which I particularly remember, becauſe it was the Feaſt of the Invention of the Holy Croſs; the 4th of *May* I have no Circumſtance to remember him by; but the 5th of *May* I ſaw him take his leave of Mr. *Pool*, and I likewiſe ſaw him the 10th or 11th of *May* at another of our Actions, wherein Mr. *Watſon* had a Quarrel with him, and beat him; I ſhould have miſs'd him above any other Man, becauſe he was ſo noted a Man.

Mr. *At. Gen.* What was he noted for? For any thing elſe but his diſtinct Place in the Refectory?

Mr. *Price.* Yes, he was very abſurd, and always quarrelling with the Students there.

L. C. J. Do you remember him read in the *Sodality*?

Mr. *Price.* I was not of that Bench that he was of.

Otes. My Lord, I deſire to know what this Gentleman's Religion is?

L. C. J. What Religion are you of, Sir?

Mr. *Price.* If your Lordſhip pleaſe to know, I am a Roman Catholick.

Otes. My Lord, I deſire to ask him, when he went firſt to St. *Omers*, and when he came away?

Mr. *Price.* I was ſix Years at St. *Omers*; I was there a twelve-month before Mr. *Otes* came thither, and came from thence about three Years ago.

Otes. Did you come directly to *England* when you came away?

Mr. *Price.* My Lord, I went to *Leige* to ſtudy Philoſophy, and I live now with my Father at home.

Otes. My Lord, I deſire to ask him, whether he did not hear of a Conſult to be held in *April* 78?

Mr. *Price.* I did hear there was a Congregation which was their uſual Triennial Meeting, and particularly I remember about that time there came Mr. *Williams*, and Mr. *Marſh*, and it was reported that they were going to the Congregation.

Otes. I deſire to ask him, if he was not a Witneſs at the Tryal of the five Jeſuits, or at the Tryal of *Langhorn*?

Mr. *Price.* No, I was not.

Otes. Pray, what Name did he go by at St. *Omers*?

Mr. *Price.* By my own Name, which is *Edward Price.*

Mr. *Sol. Gen.* Then ſwear the next, that is, Mr. *James Doddington.*

Mr. *At. Gen.* Pray, Sir, were you at St. *Omers* in the Year 77, and 78?

Mr. *Doddington.* Yes, Sir, I was.

Mr. *At. Gen.* Did you know that Gentleman Mr. *Otes* there?

Mr. *Doddington.* I know him very well.

Mr. *At. Gen.* What time did he come to St. *Omers*, and how long did he ſtay there?

Mr. *Doddington.* He came about *Chriſtmas*, and ſtayed about the latter end of *June.*

Mr. *At. Gen.* How do you remember he ſtayed there ſo long, what Circumſtances have you to make you remember it?

Mr. *Doddington.* In general his Converſation and Canting Stories after Dinner and Supper, and times of Recreation, made him ſo remarkable, that no body could miſs him all the time he was there.

Mr. *At. Gen.* Did you obſerve him to be in the Hall, or at the Exerciſes?

Mr. *Doddington.* Yes, I ſaw him ſeveral times.

Mr. *Sol. Gen.* Do you remember the time Mr. *Hilſley* went away?

Mr. *Doddington.* Yes, it was a little after *Eaſter*, and I do remember that two or three Days after I went into the Infirmary, and ſaw Mr. *Otes* there, and had Diſcourſes with him.

Mr. *At. Gen.* Do you remember Mr. *Burnaby's* coming to St. *Omers*, and when was it?

Mr. *Doddington.* Yes, the 1ſt of *May* Mr. *Burnaby* came to St. *Omers*, and the next Day I ſaw *Otes* with him, and for ten or twelve Days ſucceſſively they were in one another's Company, and then of a ſudden the Correſpondence broke off, but I know not upon what account.

L. C. J. Was he Reader there, as you remember?

Mr. *Doddington.* I do remember he did read in the *Sodality.*

L. C. J. When was that?

Mr. *Doddington.* I remember he read at *Shrovetide.*

Otes. Did you hear me read there?

Mr. *Doddington.* Yes, that I did, Sir.

Otes. Were you of the *Sodality*?

Mr. *Doddington.* Yes, I was, Sir.

Mr. *At. Gen.* Do you remember the time he came away from St. *Omers*?

Mr. *Doddington.* It was about *Midſummer*, my Lord.

Mr. *At. Gen.* Were you out of the College your ſelf at any time when he was there?

Mr. *Doddington.* No, I was not.

L. C. J. Come, I will ask you a plain Queſtion; Was he ſo long at any time out of the College as to come to *London* and ſtay here two or three Days, and come back again?

Mr. *Doddington.* My Lord, He was ſo remarkable by his Stories and ridiculous Actions, and falling out with every one of the College, that if he had been abſent, we muſt needs have miſſed him.

L. C. J. Did you miſs him at any time?

Mr. *Doddington.* My Lord, I never miſs'd him but one Day.

L. C. J. When was that?

Mr. *Doddington.* They ſaid he was gone to *Watton.*

L. C. J. What time was that?

Mr. *Doddington.* In *January*, about ſix Weeks after he came firſt.

Otes. Pray, my Lord, ask him what Religion he is of?

Mr. *Doddington.* I am a Roman Catholick.

Otes. And a Scholar of St. *Omers.*

L. C. J. Make your Remarks by and by.

Otes. Pray, my Lord, ask him what Name he went by at St. *Omers*?

Mr. *Doddington.* By the Name of *Hollis*, my Lord.

Otes. Pray, my Lord, ask him how long he was reſident there?

Mr. *Doddington.* Near upon five Years.

Otes. Pray, my Lord, ask him the occaſion of his coming over at firſt?

Mr. *Doddington.* I had Buſineſs in *England*, and I had a mind to ſee my Friends.

Otes. Pray, my Lord, ask him, whether he did not pretend at the five Jeſuits Tryal, that he came over upon the King's Proclamation, to call home thoſe that were in the Seminaries?

L. C. J. Were you at the Tryal of the five Jeſuits?

Mr. *Doddington.* Yes, I was; but if I came over upon the King's Proclamation, what Hurt is there in that?

L. C. J. None at all, as I know of.

Otes. Pray, my Lord, ask him, whether he did return again to St. *Omers*, or no?

Mr. *Doddington.* My Lord, I paſs'd by St. *Omers* once, but I never ſtayed a Day in the College ſince.

Otes. Pray, my Lord, be pleaſed to ask him, whether he ever heard of a Conſult of the Jeſuits in *April* 78?

Mr. *Doddington.* I did hear of a Congregation.

Otes. Call it a Conſult or a Congregation, it is all one.

L. C. J. He ſays he did hear of it.

Otes. Ask him by whom he did hear of it?

Mr. *Doddington.* I ſaw the Provincial when he came back from *England.*

Otes. Who was that Provincial, what was his Name?

Mr. *Doddington.* Mr. *Whitebread.*

Otes. Was not Mr. *Whitebread* a Reſident ſometimes at St. *Omers*?

Mr. *Doddington.* Yes a while he was.

Otes. Pray, was not that Houſe under his Government?

Mr. *Doddington.* My Lord, I can give no account of that, but it is generally under the Government of the Rector of St. *Omers.*

Mr. *Hanſeys.* Pray, Sir, give me leave to ask you one Queſtion; Mr. *Otes* ſpeaks of Mr. *Whitebread*; Pray, how did Mr. *Whitebread* uſe *Otes*, when he came back from *England*?

Mr. *Doddington.* I heard ſay, he did check him very ſeverely for his many Miſcarriages.

L. C. J. He heard it, he ſays, but he does not know it of his own Knowledge; that is no Evidence.

Mr. *Sol. Gen.* Pray ſwear Mr. *William Gerrard.*

[*Which was done.*

Mr. *At. Gen.* Were you at St. *Omers*, Mr. *Gerrard*, in the Years 77 and 78?

Mr. *Gerrard.* Yes, I was.

Mr. *At. Gen.* Did you know Mr. *Otes* there?

Mr. *Gerrard.* Where is he, Sir?

Mr. *At. Gen.* There he is in that Corner, do you know him?

Mr. *Gerrard.* Yes.

Mr. *At. Gen.* When came he to St. *Omers*?

Mr. *Gerrard.* He came to St. *Omers* in the Year of our Lord 77, and he went away in *June* 78.

Mr. *At. Gen.* Was he there all the time?

Mr. *Gerrard.* I never remember'd to have miſs'd him, but only once when he went to *Watton* for a Night.

Mr. *At. Gen.* By what Tokens do you remember him at any time there in *April* or *May*?

Mr. *Gerrard.* The 2d of *May* we had a Play, and he was there then, and I remember the 26th of *May* he was confirmed, and ſo was I, it being St. *Auguſtin*'s Day, and in the Refectory he had a Table by himſelf, and I uſed always at Meal-times to paſs by that Table and make a Bow to the Fathers above before I ſat down at Table; and I do not remember that ever he was abſent, and if he had, I ſhould ſurely have miſs'd him.

L. C. J. When was St. *Auguſtin*'s Day, that you ſay you and he were confirm'd?

Mr. *Gerrard.* It was the 26th of *May.*

Mr. *At. Gen.* Do you remember him in *April* there?

Mr. *Gerrard.* I cannot tell any particular Circumſtance in *April*, but I do not remember to have miſs'd him at all in *April.*

Mr. *Sol. Gen.* But you ſaw him there the 2d of *May*, you ſay?

Mr. *Gerrard.* Yes, I did ſo, and the 26th of *May.*

Otes. The 26th of *May* Old Stile I was there, my Lord.

L. C. J. Ay, but he ſays the 26th of *May* New Stile.

Otes. I was not there then, my Lord.

L. C. J. He ſwears you were.

Mr. *Sol. Gen.* Pray, between the 2d and 27th of *May* New Stile was he abſent from St. *Omers* at any time?

Mr. *Gerrard.* I never remember to have miſs'd him at all in that time.

Mr. *At. Gen.* Do you remember Mr. *Pool*'s and Mr. *Hilſley*'s going away?

Mr. *Gerrard.* I do remember Mr. *Hilſley*'s and Mr. *Pool*'s going away, but I cannot ſpeak particularly and exactly what time that was.

L. C. J. Is it uſual to have Scholars go away without being miſs'd?

Mr. *Gerrard.* No, my Lord, and he had a particular Place by himſelf.

Otes. Pray, ask him, my Lord, how he came to know that I went away in *June*?

Mr. *Gerrard.* We miſs'd him in his Place then, and 'twas diſcours'd of all over the Town, that when the Provincial came he was to be diſmiſs'd.

Otes. I deſire to know what Religion this Gentleman is of?

Mr. *Gerrard.* My Lord, I am a Roman Catholick.

Otes. Pray, my Lord, ask him what Name he went by at St. *Omers*?

Mr. *Gerrard.* By the Name of *William Clovell.*

Otes. Pray, my Lord, ask him, when he went to St. *Omers*, and how long he was reſident there?

Mr. *Gerrard.* I came there about two Years before he came, and was there about two Years after he went away.

Otes. Pray, my Lord, ask him, whether he came directly for *England* when he left St. *Omers*?

Mr. *Gerrard.* No, my Lord, I was four Years in *Low-Germany* and *France*, and came into *England* the laſt Year.

Otes. Pray, Sir, were you a Witneſs at the five Jeſuits Tryal, or at *Langhorn*'s Tryal?

Mr. *Gerrard.* No, I was no; I came but laſt Year to *England*, I tell you.

Otes. Pray, my Lord, ask this Gentleman, whether he did not know or hear of a Conſult of Jeſuits that was to be in *April* 78, and from whom he heard it?

Mr. *Gerrard.* My Lord, I know it is the Cuſtom of the Fathers of that Order to have a Congrega-

gregation once in three Years, about the Affairs of their Society, but then no Perſon is admitted to be one of that Congregation, but them that have been eighteen Years Jeſuits, and he not having been ſo much as a Novice, I know not how, if he had been here, he could have been preſent at it.

L. C. J. He ſays, that there us'd to be a Triennial Congregation for the Buſineſs of the Society, but you could not be preſent at it, becauſe you had not been eighteen Years a Jeſuit.

Mr. *Gerrard. An. decimo octavo Currente,* is the Word of the Rule.

Otes. Pray my Lord ask him this Queſtion, how he knows that to be the Rule?

Mr. *Gerrard.* You or any Man may read them in their Books.

L. C. J. It ſeems he has read them, and he ſays, you muſt paſs through eighteen Years before you be admitted of the Congregation, and he believes you were not there, for you were not capable of ſo much as a Noviceſhip.

Otes. I deſire your Lordſhip to ask him, whether or no he heard me Read in the Sodality?

Mr. *Gerrard.* Yes, I did.

Otes. Were you of the Sodality?

Mr. *Gerrard.* Yes, I was.

Otes. Pray my Lord, ask him, what Oaths are there taken before they be admitted into the Sodality?

L. C. J. No, by no means, I will not do it.

Otes. Why my Lord, may not I ask it, to ſhew what kind of Men theſe are?

L. C. J. No, indeed, it is but the ſame Queſtion again, that I told you before is not to be asked, for it may make him liable to a Penalty; if you come to be a Witneſs, no Man ſhould ask you a Queſtion that might make you obnoxious to a Penalty, no more muſt you ask them any ſuch Queſtions.

Otes. I have done with him, my Lord.

Mr. *Sol. Gen.* Where is my Lord *Gerrard* of *Bromley?*

Lord *Gerrard.* Here I am, Sir.

Mr. *At. Gen.* Pray my Lord, do you remember Mr. *Otes* at St. *Omers* in the Year 77, and 78?

Lord *Gerrard.* He was diſguiſed in another Habit, and another colour'd Perriwig, the Hair was blacker than that he has on now, but I remember his Face very well, and know him again by the Tone of his Voice, which was very remarkable, but I never remember that he was abſent from St. *Omers* after he came thither. I remember his Coming exactly, which was about *Chriſtmas*; nor did I ever hear that he was abſent till *June* 78. New Stile, when he went away.

Mr. *Sol. Gen.* Do you remember, my Lord, when Mr. *Burnaby* came?

Lord *Gerrard.* I do remember Mr. *Burnaby*'s coming, but what time it was I cannot exactly tell.

L. C. J. Is my Lord *Gerrard* ſworn?

Mr. *Sol. Gen.* I think ſo.

Lord *Gerrard.* No, my Lord, I am not ſworn.

L. C. J. You muſt be ſworn, my Lord. [*Which was done.*

Now if you be pleaſed to ask my Lord any Queſtions, do.

Mr. *At. Gen.* My Lord, we deſire to know of my Lord *Gerrard* of *Bromley*, whether he knew Mr. *Otes* at St. *Omers?*

Lord *Gerrard.* My Lord, I remember he came in 77. as I take it, it was the beginning of *December*, and never heard he was abſent or miſs'd till *June* 78. I remember particularly upon the 25*th* of *March*, there was a new Lector to be Reader of the Sodality, and Mr. *Otes* deſiring it, he was appointed to Read; I was there my ſelf, and I never miſſed him; I heard him Read, that I do remember ſeveral *Sundays* and *Holidays*, and never knew him abſent any one; however, for five or ſix Weeks he was conſtant at Reading, and I can the better remember it, becauſe he had a particular Cant in his Tone, which all Men may know which ever converſed with him.

Mr. *Sol. Gen.* If *Otes* pleaſe to ask my Lord *Gerrard* any Queſtions, he may.

Lord *Gerrard.* Pray my Lord let me ſpeak a Word or two more.

L. C. J. Ay, my Lord, pray go on.

Lord *Gerrard.* I remember I heard Mr. *Otes* was at the Confirmation, which was upon St. *Auſtin*'s Day, there was a Confirmation by a Catholick Biſhop about the 26*th* of *May* New Stile, I remember I heard Mr. *Otes* was there, and the Biſhop did particularly note him as a Perſon of elder Years than the reſt of the Students.

L. C. J. Do you know this, my Lord, of your own knowledge?

Lord *Gerrard.* I do, my Lord.

L. C. J. Becauſe you ſay you heard it.

Lord *Gerrard.* My Lord, further I remember this, when the News of the Plot being diſcovered by *Otes*, came to St. *Omers*, where he went by the name of *Sampſon Lucy*, and ſometimes *Titus Ambroſius*, it was wondered by all the Scholars that knew him there, how he came to be ſo impudent to pretend that he was at ſuch a Conſult the 24*th* of *April* 78. when all the Colledge ſaw him every Day in *April* and *May* at St. *Omers*, as much as a Man can be ſeen in a Family, and was never known to be abſent ſo much as one Day; beſides, my Lord, 'tis a thing as generally noted as a thing can be, that no Scholar goes away from, or comes to the College of St. *Omers*, but it is particularly known to the whole Houſe; it is the common News and Diſcourſe as much as any new Occurrences are here about the Town.

Mr. *Sol. Gen.* If *Otes* be pleaſed to ask him any Queſtions, he may.

Otes. My Lord, I deſire this Noble Lord may be asked a Queſtion or two; I do not remember his Lordſhip there.

Lord *Gerrard.* I do very well remember the Man by particular Remarks.

Otes. Yes, my Lord, you have occaſion to remember me, and ſo have your whole Party. Pray my Lord, let my Lord *Gerrard* be asked what Name his Lordſhip went by at St. *Omers?*

Lord *Gerrard.* Mr. *Otes*, I am not difficult in telling the Name I went by there. It was *Clovel.*

Otes. Pray, my Lord, I deſire to know what Religion his Lordſhip is of?

Lord *Gerrard.* Neither am I aſhamed to own my Religion, Mr. *Otes*, I am a Catholick.

Otes.

Otes. Pray, my Lord, if you pleaſe, becauſe this Noble Lord pretends he heard me Read, I deſire to know of him whether he was of the Sodality?

Lord *Gerrard.* I remember you particularly by your Voice, and that is one thing that particularly brings you to my Remembrance now.

Otes. Pray ask this Noble Lord, if he was a Witneſs at the Jeſuits Tryal?

Lord *Gerrard.* No, I was never a Witneſs in my Life before; By the Oath that I have taken.

L. C. J. 'Tis very well, my Lord.

Otes. Pray my Lord, ask this Nobleman, whether he did not know of a Conſult in *April* 78. and from whom he knew it.

Lord *Gerrard.* No, I know of none, nor heard of any but by Rumour, after that you pretended to diſcover ſuch a thing.

Otes. Did his Lordſhip ſee me every Day, does he ſay?

Lord *Gerrard.* I cannot ſay every Day, but I ſaw him at the Refectory generally, and I remember it particularly, becauſe he ſat at a Table by himſelf; I believe he could not be abſent without being miſs'd, becauſe we knew every Perſon that came in and went out.

Mr. *Sol. Gen.* Then Swear Mr. *Samuel Morgan.* [*Which was done.*

Mr. *At. Gen.* Mr. *Morgan*, were you at St. *Omers* in 77, and 78?

Mr. *Morgan.* I was my Lord.

Mr. *At. Gen.* Did you obſerve Mr. *Otes* to be there at that time?

Mr. *Morgan.* Yes, I did.

Mr. *At. Gen.* Pray give an account when he came, and when he went away.

Mr. *Morgan.* He came 14 or 15 Days before *Chriſtmas*, as I remember, and went away in *June.*

Mr. *At. Gen.* What *Chriſtmas* do you mean, Mr. *Morgan?*

Mr. *Morgan. Chriſtmas* 77.

Mr. *At. Gen.* And when did he go away?

Mr. *Morgan.* In *June* 78. he went away.

Mr. *At. Gen.* Was he abſent any time during that ſpace?

Mr. *Morgan.* My Lord, I know not that he was ever abſent above one Night in all that time.

Mr. *At. Gen.* What time was that one Night?

Mr. *Morgan.* Truly my Lord I cannot tell what Month it was very exactly.

Mr. *At. Gen.* Whither was he gone that Night?

Mr. *Morgan.* He went to *Watton*, three miles off from St. *Omers.*

Mr. *At. Gen.* Do you remember the time when Mr. *Hilſley* came away, and when Mr. *Burnaby* came to St. *Omers?*

Mr. *Morgan.* Yes I do, my Lord, very well.

Mr. *Sol. Gen.* Was Mr. *Otes* there when *Hilſley* went away?

Mr. *Morgan.* He was there then.

Mr. *Sol. Gen.* Was he there when Mr. *Burnaby* came?

Mr. *Morgan.* He was there when Mr. *Burnaby* came thither.

Mr. *Sol. Gen.* Was he there when Mr. *Poole* came away?

Mr. *Morgan.* Yes, my Lord, he was ſo.

Mr. *Sol. Gen.* I will ask you this ſhort Queſtion, do you believe in your Conſcience that he was abſent any particular time all that while?

Mr. *Morgan.* No, my Lord, I have no reaſon to believe ſo.

Otes. Pray my Lord, ask him what Religion he is of?

Mr. *Morgan.* I am of the Church of *England.*

Otes. When were you reconciled to the Church of *England?*

Mr. *Morgan.* Five Years ſince.

Otes. I deſire to know of him, what induced him to be reconciled to the Church of *England?*

L. C. J. That is not a pertinent Queſtion, nor fit to be asked. Is he to give an account of his Faith here?

Mr. *Juſt. Withins.* It ſeems Mr. *Otes* is angry when the Witneſſes are Papiſts, and when they are Proteſtants too.

Otes. When was it that I came to St. *Omers* do you ſay?

Mr. *Morgan.* You came thither in *December*, 77.

L. C. J. So he told you before, why do you repeat Things over and over again?

Otes. When was it I went away from thence, ſay you?

Mr. *Morgan.* In *June* 78.

Mr. *Sol. Gen.* Do you remember the 24*th* of *April* Old Stile, that Year?

Mr. *Morgan.* Yes, my Lord, I do remember it very well.

Mr. *Sol. Gen.* Do you remember him to be at St. *Omers* that Day?

Mr. *Morgan.* Yes, I do, by this Circumſtance.

Mr. *Sol. Gen.* Ay, pray tell my Lord and the Jury that Circumſtance, how you come to remember it.

Mr. *Morgan.* We had the Tryal of *Ireland* brought over to us ſoon after it was printed, and there we found mentioned, that Mr. *Otes* had depoſed, That the 24*th* of *April*, 78. there was a Conſult of the Jeſuits, and they met at the *White Horſe* Tavern, where they reſolved to kill the King, and he carried that Reſolution from Chamber to Chamber, and he did nominate the Day, and having it then freſh in my Memory, though he ſwore that he was the 24th of *April* Old Stile in *London* at that Conſult; yet I found him to be at St. *Omers* by a very particular Circumſtance: My Lord, I was playing at Ball that Day, and ſtruck it over into a Court, into which I could not get over my ſelf, but I ſaw Mr. *Otes* then walking in the Court, and I came and borrowed his Key, and ſo went in, and there paſſed between us Words of Friendſhip.

L. C. J. When was this, do you ſay?

Mr. *Morgan.* The 24*th* of *April* 78. Old Stile.

Otes. I deſire to let his Orders be ſeen.

L. C. J. No, he ſhall not be put to ſhew any ſuch thing.

Otes. He is a Miniſter of the Church of *England*, my Lord.

L. C. J. Sir, we tell you, we will not do it, what ado is here with your impertinent Queſtions, have not I told you, you ſhall not enſnare the Wineſſes?

Otes. He was a going to pull out his Orders himſelf.

Mr. *At. Gen.* My Lord, Mr. *Otes* may ſee them if he will, he is a Beneficed Miniſter of the Church of *England.*

L. C. J.

L. C. J. Does he mean thoſe Orders?

Mr. *At. Gen.* Yes, he does, and here they are.

L. C. J. Let him ſee them. [*Which was done.*

Otes. My Lord, I deſire to know of this Gentleman, what Name he went by at St. *Omers*?

Mr. *Morgan.* By the Name of *Morgan.*

Mr. *Sol. Gen.* Swear Mr. *Arundel.* [*Which was done.*

Mr. *At. Gen.* Pray Sir, will you give an account in ſhort, whether you were at St. *Omers* in 77, and 78. and the Time when *Otes* came thither, and when he went away.

Mr. *Arundel.* I was there when Dr. *Otes* came, and when he went away.

Mr. *At. Gen.* When was that?

Mr. *Arundel.* Sir, I cannot be poſitive to the Time exactly, but I think it was about *January* 77. that he came there, and he went away about *June* 78. I cannot be poſitive to the time exactly.

L. C. J. He does not particularly remember the Time, but he thinks it was about *January* 77, he came thither.

Mr. *Arundel.* I beg your Lordſhip's Pardon, he came there about *December.*

Mr. *At. Gen.* Do you remember any particular Circumſtances, that you ſaw him there at any particular time?

Mr. *Arundel.* Upon St. *Auguſtine*'s Day I ſaw him Confirm'd.

Mr. *Sol. Gen.* What Day is that?

Mr. *Arundel.* The 26*th* of *May* according to the foreign Account.

L. C. J. Did you know him there, then?

Mr. *Arundel.* Yes, my Lord, I ſay I ſaw him Confirm'd.

Mr. *Sol. Gen.* Do you remember Mr. *Hilſley*'s going away?

Mr. *Arundel.* I do not remember the time particularly, but I do remember Mr. *Otes* was actually there then.

Mr. *Sol. Gen.* Do you remember when Mr. *Burnaby* came to St. *Omers*?

Mr. *Arundel.* No, I do not remember the time, but he was there then too.

Mr. *Sol. Gen.* Do you remember when Mr. *Pool* went away?

Mr. *Arundel.* No, I cannot tell what Day it was, but he was there at the time of his going away, upon my Oath.

Mr. *Sol. Gen.* Can you tell any other particular time?

Mr. *Arundel.* The 11*th* of *May* New Stile, there was an Action exhibited in the College.

L. C. J. Was *Otes* there then?

Mr. *Arundel.* To the beſt of my remembrance he was.

L. C. J. He does not affirm any Particular, but only ſpeaks in general.

Otes. Are you a Proteſtant too, Sir?

Mr. *Arundel.* No, Doctor, I am not.

Otes. Pray, my Lord, I deſire to know what Religion he is of?

Mr. *Arundel.* I am a Papiſt, my Lord.

Otes. Pray ask him by what Name he went at St. *Omers*?

Mr. *Arundel.* I believe you know that as well as I Doctor *Otes.*

L. C. J. You muſt anſwer his Queſtion.

Mr. *Arundel.* I went by the Name of *Spencer*, my Lord.

Otes. I do remember him, my Lord, to have been there.

Mr. *Arundel.* Sir, your humble Servant.

Otes. It is almoſt ſeven Years ago, my Lord, and I may not ſo well remember them as they do me, but I deſire to know when he went to St. *Omers* firſt, and how long he was there?

Mr. *Arundel.* I was there ſeven Years.

Otes. Pray, my Lord, ask him, whether he was of the Sodality?

Mr. *Arundel.* Yes, my Lord, I was.

L. C. J. Was he Reader of the Sodality?

Mr. *Arundel.* Yes, my Lord, in my time he was Reader.

Otes. Then my Lord, I deſire to ask him, whether ever he heard of a Conſult of the Jeſuits, that was to be held in *England*, in *April* 78. and from whom he heard it?

Mr. *Arundel.* Yes, my Lord, I did hear in the College of a Congregation.

Mr. *Sol. Gen.* Was that an extraordinary one, or of courſe?

Mr. *Arundel.* It was only of courſe, as they told us, once in three Years they have one.

Otes. Pray my Lord, be pleaſed to ask this Gentleman what Studies he followed at St. *Omers*?

L. C. J. He was of the Sodality, he ſays.

Mr. *Arundel.* My Lord, I ſtudied to the end of Rhetorick.

Otes. My Lord, I deſire to know whether when he came from St. *Omers*, he did come directly for *England*?

Mr. *Arundel.* No, I went from thence to *Paris*, my Lord.

Mr. *Sol. Gen.* Swear Mr. *Chriſtopher Turbervile.* [*Which was done.*

Mr. *At. Gen.* Pray Mr. *Turbervile*, will you acquaint my Lord and the Jury, whether you were with Mr. *Otes* at St. *Omers*, and when?

Mr. *Turbervile.* Yes, my Lord; he went by the Name of *Sampſon Lucy* there, and there I ſaw him, and there I was with him all the time; I was there before him, and I remained there after he went away.

Mr. *At. Gen.* What time did he come to St. *Omers*, I pray you?

Mr. *Turbervile.* Before *Chriſtmas.*

L. C. J. In what Year?

Mr. *Turbervile* In the Year 77.

Mr. *At. Gen.* What time was it he went away?

Mr. *Turbervile.* In *June* 78.

L. C. J. Were you there all that while at St. *Omers*?

Mr. *Turbervile.* Yes, I was.

L. C. J. And to the beſt of your apprehenſion, you think he was there all that while?

Mr. *Turbervile.* Yes, I do ſo, my Lord.

Mr. *Sol. Gen.* Can you ſpeak of any particular Days you can remember?

Mr. *Turbervile.* Yes, I do remember him upon the 4*th*, 5*th*, and 6*th* of *May*, for two or three Days together; for my Lord, I do remember this Circumſtance, Mr. *Pool* about that time went away, and that very Day Mr. *Pool* went from the College, I changed my Lodging, and went into his Lodging, and that Day I ſaw Doctor *Otes* in the Chamber, and by the Chamber Door.

Mr. *At. Gen.* Did he continue in the College from the time he came about *Chriſtmas* to the time he went away in *June?*

Mr. *Turbervile.* Yes, he did, all the while except it were one Night in *January* when he went to *Watton.*

L. C. J. What time in *June* did he go away?

Mr. *Turbervile.* I am not poſitive, but I am morally ſure he went away the 23d of *June,* as near as I can remember.

Otes. I was there in *June* that is very well known.

L. C. J. What do you remember of his reading in the College?

Mr. *Turbervile.* I do remember he was Reader there on *Sundays* and *Holidays* for a great while; I cannot ſwear upon what *Sunday* he began, but he left off the *Sunday* before he went away.

L. C. J. As near as you can remember, when did he begin to read?

Mr. *Turbervile.* It was the beginning of *April,* or latter end of *March,* I cannot juſtly ſwear which it was.

Mr. *Molloy.* Did he read on *Holidays* as well as *Sundays?*

Mr. *Turbervile.* Yes, he did.

Otes. I muſt ask this Gentleman one Queſtion, if your Lordſhip pleaſe, and that is this, what Name he went by at St. *Omers?*

Mr. *Turbervile.* I went there by the Name of *Farmer.*

Otes. Pray you, my Lord, ask him what Religion he is of?

Mr. *Turbervile.* It is a hard Queſtion to anſwer that.

Otes. Nay, my Lord, I deſire to know what is his Religion?

Mr. *Turbervile.* I am, my Lord, a Roman Catholick.

Otes. Ask him when he went to St. *Omers* firſt, and how long he ſtayed there?

Mr. *Turbervile.* I was there ſeven Years very near.

Otes. I deſire to know whether he did come away directly to *England* when he came from St. *Omers?*

Mr. *Turbervile.* No, my Lord, I went into *Italy.*

Otes. Pray you, my Lord, I deſire to know whether he did go to *Rome?*

L. C. J. What if he did, what then? That is not at all to the purpoſe, he went into *Italy.*

Otes. Pray, my Lord, be pleaſed to ask him this Queſtion further, Was he a Witneſs on the behalf of the five Jeſuits, or of *Langhorn* at their Tryals?

Mr. *Turbervile.* No, my Lord, I was not.

Otes. Pray, my Lord, be pleaſed to ask him then what Reward he has been promiſed, or is to have for giving this Evidence?

Mr. *Turbervile.* None at all, my Lord.

Otes. Pray, my Lord, ask him, whether or no he heard of any Conſult of the Jeſuits in *April* 78, and from whom?

Mr. *Turbervile.* There was a Congregation, as I heard, but I do not remember that any of the Fathers went from the College to it; ſeveral came by there, and lodged there as they went, and as they came back.

Otes. Pray, my Lord, ask him how he came here to be a Witneſs in this Cauſe?

Mr. *Turbervile.* I was ſubpœna'd.

Otes. Who ſerv'd the Subpœna upon him?

Mr. *Turbervile.* The Managers; it was ſent to me by the King's Counſel, I ſuppoſe; a Man brought it to me.

L. C. J. 'Tis no matter who brought it you, you were ſubpœna'd, that's enough.

Mr. *Sol. Gen.* Swear Mr. *Anthony Turbervile.*

[*Which was done.*

Mr. *At. Gen.* Were you at St. *Omers* in 77 and 78?

Mr. *A. Turbervile.* Yes, my Lord, I was.

Mr. *At. Gen.* Did you obſerve the Defendant Mr *Otes* there at that time?

Mr. *A. Turbervile.* Yes, I obſerv'd him all the while he was there.

Mr. *At. Gen.* When did he come to St. *Omers?*

Mr. *A. Turbervile.* In the Year 77, about *Chriſtmas.*

Mr. *At. Gen.* When went he away?

Mr. *A. Turbervile.* A Gentleman who was formerly ſworn, (Mr. *Thornton*) and I were at Breakfaſt with him the ſelf ſame time when he went away.

L. C. J. When was that?

Mr. *A. Turbervile.* I ſuppoſe about the latter end of *June* 78.

Mr. *At. Gen.* Did you obſerve him to be there in *April* or *May* 78?

Mr. *A. Turbervile.* He was not abſent above one Night in *January* that I can remember from his firſt coming thither, for it was impoſſible he ſhould be abſent and not miſs'd, he ſitting at a diſtinct Table by himſelf, and his Converſation being ſo remarkable for a great many ridiculous Actions, and a great many pretty Jeſts that he us'd, ſo that he was like a ſilly Perſon, as I may call him, that us'd to make ſport, and no body could be miſs'd ſo ſoon as he: And I ſaw a little Boy in the College beat him up and down with a Fox's Tail. Indeed, my Lord, all his Actions were very remarkable: I ſee him very much abuſive to Perſons that liv'd with him in the College; and Mr. *Otes* could not be a Perſon of this Note, but all the World muſt take notice of him, and all that knew him muſt miſs him, if he were away.

L. C. J. You hear him, Mr *Otes*; he gives you a particular Character; he ſays you were a very notorious Perſon in many Inſtances.

Mr. *A. Turbervile.* My Lord, I was a Perſon then the youngeſt in the whole Company, and Mr. *Otes* being very abuſive to me, I did what became me to right my ſelf upon him.

Otes. Pray, my Lord, be pleas'd to ask this Gentleman what the Name was he went by at St. *Omers?*

Mr. *A. Turbervile.* By my Grandmother's Name, which was *Farmer.*

L. C. J. Do you remember the time when Mr. *Hilſley* went away from St. *Omers?*

Mr. *A. Turbervile.* He went away upon a *Sunday.* Mr. *Otes* remain'd afterwards there: I am poſitive I ſaw him ſeveral Days after.

L. C. J. Do you remember when Mr. *Burnaby* came thither?

Mr. *A. Turbervile.* Yes, my Lord; and Mr. *Otes* was there then.

L. C. J. Will you ask him any Queſtions? If you are not ready, I will ask him ſome for you. Come, what Religion are you of?

Mr.

Mr. *A. Turbervile.* I am a Roman Catholick, my Lord.

L. C. J. Well, and how long were you at St. *Omers*?

Mr. *A. Turbervile.* Six Years and upward, my Lord.

L. C. J. When you came away from thence, did you come directly for *England*?

Mr. *A. Turbervile.* I took a Circumference round.

Otes. My Lord, I do find my Defence is under a very great Prejudice.

L. C. J. Why so? Because we won't let you ask impertinent Questions, or such as may render the Witnesses obnoxious to a Penalty.

Otes. No, my Lord, it is not fit they should, for there is a Turn to be serv'd.

L. C. J. What do you mean by that? Ay, and a good Turn too, if these Witnesses swear true: 'Tis to bring Truth to light, and perjur'd Villains to condign Punishment.

Otes. Good my Lord, be pleased to hear me.

L. C. J. If you behave not your self with that Respect to the Court as you ought, pray get you gone. Do you think you shall give such Language as this in a Court of Justice?

Otes. My Lord, I did not design———

L. C. J. If you behave your self as you should, you shall have all due Regard; but if you fly out into such abusive Extravagancies, we'll calm you as you ought to be calm'd.

Otes. I would vindicate my self, I meant it not of the Court.

L. C. J. So you had need. Don't think we sit here to let you asperse the Justice of the Court and of the Nation, as if the Judges sat here to serve a Turn.

Otes. I say, these Men do come to serve a Turn; but I laid no Aspersion upon the Court, nor meant it of them.

L. C. J. Behave your self as you ought, and you shall be heard with all the Fairness can be desir'd.

Otes. I did perceive your Lordship and the Court made your selves pleasant with my Questions.

L. C. J. I did not make my self pleasant with your Questions, but when you ask impertinent ones you must be corrected: You see we do the same thing with them; I find fault with nothing but what is not to the purpose.

Otes. My Lord, I desire it may be observ'd, that these Men that come now, are the same Witnesses that appeared at the *Old Bailey*, and were not believed there.

L. C. J. Observe what you will by and by.

Mr. *At. Gen.* No, they are other Men, but they bear the same Testimony indeed.

Mr. *Sol. Gen.* Swear Mr. *Clavering*.

[*Which was done.*

Mr. *At. Gen.* Come, Sir, I'll ask you a short Question: Were you at St. *Omers* with Mr. *Otes*, and when?

Mr. *Clavering.* Yes, I was: I came the 10th of *December* 77 to St. *Omers*, he told me he came thither that Day too, and I liv'd there all the time that he was there, which was till towards the middle of Summer: I do not remember that he ever was absent, but once at *Watton*.

Mr. *At. Gen.* Do you remember Mr. *Burnaby*'s coming thither?

Mr. *Clavering.* Mr. *Otes* was there when Mr. *Burnaby* came there.

Mr. *Sol. Gen.* Was he there when *Pool* came away?

Mr. *Clavering.* He was there when Mr. *Pool* went away, and likewise I remember his being there at the time of the Congregation.

Mr. *At. Gen.* Pray tell the Circumstance how you know he was there then?

Mr. *Clavering.* There came a Gentleman there that desir'd a Charity of the Students, and I was the Person that made the Collection for him in the House; and I remember he did ask if there was any one that was a Student there that had been in *Spain*: We told him there was one, and describ'd him, upon which he knew the Gentleman in *Spain*; upon that I told Mr. *Otes*, that there was one there that knew him, but he deny'd to come and speak with him. Now I remember that it was the time of the Congregation, for some made Enquiry why he got so little Money at *Watton*, and it was said it was because the Fathers were gone to the Congregation in *England*. And he ask'd me particularly, what was done at the Congregation in *England*?

L. C. J. Did *Otes* ask that Question?

Mr. *Clavering.* Yes, my Lord, he did.

L. C. J. Whom did he ask it of?

Mr. *Clavering.* Of me.

L. C. J. When was that?

Mr. *Clavering.* I think it was about the time of the Congregation.

L. C. J. How came he to enquire after it?

Mr. *Clavering.* I was talking with him, and said he to me, *Know you nothing what the Business is that they are to do at the Congregation?* Said I, *Mr.* Lucy, *I know not what they do; I think not much: For I hear at those Meetings many times they stay an hour or two, and have done when they have chosen their Procurator.*

Mr. *Sol. Gen.* And you believe he was there all the time?

Mr. *Clavering.* Yes, my Lord, I do believe it.

Otes. Pray, my Lord, let me ask him a Question or two.

L. C. J. Ay, what you will.

Otes. What Religion is this Gentleman of?

Mr. *Clavering.* I am a Catholick.

Otes. A Roman Catholick you mean, I suppose?

Mr. *Clavering.* Yes, I always understood it so, Mr. *Otes*.

Otes. My Lord, I desire to know how he came not to be produc'd at the Jesuits Tryal, to give this Evidence he gives now?

Mr. *Clavering.* I can give a very good Reason perhaps: I was then, my Lord, in *Germany*.

L. C. J. That's Reason good enough of all Conscience.

Mr. *Just. Withins.* That was a new Question, and you have a satisfactory Answer, I think.

Mr. *Sol. Gen.* Swear Mr. *John Copley*.

[*Which was done.*

Mr. *At. Gen.* Were you at St. *Omers* in 77 and 78?

Mr. *Copley.* Yes, I was.

Mr. *At. Gen.* Was *Otes* there then?

Mr. *Copley.* I saw him all the time he was there.

Mr. *Sol. Gen.* When did he come thither?

Mr. *Copley.* He came a little before *Christmas*, to the best of my Remembrance.

Mr. *Sol. Gen.* When went he away?

Mr. *Copley.* In 78.

Mr. *Sol.*

Mr. *Sol. Gen.* In what Month in 78?

Mr. *Copley.* In *June* 78.

Mr. *Sol. Gen.* Was he abſent any part of that time?

Mr. *Copley.* I was there, and he was there too.

Mr. *Sol. Gen.* Was he abſent any part of the time from *Chriſtmas* to *June?*

Mr. *Copley.* Nay, I am ſure he was there all the time, except that Night that he was abſent at *Watton*, and that was in *January.*

Otes. Pray, my Lord, ask him what Religion he is of?

Mr. *Copley.* Does your Lordſhip ask me that Queſtion?

L. C. J. Yes, I do ask you, Mr. *Otes* would know it.

Mr. *Copley.* I am a Roman Catholick, my Lord.

Mr. *Sol. Gen.* Swear Mr. *Cook.*

[*Which was done.*

Mr. *At. Gen.* Did you know Mr. *Otes* at St. *Omers*, and when?

Mr. *Cook.* He came there a little before *Chriſtmas* 77.

Mr. *At. Gen.* How came you to know him there?

Mr. *Cook.* I liv'd in the Houſe then.

Mr. *At. Gen.* Was he there all *April* and *May?*

Mr. *Cook.* Yes, he was till the latter end of *June.*

Mr. *At. Gen.* Did you ſee him every Day?

Mr. *Cook.* Yes, I did.

Mr. *At. Gen.* Can you tell any particular time?

Mr. *Cook.* I am poſitive he was the 30th of *April.*

Mr. *At. Gen.* What Stile?

Mr. *Cook.* New Stile.

L. C. J. How do you know he was there then?

Mr. *Cook.* It is a remarkable time; there is a Proceſſion that they keep there on that Day from the *Sodality* to the Church, and I ſaw him go among the reſt at the latter end among the Rhetoricians.

L. C. J. What ſay you, was he there on that Day Mr. *Hilſley* went away?

Mr. *Cook.* I do not remember that.

L. C. J. Do you remember *Burnaby?*

Mr. *Cook.* I was there when Mr. *Burnaby* went away.

L. C. J. But when he came was *Otes* there?

Mr. *Cook.* I cannot ſpeak particularly to that.

Mr. *At. Gen.* What was your Place in the College?

Mr. *Sol. Gen.* My Lord, He is a Lay-man be ſure.

Mr. *Cook.* I was a Servant in the Houſe.

Otes. In what Place do you ſerve?

Mr. *Cook.* I was a Taylor.

Otes. I do not remember him.

Mr. *Cook.* But I remember you.

Mr. *Sol. Gen.* Swear *Jo. Wright*, Eſq;

[*Which was done.*

Mr. *At. Gen.* Do you remember *Otes* at St. *Omers?*

Mr. *Wright.* Yes, I do.

Mr. *At. Gen.* When was it?

Mr. *Wright.* The Winter before the notice of the Plot was.

Mr. *At. Gen.* What Year was it in?

Mr. *Wright.* In the Year 77.

Mr. *At. Gen.* What Month in that Year did he come thither?

Mr. *Wright.* I cannot tell, it was Winter-time.

Mr. *At. Gen.* When did he go away?

Mr. *Wright.* He went away in Summer, I cannot tell juſt the time.

Mr. *At. Gen.* Was he abſent at any time, from his coming in Winter, to his going away in Summer?

Mr. *Wright.* The Scholars ſaid he was once at a Place call'd *Watton.*

L. C. J. Come, this ſays nothing to the purpoſe.

Mr. *Sol. Gen.* My Lord, We leave it here.

L. C. J. What ſay you to it then, Mr. *Otes?*

Otes. Has Mr. Attorney done?

Mr. *At. Gen.* Yes, we have done for the preſent.

L. C. J. Then are you to make your Defence.

Otes. My Lord, Here is an Indictment brought againſt me for Perjury; and this Indictment ſets forth, *That I ſhould upon the 17th of* December *appear at the* Old Bailey, *and there ſwear, That there was a Treaſonable Conſult of the Jeſuits met at the* White Horſe *Tavern in the* Strand, *and that this Treaſonable Conſult did divide it ſelf into leſſer Companies and Meetings, and that I carried about a certain Reſolution, which the Jeſuits came to, concerning killing the King, from Chamber to Chamber to be ſign'd.* My Lord, I have a great Exception to make to this Indictment, and that is, my Lord, as to the Form. For, by your Lordſhip's Favour, I think the Perjury is not well aſſign'd, and according as I am adviſed I offer this to your Lordſhip's Conſideration. It ſays in the Aſſignment of the Perjury, *Ubi revera & in facto prædictus* Titus Otes *non præſens fuit ad aliquam Conſultationem Jeſuitarum apud le* White Horſe Tavern *prædict' in le* Strand *in Com'* Midd' *prædict' ſuper viceſimum quartum diem* April' *anno Dom' Milliceſimo.*

L. C. J. How *Milliceſimo!*

Otes. My Lord, It is Law-Latin, I ſuppoſe it may ſerve in a Court.

L. C. J. No, it is true Latin there.

Otes. I cannot tell how to read it better.

L. C. J. I do believe that.

Otes. It is written in ſuch a Hand, I cannot read it; but the Subſtance of it is, it ſays here, That I did not carry any Reſolution from Chamber to Chamber *ſignand'*. Now, the Evidence charged upon me to be given, is, That I did not ſee it *ſignat':* So that the Aſſignment of the Perjury does not purſue the Oath as it is ſet forth; for if it be *ſignat'* in the Evidence that was given, it ought to be *ſignat'* in the Perjury that is aſſigned; and I humbly crave the Opinion of your Lordſhip and the Court upon this Point.

L. C. J. Look you, Mr. *Otes*, That you offer'd before, and I gave this Anſwer, which I muſt now repeat, That now we are upon the Fact, and this Exception will be ſav'd to you for its proper time, if you be convicted. It is not proper now; but ſuppoſe there were that thing which you ſay is an Objection, yet you muſt know, that there are two Perjuries that are aſſign'd; the one is upon the firſt part of your Oath, which was, that you were preſent at a

Conſult

Conſult of the Jeſuits the 24th of *April* 78, at the *White Horſe* Tavern in the *Strand*, *Ubi revera* you were not there. Now, Do you admit in the firſt place, that you were forſworn in that particular.

Otes. No, my Lord, I do not.

L. C. J. If the Jury find that you were forſworn in that firſt Point, that you were not there, it will be eaſily believed you ſwore falſe in the other Point, that you did not carry the Reſolution from Chamber to Chamber.

Otes. But, my Lord, it is not well aſſign'd, I think.

L. C. J. That will be ſav'd to you after the Verdict, I tell you, if there be occaſion for it.

Otes. My Lord, I ſuppoſe the Proof ought to be according to the Record, and the Record makes the Perjury differ from the Oath.

L. C. J. I tell you that is to the Form, and that will be ſav'd to you after the Verdict one way or the other.

Otes. Then will your Lordſhip be pleaſed to conſider there was a Record brought in, which is almoſt the ſame with that I am to offer to be read on my behalf, and which is the firſt Proof that I have to offer of the Conſult that was held in *London* in *April* 78. And I deſire Mr. *Percivile* may be called, I forget his Chriſtian Name, and Mr. *Vaughan* who is my Sollicitor: But pray, my Lord, let me firſt have the Opinion of the Court, whether they did prove the Words that I am ſaid to ſwear as they are laid in the Indictment.

L. C. J. Yes, very fully, we think ſo; but the Jury are to try that, that is a Point of Fact; but if you will, you ſhall have our Thoughts about it; We think they are fully proved.

Cryer. Here is Mr. *Percivile.*

Otes. Pray ſwear him. [*Which was done.*

L. C. J. What do you ask him?

Otes. Mr. *Percivile*, You examin'd the Conviction of Mr. *Ireland*, pray put it in: Is it a true Copy?

Percivile. Yes, it is.

Otes. My Lord, I deſire that the Conviction and Attainder of Mr. *Ireland* may be read.

Mr. *At. Gen.* It has been read already.

Otes. My Lord, I will not take up the Court's time any more than is neceſſary for my Defence.

L. C. J. Nay, do as you will, as long as you offer things pertinent and decent, the Court will hear you with all Patience, and you may take what time is neceſſary for you.

Otes. I thank your Lordſhip: I deſign'd nothing at all of Reflection upon the Court, but a Reflection on the Witneſſes that came in againſt me.

Cl. of Cr. This is a Copy of the ſame Record that was before read.

Otes. Well, if that be allowed for Evidence for me, I am contented to ſpare the time of the Court, not to read it again; but, my Lord, I offer this, and deſire to have Counſel aſſign'd me to argue this Point in Law; that is, Whether or no the Convictions and Attainders of *Ireland*, *Whitebread*, and the reſt of them, of a Treaſonable Conſult of the 24th of *April* 78. where it was reſolved to murder the late King, ought not to be taken as a ſufficient Legal Proof of the Fact, ſo long as thoſe Attainders remain of Force? And whether the Averment of that being falſe, is to be received againſt thoſe Records?

L. C. J. There is no difficulty in that at all in the World, Mr. *Otes.*

Otes. My Lord, I do not know the Law, and therefore I pray I may have Counſel aſſign'd to argue that Point.

L. C. J. There is no queſtion in it. God forbid, if a Verdict be obtain'd by Perjury, that that Verdict ſhould protect the perjur'd Party from being proſecuted for his falſe Oath. There were no Juſtice in that; nor is it an Averment againſt a Record, for this is not a Writ of Error in Fact that will reverſe it, but the Record remains a good Record and unimpeached ſtill: But tho' it be a good Record, yet it is lawful to ſay this Verdict was obtain'd upon the Teſtimony of ſuch an one, that forſwore himſelf in that Teſtimony, and for that particular Perjury he may ſurely be proſecuted.

Otes. Is not that Attainder an uncontroulable Evidence of the Fact, till it be revers'd?

L. C. J. Yes, it is againſt the Party attainted; but if that Attainder was founded upon a Verdict that was obtain'd by Perjury, God forbid, but he ſhould be told ſo that did perjure himſelf.

Otes. Well, my Lord, if your Lordſhip rules that for Law, then I will go on; and I muſt now obſerve to the Jury in the opening the Evidence two things. Firſt, That the Indictment upon which *Ireland* was try'd, was found the 16th of *December* 78, and on the 17th of *December*, the next Day *Ireland* was try'd at the *Old Bailey*; and then I find this Indictment brought againſt me for Perjury, is found at the *Old Bailey* ſix Years after the Fact by ſpecial Commiſſion. Now, I ſubmit it to your Lordſhip's and the Jury's Conſideration, why the Preſentment and the finding of this Bill for Perjury has been ſo long delay'd, ſince it appears by the Evidence, that the Witneſſes that have been produc'd to prove the Perjury, were either at the Tryal of the five Jeſuits, or might have been produced then; and tho' they are not all the ſame Perſons, yet they all bear the ſame Teſtimony that was then offered, but were not credited; and I hope when my Evidence is heard, they will have the ſame Reputation with this Jury that they had with thoſe others. My Lord, I muſt acquaint your Lordſhip and this Court, That in this Indictment for which Mr. *Ireland* was convicted, Mr. *Whitebread* and Mr. *Fenwick* did undergo part of the Tryal, and did hear the whole Body of the Evidence that the Witneſſes teſtified againſt them; but there being but one Witneſs againſt them two at that time, which was my ſelf, (Mr. *Bedloe* being then upon an Intrigue, as your Lordſhip may remember) my Lord Chief Juſtice *Scroggs*, who was then the Mouth of the Court, did diſcharge the Jury of Mr. *Whitebread* and Mr. *Fenwick*, and remanded them to Priſon, which Mr. *Whitebread* ſix Months after did remark to the Court, and urg'd it as a Plea for himſelf to be diſcharged; but that being over-ruled by the Court, he was try'd. Now, he had ſix Months time to provide himſelf with new freſh Evidence to aſperſe me, and to endeavour to falſify that Teſtimony I gave in againſt *Whitebread* and *Fenwick*, when *Ireland* was try'd, and ſo he knew what it was. I muſt further ob-

ſerve to you, my Lord, and Gentlemen of the Jury, That my Caſe is very hard, that ſince the Subſtance of my Teſtimony was with Credit receiv'd, and the Jury upon convicting them were acquainted, " That they had found an " unexceptionable Verdict; That all the Ob- " jections againſt the Evidence were then fully " anſwer'd; That there was nothing that the " Priſoners had been wanting in to object, " which could be objected; and that the thing " was as clear as the Sun. And yet after ſix Years time, I muſt come to be called to an account for Perjury in my Teſtimony of that part of the Popiſh Plot, with which the King and Kingdom, four ſucceſſive Parliaments, all the Judges of the Land, and three Juries were ſo well ſatisfied. I ſhall therefore offer to your Lordſhip and the Jury's Conſideration the unanimous Votes of three Houſes of Commons; I ſhall offer the Proceedings of the Houſe of Lords, that is the higheſt Judicature in the Kingdom; I ſhall prove what I have open'd by the Teſtimony of ſeveral Noblemen that are here, who will teſtify this for me. My Lord, I ſhall prove, that ſeveral Attempts have been made to baffle this Teſtimony, as that of the Murder of Sir *Edmundbury Godfrey*, who took my Depoſitions, the Contrivance of *Paine*, *Farewell*, and *Thompſon*, made in the Year 81 or 82, I forget which; I ſhall then produce Evidence that I was actually here in Town at the time in queſtion; and then upon the whole I ſhall ſubmit it to your Lordſhip and the Jury. But to prepare your Lordſhip and the Jury the better for my Evidence, I would again urge the ſtrangeneſs of this Proſecution, and the Hardſhip that is put upon me, to be tryed for Perjury in an Evidence given ſix Years ago, and formerly very induſtriouſly, tho' not ſucceſsfully, endeavoured to be falſified by ſixteen St. *Omers* Youths that were produced and examined before all the Judges in the Kingdom, and that not only once at *Whitebread*'s Tryal, but a ſecond time at *Langhorn*'s Tryal, in neither of which would the Jury believe them, becauſe of their Religion and Education, and the Perſons under whom they were educated, who were Men of known Artifice. Then, my Lord, I would argue this: If at that time my Evidence were true, it muſt be true ſtill; for Truth is always the ſame; and if it were then true, and I can prove it to be true, 'twill be thought a hard thing without all doubt, that this ſhould be put upon me. Then, my Lord, I would fain know from my Proſecutors, Why this Indictment of Perjury has been deferred ſo long? Why theſe Witneſſes that come now to teſtify this Matter, and could then have been brought, did not come before, to juſtify at the Tryals of theſe Perſons what they now ſay, which might have ſav'd their Lives, if true, and had been credited. Then I ſhall offer to your Lordſhip what I deſire You and the Jury would pleaſe to obſerve, That tho' the King's Counſel are now againſt me, yet they are alſo againſt themſelves, for they were of Counſel for the King in thoſe Caſes; particularly Mr. Sollicitor at *Langhorn*'s Tryal, Sir *Robert Sawyer* at Sir *George Wakeman*'s Tryal: They were of Counſel before for the Truth of my Teſtimony; they are now againſt it: I only mention that, and paſs it over. But this is not the firſt Attempt that has been made to diſcredit the Teſtimony of the *Popiſh Plot*, as I told you before. Now, can it be ſuppoſed that the Love and Deſire of Publick Juſtice can be the Cauſe of this Attempt to falſify my Evidence after ſo many Tryals, in which it has been credited and confirmed? Can any thing, my Lord, more plainly tend to deſtroy and ſubvert the Methods of Juſtice, to frighten all Witneſſes from henceforth from ever appearing to diſcover any Conſpiracies? And does it not tend to expoſe and vilify the known Underſtanding and Juſtice of the late King of ever Bleſſed Memory, to arraign the Wiſdom of His Privy Council, His Great and Noble Peers, His Loyal Commons in three ſucceſſive Parliaments, His Twelve Judges, and all theſe ſeveral Juries that were upon thoſe Tryals? Had not thoſe Juries Senſe? Had they not Honeſty? Had they no Conſciences? And the Judges before whom thoſe Conſpirators were try'd, were they Men of no Juſtice, nor Honour, nor Integrity, nor Conſcience, nor Underſtanding? Shall thoſe Juries be ſaid to have drawn the innocent Blood of theſe Men upon their own Heads and the Nation? As, if I were perjur'd it muſt be innocent Blood that was ſhed upon it.

L. C. J. No, no, that goes a great deal too far, Mr. *Otes*: The Jury have no ſhare, nor the Judges neither, in that Blood which was ſhed by your Oath.

Mr. *Juſt. Withins.* No, that is your own moſt certainly, and not theirs.

Otes. But this, I ſay, makes it moſt plain: The Evidence was then true, and I hope I ſhall make it as evidently plain 'tis as true now; and I do not queſtion, but upon the Evidence I ſhall now give, both poſitive and collateral, the Jury will believe me, and acquit me of this foul Accuſation. Pray, my Lord, be pleaſed to conſider, that when the Jury brought in *Ireland* guilty of the High Treaſon of which he was accuſed, and convicted him, *Pickering* and *Grove*; ſays my Lord Chief Juſtice *Scroggs* (that then was) to them, " *Gentlemen, you have done like very* " *good Subjects, and very good Chriſtians, that is,* " *like very good Proteſtants; and now much good may* " *do them with their Thirty Thouſand Maſſes*; as I ſhall prove he did ſay. Then I inſiſt, in the ſecond place, That *Whitebread*'s Conviction does reinforce the Conviction of *Ireland*, becauſe of the Attempt by the St. *Omers* Witneſſes to have overthrown my Evidence: But ſince I am attack'd again in the ſame kind by the Violence of the Popiſh Intereſt, and by the Malice of my Popiſh Adverſaries, I am contented to ſtand the Teſt with all my Heart. And then, to conclude all, I ſhall ſhew the Court, That 'tis in vain for the Popiſh Party to expect and think to wipe their Mouths, with *Solomon*'s Whore, and ſay, *they have done no wickedneſs*: No, I queſtion not but thouſands of Proteſtants in this Kingdom are fully ſatisfied and convinced of the Truth of the Popiſh Plot, all and every part of it. Now, my Lord, if you pleaſe to give me leave to proceed on in my Evidence, I ſhall beg that theſe Records of Conviction may be read, which are my firſt Proof of the Conſult; and I ſhall then bring Witneſſes, *vivâ voce*, and ſhall make it appear, that what I did ſwear at thoſe Tryals was true.

L. C. J.

L. C. J. Not to interrupt you in your Defence, or the Method you will take for it, I would put you upon that which is proper for you to apply your self to, becauſe the Queſtion now is not, Whether there was a Conſult or Congregation of the Jeſuits here upon the 24th of *April* 78? But the Queſtion that toucheth you is, Whether you were preſent at any ſuch Conſult here in *London* the 24th of *April* 78? Theſe Gentlemen, ſome of them, do ſay, there was a Conſult, and others that they heard of it, and believe there was ſuch an one, becauſe it was uſual to have a Triennial Congregation for ſome particular Purpoſes: But the Queſtion is, Whether you have ſufficient Proof to prove your ſelf to be here on the 24th of *April* 78, at which time it is agreed of all Hands there was a Conſult?

Otes. But will your Lordſhip be pleaſed to take notice of the drift of the Evidence, how they are conſiſtent one with another? Theſe Gentlemen that have now been ſworn to prove that I was not at this Conſult, do attempt to prove that I was at St. *Omers*: Now, to anſwer this, I ſhall not go about to prove that I was not then at St. *Omers*, but that I was actually then, and about that time, here in *London*; and then all that Proof that Mr. Attorney General has brought, muſt be laid aſide.

L. C. J. You ſay well; prove that.

Otes. Now, my Lord, to introduce and prepare the Jury for this, it will be neceſſary, I humbly conceive, to read the Records of the Conviction of *Whitebread* and *Ireland*.

L. C. J. Well, go your own way. We are not to direct you: I only tell you where the Queſtion lies.

Otes. Sir *Samuel Aſtrey*, Pray be pleaſed to read them in *Engliſh*, that the Jury may underſtand them. Firſt read *Ireland*'s Record.

[*Which was done.*

Otes. Now read *Whitebread*'s Record: Read but the Attainder, I will not trouble the Court with the whole Record.

Cl. of Cr. "*Thomas White* aliàs *Whitebread*, *William Harcourt* aliàs *Harriſon*, *John Fenwick*, *John Gaven*, and *Anthony Turner*, were found guilty of High Treaſon, and attainted, and Execution awarded againſt them upon that Attainder.

Otes. Does not the Record ſay, The Jurors ſay upon their Oaths they are guilty.

L. C. J. Yes, I'll warrant you.

Cl. of Cr. It is *Dicunt ſuper ſacramentum ſuum.*

Otes. Very well. Theſe, my Lord, I do produce as my firſt Evidence, to prove that there was a traiterous Conſult, held upon the 24th of *April* 78, at the *White Horſe* Tavern in the *Strand*, it having been believed and affirmed by two Verdicts. Now give me leave to offer but this to the Court, That at the Tryal of Mr. *Ireland* I gave ſo full and ample a Teſtimony againſt *Whitebread* and *Fenwick*, accompanied with all the Circumſtances of Time and Place, That my Lord Chief Juſtice *Scroggs* ſaid, *The Evidence might be ſufficient to have ſatisfied a private Conſcience, tho' it was not a legal Proof then to convict him, there being but one Witneſs againſt them:* And for this I call Mr. *Robert Blayney*.

Mr. *At. Gen.* Pray ſwear Mr. *Blayney*.

[*Which was done.*

L. C. J. What do you ask Mr. *Blayney*?

Otes. Mr. *Blayney*, Have you your Notes of *Ireland*'s Tryal here?

Mr. *Blayney.* Yes, Sir, I have.

Otes. Pray, will you look into what my Lord Chief Juſtice *Scroggs* ſaid when he diſcharged the Jury of *Whitebread* and *Fenwick*.

Mr. *Blayney.* Whereabouts is it, Sir, in the Printed Tryal?

Otes. It is Page 55.

Mr. *Blayney.* I have found the Place, what is it you would ask me about it?

Otes. Whether my Lord Chief Juſtice *Scroggs* did not uſe theſe Words to the Jury? "*I do* "*acknowledge that Mr.* Otes *has given a very full* "*and ample Teſtimony accompanied with all the Cir-* "*cumſtances of Time and Place, againſt them all;* "*That may go far with you, all things conſidered, to* "*believe there is a Plot: Yet I do not think they* "*have proved it againſt* Whitebread *and* Fenwick "*by Two Witneſſes, tho' the Teſtimony be ſo full as* "*to ſatisfy a private Conſcience, yet we muſt go ac-* "*cording to Law too. It will be convenient from* "*what is already proved, to have them ſtay till more* "*Proof come in; 'Tis a great Evidence that is againſt* "*them, but it not being ſufficient in Point of Law,* "*We diſcharge you of them. It is not a legal Proof* "*to convict them by, whatſoever it may be to ſatisfy* "*your Conſciences.*

Mr. *Blayney.* I have look'd upon my Notes, and I cannot find exactly thoſe Words.

L. C. J. He ſays he cannot find that Paſſage as it is there.

Mr. *Blayney.* There is ſomething to that purpoſe, my Lord.

Otes. Pray, Sir, will you look into your Notes in the very ſame place, what my Lord Chief Baron ſaid: "*You muſt* (ſpeaking to the Jaylor) "*underſtand they are no way acquitted: The Evidence* "*is ſo full againſt them by Mr.* Otes's *Teſtimony,* "*that there is no Reaſon to acquit them; it is as flat* "*as by one Witneſs can be.*

Mr. *Blayney.* There is ſuch a Paſſage, I find, in my Notes.

L. C. J. He ſays there is ſuch a Paſſage.

Otes. Then I deſire Mr. *Blayney* would look into his Notes, what my Lord Chief Juſtice *Scroggs* ſaid in his ſumming up the Evidence againſt *Ireland*? He mentions the Evidence of Sir *Dennis Aſhburnham*, who was produced to diſcredit me, and then he adds, "*When the Matter is ſo ac-* "*companied with ſo many other Circumſtances which* "*are material things, and cannot be evaded or deny'd,* "*it is almoſt impoſſible for any Man either to make* "*ſuch a Story or not to believe it when it is told.*—— It is *Ireland*'s Tryal, page 72.

Mr. *Blayney.* My Lord, I do find ſuch a Paſſage in my Notes.

L. C. J. He ſays there is ſuch a Paſſage in his Notes.

Otes. Then I would ask Mr. *Blayney* another Queſtion at the bringing in the Verdict of the Jury againſt *Ireland*, *Pickering* and *Grove*, my Lord Chief Juſtice *Scroggs* (that then was) had this Expreſſion: *You have done, Gentlemen, like* "*very good Subjects, and very good Chriſtians, that* "*is to ſay, like very good Proteſtants; and now* "*much good may their* 30000 *Maſſes do them.*

Mr. *Blayney.* Yes, my Lord, there is in my Notes ſuch an Expreſſion of my Lord Chief Juſtice *Scroggs*.

Otes. Pray you, Mr. *Blayney*, have you *Whitebread*'s Tryal? The Tryal of the five Jeſuits, I mean.

Mr. *Blayney.*

Mr. *Blayney*. My Lord, When I received a *Subpœna* from Mr. *Otes* to be here this Day, and to bring my Notes of *Ireland*, *Whitebread* and *Langhorn*'s Tryals, I did (as I did before upon another occaſion, make a Search for all my Notes, but could not find any but thoſe of the Tryal of *Ireland* and *Langhorn*, and thoſe I have brought here, but have not *Whitebread*'s.

L. C. J. He ſays he has not the Notes of *Whitebread*'s Tryal; he cannot find them.

Otes. Then I muſt deſire, my Lord, that the Printed Tryals may be read.

L. C. J. No, they are no Evidence: If you can prove what was ſaid at any of them, you may by Witneſſes, but not by the Printed Books.

Otes. Then will your Lordſhip be pleaſed to give me leave to mention what was ſaid by your Lordſhip at that time, when you were Recorder of *London*, about your Satisfaction with the Evidence?

L. C. J. Ay, with all my heart, and whatever I ſaid, I will own, if I can remember it.

Otes. Will your Lordſhip be pleaſed to be ſworn then?

L. C. J. No, there will be no need for that; I will acknowledge any thing I ſaid then.

Otes. Then, if your Lordſhip pleaſes, I will read thoſe Paſſages out of the Books.

L. C. J. Ay, do ſo.

Otes. Says Mr. Recorder of *London*, (in particular to that part of the Priſoners Defence, at the Tryal of the five Jeſuits, and the full Scope given them of making Objections to the Evidence) when he gave Judgment of Death upon theſe five Jeſuits and *Langhorn*, (for I now ſpeak of your Lordſhip in the third Perſon) "*Your* "*ſeveral Crimes have been proved againſt you; you* "*have been fully heard, and ſtand convicted of thoſe* "*Crimes you have been indicted for.*

L. C. J. I believe I might ſay ſomething to the ſame purpoſe as you have read now.

Otes. I thank your Lordſhip for that Acknowledgment.

L. C. J. Ay, I'll own any thing I did ſay.

Otes. My Lord, I have one Paſſage more to urge, and that was, my Lord, after the Jeſuits had been convicted, when the Jury brought in their Verdict, and found *Whitebread*, *Fenwick*, *Harcourt*, *Gaven*, and *Turner* guilty, your Lordſhip applying your ſelf to the Jury, ſaid thus to them; "*Gentlemen, you of the Jury, there has been* "*a long Evidence given againſt the Priſoners at the* "*Bar; they were all indicted, arraigned, and tryed,* "*for High Treaſon depending upon ſeveral Circum-* "*ſtances: They cannone of them ſay the Court re-* "*fuſed to hear any thing they could ſay for themſelves,* "*but upon a long Evidence, and a patient Hearing* "*of the Defence they made, they are found guilty,* "*and for any thing appears to us it is a juſt Verdict* "*you have given.*

L. C. J. I believe I might ſay ſomething to that purpoſe too at that time; and no doubt the Jury did (as the Caſe then ſtood) find an unexceptionable Verdict.

Otes. There is another place, my Lord, that I would inſtance in, for your Lordſhip's Opinion of the Evidence of the Popiſh Plot, and that is this: Now, my Lord, I bring your Lordſhip as you were of Counſel for the King at Mr. *Colledge*'s Tryal at *Oxford*, the 17th of *Auguſt* 81. There you, my now Lord Chief Juſtice, directing your ſelf to the Jury, had this Expreſſion; "*We come not here to trip up the Heels of the* "*Popiſh Plot, by ſaying that any of them who ſuf-* "*fer'd for it did die contrary to Law; for if Mr.* "Dugdale *was not a Perſon fit to be believed, or* "*if the reſt of the Judges who try'd* Gaven *were out* "*in the Law, then that Man died wrongfully; for* "*he had as much right to be try'd according to Law* "*as any other Perſon whatſoever.* This was your Lordſhip's Opinion of the Matter then, and your Lordſhip, as Counſel for the King, did there deliver the Law as well as Fact to the Jury. If then they went againſt Law that would go to trip up the Heels of the Popiſh Plot——

Mr. *Juſt. Withins*. We are got into an endleſs Wood of Sayings of People, I know not where and when; and when all is done, it is to no purpoſe.

Otes. My Lord, it is a part, and a great part of my Defence, to ſhew what credit has been given to the Evidence of the Popiſh Plot.

L. C. J. Ay, but what Counſel ſays at the Bar, or what Judges ſay in the Court of their Opinion, is no Evidence of a Fact, of which the Jury are Judges only.

Otes. My Lord, Every Judge is upon his Oath, and delivers his Judgment according to his Oath.

L. C. J. Not as to the Fact, but only in Points of Law, ſo as to tell the Jury what the the Law is, if the Fact be ſo and ſo.

Otes. My Lord, It goes a great way with the Jury to have the Judge's Opinion.

L. C. J. Mr. *Otes*, Deceive not your ſelf; all this you have inſiſted on hitherto, has not been to the purpoſe, nor is any ſort of Evidence in this Caſe; and therefore do not run away with an Opinion of this as Evidence; a Judge's Opinion is of Value in Points of Law that ariſe upon Facts found by Juries, but are no Evidence of the Fact; for Judges only do preſume the Fact to be true, as it is found by the Jury; and therefore ſay they, Out of that Fact ſo found, the Point of Law ariſing is thus or thus. Then in caſe, after a Jury has given a Verdict of the Fact, a Judge's Opinion of the Fact, (which may be perhaps contrary to the Verdict) ſhould be an Evidence as to that Fact, that would be to overthrow and nullify the Jury's Verdict: No, that is not the Judge's Province. Surely you would not have a Judge's private Opinion, that Twelve men have found a Verdict againſt the Fact, to be an Evidence as to that Fact: No; but admit the Fact to be ſo or ſo, then the Perſon convicted of the Fact ought to ſuffer ſo or ſo. And by the ſame reaſon as this, a Jury of honeſt Gentlemen here, when I tell them here is a plain Fact either to convict you or to acquit you upon this Indictment, are not bound to go by what I ſay in Point of Fact, but they are to go according to their own Oaths, and according to the Evidence and Teſtimony of the Witneſſes: It is not my Opinion that is to weigh at all with them, whether you are guilty of this Perjury, or are innocent, but the Evidence that is given here in Court. Therefore what my Lord Chief Juſtice *Scroggs* ſaid at any of thoſe Tryals, or what I ſaid, or any other Perſon, that either was of Counſel, or a Judge on the Bench, ſaid as our Opinions, is but our Opinions on the Fact as it occurred to our preſent Apprehenſions, but is no Evidence

nor

nor binding to this Jury. I muſt tell you, there is no doubt but that thoſe Juries did every one of them believe the Evidence you gave, or they would not have convicted the Priſoners. Do you think they would have found a Verdict againſt their own Belief, and being upon their Oaths to make true Deliverance between the King and the Priſoners, have perjured themſelves to hang others? If they had ſo done, they had committed wilful Murther, and the worſt of Murthers too, being under colour of the Proceſs of Law; but yet all this is no Evidence. I do not diſcommend you for inſinuating theſe things as introductive and preparative to what Evidence you have to offer; but it is no Evidence one way or other. Alack-a-day! how many times have we Cauſes here in *Weſtminſter-hall*, wherein we have Verdict againſt Verdict? And yet no Imputation to either of the Juries, which might give different Verdicts upon different Grounds. There was a notable Caſe lately of my Lady *Ivies* at this Bar: We all thought upon the firſt Tryal, that ſhe had as good a Title to the Land as could be; all the Judges and the Counſel went away (I believe) ſatisfied with the Jury's Verdict for her: But when the Cauſe came to be heard again, we found all the Witneſſes to prove her Title, were guilty of notorious Perjury, and the ſame Perſons which did believe before that ſhe was in the right, and the Jury had done well, when they heard the ſecond Tryal did believe ſhe was in the wrong, and accordingly the ſecond Jury found it ſo; and we believe that laſt Verdict to be good, without any Reflection on the Credit of the firſt Jury, becauſe the Evidence was as ſtrong on her ſide then, as it was afterwards againſt her. In theſe Caſes we give our Opinions always according to the preſent Teſtimony that is before us.

Otes. Then, my Lord, I offer this to your Conſideration, That thoſe Men that were thus charged by me with High Treaſon, were Prieſts and Jeſuits moſt of them, and particularly Mr. *Ireland*, in whoſe Tryal I am ſaid to have committed this Perjury, and you ſhall find him to have been by others proved a Prieſt and a Jeſuit, and actually engaged in a Deſign againſt the Life of the King. If I then do prove that *Ireland* was engaged in a Deſign againſt the late King's Life, and was a Prieſt and a Jeſuit, I deſire to know, Whether this be not a Collateral Evidence to render me of Credit ſufficient, and ſupport my Teſtimony?

L. C. J. By no means upon this Indictment. It's true it may give ſome Credit to your Teſtimony, but is not of it ſelf ſufficient: Nay, I'll go a great way further than that; I will ſuppoſe that there was a Conſult of the Jeſuits upon the 24th of *April* 78, at the *White Horſe* Tavern in the *Strand*, where thoſe you ſay were preſent, were all preſent, *Ireland*, and *Whitebread*, and *Pickering*, *Grove* and *Fenwick*, were all there, and that they did there come to a Reſolution to deſtroy the late King: Suppoſe all this to be true, and yet you all this time are not innocent of the Fact imputed to you, becauſe you ſwore directly, *That you were there at that Conſult too*, which you were not, if theſe Men ſwear true, for then you were at St. *Omers* at that time; and therefore give us ſome ſort of Teſtimony to ſatisfy us that you were here, and then you will ſet all right again. If the Jeſuits and Prieſts did plot, that is nothing to make your Evidence true, if you ſwore that which you did not know of your own Knowledge.

Otes. Shall it be allow'd then that *Ireland* was a Jeſuit and a Papiſt?

L. C. J. If it ſhould, that will be to very little purpoſe for your Turn.

Otes. There is the Evidence of a Record for it, my Lord; but if that be not ſufficient, I can call Witneſſes to prove it. Pray call Mr. *Miles Prance.*

Which was done, but he did not appear.

Cryer. He is not here.

Otes. He was *ſubpœna'd*, my Lord, to come hither.

L. C. J. I can't help it, if he will not come; but I'll tell you, for method's ſake, not to preſcribe to you, but to tell you what I think may be more for your Advantage than any of theſe Inferences that you are making. If you did call two or three Witneſſes to prove that you were in Town the 22d, 23d, or 24th of *April*, it would be the beſt Defence you can make, and would give the beſt Anſwer to all that is objected againſt you.

Otes. I will do that, my Lord, then, and follow your Directions.

L. C. J. Do ſo, that is the beſt way.

Otes. Cryer, call *Cecilia Mayo.*

Cryer. Here ſhe is.

Otes. Swear her. [*Which was done.*

L. C. J. Well, what do you ask this Witneſs?

Otes. Pray, Mrs. *Mayo*, give my Lord and the Jury an account, whether you did ſee me in *London* the latter part of *April* or the beginning of *May* 78? For that is the Queſtion now before the Court.

L. C. J. Ay, what ſay you? When did you ſee him in 78?

Mrs. *Mayo.* My Lord, I ſaw him the latter end of *April:* He came to Sir *Richard Barker*'s Houſe, where I did then live, and afterwards he came again thither within a few Days. By this Circumſtance I remember it; Sir *Richard Barker* my Maſter was ſick all the Month of *April*, and in the Country, only he came now and then home for a little while, and went again: Now Mr. *Otes* came there when he was abſent, and a young Man that lived in the Houſe came to me, and told me, There was Mr. *Otes* in the ſtrangeſt Diſguiſe that ever was. Says he, I think he is turn'd Quaker: No, ſaid I, he is no Quaker, for they were no Perriwigs, and I rebuk'd the young Man for ſaying ſo. As for Mr. *Otes*, I never ſaw his Face before that time that I know of.

L. C. J. How do you know that to be Mr. *Otes* then?

Mrs. *Mayo.* The Family knew him, and they told me it was he: That is the Gentleman there. I ſpeak now nothing but that which I teſtified ſeven Years ago, and it is all Truth, and nothing but the Truth.

L. C. J. Ay, no doubt of it, thou ſweareſt nothing but the Truth.

Mrs. *Mayo.* My Lord, He came three or four Days afterwards again to the Houſe, and then the young Man came to me, and told me, That Parſon *Otes* was turn'd Jeſuit; and thereupon I ſaid to him, Good Lord! Why doſt thou concern thy ſelf with him? Can'ſt not let him alone? I look'd upon him, and ſaw him at

that time: And when he came that time, he went to Sir *Richard*'s Lady's Sister, who is now in *Wales*, and coming to her, said she, Mr. *Otes*, *I hear you are turn'd* Jesuit, *and we can have no Society with you now*: At last, he stay'd to Dinner with them, and stay'd most of the Day there. Then he comes the latter end of *May*; *Whitsuntide* was in *May* that Year, and I know he came before *Whitsuntide* by this Token; I speak of the second time of his Coming: Our Custom in the House was to wash and scowre before the time, and I was sending for a Woman to come and help to wash and scowre, and then he was walking in the Garden; and the young Man came and told me *Otes* was there: He came into the Pantry to me, Look, said he, he is come again, and he is turn'd Jesuit by his Disguise: Why *Benjamin*, said I, what hast thou to do with the Man? Can'st not let him alone?

L. C. J. What was the Name of that young Man you speak of?

Mrs. *Mayo.* Truly, my Lord, he is dead, or he would have testified the same thing.

L. C. J. But what was his Name?

Mrs. *Mayo.* *Benjamin*; I can't tell his other Name.

L. C. J. Well, go on.

Mrs. *Mayo.* Said I to him, Why dost thou scorn this Man? Prithee get out of the Room, I am not able to hear it: So he walk'd the space of an Hour in the Garden.

L. C. J. Is Sir *Richard Barker* living?

Mrs. *Mayo.* Yes, my Lord, he is, but he is not well.

L. C. J. Was he at home when *Otes* was there?

Mrs. *Mayo.* No, my Lord, I think not.

L. C. J. Who din'd with him, do you say, when he din'd there?

Mrs. *Mayo.* My Lady's Sister.

L. C. J. What is her Name?

Mrs. *Mayo.* Madam *Thurrel.*

L. C. J. And who else?

Mrs. *Mayo.* And her Sons.

L. C. J. Where are they?

Mrs. *Mayo.* They are both dead.

L. C. J. And who else was there?

Mrs. *Mayo.* One Dr. *Cocket.*

L. C. J. Where is he?

Mrs. *Mayo.* He is in *Wales* too, my Lord.

L. C. J. 'Tis a great Misfortune to have so many dead, or so far remote.

Otes. My Lord, Six Years time makes a great Alteration in a Family.

L. C. J. Was there any body else there?

Mrs. *Mayo.* There were two of the Daughters, and they could all come and testify the same thing.

L. C. J. Where are they, and what is become of them? Why are they not here?

Mrs. *Mayo.* They are living in *Lincolnshire*, my Lord, I think.

L. C. J. What else have you more to say?

Mr. *At. Gen.* Pray, Mrs. *Mayo*, let me ask you a Question: What colour'd Cloaths had he on when you saw him first?

Mrs. *Mayo.* He had a whitish Hat, and colour'd Cloaths.

Mr. *Sol. Gen.* What time of the Day was it you saw him?

Mrs. *Mayo.* In the Morning.

L. C. J. Did he go publickly?

Mrs. *Mayo.* Yes, he went publickly.

Mr. *Sol. Gen.* Did he come often to the House?

Mrs. *Mayo.* He was there frequently, my Lord.

Mr. *Sol. Gen.* Then it seems he was so disguis'd that he could walk publickly in the Streets of *London* at Noon-day, and was frequently in the Family.

Mrs. *Mayo.* Yes, my Lord.

L. C. J. Now tell me who was in the Family?

Mr. *At. Gen.* Mrs. *Mayo.*——

L. C. J. Pray, give me leave to ask her the Question: Who was there at that time?

Mrs. *Mayo.* Sir *Richard Barker*'s Lady's Sister, Madam *Thurrel*, and his two Daughters, and two of his Kinsmen, and two of the Servants, one is here a Witness now.

L. C. J. Who is that that is a Witness now?

Mrs. *Mayo.* One that belongs to Sir *Richard Barker*, and the other is now dead, and those two Kinsmen are dead.

L. C. J. What is become of the two Daughters, say you?

Mrs. *Mayo.* They are in *Lincolnshire*, as I take it, my Lord.

L. C. J. When did you hear from them?

Mr. *At. Gen.* My Lord, It is half a Year ago almost since Mr. *Otes* had notice of this Tryal.

L. C. J. Where is Sir *Richard Barker* himself?

Mrs. *Mayo.* I was with Sir *Richard Barker*, and he purposed to have come hither; but being a crazy Man, and ancient, it seems he could not, and desired to be excus'd, for he had a bad Night, and was not well; but he desired that the Court should know, if he were well, he would be there.

Mr. *At. Gen.* Were you sworn at a former Tryal about this Matter, Mrs. *Mayo*?

Mrs. *Mayo.* Yes, Sir, I was.

Mr. *At. Gen.* Do you remember what you swore then?

Mrs. *Mayo.* The same I do now.

Mr. *At. Gen.* Then I ask you this Question, How long before *Whitsuntide* was it that you saw Mr. *Otes* at Sir *Richard Barker*'s?

Mrs. *Mayo.* A pretty while before, twice.

Otes. Mrs. *Mayo*, I'll put you a fair Question, Whether or no it might not be a Fortnight before *Whitsuntide*, you think?

Mrs. *Mayo.* The last time I saw you was a Week before *Whitsuntide.*

L. C. J. How can you tell it was but a Week?

Mrs. *Mayo.* 'Twas but a Week, because at that time I had sent the Boy for the Woman to scowre and wash there.

L. C. J. Was that the last time you saw him?

Mrs. *Mayo.* Yes: I saw him several times before, and it was all before *Whitsuntide.*

L. C. J. How long before that was the first time that you saw him?

Mrs. *Mayo.* He would be away for three or four Days, and come again.

L. C. J. But how long before the last time, was the first time you saw him?

Mrs. *Mayo.* He came still to and again.

L. C. J. When was the time that you saw him next before the Week before *Whitsuntide*, which, as you say, was the last time you saw him?

Mrs. *Mayo.*

Mrs. *Mayo.* I am not able to ſay that.

L. C. J. Did you believe it was within the compaſs of a Week before?

Mrs. *Mayo.* To the beſt of my remembrance it was.

L. C. J. When was the firſt time you ſaw him?

Mrs. *Mayo.* 'Twas in the beginning of *May.*

L. C. J. You ſaid at firſt it was at the latter end of *April.*

Mrs. *Mayo.* Pray, my Lord, let me a little think; I am unwilling to be miſtaken, I would ſay nothing but the Truth.

L. C. J. No, I would not have thee; but for God's ſake, let us have the Truth, that is that we look for.

Mrs. *Mayo.* I ſay, the Coach-man ſaw him there as well as I, and he can tell you better than I.

L. C. J. But I ask you this Queſtion poſitively, Was it in *May* or *April?*

Mrs. *Mayo.* To the beſt of my remembrance it was the beginning of *May.*

L. C. J. Was it within a Week of *May?*

Mrs. *Mayo.* I believe it was, I cannot tell exactly to a Day.

Mr. *Sol. Gen.* Was it ſo or not?

Mrs. *Mayo.* I cannot be poſitive to a Day; it is now ſix Years time ſince I was firſt examined about it.

Mr. *At. Gen.* But you can remember what you ſwore then, can't you?

Mrs. *Mayo.* I declare it, I ſpeak not a Syllable, but I will aver to be true, before the great God.

Mr. *Sol. Gen.* Can you ſwear it was within the firſt ſeven Days of *May?*

L. C. J. You ſee, Mr. Sollicitor, ſhe ſays ſhe cannot.

Mr. *At. Gen.* Did not you ſay at that Tryal, that you did never ſee his Face till a Week before *Whitſuntide*, or a little after?

Mrs. *Mayo.* I did ſwear the ſame that I do now, to the beſt of my remembrance, and that is the Truth.

Mr. *At. Gen.* But did not you ſwear ſo?

Mrs. *Mayo.* I never ſaw him before that firſt time he came to Sir *Richard Barker*'s, and after the laſt time that he came, I ſaw him not till after the Plot was diſcovered.

Mr. *Sol. Gen.* How long was that after he had been at your Maſter's Houſe?

Mrs. *Mayo.* It was a good while, I cannot tell how long.

L. C. J. Was it within a Month, or two Months?

Mrs. *Mayo.* It was more, my Lord.

L. C. J. Where was Sir *Richard Barker* at that time?

Mrs. *Mayo.* He was at *Putney.*

L. C. J. Then he did not ſee him?

Mrs. *Mayo.* Not then he did not.

L. C. J. Did he afterwards?

Mrs. *Mayo.* Yes, he did ſee him afterwards.

L. C. J. How long afterwards was it?

Mrs. *Mayo.* I can't tell how long afterwards it was, my Lord.

L. C. J. About what time was it?

Mrs. *Mayo.* After the Plot was diſcovered he was up and down in the Family.

L. C. J. You never knew Mr. *Otes* before that time he came in a Diſguiſe, and you did not know him then, but as they told you it was he?

Mrs. *Mayo.* No, I did not, but as they told me then; and this is the Man, I'll ſwear it.

Otes. Call *John Butler.*

Cryer. Here is *John Butler.*

Otes. Swear him. [*Which was done.*

My Lord, if you pleaſe I will propoſe my Queſtions to your Lordſhip; and my firſt Queſtion is this, I pray your Lordſhip would ask him, Whether he gave in any Evidence at the five Jeſuits Tryal, or *Langhorn*'s Tryal, about my being in Town in *April* or *May*, 78?

L. C. J. Did you give any Evidence at the Five Jeſuits Tryal?

Butler. Yes, I did.

L. C. J. Did you give any Evidence at *Langhorn*'s Tryal?

Butler. Yes, my Lord, I was a Witneſs there.

Otes. My Lord, it is ſo long ago, that ignorant People that come innocently without deſign, may not be ſo ready in their remembrance, as thoſe that conn'd their Leſſon for ſo long time together.

L. C. J. Well, well; what do you ask him next, Whether he will ſtand by that Evidence he gave then?

Butler. That is all I have to ſay, my Lord: I did teſtifie the Truth then, and will abide by it.

L. C. J. But he muſt give the ſame over again here, or it will ſignifie nothing.

Otes. My Lord, it is now ſix Years ſince, and this Queſtion was not thought to be ſtirr'd ſo long after: Therefore I beg ſo much Favour, that the Evidence he did give at Mr. *Langhorn*'s Tryal may be read to him.

L. C. J. O by no means.

Otes. My Lord, it is ſuch a diſtance of time—

L. C. J. Look ye, if he has any Notes himſelf, he may look on them to refreſh him.

Otes. My Lord, he comes raw hither, without any Inſtruction at all.

L. C. J. So ſhould every Witneſs: God forbid we ſhould countenance the inſtructing of Witneſſes what they ſhould ſwear.

Otes. I beg your Pardon, my Lord, I did hope this Favour might be granted: I will then ask him ſome Queſtions.

L. C. J. Ay, ay, do, Refreſh his Memory by Queſtions as much as you can. Come, I'll ask him ſome Queſtions for you: Do you remember you ſaw Mr. *Otes* at any time in the Year 78?

Butler. If it pleaſe your Lordſhip, as near as I can remember, I ſaw him in *May* before the Plot was diſcovered.

L. C. J. That was the Year 78.

Butler. I am ſure I did ſee him about that time.

L. C. J. Where did you ſee him?

Butler. I was a Servant to Sir *Richard Barker*, and Mr. *Otes* I had been acquainted with before he went to Sea; he uſed to come to my Maſter's Houſe frequently, and divers times he din'd at the Table, and I waited upon my Maſter there.

L. C. J. When was it that he din'd there at the Table?

Butler. A Year before that time in *May* that I ſpoke of before: It was before he went to Sea.

L. C. J.

L. C. J. When did you ſee him again?

Butler. After he came from Sea, I ſaw him at my Maſter's Houſe.

L. C. J. When was it that he went to Sea?

Butler. It was a Year or two before the *May* that I ſaw him diſguis'd coming to my Maſter's Houſe.

Mr. *At. Gen.* Ay, what Diſguiſe did he come in?

Butler. His Hair was cut off, cloſe cropt to his Ears, and an old white Hat over his Head, and a ſhort gray Coat over like a Horſe-man's Coat.

L. C. J. How came you to take ſuch notice of him at that time, as to be able to ſwear when this was?

Butler. I was call'd preſently after for a Witneſs.

L. C. J. How long after this was it, that you were call'd to be a Witneſs?

Butler. It was when the Tryals were at the *Old Bailey*.

L. C. J. Was this the firſt time you had recollected theſe Circumſtances?

Butler. Yes, my Lord, that was the firſt time.

L. C. J. Then how came you a Year and an half's time afterwards to remember the preciſe Month of *May*, when you did not know you ſhould be call'd to queſtion about it, and yet you cannot remember the time particularly when *Otes* went to Sea, but take the Compaſs of a Year or two?

Butler. I gueſs it was a Year before, I cannot exactly tell.

L. C. J. When you can but gueſs at the time of ſuch a remarkable Paſſage, within the Compaſs of a Year or two, how can you pitch upon the very Month for ſuch a thing as this is, a Year and an half's time after?

Otes. No, my Lord, it was not ſo long as a Year and an half.

L. C. J. Pray, Sir, have patience.

Otes. My Lord, The Records ſhew, that *Ireland*'s Tryal was the 17th of *December* 78, and the five Jeſuits Tryal was the 15th of *June* 79.

L. C. J. Then it is a full twelve-month's time and more from the *May* that he ſays he ſaw you at Sir *Richard Barker*'s, to *Whitebread*'s Tryal, in which he was examin'd the firſt time. Now that which I deſire of him is, to give me a reaſon why he remembers it was in the *May* was twelve-month before?

Butler. My Lord, The Lady whom I did ſerve, died in *February* before, that Year.

L. C. J. But give me ſome reaſon of your Remembrance ſo long after.

Butler. My Lord, I do as well as I can.

L. C. J. Well, what is it?

Butler. My Lady was buried in *February*, and he comes into the Yard where I was cleaning my Coach, in *May* following that *February*, which was *May* before the Diſcovery of the Plot. He ask'd me what Alteration was in the Family? I told him my Lady was dead, and the Eſcutcheon was over the Door for her. He ask'd for Dr. *Tongue* when he came firſt in the Houſe.

L. C. J. Why ſhould he ask for Dr. *Tongue*?

Butler. My Lord, Dr. *Tongue* lodged there, and he did ask for him; I come to juſtify the Truth; upon my Salvation what I ſay is true.

L. C. J. Well, when he ask'd whether Dr. *Tongue* was within, what ſaid you?

Butler. I told him no; but he went into the Room where Dr. *Tongue* us'd to lie, but found him not there: So he went out again; that was the ſame time Mrs. *Mayo* ſaw him.

L. C. J. But, Friend, prithee mind what I ask thee, becauſe thou muſt give me ſatisfaction how thou com'ſt to remember this, ſo as to be able to ſwear it; for his going to ask for *Tongue*, or the Eſcutcheon being over the Door, neither of thoſe can be a Reaſon for you to remember that this was in *May*, for the Eſcutcheon may be up in *June*, or in *July*, or in *Auguſt*, or in any other Month after the time you ſpeak of: But how came you to take notice of this Buſineſs that it was in *May*?

Butler. Sir *Richard Barker* my Maſter was then ſick at *Putney*, which was in *May*, tho' I cannot ſpeak to a Day or a Week particularly.

L. C. J. Then prithee let me ask thee this Queſtion, How long had your Maſter been ſick before that?

Butler. He had never been well ſince my Lady died.

L. C. J. When was it that your Lady died?

Butler. In *February* before.

L. C. J. How long after that did your Maſter Sir *Richard Barker* continue ſick?

Butler. Half a Year, I believe.

L. C. J. Why then, ſuppoſe your Maſter fell ſick immediately after your Lady died, and he continued ſick half a Year after, yet all this while *Otes* might come during his Sickneſs even in the Month of *June* or *July*, when 'tis acknowledg'd he was in Town, and not be here in *February*, which is teſtified by a great many Witneſſes.

Butler. My Lord, I tell your Lordſhip the Truth, it was in *May*.

L. C. J. But how doſt thou come to take notice it was in the Month of *May*, ſo as to be able to ſwear it?

Butler. My Lord, I tell your Lordſhip my Lady was dead, and the Eſcutcheon was over the Door.

L. C. J. So it might be, tho' he came in *June* or *July*, I tell ye.

Butler. My Maſter was ſick at *Putney* at that time.

L. C. J. How long did he lie ſick at *Putney*?

Butler. He was ſick there a Fortnight, my Lord.

L. C. J. Then prithee when did thy Maſter go to *Putney*?

Butler. I cannot tell to a Day.

L. C. J. In what Month was it that he went?

Butler. It was the latter end of *April*, my Lord, as I remember.

L. C. J. How long continued he ſick at *Putney*?

Butler. The matter of a Fortnight.

L. C. J. Was not your Maſter ſick, when your Lady died, at *Putney*?

Butler. No, he was not there then.

L. C. J. When did he go to *Putney*, ſay ye?

Butler. He went not thither till the latter end of *April*, my Lord.

L. C. J. And did he continue at *Putney* but a Fortnight?

Butler.

Butler. Not at a time, but he continued going and coming a quarter of a Year.

L. C. J. But this was the firſt time of his going, was it?

Butler. Yes, as I do remember.

Otes. My Lord, He is my Witneſs, and I deſire I may examine him.

L. C. J. Hold there, Mr. *Otes*; he is mine too: All the Witneſſes are mine to ſatisfy me in the Truth of the Fact.

Otes. And to ſatisfy the Jury too, my Lord.

L. C. J. Yes, and to ſatisfy the Jury too; but I muſt and will ſift out the Truth, for both our Satisfactions.

Otes. My Lord, It is now, come the next Month, ſix Years ago ſince the Evidence of this Matter was firſt given by theſe Witneſſes.

L. C. J. Then, Mr. *Otes*, I'll come a little rounder to you, and I'll put you into a certain way of clearing this Buſineſs. I'll tell you what you ſhall do; You had a Lodging in Town, as well as Diet, and as well as you did eat at Dr. *Barker*'s ſometimes, ſo you eat and lay ſometimes elſewhere. You were here in Town a great while together, if your own Aſſertions be true; for you were from *April* till *June* in Town. Now come and give us account by ſome Witneſſes, if you can, where did you lodge at that time, and where did you diet? For it ſeems you had but one Meal at Sir *Richard Barker*'s.

Otes. Is that the Queſtion, Sir, here in hand?

L. C. J. Ay indeed is it, and the main one too.

Otes. I beg your Lordſhip's Pardon if I miſtake, but I think that is not now in queſtion; for theſe St. *Omers* Men do ſwear, That I was all *April* and *May* at St. *Omers*: Then if I do prove that in *April* and *May* I was not at St. *Omers*, but here in *London*, it is Argument good enough againſt them that their Evidence is falſe. And indeed, can your Lordſhip or the Jury expect that I being then engag'd among and for the Papiſts, and afterwards an Evidence againſt them to diſcover their Treaſons, can bring any of them to teſtify for me now? No, they will as certainly forſwear themſelves, as theſe young Fellows have all done.

L. C. J. Let me ask you a ſhorter Queſtion: Did you always lie in a Papiſt Houſe, all the two Months you ſay you were here?

Otes. My Lord, I lay at ſeveral Houſes.

L. C. J. Tell me the Names of thoſe Houſes, or any of them.

Otes. It is not to the Point in queſtion here, my Lord.

L. C. J. Yes it is very much; but I perceive it is a Secret, and let any body judge why.

Otes. My Lord, They that have by the Principles of their Religion, Liberty to affirm or deny any thing, and can have Diſpenſations for the Violations of Oaths and Sacraments, certainly are not to be admitted as Witneſſes in ſuch a Caſe as this.

L. C. J. Talk not to me of Diſpenſations and I know not what; I ſpeak from a plain demonſtrative Proof: Can it be believed that you ſhould be here in *England* ſo long, and as they ſay, publickly, and no Perſon living ſee you that we can hear of, but an Old Woman that never ſaw you, nor knew you before, and a Coachman that tells a wild Story without reaſon: If you will not tell me where you lay, can you tell me where you did eat all that time?

Otes. I can tell where I did lie that time.

L. C. J. Do ſo then. Let us hear it, that will be your beſt Defence.

Otes. Is that the Point, my Lord, in queſtion?

L. C. J. Ay upon my Word is it the main Point in this Caſe.

Otes. If it ſhould go upon that Foot, my Lord, it is impoſſible for me now to prove it; for 'tis well known, I lay ſometimes with Mr. *Whitebread*, and ſometimes with Mr. *Mico*, neither of which can I have to teſtify for me; and beſides, I muſt inſiſt upon it, theſe things were in queſtion at *Whitebread*'s Tryal, nor do I believe that Mr. *Whitebread*, if ask'd at his Death, would have juſtified, and ſtood by it, that I was not here then.

L. C. J. Well, This I muſt certainly ſay, I cannot help it, but it will ſtick with me till better anſwered. I can never be ſatisfied, that if you were here ſo long, there ſhould no better Evidence be produced to prove you here.

Otes. My Lord, Nor can I help your Diſſatisfaction, but I am to ſatisfy all that hear me this Day, that it is a very hard Caſe that is put upon me; I have taken the moſt effectual Courſe that I could, to provide for Evidence to make my Defence; and I think, by your Lordſhip's good Leave, thoſe that I have produc'd, do prove me here in Town in *April* and *May* 78. And if your Lordſhip has done with this Witneſs, I'll call another.

L. C. J. Well, go on as you will. I tell you what ſticks with me.

Otes. Pray call Mr. *Philip Page*.

Mr. *Sol. Gen.* Hold, Sir, a little, I would ask theſe Witneſſes a few Queſtions before they go away. You *Butler*, Let me ask you, pray, the firſt time you ſaw Mr. *Otes* at the time you ſpeak of, was it in *April* or *May*?

L. C. J. He ſwore it was the beginning of *May*.

Butler. To the beſt of my Knowledge it was the beginning of *May*.

Mr. *Sol. Gen.* Who did you tell firſt, that there was Mr. *Otes* at that time?

Butler. I told it Mrs. *Mayo*.

Mr. *Sol. Gen.* Conſider, Friend, what you ſay now, you are upon your Oath, and conſider what you ſaid at the former Tryal, when you were upon your Oath too.

Otes. Pray, my Lord, I deſire my Witneſſes may be examined without Threatnings.

L. C. J. It is not a Threatning, it is an Admonition not to go beyond the Truth.

Mr. *Sol. Gen.* Be ſure you be in the right in what you ſay, and now I ask you upon your Oath, when was the firſt time you ſaw Mr. *Otes* when he came in that Diſguiſe you ſpeak of?

Butler. I told you it was in *May*, Sir.

Mr. *Sol. Gen.* How far in *May*, conſider well what you ſay.

Butler. To the beſt of my Remembrance, it was the beginning of *May*.

Mr. *Sol. Gen.* Do you think it was within a Week, or the firſt Ten Days of *May*?

Butler. I cannot tell that, as well as I remember, it was the beginning of *May*.

Mr. *Sol. Gen.* When you ſaw him firſt in *May*, who elſe, as you remember, was by?

Butler. Mrs. *Mayo.*

Mr. *Sol. Gen.* And no body elſe?

Butler. Yes, One *Benjamin Turbet*, who is ſince dead.

Mr. *Sol. Gen.* But conſider your Oath, Friend, once more, and recollect your ſelf, Do you ſwear poſitively Mrs. *Mayo* was by, and did ſee him at the ſame time?

Butler. I ſee her look out of the Window into the Yard, and I believe ſhe did ſee him.

Mr. *Sol. Gen.* Well then, Let us examine her Evidence and yours together, and ſee how they agree.

Otes. My Lord, Theſe are not Queſtions tending to ſatisfy the Jury at all, as to the Point in queſtion.

L. C. J. Are they not, methinks they are, whatſoever you think.

Otes. After ſix Years time, to ask ſuch poor ignorant People ſuch trifling Queſtions!

L. C. J. Pray, Sir, be contented, and let the King's Counſel examine the Witneſſes.

Otes. My Lord, He ſays I was here in *May*, that's enough.

L. C. J. Well, Sir, I know what he ſays.

Mr. *Sol. Gen.* And you ſhall hear Mr. *Otes*, how your Witneſſes agree.

L. C. J. Go on, Mr. Sollicitor, and do you ſit ſtill and be quiet.

Mr. *Sol. Gen.* Then, my Lord, I would ask him this Queſtion more, the firſt time you ſaw *Otes* come to Sir *Richard Barker*'s, what Habit, pray you, was he in?

Butler. He was in a Diſguiſe.

Mr. *Sol. Gen.* Ay, what Diſguiſe?

Butler. He had a white Hat flapping over his Ears; his Hair cut ſhort, cloſe to his Ears, and a grey ſhort Coat.

Mr. *Sol. Gen.* Had he never a Perriwig on?

Butler. No, his Hair was cut ſhort to his Ears.

Mr. *Hanſes.* Was he in ſuch a Diſguiſe, that a Man might not ordinarily know him, that had known him before?

Butler. Truly, my Lord, I did not know him when he firſt came in, till he ſpoke to me, and asked me, how do you, *John*? and then I recollected who he was, that it was Mr. *Otes.*

Mr. *Sol. Gen.* Was he always in the ſame Habit, when he came thither?

Butler. The next time he came, he had a Cinnamon-coloured Suit, and a long black Perriwig that was curl'd down thus far, and a black Hat with a green Ribbon and green Cuff-ſtrings about his Wriſts.

L. C. J. Did you ever ſee *Otes* dine there?

Butler. Yes, I did.

L. C. J. When was that?

Butler. After my Maſter came home from *Putney.*

L. C. J. Who was there beſides?

Butler. One Sir *William Thurrell* and Madam *Thurrell.*

L. C. J. How often did he dine there?

Butler. Several times.

L. C. J. Who elſe was there?

Butler. My Maſter and his Daughter.

L. C. J. And who elſe?

Butler. Mrs. *Mayo.*

L. C. J. What is become of your Maſter's Daughter?

Butler. I beg your Pardon for that, my Lord.

L. C. J. Where is ſhe, Man?

Butler. She is at home, I ſuppoſe.

L. C. J. What doſt thou beg my Pardon for then?

Butler. My Lord, I call to mind ſhe did not dine with them.

L. C. J. Did ſhe dine at any time with him there?

Butler. Yes, I remember ſeveral times, but not then.

L. C. J. When did you ſee your Maſter's Daughter laſt?

Butler. I have not ſeen her this Quarter of this Year.

L. C. J. Where is ſhe now?

Butler. At home at *Putney*, my Lord, I believe.

L. C. J. And ſhe was ſeveral times there when he din'd there?

Butler. Yes, ſhe was at home.

L. C. J. Did Mrs. *Mayo* ſee him at Dinner there?

Butler. Yes, I believe ſhe did.

L. C. J. How often did he dine there about this time you ſpeak of?

Butler. Several times.

L. C. J. Do you think ſeven times?

Butler. I do think he might have din'd there ſeven times.

L. C. J. Did he more than ſeven times do you think?

Butler. I cannot number how many times it was.

L. C. J. Now come in Mrs. *Mayo* again.

Mrs. *Mayo.* Here I am, my Lord.

L. C. J. Mrs. *Mayo*, Give me leave to ask you a Queſtion or two.

Mrs. *Mayo.* Yes, my Lord, what you pleaſe.

L. C. J. You ſay (if I do not miſ-remember; if I do, I beg your Pardon, and you'll correct me) a Week in *May* was the firſt time you ſaw Mr. *Otes*, and that was at Sir *Richard Barker*'s.

Mrs. *Mayo.* I think it might be about the beginning of *May.*

L. C. J. Had he been in the Houſe before?

Mrs. *Mayo.* Not at that time that I know of, but as they told me.

L. C. J. Who told you?

Mrs. *Mayo.* That Coach-man there *John Butler*, and one *Benjamin* who liv'd in the Houſe.

L. C. J. Then you did not ſee him the firſt time he came; what ſay you, *Butler*?

Butler. She did ſee him out of the Window in the Yard.

L. C. J. Well, let that paſs then, come I'll ask you another Queſtion upon your Oath, How often have you ſeen him dine there?

Mrs. *Mayo.* I ſaw him dine that time that I ſpoke of.

L. C. J. Did not he dine there above once?

Mrs. *Mayo.* No, he did not.

L. C. J. What ſay you *Butler*?

Butler. He did dine there ſeveral times with them.

L. C. J. Then one of you two muſt be miſtaken, I am ſure.

Otes. My Lord, If your Lordſhip would pleaſe to give me leave to ſpeak, I would ſet it right.

L. C. J. Good Sir, Let them ſet themſelves right if they can, we need none of your Inſtructions.

Otes.

Otes. My Lord, I desire——

L. C. J. Why, how now; pray, Sir, be at quiet. Mrs. *Mayo*, Pray what Habit had *Otes* when you saw him first?

Mrs. *Mayo.* He was in a grey Hat and a grey Coat.

L. C. J. Was his Hair short or long?

Mrs. *Mayo.* He had on a kind of a short Wigg.

Mr. *Sol. Gen.* You are sure it was a Wigg.

Mrs. *Mayo.* Yes, a kind of a brown Perriwig.

L. C. J. And he says his Hair was cut short to his Ears,

Otes. These things are very lean stuff to perjure a Witness upon.

Mr. *Sol. Gen.* When he came the second time what Cloaths had he on?

Mrs. *Mayo.* Afterwards he came in black Cloaths and a long Perriwig.

Mr. *Hanses.* What coulored Perriwig was that, a black or a white one?

Mrs. *Mayo.* Not a black, but a brown.

Mr. *Sol. Gen.* You say it was long?

Mrs. *Mayo.* Longer than his other, yet not very long neither.

L. C. J. Here are I know not how many Contradictions in these Witnesses Testimonies.

Otes. Truly, my Lord, I do not find in the Examination of the St. *Omers* Witnesses, you were so strict, or bore half so hard upon them, as you do upon my Witnesses; what does it signify, my Lord, whether the Wigg were long or short, black or brown?

L. C. J. We have no other way to detect Perjuries, but by these Circumstances; and 'tis the Duty of a Judge to enquire into all Particulars; as in a Controversy about Words, were they spoken in Latin or in English, and so to all Places and Postures of sitting, riding, or the like; as you know the Perjury of the Elders in the Case of *Susanna*, was by their different Testimony in particular Circumstances discovered.

Otes. My Lord, I will ask her but one short Question, by the Oath you have taken, Mrs. *Mayo*, to speak the Truth, the whole Truth, and nothing but the Truth, as you expect the Face of God with Comfort in another World; Did you see me at Sir *Richard Barker*'s at any time in *May* 78. the *May* before the Plot was discovered? For that is the main Question.

Mrs. *Mayo.* Yes, I did, and I speak nothing here, but what I speak as in the Presence of the Lord.

L. C. J. Prithee, Woman, dost thou think we ask thee any thing that we think thou dost not speak in the Presence of the Lord; we are all of us in the Presence of the Lord always.

Mrs. *Mayo.* And shall answer before him for all that we have done and said, all of us, the proudest and the greatest here.

L. C. J. But I would not have so much to answer for as thou hast in this Business for all the World.

Mr. *Sol. Gen.* Well, we have done with her now, she may go away.

L. C. J. Where does she live now?

Cryer. Mrs. *Mayo*, Where do you live now?

Mrs. *Mayo.* In *Leaden-hall-street*, my Lord.

L. C. J. When did you see Sir *Richard Barker*'s Daughter?

Mrs. *Mayo.* About a Fortnight ago.

L. C. J. Where?

Mrs. *Mayo.* In *Barbican* in *London.*

L. C. J. Do you live with Sir *Richard Barker* now?

Mrs. *Mayo.* I do not live with him now.

L. C. J. Did his Daughter use to be at the Table at Dinner?

Mrs. *Mayo.* She was often in the Country, my Lord.

L. C. J. Did she eat at his Table at that time when *Otes* was there?

Mrs. *Mayo.* I am not able to say whether she did or not; she used to be in *Wales* at Sir *Thomas Middleton*'s sometimes, and with Madam *Thurrell* her Aunt, who was her Mother's Sister, and her two Daughters.

L. C. J. In *Wales* dost thou say, where?

Mrs. *Mayo.* My Lord, In your own Country, at one Dr. *Cocket*'s; I know your Lordship, tho' your Lordship does not know me.

L. C. J. I am very glad of it, good Woman; but prithee did ever Sir *Richard Barker* dine with Mr. *Otes*?

Mrs. *Mayo.* I cannot say he did, he went to and fro.

L. C. J. Well, have you any more Witnesses?

Otes. Cryer, Call *Philip Page.*

Cryer. Here he is, Sir.

Otes. Pray swear him. (*Which was done.*) Pray be pleased to give my Lord and the Jury the best account you can of my being in Town. But, Mr. *Page*, the Question that I first ask you, is whether I was here in *April* or *May*, and in what Year it was that you did see me at your Master's House?

L. C. J. When did you see Mr. *Otes* at your Master's House? You mean Sir *Richard Barker* to be his Master, I suppose?

Otes. Yes, my Lord.

L. C. J. What do you say to it?

Page. Truly, I cannot be positive to the Year, but to the best of my remembrance it was 78.

Otes. Pray tell my Lord and the Jury some Circumstances in that Year that did happen to you, that makes you believe it was 78.

Page. Sir, I'll give you the best Satisfaction I can to the best of my Knowledge; he came to Sir *Richard Barker*'s one Evening, and there he enquired for Dr. *Tongue*: He was in a Disguise, in a light-coloured Coat, something like to Frize, but it was not Frize; the Term that they give it, I cannot so readily tell. He had his Hair cut short almost to his Ears, and he had a broad brim'd Hat on, and a small Stick in his Hand, walking melancholly about the Hall: I happening to be the first body he met with, as I suppose, he asked me if Dr. *Tongue* was within; I told him no, I had not seen him of a considerable time: He then asked me where Sir *Richard Barker* was? I told him he was ill now at *Putney*; says he, when will he be here? I told him I could not tell.

L. C. J. Did he see any body there but you?

Page. That I cannot tell, my Lord; not that I know of.

L. C. J. What time of the Year was it?

Mr. *At. Gen.* And what Month?

Page. What Year and what Month it was, I am not able to say, my Lord.

L. C. J. What became of him after that?

Page.

Page. He went out of our Gates then, Sir; he was walking up and down melancholly, and not finding any one, as I ſuppoſe, to anſwer him, he continued walking in the Patient's Hall, where they uſed to wait on Sir *Richard Barker*, that came to diſcourſe with him about Phyſick; and upon my Anſwer to his Queſtion he went away.

L. C. J. Did you ever ſee him any other time near to that time?

Page. No, I did not.

L. C. J. Did you uſe to wait on Table?

Page. No, I did not.

L. C. J. What Service were you then engaged in at Sir *Richard Barker*'s?

Page. I made up the Phyſick, my Lord.

L. C. J. Did you not acquaint the Coach man, nor Mrs. *Mayo*, nor Sir *Richard Barker* with it?

Page. I think Sir *Richard Barker* was in Town ſoon after, and I did acquaint him with it.

Otes. But can't you tell what time this is, Sir?

Page. I can ſay no other than I have ſaid; I believe it was in 78.

L. C. J. Was this in *June*, *July*, or *May*, or when?

Page. I cannot ſay punctually what Month it was, my Lord; but to the beſt of my Knowledge and Remembrance, it was in the beginning of *May*.

Otes. Had not your Maſter a Patient at *Iſlington* at that time, that was ſick of a Fever?

Page. Yes, he had.

Mr. *Juſt. Withins.* Why, would Mr. *Otes* have given the Patient Phyſick?

Page. No, my Lord, but 'twas about that time that the Patient was under my Maſter's Cure.

Otes. Indeed the St. *Omers* Men do ſwear thorough-ſtitch, but my honeſt Witneſſes are cautious, it being ſo long ago; and he that is a Miniſter of the Church of *England* (as they ſay) ſpeaks to a very day, upon a much ſlighter Circumſtance: Pray call Mr. *William Walker*.

Cryer. Here he is.

Otes. Swear him. (*Which was done.*) Be pleaſed, *Walker*, to give my Lord to underſtand, when 'twas you ſaw me here in *London* in Diſguiſe, and when it was you ſwore ſix Years agon at the *Old Bailey*, that you ſaw me here in *London*: Sir, the time in Controverſy is this: I came here to diſcover a Plot of the Papiſts againſt the King's Life and the Religion, and I ſwore——

L. C. J. You muſt not ask Queſtions in that manner. It is propereſt for you to propoſe your Queſtions to the Court, and they will ask the Witneſſes.

Otes. Then I will not ask him, but propoſe it to your Lordſhip.

L. C. J. Ay, propoſe what Queſtions you pleaſe, and if they are fair, I'll ask them.

Otes. Then, my Lord, I would ask Mr. *Walker* this Queſtion; when 'twas he met me with a Diſguiſe, in what Year and what Month?

Mr. *Walker.* My Lord, I have been interrogated in former times upon this Point, ſix or ſeven Years ago, and I do confeſs I did ſee the Man, and met him between St. *Martin's-lane* and *Leiceſter-fields*; and truly, my Lord, I think I may ſay it was my Unhappineſs to meet with him; for I have had a great deal of Trouble by it ſince, Subpœna upon Subpœna, Trouble after Trouble, that I am even weary of it; for I am an old Man: But I do ſay I did meet him at that end of the Town, between St. *Martin's-lane* and *Leiceſter-fields* in a ſtrange Diſguiſe; he was juſt like a Vagrant, a very Raſcal, and that's true, I believe, my Lord.

Mr. *At. Gen.* Did you know him before?

Mr. *Walker.* Yes, or I had not known him then.

L. C. J. When was this?

Mr. *Walker.* My Lord, I'll tell you; my Lord Chief Juſtice *Scroggs*, when I was at the *Old Bailey*, asked me if I knew what time it was I ſaw him thus; ſaid I, my Lord, 'tis almoſt a Year and an half ſince I ſaw him; and I being an old Man, little thought it worth the while to lay up the particular time in my Memory; but I'll caſt about in my Thoughts to make the beſt Conjecture I can; for now I will not be upon my Oath, it being but Conjecture.

L. C. J. But now you are upon your Oath, remember that, Man.

Mr. *Walker.* My Lord, I am ſpeaking what I ſaid to the Court at that time.

L. C. J. Pray do not tell us an old tedious Story of the Queſtions and Anſwers in the *Old Bailey*, but mind what is ſaid to you here, my Queſtion is now, what time you ſaw *Otes* diſguiſed between St. *Martin's-lane* and *Leiceſter-fields*, as you ſay you did.

Mr. *Walker.* My Lord, I cannot preſcribe the time; but I'll gueſs as near as I can with the beſt probability, and that is, upon this Circumſtance; when I went forward into *Leiceſter-fields*, in the Court before the Houſe, I ſaw the Elm-Trees budded forth as big as an Hazle Nut; ſo that I did conjecture by that Token, it might be between *Lady-day* and the latter end of *April*; that was the time as near as I could gueſs.

L. C. J. In what Year was it?

Mr. *Walker.* I cannot very well tell what Year it was.

L. C. J. Was it in 77 or 78?

Mr. *Walker.* Truly, my Lord, I never thought it worth ſo much taking notice of, to fix the particular time in my Memory.

Otes. Whether was it that Year the Plot was diſcovered, or the *Michaelmas* following?

Mr. *Walker.* I cannot tell when the Plot was diſcovered, or whether it be found out yet or no?

Otes. But was it the Year before you were examined?

Mr. *Walker.* To anſwer you, Mr. *Otes*, when it was exactly, I cannot ſay; truly I would give you the beſt Satisfaction I could, and do you as much Right as I would do my ſelf; I think if that time when I was examined, were in 77 or 78, it was near a Year and a quarter before I did ſee you.

L. C. J. Well, what can you make of this?

Otes. 'Tis not to be ſuppoſed he is a very willing Witneſs, but yet he ſays, 'twas a Year and a quarter before the Tryal in which he was examined, which muſt be in *April* 78.

L. C. J. I would know this Queſtion of you: Were you preſent at the *Old Bailey*, when the five Jeſuits were tryed?

Mr. *Walker.* I was there, my Lord.

L. C. J.

L. C. J. Were you at any Tryal but one?

Mr. *Walker.* I was not Examin'd at any time but one.

L. C. J. Have you any more Queſtions to ask him?

Mr. *Walker.* My *Lord Chief Juſtice* that then was, did ask me, if I knew any of the Priſoners at the Bar, and I look'd upon all of them, and I ſaid I knew not either of them.

Otes. Pray my Lord, ask him whether he was not produc'd, when the St. *Omers* Men were produc'd, and gave his Evidence as to my being in Town at that time?

L. C. J. He hears the Queſtion, let him anſwer it?

Mr. *Walker.* I am not able to anſwer you, becauſe you put ſeveral Queſtions together; but this I ſay, I was never Examined but once, though I have been Subpœna'd often, to my great torment and trouble.

Otes. Did you give Evidence at that Tryal, that you ſaw me in *April* 78?

Mr. *Walker.* I teſtified that I ſaw you, and by ſuch Circumſtances, it muſt be about ſuch a time as well as I could ſuggeſt; but I could not, nor cannot ſpeak poſitively.

Otes. Now my Lord, I ſhall go on to another part of my Evidence, and call ſome other Witneſſes, and firſt of all, I come to Mr. *Serjeant Maynard*, and I deſire he may be ſworn. [*Which was done.*

L. C. J. What do you ask my Brother, *Maynard*?

Otes. I call Mr. *Serjeant Maynard* to give an Account of the Proceedings of the Houſe of Commons upon my Diſcovery of the Popiſh Plot.

L. C. J. We will not admit that to be any Evidence at all; nor can it be by Law.

Otes. My Lord, Mr. *Serjeant Maynard* was one of the Committee of the Houſe of Commons that managed the Impeachment, and can give an Account of the Evidence and Records that were produced at the Tryal of the late Viſcount *Stafford.*

Mr. *Serj. Maynard.* I know nothing truly, nor can remember any thing of it now.

L. C. J. He ſays, he remembers nothing.

Mr. *Serj. Maynard.* If Mr. *Otes* had told me before hand, when he Subpœna'd me, what time, and what particular things he would have Examin'd me to, probably if I was there, I have Notes that I then took, but I can never ſwear to my Memory, for any Cauſe ſo long ago.

Otes. My Lord, I am very ſorry Mr. *Serjeant Maynard*'s Age ſhould ſo impair his Memory.

L. C. J. I dare ſay, you are not more ſorry than he is for his Age.

Otes. Well, my Lord, I cannot help it: Then I deſire Mr. *Blaney* may be ask'd whether he has his Notes of my Lord *Stafford*'s Tryal?

Mr. *Blayney.* No, my Lord, I have them not here; Mr. *Otes* by his Ticket of his Subpœna, deſir'd only the Notes of *Ireland*, *Whitebread* and *Langhorn*'s Tryal.

L. C. J. But I muſt tell you, Mr. *Otes*, if thoſe Notes were here, they could be of no uſe to you without the Record of my Lord *Stafford*'s Attainder; if you ask any thing upon another Tryal, you muſt produce firſt the Record of that Tryal, and then you may examine to what was given in Evidence at the Tryal.

Otes. My Lord, it is of Record in the Houſe of Lords.

L. C. J. But that we are not to take notice of, without the Record be brought in Evidence before us: We muſt go according to the courſe of Law in all Caſes.

Otes. Then, my Lord, I muſt betake my ſelf to another Part of my Defence, and that is to prove the frequent Attempts made to baffle the Diſcovery of this Popiſh Plot, and to ſtifle the Murder of Sir *Edmundbury Godfrey*, and to fling it upon a Proteſtant Peer.

L. C. J. But that is no Evidence neither.

Mr. *Juſt. Holloway.* Surely that is very Collateral Evidence.

L. C. J. Nay, it is no Evidence at all in this Caſe; we muſt not admit of any ſuch Evidence to be given.

Otes. Good my Lord, if this had not been true, which was ſworn by Witneſſes that had diſcovered the Plot, why ſhould theſe Men appear to ſuborn Witneſſes (and they have been Convicted of Subornation, and endeavouring) to baffle the Diſcovery, particularly as to Juſtice *Godfrey*'s Death.

L. C. J. Mr. *Otes.* I muſt keep you to Evidence that is proper; we are upon our Oaths to go according to Law, and the Jury are upon their Oaths to Try this Cauſe according to their Evidence; and we are bound to give them this Advice in Point of Law, that nothing muſt weigh, or have any Conſideration with them, that you offer, if it be not legal and proper Evidence: If you can ſay and prove that any of the Witneſſes that have been produc'd this Day againſt you, have been tamper'd with; or that they have tamper'd with any of the former Evidence, that is a good Evidence againſt them; but it muſt not be by any means admitted that the time of the Court be taken up, or the Jury enveigled by that which has not a natural tendency to the Buſineſs before us.

Otes. But if your Lordſhip pleaſe, this Conſult in *April* 78. was diſcovered to the Houſe of Commons, among the other parts of the Diſcovery of the Treaſons of ſeveral Noble Men and Gentlemen: Now upon the Diſcovery of the Plot, I would deſire that I might give in Proof the Proceedings of the Houſe of Commons.

L. C. J. No, no, you cannot.

Otes. Pray my Lord, is not the Journal of the Houſe of Commons Evidence?

L. C. J. No, we ſay it is not at all.

Otes. Is that the Opinion of the whole Court, my Lord?

L. C. J. Yes, undoubtedly, there is no Queſtion of it.

Otes. Is any Record of the Houſe of Lords Evidence?

L. C. J. Yes, I tell you it is, and that becauſe it is a Record; but there is a vaſt difference between the Records of the Houſe of Lords, and the Journals of the Houſe of Commons.

Otes. The Journals have been delivered in as Evidence before now.

L. C. J. I cannot tell what they have been, but I am ſure they ought not to be, and whatever they have been elſewhere, they cannot be here; and I'll tell you a plain reaſon for it, becauſe they have not ſo much Power in the Houſe of Commons as to give an Oath: But the Houſe of Peers is a Court of Record, and therefore their Proceedings are Evidence as the Proceedings of the Kings Bench here; or any Court of Record are.

Otes. Then my Lord, if that part of my Evidence be over-rul'd; before I come to ſum up my Evidence, I deſire to offer this thing. My

Lord, I can produce ſeveral Members of the Houſe of Commons in the ſeveral Parliaments, that can remember how they proceeded againſt the Lords in the Tower, and the Popiſh Traitors upon my Diſcovery, and what Credit I had in the Houſe of Commons; Will that be Evidence, pray my Lord?

L. C. J. No, it will not, if you will produce any one that you told this to before the publick Diſcovery, that may be Evidence ſuch as it is, and is often allow'd; but what the Houſe of Commons did upon the Diſcovery, that's not any Evidence at all.

Otes. Then my Lord, ſuppoſe I can prove, that I gave an early and timely Account to any of the Houſe of Lords of this Conſpiracy, and did acquaint them with the Conſult in *April* as part of it; I deſire to know whether in producing any of thoſe Lords, I ſhall give that which is Evidence?

L. C. J. Call whom you will that you told any thing to, that is a ſort of Evidence, I tell you?

Otes. Then I call my Lord of *Devonſhire.*

L. C. J. Here is my Lord of *Devonſhire.*

Otes. My Lord, I beg your Pardon for the trouble I put your Lordſhip to; but your Lordſhip ſees the neceſſity of it: It is for the juſtification of the Truth, to which I will give my Blood for a Seal if I be call'd to it.

L. C. J. My Lord of *Devonſhire,* your Lordſhip muſt be ſworn. [*Which was done.*

Otes. Will your Lordſhip pleaſe to acquaint the Court and the Jury (your Lordſhip being at that time a Member of the Commons Houſe) what Account I gave there of this particular Conſult (to keep to that Point that is here in queſtion) before the Court this Day, and with what Credit I was received in all theſe Parliaments; for my Credit and the Credit of the Parliament is now in queſtion.

Earl of *Devonſhire.* My Lord, all I can ſay to it is this; you Mr. *Otes* gave a long Account of a Conſult and Conſpiracy among the Jeſuits: But I cannot remember any Particular, it is ſo long ago.

L. C. J. Every body knows this, you gave a long Narrative into the Houſe of Commons and Houſe of Lords too.

Otes. Ay, and it was a true one; but my Lord of *Devonſhire,* I deſire your Lordſhip would be pleaſed to give the Court and the Jury an Account, with what Credit I was received in thoſe three Parliaments your Lordſhip ſat as Member in.

Earl of *Devonſhire.* I remember that the two *Weſtminſter* Parliaments after the long Parliament, were ſo ſatisfied with the Diſcovery, that they paſſed a Vote in the Houſe of Commons——

L. C. J. The Votes of the Houſe of Commons are no Evidence at all.

Otes. They ſhow what Opinion the Parliament was of.

L. C. J. Many Votes that have been made of late, I hope will neither be Evidence for, nor put in practice again.

Earl of *Devonſhire.* My Lord, it is well known to all the World the Vote I ſpeak of.

L. C. J. Nay, my Lord, I ſpeak not to your Lordſhip; for we all know thoſe Votes that I ſpeak of were not according to your Lordſhip's Mind: But we only ſay thus in general, that becauſe the Houſe of Commons cannot give an Oath, therefore what is done there, is not an Evidence here, or in any Court of Record.

Otes. But my Lord, that I muſt urge, I do perceive that in the time of Parliament, and during the Sitting of the Houſe of Commons, Votes have been brought in as Bars to the Proceedings of Inferior Courts; and this Court does not look upon it ſelf as Superior to the Great Court of Parliament, and then if they may be brought——

L. C. J. Which they cannot be, nor never were, nor I am ſure ought to be; nor I hope never will be as long as there is any Juſtice in the Nation.

Otes. But my Lord, you will allow the Records of the Houſe of Lords to be Evidence?

L. C. J. Yes, I tell you, I will, and for that reaſon, becauſe they are Records out of a Court of Record: An Order of Court Baron is no Evidence, becauſe it is no Court of Record; but a Judgment of a Court Leet is Evidence, becauſe it is a Court of Record; and there's the difference.

Otes. My Lord, I call in the next place my Lord of *Angleſey,* if he be in Court.

L. C. J. No, he is not here.

Otes. Pray will you give me leave to call my Lord Keeper then?

L. C. J. See in the Court of Chancery, whether my Lord Keeper be there.

Cryer. No, my Lord, he is not; he is gone.

Otes. He was Subpœna'd, my Lord, and I can have Affidavit made of it: He was a material Witneſs for me.

L. C. J. I cannot help it; he is not here.

Otes. Pray call my Lord Chief Baron.

L. C. J. Go one of you into the Exchequer, and ſee if my Lord Chief Baron be there, and tell him, Mr. *Otes* calls for him as a Witneſs.

Otes. And Mr. Juſtice *Levins.*

Cryer. The Courts are both up; and they are all gone.

Otes. They were ſubpæna'd I am ſure to be here; well, go and ſee, whether they are or no.

L. C. J. In the mean time do you call ſome other Witneſſes.

Otes. I call my Lord Chief Juſtice *Jones.*

L. C. J. The Cryer is gone to look for the Judges.

Otes. Then I call my Lord of *Clare.*

L. C. J. Here is my Lord of *Clare.*

Earl of *Clare.* My Lord I can remember nothing, it is ſo long time ago.

L. C. J. My Lord of *Clare* ſays, he can remember nothing.

Otes. I only call my Lord of *Clare* to ask him one Queſtion which I hope his Lordſhip will remember.

L. C. J. Swear my Lord of *Clare.* [*Which was done.*

Well, what is it you ask my Lord?

Otes. My Lord of *Clare,* the Queſtion I would ask your Lordſhip is, with what Credit I was received in the Houſe of Lords upon my Diſcovery; and that you will to the beſt of your Memory, give my Lord and the Jury an Account, how the Houſe of Peers proceeded upon my Evidence?

Earl of *Clare.* Truly, my Lord, I cannot give any Account; it is of ſo long ſtanding.

Otes.

Otes. It is a great while ago, my Lord, and therefore it is hard meaſure that I muſt be brought to this Tryal ſo long after.

L. C. J. If it be a long time, we cannot help it: We cannot force People to proſecute ſooner than they will do.

Otes. I deſire Mr. Baron *Gregory* may be called.

L. C. J. He is not here, but ſee and call my Brother *Gregory*; I hear they are altogether in the Treaſury.

Otes. Then I call Mr. *Williams* that was Speaker in the Houſe of Commons.

L. C J. Here is Mr. *Williams.* [*He was ſworn.*

Otes. I deſire, Mr. *Williams*, becauſe you were then Speaker of the Commons Houſe of Parliament, you would be pleaſed to tell what you remember concerning the Credit I received in that Parliament in which you were Speaker, upon the Diſcovery I made of the Popiſh Plot; and particularly as to the Conſult of Jeſuits to kill the late King in the Month of *April* 78?

Mr. *Williams.* My Lord, my Memory is never very good; but eſpecially in a Caſe that is at ſuch a diſtance of time, and which conſiſts of ſo many Particulars as this, I mean Mr. *Otes*'s Diſcovery. But this my Lord I do remember; he was examin'd at the Bar of the Houſe of Commons, and gave a long Account: But it is more than any Man can do to tell every Particular that is ſaid in that Houſe.

L. C. J. Was he upon his Oath, Mr. *Williams*, at the Bar of the Houſe of Commons?

Mr. *Williams.* My Lord, he was as other Men are that are examin'd in the Houſe of Commons.

L. C. J. We all know it could not be upon Oath, they have not Power to give an Oath.

Mr. *Williams.* What Reputation he was of, I cannot ſay ſo well as what their Proceedings did teſtifie.

L. C. J. Nor in caſe they did believe him never ſo much, is it any thing to this Queſtion, which is, whether he ſwore true or falſe at *Ireland*'s Tryal?

Mr. *Williams.* My Lord, when a Perſon is brought to the Bar, there to be a Witneſs in any Cauſe, every body is ſilent, and the Witneſs is heard what he has to ſay; and ſo was Mr. *Otes:* When he had done he withdrew; but what the Opinion of the Houſe was upon it, I muſt ſubmit to their Votes and Reſolutions.

L. C. J. Which you know, Mr. *Williams*, are no Evidence.

Mr. *Williams.* That I muſt ſubmit to the Court.

Otes. I deſire my Lord of *Clare* would be pleaſed to tell, if he remembers, what Credit the Houſe of Lords gave me upon my Diſcovery?

Earl of *Clare.* My Lord, I do not well hear Mr. *Otes*'s Queſtion.

Otes. My Lord, my Queſtion is this, when I was brought to the Bar of the Lords Houſe, whether I did not receive the Thanks of the Lords Houſe for my Diſcovery?

Earl of *Clare.* Truly, Sir, at the beginning of the Diſcovery of the Popiſh Plot, I was not in Town, nor in the Houſe.

L. C. J. But now Mr. *Otes* I hope you are ſatisfied by the Anſwer that is given by your own Witneſs, that what is done in the Houſe of Commons, is no Evidence; and I would have you remember that is the Reaſon of it, becauſe they are no Court of Record, and becauſe they cannot ſo much as give an Oath.

Otes. My Lord, I ſee my Lord of *Huntingdon* is here; and though I did not Subpœna his Lordſhip, nor deſigned to have troubled him; yet being here, I deſire his Lordſhip would give an Account what Credit I had in the Houſe of Lords upon my Diſcovery.

L. C. J. Swear my Lord of *Huntingdon.* [*Which was done.*

Earl of *Huntingdon.* I do believe my Lord, Mr. *Otes*'s Diſcovery found a good reception in the Houſe of the Lords; but it was grounded upon the Opinion, that what he ſaid was true, and that he was an honeſt Man: For ſo the Houſe then accounted him to be; and upon this it was their Lordſhips gave Credit to his Teſtimony; and indeed had the Matter been true, it was of high Importance to have it thoroughly examined: But ſince that time it being apparent there were ſo many, and great Contradictions, Falſities, and Perjuries in his Evidence; upon which ſo much innocent Blood hath been ſhed, I believe a great many Perſons who were concerned in the Tryals of thoſe unfortunate Men, are heartily afflicted and ſorry for their ſhare in it: And I do believe moſt of the Houſe of Peers have altered their Opinion, as to this Man's Credit; and look upon his Evidence as I do, to be very falſe.

L. C. J. Do you hear him, Mr. *Otes?*

Otes. No, my Lord, I do not very well.

L. C. J. Then my Lord of *Huntingdon* turn your Face to the Jury; and ſay what you ſaid to us over again.

Which his Lordſhip did to the ſame Effect.

Otes. Very well, my Lord.

Mr. *Juſt. Withins.* There's your Credit with the Houſe of Lords, Mr. *Otes.*

Otes. My Lord, I call'd you in to anſwer my Queſtion, as to ſomewhat that is paſt, and to give your Judgment how you are inclined to believe now.

L. C. J. Nay, but with your Favour, it was to declare what Opinion the Houſe of Lords had of you; and he ſays very well, and that this is in truth the ſame Anſwer that muſt be given, for the Judges and the Juries that try'd the People upon your Evidence: Says my Lord of *Huntingdon* at firſt, truly I did believe Mr. *Otes* did ſwear true, and he had Credit with me, and ſo he had with others; but now upon further Examination into Things, and in proceſs of time Diſcoveries have been made of the Truth, and that what he ſwore is falſe; ſo that now I believe in my Conſcience he is actually forſworn, and has drawn innocent Blood upon the Nation; and no body will believe a Word he ſays.

Otes. Well, my Lord, I have done with my Lord of *Huntingdon.*

Mr. *Juſt. Withins.* And he has done with you, as I perceive.

L. C. J. Yes, truly, methinks ye ſhake hands, and part very fairly.

Mr. *Juſt. Holloway.* There's my Lord Chief Baron; what ſay you to him, Mr. *Otes?*

L. C. J.

L. C J. Is my Lord Chief Baron ſworn?

Cryer. Yes, my Lord, he is.

L. C. J. Then what do you ask him?

Otes. My Lord, I call'd your Lordſhip, becauſe your Lordſhip ſat as a Commiſſioner of *Oyer* and *Terminer* in the *Old Bailey*, at *Ireland*, *Whitebread* and *Langhorn*'s Tryals; and that which I call your Lordſhip for, is to give an account to my Lord and the Jury, of the Satisfaction your Lordſhip received concerning the Fulneſs and Fairneſs of the Evidence then deliver'd by me in thoſe Tryals?

L. C. Baron. My Lord, I cannot charge my Memory with it.

L. C. J. He ſays he cannot remember.

L. C. Baron. No, not in particular; but in general I remember there were a great many Perſons that gave Evidence in thoſe Tryals on the one ſide and the other: There were a great many Perſons that came from St. *Omers*, that gave Evidence there of Mr. *Otes* being at St. *Omers*, when he ſaid he was in Town.

Otes. And what Credit were they of at that time, pray, my Lord?

L. C. Baron. I think they were Perſons of very good Credit; they were Gentlemen of good Families many of them.

Otes. Did the Jury believe them at that time?

L. C. Baron. I cannot tell what the Jury did.

L. C. J. Nor is it any matter at all what they did: But I would ask you, my Lord, but one Queſtion: Have you heard this Evidence that has been given here to day?

L. C. Baron. No, my Lord, I have not.

L. C. J. If you had, I would then have ask'd you, whether you believe him now or not?

L. C. Baron. Truly, my Lord, I never had any great Faith in him, I do aſſure you, as to my ſelf.

Mr. *Juſt. Withins.* You hear what he ſays, Mr. *Otes*; you had never any great Credit with him.

Otes. My Lord, I am not at all concern'd at this; I value my ſelf more upon my own Innocency and Integrity, than any Man's good or bad Opinion whatſoever.

L. C. J. Ah! your Innocency is very great!

Otes. Then, my Lord, I will conclude my Evidence.

Mr. *At. Gen.* My Lord, Before Mr. *Otes* goes to ſumm up his Evidence, we have ſome other Evidence to give.

L. C. J. What ſay you, Mr. *Otes*? Will you call any other Witneſſes to this point?

Otes. My Lord, If they bring any other Evidence, I hope I may have my turn to anſwer it.

L. C. J. Ay, truly, if they bring any new Evidence that you have not applied to already, God forbid that you ſhould not be heard; but if it only gives an Anſwer to the Evidence that has been given, then you muſt not retort on them; for they are to have the laſt Word; but it is not fit withal, that you ſhould be denied any thing that is neceſſary or really of advantage to you.

Otes. If they offer any new Evidence to my Diſreputation, the Queſtion is, whether I may have a time allotted me to make my Defence againſt that Evidence?

L. C. J. Ay, ay, in God's Name by all means.

Mr. *At. Gen.* This is the uſual Method of Proceedings; but I would know if Mr. *Otes* has any more Witneſſes to examine to this Point, that he has examin'd to already?

Otes. My Lord, I think I have no further Evidence at preſent, till I hear what they further ſay.

Mr. *At. Gen.* Then may it pleaſe your Lordſhip, and you Gentlemen of the Jury——

Otes. I hope when your Lordſhip ſumms up the Evidence, you'll remember what has been ſaid by the Witneſſes.

L. C. J. You may aſſure your ſelf, I will remember whatſoever has been ſaid on the one ſide and t'other, as near as I can: The Gentlemen of the Jury are Men of Underſtanding, and I ſee they take Notes, and I'll give them all the Aſſiſtance I can.

Otes. Truly, my Lord, I have ſome more Witneſſes to the ſame purpoſe, if your Lordſhip pleaſe to ſpare time to hear them.

L. C. J. Ay, ay, We ſit here to hear the Witneſſes, call whom you will.

Otes. Is my Lord *Lovelace* here?

L. C. J. I cannot tell, I do not ſee him here; but you did call my Brother *Gregory*, there he is, what ſay you to him?

Otes. Mr. Baron *Gregory* was Speaker of the Houſe of Commons in one of the *Weſtminſter* Parliaments.

L. C. J. Swear my Brother *Gregory*.

[*Which was done.*

Otes. I deſire your Honour would be pleaſed to give this Court and the Jury an account, you being Speaker of the Houſe of Commons, what Credit I received there in that Houſe upon my Diſcovery of the Popiſh Plot?

Mr. *Bar. Gregory.* My Lord, That is a pretty general Queſtion, it is not poſſible for me to remember the Proceedings in the Houſe of Commons ſo long ago.

L. C. J. But, Brother, I tell you what he means by it: He would have you to anſwer this Queſtion, whether he was of good Credit in the Houſe of Commons or not?

Mr. *Bar. Gregory.* I know not what Anſwer to make about the Credit he there had; any Member of the Houſe of Commons may give as good and better an account in that Matter than I; and truly I do not remember that Mr. *Otes* was before the Bar of the Houſe when I was Speaker: I believe it was before I was Speaker, that he was examined at the Commons Bar.

L. C. J. Well, he can remember nothing of it.

Otes. Is my Lord *Lovelace* there?

Cryer. He has been called, but he is not here.

Otes. Call my Lord of *Stamford*.

Cryer. He is not here.

Otes. Call Sir *Francis Winnington*.

Cryer. He is not here.

Otes. Call *Silas Titus*, Eſq;

Cryer. He is not here.

Otes. Call Sir *George Treby*.

Cryer. He is not here.

Otes. Call Sir *Francis Pemberton*: Theſe have been all ſubpœna'd.

Cryer. He is not here.

Otes. Is my Lord Biſhop of *London*?

L. C. J.

L. C. J. Here is my Lord Biſhop of *London*, pray ſwear my Lord Biſhop of *London*.

[*Which was done.*

Otes. I beg your Lordſhip, if you can, would give an account of your Remembrance in this Matter: Your Lordſhip was often in Committees of the Houſe of Peers about this Buſineſs, and from firſt to laſt you were in the Committee for further Examination of the Popiſh Plot; and you were not only of the Committee, but you alſo ſat as a Baron in the Houſe. I humbly beg your Lordſhip would pleaſe to tell as far as you can charge your Memory, what Reputation I had in the Houſe of Lords, where I was upon my Oath, and in particular, whether your Lordſhip remembers that I received the Thanks of the Houſe for the Service I had done for the King and Kingdom in the Diſcovery.

Mr. *Juſt. Holloway.* It is a long Queſtion, my Lord.

L. B. of London. It is ſo, my Lord; but my Anſwer will be very ſhort: For it is a very little I can remember after ſo great a diſtance of Time, and the Tranſactions have been publick; nor can I acquaint the Court with any thing, but what is known already; and that is this, I remember that the Plot was diſcovered by him, and his Diſcovery was receiv'd as Evidence at the Bar of the Houſe of Lords, and believ'd, and the Thanks of the Houſe were given him at that time for it.

L. C. J. There's Sir *George Treby*, What do you ask him? But firſt let him be ſworn.

[*Which was done.*

Otes. Pray be pleas'd to ask Sir *George Treby*, who was Chair-man of the Committee of Secrecy, and was Manager in the Tryal of the Lord Viſcount *Stafford*, that he will be pleas'd to tell what Credit I had in both Houſes upon that Tryal.

L. C. J. I told you before, you muſt urge nothing of that Tryal, unleſs you have the Record here.

Otes. Then, my Lord, I deſire Sir *George* may give an account what he knows of the Correſpondencies between Mr. *Coleman* and the *See of Rome*?

L. C. J. No, that will not be any Evidence at all in this Caſe; for that is not at all here in queſtion.

Otes. Then, my Lord, I deſire Sir *George Treby* may ſpeak what he knows of my Credit in the Houſe of Commons.

L. C. J. Ay, what ſays he to that?

Sir *George Treby.* My Lord, I can anſwer for nothing but my own Judgment; I cannot tell what Credit he had with any particular Member of the Houſe of Commons; I do remember indeed, he was there ſeveral times at the Bar, but not upon Oath, but as others uſually are there; and concerning the Diſcovery, there was a Vote all the Kingdom knows of, that they were ſatisfied there was a Plot, but whether that Vote was grounded altogether upon his Evidence, or how far upon his Evidence, I cannot tell, nor what any Man thought of it beſides my ſelf.

Otes. I deſire Mr. Serj. *Pemberton* might be call'd again.

Cryer. He is not here.

Otes. Then pray call Sir *William Dolben.*

Cryer. He is not here neither.

Otes. Then I call Sir *Edward Atkins.*

Cryer. He is not here.

Otes. Call Mr. *Richard White.*

Cryer. He is not here.

Otes. My Lord, Theſe were all ſubpœna'd, but they will not come; they are frighted away.

L. C. J. We know nothing of that, they may come if they will.

Otes. Call Mr. *Thomas Cox.*

Cryer. He is not here; but here is Mr. *White.*

Otes. I pray he may be ſworn. (*Which was done.*) I deſire to know of him, whether he were not a Jury man upon the Tryals of *Ireland* and *Whitebread*?

Mr. *White.* No, I was not.

Otes. Then I am miſtaken, I beg your Pardon for this Trouble.

L. C. J. Well, there's my Brother *Dolben* come now. What ſay you to him? Swear my Brother *Dolben*. [*Which was done.*

Otes. May it pleaſe you, Sir *William Dolben*, you ſat as a Judge upon the Tryals of Mr. *Ireland*, Mr. *Whitebread*, and Mr. *Langhorn*; and I call you, Sir *William Dolben*, to give an account to my Lord and the Jury, what Credit my Evidence had at thoſe Tryals, and how the Jury was ſatisfied with it.

L. C. J. There is the Verdict, Man, that finds the Perſons you ſpeak of guilty.

Otes. If that be Evidence enough, I am ſatisfied, my Lord.

L. C. J. Is not that better than his Opinion to ſhew how the Jury was ſatisfied? Ay, certainly: Better than the Opinion of all the Twelve Judges; for that point they would not have Convicted them, except they had been ſatisfied with the Evidence.

Sir *William Dolben.* Have you done with me, Sir?

Otes. I have, Sir.

L. C. J. Have you called all your Witneſſes, or will you call any more?

Otes. No, my Lord, I will call no more at preſent.

Mr. *At. Gen.* Then, my Lord, we'll go on with another Part of our Evidence. Gentlemen, you ſee Dr. *Otes*, to ſupport his Credit, has given two ſorts of Evidence; the one is, ſome Records of Tryals at the *Old Bailey*, wherein he had the good hap to be believed; the other is, ſeveral noble Perſons, and other Gentlemen, as to the Credit he has had given to his Evidence before. What they have ſaid I ſhall not meddle with at all at this time, but leave the Obſervations that are to be made thereupon, till we come to ſumm up the Evidence for the King. But as to the firſt part of his Evidence, that is, as to the Records produced, and the Verdicts therein given, and the Opinions of the Judges, we have this to ſay in point of Evidence as an Anſwer. 1. We ſhall produce to you ſeveral Records, wherein he has not been believed; as that of Sir *George Wakeman*, and my Lord *Caſtlemain*; and not only ſo, but we ſhall actually prove that he was perjur'd in them; that what he ſwore againſt them was utterly falſe, and you will hear this was not the firſt time that he had ſworn falſe; for in an Accuſation that he gave at a Tryal at *Haſtings*, we ſhall prove he ſwore Buggery upon a Perſon which was prov'd falſe.

Otes. Can you produce any ſuch Record, Mr. Attorney?

Mr. *At. Gen.* Yes, we ſhall.

L. C. J. Do not interrupt the King's Counſel; let them go on; you ſhall be heard quietly in your time.

Mr. *Hanſes.* Nay, Mr. *Otes* need not be ſo haſty as to ask for the Records, by degrees we ſhall produce Records enough againſt him.

Mr. *At. Gen.* We ſhall prove alſo by the Journals of the Lords Houſe, that he did forſwear himſelf; for after he had there made a long Narrative of the Plot, being ask'd whether he had any more to accuſe, than thoſe Perſons that he had nam'd, and this upon his Oath; he did there ſwear that he had no more Perſons to accuſe.

Otes. That were Members of that Houſe, it was.

L. C. J. Sir, You muſt be quiet till they have done.

Mr. *At. Gen.* But ſoon after he bethought himſelf, and accuſes the Queen and His Royal Highneſs the Duke, our now preſent Sovereign of being in the Plot.

Otes. What Plot did I accuſe them of?

L. C. J. Nay, you muſt ſit down and be quiet; how now, will you not let the King's Counſel ſpeak? You were heard quietly, and ſo ſhall they be too.

Otes. Well, my Lord, I will be quiet.

Mr. *At. Gen.* Theſe things, my Lord, will ſhew of what Credit he was of at that time: Another thing we ſay to theſe Records, is this; There were two other Witneſſes, Mr. *Clay* and Mr. *Smith*, beſides thoſe that were now produced, which were the Home-Witneſſes, that did poſitively ſwear, that in *April* and *May* 78. *Otes* was here in Town; he did then indeed make uſe of thoſe other canting Witneſſes, for I cannot call them any otherwiſe, that beat ſo about the Buſh, and ſpeak of Uncertainties, and contradict one another; but thoſe that I name, *Clay* and *Smith*, were Home-Witneſſes, and there lay the Credit of his being in Town, when the Witneſſes which came from St. *Omers*, ſay he was beyond Sea.

Otes. My Lord, I beg I may ask one thing; whether my Lord Biſhop of *London* be there ſtill?

L. C. J. No, my Lord of *London* is gone.

Otes. I am ſorry for it, becauſe he could have given an account of this *Smith*, for he knows him.

L. C. J. I cannot help it, you ſhould have deſired him to ſtay while he was here; go on, Mr. Attorney.

Mr. *At. Gen.* I will, my Lord; and this which I am going to ſay, as an Anſwer to his Evidence, which will give a full Anſwer to that other Objection which he made; which was, what was the Reaſon, when he had given ſuch an Evidence ſo long ago, it ſhould be delayed ſo long e'er it was proſecuted. I'll give your Lordſhip a Reaſon, and a ſatisfactory one, till thoſe Diſcoveries were made that have lately been made: The Evidence theſe Witneſſes gave, carried a Probability of Truth in it; and Sir *Richard Barker* himſelf added his Teſtimony to it, tho' he does not think fit now to come and confirm it: I ſay hitherto it had ſome ſemblance of Truth, and ſo did ballance the other Teſtimony of them that came from St. *Omers*: But when we had diſcover'd that it could be teſtified by twenty Perſons, that had not been at any of the former Tryals, that he was certainly all that time at St. *Omers*; and when we had diſcover'd the Tampering and Practices of Mr. *Otes*, in ſuborning theſe Witneſſes to ſwear as corruptly as he ſwore at firſt; which we ſhall ſhew you palpably to be true that he did ſo; that gave us Encouragement to go on to make Enquiry into the Matter; but this was not diſcover'd till half a Year ago, or thereabouts. Now as to one of thoſe Witneſſes, that is Mr. *Clay*, the Caſe ſtands thus; indeed I expected he would have brought the ſame Witneſſes he did then; for I preſume they are all about Town, but he has not thought fit to do that: This *Clay* was then a Prieſt, and a Priſoner in the Gate-houſe for that very reaſon as being accuſed for being a Romiſh Prieſt; while he was there a Priſoner, Mr. *Otes* comes and threatens him, and ſollicits him to ſwear that he was here in Town in *May* 78. that he might be provided with Proof againſt what the Boys of St. *Omers* (as he call'd them) would come to teſtify; and threaten'd him if he did not, he would hang him, for he could ſwear him to be a Prieſt; and this was about three or four Days before the Tryal of the five Jeſuits: At length they came to a Bargain and Agreement, as you will hear, that he ſhould come and ſwear this; when Mr. *Otes* cannot pretend that the Evidence of *Clay* was known at all by any of the Committees that were concern'd in the Management of his Diſcovery; or that he was ſo much as thought of for a Witneſs. But we ſhall prove how it came to paſs; and I believe, if Mr. *Otes* would call him now (as I do not queſtion he knows where to have him) *Clay* would not be ſo hardy now, as to affirm his former Teſtimony. Then as for Mr. *Smith*, his Caſe ſtands thus: Mr. *Otes* had ſworn him into the Plot, as you will find in his Narrative that he gave in upon Oath, which is upon Record, and enter'd in the Journals of the Lords Houſe. He was a School-maſter in *Iſlington*, and *Otes* ſwears High Treaſon againſt him, and thereupon Warrants went out to take this *Smith*, and Mr. *Otes* was very violent in the Purſuit of him but two or three Days before the Tryal; and then, when all theſe Witneſſes from St. *Omers* were come, as he knew very well, he was in ſome Doubt his Deſign would have fail'd, and then does he prevail with *Smith* to become a Witneſs for him. And 'tis evident he did tamper with him, from that which was done by him at that time: For now he gives him under his Hand, (to ſhew the Impudence, as well as Villany of the Man) as it has been evident enough in all his Carriage) a Paper that ſhould give him Authority to go free from all Proceſs and Arreſts upon any Warrants; and this Protection under Mr. *Otes*'s Hand, is directed to all the King's Officers, thereby commanding them to take notice that this Mr. *Smith*, whom before he had accus'd of being in the Plot, was an honeſt Man, and employed in great Service for the King at that time. This Paper, when produc'd, will ſhew the time when it was made; and then it will appear, that two Days after *Smith* comes and ſwears that he din'd with him the firſt Monday in *May* 78. This was what

Smith

Smith ſwore then; and upon my mentioning of this Practice, if he have any ſhame in him, it muſt put him in ſome Confuſion: For we are prepared to prove by undeniable Teſtimony, that Mr. *Otes* did not dine with this Mr. *Smith* that Day: We ſhall prove it by the whole Family; but the firſt time ever Mr. *Otes* came there, was in *July* after, when he came into *England* from St. *Omers*, which theſe Witneſſes ſay, was the latter end of *June*. Then it was that he was with Mr. *Smith*, and came to his Houſe, and not before. And we ſhall prove by ſeveral Witneſſes, that upon the Queſtions being asked of Mr. *Smith*, how he came to teſtifie ſuch a thing, his Anſwer was, I muſt have died for it, if I had not don't, 'twas only a miſtake in point of Time: But he threatened me, and ſo did ſome others too, that he would have me hang'd for being in the Plot, if I did not comply with him, and ſwear this for him. My Lord, I ſhall offer this Evidence that I have open'd, and then I hope we ſhall ſatisfie the Jury, and all that hear this Tryal, that he is one of the moſt notorious Villains that liv'd upon the Earth; to be ſure that ever was known in this Kingdom.

Mr. *Sol. Gen.* Firſt, my Lord, we'll produce our Records, where is the Record of Sir *George Wakeman*?

Mr. *Swift.* This is the Record of Sir *George Wakeman*, and this is a true Copy, I examin'd it.

Mr. *Sol. Gen.* Pray Sir *Samuel Aſtry*, read a Word or two of it.

Cl. of Cr. Here is an Indictment againſt Sir *George Wakeman* for High Treaſon, he pleaded not Guilty; and here is an Acquittal by the Jury.

Mr. *At. Gen.* He being acquitted, I deſire he may be ſworn. [*Which was done.*

Mr. *Sol. Gen.* Pray Sir *George Wakeman*, was Mr. *Otes* ſworn againſt you at the Tryal?

Sir *George Wakeman.* Yes, Mr. Sollicitor, he was.

Mr. *Sol. Gen.* Do you remember what he ſwore againſt you at that Tryal?

Sir *George Wakeman.* Yes, I do Sir.

Mr. *Sol. Gen.* Was that true that he ſwore, by the Oath you have taken?

Otes. Is that a fair Queſtion? I deſire the Opinion of the Court?

L. C. J. Ah! why not?

Otes. He was legally accus'd; he cannot ſwear himſelf off.

L. C. J. But he is legally acquitted too; we have a Record for that here.

Otes. Ah! My Lord, he was acquitted; it's well known how.

Mr. *Sol. Gen.* Come Sir, was That he ſwore againſt you at your Tryal, true?

Sir *George Wakeman.*

L. C. J. What do you ſay, Sir?

Sir *George Wakeman.* 'Twas falſe upon my Oath, my Lord.

Mr. *Sol. Gen.* What Particulars did he ſwear againſt you?

Mr. *Pollexfen.* Ah! Pray tell the Particulars as near as you can what he ſwore againſt you.

Sir *George Wakeman.* My Lord, if your Lordſhip pleaſe, I will give a little Account what he ſwore againſt me before the King and Council.

Mr. *Sol. Gen.* That will not do, Sir *George Wakeman*, we do not ask you that.

L. C. J. No, it muſt be only the Evidence that was given upon this Acquittal, which is the Record here produc'd before us; what did he ſwear againſt you then?

Sir *George Wakeman.* He ſwore at that Tryal, as near as I can remember, that I undertook for a certain Sum of Money, 15000 *l.* as I think it was, to poyſon the King, and I was to do it by the means of the Queen. I was to provide this Poyſon by for her, and ſhe was to give it to the King. This he ſwore at my Tryal, which God forbid it ſhould be true; nothing can be more falſe.

L. C. J. I ask you by the Oath you have taken, you are now quitted, and ſo in no danger; and being upon your Oath, ought to ſpeak the Truth, without Malice or ill Will to him that did accuſe you; was that he ſwore true or falſe?

Sir *George Wakeman.* Falſe, falſe, upon my Oath; I ſpeak it without any Malice againſt the Man in the World.

Mr. *At. Gen.* Then ſwear my Lord *Caſtlemain.* [*Which was done.*

Sir *George Wakeman.* My Lord, I'll be bound to make it appear, that all he ſwore againſt me was falſe.

Mr. *At. Gen.* And ſo was it he ſwore againſt my Lord *Caſtlemain* and others that were acquitted at the ſame time with Sir *George Wakeman.*

Mr. *Sol. Gen.* Firſt read the Record of my Lord *Caſtlemain*'s Acquittal.

Cl. of Cr. Here is the very Record it ſelf: It was in this Court my Lord *Caſtlemain* was Indicted of High Treaſon, and Tried and Acquitted.

Mr. *At. Gen.* My Lord *Caſtlemain*, pray what did *Otes* ſwear againſt you at your Tryal? And pray tell the Court whether that was true or falſe.

Earl of *Caſtlemain.* My Lord, as near as I remember, Mr. *Otes* did ſwear at my Tryal, that he met me in *Lincolns-Inn Fields*, and that he went with me ſomewhere to Mr. *Fenwick*'s Chamber in *Dukes-ſtreet* in *Covent-garden*, where he ſaid I did talk a great deal of Treaſon, and a great Diſcourſe of that kind he ſaid there was, and he ſwore that I was in ſeveral Cabals in relation to the King's death: I was afterwards acquitted by the Jury that Try'd me, as appears by the Record; and here I do declare, as in the Preſence of God, and with all the Imprecations of divine Vengeance to fall upon me, if I ſpeak any thing but the Truth, that not only that which he ſwore was falſe, but that I never had any thoughts in my Heart, much leſs did ever declare in my Words of any injury or hurt againſt the late King. And beſides, that I never ſaw the Face of *Otes* in my life, till after I was put in Priſon upon his Accuſation of me.

Otes. My Lord, I deſire to know what Religion that Noble Lord is of?

Earl of *Caſtlemain.* I am a Roman Catholick, my Lord.

L. C. J. We all know what Religion my Lord is of, you need not ask that Queſtion.

Otes. That's not the Point, my Lord, I muſt have it declar'd in Evidence.

L. C. J. I wonder to ſee any Man that has the Face of a Man, carry it at this rate, when he

he hears ſuch an Evidence brought in againſt him.

Otes. I wonder that Mr. *Attorney* will offer to bring this Evidence, Men that muſt have Malice againſt me———

L. C. J. Hold your Tongue; you are a ſhame to Mankind.

Otes. No, my Lord, I am neither a ſhame to my ſelf or Mankind: What I have ſworn is true, and I will ſtand by it to my laſt Breath, and ſeal it if occaſion be with my Blood.

L. C. J. 'Twere pity but that it were to be done by thy Blood.

Otes. Ah! Ah! my Lord, I know why all this is, and ſo may the World very eaſily too.

L. C. J. Such Impudence and Impiety was never known in any Chriſtian Nation.

Otes. But this will not do the Work to make the Plot to be disbelieved; Things are not to be done by great Noiſes: I will ſtand by the Truth.

L. C. J Can you think to out-face ſuch Evidence as this with your Impudence?

Otes. But I hope you'll give me leave to make my Defence.

L. C. J. Then carry your ſelf as becomes you in the Court.

Otes. My Lord, I will do ſo.

L. C. J. If you do not, we know how to make you do it, you ſhall not think to Domineer here.

Otes. My Lord, I hope I do behave my ſelf as I ought.

L. C. J. No, you do not.

Otes. Ill Language may provoke any Man's Paſſion, my Lord.

L. C. J. Keep your ſelf within Bounds, and you ſhall be heard; but we'll ſuffer none of your Extravagancies.

Otes. My Lord, if I had been aware of this, I could have produc'd Evidence that would have ſupported my Teſtimony in theſe Matters.

L. C. J. Go on with your Proofs, Mr. *Attorney.*

Mr. *Attorney.* We will do ſo, my Lord.

Earl of *Caſtlemain.* Have you done with me, Sir?

L. C. J. Have you any other Queſtions to ask my Lord *Caſtlemain?*

Mr. *At. Gen.* No, my Lord.

L. C. J. Then your Lordſhip may ſit down again where you were.

Mr. *At. Gen.* Now my Lord, we ſhall ſhow the Lords Journal where it is Recorded, that he ſwore he could accuſe no body elſe but thoſe that he nam'd, and then we ſhall give an Account, that ſoon after, he accus'd our preſent Sovereign, and the Queen *Dowager.*

Mr. *Sol. Gen.* Where is the Clerk of the Parliament?

Mr. *Swift.* Here he is, Mr. *Walker.*

Mr. *At. Gen.* Swear him. [*Which was done.*

Mr. *Sol. Gen.* Mr. *Walker,* Is that the Journal of the Houſe of Lords?

Mr. *Walker.* Yes, my Lord, it is.

Mr. *Sol. Gen.* Deliver it in to the Clerk, and let him read it.

L. C. J. Then you muſt direct to the time, or elſe it will be to no purpoſe.

Mr. *Swift.* Sir *Samuel Aſtry,* pray turn to *Friday* the 29*th* of *November* 78.

Cl. of Cr. Reads, *Die veneris decimo nono Novembris* 1678. *Titus Otes* being call'd in at the Bar, deſired to be heard a few Words before he was ſworn———

L. C. J. Mr. *Attorney,* I doubt this will not be Evidence: It is only a Paper of what he ſaid, taken before the Lords; but now whether that was upon Oath or no, is the Queſtion, nay it appears it was not upon Oath; but ſays, it was before he was ſworn.

Mr. *At. Gen.* My Lord, I deſire it may be read all out.

Cl. of Cr. Reads, *Titus Otes* being called in at the Bar, deſired he might be heard a few Words before he was ſworn to ſpeak to the main Buſineſs, which being granted to him, he complained of the Reſtraint he is under, and being debarr'd of the liberty of his Friends coming to him, and of converſing with any body in private, and that no *Engliſhman* ought to be reſtrained, unleſs accuſed by one or more Witneſſes; and pray'd that the Reſtraint might be taken off, that he might be enabled to give his Evidence more cheerfully, and that the Houſe would be pleaſed to Addreſs to the King for that purpoſe, and that his Pardon may be renewed, becauſe he is under miſpriſion of Treaſon, to which the Lord Chancellor told him, that the Houſe would take his Condition into Conſideration, and then being ſworn, he was told by the Lord Chancellor, that the Lords have received an Addreſs from the Houſe of Commons in part upon Evidence by him given there, and that the Houſe expects he ſhould give an Account what that is, which has begot ſuch Aſtoniſhment in the Houſe of Commons as is expreſſed in the Addreſs, upon which *Titus Otes* ſaid, that in *July* laſt, he ſaw a Letter from Sir *George Wakeman*———

L. C. J. Is this Evidence, Mr. *Attorney?*

Mr. *At. Gen.* My Lord, the uſe we make of it is to prove that he did accuſe the Queen.

L. C. J. What is the Accuſation of the Queen to this purpoſe?

Mr. *At. Gen.* My Lord, we ſay he had ſworn ſeveral Days before that he had no other Perſons to accuſe.

L. C. J. You ſhould produce that firſt that he ſwore ſo.

Mr. *At. Gen.* My Lord, we ſhould ſo, I think, and I thought it had been ſo done.

L. C. J. This is no Evidence, for it is not upon Oath; it does not ſay ſo.

Mr. *At. Gen.* Yes, it does my Lord, but we will go on in order.

L. C. J. Come then, let us ſee what was ſworn about his having no more Perſons to accuſe.

Mr. *At. Gen.* Pray Sir *Samuel Aſtry,* look the 30*th* of *October* 78.

Cl. of Cr. Reads, *Die Mercurii* 30. *Octobris* 1678. *Titus Otes,* being called in, was ſworn at the Bar, and required to anſwer to what he is now called in for concerning his Diſcourſe with the Lord *Anneſley* laſt Night, about the Duke of *York.*

L. C. J. I doubt this will not be Evidence neither; for we are now ſpeaking only about what ſhall be Evidence: We are not now medling with the methods of the Houſe in their Examination of Witneſſes, but what is Evidence here; ſuppoſe an Oath be adminiſtred to me for a particular purpoſe in the Houſe of Lords, that I ſhall anſwer to what is asked me concerning a Diſcourſe that I had with a third Perſon.

Mr. *At. Gen.*

Mr. *At. Gen.* Pray Sir *Samuel Aſtry* look the next Day; for there my Lord, he is examin'd upon the general.

Sir *Samuel Aſtry* Reads, *Die Jovis* 31 *Octobris* 1678.

Mr. *At. Gen.* But firſt read the latter end of the former Day's Proceedings, beginning at thoſe Words, Upon conſideration.

Cl. of Cr. Reads. Upon conſideration of what *Titus Otes* had ſaid, he was call'd in again, and told by the Lord Chancellor that the Houſe has directed he ſhall be heard again to Morrow at Nine a Clock, and the Lords do expect that by the Oath he hath now taken, he ſhould go thorow with what he hath to ſay, and therefore he ſhould prepare himſelf to deliver the whole Truth of what he knows concerning the Deſign againſt the King's Perſon, and the Government of this Kingdom.

L. C. J. But ſtill Mr. *Attorney*, we are but where we were; for ſuppoſing upon my Examination upon Oath given me in the Houſe of Lords to a particular purpoſe, That my Lord Chancellor ſhould tell me here; my Lords intend to Morrow, that you by vertue of the Oath now given you, ſhould come and give them Satisfaction as to other Queſtions, I doubt that would not be Evidence in *Weſtminſter-Hall*: Let us not ſtretch any thing further than it ſhould be upon any Account whatſoever: For ſuppoſe I give you an Oath to make true Anſwer to ſuch Queſtions as I ſhall ask you concerning what was ſaid at the Seſſions houſe at ſuch a Tryal, and then I come after and ask you upon the Oath you have taken, what do you ſay concerning ſuch a Buſineſs 7 Years ago, would that be Evidence?

Mr. *At. Gen.* With Submiſſion, my Lord, if a Man be told he is upon his Oath, to ſay all he knows of ſuch a Deſign, what he ſays upon that Oath, is Evidence.

L. C. J. You ſay very true, Mr. *Attorney*, if I give him a general Oath; but what he ſays concerning any other Matter than that particular Thing which he was ſworn to give an Account of, can never be Evidence.

Mr. *Sol. Gen.* Truly, my Lord, I think we need not labour in ſuch a thing as this is.

L. C. J. Truly, Mr. *Sollicitor*, I think it is no Evidence at all, if you can prove he was ſworn to his whole Narrative, and can bring any thing out of that, you ſay ſomething.

Mr. *At. Gen.* We deſire that my Lord of *Berkley* may be ſworn. [*Which was done.*

L. C. J. What do you ask him?

Mr. *At. Gen.* Pray, my Lord, will you give the Court and the Jury an Account, whether Mr. *Otes* was not ſworn to his Narrative, and delivered in his Evidence at your Lordſhip's Bar upon Oath.

L. C. J. My Lord of *Berkeley*, let me ask you this Queſtion, Was every thing that he gave an Account of at the Bar of the Lords Houſe, given in upon Oath?

Earl of *Berkeley*. I cannot remember that my Lord.

L. C. J. It is impoſſible that he ſhould.

Earl of *Berkeley*. All I can teſtifie is but what I anſwered to the Queſtion which was asked me at my Lord *Stafford*'s Tryal.

L. C. J. But that is not material, now my Lord, becauſe the Record of that Tryal is not here.

Earl of *Berkeley*. The ſame thing is entered here particularly.

Mr. *At. Gen.* My Lord, we deſire it may be read again.

L. C. J. Read it again with all my Heart.

L. C. J. This is a particular Oath to a particular poſe; and ſhall I help it by intendment, that he was afterwards ſworn to the general Matter? No, I will not: Suppoſe any thing had happened afterwards that it ſhould have been thought fit to proſecute *Otes*; could the Man have been convicted of Perjury for this? Certainly he never could.

Mr. *Sol. Gen.* Well, my Lord, we ſubmit it to you; but we will now go on to prove that which Mr. *Attorney* opened, that *Otes* did ſuborn theſe Witneſſes to ſwear what they did ſwear: You have had one part of the Evidence that was then given; now we ſhall prove that *Clay* was ſworn at *Whitebread*'s Tryal, and what he did there teſtify about *Otes* being in Town.

Otes. I own it, he was ſworn then.

Mr. *At. Gen.* Do you own that you ſuborned him?

Otes. No, I think not, Mr. *Attorney*.

Mr. *Sol. Gen.* Then we will prove that you did tamper with him, and by threatenings prevail'd with him to ſwear for you.

Mr. *At. Gen.* Nay, we will prove that he was miſtaken in what he did ſwear a whole Year. Pray call Mr. *Charles Howard*.

Otes. My Lord, I deſire I may have leave to ask the Court a Queſtion, and I beg the Opinion of the Court in it, whether a Popiſh Recuſant Convicted, may be a good Witneſs?

L. C. J. We are not bound to anſwer your Queſtion; for we ſee no ground why you ſhould ask it: If you have any occaſion to object againſt any Witneſs, and can produce any Record againſt him; then we will tell you more of our Minds.

Otes. Pray then let me ask you another Queſtion, my Lord.

L. C. J. Prithee do not trouble us with thy Queſtions, let them go on with their Evidence.

Otes. My Lord, I deſire to know, whether a Man confeſſing himſelf a Popiſh Prieſt——

L. C. J. We do not ſit here to anſwer every idle Queſtion; 'tis nothing at all to the purpoſe: When you ask a proper Queſtion, we will anſwer it.

Otes. Yes, it is my Lord, and you are of my Counſel in Matter of Law.

L. C. J. I am not ſo.

Otes. Yes, my Lord, the Court is always of Counſel for the Priſoner.

L. C. J. That were well, indeed, if we were bound to give Advice in every Caſe, where a Man is Proſecuted at the King's Suit; indeed in thoſe Caſes where a Man can have no Counſel allowed him, the Court is of Counſel for him; but where he may have Counſel, the Judges are not of Counſel for him.

Mr. *Juſt. Holloway*. Beſides, We are not here putting of Caſes, but trying of a Cauſe.

Mr. *Sol. Gen.* Here is Mr. *Charles Howard*, ſwear him. [*Which was done.*

Mr. *At. Gen.* My Lord, we bring this Gentleman Mr. *Charles Howard* only to this part of our Evidence, to prove that Mr. *Clay* was miſtaken a whole Year, miſtook 78, for 77.

L. C. J. But, Mr. Sollicitor, if you take this confuſed Method, we ſhall never be at an end, and for my part I cannot make any thing of it; it is impoſſible for me to retain theſe things in Memory, ſo as to give any Direction to the Jury, if there be not a Method uſed; for do you think that it is poſſible for any Man to retain in his Head a hundred things huddled up and down without any Order?

Mr. *Sol. Gen.* We beg your Lordſhip's Patience but a little while, and we ſhall have it in very good Order. Swear *Higgins*.

[*Which was done.*

L. C. J. Pray what do you ask him?

Mr. *At. Gen.* The Matter we examine him to is this; for I would open to you the Nature of our Evidence. 1. He ſwore *Smith* into the Plot, and then gave him a Certificate, that he was an honeſt Man.

L. C. J. Is that *Otes*'s Hand?

Mr. *At. Gen.* We ſhall prove it to be ſo.

L. C. J. You muſt firſt prove what he ſwore of *Smith*.

Mr. *At. Gen.* My Lord, We deſire that we may read his Narrative.

L. C. J. But firſt prove it, Mr. Attorney.

Mr. *At. Gen.* It is upon Record in the Houſe of Lords.

L. C. J. Was that delivered in upon Oath to the Houſe of Lords? Or elſe we ſhall be but where we were.

Mr. *At. Gen.* For Proof of that we call my Lord *Bridgwater*.

L. C. J. Here he is. Swear my Lord.

[*Which was done.*

Mr. *At. Gen.* My Lord *Bridgwater*, Do you remember the Narrative that *Otes* gave in to the Houſe of Lords, and was it upon Oath? But firſt of all, if you pleaſe, I deſire my Lord may ſee the Book, whether any thing be there under his Hand, and then whether it be enter'd to be upon Oath, and whether this be the Journal agreeing with the Paper deliver'd him?

L. C. J. This is a Narrative, my Lord, that he himſelf deliver'd in, and I would ask my Lord *Bridgwater* this one Queſtion: Was not this Journal compar'd with the Narrative given in upon Oath by Order of the Lords Houſe?

Earl of *Bridgwater*. Yes, I muſt ſay I was one of the Committee appointed to take care of the Journal, and here is my Hand to it among other Lords, and that is a Copy of what Mr. *Otes* did deliver in as his Narrative which was inſerted upon a Report of the Committee into the Journal-Book by Order of the Lords, and we did examine the Narrative with the Book.

L. C. J. But what is all this to our purpoſe now? Do not miſtake me, my Lord *Bridgwater*, I do not ſpeak to you now, but to Mr. Attorney: What does this prove as to the Matter in hand?

Mr. *At. Gen.* Pray, my Lord *Bridgwater*, did you ſee the Narrative brought in by *Otes*?

Earl of *Bridgwater*. That Narrative was delivered to us by the Clerk of the Parliament.

L. C. J. But, my Lord, do you know that Narrative was given in upon Oath?

Earl of *Bridgwater*. I know no other, but that the Clerk of the Parliament brought it to us.

Mr. *At. Gen.* Here is the Clerk of the Parliament will tell you that *Otes* was ſworn to it.

L. C. J. Prove it if you can; but hitherto I ſee nothing that looks like Evidence.

Mr. *At. Gen.* Really, my Lord, I ſhould take it to be as much Evidence as any that ever was offer'd in the World.

L. C. J. Pray, Mr. Attorney, let us reaſon the Point a little; ſuppoſe you bring an Anſwer in Chancery; except the Man be ſworn to it, can you read his Anſwer; and yet I ever look'd upon an Anſwer in Chancery as Evidence?

Mr. *At. Gen.* In that Caſe the Record proves it ſelf, and ſo it ſhould here; and therefore we deſire it may be read.

L. C. J. But ſurely you would not allow an Anſwer to be Evidence, unleſs you prove it to be ſworn.

Mr. *At. Gen.* Truly, my Lord, I always took it, that we need not come to prove a Man was actually ſworn to his Anſwer; but if it be once enter'd upon Record in Chancery, it proves it ſelf.

L. C. J. It is true, Mr. Attorney, if it appears upon Record that the Anſwer was ſworn.

Mr. *At. Gen.* My Lord, If this Journal of the Houſe of Lords is a Record, then that which is enter'd into it, is a Record; 'tis a thing recorded as a Deed inrolled is, and proves it ſelf.

L. C. J. Mr. Attorney, Either we miſtake one another, or we do not differ in Opinion: If you could make it appear that *Otes* brought this thing in the Houſe of Lords, and deliver'd it upon Oath, that were Evidence; otherwiſe I cannot ſee how you can make Evidence of it.

Mr. *At. Gen.* I always thought, my Lord, that a Record out of a Court of Record, would have that Credit in another Court of Record, as to be read.

L. C. J. My Lord *Bridgwater* tells you, it was deliver'd to them by the Clerk of the Parliament.

Mr. *At. Gen.* Pray, my Lord, let the Clerk read what is at the end thereof.

Cl. of Crown. Reads, Hitherto examined the 3d of *December*, 1678. The Narrative and Examinations of *Titus Otes*, being firſt inſerted according to the Order of the Houſe, of the 21ſt of *November* laſt, by us *Angleſey*, *&c.*

Mr. *At. Gen.* Pray read the Order of the 21ſt of *November*.

Cl. of Cr. Reads, *Die Jovis* 21ſt of *November*, 1678. Upon Report made by the Earl of *Bridgwater*, from the Lords Sub-Committees for the examining the Journal of this Houſe; That upon Examination thereof, their Lordſhips find, that the Narrative made upon Oath by *Titus Otes* at the Bar on the 31ſt of *October* laſt, of the horrid Deſign againſt His Majeſty's Perſon and Government; is only mentioned in the Journal, but not enter'd at large in ſuch manner as he then related it; and that therefore their Lordſhips deſire the Direction of the Houſe concerning this Matter: It is thereupon ordered, that the ſaid Narrative made by *Titus Otes* on the ſaid 31ſt of *October*, ſhall be enter'd at large, and inſerted in the Journal, as the part of the Buſineſs of that Day.

L. C. J. Now you make it Evidence; for it appears that he was ſworn, and gave his Narrative upon Oath.

Mr. *At.*

Mr. *At. Gen.* Then now, my Lord, I hope we may read it.

L. C. J. Ay, read it.

Mr. *At. Gen.* Read the 54th Article.

Cl. of Cr. Reads, This is the Narrative of *Titus Otes*, the 54th Article. That one *Matthew Medborne*, a Player in the Duke's Theatre; one Mr. *Penny*, Mr. *Mannock*, Mr. *Sharpe*, and Mr. *Seddon*, and one *William Smith* a School-master at *Iſlington*, and one *Edward Everard* and others, meeting in a Club on Thurſday Nights and Sunday Nights, with one *Jones* a Prieſt, and one *Keymaſh* within-mentioned; and all theſe Perſons are employed by the Jeſuits, to vilify the Houſe of Commons, and to go about the City to inceniſe the People againſt them, and againſt the Biſhops of the Nation; and they deliver this Treaſonable Poſition, That the Commons aſſembled in Parliament are the Devil's Repreſentatives, and not the Nation's; with treaſonable and deteſtable Words the Deponent did hear at the ſaid Club, which is kept at *Fuller's* Rents near *Grey's-Inn*. And in the Month of *Auguſt* the Deponent was ordered by the Jeſuits in *London*, to give the ſaid Perſons great Reſpects, and in their Names to thank the Club for their Faithfulneſs to them in that Particular.

Mr. *At. Gen.* Thus you ſee what he had ſworn againſt him; now we ſhall ſhew how he dealt with him. Is that Mr. *Otes's* Hand?

Witneſs. It is; yes I believe it is.

Mr. *At. Gen.* I believe he will hardly deny it himſelf.

Otes. Let me ſee it, I pray you, Mr. Attorney.

Mr. *At. Gen.* Show it him. (*Which was done.*) Is that your Hand?

Otes. I cannot ſay it is my Hand; nor do I believe it to be ſo.

L. C. J. He does not own it to be his Hand.

Otes. I do not ſay it is not my Hand; but I do not remember any thing of it.

Mr. *At. Gen.* Read it, Sir, pray you.

L. C. J. What is it you would read?

Mr. *At. Gen.* A Certificate under *Otes's* Hand of Mr. *Smith's* Honeſty, not three Days before the Tryal of the five Jeſuits.

L. C. J. Read it, let us hear what it is.

Theſe are to certify that William Smith *is no Papiſt; and that he is upon good Service at this time for his King and Country; of which, I hope, thoſe that are Inquirers after Recuſants, will take notice.*

Witneſs my Hand this 3d Day of June 1679.

Titus Otes.

L. C. J. What Harm is there in all this? I muſt needs ſay, I cannot comprehend what you would make of it.

Mr. *At. Gen.* This Protection was given Mr. *Smith* by Mr. *Otes* three Days before the Tryal; but after he had ſworn him into the Plot in his Narrative.

L. C. J. I ſee not any Plot, for my part, that he ſwore him into, unleſs you mean Treaſon againſt the Houſe of Commons: For that is the Accuſation he made, that he ſpoke ſuch Words of the Houſe of Commons. Pray read it again. (*Which was done.*)

L. C. J. Well, and what is all this?

Mr. *At. Gen.* Is not this a ſwearing him into the Plot?

L. C. J. No, not that I ſee: It only gives an ill Character of him.

Mr. *At. Gen.* But he is accuſed as a Confederate with the Prieſts and Jeſuits.

Otes. Did I charge him, Mr. Attorney, with having any Hand in the Plot againſt the King's Life?

Mr. *At. Gen.* I only offer this as an Evidence that there was tampering.

L. C. J. You call it a being in the Plot; I ſee no ſuch thing.

Mr. *At. Gen.* And then he comes and gives him an Acquittal under his Hand, and then produces him as a Witneſs.

L. C. J. There can be no great matter in this, Mr. Attorney.

Mr. *At. Gen.* Then, my Lord, we'll call Mr. *Smith* himſelf, and he will tell you how *Otes* drew him in: Swear Mr. *Smith*. (*Which was done.*) Pray acquaint my Lord and the Jury, how you came to ſwear at the former Tryal; by whom you were perſwaded, and how you varied from the Truth.

L. C. J. That is very nauſeous and fulſome, Mr. Attorney, methinks in a Court of Juſtice.

Mr. *At. Gen.* What did you ſwear in the former Tryal? And was that true you did ſwear then?

L. C. J. I tell you truly, Mr. Attorney, it looks rank and fulſome; if he did forſwear himſelf, why ſhould he ever be a Witneſs again?

Mr. *At. Gen.* 'Tis not the firſt time by twenty that ſuch Evidences have been given.

L. C. J. I hate ſuch Preſidents in all times; let it be done never ſo often. Shall I believe a Villain one Word he ſays, when he owns that he forſwore himſelf?

Mr. *At. Gen.* Pray, my Lord, give me leave; I muſt purſue my Maſter's Intereſt.

Mr. *Sol. Gen.* My Lord, It was ever Teſtimony allowed to be given, to detect a Subornation.

L. C. J. I am ſure 'tis not fit to be allow'd at any time: If he did forſwear himſelf in a Court of Record, in my Opinion he is not to be receiv'd as a Witneſs any more.

Mr. *Sol. Gen.* We do only make this uſe of him, to prove that *Otes* did ſuborn him.

L. C. J. Pray call ſome other Witneſſes, if you have them, to contradict him; but do not offer to bring a Man to ſwear that he did forſwear himſelf before.

Mr. *Sol. Gen.* My Lord, We give Evidence here of a Man's being produced by *Otes*, to ſwear he was here in *May* 78. and he did make ſuch an Oath: Now I hope, with Submiſſion, my Lord, it is Evidence to contradict that Oath, if we can prove that he has confeſſed he was forſworn, and miſtaken in his Oath; ſuch Evidence perhaps will be of little value, yet Evidence it is.

L. C. J. Make it what you will, Mr. Sollicitor; I think it is of no value at all, nor to be admitted for the Man to come and ſwear it himſelf: Prove what you can by others.

Mr. *Sol. Gen.* Surely, my Lord, this Confeſſion of his to others is of leſs value than when we bring the Man himſelf to confeſs his Fault; that Man himſelf coming and owning the thing, that he was miſtaken, with great Sorrow for it, ſure is a good Evidence.

L. C. J.

L. C. J. Argue the Matter as long as you will, Mr. Sollicitor, you will never convince me, but that he that has once forſworn himſelf, ought not to be a Witneſs after that in any Cauſe whatſoever. If any Man tell me otherwiſe till Doomſday, I cannot be convinced of it.

Mr. *Sol. Gen.* I go but to ask him this Queſtion, Whether or no what he ſwore were true?

L. C. J. Mr. Sollicitor, We are all of another Opinion, that it is not Evidence fit to be given.

Mr. *Sol. Gen.* My Lord, I muſt ſubmit it to you.

L. C. J. I tell you, Mr. Sollicitor, if you ſhould call him to know what it was he ſwore, and it does appear by any Evidence, or by his own Confeſſion, that it was falſe, you ought not to believe what he ſays even in that Matter. And I think truly, for Example's ſake, it ought not by any means to be admitted.

Mr. *Sol. Gen.* My Lord, I muſt ſubmit it to you, but then I humbly conceive, it will be in very many Caſes impoſſible to detect a Perjury or Subornation, if the Party ſuborn'd cannot be admitted to be a Witneſs.

L. C. J. What good will the admitting him to be a Witneſs do? For either what he ſwore then, or what he ſwears now, is falſe; and if he once ſwears falſe, can you ſay he is to be believ'd?

Mr. *North.* My Lord, If a Man come and ſwear——

L. C. J. Look ye, Sir, you have our Opinion; it has been always the Practice heretofore, That when the Court have delivered their Opinion, the Counſel ſhould ſit down, and not diſpute it any further.

Mr. *At. Gen.* Then we will go about the Buſineſs of *Clay*, and for that we will call *Lawrence Davenport*.

L. C. J. 'Tis certainly againſt the Law to admit a Man that has once forſworn himſelf to be a Witneſs again in any Cauſe.

Mr. *At. Gen.* Swear *Lawrence Davenport*. (*Which was done.*) Pray give my Lord and the Jury an account how *Clay* came to be a Witneſs, and by whom he was wrought upon to be ſo.

Davenport. May it pleaſe you, my Lords and Gentlemen of the Jury, Mr. *Otes* came to the Priſon, I being then a Priſoner at that time in the Gate-houſe at *Weſtminſter* my ſelf, and having no other Employment I had the Government and Care of ſome of the Priſoners for a Livelihood, being in Cuſtody; and at that time Mr. *Otes*, as I ſaid, when old *Clay* was in Priſon, did come there to viſit this *Clay* at ſeveral times; and coming there to viſit this *Clay*, up ſtairs he went to his Chamber, and deſired to ſpeak with him; and I did deſire your Worſhip, Mr. *Otes*, that you would go in to him, and you did go into his Chamber, and there theſe Words you did ſpeak to him before the Tryal of the five Jeſuits, That if he did not ſwear what you put to him, he ſhould be proſecuted as a Prieſt, which you did believe he would die for.

L. C. J. What is this Man's Name?

Mr. *At. Gen. Lawrence Davenport.*

L. C. J. Did you hear him ſay ſo?

Davenport. Yes, my Lord, upon my Oath I did hear him ſay ſo, and Sir *William Waller* was with him; and then he replied and ſaid, with a Proviſo That you would give him his Gold and Silver that was taken from him, being then a Priſoner under my keeping in the Gate-houſe, and wanting his Money; if you would do that, he ſaid, he had been a Rogue before, and he could not ſay what he might do.

L. C. J. Now make it appear that this *Clay* was ſworn at the Tryal.

Davenport. My Lord, Afterwards I was Keeper to him under the other Keeper, and he had a Keeper to wait on him to *Newgate* Seſſions at the *Old Bailey*; wherefore this Gentleman that is ſtanding there, Mr. *Otes*, comes to us, ſays he, Do not you trouble your ſelf about this Priſoner; let him alone with me, I'll ſee him at home again; and then the Jeſuits there did take their Tryals; how it was I cannot tell: For we could not come into the Court. Afterwards they went to the Fountain Tavern by *Newgate* to Dinner, and Mr. *Otes* and he went to Dinner together; we were below in the Houſe waiting there till it was Night, and ſtill thinking that he ſhould come down again; but away went he home, and left us in the lurch; but indeed he did come home to the Priſon very honeſtly and civilly, becauſe he was civilly guarded.

Mr. *At. Gen.* Now, my Lord, we'll give you an account, That the next Morning after this Diſcourſe betwixt *Otes* and *Clay* at the Gate-houſe, this Witneſs told it to another that was a Priſoner there then too.

Otes. My Lord, I would ask this Man a Queſtion, whether he had the ſole Keeping of *Clay* without any other Keeper with him?

Davenport. There was no Keeper in the Houſe, but my ſelf, where he lay, which was in *Margaret's-lane*, not in the Priſon, but in the Houſe.

Otes. Pray ask this Gentleman, why he did not come in and teſtify this Diſcourſe he ſpeaks of, when *Clay* was a Witneſs?

Davenport. I was not by when he was ſworn.

Otes. Did he not know he was a Witneſs?

L. C. J. No, he ſays he did not go into the Court with you, he was not ſuffered to go in.

Davenport. My Lord, I am a poor Tradeſman, and know nothing what belongs to the Law.

Mr. *At. Gen.* Come, pray ſwear this Man, Mr. —— [*Which was done.*

Mr. *Sol. Gen.* Pray tell what *Davenport* told you, and when.

Mr. —— He came and told me the next Day in the Priſon, where I was then, what Mr. *Otes* and Sir *William Waller* had been tampering with *Clay* about, to make him ſwear for Mr. *Otes*.

L. C. J. What were the Words he told you they ſaid to him?

Mr. —— It was, That he muſt ſwear that Mr. *Otes* dined at Mr. *Howard's* Houſe ſuch a Day of the Month, and Mr. *Clay* did ſay he knew nothing of the Matter; but then Sir *William Waller* and Mr. *Otes* did reply to him again, here's your Choice; if you will not ſwear this, we will try you for a Prieſt, and hang you, and ſo *Clay* agreed; if he might have his Money reſtored that was taken from him, he had been a Rogue before, and did not know what he might do.

Otes.

Otes. Is this Evidence, my Lord?

L. C. J. Yes, doubtleſs, very good Evidence.

Otes. 'Tis only upon Hearſay that he ſpeaks.

L. C. J. But that eſtabliſhes the other Man's Teſtimony, this being told the very next Morning; for he would not conceal it, it ſeems.

Mr. *At. Gen.* Now that *Clay* was ſworn at the Tryal, you admit, Mr. *Otes.*

Otes. Yes, I do, he was ſo.

Mr. *At. Gen.* Then I think here's a plain Proof of a Subornation.

L. C. J. You muſt obſerve how they apply this Evidence: They ſay, you are an ill Man, not only as to ſwearing falſe your ſelf, but as to ſuborning others to ſwear more than they knew; and particularly as to this *Clay*, that you and Sir *William Waller* did threaten him, you would hang him up for a Prieſt, if he would not ſwear as you would have him; and by your Threatnings he was prevailed with to ſwear.

Otes. Is Mr. *Clay* in Court, my Lord?

L. C. J. Nay, I cannot tell where he is.

Mr. *At. Gen.* He was your Witneſs, Mr. *Otes*; we expected you would have brought him.

Otes. I cannot tell where to find him, my Lord, now truly.

Mr. *At. Gen.* Call Mr. *Howard.*

Cryer. Here he is, Sir, he is ſworn.

L. C. J. Mr. Attorney, You have not proved what he ſwore.

Mr. *At. Gen.* We are now about it, my Lord. Mr. *Howard*, pray were you at the Tryal of the five Jeſuits, or at *Langhorn's*, when *Clay* was ſworn as a Witneſs for Dr. *Otes?*

Mr. *Howard.* Yes, I was at *Langhorn's* Tryal, my Lord.

Mr. *At. Gen.* What was the Effect of his Teſtimony there?

Mr. *Howard.* He did ſwear, That he was with me and Mr. *Otes* at Dinner at my Houſe, in *May*, in the Year 77.

Mr. *At. Gen.* 77 did he ſay, or 78?

Mr. *Howard.* Stay, I will look upon my Notes I took at that time.

L. C. J. Ay, do ſo, to refreſh your Memory, Mr. *Howard.*

Mr. *Howard.* It was *May* 78, my Lord.

Mr. *Sol. Gen.* Pray thus, Sir, Was he then at your Houſe with *Otes?*

Mr. *Howard.* No, he was not there in *May*; Mr. *Clay* was with me and Mr *Otes* both together in *July* 78. after the 4th Day of *July.*

Mr. *At. Gen.* That is after the time he came to *London* from St. *Omers.*

L. C. J. You ſay very well; Have you any more Witneſſes?

Mr. *Sol. Gen.* My Lord, We muſt deſire that the 28th Article of Mr. *Otes's* Narrative may be read.

Cl. of Cr. Reads, *That in order to this Command on* April 24. 78. *Father* Warren, *Rector of* Leidge, *Sir* Thomas Preſton, *Baronet*, *Father* Marſh, *Rector of* Gaunt, *and Father* Williams, *Rector of* Watton, *and Maſter of the Novices*, *Sir* John Warner, *Baronet*, Richard Aſhby, *Rector of the Engliſh Seminary at St.* Omers, *being ſick of the Gout could not go. But out of the ſaid Seminary went Sir* Robert Bret, *Baronet*, *Father* Pool, Edward Nevile. *There were in all with the Deponent nine or ten, who met in* London *in Conſult with* Thomas Whitebread, *Father* Harcourt *Senior*, *and Father* Harcourt *Junior*, John Fenwick, Baſil Langworth, William Morgan, John Keimes, *Father* Lovel, *Father* Ireland, *Father* Blundel, Richard Strange, *Father* Mico, *Father* Grey, *and others to the Number of fifty Jeſuits met at the* White Horſe *Tavern in the* Strand, *where they plotted their Deſigns for the Society, and ordered Father* John Carey, *who was alſo there, to go Procurator for* Rome; *at which Conſult thus held in the Month of* May, *the Deponent was preſent to attend the Conſultors and deliver their Concerns from Company to Company; and then a little after they left the* White Horſe *Tavern, and divided themſelves into ſeveral Clubs and Companies; ſome met at Mr.* Saunders's *Houſe in* Wild-ſtreet; *others at Mr.* Fenwick's *at* Aireſes *his Houſe in* Drury-lane; *others at Mr.* Ireland's *in* Ruſſel-ſtreet *near* Covent garden, *and in other places. All which, tho' in ſeveral Companies, five or ſix in a Company, did contrive the Death of the King; and in order to which, there were Papers ſent from Company to Company, which the Deponent did carry containing their Opinions of the timing their Buſineſs, and the manner how it was to be done, and within three or four Days after the Deponent went to St.* Omers *with the Fathers that came from the other ſide of the Water.*

Mr. *At. Gen.* My Lord, We produce this to overthrow their Witneſſes, that ſpeak his being here a Week in *May.* Now Mr. *Otes* in this Narrative, ſays, that the Conſult ended the 24th of *April*, and that three or four Days after, he returned back to St. *Omers.*

L. C. J. Pray read that over again, where the Names are, for the Witneſſes for the King ſwear, That Mr. *Williams* came over from St. *Omers*, but he here ſays he did not, I think.

It was read again.

L. C. J. I thought it had been otherwiſe; 'tis darkly penn'd.

Mr. *At. Gen.* My Lord, I my ſelf heard him declare in many Tryals here, and at the *Old Bailey*, That all was finiſhed in that Day, and he went in a few Days.

Otes. Mr. Attorney, You are miſtaken: For if you pleaſe, my Lord, the Conſult was not diſſolved in ſix or eight Days, tho' they were not ſitting or acting every Day.

Mr. *At Gen.* 'Tis not a difference of ſix or eight Days that is contended for, but it is, Either Mr. *Otes* or his Witneſſes do not ſwear true. If it were as Mr. *Otes* ſays, That ſix or eight Days were allow'd after the 24th of *April*, then it muſt be the 5th or 6th of *May* that he went to St. *Omers*; and then his Witneſſes, that ſay he was here the latter end of *May*, cannot ſwear true. And our Witneſſes ſay he was all *April* and *May*, until the 23d of *June* at St. *Omers.*

Otes. My Lord, Mr. Attorney does not apprehend the Evidence aright.

L. C. J. Well, you may make your Remarks by and by, and ſet him right if you can.

Mr. *At. Gen.* We have done our Evidence, my Lord.

L. C. J. Have you any more Witneſſes, Mr. *Otes?*

Otes. No, my Lord, I have not.

L. C. J. Then you muſt conclude, and ſay what you have to ſay to the Jury.

Otes. My Lord, I have one thing more, and that is, A Copy of the Record out of the House of Lords. It is in the Journal the twenty fifth of *March*, seventy nine.

Mr. *Walker.* My Lord, I have not the Book here, it was not spoke for.

Otes. But do you know this Hand? Shewing him a Copy.

Mr. *Walker.* Yes, and I believe it is a true Copy.

L. C. J. Read it.

Cl. of Cr. Reads, *Tuesday* the 25th of *March*, 1679.

Otes. It is the last Clause in the Journal of that Day.

Cl. of Cr. Reads. *Resolved*, Nemine Contradicente, *by the Lords Spiritual and Temporal and Commons in Parliament assembled, That they do declare that they are fully satisfied by the Proofs they have heard, That there now is, and for divers Years last past hath been a Horrid and Treasonable Plot and Conspiracy contrived and carried on by those of the Popish Religion, for the Murthering of His Majesty's Sacred Person, and for subverting the Protestant Religion, and the Ancient and Established Government of this Kingdom.*

Otes. There is an Order to have that Vote printed and inserted before the Form of Prayer for the Fast. Pray, Sir, read the next Page.

Cl. of Cr. Reads. Die Lunæ 25. Oct. 1680.

Upon Report from the Lords Committees for examining Matters relating to the Discovery of the late Horrid Plot and Conspiracy, That Captain Thomas Bickley *hath lately vilified Dr.* Titus Otes *at a publick Meeting at* Chichester *to the prejudice of His Majesty's Evidence, for the further Discovery of the said Plot: It is thereupon ordered by the Lords Spiritual and Temporal in Parliament assembled, That the said* Thomas Bickley *be, and is hereby required to appear before their Lordships, in the Lord Privy-Seal's Lodgings, near the House of Peers, on* Wednesday *the third Day of* November *next, at eight of the Clock in the Forenoon. And it is further ordered that Alderman* Exon, *and Alderman* William Bury *of* Chichester *aforesaid, who were then present at the said meeting, do likewise attend their Lordships at the time aforesaid, to give Evidence of what they know concerning this Matter.*

L. C. J. What of all this? We know hereupon *Bickley* was turned out of Commission, and now *Bickley* is in again. But it seems as you had Credit with some then, so you had not with others. Well, have you now done all?

Mr. *At. Gen.* Yes, my Lord.

Mr. *Sol. Gen.* If Mr. *Otes* will Sum up his Evidence, then I will do the same for the King, when he has done.

L. C. J. Well, what say you, Mr. *Otes*?

Otes. Now, my Lord, here is an Indictment preferr'd against me for Perjury, and the Evidence they have given for the King, is this, 1. They have called Mr. *Foster*, and he tells you, that I was produced at the Sessions-house in the *Old Bailey*, where he was summoned as a Juryman, upon the Tryal of *Ireland*; and he says, That when I was produced at the Sessions in the *Old Bailey* as a Witness, and sworn (if I do remember Mr. *Foster* aright in what he says) he did hear me swear, That there was a Treasonable Consult of Jesuits upon the twenty fourth of *April* 78. at the *White-Horse* Tavern in the *Strand*; and he does further say, That I said those Jesuits afterwards came to a Resolution to kill the King; and that they separated themselves into lesser Clubs; the Resolution being drawn up by one *Mico*; and that I carried it from Chamber to Chamber to be signed, and did see it signed. My Lord, I did ask Mr. *Foster*, Whether I in my Evidence called it a Consult, or a Traiterous Consult. Now, my Lord, 'tis true, I did call it a Traiterous Consult; it is as true that I did swear there was such a Consult; and it is as true that I did swear this Consult did divide it self into lesser Companies; it is as true that I did say I did carry that Resolution about from Chamber to Chamber, and saw them sign that Resolution for murdering the King, I do not mean of this King, but of the late King. My Lord, the Evidence I think I nor no honest Man shall need to be ashamed of; I am not ashamed to own that I repeated this Evidence several times, nor that I gave that Evidence upon Oath; for it is Truth, my Lord, and nothing but Truth, and I resolve by the Grace of God to stand by it and confirm it with my Blood, if there be occasion. My Lord, to Convict me of Perjury, they have brought a parcel of St. *Omers* Witnesses, and these do swear that which they would have sworn six Years ago; but then the Court thought them not fit to be sworn, not only because the Law will not allow them, but because of their Religion, that can dispense with false Oaths, if it were for a good Cause, and that was the Remark my Lord Chief Justice *Scroggs* then made of it. I shall not insist much upon what they have sworn, for that I suppose your Lordship and the Jury do very well remember: But I have five Things to object to their Evidence; and I hope the Jury will take notice of my Objections, and make their Remarks upon them; for since you have heard the Evidence that is brought against me, it will be necessary for your Lordship to weigh the nature of these Witnesses, and the Value that the several Juries of *London* and *Middlesex* had for them. 'Tis true, there are several brought here now, that never were Witnesses before; there are indeed other Men, but of the same Religion and the same Interest, and therefore their Testimony must be of the same Value; I think your Lordship will allow me that: Therefore I begin with their Religion, and that I take notice to be a great Objection to their Evidence, as I am advis'd by those that are learn'd in the Law. And I must appeal to the Court, whether a Papist in Case of Religion may be believed and received as a good Witness?

L. C. J. We must not hear any of these idle Expressions.

Mr. *Just. Withins.* Do you think you are come here to preach, Mr. *Otes*?

L. C. J. I'll tell you, a Papist, except you'll prove any Legal Objection against him, is as good a Witness in a Court of Record as any other Person whatsoever.

Otes. But if 'tis your Lordship's, I'll tell you my Lord *Cook*'s Practice was not to admit them as good Witnesses.

L. C. J. Do not tell me of my Lord *Cook*'s Practice; the Law is otherwise; keep to the Business that you have here in hand; the Question before us, Whether you were forsworn in *Ireland*'s Tryal or not? Answer that if you can;

can; but you must not run out into Clamours and idle Extravagancies.

Otes. My Lord, I demand it as my Right to be heard what I have to except against the Witnesses.

L. C. J. I tell you, you shall be heard when you speak properly: But are you to determine what is right, or what is wrong?

Otes. I am to determine my own Right now in this Point, and I insist upon it, and demand it.

L. C. J. It may be presently you'll tell us we have no right to judge of it.

Otes. Yes, my Lord, you have; but I hope I have right to urge it.

L. C. J. Urge what you will that is to the Purpose, but then you must keep to the Matter in hand, and not make such idle Excursions as these are.

Otes. I will keep to the Matter, my Lord, if you will hear me.

L. C. J. So you shall, we'll make you keep to the Matter, or we will not hear you at all: Do not think your Impudence shall storm us out of our Senses.

Otes. My Lord, I do insist upon it, that these Mens Religion is an exception to their Testimony, and a Papist is not a good Witness in a Cause of Religion; and I desire I may have leave to argue that as a Point of Law in my own Defence.

L. C. J. No, Sir, it is no Point of Law at all.

Otes. Then I appeal to all the hearers, whether I have Justice done me.

L. C. J. What's that, why you impudent Fellow, do you know where you are? You are in a Court of Justice, and must appeal to none but the Court and the Jury.

Otes. I do appeal to the hearers.

L. C. J. Take him away there; if you will not behave your self as you ought, I can assure you, the Court will do what they ought to do, and stop your Mouth.

Otes. What you please, my Lord, I must make my own Defence as well as I can.

L. C. J. You are here in Judgment before us, and are to appeal to us; we'll suffer none of your Common-wealth Appeals to your *Mobile*; keep within the Bounds of Decency, and say what you can for your self.

Otes. My Lord, this I move to the Court as one of my Objections to this Evidence given against me, That their Religion makes them no good Witnesses; especially in this Cause.

L. C. J. I tell you that is nothing to the purpose, what their Religion is.

Mr. *Just. Holloway.* Mr. *Otes*, we come not here to dispute Points of Religion, we come to try a bare Matter of Fact, whether you are perjured, or no.

L. C. J. I tell you a Papist is a good Witness without a Legal Exception.

Mr. *Just. Withins.* Pray, Mr. *Otes*, is not a Papist as good a Witness as a Dissenter?

Otes. My Lord *Cook* would not admit a Papist to be a good Witness in any Cause.

Mr. *Just. Withins.* How, not in a Cause of *Meum* and *Tuum*?

Otes. No, my Lord, not in any Cause between Party and Party.

L. C. J. Where is that Opinion?

Otes. I'll cite you the Case, if you please, my Lord.

L. C. J. Pray let us hear it.

Otes. It is in *Bulstrode*'s Reports, the Second Part, 155. A Popish Recusant is not to be admitted a Witness between Party and Party.——

Mr. *Just. Withins.* May a Presbyterian be a good Witness, Mr. *Otes?*

Mr. *Just. Holloway.* Or would Mr. *Colledge* have been a good Witness, Mr. *Otes?*

Otes. I tell you this was my Lord *Cook*'s Practice.

L. C. J. You have our Opinion, and be satisfied with it; That Book says it was my Lord *Cook*'s Practice, and we think if that was his Practice, his Practice was against Law.

Otes. Then another thing I object to their Testimony, is their Education.

L. C. J. That's no Objection at all neither.

Otes. My Lord, they are bred up in a Seminary against Law, and for which their Friends are to be punished.

L. C. J. So is every Man living that's bred a Dissenter, bred up against Law.

Otes. My Lord, I have not offered any Dissenter as Evidence for me.

L. C. J. No, they are all no doubt of it very good People. Good-wife *Mayo*, and her Companions, excellent Protestants without all question.

Otes. My Lord, I humbly offer a Statute to your Lordship: And that is Law sure.

L. C. J. Yes, a Statute is Law. What Statute is it?

Otes. It is 27° of *Eliz. Cap.* 2. The Law says there——

L. C. J. Come we will see what the Law says. Read the Statute he speaks of.

Cl. of Cr. *It is Intituled an Act against Jesuits, Priests, and other such like disobedient Persons.*

Otes. My Lord, I desire that the Preamble of the Act may be read.

Cl. of Cr. *Whereas divers Persons called and professed Jesuits, Seminary Priests, and other Priests, which have been, and from time to time are made in the Parts beyond the Seas, by or according to the Order and Rites of the* Romish *Church, have of late come, and have been sent, and daily do come, and are sent into this Realm of* England, *and others the Queen's Majesty's Dominions*——

L. C. J. This is nothing to this Business before us at all.

Mr. *Just. Withins.* Does this Statute say they are no good Witnesses?

Otes. They own themselves to be Educated at St. *Omers*, and that is against this Law expresly.

L. C. J. What then, Do they own themselves to be in Orders, Jesuits and Priests, then you might say somewhat to them upon this Law; but do not spend our Time in such Trifles.

Otes. I do not spend your Time in Trifles, my Lord. It is my Defence.

L. C. J. Mr. *Attorney*, do you go on; for we will not sit here to spend our Time for nothing.

Otes. Pray, my Lord, let me but shew this, I only purpose one Statute more to your Lordship's Consideration.

L. C. J. You may propose to read the whole Statute-Book.

Otes.

Otes. Pray, my Lord, hear me out.

L. C. J. Speak then to the Buſineſs in hand.

Otes. It is the Statute made in the 3*d* of King *Charles* I. *Chap.* 2.

L. C. J. It is nothing to the purpoſe.

Otes. I am adviſed 'tis very material for me.

L. C. J. I tell you it is not, and we'll not let your Importunity prevail upon us to ſpend our time for nothing: There has been a great deal of Time ſpent to no purpoſe already.

Otes. Then if you will over-rule it, my Lord——

L. C. J. We do over-rule it: For it ſignifies nothing to this purpoſe.

Otes. Pray, my Lord, be pleaſed to give me leave to offer their Judgments in Caſes of Conſcience, whereby they own they have Diſpenſations to ſwear Lies for the promoting of the Cauſe.

L C. J. That is no Evidence neither.

Otes. This is very hard in ſuch a Caſe as this.

L. C. J. No, it is not hard, that what is no Evidence in Law, ſhould not be ſuffered to be given in Evidence.

Otes. It is Evidence againſt the poor Diſſenters, my Lord.

L. C. J. Indeed, Sir, it is not Evidence againſt any one body in the World; if you will take my Word for it, if you will not, I cannot tell how to help it.

Otes. Then I offer you one thing more, my Lord, and that is what was ſaid and done in the Caſe of the Earl of *Shaftsbury*, when he was charged with High Treaſon, and committed to the Tower of *London*, at ſeveral Seſſions in the *Old Bailey* and at *Hicks*'s *Hall*; they did move that they might have liberty to bring in an Indictment of Perjury againſt the Witneſſes which did accuſe him of Treaſon, but now the Court there over-rul'd thoſe Motions, and would not ſuffer my Lord of *Shaftsbury*'s Friends to bring Indictments of Perjury againſt him, becauſe they would not have the King's Evidence Indicted of Perjury, nor the Popiſh Plot called in queſtion; This is a Matter of Fact in the *Old Bailey*.

L. C. J. And this is all idle too.

Otes. Pray, my Lord, will you hear me?

L. C. J. But pray, Sir, will you hear me too? I tell you this is nothing to the purpoſe neither.

Otes. My Lord, I deſire to ſpeak but theſe few Words then, as to my own Witneſſes I have produced. And the firſt is *Cicely Mayo*; and, my Lord, though it be your Lordſhip's Pleaſure, not to have that good Opinion of her, as I think the poor Woman does deſerve, yet I hope her Evidence, will have its due Weight and Conſideration with your Lordſhip and the Jury; ſhe ſays, ſhe ſaw me in Town in the Month of *May*: Now indeed ſhe could not be poſitive, what *May* it was, but ſhe ſaid it was the *May* before the Popiſh plot broke out, that is, before the Rumour of that Plot was ſpread Abroad, and ſhe believes the Plot broke out in 78. But this ſhe ſays poſitively, ſhe ſaw me in the Month of *May* here; my Lord, ſhe comes to give this Evidence freely and voluntarily; a Man that is a Knave, is a Knave for ſomething, either out of Malice, or for Gain or Intereſt; but ſhe has no Reward given her, nor can hope for any; but in Love to Juſtice, without any By-end or particular Intereſt, ſhe came here to teſtifie the Truth, about her ſeeing me in *London*, in *May* 78. The next Witneſs is Mr. *Butler*, he was then Sir *Richard Barker*'s Coachman. He lived ſome Years with him, as his Servant; but he is now ſet up for himſelf, and he ſays, that when he was about his Maſter's Buſineſs in the Coach yard, and fitting the Coach for to fetch his Maſter home from *Putney*, I came in, and this was in the beginning of *May*, in a Diſguiſe; and he ſays, he ſaw me a ſecond time in another Diſguiſe. Then comes a third Witneſs that I called, and that is *Page*, and he came into the Hall, where the Patients uſe to wait for his Maſter, and there he met me, and ſpoke with me. Then I called *Walker*, the Miniſter, but it happens his Memory is not ſo good now, as it was heretofore; and indeed I cannot tell how to blame him; for 'tis ſo long ſince, that it is impoſſible for any body to remember the Circumſtances of Times and Places, that in ſome ſhort time after the Fact might have been remembred with far greater Eaſe. I expected Sir *Richard Barker* might have been here, being Subpœna'd to juſtifie the Evidence of theſe People; and I did expect that Mr. *Smith* would have been examined; but I perceived the Court tender of that Point, as knowing it would then eaſily have been ſeen upon which Side it was, that he was ſuborned, that is, to make ſuch a Confeſſion as Mr. *Attorney* would have hinted at.

L. C. J. Have you a mind to examine him, Mr. *Otes*; with all my Heart. If you conſent to it, he ſhall be examined.

Mr. *Juſt. Withins.* If you will, he ſhall be examined, it was for your ſake he was not.

Mr. *Juſt. Holloway.* It was to do you Right, that he was refuſed to be ſworn before.

Otes. Good Mr. Juſtice *Holloway*, are very ſharp upon me.

Mr. *Juſt. Holloway.* No, I am not ſharp upon you; I think the Court did you a great deal of Juſtice, you have no reaſon to complain.

Otes. But, my Lord, this I ſay, The Evidence upon which I am now indicted of Perjury is the ſame which was delivered ſix Years ago at the *Old Bailey*, at *Whitebread*'s Tryal firſt, and then at *Langhorn*'s Tryal, where were ſixteen Witneſſes then produced and heard againſt me: But then, my Lord, what Credit did they receive at *Whitebread* and *Langhorn*'s Tryals? Now if this Evidence that I gave was then to be believed, though oppoſed by ſo many Witneſſes, what new Objection does riſe againſt it, which was not then hinted, and received an Anſwer? For as to all the Records that are brought out of the Houſe of Lords, they have not amounted to a Charge ſufficient to diminiſh any Man's Evidence in the World; for as to the Narrative that is entered there in the Journal; I think I and any Man elſe, that were concerned as I was, may very well defend the Truth of it; and I do avow the Truth of the Popiſh Plot, and will ſtand by it as long as I have a Day to live, and I do not queſtion but the Jury, upon Conſideration of thoſe Proteſtant Witneſſes that I have here brought againſt theſe Popiſh Seminaries, will acquit me of this Perjury. I leave it to your Lordſhip and the Jury to judge, and I hope thoſe Paſſages of Heat, that have fallen from me in Court, ſhall not make me fare at all

all the worſe in your Judgment. I have called ſome Noble Lords to teſtify for me; but I find, either the diſtance of time has wrought upon their Memories, or the Difference of the Seaſon has chang'd their Opinion, ſo that now they disbelieve that which they did believe before, and perhaps for as little Reaſon as ——

L. C. J. As they believed you at firſt.

Otes. Yes truly, my Lord, for as little reaſon as they believed me at firſt; for I cannot expect that a Man, who believes without a Principal, ſhould not recant that Belief without a Reaſon.

L. C. J. What do you mean by that?

Otes. I name no body.

L. C. J. But the Nobility that are here, and that have been Witneſſes in this Cauſe, are all Perſons of that Honour, that the Court is bound in Juſtice to take notice of, and vindicate them from your ſcandalous Reflections; but only I think that a Slander from your Mouth is very little Scandal.

Otes. Nor from ſome body's elſe neither.

L. C. J. But, Sir, you muſt be taught better Manners.

Otes. I find, my Lord, I am not to be heard in this Cauſe with Patience.

L. C. J. I think you do not deſerve to be heard at all.

Otes. I cannot tell how to help it, if you will not hear me.

L. C. J. Can't you ſay what you have to ſay for your ſelf without Reflections and running out into ſuch Extravagances?

Otes. My Lord, You will ſuffer me to offer nothing that is material for my Defence.

Mr. *Juſt. Walcot.* Do you think it decent for this Court to ſuffer Perſons of Honour, that by your own Deſire were ſworn to give Teſtimony in this Cauſe, ſhould lie under the Reproach of your Tongue?

Otes. Good Mr. Juſtice *Walcot*, Was there ever any Man dealt with as I am, or had ſuch Evidence offer'd to be given againſt him? Here they offer to blacken me with the Imputation of that foul, infamous Crime of Perjury; and who are the Witneſſes to prove it, but Youths out of a Seminary? Sir *George Wakeman*, and my Lord *Caſtlemain*, known Papiſts, and perhaps Popiſh Recuſants, Convict too; as for my Lord *Caſtlemain*, the Record of his Acquittal is brought as a Charge againſt me, to prove that I was forſworn, and not believed at his Tryal; when all the World knows, it was becauſe there was but one Witneſs againſt him that he came off, and that was the Reaſon that was urged by my Lord Chief Juſtice *Scroggs* at that very time, who would not admit *Dangerfield* to be a Witneſs, and reflected not at all upon my Teſtimony, but directed the Jury, for want of another Witneſs, to acquit him: Then, my Lord, here is *Wakeman* brought and his Acquittal too; he ſwears all I ſaid againſt him was falſe; whereas, had it not been for two diſhoneſt Perſons, one I have now in my ſight, I ſhall not name any Names, we could at that time have proved five thouſand Pounds of the Money paid to him, and that he gave a Receipt for it; but, my Lord, this I am ſure of, if I had been brought in as a Witneſs in the Caſe of thoſe that ſuffered lately for the Presbyterian Fanatick Plot (as they call it) I had never been call'd in queſtion, if my Evidence had been falſe; but it is apparent the Papiſts have now a Turn to ſerve, and theſe Papiſts are brought in, the St. *Omers* Youths, to bear this Teſtimony on purpoſe to falſify my Evidence, and to bring off the Popiſh Lords that now ſtand impeach'd of High Treaſon for the Popiſh Conſpiracy; but, my Lord, I hope as the Court would never admit Indictments of Perjury againſt the Witneſſes in that Caſe of my Lord *Shaftsbury*, ſo you will not admit it here; and if my Lord Chief Juſtice *Jones* were in the Right, who did the ſame thing in his Circuit, I hope I ſhall have that Right done me here. My Lord, It is not me they indict, but the whole Proteſtant Intereſt is aim'd at in this Proſecution; and hereby they arraign the whole Proceedings of ſo many Parliaments, all the Courts of Juſtice, and the Verdicts of thoſe Juries that convicted the Traitors that were executed; for my own part, I care not what becomes of me, the Truth will one time or another appear.

L. C. J. I hope in God it will.

Otes. I do not queſtion it, my Lord.

L. C. J. And I hope we are finding it out to day.

Otes. But, my Lord, ſince I have not the liberty to argue thoſe things that were moſt material for my Defence againſt this Indictment, I appeal to the Great God of Heaven and Earth, the Judge of all; and once more in his Preſence, and before all this Auditory, I avow my Evidence of the Popiſh Plot, all and every part of it, to be nothing but true, and will expect from the Almighty God, the Vindication of my Integrity and Innocence.

Mr. *Sol. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury ——

Otes. My Lord, I have one thing to move to your Lordſhip; I deſire I may be brought up to morrow by Rule of Court to hear my Tryal that is then to be.

L. C. J. Ay, let him be brought up by Rule to his Tryal.

Otes. My Lord, I lie under very great Affliction with the Stone and the Gout, and beſides that, I have lain in Irons theſe twenty-one Weeks; I beſeech your Lordſhip, that this Cruelty may not be inflicted upon me. My Lord, I am but hitherto a Debtor to the King upon a Civil Account; and if I ſhould be convicted upon theſe Indictments, I could then be but in Execution for a Treſpaſs; and I humbly conceive and hope the Court will ſhew me that Favour as to acquaint my Keeper, that I ought not to be ſo handled.

L. C. J. Look you, for that I tell you again what I have often ſaid, I expect from the Marſhal that he keep you as he ought to keep you; I have heard that there have been abundance of Attempts made for your Eſcape, and therefore the Marſhal muſt have the greater Care of you.

Otes. Let any of thoſe Complaints be made out, my Lord, and I'll be contented to be uſed how they will.

L. C. J. I repeat it again, Let the Marſhal have a care to keep you *in ſalvâ & arctâ Cuſtodiâ*, according to Law.

Mr. *Juſt. Holloway.* If the Marſhal does otherwiſe than his Duty, inform againſt him, and take the Remedy the Law allows.

Marſhal. But the laſt Night, my Lord, Ropes were brought into his Chamber, on purpoſe to give him means to eſcape, and here are the Bundle of Ropes.

Otes. I know nothing at all of them, I aſſure you, my Lord.

L. C. J. Well, you have our Rule. Go on, Mr. Sollicitor.

Mr. *Sol. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel for the King in this Cauſe; which is upon an Indictment of Perjury againſt *Titus Otes*, the Defendant; and the Perjury charg'd upon the Defendant, is laid to be in his Oath at the Tryal of *Ireland*, at the *Old Bailey*; and it is thus, That he in his Evidence at that Tryal, did ſwear, that there was a Treaſonable Conſult of the Jeſuits, held at the *White Horſe* Tavern in the *Strand*, the 24th of *April* 78. and that he was there preſent. ——

Otes. Ay, I was there.

L. C. J. You muſt be quiet, and let the Counſel go on without Interruption.

Mr. *Sol. Gen.* And that they ſeparated themſelves into leſſer Companies and Clubs, and that the Jeſuits came to a Reſolution to murder the late King, and that he, the Defendant *Otes*, carried this Reſolution from Chamber to Chamber, and ſaw it ſigned by them; now all this is laid in his Indictment to be falſe; for that in truth, he was not preſent at any ſuch Conſult of the Jeſuits at the *White Horſe* Tavern in the *Strand* upon the 24th of *April* 78. nor did carry any ſuch Reſolution from Chamber to Chamber to be ſign'd as he had ſworn in the *Old Bailey* at that Tryal, and ſo has committed Wilful and Corrupt Perjury.

Gentlemen, The Evidence that has been given to prove, that he was not preſent at any ſuch Conſult, nor did carry any ſuch Reſolution, has been by proving where he was at that very time that he ſwears this Conſult was held, that is, that he was really at St. *Omers*, in Parts beyond the Seas, and not in *London*; and to make out this, we have produced no leſs than twenty Witneſſes, that ſwear poſitively, and give you very many Circumſtances to induce you to believe, that what they have taken upon them to remember is really and effectually true.

Firſt, You have Mr. *Hilſley*, and he ſwears that he himſelf came away from St. *Omers*, the 24th of *April*, New Stile, which is the 14th of *April*, Old Stile, which was a Sunday; that Night he came to *Calais*, the next Day he arriv'd at *Dover*, and coming up to Town towards *London*, the next Day he met with Mr. *Burnaby*, who was then going to St. *Omers*. And he further ſwears, that at that very time, when he came from St. *Omers*, he left *Otes*, the Defendant upon the Place; this I ſay was the 14th of *April*: And for a Confirmation of this to be true, he left him there at that time, I would mention what two other Witneſſes do teſtify, and therein do verify what he ſwears; for they tell you, that at this very time when he came over, or within a Day or two, but long before ſuch time as there was any occaſion to bring this to be a Queſtion, he told one of them, in a Diſcourſe that was between them, that he had left upon the Place from whence he came, which was the College at St. *Omers*, an Engliſh Miniſter, whoſe Name was *Sampſon Lucy*.——

Otes. My Lord, I beg I may have leave to withdraw, for I am very weak, and ill.

L. C. J. Then make Room for him to go away, if he will.

Mr. *Sol. Gen.* And they give you an account, that the Defendant, *Otes*, went by that Name there, and it is not denied by him that he did ſo: And this is a Circumſtance greatly verifying Mr. *Hilſley*'s Evidence. Then comes Mr. *Burnaby*, who ſwears, That he met Mr. *Hilſley* when he came from St. *Omers*, about the 16th of *April*, Old Stile, and the 21ſt of *April*, Old Stile, he came to St. *Omers*; and that when he came there he found *Otes* there upon the Place; this was the firſt of *May*, New Stile; and he gives you this Circumſtance to ſtrengthen his Teſtimony, That he very well remembers, that upon the 2d of *May*, New Stile, the Day after he came to St. *Omers*, *Otes* intruded into his Company, and got himſelf acquainted with him; he ſays further, that upon the 3d of *May*, New Stile, he particularly remembers *Otes* was in his Company there, and they went into the Garden and walk'd together; he alſo ſays, he ſaw him the 5th of *May*, New Stile, which is the 25th of *April*, Old Stile, the Day after this Day aſſign'd for the Conſult, with this Circumſtance, That he remembers to have ſeen him in the Rhetorick School, and ſo ſucceſſively afterwards he gives you a particular account down to *Midſummer*; after that *Otes* continued in the College at St. *Omers*, and then went away.

Then the next Witneſs we produce is Mr. *Pool*, and he gives you an account, That upon the 25th of *April* 1678. New Stile, which was the 15th of *April*, our Stile, he came over here, and he left behind him at St. *Omers*, the Defendant *Otes*; for he particularly remembers, that he ſaw him there when he came away; ſo *Hilſley* left him the 14th of *April*; Mr. *Pool* came away the 15th of *April*, which is our 25th, and left him at St. *Omers*, and does not remember, That he uſed to be abſent out of the College; and Mr. *Burnaby* finds him there the 21ſt of *April*; ſo that particularly at the times the other two came away, and *Burnaby* came thither, there he was, and there they ſaw him.

The next Witneſs is Mr. *Thornton*, and he gives you an account when *Otes* came thither firſt, and how long he ſtayed there; he ſays he came about *Chriſtmas* 77. and there he ſtayed till *Midſummer Eve* 78; and he tells you ſome particular Days he ſaw him on; he ſays he ſaw him there on the 1ſt of *May*, New Stile, and he ſaw him the 2d of *May*, New Stile, in Company with Mr. *Burnaby*, the next Day after his Arrival there, wondering at their ſudden Acquaintance. And he adds a particular Circumſtance, why he remembers it was the 2d of *May*; becauſe that Day the Scholars at St. *Omers* acted a Play, at which *Otes* had a Scuffle for a Seat; and he ſays he does likewiſe remember him to have been there, when Mr. *Pool* came away, which was the 25th of *April*, New Stile.

Then Mr. *Conway*, that was our next Witneſs, gives you an account likewiſe of *Otes*'s coming to St. *Omers* about *December* 77. and how long he ſtayed there, *viz.* till the latter end of *June* 78. And he does not remember, that he lay out of the

the College above one Night, and that was in *January*. And he remembers particularly, that he ſaw him with Mr. *Burnaby* ſuch a Day in *May*.

Then we brought another Witneſs, and that was Mr. *Haggerſtone*, and he tells you, he had good reaſon to remember Mr. *Otes*, for he was in the ſame *Claſſis* with him; and this Gentleman gives an account particularly, that he remembers him to be there the next Day after Mr. *Burnaby* came, and agrees in Teſtimony with all the reſt, that from *Chriſtmas* till *Midſummer*, he was not abſent out of the College, but one Night.

We have another Witneſs, Mr. *Beeſton*, and he remembers, that *Otes* was playing at Nine-pins the 1ſt of *May*; he remembers the 2d of *May* to have ſeen him with Mr. *Burnaby* after the Play was over; and that agrees with the other Witneſſes about his being in *Burnaby*'s Company the 2d of *May*; and he remembers likewiſe, that he himſelf was choſen Reader to the Sodality; but upon Mr. *Otes*'s Importunity, he ſupplied the Place in Mr. *Beeſton*'s Room, only with this Reſerve and Condition, That Mr. *Beeſton* was to be Reader at any time, if *Otes* failed; and he gives you this particular account, that *Otes* did read, as he believes, every Sunday and Holiday, from the latter end of *March* when he was choſen Reader, to within a Week of his going away; for that he did never read himſelf, as he ſhould have done if *Otes* had been abſent or failed to read.

We have another Witneſs, and that is Mr. *Smith*, and he ſwears his being there from *Chriſtmas* 77. to *Midſummer* 78. and he remembers particularly as to *April* and *May*, becauſe the 21ſt of *April*, he himſelf fell ſick in the College, and went into the Infirmary, and remained there till the 7th of *May*; and he does remember that *Otes* viſited him very oft in that time in the Infirmary, and told him Mr. *Hilſley* was gone away, and Mr. *Pool* was gone away, and two or three other Particulars, which happened in the College at that time; ſo that there is another Evidence, that is very ſtrong with Circumſtances to confirm the Teſtimony of the reſt; and he gives you a very ſatisfactory account of it, by ſhewing the Reaſons how he comes to remember theſe things.

Mr. *Price*, who was our next Witneſs, has given you a Relation all to the ſame purpoſe of *Otes*'s coming there at *Chriſtmas*, and of his going away at *Midſummer*. And he remembers particularly, that *Otes* was at St. *Omers*, when the Jeſuits went to the Conſult at *London*; for that there was a Conſult, and at that time, is acknowledged to be true; but not ſuch as he ſays, nor was he there; but he ſays ſome of the Fathers did call there in the way to *England*. And at that very time, and after, he ſaw him there. And Mr. *Doddington* gives you the ſame account.

Then comes Mr. *Gerrard*, and he tells you a Story to the ſame purpoſe; how long *Otes* was there, and when he came. And that the 2d of *May* he remembers *Otes* was at the Play; and he remembers the 26th of *May Otes* was there, which was the 16th of *May*, Old Stile. And he is ſure *Otes* was there at that time, for this reaſon, that being the Day whereon he himſelf was confirmed, St. *Auguſtine*'s Day; and *Otes* was confirm'd with him; and therefore he has reaſon to remember *Otes* was at St. *Omers*.

My Lord *Gerrard* of *Bromeley* was our next Witneſs, and he gives you an account to the ſame purpoſe; and to the General Evidence, in which he confirms the others, he adds this particular, That *Otes* uſed to read with a ſingular canting Tone; ſo that he muſt needs remember him, and was ſo remarkable for other things that he could not be abſent without being miſs'd, which he never was.

Then comes Mr. *Morgan*, who was there at that time, a Scholar; but he's now a Miniſter of the Church of *England*; and therefore not liable to Mr. *Otes*'s great Exception of Religion; he confirms what all the Witneſſes ſaid of the time of *Otes*'s coming, and of the time of his going away: And particularly he ſwears, That when Mr. *Hilſley* went away, he was there; when Mr. *Pool* went away, he was there; and when Mr. *Burnaby* came thither, he was there. And this is not all; for there is ſomewhat more remarkable in his Teſtimony; for he tells you particularly he does remember, That upon the 24th of *April*, Old Stile, the Day, Gentlemen, when *Otes* ſays he was at the Conſult in *London*, *Otes* was then at St. *Omers*. And the occaſion of his remembering this he gives you an account of; for, he tells you, upon reading the Tryal of *Ireland*, where *Otes* ſwears, That he was here at the Conſult the 24th of *April*, 1678. Old Stile, all the College reflected upon it, and wondered at the Impudence of the Man, that he ſhould dare to ſwear ſuch a thing, when all the College remember'd him to be there all the while: And upon Recollection of Circumſtances, he himſelf did particularly recollect his own playing at Ball that very Day, and having toſs'd his Ball over the Wall, he borrowed *Otes*'s Key to go into the Garden to fetch it: And this was thought of whilſt things were freſh, and every Man remembered this, or that, or the other thing to be done at ſuch a particular time.

Mr. *Arundel*, who was another Witneſs, proves the general Teſtimony of the reſt, and agrees in ſome particular things; and all he ſays, is to the ſame purpoſe.

Mr. *Chriſtopher Turbervile*, he comes and ſwears *Otes*'s being at St. *Omers* the 4th or 5th of *May*, which is the 24th and 25th of *April*, Old Stile. For that upon Mr. *Pool*'s going away, he changed his Chamber in the College, and ſaw *Otes* divers Days afterwards in his Chamber, and at the Door; and he knew that he conſtantly read in the Sodality, and that he left particularly the *Sunday* before he went away, which was about *Midſummer* 1678.

There was another Gentleman, and that was Mr. *Anthony Turbervile*, who gives Evidence all to the ſame purpoſe; and this Circumſtance goes thorough all the Teſtimony of theſe Perſons, that there's ſcarce any body can come to, or go out of the College, but it is known to all that are there, every Man takes notice of it, 'tis the Common Diſcourſe amongſt them; and therefore they give this as the Reaſon of their Belief, That he was there all this while, becauſe they did not remember any thing that ſhould give them occaſion to believe Mr. *Otes* was away from the College from *Chriſtmas* till *Midſummer*, but only one time; and the remembrance of

that

that does ſhew, That they do really obſerve theſe things; for they could all tell that in *January* he went to *Watton*, and ſtayed out one Night.

There is one Witneſs more that is poſitive and particular, and that is Mr. *Clavering*, and he remembers *Otes*, by a very remarkable Circumſtance, was at St. *Omers* at the very time the Congregation is ſaid to be held in *London*; for he tells you there came a Perſon to beg Money of him, and there was a Collection made in the Houſe; and this Perſon did deſire to ſpeak with *Otes*, who was then in the College; and whom it ſeems this Perſon had known in *Spain*; but *Otes* did refuſe to ſpeak with him, and did not come down to him. Thus he remembers ſuch an one came there, and when he was there, he was ſent to *Otes* to deſire him to come down to this Man, and he would not. Ay, but now how is this remember'd to be at the time when the Congregation was held here in *England*? As to that, he gives this plain and full account, That it muſt be at that very time; for the Scholars did diſcourſe among themſelves, and were reckoning up what he had gotten among them, and what he had gotten at *Watton*; and finding that it was very inconſiderable that he had gotten at *Watton*, they talk'd among themſelves what ſhould be the Reaſon, and concluded it was, Becauſe the Fathers were gone over to *England* to the Congregation.

Theſe particular Circumſtances our Witneſſes give you as the Reaſons of their particular Remembrances of the particular times: But, Gentlemen, you muſt take along with you thoſe General Conſiderations too that are offered, which do affect the whole time, from *Chriſtmas* till *Midſummer*. Firſt, That none can come or go, without being diſcourſed of in the College: Next, That much more Mr. *Otes* muſt needs be miſſed, than any other, being ſo remarkable a Perſon, as they tell you, that ſcarce any Week paſs'd without his making it remarkable by ſome ridiculous Action or another. They ſay he ſat ſingly by himſelf, at a particular Table, that no Man could come into the Hall, but they muſt ſee him; and therefore, if abſent, muſt needs miſs him. And yet they ſwear they do not ever remember him abſent, but that one Night; and if he had been abſent, they muſt needs have obſerved it, becauſe of all thoſe Circumſtances that have been reckoned up.

Theſe are the Witneſſes, Gentlemen, that we have produced to prove this Charge upon the Defendant, two of whom are brought only to verify Mr. *Hilſley*'s Teſtimony; having heard it from him at that time that he had left *Otes* at St. *Omers*; when there was no Thoughts of this Queſtion.

Now among theſe twenty Witneſſes, there are not above two or three at moſt that were at either of the Tryals before. They were never produced as Evidence, tho' indeed they proved the ſame thing that was teſtified by others then, but with many other Circumſtances and Particularities that were not before ſpoken of; ſome are now produced that were produced before, and the Reaſon is, becauſe they are themſelves concerned in thoſe Particularities which gave occaſion to the others to remember them.

Gentlemen, after the producing of ſo many Witneſſes, and ſo ſtrong a Proof; What is it that Mr. *Otes* has produced againſt it? His main Objection to their Teſtimony, is, There were ſeveral that came from St. *Omers* to teſtify at thoſe former Tryals what theſe now ſwear, who were not believed, but I was believed, and the Men were Convicted, Condemned, and Executed upon my Teſtimony: But is that all he has to ſay? No, ſays he, I have likewiſe Witneſſes to offer as a Counter-proof to them, a poſitive Proof that I was here in *England*, at the time they ſwear me to be at St. *Omers*; and he ſays well; if that be proved, there is an end of the Caſe. Well, what is the Proof? The Witneſſes that he has, have been theſe four, *Cicely Mayo*, Servant to Sir *Richard Barker*, *Butler* his Coachman, *Page* another of Sir *Richard*'s Servants, and the Parſon *Walker*.

The Evidence of *Page* and *Walker*, tho' produced laſt by Mr. *Otes*, yet I crave leave to mention firſt, and ſet them out of the way. *Page*, he remembers to have ſeen Mr. *Otes* in a Diſguiſe at Sir *Richard Barker*'s; that is, in grey Cloaths; but he is not certain as to the time, and he cannot take upon him to ſay what time of the Year, or what Year it was, only he believes it was in *May*; and therefore that can be no ſufficient Evidence to contradict Witneſſes, that with great Particularity ſpeak to certain times. As for *Walker*, the Parſon, he ſaid he ſaw him between St. *Martin's lane* and *Leiceſter-fields*; but he cannot remember the time when neither; nay, the Remembrance he has of it goes rather to another time, than the time in queſtion; for being asked what Circumſtance he knew the time by, he ſaid, it was about a Year and a quarter before the Plot was diſcovered, which muſt be in *April* or *May* 1677. and that will do the Doctor no Service at all upon this Queſtion.

Now let us conſider Mrs. *Mayo*'s Teſtimony; and the Oath that ſhe made was this, That when *Otes* came over into *England*, ſhe ſaw him at Sir *Richard Barker*'s Houſe the latter end of *April*, or the beginning of *May*, and the Week before *Whitſuntide*; the latter end of *April*, or the beginning of *May*, was the firſt time that he came, that ſhe ſaw him; but that he came before, as ſhe heard, but the Coachman only ſaw him, and told her that *Otes* had been there; but the ſecond time ſhe did ſee him, and he went in and dined there in the Houſe: Sir *Richard Barker* was not there, but my Lady's Siſter, her Sons and Daughters were there; ſhe ſays, that ſhe ſaw him again a Week before *Whitſuntide*; that when he came the firſt time he was in grey Cloaths, a white Hat, and a ſhort Perriwig: Afterwards he was in black Cloaths, a pretty long Perriwig, not very long, but the Perriwig was brown; and theſe are the Circumſtances ſhe remembers to have ſeen him by.

Now let us ſee what *Butler*, the Coachman, ſays, he remembers about the beginning of *May* he ſaw *Otes* at his Maſter's Houſe in a Diſguiſe; the other ſaid it was the latter end of *April*, or the beginning of *May*; but I ſtand not upon that; but this he does ſwear, That the firſt time he ſaw him, *Cicely Mayo* ſaw him too, that he was then in grey Cloaths, a white Hat, but his Hair was cut ſhort, and he had no Perriwig on; afterwards he came in a Cinnamon-colour'd Coat, and green Ribbons, and a long black Perriwig: This is *Butler*'s Evidence.

Now

Now these two People's Evidence are utterly impossible to be reconciled, they contradict one another so much: First, they contradict one another in this; she says, The first time he came, she did not see him, but the Coachman told her, he had been there; but he swears, That she did at that time look out of the Window into the Yard, and did see him as well as he: Another Contradiction is this, She remembers the first time he came in grey Cloths, a white Hat, and a short Perriwig; the Coachman he swears he had no Perriwig on, but his Hair was cut short to his Ears: Then again she swears the second time, he was in black Cloths, and an indifferent long Perriwig, and the Perriwig was brown; and the other swears he was in cinnamon colour Cloths, and a long Perriwig, and it was a black one. Now thus you see the Witnesses contradict themselves, and cannot be reconciled to one another.

But take one thing more, which is very considerable, wherein she contradicts Mr. *Gerrard*; for she swears he was here a Week before *Whitsontide*, that she is sure of: Now that falls upon the nineteenth Day of *May*; then upon the sixteenth Day of *May*, was the Week before *Whitsontide*; now, that is a most Eminent Day, by the Testimony of Mr. *Gerrard*; for that happens to be the twenty sixth of *May*, New Stile, and that was the Day he was confirmed with Mr. *Gerrard* at St. *Omers*: And no Man sure can doubt, which of the two Witnesses is to believed; and it cannot but be true, that he was there at that time; because so remarkable a Circumstance cannot be forgotten; and yet this Woman swears that he was here a Week before *Whitsontide*, and that by Computation must be the time of his Confirmation: But, Gentlemen, another thing that I offer upon the Testimony of these Witnesses, is this; If you will believe it, he himself contradicts his own Witnesses, or they him, and one of them is forsworn: For he has sworn the Consult was the twenty fourth of *April*, and that three or four Days after that was over, he went back with the Fathers to St. *Omers*: Now, this contradicts all that his Witnesses have said: But he has given himself, as he thought, some little Latitude; says he, the Consult began the twenty fourth, but it held six or seven Days longer. We will for this time admit it to be so, and give him the six Days he requires; and yet after all, it will not come up to the time that his Witnesses speak to; for to the twenty fourth of *April*, add six Days, and that brings us just to the last Day of *April*; and then take four Days in *May*, to make up the three or four Days after the Consult was over, and we are yet at a great distance from the *Whitson* Week; for that was the nineteenth of *May*, and the Week before must be the twelfth or thirteenth, and so it is impossible to be reconciled to Truth what he and his Witnesses swear; either the Evidence that the Doctor now brings, must be a Contradiction to his own former Oath, or his Oath proves they are mistaken; besides the Contradiction that is between the Witnesses themselves; for they vary in a great many material Circumstances, which I have before reckoned up to you.

But, Gentlemen, false Witnesses are very often detected by little Circumstances, though I must needs say these are not small ones; for these are very remarkable things in themselves, and great Contradictions to one another, and therefore 'tis impossible they both can swear true.

There were some other Witnesses that were produced by Mr. *Otes* formerly upon this Point; one of which was *Clay*, the Priest, and he you hear is contradicted by Mr. *Howard*'s Testimony, who not only tells you he was not at his House, when he says he was; but shews that *Clay* was mistaken in Point of Time: It was not in *May*, but in *July*: But that's not all, we have another Evidence, Gentlemen, to show how this Mistake comes to pass, and which will give a great light into this sort of Practice that has been used in this Matter; for we have two Witnesses that give you an Account how *Otes* and Sir *William Waller* were at the *Gate-House* with *Clay*, and there did threaten him, That unless he swore he dined with *Otes* at Mr. *Howard*'s in *May*, they knew he was a Priest, and he should be hanged: The Man was somewhat cautious at first, for truly he knew nothing of the Matter, but at last, upon Condition he might have his Money again that was taken from him; he had been a Rogue formerly, and he did not know what he might do: Now, we find presently after, that he was in Fact brought as a Witness; what he swore, Mr. *Howard* tells you, and you have heard him contradicted in that point of Time. For Mr. *Howard* says, it was in *July*; and then it was agreed, that *Otes* was in *England*; for our Witnesses tell you, that at *Midsummer* he came away from St. *Omers*.

So that, Gentlemen, the Evidence that was formerly produced for him, is not only taken away by positive Counter-proof, but there is fixed upon him, with great Infamy, the additional Crime of Subornation, by forcing People to swear for him under the Threats of being hanged; and we all know how such People lay under great Fears and Terrors at that Time.

There was another Witness that was produced formerly for him; but I shall not take upon me to repeat all the particular Evidence that has been now given about that Matter: In short, our Objection to that Testimony lies thus; That *Otes* did swear in his Narrative, that *Smith* was a dangerous Man, and imployed by the Jesuits to stir up the People against the Government; that appears by *Otes*'s own Oath. But it likewise appears, that afterwards they were reconciled, and that he gave *Smith* a Certificate under his Hand, that he was a good Protestant, and a good Subject, and about Eminent Service for the King: Now, we see no reason hitherto, why Mr. *Otes* should change his Mind, after having sworn him such an ill Man, all of a suddain to be so kind to give him his Protection, and so advantageous a Character, as that was in that Season. But, Gentlemen, the Mystery is easily unfolded, if we go three or four Days further in time, which brings us to the Tryals of *Whitebread* and *Langhorn*; it seems Mr. *Otes* was then aware of that, which is now an Objection to his Testimony; for it was made an Objection at the first Tryal of *Ireland*, That he was not at this Consult, for he was then actually at St. *Omers*; but no Witnesses were there to prove it; but now he was aware that some were a coming over, and it concerned

him to make ſome good Proof if he could, that really and in Truth he was here in *London* at that Time.

And I cannot omit to take notice of what my *Lord Chief Juſtice* was pleaſed to obſerve and object to him now; It is a wonder a Man ſhould be here in Town ſo long; a Man that had much Acquaintance, as it ſeems he had, a Man that went about freely and publickly, as his own Witneſſes ſay he did, ſhould be ſeen by no body, but theſe few, ſhould not be able to give an Account, by any body, where he lodged, at any one Time in this Interval. Nay, by no Circumſtances that muſt occur to his own Knowledge, to be able to ſhew where he lodged, is very ſtrange; though it ſhould be that he did lodge in the Houſes of thoſe that would not come to give Evidence, as he alledges, yet it is almoſt impoſſible, but there muſt be ſome other Circumſtances to prove his being here, beſides the Evidence of the Landlord of the Houſe where he lodged; but he gives no Account where he was lodged, and whom he converſed withal, but theſe People only; and that they ſhould ſee him, who were not his Intimates, and none elſe in the World, is to me one of the moſt ſtrange Things that can be conceived.

Now, Gentlemen, when he has given no manner of Satisfaction, that he was here, and is by twenty Witneſſes ſworn not to be here; what is it that he ſays to all this? Why, he doth inſiſt upon it, that his Credit muſt not be now Impeached, becauſe that once he had the fortune to be believed, and ſome Men have died and ſuffered for it; as if no Perjury were to be puniſhed, but that which is unſucceſsful; whereas the reaſon why Perjury is taken notice of in the Temporal Courts, is only becauſe of the Miſchief that it may do: Shall it then be no Crime when a Man has done the Miſchief, when the fear of that Miſchief was the ground of making it a Crime? That is a moſt monſtrous way of arguing. And yet this would Mr. *Otes* have look like an Argument, that becauſe he has been believed in his falſe Oaths, and Men have ſuffered by his Perjury, and he has been ſucceſsful in his Crime, that Succeſs has protected his Wickedneſs from Puniſhment. This I confeſs is a new way of arguing; and ſuch as none but Mr. *Otes* could certainly have invented.

But, Gentlemen, to contradict this, we have ſhown you, that as he has had the fortune to be believed; ſo he has likewiſe had the fortune to be disbelieved. For there have been produced as many Records of Acquittals, where he was an Evidence, as there have been produced Convictions upon his Teſtimony; ſo that he has been as often disbelieved as believed.

Whither then does he betake himſelf next? He has called a great many Witneſſes to give you, as Evidence for him, an Account what Opinions at that time the Houſes of Parliament, the Courts of Juſtice, and the Juries had of his Evidence; and then inſiſts upon it, that now to call his Credit in queſtion, is to arraign the Juſtice of the Nation, the Wiſdom of both Houſes of Parliament that believed him, the Honeſty of the Juries that convicted thoſe whom he accuſed, and the Integrity and Underſtanding of the Judges who were learned, wiſe and juſt Men; and with great Earneſtneſs he asks the Queſtion, Why now at this time of Day ſhould this be called in queſtion, which received ſo much Credit and Approbation ſo long ago, by the good Opinion that all ſorts of Men had of it at that Time? And, now to queſtion this, he would have thought to be a caſting a Blot upon the Wiſdom of the Nation, and an arraigning the Juſtice of it; when, if the Thing be duly conſidered, the not puniſhing this hainous Offence with the utmoſt Severity that the Law will allow of, now, that theſe Circumſtances appear to make it plain and evident, would be a greater piece of Injuſtice and Reproach, rather to our Nation, than any ways a Reflection on the Juſtice of it.

Gentlemen, when we conſider the Circumſtances of this Caſe now, I do verily think it will appear to be a very ſtrange and wonderful Thing to us, that ever any Man ſhould have believed him. And it is a ſtrange Conſideration to reflect upon, to think what Credit he had at that time. But withal conſider, Gentlemen, could any one imagine, that it were poſſible for any Man on Earth to become ſo impudent, as to dare to expoſe himſelf before the High Court of Parliament, the great Courts of Juſtice, and there tell a moſt Infamous Lye for the taking away the Lives of Men? The greatneſs of the Attempt, was a great inducement to the belief of it, becauſe no Man could be preſumed to dare the doing of ſuch a Thing, if he had not a Foundation of Truth to build upon. And when he had thus made his Diſcovery, and that of ſuch a nature too, a moſt horrid, bloody and traiterous Conſpiracy to murder the King, to overturn the Government, to maſſacre all the Proteſtants in the Kingdom, and to deface the very Name of the Proteſtant Religion. What was more natural than that the Parliament ſhould take all imaginable care to prevent the accompliſhment of ſo great a Miſchief? And conſider too how much eaſier it was for him to relate his Evidence in a continued Story, than afterwards it was to maintain it, when it came to be examined and oppoſed by them that were accuſed, who beſt knew wherein, and by what means to prove him falſe.

Gentlemen, the Care the Parliament took to diſappoint any Deſigns of this nature, and the means they uſed for the Security of the King and Kingdom, and the Preſervation of our Religion and Lives (which I cannot but obſerve was previous to the Tryal of any one Offender, that was tried and convicted upon this Evidence) muſt needs put the whole Nation under great apprehenſions of Danger, and make the way much eaſier for him to be believed, as by ſad Experience we found it did. Under theſe Circumſtances came thoſe Men to be tried, with this further (as we cannot now but think) that there were ill Men at work, that laboured to improve thoſe Fears and Jealouſies, that had already poſſeſt Men's Minds; the Wonder then will be the leſs, if Men under ſuch Diſadvantages, tried by Men under thoſe fears and apprehenſions, had the ill Fortune to be convicted. But when Men had a little overcome their Fears, and began to conſider his Evidence more calmly, the Scene was changed, *Otes* loſt his Credit, and the Men were all acquitted. Nor is this Proſecution any reflection on the Proteſtant Religion, whoſe cauſe he falſly aſ-

ſume,

ſumes to himſelf. No, Gentlemen, the Proteſtant Religion had no ſhare in that Invention. It needs not the ſupport of a Lye, no not the moſt plauſible Lye, much leſs of one ſo Infamous as this does now appear to be. It is rather a Vindication of our Religion, to puniſh ſuch Offenders as they deſerve, and the proper way to maintain the Juſtice of the Nation, and wipe off that Reproach this Man's Perjury has brought upon it.

L. C. J. Then, Gentlemen of the Jury, the Evidence has been very long, and it cannot be expected after ſo much Time has been ſpent in this Cauſe, and ſuch a difference of Teſtimony, and eſpecially conſidering that the Teſtimony has met with frequent interruptions, and, I may ſay, ſome Part of it delivered in great Confuſion, it cannot be thought or imagined, I ſay, that I ſhould be able to remind you of the ſeveral Particulars that concern this Caſe, and may be neceſſary to be obſerved about it. But, Gentlemen, I am ſure, by the Knowledge I have of the moſt of you, you are Perſons of great Underſtanding; ſo that what may be omitted by me, I queſtion not, but your own Abilities will ſupply; I confeſs I am much ſhortned in my Labour, by the Pains that Mr. *Sollicitor* has taken to ſum up the Evidence to you, and without all doubt, has done it with all Faithfulneſs to his Maſter, and with great Right to himſelf. I could not hear much of what he did ſay; but you, who were nearer and did hear all, which I could not do, your Judgments will direct you to lay that Weight upon it, which it deſerves, and which the Law will allow; for, Gentlemen, I am bound to tell you, that you are to lay no weight upon any Allegations on the one Side or on the other, or what is obſerved to you by the Court, further than is ſupported by the Teſtimony that has been offered.

Now, Gentlemen, I think it not amiſs for me (before ſuch time as I enter upon the Conſideration of the Particulars, and reminding you what I take to be Evidence in this Caſe, and what not) to clear one Point, that this Perſon *Otes*, the Defendant, againſt whom this Indictment of Perjury is brought, has endeavoured to inſinuate, on purpoſe to gain himſelf a Reputation, which if he could acquire this way, would add a greater Reproach to the Juſtice of the Nation, than it has contracted already, by giving too much Credit to ſuch profligate Wretches, as have too lately appeared among us. The Objection he makes and inſiſts ſo much upon; ſays he, I was believed very much before, I can produce you the Opinions of the Judges, that declared themſelves very well ſatisfied with my Evidence, and the Verdicts of Juries, two or three, that convicted Men upon my Teſtimony; and not only that, but here were likewiſe three or four Parliaments that did not only believe that Teſtimony (or rather Narrative; for I cannot call that Teſtimony which was given before the Houſe of Commons) that I gave, but did declare their Satisfaction of the Truth of what I ſaid, which Satisfaction and Belief of theirs did produce Thanks from both Houſes to me for giving this Teſtimony.

But all this while, what Mr. *Sollicitor* ſaid upon this Point, is a plain and a full Anſwer to it: If in caſe upon a ſudden Information, the King, the Parliament, the Courts of Law, and Juries, were ſurprized into this Belief, as not imagining there could be a pack of ſuch Villains, that could be wound up to that height, as theſe Fellows have been; that there could be ſuch an horrid Impoſtor, as this Fellow, that ſhould make ſuch Attempts, unleſs there had been ſome Truth in it.

Therefore the ſurprize of the Thing, at that Time might obtain a Belief; but, God forbid, that that Belief which was ſo obtained, ſhould protect the Party believed from being called in queſtion for the falſhood of that Teſtimony, which was the ground of that Belief. It was hardly credible that any Perſon could be ſo wicked as to declare ſuch impudent falſities as theſe; but, God forbid, that we ſhould continue longer under the ſame blindneſs and deluſion, the whole Matter is now laid open and detected. Therefore, Gentlemen, if you are ſatisfied in your Conſciences, and do believe upon the Teſtimony and Evidence that has been given here this Day, that thoſe very Things that were ſo much believed before, were credited upon the Surprize of a ſudden Diſcovery, or the boldneſs of the Undertaking, yet now do plainly appear to be falſe; then be it, I ſay, upon your Conſciences, if you let this falſhood go unpuniſhed: It is a Charge upon us who are upon our Oaths as Judges, and who muſt anſwer to the great Judge of all the World for our Judgments; and 'tis likewiſe a Charge upon you that are ſworn to try this Cauſe, and muſt anſwer, as well as we, for what you do in it, not to have regard to any thing that was done before upon that hurry and ſurprize, but ſeriouſly to weigh and conſider what is ſworn now, and from thence make a Concluſion, whether you are not ſatisfied that innocent Blood has been ſpilt by the means of this Fellow: Nay, in this Caſe, 'tis a contracting of much more Guilt than ordinary, as it is Murder done under the Forms of Law, and common Methods of Juſtice; That Men ſhould take away the Lives of their Fellow Creatures, by Perjury and Falſe Accuſations, is of ſuch dreadful Conſequence, that if the Juſtice of the Nation ſhall be afraid to have ſuch Matters detected, there would be an end of all the Security we have of our Lives, Liberties, and whatſoever is dear to us.

Gentlemen, the Juſtice of the Nation lies under a very great Reproach Abroad, for this particular Thing; and we muſt be, all of us, that have any Concern for the Honour and Good of our Country, uneaſie, till this Matter be throughly ſearched into, and impartially determined; and I take it to be a Caſe of the greateſt Importance to the Settlement of the Kingdom, for the Credit of our Laws, for the Honour and Juſtice of our Kingdom, that ever came in Judgment in any of our Courts of Juſtice. And therefore as you reſpect your own Conſciences, and the Obligation of that Oath you are now under, and as you would be thought to bear any regard to the Peace, Honour and Good of your Country, take care to examine ſtrictly and impartially into the Merits of this Cauſe, and weigh the Evidence which has been given on all Sides: Be not at all diſmayed with the Apprehenſion of Clamour

mour or Calumny, from any ſort of People whatſoever, for doing your Duty; neither be led away by the Inſinuations of what was believed formerly; for you hear the Reaſon which might make *Otes* be believed then; but it is incumbent upon you to enquire, whether you have not ſufficient reaſon to be ſatisfied what the Truth now is.

And, Gentlemen, I take my ſelf to be the more obliged to take ſome pains in the preſſing a ſerious and impartial Conſideration of theſe things upon you, becauſe I cannot but ſay, my Blood does curdle, and my Spirits are raiſed, that after the Diſcoveries made, I think, to the ſatisfaction of all that has attended this Day, to ſee a Fellow continue ſo impudent as to brazen it out, as he has done this Day; and that there ſhould appear no more Shame and Confuſion than what was ſeen in the Face of that monſtrous Villain that ſtood but now at the Bar; the pretended Infirmity of his Body made him remove out of Court, but the Infirmity of his depraved Mind, the Blackneſs of his Soul, the Baſeneſs of his Actions ought to be looked upon with ſuch Horror and Deteſtation, as to think him unworthy any longer to tread upon the Face of God's Earth: You'll pardon my Warmth, I hope; for it is impoſſible that ſuch things ſhould come before any honeſt Man, and not have ſome extraordinary Influence upon him.

Gentlemen, As to the Merits of the Cauſe, you have the poſitive Proof of many Witneſſes, whoſe Teſtimony I ſhall by and by, as well as I can, repeat to you; but, pray you, firſt give me leave to obſerve ſomewhat, as to ſome Points that have been ſtarted at the Bar, as, Whether a Papiſt can be a Witneſs? Now, ſuppoſe all theſe Perſons that come here to teſtify this Matter againſt the Defendant, were Papiſts, as they are not, except you can take it upon your Oaths and Conſciences, that all theſe Men are guilty of voluntary and wilful Perjury, you muſt find the Defendant guilty.

As to their Difference in Religion, which *Otes* ſo much hung upon, I muſt tell you, every Papiſt or Roman Catholick, call them how you will, except the contrary be made appear by a Legal Exception; I mean ſuch as would take off the Teſtimony of one that were not a Papiſt, is as good a Witneſs in a Court of Juſtice, as any Proteſtant whatſoever; we are not come here to controvert Points of Religion, but to try a bare Matter of Fact; ſo that all that ſtuff that you have heard here this Day from the Defendant, and thoſe Inſinuations that he made about their Religion, on purpoſe to caſt Dirt and Filth upon all the Teſtimony that they have brought againſt him, muſt ſignify nothing with you at all. If in caſe ſuch Doctrine happen to prevail as he has this Day preached, then it is in the Power of any Villain, to ſwear any Miſchief whatſoever againſt a Roman Catholick, and that Roman Catholick has no way to vindicate himſelf, nor to make the Truth appear. We have no ſuch Exceptions to Witneſſes in our Law; every Man, till it is made to appear, that his Credit is forfeited, may and ought to be received as a Witneſs to give Teſtimony in any Cauſe; ſo that all that Matter is of no Import at all.

And, Gentlemen, I am the rather minded to hint this unto you, becauſe he has inſinuated ſomething out of the Tryals of *Grove* and *Pickering*, and *Ireland*, which was in *December*, in the Year 1677. at which Tryal *Whitebread* and *Fenwick*, who had pleaded to the ſame Indictment, were brought on to Tryal; but becauſe there was but one Witneſs againſt them, the Court diſcharged them for that time, and they came not again to Tryal till the Month of *June* or *July* hereafter, when they were convicted and executed; now between that time of *Ireland*'s Tryal, and the time when *Whitebread* and the reſt came on to Tryal again, ſays *Otes*, they had ſufficient time to have brought all their Witneſſes from St. *Omers*, to teſtify this Buſineſs of my being there, having notice by the former Tryal, what Evidence was againſt them; but all the Witneſſes they did bring, which were about fifteen or ſixteen, were not ſufficient to countervail the Teſtimony that *Otes* gave of his being here in Town, and thereupon they were convicted, condemned, and afterwards (I am ſorry to ſay it) executed.

This is the Objection he makes, but at the ſame time I muſt repeat what I ſaid before, when ſuch a diſmal Story as this was told, when he had the Confidence to relate it before, in the Houſes of Parliament, and there obtained Credit; no wonder if, in that hurry, all of that Perſwaſion were look'd upon with an evil Eye; and the Conviction of thoſe that were at that time accuſed were too eaſy.

We muſt remember the Apprehenſions ſome were under of our Religion being to be ſubverted, our Government to be deſtroyed, our King to be murdered, our Throats to be cut by the Papiſts, to that height, that this very Fellow, *Otes*, was ſo much credited, that all other People almoſt were below him, and greater Reſpect ſhewn to him, than to the Branches of the Royal Family. Nay, it was come to that degree of Folly, to give it no worſe Name, that in publick Societies, to the Reproach and Infamy of them be it ſpoken, this profligate Villain was careſſed, was drunk to, and ſaluted, by the Name of the *Saviour of the Nation*. O prodigious Madneſs! that ſuch a Title, as that was, ſhould ever be given to ſuch a Proſtitute Monſter of Impiety, as this is.

Good God, whither were we running, when many eaſy People were ſo ſtrangely wrought upon by this Impoſtor, and when the villainous and black Deſigns of ſome evil Inſtruments amongſt us, could prevail ſo far, as to deceive almoſt a whole Nation into the Belief of ſo horrid a Falſhood; even at the ſame time that a hidden Treaſon too deeply contriv'd was carried on amongſt us? But, God be thanked, was not too lately diſcovered. The Conſpirators had a fair Game of it, whilſt this Fellow was believed, and they needed no other means to accompliſh their Deſign: But when he was found falſe, and the pretended Plot had loſt its Credit in the World, what is their next Step? Why, then they enter into that black and bloody Conſpiracy, from which it hath pleaſed God lately to deliver us.

I ſpeak this the rather, becauſe I know there are in my Eye ſeveral Perſons, whoſe Fears of Popery made them give Credit to ſuch Villains as theſe before: But when it pleaſed God to open their Eyes, and the falſe Miſt vaniſh'd,

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they found a real Conſpiracy againſt the Perſons of that Bleſſed King, lately dead, and of our Gracious Sovereign, now living, carried on under the pretence of that falſe, but ſo much credited Diſcovery, and now, God be thanked, all our Eyes are open. And I hope, as we are ſecured from what we ſo vainly dreaded, ſo we ſhall not be afraid to have Villany detected, and the greateſt Mark of Infamy that can be put upon it.

Yes, Gentlemen, there was a Conſult, and there was a Conſpiracy againſt the Life of our King, our Government, and our Religion: Not a Conſult at the *White Horſe* in the *Strand*, but a Cabal and Aſſociation of perfidious Rebels and Traitors, who had a mind to embroil us in Blood and Confuſion, but, God be thanked, it had not its deſired Effect; the ſame ſort of Villains were Parties in this Conſpiracy, that had too great a Hand in the late great Rebellion, which we to this Day feel the ſmart of, and they had a mind to make uſe of the like Inſtruments, as they did before, to bring us into the like Miſery, as we were before involv'd in.

And is it not a prodigious thing, to have ſuch Actions as theſe to day defended in a Court of Juſtice, with that Impudence and Unconcernedneſs, as tho' he would challenge even God Almighty to puniſh his Wickedneſs, and blaſphemouſly bleſſes God, that he has liv'd to do ſuch wonderful Service to the Proteſtant Religion; and is ſo obſtinate, in his Villany, as to declare he would venture his Blood for the Confirmation of ſo impious a Falſhood; and indeed, to ſpeak the Truth, he makes no great Venture in it; for when he had pawn'd his immortal Soul, by ſo perjur'd a Teſtimony, he may very eaſily proffer the venturing of his vile Carcaſs to maintain it?

Gentlemen, Having thus ſaid, (and I could not forbear ſaying of it) give me leave to put you in mind of what lies before you now to be tryed. Firſt, this Indictment takes notice, that there was an Indictment, taken before the Commiſſioners of *Oyer* and *Terminer*, and Goal-delivery at *Hicks's-hall*, of High Treaſon againſt *Whitebread*, *Fenwick*, *Ireland*, *Pickering* and *Grove*, and that Indictment, and the whole Record is proved to you by *Swift*: For I muſt tell you as I go along, what Proofs there are of all the Particulars, and you, upon conſideration of all that is alledged, are to be Judges what is ſufficient Proof to convict the Defendant of the Crime that is laid to him; which is wilful and corrupt Perjury. The Indictment, Gentlemen, ſets forth the Oath that *Otes* did make at *Ireland's* Tryal, and then avers it to be falſe: For the Oath that he did take, that ſtands thus, That he did ſwear he was preſent at a Conſult, held at the *White Horſe* Tavern in the *Strand*, the 24th of *April* 1678. That he did ſwear, That it was there reſolved to murder the late King: How that that Reſolution was carried by him from Chamber to Chamber, that is, to *Whitebread's* and *Fenwick's*, and *Ireland's* Chambers, and ſaw them ſign this Reſolution there; and the Aſſignment of the Perjury, is, That he was not preſent at any Conſult, 'tis not that there was not any ſuch Conſult, tho' it appears by the Evidence that there was none ſuch, but that he was not preſent at any Conſult at all held there at that time.

Now, that he did make ſuch an Oath, is proved by a worthy Gentleman, Mr. *Foſter*; a Gentleman known to you all that live in the City of *London*; and he did truly make that Remark in the beginning of his Teſtimony, that any honeſt Man in his place would have done, That he was one of thoſe unfortunate Men, that tryed Mr. *Ireland*; for tho' a Man do go according to his Conſcience, as to be ſure there is no queſtion to be made of it, but all theſe Jury-men did in finding that Verdict; yet when I come to find, that the Evidence, upon which I convicted thoſe Men, is detected to be falſe; and that upon my Verdict the Perſons were executed; tho' no Guilt of their Blood is really contracted by me; yet I cannot but think my ſelf unfortunate, that I was, tho' innocently, an Inſtrument of their Death; and there is never an one of you, but would have thought your ſelves unfortunate, if you had convicted Men upon ſuch a Teſtimony, which tho' you believed then, yet afterwards you ſhould have reaſon to conclude was falſe. And yet *Otes* would have you think, that becauſe they believed him when he was a Villain, and not known to be ſo, you muſt believe him, notwithſtanding his Villany is now diſcovered; for that is all the Argument this learned Doctor has a mind to impoſe upon you by.

Gentlemen, Mr. Sollicitor has been very particular, in giving an Account of the whole Evidence, and then it comes to this, which is the natural Queſtion in the Caſe, Whether upon the Teſtimonies that have been given to you, there does remain ſo much as a Doubt, what Verdict you ought to give; for I confeſs, were it a thing in the leaſt doubtful, Matters of Perjury are ſo nice and tender, that we and you ought to be cautious how you convict People for Perjury in doubtful Matters; but if it be a thing without doubt, and plainly evident, that there was a Verdict thereupon, adds to the Guilt; becauſe the Juſtice of the Nation is impoſed upon; the God of Heaven deliver every honeſt Man's Soul and Conſcience from ſuch Guilt. For my part, I would not for the Univerſe have the leaſt Guilt of innocent Blood lie upon me.

Then, Gentlemen, to prove what *Otes* ſwore is not true, you have no leſs than twenty two Witneſſes, that ſwear directly he was not here in *London* the 24th of *April* 1678. But it may be that it is not ſuch a poſitive Teſtimony as the Law requires to prove a Perjury; but then to ſwear directly that he was in another place at that time, is a poſitive Contradiction to his Evidence; and this has been teſtified by the Oaths of twenty two Perſons, againſt the Credit of whoſe Teſtimony there is no Objection at all really made, but only Impudence; and that Shadow of an Objection, They are all Papiſts, and I am a Proteſtant, and truly a wonderful Credit is is, I muſt needs ſay, for the Proteſtant Religion for to have ſuch a Learned and Pious Supporter, as Mr. *Otes*, to be of that Perſwaſion, but it is certain there was a *Judas* amongſt the twelve Apoſtles, and there are Raſcals of all Perſwaſions. And truly I take it makes never the more for his Advantage, nor the Honour of our Church, that he is pleaſed to call himſelf by that Name, which he, and ſuch as he, have brought into ſome Scandal and

Reproach, by ſetting themſelves up, as the great Pillars of it; but we know Dr. *Otes* has been very liberal to himſelf, he has given himſelf Baptiſm, and given himſelf the Doctor's Degree, and now he gives himſelf the Title of the Reforming Proteſtant, Mr. *Otes*. We have Proteſtant Shoe-makers, and Proteſtant Joyners, and Proteſtant Atheiſts, and all ſorts of true Proteſtant Raſcals; but it becomes us and you to aſſert the Honour of our Religion by diſowning any Fellowſhip with ſuch Villains, or their Actions.

Gentlemen, The Method that was taken, gives you an exact account in point of time, as to this whole Buſineſs. Firſt, Says Mr. *Hilſley*, I left him, in time the 23d of *April*, New Stile, at St. *Omers*, and I am ſure I ſaw him there then, which is the 13th, Old Stile, the 24th of *April*, New Stile, which is the 14th, Old Stile, I came from St. *Omers*, I did not ſee him there that Morning, but I my ſelf came to *Calais*, it being Sunday, and I ſtayed there till Sunday in the Afternoon, and all Night. I came on Monday in the Afternoon to take Water at *Calais*, and from thence went to *Dover*. And from thence the next Day I went towards *London*; but I ſtayed four or five Days by the way before I came to *London*; but then there is this Circumſtance that you muſt take along with you, Gentlemen, That at this time, one Mr. *Burnaby* was coming from *London*, and going to St. *Omers*, and met with Mr. *Hilſley* in his way towards *London*; ſays *Hilſley*, I came afterwards to Town, and that was upon the Monday following, which happens to be the 21ſt or 22d of *April*, our Stile; but this I do remember very particularly, which makes his Teſtimony to be true, and not dreſſed up for this occaſion; ſays he, I told one *Osborn* at that time that we had a pretty Fellow at St. *Omers*, that went ſometimes by the Name of *Lucy*, and ſometimes by the Name of *Otes*, a Miniſter of the Church of *England*; and there he comes and gives an account of his ridiculous childiſh Actions, and what a remarkable Fellow he was; and this, ſays he, I told to *Osborn*.

Now, to make this good, you have one Mr. *Dorrel*, who tells you there happened a Diſcourſe, where he was preſent, between his Mother and Mr. *Osborn*, about Religion; and amongſt other things, *Osborn* did ſay, Mr. *Hilſley* had told him he left *Otes* at St. *Omers* when he came away from thence; and Mr. *Osborn*, he comes and ſays, I remember I did tell Mr. *Dorrel* and his Mother, at that time that Mr. *Hilſley* did tell me this Story; ſo that here are theſe two Witneſſes which ſupport Mr. *Hilſley* in that Circumſtance of the time of his coming away, and his Relation of *Otes* being left behind him, and that this was related about the 21ſt or 22d of *April*.

Burnaby is the next Perſon that was produced, and he ſwears he met *Hilſley* by *Cittinbourn*; and he happens to ſet out for St. *Omers* the 18th of *April*, our Stile, and to come thither to St. *Omers* the 21ſt; and he ſwears poſitively, that he was there the 21ſt, 22d, 23d, and was there the 25th Day of *April*, our Stile; and he does poſitively affirm, that all thoſe Days he ſaw *Otes* there at St. *Omers*; that *Otes* intruded into his Company at his firſt coming; and that he and all the other Scholars wondered at the Confidence of the Man; and he particularly remembers that he was with him at a Publick Entertainment that was there the 25th; and if ſo, then it is impoſſible that what *Otes* has ſworn of his being at the Conſult the 24th of *April*, our Stile, can be true; and except you can imagine Mr. *Otes* to fly from St. *Omers* the 24th Day in the Morning, and be at the Conſult and back again at Night, which is more than he would have believed, becauſe he ſwears the contrary, you muſt conclude that what he ſwore was falſe.

The next Witneſs is Mr. *Pool*, and he comes and ſays, he was there at St. *Omers*, and he came over from thence the 25th of *April*, and that was the Day after *Otes* ſwears the Conſult of the Plot to be here; and all the reſt of the Witneſſes do directly ſwear, That at the time that *Pool* went from thence, *Otes* was there; ſo that the Teſtimony of *Pool* is fully and poſitively confirmed; and *Pool* gives you a reaſon why he came over, which was the Death of a Brother of his, and upon a Proſpect of an Eſtate he came into *England*, which likewiſe is a reaſonable Circumſtance why he ſhould remember the time, becauſe he had ſuch Inducement to come over hither.

The next, Gentlemen, is one *Thornton*, and he comes to the Month of *May*, to the 1ſt and 2d of *May*, their Stile, which was the 21ſt and 22d of *April*, our Stile, and particularly he is ſure *Otes* was there upon the 22d of *April*, our Stile, that is, the 2d of *May*, their Stile. For, ſays he, there was an Action or Play of the Scholars; and I can tell you how I remember *Otes* was there, *Otes* had a mind to have a place to ſee the Play, which he had no Pretence or Title to; and he had a Scuffle with ſome body about it; and therefore I remember by that Token, that he was there at that time.

Now, Gentlemen, it is not eaſy to be imagined, that ſix or ſeven Men ſhould agree in their Teſtimony in all thoſe Circumſtances, which in themſelves are but minute; yet when offered as Reaſons to induce Men's Remembrance, muſt be allowed as good Reaſons; and yet this is to be thought to be but a made Story. If Sir *Richard Barker*'s Coach-man, and Mrs. *Mayo* had had any ſuch Circumſtances to ſupport their Teſtimony, they would have had much more Credit.

Then there is one *Conway*; and it is very obſervable what he ſpeaks of; for he was there all the while that they ſay *Otes* was there, and he gives you an account that he ſaw him with *Burnaby* the firſt time he came over, and agrees with *Burnaby* in this, that he wonder'd much at his Confidence, and did think that he was very well known to him before: He ſwears *Otes* came in thither about the beginning of *December* 77, and he was not abſent, ſays he and ſeveral more, any one Night, except in *January* once at *Watton*, till he went away in *June* 78. Nay, they are ſo preciſe in their Memory for very good Reaſons, becauſe they are ſo regular in their Societies, and keep a ſtrict Order, each has his fixed Place in the Refectory, where all the *Socii* or the Members of the College do meet; and becauſe this Fellow was an old Fellow, older than the reſt, and likewiſe was a Dunce, therefore he was ſet at the Dunce-Table in every body's View, becauſe he was a Block-

Blockhead, and too old to keep Company with the Boys; ſo that though perhaps one of thoſe young Fellows in a mixt Society may eſcape the View, and be abſent without being miſſed, yet Remarkable Mr. *Otes* is not ſo eaſily forgotten, that us'd to ſit by himſelf. And as that Noble Lord, my Lord *Gerrard* of *Bromley* ſays, he has a particular Face, and a particular Tone; and there was more reaſon to remark him than any other, both upon the Account of his Perſon and of his Actions; ſo that I muſt needs ſay indeed, it is not a downright and poſitive Swearing, but their Teſtimony is given with deliberation and recollection of ſuch particular Circumſtances as may reaſonably induce any unprejudic'd Perſon to give Credit to it.

The next Witneſs, Gentlemen, is *Haggerſtone*, whoſe Evidence is wonderful particular, and very material as to the Circumſtances that accompany it. For you are to obſerve, that in theſe Colleges ſome are of the Sodality, and ſome are not; and ſome are of ſuch and ſuch Claſſes or Forms, and others of other. Now this Gentleman and Mr. *Otes* were of the ſame Form, and he does particularly remember that he was ſetting up for a Preacher, as he has an excellent knack that way; and he tells you, how ridiculous he made the late King in a Sermon; that he halted between two Opinions, and there ran a Stream of *Popery* between his Legs; and ſuch like precious Stuff he vented. And to fix it to be about the ſame time that is now in queſtion, he ſays, he particularly remembers it was when he was Reader, when Mr. *Otes* was, it ſeems, the Buffoon to the Society, or as I may call him, the Jack-pudding to the College, that uſed to make them Sport, and was guilty of ſo many ridiculous Things, that they could not but put particular Remarks upon him.

Next, I take notice, that this Perſon ſays, there were two Perſons, *Williams* and *Marſh*, that were qualified to give Suffrages in the Congregation, that is, they were paſs'd eighteen Years ſtanding, and did go over: For that there was a Conſult, is not denied, nor that it was in *London*, nor that it was upon the 24*th* of *April*; but they ſay, it was a Triennial Meeting, which they us'd to have once in three Years for the choice of ſome Officers to manage the Affairs of the Society; as for the choice of a Provincial, and other Perſons that they were to ſend upon their Errands, in order to the ſupport of their Society; ſo that under the Colour and Countenance, of what was in it ſelf ordinary and uſual, and that happened to be at that Time, *Otes*, who had heard ſomewhat of it, and that it was the 24*th* of *April*, and that ſuch and ſuch were to be there, he upon that Hear-ſay, as ſhould ſeem at St. *Omers*, does feign and contrive this pretended Conſpiracy.

The next is one *Beeſton*; and it is very material too that he ſwears: For beſides what he teſtifies, That from the time of his coming, which was in *December* 77, he was not abſent till the 23d of *June*, when he went away; and for the Time in queſtion, he very well remembers his being there, by this Circumſtance: Says he, I was choſen to be Reader of the Sodality in the Month of *March*, but then *Otes* comes and gets the Office out of my Hands; but ſtill with me there was that Benefit reſerved, that if he ſhould at any time fail of Reading there upon a *Sunday*, or a Holy-day, I was then to have read, and to have ſupplied his Place. Says he, I was there from *March*, till the Time *Otes* went away in *June*; and *Otes* read there that very *Sunday* before the Time in *June* that he went away. And I am ſure I heard him read every time; and in caſe he had not read every time, I muſt have read in his Abſence: But I did not read at all during that time.

Now, Gentlemen, when a Man is to ſucceed or to ſupply the Abſence of another in an Office that is peculiar as to the Charge incumbent upon the Officer, and conſiderable as to the Profit of it, that muſt needs make an impreſſion upon the Mind, and give a Man a more exact remembrance of the Thing; and therefore I recommend it particularly to your Obſervation.

The next is one Mr. *Smith*, and he ſays, he ſaw *Otes* there all the Time: And as to one part of it, when he himſelf was in the Infirmary, *Otes* went to viſit him every two or three Days; nay, and about ſuch a Time in *May*, ſays he, which was about the beginning of *May*, *Otes* being then in the Infirmary, not well, the Doctor and he had a pretty Dialogue together, and *Otes* ſpoke falſe Latin to the Doctor, for he ſaid, *Si placeat Dominatio veſtra*, in the beginning of his Compliment; This he did particularly ſay was the Expreſſion that this excellent Scholar uſed to the Phyſician at his firſt application to him, and all the whole College took notice of that Piece of his Learning.

The next is one *Price*, and he tells you, he was there all the time that the others ſpeak of; he remembers him very well, and particularly ſays, I am ſure *Otes* was there the 11*th* of *May*, *N. S.* which will be the firſt of *May O. S.* Becauſe, ſays he, I know he was ſoundly beaten that Day upon a Quarrel that he had there; this particularly he ſpeaks to, beſides his remembrance of the other Circumſtances in concurrence with the former Witneſſes.

Mr. *Doddington* ſwears the ſame, and Mr. *Gerrard* alſo ſwears the ſame, with that other particular Circumſtance that Mr. *Sollicitor* repeated to you, which was of *Otes* being there upon the Day of Confirmation, the 26*th* of *May N. S.* the 16*th* of *May O. S.* and he is ſure of it, becauſe he was Confirmed along with him, and therefore it is impoſſible he ſhould forget it: And my Lord *Gerrard*, who was next, gives this reaſon upon his remembrance of all the forementioned Particulars, that he always took ſpecial notice of the Man for his Canting Tone, his Phyſiognomy, and remarkable Behaviour.

Then there is Mr. *Morgan* who is no *Papiſt*, but a Miniſter of the Church of *England*; now Mr. *Otes* was angry with all the reſt, becauſe they were Catholicks; but what has to ſay to Mr. *Morgan* who is a Proteſtant? Why the truth is, there are none of them to be believed, becauſe they ſwear againſt him, and really he ought to be permitted to give that reaſon, or it is like to go very hard with him; for if in caſe you believe but a third Part of the Teſtimony that has been given, it is enough to do his Work. But what ſays Mr. *Morgan*? Truly he comes up to the 24*th* of *April* particularly, and he tells you how he remembers it; and the firſt Occaſion he had to look into it was,

they

they being all ſurprized at St. *Omers* at what *Otes* had Sworn, and Mr. *Morgan* recollecting with himſelf, did remember that very Day he was playing at Ball within the College, and happened to toſs his Ball over the Wall into the Garden, and not being able to recover it any other way, he ſpied *Otes* walking and looking into his Book, and therefore he deſired him to lend him his Key, and by the help of that, he went in and fetched his Ball; and this was the very Day that *Otes* ſwore he was here.

Mr. *Arundel* ſays the ſame: The two *Turberviles* ſay the ſame; and one of them is poſitive to have ſeen him there, either the 24*th* and 25*th*, or 23d and 24th of *April O. S.* which is the 3d and 4th, or 4th and 5th of *May N. S.* and if it were either of theſe Days, it cannot be poſſible he ſhould be here at the Conſult.

The next is Mr. *Clavering*, and I cannot but particularly take notice of what he has ſworn: He ſays Mr. *Otes* was there all the time that the reſt ſpeak of; but it ſeems particularly about the time of the Congregation in *London*: There comes in a Stranger that was poor, and this Gentleman Mr. *Clavering* made a Collection for him; and it was talked of in the College as the reaſon why he had not Succeſs in his Collection, becauſe the Fathers were gone to the Congregation. Nay, and yet farther ſays he, I do remember particularly that Mr. *Williams* and Mr. *Marſh* did go over to the Congregation, but *Otes* did not; for I do remember when *Williams* and *Marſh* came back again, I had ſome Diſcourſe with Mr. *Otes* about the Congregation: He came to me, and deſired to know of me what Account I was able to give of the Matter of that Meeting after the Conſult was over. Now had Mr. *Otes* been there, and been a Perſon of that great Truſt that he had ſworn himſelf into, he needed not ſure have asked Mr. *Clavering* at St. *Omers*, what the Buſineſs of the Conſult was at *London*, where he himſelf had been, but the other had not.

There is beſides Mr. *Copley*, another Witneſs, Mr. *Cooke*, that ſpeaks particularly of the 30*th* of *April*, that he was ſure *Otes* was there then, becauſe of the Proceſſion, and becauſe he walked by himſelf in it; and *Wright* the laſt Witneſs gives a general Account, but ſpeaks to no particular Time.

And now, Gentlemen, after all this Evidence, *Viva voce*, you muſt give me leave to hint *Teſtimonium Rei*, an improbable Oath was that which *Otes* owns he made, if it be conſidered in all its Parts. Can any Man believe that fifty Perſons ſhould meet together in a Tavern in *London*, and theſe fifty Perſons ſhould come to a Reſolution to kill the King and ſubvert the Government, and alter the Religion; and that this Conſultation being drawn up in the Tavern (for ſo he ſwears it was) they ſhould ſever themſelves into leſſer Clubs and Companies, and take care that none ſhould ſign when they were altogether and among themſelves, but muſt have it carried up and down from one Man's Chamber to another, and find no body to truſt with this Affair, that if diſcovered, muſt ſubject them to preſent Deſtruction, and ruin their whole Party, but only Mr. *Otes*, who was none of their own Order, nor does appear to be of ſuch Credit amongſt them? Can you believe any Men ſhould be ſo void of Senſe and Reaſon, that of fifty together, and thoſe reputed as ſubtile as any Sort of Men whatſoever, there ſhould not be one Man of common Underſtanding that ſhould take care for a more rational Management of ſo great and hazardous an Undertaking? When they were met together, and might have diſpatched it in a quarter of an Hour, they ſhould ſeparate themſelves into ſeveral Parts of the Town, and truſt a Reſolution of that nature in Mr. *Otes*'s Pocket, in whom if they had had more Confidence than they ſeem to have, yet it was folly and madneſs to give him that Opportunity of deſtroying all them, and making himſelf; were there no other Evidence but the very Teſtimony of the Thing, it would go a very great way with me I confeſs; but I muſt ſay withal, you are Judges of this Fact, upon a ſuperadded Teſtimony of Twenty two Witneſſes, *Viva voce*, I think it leaves the Thing without any doubt.

Gentlemen, the Anſwer given by the Defendant to this Charge is very fallacious; and though he puts ſuch a Countenance upon it, as though his Witneſſes were ſuch Perſons of Credit, that nothing could be objected againſt them, yet he is certainly very much miſtaken in that: He has produced but two poſitive Witneſſes, and thoſe two as poſitive as they are in their Proof, are likewiſe poſitive in their Contradictions of one another, and what they have ſaid is left to your Conſideration.

The one is a Coachman, the other was Sir *Richard Barker*'s Houſe-keeper; they indeed do ſay, Sir *Richard Barker*'s Wife's Siſter, and his Nephew, and his Daughter, and his Neeces, and a worſhipful Knight, and I know not who, that the old Woman tells me are gone into my Countrey, were all there at the ſame time, and no body comes to teſtifie it, but only this Coachman and this old Woman: Theſe, Gentlemen, are Things fit to be thought of.

But now let us conſider how they agree in their Evidence. Says the Woman, I ſaw him not till the beginning of *May*, but I am ſure he was there before once or twice. And how does ſhe know that? Becauſe the Coachman told her ſo; and he came there ſeveral times, but he did dine there but once; and when he came there the firſt time ſhe ſaw him, he came in ſuch a Diſguiſe, and he had a ſhort Perriwig, and a kind of a ſhort white Coat, and a white Hat; but when my Coachman comes to ſwear, he tells you the firſt time he ſaw him, the Woman ſaw him too, that he had his own Hair, and cut cloſe to his Ears, that made him look, as the young Fellow told her, like a Quaker. And when I aſked the Coachman, Are you ſure that *Benjamin* the young Fellow did ſee him the firſt time you ſaw him there? He told me, No; but he was ſure the old Woman did look out of the Window and ſee him, which ſhe denies. I then asked him how often he dined there? He tells you ſeveral Times, and there were ſuch and ſuch, and the old Woman did ſee him dine there ſeveral times; which ſhe denies that ſhe ever ſaw him dine there above once: And I take notice of one of the Evidence, the Coachman, he gives but an odd ſort of Reaſon for his remembrance: In *February*, ſays he, my Lady died, and my Maſter was ſick at *Putney*, and *Otes* came into the Yard while I was cleaning my Coach; and I am ſure it was where the

Coat

Coat of Arms hung over the Door, becauſe he ask'd me about my Lady's death, and therefore it muſt be in *May*, when, for ought does appear to the contrary, it might be in any other Month after the Eſcutcheon was up; and in the other Circumſtances there is no certainty at all: So that it is plain, theſe Witneſſes ſwear according as their Humour leads them, and not according to any remembrance they have of the Thing.

And I rather believe it, becauſe the third Witneſs, that is *Page* the Apothecary, that uſed to make up Sir *Richard Barker*'s Medicines, gives an Evidence contrary to both thoſe, he cannot remember the Year poſitively or particularly; but I'll tell you how he thwarts and contradicts the other Peoples Teſtimony; for he remembers he came in ſuch a Diſguiſe, but he believes no body ſpoke to him but himſelf, becauſe he found him walking in the Place that was for the common reception of the Patients, and he asked for Dr. *Tongue*, and he not being within, he went away very diſcontented: And ſo now theſe three Witneſſes ſeem to contradict one another; and the laſt Witneſs *Walker*, who is the Parſon, he ſays nothing to the Matter; for it does plainly appear, the Time which he ſpeaks of, which was about a Year and a half before he was called to teſtifie at the five Jeſuits Tryal, muſt be in the Year 77, and not in the Year 78, which is the Queſtion here, which muſt be before he went firſt to St. *Omers*.

Gentlemen, the other Part of Mr. *Otes*'s Defence has been upon this Topick: Says he, I have been believed heretofore, the Parliaments have given me Credit; and to prove it, he has called ſeveral Noble Lords and Perſons of Quality. The firſt was my Lord of *Devonſhire*, who ſays he cannot remember any Particulars of his Evidence, 'tis ſo long ſince; but he remembers the Parliament, upon the Evidence given of the Plot, did make ſuch Votes as we do all know of. And there were a great many People that gave Credit to his Teſtimony, who, God be thanked, are of another Opinion now. And my Lord of *Clare* ſays, he was not in the Houſe of Lords at the beginning of the Diſcovery, and cannot remember any Thing in particular. But my Lord of *Huntingdon* was a little more particular; and Mr. *Otes* began to be angry with him, becauſe he ſpoke ſo much: Says he, I remember Mr. *Otes* was examin'd in the Houſe of Lords, and was believed there, becauſe they did believe he ſpoke Truth at that time; but now, upon Conſideration of the Contradictions and Falſities of his Evidence, I cannot but ſay, I do believe him, ſays he, to be a great Villain, and that he has been guilty of ſpilling innocent Blood. And this Noble Lord ſpeaks with great Honour and Conſideration: And truly, I believe, if every Man that is here were to ſpeak his Mind, my Lord has delivered the Opinions of us all, and many Thouſands more in the Nation.

Mr. *Otes* call'd next my Lord Chief Baron, my Brother *Gregory*, my Lord of *London*, Sir *George Treby*, Mr. *Williams*, and my Brother *Dolben*. But they all tell you, they are able to give no particular Anſwers to his Queſtions; and this was the Sum of his Evidence.

To this Mr. *Attorney General* has given a Reply of Evidence, that truly is of very great Moment. Firſt, here is produced Sir *George Wakeman*, whom *Otes* accuſed of High Treaſon, and he ſuffered his Tryal and was acquitted; ſo that as well as the Jury had given Credit to him in the former Verdicts, ſo ſays Mr. *Attorney*, I muſt ſpeak likewiſe for the Credit of that Verdict that did disbelieve him, becauſe though he did ſwear as roundly and briskly up to the Matter as he had done before, yet when he had not the Hurry and Surprize of his Diſcovery to ſupport him, his Villany was detected, and the Innocent acquitted. And beſides the Record of the Acquittal, here is the Perſon himſelf who is now under no dread or danger, having ſtood his Tryal and being acquitted; and he takes it upon his Oath, in the Preſence of the great God, and the Searcher of Hearts, That whatſoever *Otes* ſwore againſt him at his Tryal, was every Tittle of it falſe: And this Acquittal of his, being after great and mature Conſideration, is an Evidence of another-gets quality, than the Verdicts of the other Convictions.

Next to him, is my Lord *Caſtlemain*, a Perſon of very great Honour; and he gives an Account he was arraigned of High Treaſon at this Bar, and upon his Tryal *Otes* was produced as a Witneſs againſt him, and there he ſwore he met with my Lord *Caſtlemain* in *Lincolns-Inn-Fields*, and great familiarity there was between them, ſo that my Lord could not truſt him in a leſs Affair than the Plot; and away he goes with him to *Fenwick*'s Chamber, there to talk about a Deſign of killing the late King. Mr. *Otes*, of all Mankind muſt be the great Repoſitory of this Secret; but the Jury then being Perſons of great Underſtanding and Integrity, did not believe *Otes*, but acquitted my Lord *Caſtlemain*: And he does here take it upon his Oath, back'd with all the Imprecations of Evil to himſelf that a Man can uſe, That there was not one Word of Truth in *Otes*'s Teſtimony; nor did he ever ſee *Otes* in his life, till ſuch time as he was taken up upon his Accuſation. Now are here two Perſons of Honour and Quality, that upon their Oaths do particularly give you an Account, as in the Preſence of Almighty God, that *Otes* has twice forſworn himſelf againſt them.

Gentlemen, there is notice to be taken of the Journal of the Houſe of Lords; and though it is true for the ſake of the Precedent, and to ſecure the Juſtice of the Nation, we did keep them ſtrictly to their Proof, that it was upon Oath. And as to the Buſineſs of *Smith*, though we do believe the Thing in our private Judgments, yet we thought it not fit to be permitted, that Perſons ſhould upon their own Oaths confeſs themſelves to be guilty of Perjury, and afterwards give Evidence againſt others; for ſuch are not to have the Countenance of ever being Witneſſes again: Yet by the Records of Parliament, and other Evidence, there is enough to make the Matter aimed at clear.

For it is clear by his Narrative, that *Otes* did firſt ſwear, as far as he could well ſwear, to bring him into the Diſpleaſure of the People; For that was his way to intimidate all he had to do with, and thereby force them to comply with his Deſigns. And there was no more plauſible Accuſation at that time, than to accuſe a Man for ſaying ſomewhat againſt

the Parliament, or being in a Combination to ſubvert the Proteſtant Religion. But you ſee when he comes to have his own Turn ſerved, then this Man upon whom he had fixed ſuch an odious Character, is really no Papiſt at all, but engaged in Service for his King and Country, and has Mr. *Otes*'s Paſsport, a Thing of great advantage to him at that Seaſon. This the King's Counſel made uſe of with great reaſon, as an Evidence of Tampering: For the Man has altered his Opinion of one he had before accuſed, and now brings him as an honeſt Man to give Evidence for him. And this, ſay they, muſt be intended to be done by Practice and by Threats.

And the rather, Gentlemen, for that you have an Account by Witneſſes ſworn, that there was one *Clay* a Popiſh Prieſt, that lay in Priſon at the *Gate-Houſe*, and while he was there *Otes* and Sir *William Waller* came into the Priſon to him, and tampering with him, ſays *Otes*, I hear there are ſome St. *Omers* Boys that intend to teſtifie that I was at St. *Omers*, when I ſay I was at *London*; but you muſt ſwear, that you dined with me at Mr. *Howard*'s in *May* 1678. or if you will not, you know I know you to be a Prieſt, and I'll hang you, Says *Clay*, Where is my Silver and Gold that was taken away from me? And we all know Sir *William Waller* was wonderful good at the fingering of Gold; he us'd to take away broad Pieces as Popiſh Reliques, becauſe of the Croſſes upon them. Says *Clay*, Give me my Gold again, I will ſwear for you; I have been a Rogue before, and I may be a Rogue again. And accordingly a Contract is made for him to ſwear directly that *Otes* and he were together at Mr. *Howard*'s Houſe in *May* 78. This very Fellow that tells you now the Story, told it the next Morning to another Man, who has likewiſe ſworn the ſame. Then is *Clay* conveyed by *Otes* to the *Old Bailey*, and there ſwears, being thus threatened and ſuborn'd, That in *May* 1678. he and Mr. *Otes* dined together at Mr. *Howard*'s Houſe, and you have Mr. *Howard* produc'd, who does ſwear that *Clay* did ſwear ſo; but indeed he was not there with Mr. *Otes* at Dinner till *July* after.

This, Gentlemen, is direct Corruption and Subornation; and if a Man will be a corrupt Knave, and endeavour to ſuborn Witneſſes to ſwear that which is falſe, he is the more likely to ſwear falſe himſelf. Beſides, that you are to take notice, here is his own Narrative produced, where you have it ſworn by himſelf, That he went back to St. *Omers* about the beginning of *May*, and was there all the Month of *May*, and in *June* till the latter end of it. Then all this while, either Mr. *Otes*, or his Witneſſes, are perjured in the Caſe: He ſays, he ſtay'd but three or four Days in *England* after the Conſult was over, and then went ſtreight back again to St. *Omers*. Which muſt be the firſt Week in *May*; but if you believe his two Witneſſes, he din'd with them ſeveral times after that: And ſo it is apparent, ſome of them are guilty of groſs and foul Perjury.

Now, Gentlemen, I cannot but reſort back to the Objection that I made at firſt. 'Tis ſtrange to me, that a Man that came upon ſuch a Deſign, ſhould go publickly about the Streets at Noon-day, though in a Diſguiſe, yet he was known. But if you take the Perſons Time to be in the Year 1677, then it is eaſily reconciled what they did ſay of their ſeeing him in ſuch a Diſguiſe; and ſo all their Teſtimony may ſtand together, and perhaps they may miſtake in a Point of Time, though not in the Subſtance of their Evidence; and I would out of Charity conclude it to be ſo.

But I will ſay, if they are to be taken ſtrictly to the Year 1678, it is monſtrous to imagine, that we ſhould have no body brought to let us know where he lodged, where he eat, with whom he convers'd for all that time.

Gentlemen, I have detained you the longer in this Matter, becauſe I take it to be of ſo great Weight, wherein the Juſtice and Honour of the Nation are ſo much engag'd, and it was therefore fit this Cauſe ſhould be tryed in the moſt ſolemn and publick manner, in order to vindicate the Nation from the Reproach and Calumny of Injuſtice and Oppreſſion. And ſure I am, if you think theſe Witneſſes ſwear true, as I cannot ſee any colour of Objection, there does not remain the leaſt doubt, but that *Otes* is the blackeſt, moſt perjur'd Villain that ever appear'd upon the face of the Earth.

Cl. of Cr. Tipſtaff, you muſt take care of the Jury.

L. C. J. Gentlemen, if any of you have a mind to drink at the Bar, before you go, you ſhall have ſome got for you.

Jury. No, my Lord, we do not care for drinking.

L. C. J. Then we will ſtay for you.

Then the Jury withdrew to conſider of their Verdict, and after about a quarter of an Hour's ſtay, they returned and delivered in their Verdict: That the Defendant was Guilty of the Perjury whereof he was Indicted. *Which being Recorded, the Lord Chief Juſtice ſpoke to the Jury, to this effect.*

L. C. J. Gentlemen, that we are not, God be thanked, in thoſe Times of Diſorder and Confuſion that we have been heretofore in, to have Humming or Hiſſings to declare the Auditors Approbation or Diſlike of Juries Verdicts. But becauſe there has been this Day mention made of the Opinions of Judges about Verdicts, I ſhall take the liberty to declare my Mind to you now, That for my Part, I am ſatisfied in my Conſcience, you have given a good and a juſt Verdict; and ſo I believe is every other Judge upon the Bench.

To which the reſt of the Judges aſſented; and then the Court aroſe.

THE

THE TRYAL OF *TITUS OTES.*

Die Sabbati 9. Maii 1685. *in* Banco Regis.

Dominus Rex verſus OTES.

THIS Day being appointed for the Tryal of the Other of the Cauſes between Our Sovereign Lord the King, and *Titus Otes*, for Perjury: The ſame began about nine in the Morning, and proceeded after this manner:

Firſt, Proclamation was made for Silence: Then the Defendant was called; who, appearing in Perſon, was adviſed to look to his Challenges; but he challenged none; only he deſir'd, that they might be all ask'd, Whether they were of the Grand Jury that found the Bill? Which was done: And all denying it, the Twelve ſworn were theſe:

Sir *Thomas Vernon*, Kt.
Nicholas Charleton, Eſq;
Thomas Langham, Eſq;
Thomas Hartop,
Francis Griffith,
John Kent,
Jur',
George Toriano,
Henry Loades,
John Midgley,
John Pelling,
Thomas Short, and
George Peck.

Cl. of Cr. Gentlemen, You that are ſworn, hearken to the Record.

Memorandum, That by a certain Inquiſition for our Sovereign Lord the King, at the *Guild hall* of the City of *London*, and within the ſame City, on *Tueſday* the 28th of *October*, in the 36th Year of the Reign of our late Sovereign Lord *Charles* II. by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, *&c.* before Sir *Henry Tulſe*, Knight, Mayor of the City of *London*; Sir *William Turner*, Knight; and Sir *James Edwards*, Knight, Aldermen of the ſaid City; Sir *Thomas Jenner*, Knight, one of His Majeſty's Serjeants at Law, and Recorder of the ſame City; Sir *Robert Jefferies*, Knight; and Sir *John Peake*, Knight, other Aldermen of the ſaid City; and others their Companions, Juſtices of our ſaid Lord the King; by His Majeſty's Letters Patents under the Great Seal of *England*, to enquire of ſeveral Offences in the ſaid Letters Patents contain'd, and to hear and determine the ſame, according to the Laws and Cuſtoms of this Kingdom, by the Oaths of Twelve Jurors, honeſt and lawful Men of the City of *London* aforeſaid, who then and there being then and there ſworn, and charged to enquire for our ſaid Sovereign Lord the King, and the Body of the ſaid City, upon their Oaths, preſent:

That at a certain Seſſion of our ſaid Lord the King, holden for the County of *Middleſex*, at *Hicks's Hall* in St. *John's-ſtreet*, in the County aforeſaid; on *Monday* (to wit) the 16th Day of *December*, in the Year of the Reign of our ſaid late Sovereign Lord, *Charles* II. by the Grace of God, of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the Faith, *&c.* the 30th before Sir *Reginald Forſter*, Baronet; Sir *Philip Matthews*, Baronet; Sir *William Bowles*, Knight; Sir *Charles Pitfield*, Knight; *Thomas Robinſon*, *Humphrey Wyrley*, *Thomas Harriot*, and *William Hempſon*, Eſquires, Juſtices of our ſaid Lord the King; to enquire by the Oaths of Honeſt and Lawful Men, of the County of *Middleſex* aforeſaid; and by other ways, manners, and means, whereby they might, or could better know, as well within Liberties as without; by whom the Truth of the Matter might be better known and enquired of, concerning all Treaſons and Miſpriſions of Treaſons, Inſurrections, Rebellions, Counterfeitings, Clippings, Waſhings, Falſe-making, and other Falſifying of the Moneys of this Kingdom of *England*; and of any other Kingdoms, and Dominions whatſoever; and of all Murthers, Felonies, Manſlaughters, Killings, Burglaries, and other Articles and Offences in the Letters Patents of our ſaid Lord the King, to them, or any four or more of them, thereupon directed, ſpecified; As alſo, the Acceſſaries of the ſame, within the County aforeſaid, as well within Liberties as without, by whomſoever, howſoever had made done, or committed, and to hear and determine the ſame Treaſons, and other the Premiſſes, according to the Law, and Cuſtom of this Kingdom of *England*, aſſigned by the Oaths of *Ralph Wain*, *John Vaughan*, *Richard Foſter*, *Thomas Paget*, *Robert Newington*, *Henry Tompkins*, *Robert Hayes*, *John Greenwood*,

Peter

Peter Stinyeſon, Joſiah Richard Richman, Auguſtine Bear, John King, Nathanael Brit, Francis Fiſher, Edward Foſter, and *Samuel Lynn*; Honeſt and Lawful Men of the County aforeſaid, ſworn, and charg'd to enquire for our ſaid Lord the King, and the Body of the County aforeſaid, upon their Oaths; it was preſented, That *Thomas White*, otherwiſe *Whitebread*, late of the Pariſh of St. *Giles's in the Fields*, in the County of *Middleſex*, Clerk; *William Ireland*, late of the Pariſh aforeſaid, in the County aforeſaid, Clerk; *John Fenwick*, late of the ſame Pariſh and County, Clerk; *Thomas Pickering*, late of the Pariſh aforeſaid, in the County aforeſaid, Clerk; and *John Grove*, late of the Pariſh aforeſaid, in the County aforeſaid, Gentleman: As falſe Traitors againſt the moſt Illuſtrious, and moſt Serene, and Excellent Prince, our ſaid late Sovereign Lord *Charles* II. by the Grace of God, of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the Faith, *&c.* their Supreme and Natural Lord; not having the Fear of the Lord in their Hearts, nor weighing the Duty of their Allegiance; but being moved and ſeduced by the Inſtigation of the Devil, the cordial Love, and true, due, and Natural Obedience, which True and Faithful Subjects of our ſaid Lord the King, towards him our ſaid Lord the King, ſhould, and of right ought to bear, utterly withdrawing and contriving, and, with all their might, intending the Peace and common Tranquillity of this Kingdom of *England*, to diſturb; and the true Worſhip of God, within this Kingdom of *England*, uſed, and by Law Eſtabliſhed, to ſubvert; and Sedition and Rebellion within this Kingdom of *England*, to move, ſtir up, and procure; and the cordial Love, and true and due Obedience, which true and faithful Subjects of our ſaid Lord the King, towards him the ſaid Lord the King, ſhould, and of right ought to bear, utterly to withdraw, put out, and extinguiſh; and our ſaid Sovereign Lord the King, to Death and final Deſtruction to bring and put, the 24th of *April*, in the 30th Year of the Reign of our ſaid late Sovereign Lord *Charles* II. at the Pariſh of St. *Giles's in the Fields* aforeſaid, in the County of *Middleſex* aforeſaid; falſly, malicioufly, ſubtilly, adviſedly, and traiterouſly, did purpoſe, compaſs, imagine, and intend Sedition and Rebellion within this Kingdom of *England* to move, ſtir up, and procure, and a miſerable Slaughter amongſt the Subjects of our ſaid Sovereign Lord the King, to procure and cauſe; and our ſaid Lord the King, from the Regal State, Title, Power, and Government of his Kingdom of *England*, wholly to deprive, depoſe, caſt down, and diſinherit; and him our ſaid Lord the King, to Death and final Deſtruction to bring and put; and the Government of the ſaid Kingdom, and the ſincere Religion of God, in the ſame Kingdom, rightly, and by the Laws of the ſame Kingdom Eſtabliſhed, at their Will and Pleaſure to change and alter; and the State of this whole Kingdom of *England*, through all its Parts, well inſtituted and ordained, wholly to ſubvert and deſtroy, and War againſt our ſaid Lord the King, within this Kingdom of *England* to levy.

And to compleat and perfect the ſame their moſt wicked Treaſons and traiterous Imaginations and Purpoſes aforeſaid; they, the aforeſaid *Thomas White*, otherwiſe *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, and *John Grove*, and other falſe Traitors, to the Jurors unknown, the aforeſaid 25th Day of *April*, in the 30th Year aforeſaid, with Force and Arms, *&c.* at the Pariſh of St. *Giles's in the Fields* aforeſaid, in the County of *Middleſex* aforeſaid; falſly, malicioufly, ſubtilly, adviſedly, deviliſhly and traiterouſly did aſſemble themſelves, unite, and congregate; and then and there falſly, malicioufly, ſubtilly, adviſedly, deviliſhly and traiterouſly did conſult and agree, our ſaid Sovereign Lord the King, to Death and final Deſtruction to bring and put, and the Religion within this Kingdom of *England*, rightly, and by the Laws of the ſame Kingdom eſtabliſh'd, to the Superſtition of the *Romiſh* Church, to change and alter: And the ſooner to compleat and perfect the ſame their moſt wicked Treaſons and traiterous Imaginations and Purpoſes aforeſaid, the ſaid *Thomas White*, otherwiſe *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, and *John Grove*, and other falſe Traitors of our ſaid late Lord the King, to the Jurors unknown; afterwards (to wit) the ſame 24th Day of *April*, in the 30th Year aforeſaid, at the aforeſaid Pariſh of St. *Giles's in the Fields*, in the County of *Middleſex* aforeſaid, falſly, ſubtilly, adviſedly, malicioufly, deviliſhly and traiterouſly between themſelves, did conclude and agree, That they, the ſaid *Thomas Pickering* and *John Grove*, Him our ſaid late Lord the King ſhould kill and murder; and that they, the ſaid *Thomas White*, otherwiſe *Whitebread*, *William Ireland*, *John Fenwick* and others, falſe Traitors, to the Jurors unknown, a certain number of Maſſes, between them then and there agreed, for the Health of the Soul of him the ſaid *Thomas Pickering*, therefore ſhould ſay, celebrate and perform; and therefore ſhould pay unto the ſaid *John Grove* a certain Sum of Money between them then and there agreed.

And the Jurors aforeſaid, upon their Oaths aforeſaid, did further preſent: That the ſaid *Thomas Pickering* and *John Grove*, upon the Agreement aforeſaid, then and there falſly, ſubtilly, adviſedly, malicioufly, deviliſhly, and traiterouſly did take upon themſelves, and to the ſame *Thomas White*, otherwiſe *Whitebread*, *William Ireland*, *John Fenwick*, and other falſe Traitors againſt our ſaid Lord the King, to the Jurors aforeſaid unknown, then and there falſly, ſubtilly, adviſedly, malicioufly, deviliſhly and traiterouſly did promiſe that they, the ſaid *Thomas Pickering* and *John Grove*, Him our ſaid late Lord the King would kill and murder: And that they, the ſaid *Thomas White*, otherwiſe *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, *John Grove*, and other falſe Traitors againſt our ſaid Lord the King, unknown; afterwards (to wit) the ſame 24th Day of *April*, in the 30th Year aforeſaid, at the aforeſaid Pariſh of St. *Giles's in the Fields*, in the County of *Middleſex* aforeſaid; falſly, ſubtilly, adviſedly, malicioufly, deviliſhly and traiterouſly did give their Faith each to other; and upon the Sacrament then and there traiterouſly did ſwear and promiſe to conceal, and not to divulge their ſaid moſt wicked Treaſons and traiterous Compaſſings, Conſultations and Purpoſes ſo between them had, Him our ſaid late Lord the King, traiterouſly to kill and murder, and the *Romiſh Religion* within this Kingdom of *England* to be

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uſed to introduce, and the true Reformed Religion within this Kingdom of *England* rightly, and by the Laws of the ſaid Kingdom Eſtabliſh'd, to alter and change: And that the ſaid *Thomas Pickering* and *John Grove*, in Execution of the traiterous Agreement aforeſaid, afterwards (to wit) the ſame 24th Day of *April*, in the 30th Year aforeſaid, and divers Days, and Times after, at the aforeſaid Pariſh of St. *Giles's in the Fields*, in the County aforeſaid; Muskets, Piſtols, Swords, Daggers, and other offenſive and cruel Weapons, Him the ſaid late Lord the King to kill and murder; falſly, ſubtilly, adviſedly, malicioufly, deviliſhly and traiterouſly did prepare and obtain, had and kept for themſelves; and that they, the ſaid *Thomas Pickering* and *John Grove*, afterwards (to wit) the ſame 24th Day of *April*, in the 30th Year aforeſaid, and divers Days and Times after, with Force and Arms, *&c.* at the Pariſh aforeſaid, in the County of *Middleſex* aforeſaid, and in other places within the County of *Middleſex* aforeſaid, falſly, ſubtilly, adviſedly, malicioufly, deviliſhly and traiterouſly did lie in wait, and endeavour our ſaid late Lord the King traiterouſly to kill and murder; and that the ſaid *Thomas White*, otherwiſe *Whitebread*, *William Ireland*, *John Fenwick*, and other falſe Traitors, to the Jurors aforeſaid unknown, afterwards (to wit) the ſame 24th Day of *April*, in the 30th Year aforeſaid, at the Pariſh aforeſaid, in the County of *Middleſex* aforeſaid, falſly, ſubtilly, adviſedly, malicioufly and traiterouſly did prepare, perſwade, excite, abate, comfort and counſel four other Perſons to the Jurors unknown, and Subjects of our ſaid Lord the King, Him our ſaid late Lord the King traiterouſly to kill and murder, againſt the Duty of their Allegiance, againſt the Peace of our ſaid Lord the King his Crown and Dignity, and againſt the Form of the Statute in ſuch Caſe made and provided; and thereupon it was ſo far proceeded, that afterwards, at the Court of Goal-delivery of our ſaid Lord the King, at *Newgate*, at *Juſtice-hall* in the *Old Bailey*, in the Suburbs of the City of *London*, in the Pariſh of St. *Sepulchre*, in the Ward of *Faringdon without*, *London*, the 17th Day of *December*, in the 30th Year aforeſaid; before the Juſtices of the ſaid Lord the King, of the ſame Goal-delivery; then and there held, by Adjournment of the County of *Middleſex* aforeſaid, came the ſaid *William Ireland*, *Thomas Pickering* and *John Grove*, under the Cuſtody of Sir *Richard How*, Knight; and Sir *John Chapman*, Knight, Sheriff of the County of *Middleſex* aforeſaid; into whoſe Cuſtody, for the Cauſe aforeſaid, they were before committed: Being brought to the Bar there, in their proper Perſons; and preſently being ſeverally asked concerning the Premiſes above-charged upon them, how they would acquit themſelves; the aforeſaid *William Ireland*, *Thomas Pickering* and *John Grove* did ſeverally ſay, *That they were not thereof guilty*; and for the ſame, for good and bad, they did ſeverally put themſelves upon the Country; and by a certain Jury of the Country, in that behalf duly impannel'd; ſworn and charged then and there in the ſame Court, before the Juſtices of Goal-delivery aforeſaid, were tryed; and that upon that Tryal, between our ſaid late Lord the King, and the ſaid *William Ireland*, *Thomas Pickering* and *John Grove* at *London* aforeſaid; to wit, at the *Juſtice-hall* in the *Old Bailey* aforeſaid; in the Pariſh of St. *Sepulchre*, in the Ward of *Faringdon without*, *London* aforeſaid; The Defendant (*Titus Otes*) late of the Pariſh of St. *Sepulchre* aforeſaid, in the Ward aforeſaid *Clerk*, was produced as a Witneſs, on the part of the ſaid late Lord the King, upon the Tryal aforeſaid; and before the ſaid Juſtices of Goal-delivery, in the Court aforeſaid, then and there held, upon the *Holy Goſpels of God*, was duly ſworn to ſpeak and teſtify the Truth, the whole Truth, and nothing but the Truth, of, and in the Premiſes between our ſaid Lord the King, and the ſaid *William Ireland*, *Thomas Pickering* and *John Grove*: And that the ſaid *Titus Otes* then and there, in the Court of Goal-delivery aforeſaid, upon his Oath aforeſaid, upon the Indictment aforeſaid, at the Pariſh and Ward aforeſaid, by his own proper Act and Conſent of his moſt wicked Mind, falſly, voluntarily and corruptly, did ſay, depoſe, ſwear, and give in Evidence to the Jurors of the Jury aforeſaid, then and there ſworn and impannel'd to try the Iſſue aforeſaid between our ſaid late Lord the King, and the ſaid *William Ireland*, *Thomas Pickering* and *John Grove*; That the ſaid *William Ireland*, in the Indictment aforeſaid, mentioned, was in Town (within the Cities of *London* and *Weſtminſter*, or the Places adjacent to the ſaid Cities, meaning) upon the 1ſt or 2d Day of *September*, in the Year 1678. Whereas in truth and indeed the ſaid *William Ireland*, in the Indictment aforeſaid, mentioned, was not in Town, nor within the Cities of *London* or *Weſtminſter*, or the Places adjacent to the ſame Cities, or either of them, upon the 1ſt or 2d Day of *September*, in the Year 1678. And ſo the aforeſaid *Titus Otes*, the aforeſaid 17th Day of *December*, in the 30th Year aforeſaid, at the *Juſtice-hall* aforeſaid, in the Court aforeſaid, upon the Tryal aforeſaid, upon the Indictment aforeſaid, between our ſaid late Lord the King, and the aforeſaid *William Ireland*, *Thomas Pickering* and *John Grove*, ſo as aforeſaid had, by his own Act and Conſent, and of his moſt wicked Mind, falſly, voluntarily and corruptly, in Manner and Form aforeſaid, did commit voluntary and corrupt Perjury.

And the Jurors aforeſaid, laſt ſworn to enquire for our ſaid Lord the King; and the Body of the City of *London* aforeſaid, upon their Oaths aforeſaid, do further preſent, That at another Seſſion of our ſaid late Lord the King, held for the County of *Middleſex*, at *Hicks's-hall* in St. *John's-ſtreet*, in the County aforeſaid, on *Thurſday* (to wit) the 12th Day of *June*, in the 31ſt Year of our ſaid late Lord King *Charles* II. before Sir *Philip Matthews*, Baronet; Sir *Thomas Orby*, Knight and Baronet; Sir *William Pultney*, Knight; Sir *William Bowles*, Knight; *Thomas Robinſon*, *Thomas Harriot*, Eſquires; and others their Companions, by Letters Patents of our ſaid late Lord the King, to the ſame Juſtices aforenamed, and others; and to any four or more of them, under the Great Seal of our ſaid late Lord the King, made to enquire, by the Oaths of good and lawful Men of the County of *Middleſex* aforeſaid, and by all other ways, manners and means, by which they might or could better know, as well within Liberties as without; by whom the Truth of the Matter might be beſt known and enquired, of all Treaſons,

ſons, Miſpriſions of Treaſons, Inſurrections, Rebellions, Counterfeitings, Clippings, Waſhings, Falſe-making, and other Falſifyings of the Money of this Kingdom of *England*, and of other Kingdoms and Dominions whatſoever; and of all Murders, Felonies, Man-ſlaughters, Killings, Burglaries, Rapes, Meetings and unlawful Conventicles; Speakings of Words, Combinations, Miſpriſions, Confederacies, falſe Allegations, Treſpaſſes, Riots, Routs, Retainers, Eſcapes, Contempts, Oppreſſions; and of other Articles and Offences in the ſame *Letters Patents* of our ſaid Lord the King, ſpecified; As alſo, the Acceſſaries of the ſame, within the County aforeſaid, as well within Liberties as without, by whomſoever and howſoever had, done, perpetrated or committed; and of other Articles and Circumſtances concerning the Premiſes howſoever; and the ſame Treaſons, and other the Premiſes, to hear and determine according to the Law and Cuſtom of this Kingdom of *England*; being aſſigned by the Oaths of *Henry Aſhurſt*, Eſq; *Edward Gavell*, *John Radford*, *John Warral*, *William Hanmar*, *Robert Pritchard*, *John Tredder*, *Gilbert Ureweyn*, *David Collivex*, *Abraham Harriſon*, *Charles Morgan*, *Philip Trehearn*, *John Collier*, *Robert Whiterod*, *William Webb*, *Thomas Edwards* and *Abraham Tillent*; honeſt and lawful Men of the County aforeſaid, Sworn and Charged to enquire for our ſaid Lord the King, and the Body of the County aforeſaid; upon their Oaths, it was preſented, That *Thomas White*, late of the Pariſh of St. *Giles* in the *Fields*, in the County of *Middleſex*, Clerk, otherwiſe called *Thomas Whitebread*, late of the Pariſh aforeſaid, in the County aforeſaid, Clerk; *John Fenwick*, late of the Pariſh aforeſaid, in the County aforeſaid, Clerk; *William Harcourt*, late of the Pariſh aforeſaid, in the County aforeſaid, Clerk, otherwiſe called *William Harriſon*, late of the Pariſh aforeſaid, in the County aforeſaid, Clerk; *John Gaven*, late of the Pariſh aforeſaid, in the County aforeſaid, Clerk; and *James Corker*, late of the Pariſh aforeſaid, in the County aforeſaid, Clerk, as falſe Traytors againſt the moſt Illuſtrious, moſt Serene and Excellent Prince, our late Sovereign Lord King *Charles* II. by the Grace of God, of *England*, *Scotland*, *France* and *Ireland*, King; Defender of the Faith, *&c.* Their Supreme and Natural Lord; not having the fear of God in their Hearts, nor weighing the Duty of their Allegiance; but being moved, and ſeduced by the Inſtigation of the Devil, the Cordial Love, the true, due, and Natural Obedience, which true and faithful Subjects of our ſaid Lord the King, towards him, our ſaid Lord the King, ſhould, and of right ought to bear; wholly withdrawing, and contriving, and with all their might intending the Peace and common Tranquility of this Kingdom of *England* to diſturb; and the true *Worſhip of God* within this Kingdom of *England* uſed, and by Law eſtabliſhed, to overthrow; and the Government of this Kingdom of *England*, to Subvert, and Sedition and Rebellion within this Kingdom of *England*, to move, ſtir up, and procure; and the Cordial Love, and true, and due Obedience, which true and faithful Subjects of our Lord the King, towards him the ſaid Lord the King, ſhould, and of right ought to bear, utterly to withdraw; put out, and extinguiſh; and our ſaid late Lord the King to death and final Deſtruction to bring, and put, the 24*th* Day of *April*, in the 30*th* Year of the Reign of our ſaid late Lord King *Charles* II. *&c.* at the Pariſh of St. *Giles* in the *Fields*, in the County of *Middleſex* aforeſaid, with diverſe other falſe Traytors againſt our ſaid late Lord the King, to the Jurors aforeſaid unknown, falſly, ſubtilly, adviſedly, maliciouſly and trayterouſly did purpoſe, compaſs, imagine, and intend Sedition and Rebellion within this Kingdom of *England* to move, ſtir up and procure, and a miſerable ſlaughter among the Subjects of our ſaid Lord the King to procure, and cauſe; and our ſaid late Lord the King, from the Regal State, Title, Power and Government of his Kingdom of *England*, utterly to deprive, depoſe, caſt down, and diſinherit; and him our ſaid late Lord the King to Death, and final Deſtruction to bring, and put; and the Government of the ſame Kingdom, and the ſincere Religion of God in the ſame Kingdom, rightly and by the Laws of the ſaid Kingdom Eſtabliſhed, at their Will and Pleaſure to change and alter; and the State of this whole Kingdom of *England*, through all its Parts well inſtituted and ordered, wholly to ſubvert, and deſtroy; and War, againſt our late Lord the King, within this Kingdom of *England*, to levy: And to perfect and compleat the ſame, their moſt wicked Treaſons and Trayterous Imaginations, and Purpoſes; They the ſaid *Thomas White*, otherwiſe *Whitebread*, *John Fenwick*, *William Harcourt* otherwiſe *Harriſon*, *John Gaven*, *Anthony Turner*, and *James Corker*, and other falſe Traytors to the Jurors aforeſaid unknown, the aforeſaid 24*th* Day of *April*, in the 30*th* Year aforeſaid, with Force and Arms aforeſaid, at the Pariſh of St. *Giles* in the *Fields* aforeſaid, in the County of *Middleſex* aforeſaid, falſely, maliciouſly, ſubtilly, adviſedly, deviliſhly and Trayterouſly did aſſemble, unite and gather themſelves together; and then and there falſely, maliciouſly, ſubtilly, adviſedly, deviliſhly and Trayterouſly did conſult, conſent and agree our ſaid late Lord the King, to Death and final Deſtruction to bring and put, and the Religion within this Kingdom of *England*, rightly and by the Laws of the ſame Kingdom eſtabliſhed to change and alter, to the Superſtition of the Church of *Rome*, and the Government of this Kingdom of *England* to ſubvert; and that one *Thomas Pickering*, and one *John Grove*, him our ſaid late Lord the King ſhould kill and murder; and that they the ſaid, *Thomas White*, otherwiſe *Whitebread*, *John Fenwick*, *William Harcourt* otherwiſe *Harriſon*, *John Gaven*, *Anthony Turner*, *James Corker*, and other falſe Traytors againſt our ſaid late Lord the King, to the Jurors unknown, a certain number of Maſſes, between them, then and there agreed upon, for the health of the Soul of him the ſaid *Thomas Pickering*, therefore ſhould ſay, celebrate and perform; and therefore ſhould pay unto the ſaid *John Grove*, a certain Sum of Money, between them then and there agreed upon: And that the ſaid *Thomas White*, otherwiſe *Whitebread*, *John Fenwick*, *John Gaven*, *Anthony Turner*, *William Harcourt* otherwiſe *Harriſon*, and other falſe Traytors againſt our ſaid late Lord the King, to the Jurors unknown, in the further Proſecution of the Treaſons and Trayterous Conſultations and Agreements aforeſaid, afterwards (to wit) the ſaid 24*th* Day of *April*, in the

the 30*th* Year aforeſaid, at the aforeſaid Pariſh of St. *Giles* in the *Fields*, in the County of *Middleſex* aforeſaid, falſely, ſubtilly, adviſedly, maliciouſly, deviliſhly, and Trayterouſly, did ſeverally give their Faith each to other; and upon the Sacrament, then and there Trayterouſly did ſwear and promiſe to conceal, and not to divulge their ſaid moſt wicked Treaſons and Trayterous Compaſſings, Conſultations and Purpoſes aforeſaid; ſo between them had, him the ſaid late Lord the King Trayterouſly to kill and murder, and to introduce the *Romiſh* Religion, to be uſed within this Kingdom of *England*, rightly and by the Laws of this Kingdom Eſtabliſhed to alter and change; and that the ſaid *Thomas White* otherwiſe *Whitebread*, *John Fenwick*, *William Harcourt* otherwiſe *Harriſon*, *John Gaven*, *Anthony Turner*, *James Corker*, and other falſe Traytors to the Jurors aforeſaid unknown, in further Proſecution of the Treaſons and Trayterous Intentions and Agreements aforeſaid, afterwards (to wit) the ſaid 24*th* Day of *April*, in the 30*th* Year aforeſaid at the Pariſh aforeſaid, in the County aforeſaid, falſely, ſubtilly, adviſedly, maliciouſly, deviliſhly and Trayterouſly, did prepare, perſwade, excite, abet, comfort and Counſel four other Perſons to the Jurors unknown, and Subjects of our ſaid late Lord the King, him our ſaid late Lord the King, Trayterouſly to kill and murder, againſt the Duty of their Allegiance, and againſt the Peace of our ſaid late Lord the King, his Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided; whereupon, it was Commanded the Sheriff of the County aforeſaid, that he ſhould not omit, *&c.* But ſhould take them to anſwer, *&c.*

Which Indictment the ſaid Juſtices of our Lord the King, afterwards (to wit) at the Goal-delivery of our ſaid Lord the King, of *Newgate*, holden by Adjournment for the County of *Middleſex*, at *Juſtice-Hall* in the *Old Bailey*, in the *Suburbs* of the City of *London*, on *Friday* (to wit) the 13*th* Day of *June*, in the 31ſt Year aforeſaid, before Sir *James Edwards*, Knight, Mayor of the City of *London*; Sir *William Scroggs*, Knight, Lord Chief Juſtice of His Majeſty's Court of *King's-Bench*; Sir *Francis North*, Knight, Lord Chief Juſtice of His Majeſty's Court of *Common-Pleas*; Sir *Thomas Allen*, Knight and Baronet, one of the Aldermen of the ſaid City of *London*; Sir *George Jefferies*, Knight, Recorder of the ſaid City of *London*; and other their Companions, Juſtices of our ſaid Lord the King, aſſigned to deliver his Goal of *Newgate* of the Priſoners in the ſame being, by their own proper Hands did deliver there, in the Court of Record, in form of Law to be determined: And thereupon, at the ſaid Goal-delivery of our Lord the King, of *Newgate*, holden by the Adjournment aforeſaid, for the County aforeſaid, at *Juſtice-Hall* aforeſaid, the ſaid *Friday* the 13*th* of *June*, in the 31ſt Year aforeſaid, before the aforeſaid Juſtices of our ſaid late Lord the King laſt named, came the ſaid *Thomas White*, otherwiſe *Whitebread*, *John Fenwick*, *William Harcourt*, otherwiſe *Harriſon*, *John Gaven*, and *Anthony Turner*, under the Cuſtody of Sir *Richard How*, Kt. and Sir *John Chapman*, Knight, Sheriff of the County aforeſaid; into whoſe Cuſtody, for the Cauſe aforeſaid, they were before that time Committed; being brought to the Bar there, in their proper Perſons; who were committed to the aforeſaid Sheriff, *&c.* And immediately being ſeverally demanded concerning the premiſes aforeſaid, in the Indictment aforeſaid ſpecified, charg'd upon them as above, how they would thereof acquit themſelves; the ſaid *Thomas White*, otherwiſe *Whitebread*, *John Fenwick*, *William Harcourt*, otherwiſe *Harriſon*, *John Gaven*, and *Anthony Turner*, did ſeverally ſay, That they were *Not* thereof *Guilty*: And thereupon, for Good and Bad, did ſeverally put themſelves upon the Country. And thereupon, upon the Indictment aforeſaid laſt recited, at the Seſſion of our Lord the King, at the *Juſtice-Hall* in the *Old Bailey*, it was ſo far proceeded, that the Iſſue aforeſaid between our ſaid late Lord the King, and the ſaid *Thomas White*, otherwiſe *Whitebread*, *John Fenwick*, *William Harcourt*, otherwiſe *Harriſon*, *John Gaven*, and *Anthony Turner*; afterwards (to wit) the aforeſaid *Friday*, the 13*th* Day of *June*, in the 31ſt Year aforeſaid, at *Juſtice-Hall* aforeſaid, by a certain Jury of the Country in that behalf duly impanell'd, Sworn and Charged, was Tried; and that upon the Tryal of the Iſſue aforeſaid laſt mentioned, between our ſaid late Lord the King, and the ſaid *Thomas White*, otherwiſe *Whitebread*, *John Fenwick*, *William Harcourt*, otherwiſe *Harriſon*, *John Gaven*, and *Anthony Turner*, at *London* aforeſaid, (to wit) at the *Juſtice-Hall* in the *Old Bailey* aforeſaid, in the Pariſh of St. *Sepulchre* in the Ward of *Faringdon* Without, *London*, aforeſaid, the ſaid Defendant, *Titus Otes*, was alſo a Witneſs produced on behalf of our ſaid late Lord the King, upon the Tryal aforeſaid, upon the Indictment laſt aforſaid: And he, the aforeſaid *Titus Otes*, then and there at the Seſſion laſt aforeſaid, at the *Juſtice-Hall* aforeſaid, in the Court of the ſame Seſſion (to wit) at the Pariſh and Ward aforeſaid, was duly ſworn upon the *Holy Goſpels of God*, to ſpeak and teſtify the Truth, the whole Truth, and nothing but the Truth, of, and in the Premiſes, in the Iſſue aforeſaid laſt mentioned, ſo as aforeſaid joyned between our ſaid late Lord the King, and the ſaid *Thomas White*, otherwiſe *Whitebread*, *John Fenwick*, *William Harcourt*, otherwiſe *Harriſon*, *John Gaven*, and *Anthony Turner*. And that the ſaid *Titus Otes* then and there, at the Seſſion aforeſaid laſt mentioned, in the *Juſtice-Hall* aforeſaid, in the Court of the ſame Seſſion, upon his Oath aforeſaid, upon the Indictment laſt aforeſaid, by his own proper Act and Conſent, of his moſt wicked Mind, falſely, voluntarily, and corruptly did ſay, depoſe, ſwear, and give in Evidence to the *Jurors* of the *Jury* aforeſaid laſt mentioned, ſo as aforeſaid Sworn and impanell'd to try the Iſſue aforeſaid between our ſaid late Lord the King, and the ſaid *Thomas White*, otherwiſe *Whitebread*, *John Fenwick*, *William Harcourt*, otherwiſe *Harriſon*, *John Gaven*, and *Anthony Turner*. That *William Ireland* (one *William Ireland*, then before Convicted and Executed for High Treaſon againſt our late Lord the King, meaning) took his Leave of him the ſaid *Titus Otes* and others, at the Chamber of the ſaid *William Ireland*, then being in *Ruſſel-ſtreet* (a certain Street, called *Ruſſel ſtreet*, lying within the City of *Weſtminſter*, in the County of *Middleſex*, meaning) between the 8*th* and 12*th* Day of *Auguſt*, in the Year of our Lord 1678. Whereas, in truth and in deed, the ſaid *William Ireland* did not take his Leave

of

of the ſaid *Titus Otes*, or any other Perſons whatſoever, at the Chamber of the ſaid *William Ireland*, then being in *Ruſſel ſtreet* aforeſaid, between the ſaid 8 and 12 Days of *Auguſt*, in the Year of our Lord 1678. And ſo the ſaid *Titus Otes*, upon the ſaid *Friday* the 13*th* Day of *June*, in the 31ſt Year aforeſaid, at the Seſſion laſt aforeſaid, at the *Juſtice-Hall* aforeſaid, in the Court of the ſame Seſſion, upon the Indictment laſt aforeſaid, ſo put in Iſſue, and Tryed as aforeſaid, between our ſaid late Lord the King, and the ſaid *Thomas White*, otherwiſe *Whitebread*, *John Fenwick*, *William Harcourt*, otherwiſe *Harriſon*, *John Gaven*, and *Anthony Turner*, by his own proper Act and Conſent, and of his moſt wicked Mind, falſely, voluntarily, and corruptly, in manner and form aforeſaid, did commit voluntary and corrupt Perjury, to the great Diſpleaſure of *Almighty God*, in manifeſt contempt of the Laws of this Kingdom of *England*, to the evil and pernicious Example of all others in the like Caſe offending, and againſt the Peace of our Sovereign Lord the King, his Crown and Dignity. Upon this Indictment he has been Arraigned; and thereunto hath pleaded, *Not Guilty*: And for his Tryal, hath put himſelf upon the Country, and His Majeſty's *Attorney-General* likewiſe; which Country you are. Your Charge is, To enquire, whether the Defendant, *Titus Otes*, be *Guilty* of the Perjury he ſtands Indicted, or *Not Guilty*. If you find him *Guilty*, you are to ſay ſo: If you find him *Not Guilty*, you are to ſay ſo, and no more: And hear your Evidence.

Sir *George Jefferies.* *L. C. J.* Look ye, Mr. *Attorney*, my Lord Chief Juſtice *Jones* has ſent to know, whether you have any thing to do with him to Day, here?

Sir *Robert Sawyer.* Mr. *At. Gen.* Not at all, that I know of.

L. C. J. Mr. *Otes*, Do you intend to make uſe of my Lord Chief Juſtice *Jones*, or any of the Judges of the *Common Pleas*, as Witneſſes?

Otes. Yeſterday, my Lord, I did call for them, to have made uſe of them, as Witneſſes.

L. C. J. But have you any thing to ſay to them to Day?

Otes. I cannot tell, as yet.

L. C. J. Then my Lord Chief Juſtice *Jones* muſt be told, That he does not know, whether he ſhall, or not. Go on, Sir *Samuel Aſtry*.

Then Proclamation was made for Information, *and* Evidence *was made in uſual manner.*

Mr. *Phipps.* May it pleaſe your Lordſhip, and you, Gentlemen of the Jury; This is an Indictment againſt *Titus Otes*, Clerk, for Perjury: And this Indictment ſets forth, That *William Ireland*, *Thomas Pickering*, and *John Grove*, in the 30*th* Year of the late King, were Indicted of High Treaſon, and Tryed at the *Old Bailey*; and at that Tryal, the Defendant, *Titus Otes*, was produced a Witneſs for the King; and being ſworn to tell the Truth, the whole Truth, and nothing but the Truth; did falſely, voluntarily, and corruptly depoſe, and ſwear, and give in Evidence to the Jury that did try that Cauſe, That the ſaid *William Ireland* was in Town (within the Cities of *London* and *Weſtminſter*, or the Places adjacent, meaning) upon the Firſt or Second Day of *September*, in the Year 1678. Whereas, in truth, the ſaid *William Ireland* was not in Town, nor within the Cities of *London* and *Weſtminſter*, or the Places adjacent, upon the Firſt or Second Day of *September*, in the Year 1678. And ſo the ſaid *Titus Otes* hath committed wilful and corrupt Perjury. And the Indictment further ſets forth, That upon the 13*th* Day of *June*, in the 31ſt Year of the late King, *Thomas White*, otherwiſe *Whitebread*, *John Fenwick*, *William Harcourt*, otherwiſe *Harriſon*, *John Gaven*, and *Anthony Turner*, were Indicted and Tryed at the *Old Bailey* for Treaſon; and at that Tryal, the ſaid *Titus Otes* was a Witneſs produced on the part of the King: And being ſworn to teſtify the Truth, the whole Truth, and nothing but the Truth; by his own Act and Conſent, of his own moſt wicked Mind, falſely, voluntarily, and corruptly did depoſe, and ſwear, and give in Evidence to the Jury, That *William Ireland* (one *William Ireland*, before that time Convicted and Executed for High Treaſon, meaning) did take his Leave of him the ſaid *Titus Otes*, at his the ſaid *William Ireland*'s Chamber, then being in *Ruſſel Street*, between the 8*th* and 12*th* Day of *Auguſt*, in the Year of our Lord 1678. Whereas, in truth, the ſaid *William Ireland* did not take his Leave of him the ſaid *Titus Otes*, or of any other Perſons whatſoever, at his the ſaid *William Ireland*'s Chamber, then being in *Ruſſel-Street* aforeſaid, between the ſaid 8*th* and 12*th* Day of *Auguſt*, in the Year of our Lord 1678. And ſo the ſaid *Titus Otes* did then and there commit wilful and corrupt Perjury. And this is laid to be to the great Diſpleaſure of *Almighty God*, in contempt of the Laws of this Land, to the evil and pernicious Example of all others in the like Caſe offending, and againſt the King's Peace, Crown, and Dignity. To this he has pleaded, *Not Guilty*. If we prove it, we do not queſtion, but you will find him *Guilty*.

Mr. *At. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury; Mr. *Otes* ſtands Indicted for having perjured himſelf: The Inſtances, Gentlemen, that we charge him with, are theſe: Firſt, What he ſwore at the Tryal of *Ireland*; and we ſay, that at that Tryal he did ſwear *Ireland* was in Town the 1ſt or 2d of *September*, 1678. The ſecond Inſtance is, What he ſwore at the Tryal of the five Jeſuits; and there we ſay, he did ſwear, That *Ireland* was in Town between the 8*th* and 12*th* of *Auguſt*, and that he took his Leave of him here in Town at his Chamber in *Ruſſel-Street*; and we do charge him by this Indictment, that he has forſworn himſelf in both Inſtances: And that *Ireland*, Gentlemen, was neither in Town between the 8*th* and 12*th* of *Auguſt*, nor the 1*ſt* or 2*d* of *September*. And we ſhall make it out very evidently; For, Gentlemen, as to the Proof in this Caſe, our Caſe ſtands thus; We ſay, That the 3*d* of *Auguſt*, 1678. *Ireland* went into *Hartfordſhire*, to a Houſe of my Lord *Aſton*'s; and from thence went into *Staffordſhire*. I will not ſtand to open the Particulars, where he was every Day; but we ſhall give you an Account, in a Method very eaſie to be remembered and obſerved, where he was till the 14*th* of *September*. But one remarkable Inſtance, Gentlemen, I deſire to take particular notice of; and that is the Time of *Pancras* Fair, which is upon the 2d of *September* always, a known Day, and a known Place

place in that Country. Now we have among the reſt, many Witneſſes to prove, That Mr. *Ireland* was there that Day, and not in Town. And when we have proved this, as we ſhall by a whole Cloud of Witneſſes, I believe, you Gentlemen of this Jury, will no more doubt, that Mr. *Otes* is Forſworn in theſe Particulars, than the Jury Yeſterday did in that Particular; nor than, I believe, the whole Kingdom does by this time.

Mr. *Sol. Gen.* My Lord, we ſhall go to our Evidence; and firſt, we produce the Records of the two Tryals of *Ireland*, and the five Jeſuits. Swear Mr. *Swift*. [*Which was done.*

Pray, Sir, put in the Records. Are thoſe true Copies?

Mr. *Swift*. My Lord, I examined theſe Records with the Originals, and they are true Copies.

Mr. *At. Gen.* Mr. *Otes*, Will you have them read? Or to ſave the time of the Court will you agree them?

Otes. My Lord, I conſent to ſave the time of the Court; if they ſhall be made uſe of for Evidence for me.

L. C. J. No doubt, they are Evidence for you, as well as againſt you, when they are produced here.

Mr. *Sol. Gen.* If Mr. *Otes* does admit the Records, then ſhall we go on, and prove what he did ſwear at thoſe Tryals; and for the firſt part of the time, which is between the 8*th* and 12*th* of *Auguſt*, we deſire that Mr. *Thomas Harriot*, and Mr. *Rainsford Waterhouſe* may be ſworn. [*Which was done.*

Mr. *At. Gen.* Mr. *Harriot*. Pray do you remember at the Tryal of the five Jeſuits, was Mr. *Otes* produced and ſworn as a Witneſs?

Mr. *Harriot*. Yes, he was, my Lord.

Mr. *At. Gen.* Do you remember what Teſtimony he gave about *Ireland*'s being in Town, and when it was, he ſaid, he was in Town?

Mr. *Harriot*. My Lord, he did poſitively ſwear, that Mr. *Ireland*, the late Jeſuit, did take his leave of him the ſaid *Otes* and others, at the ſaid *Ireland*'s Chamber in *Ruſſel-ſtreet*, betwixt the 8*th* and 12*th* of *Auguſt*, 1678.

Mr. *Sol. Gen.* Were you of the Jury that tryed the five Jeſuits, Mr. *Harriot*?

Mr. *Harriot*. Yes, I was Foreman of that Jury.

Mr. *Sol. Gen.* What ſay you, Mr. *Waterhouſe*? Were you preſent at that Tryal?

Mr. *Waterhouſe*. Yes, I was of the Jury too.

Mr. *Sol. Gen.* What did *Otes* ſwear at that Tryal?

Mr. *Waterhouſe*. He ſaid, That Mr. *Ireland* took his leave of him the 12*th* of *Auguſt*. My *Lord Chief Juſtice Scroggs* then asked him, are you ſure it was the 12*th*? And then he ſaid, He would not be poſitive it was the 12*th*, but between the 8*th* and 12*th* it was, I am poſitive upon my Oath.

Mr. *At. Gen.* It is ſo in the Print too; but we will now go on.

L. C. J. But will the Defendant ask theſe Witneſſes any Queſtions?

Otes. My Lord, if your Lordſhip pleaſe, I will ask Mr. *Harriot* a Queſtion.

L. C. J. Ay, do, ask him what you will.

Otes. Mr. *Harriot*. Did I ſwear, that he took his leave of me, or I took my leave of him?

Mr. *Harriot*. You ſwore, that *Ireland* took his leave of you and others, between the 8*th* and 12*th* of *Auguſt*, 1678. between thoſe two Days, and in that Year.

Mr. *Juſt. Withins*. It is a nice Queſtion, that of yours, Mr. *Otes*, upon my Word.

Otes. My Lord, I know what reaſon I have to ask that Queſtion; I am ſure in Perjury, the Court ought to keep up the Witneſſes ſtrictly to what is laid in the Indictment.

L. C. J. Well, you have his Anſwer according to the Indictment.

Otes. Pray, my Lord, be pleaſed to ask Mr. *Harriot* this Queſtion, whether he took Notes of the Tryal?

Mr. *Harriot*. Yes, I did ſo, Sir.

Otes. My Lord, I deſire to know of Mr. *Harriot*, whether he has thoſe Notes by him?

Mr. *Harriot*. No, Sir, I have them not here; but I have had them by me this four or five Years, or more. It was my manner in all the Tryals, wherein I was concern'd as a Jury-man, to read the Tryals ſtrictly over, when they were printed, eſpecially where I happened to have any Notes, that I took at the Tryal; and to compare the printed Tryal with my Notes; and where I found any thing doubtful, I uſed to put a Query upon it. And this and many other things, I found to be in the printed Tryal ſtrictly according to my Notes.

Otes. My Lord, I deſire to know, what Tryal he was Foreman at?

Mr. *Harriot*. That of the Five *Jeſuits*, in *June*, the 13*th* of *June*, 1679.

L. C. J. Have you any thing to ask Mr. *Waterhouſe*?

Otes. Yes, my Lord. Pray, Sir, let me ask you a Queſtion.

Mr. *Waterhouſe*. Ay, if you pleaſe, Sir.

Otes. Did you take Notes of that Tryal you ſpeak of, Sir?

Mr. *Waterhouſe*. No, I did not.

Otes. How come you then to remember this, That I was ſo poſitive as to the time betwixt the 8*th* and 12*th* of *Auguſt*?

Mr. *Waterhouſe*. Becauſe I was one of the Jury; and becauſe my Lord Chief Juſtice made a ſtop, when you ſaid, 'Twas the 12*th* of *Auguſt*; and bid you conſider: And you conſider'd, and conſider'd it; and did affirm poſitively, That it was between the 8*th* and 12*th* of *Auguſt*.

L. C. J. He gives you a plain Reaſon for his Remembrance.

Otes. My Lord, I have done with him.

Mr. *Sol. Gen.* Then we deſire Mr. *Foſter* may be ſworn. [*Which was done.*

Mr. *Foſter*, Pray will you tell what you remember Mr. *Otes* ſwore at Mr. *Ireland*'s Tryal, about *Ireland*'s being in Town?

Mr. *Foſter*. I was one of the Jury at the Tryal of Mr. *Ireland*, Mr. *Pickering*, and Mr. *Grove*; and I did ſee Mr. *Otes* ſworn, as a Witneſs for the King, at that Tryal; and ſo was Mr. *Bedloe*: And *Bedloe* there gave Evidence, That there was a Meeting at *Harcourt*'s Chamber; and *Ireland*, *Grove*, and *Pickering* was there: And that this was the latter End of *Auguſt*. Mr. *Ireland* did make his Defence, as much as he could, to prove, That he was not in Town from the Beginning of *Auguſt*, to the Middle of *September*; and brought divers Witneſſes. But upon his denying to be here the latter End of *Auguſt*, Mr. *Otes* did come and ſwear: *I am certain* (ſays he) *that the Firſt or Second of* September, *he was in Town; for then I had of him Twenty Shillings.*

Otes. Was I positive, that he was here in Town the 1st or 2d of *September*?

Mr. *Foster.* You were positive, Sir, to the 1st or 2d; I have it in my Notes in Writing.

L. C. J. He tells you, It is in his Notes: And therefore he's sure you said so.

Mr. *At. Gen.* In the Printed Copy, if it be right, there is mention made of the Word *Positive.*

L. C. J. I think, that is in *August*, between the 8th or 12th he was positive.

Otes. Did I say these Words, *I was positive*?

Mr. *Waterhouse.* I say, you affirmed that he was in Town the 1st or 2d of *September.*

L. C. J. It is not necessary, that you should use the Word *Positive:* The Question is, Whether it was positively affirmed?

Mr. *Just. Withins.* Was not that true that you said? Did not you affirm a positive Truth?

Otes. My Lord, I'll tell you the Reason why I ask the Question, because I have forgot my self, whether I us'd the Word or no; and therefore I ask for my own Information now.

L. C. J. Well, ask for what Reason you will, you have receiv'd an Answer to your Question; and upon my Word he gives a notable Evidence: Says he, *Bedloe* had sworn a treasonable Practice by *Ireland*, in the latter end of *August.* Then *Ireland* comes, and makes his Defence: Says he, *That cannot be; for I was out of Town at that time: I was not in* London *all* August, *nor the beginning of* September. Then come you in, to support the Testimony of *Bedloe*; and swear, that he was in Town the 1st or 2d of *September*; for then he gave you Twenty Shillings. And so you come to rivet the Matter that was sworn before by *Bedloe.*

Otes. My Lord, What I swore was Truth.

L. C. J. That is now to be tryed.

Mr. *At. Gen.* We have another of the Jury here, Mr. *John Byfield:* Pray, swear him.

[*Which was done.*

Mr. *Sol. Gen.* Well, Sir, what did you hear *Otes* swear at that Tryal?

Mr. *Byfield.* I heard the same that they have testified before.

L. C. J. But you must tell us what that was.

Mr. *Sol. Gen.* Were you a Jury-man at that Tryal?

Mr. *Byfield.* Yes, I had a Summons to the *Old Bailey.*

L. C. J. But what did *Otes* swear? That's the Question.

Mr. *Byfield.* Mr. *Otes* did positively assert, That *Ireland* was here in Town the 1st or 2d of *September*; and to confirm it, he said, He receiv'd of him Twenty Shillings.

Mr. *At. Gen.* Now, my Lord, we shall go to our Evidence to prove, That all this is absolutely false: For *Ireland* went out of Town into *Staffordshire*, and did not return till after the 9th of *September.* And for this, we call *Anne Ireland.*

[*Who was sworn.*

Mr. *Sol. Gen.* Mrs. *Ireland*, Pray, where did you take your Leave of your Brother Mr. *Ireland*, who was Executed in *Summer* 1678. and when?

Mrs. *A. Ireland.* I took my Leave of him the beginning of *August.*

Mr. *Sol. Gen.* What Day in *August* do you remember?

Mrs. *A. Ireland.* The 3d of *August.*

Mr. *Sol. Gen.* Where was it?

Mrs. *A. Ireland.* In my own Lodging.

L. C. J. Where was your Lodging?

Mrs. *A. Ireland.* In *Russel-street, Covent-Garden.*

L. C. J. Now tell us again the time when it was?

Mrs. *A. Ireland.* It was on *Saturday* Morning, as I remember, the 3d of *August*, the *Saturday* after St. *Ignatius*'s Day.

L. C. J. How come you to remember so particularly, that it was then?

Mrs. *A. Ireland.* Because upon St. *Ignatius*'s Day, we were invited to Mr. *Gifford*'s at *Hammersmith*; my Brother, my Mother, and I, were invited to stay all Night: But my Brother refused to stay, because——

L. C. J. Which Brother? What was his Name?

Mrs. *A. Ireland. William Ireland.*

L. C. J. Did they stay there?

Mrs. *A. Ireland.* No, my Lord; my Brother came home on foot, but we stayed all Night.

Mr. *At. Gen.* Here is an Almanack of that Year: And the 3d of *August* was on a *Saturday.*

Mrs. *A. Ireland.* He said he could not stay, because he was to go into the Country upon *Saturday.* I ask'd him, *Why he would set out on* Saturday? And says he, *I'll go to* Standen; *there I shall meet with my Lord* Ashton, *and his Family; and have an Opportunity to go with him into* Staffordshire.

L. C. J. She says, he went out of Town on *Saturday* after St. *Ignatius*'s Day; which was *Saturday* the 3d of *August:* But there being a Discourse between her and her Brother, why he should make choice of a *Saturday*; which she thought, it seems was an inconvenient Day to take a Journey on. And upon that, her Brother made Answer again, That that Night he would only go to *Standen*, to my Lord *Ashton*'s House, where he should meet with Company to go along with him into *Staffordshire.*

Mr. *At. Gen.* What Day of the Week was St. *Ignatius*'s Day?

Mrs. *A. Ireland.* St. *Ignatius*'s Day was on a *Wednesday.*

L. C. J. What Day of the Month is St. *Ignatius*'s Day?

Mrs. *A. Ireland.* It is either the last Day of *July*, or the 1st of *August.*

L. C. J. Look on your Almanack, if you have any one of that Year, Mr. Attorney.

Mr. *At. Gen.* We have no such Saint in our Almanack.

Mrs. *A. Ireland.* It was, as near as I can remember, the 3d of *August*, that he went out of Town.

Mr. *Sol. Gen.* The 3d of *August*, at that time, was on a *Saturday.*

Lord *Petre.* St. *Ignatius*'s Day is always the last Day of *July*, my Lord.

Mr. *At. Gen.* In this Almanack another Saint has justled him out; and that is Bishop *German.*

L. C. J. And in my Almanack, a third has justled them both out; but my Lord *Petre* says, it is always the last of *July*; and that was on a *Wednesday* that Year.

Mrs. *A. Ireland.* I remember it was on a *Wednesday.*

L. C. J.

L. C. J. And you are ſure he went out of Town the *Wedneſday* after?

Mrs. *A. Ireland.* Yes, I am ſure he went out of Town then; for I ask'd him, Why he would go on a *Saturday*? And he told me he would go but to *Standen* that Night.

Mr. *Sol. Gen.* And that does hold, according to the Computation, to be the 3d of *Auguſt*.

Otes. My Lord, She is not poſitive in this, that he went out of Town the 3d of *Auguſt*.

Mr. *At. Gen.* Yes, but ſhe is; for ſhe ſays, that ſhe was the *Wedneſday* before (which was St. *Ignatius*'s Day) with him a little way out of Town.

L. C. J. And that it was *Saturday* after he went out of Town; and ſhe gives the Reaſon, that ſhe entred into a Diſcourſe with him, why he would go on *Saturday*? And he made that Anſwer which you hear.

Mr. *Juſt. Withins.* Mr. *Otes* knows what Day St. *Ignatius*'s Day is upon, I preſume.

Otes. It is the laſt Day of *July*, I think.

Mr. *Sol. Gen.* In our Proteſtant Almanacks, it ſeems, we give another Biſhop place.

Mr. *At. Gen.* Mrs. *Ireland*, When did you ſee him again?

Mrs. *A. Ireland.* Juſt a Fortnight before *Michaelmas*, and not before.

L. C. J. You were his near Relation, I ſuppoſe?

Mrs. *A. Ireland.* Yes, my Lord, I was his Siſter.

L. C. J. Pray, when he came to Town again, where did he lodge?

Mrs. *A. Ireland.* He uſed to lodge at the ſame place where we did always; and in the mean time, while he was abſent, my Mother lent one Mrs. *Eagleſton* his Lodging.

L. C. J. Is that Perſon, you lent his Chamber to in his Abſence, here?

Mrs. *A. Ireland.* No, my Lord.

L. C. J. When did ſhe enter upon his Lodging?

Mrs. *A. Ireland.* Truly, my Lord, I cannot tell; her Maid fell ſick, and ſo ſhe came down a pair of Stairs lower into his Lodging. It was in a ſhort time after he went out of Town, my Lord, as I remember.

L. C. J. When did he come to Town again, do you ſay?

Mrs. *A. Ireland.* He came to Town again a Fortnight before *Michaelmas*; it was that Day Fortnight before *Michaelmas*, that *Michaelmas day* fell on——

L. C. J. Have you any Queſtions to ask her, Mr. *Otes*?

Otes. My Lord, I deſire to know, Why ſhe did not give this Evidence before? Or whether ever ſhe did give this Evidence at any of the Tryals?

Mrs. *A. Ireland.* Yes, I was at my Brother's Tryal; and there I gave the ſame Evidence.

Otes. Were you there at the Tryal of the five Jeſuits? And did you give the ſame Evidence then?

Mrs. *A. Ireland.* No, I was not call'd.

L. C. J. But were you there?

Mrs. *A. Ireland.* I was in the Court at the ſame time, but was not Examined.

Otes. What Year is it you ſpeak of, that he went out of Town the 3d of *Auguſt*?

Mrs. *A. Ireland.* The Year 78.

Otes. I deſire, my Lord, to ask this Gentlewoman, what Religion ſhe is of?

Mrs. *A. Ireland.* I am a Roman Catholick, my Lord.

Otes. I deſire to know, whether her Name be *Ireland* or *Ironmonger*?

Mrs. *A. Ireland.* My right Name is *Ironmonger*; but becauſe of his Profeſſion, he went by the Name of *Ireland*; and for his ſake we go by that Name too.

Otes. By what Name did you give Evidence at *Ireland*'s Tryal?

Mrs. *A. Ireland.* By that Name of *Ireland*.

L. C. J. Why, Mr. *Otes*, that is a good Name enough to be called by; you may remember, you were called *Titus Ambroſius*, and *Sampſon Lucy*, at St. *Omers*.

Mr. *At. Gen.* Swear Mrs. *Elianor Ireland*.

[*Which was done.*

Mr. *At. Gen.* When did your Son go out of Town?

Mrs. *El. Ireland.* The 3d of *Auguſt*.

Mr. *Sol. Gen.* Are you ſure it was the 3d of *Auguſt*?

Mrs. *El. Ireland.* Yes, I am ſure it was.

Mr. *Sol. Gen.* What Year was it?

Mrs. *El. Ireland.* My Memory is not good for that; I cannot tell what Year, my Daughter can.

Mr. *Sol. Gen.* Was it the ſame Year he was tryed afterwards?

Mrs. *El. Ireland.* Yes, it was the ſame Summer; at *Michaelmas* after he was taken up.

Mr. *Sol. Gen.* What time did he return again out of the Country?

Mrs. *El. Ireland.* The 14th of *September* after.

Otes. My Lord, I would ask her, Whether or no ſhe gave this Evidence at her Son's Tryal?

Mrs. *El. Ireland.* Yes, I was a Witneſs there; but they would not permit me to ſpeak half ſo much; they would hardly let me ſpeak at all.

Otes. I deſire to know, whether ſhe was an Evidence at the five Jeſuits Tryals?

Mrs. *El. Ireland.* No, I was not there then.

Mr. *At. Gen.* Pray ſwear Mrs. *Duddle*, and Mrs. *Quino*. [*Which was done.*

Mr. *Sol. Gen.* Come, Mrs. *Duddle*; Do you remember when Mr. *Ireland* went out of Town, in the Year 78?

Mrs. *Duddle.* To the beſt of my remembrance, it was the 3d of *Auguſt*.

Mr. *Sol. Gen.* Why do you think it was the 3d of *Auguſt*?

Mrs. *Duddle.* He went for a Recreation out of Town three Days before, which was upon an Holiday, St. *Ignatius*'s Day; and he went out of Town one Night then, and he came and ſtayed but two Nights after; and went out of Town upon the *Saturday*.

L. C. J. Did he ſtay out of Town one Night?

Mrs. *Duddle.* Yes, he ſtay'd out of Town all Night.

L. C. J. Are you ſure he ſtay'd all Night?

Mrs. *Duddle.* I am ſure he ſtay'd but one Night.

L. C. J. But what ſay you to that, Mr. Attorney? This Witneſs contradicts the other.

Mr. *Juſt. Withins.* Ay, plainly.

Mrs. *Duddle.* Mrs. *Ireland*, and Mrs. *Anne Ireland*, and he, went out upon a Recreation out of Town, it being Holiday; and I remember well, that was of a *Wedneſday*: And that *Saturday*

turday he went away, and never came again till a Fortnight before *Michaelmas*.

L. C. J. But mind my Queſtion, Woman.

Mrs. *Duddle.* Yes, my Lord.

L. C. J. Did he come home that Night he went on the Recreation?

Mrs. *Duddle.* I do not know.

L. C. J. But juſt now you ſwore, he ſtay'd out all Night.

Mrs. *Duddle.* No, my Lord.

L. C. J. Yes, but you did though; prithee mind what thou art about.

Mrs. *Duddle.* I do not ſay, He; but I am ſure his Siſter and the Company ſtay'd out that Night. I remember very well, he went the third Day after, which was *Saturday*. And Mr. *Jenniſon* came to ask for him three Weeks after: And there was a Perſon of Quality with him in the Coach; I think, it was Sir *Miles Wharton*. And he asking for him, they gave him an account, that they had not heard from him ſince he went; which was then three Weeks after he was gone. And I remember well, he did not come to Town again till a Fortnight before *Michaelmas*.

L. C. J. How can you tell that?

Mrs. *Duddle.* My Lord, I can tell it very well: For I was almoſt every Night in the Room where he uſed to lie; and there lay a Gentlewoman there, that I knew.

L. C. J. What was her Name?

Mrs. *Duddle.* Mrs. *Eagleſton*.

L. C. J. How comes ſhe to lie there?

Mrs. *Duddle.* Her Maid fell ſick, and ſhe chang'd her own Chamber, and lay there all the time he was out of Town.

Otes. My Lord, Is this good Evidence?

L. C. J. Ay, why not?

Otes. My Lord, I think ſhe contradicts the other Witneſs: For ſhe ſays, he lay out two Nights.

L. C. J. No, there you are miſtaken too. But I tell you what I did obſerve before. Mrs. *Anne Ireland* ſwore, that they did ſtay all Night; but Mr. *Iroland* refuſed to ſtay there; but would go home, becauſe he was to go his Journey on *Saturday*. Then this Woman comes; and ſhe ſaid at firſt, that he went out of Town on the *Wedneſday*, and ſtay'd out all Night; and lay at home but two Nights, and then went away. But now, when I put her in mind to take care what ſhe ſaid, ſhe ſwears, She is ſure the Siſter lay out; but ſhe is not ſure of *Ireland*'s lying out: But ſhe is poſitive he went away on the *Saturday* the 3d of *Auguſt*, and return'd not till a Fortnight before *Michaelmas*.

Otes. My Lord, I humbly conceive, ſhe having once ſworn falſe,——

L. C. J. Ay, but ſhe immediately recollected her ſelf.

Otes. By what Token does ſhe remember it to be the 3d of *Auguſt*?

L. C. J. She ſaid before, it was the *Saturday* after St. *Ignatius*'s Day, which was on a *Wedneſday*, the laſt Day of *July*; and he went then out of Town. She called it by the Name of *Recreation*.

Otes. Was it the *Saturday* after St. *Ignatius*'s Day?

Mrs. *Duddle.* Yes, it was: And I had not remember'd it, but that it was upon that Holiday.

Otes. This is a Roman Catholick, I ſuppoſe, my Lord.

L. C. J. I cannot tell. What Religion are you of?

Mrs. *Duddle.* I am a Roman Catholick, my Lord. Mr. *Jenniſon* knows what I ſay to be true.

Otes. Were you a Witneſs in any of the Tryals at the *Old-Bailey*?

Mrs. *Duddle.* I was in the Court, but was not called.

Mr. *Sol. Gen.* What ſay you, Mrs. *Quino*? When did Mr. *Ireland* go out of Town?

Mrs. *Quino.* I muſt ſay the ſame; It was the 3d Day of *Auguſt*, on a *Saturday*.

L. C. J. How do you know that it was on a *Saturday* the 3d of *Auguſt*?

Mrs. *Quino.* By the ſame Reaſon that ſhe ſpeaks. I mark'd that other Day he went out of Town; and he came again, and his Mother ſtay'd there that Night: And he went on *Saturday* Morning out of Town. I know it very well: For my Husband was his Taylor, and he had ſomewhat to alter in his Cloaths; and I brought it immediately after it was done.

L. C. J. Are you ſure he went out of Town that Day?

Mrs. *Quino.* He went out of the Houſe, and, as I take it, he went out of Town?

L. C. J. Did he ſay, he was to go out of Town?

Mrs. *Quino.* He had his Boots on; and took Horſe at the *Bull-Inn* in *Drury-lane*.

L. C. J. How do you know it?

Mrs. *Quino.* Becauſe his Servant that was there has teſtified it.

Mr. *At. Gen.* Now ſwear my Lord *Aſton*. (*Which was done.*) We'll bring *Ireland* now upon the 3d of *Auguſt* at Night, to my Lord *Aſton*'s Houſe at *Standen*.

Mr. *Sol. Gen.* Pray will your Lordſhip give my Lord and the Jury an account, when Mr. *Ireland* came to your Houſe, and how far he travelled with you afterwards?

Lord *Aſton.* My Lord, Being in Town, I was ſpoke to, and deſired, that Mr. *Ireland* might have the Opportunity of going in my Company down into *Staffordſhire*; which I conſented to. I went out of Town, as I remember, the latter end of *July* 1678. and this ſame Mr. *Ireland* came to me at my Houſe in *Hartfordſhire* at *Standen*, upon the 3d of *Auguſt* at Night.

L. C. J. What Day of the Week was that, my Lord?

Lord *Aſton.* As I remember, it was *Saturday*, and in the Evening.

L. C. J. How long did he ſtay with your Lordſhip?

Lord *Aſton.* My Lord, I ſtay'd till *Monday* at *Standen*; and upon *Monday* he went in my Company to St. *Albans*, which was the 5th of *Auguſt*.

Mr. *At. Gen.* Whither then did you go, my Lord?

Lord *Aſton.* There I met with my Brother and Siſter *Southcoat*.

L. C. J. Sir *John Southcoat* you mean, my Lord.

Lord *Aſton.* Yes, my Lord. And thence, in four Days, we went to my Houſe at *Tixhall*.

L. C. J. Did Mr. *Ireland* travel with you all the Way?

Lord

Lord *Aſton.* I cannot charge my Memory, my Lord, that he did, ſo as particularly to ſwear it: But there he came into my Company ſometimes at *Tixhall*; but I cannot tell the particular Days: Nor could I ſpeak poſitively to thoſe things that I have ſpoke to now, but that I find in my Note-Book, that at that time he did come to my Houſe at *Standen*, and did go with me to St. *Albans*.

Mr. *At. Gen.* Pray, my Lord, Did he go that Journey to *Tixhall* along with you?

Lord *Aſton.* I cannot ſay poſitively that, Mr. Attorney; but I have a general Notion that he did. Nor could I teſtify this ſo poſitively, I ſay, but by Notes that I have of things at that time: Where I have only writ down theſe things concerning Mr. *Ireland*, that he came the 3d of *Auguſt* to my Houſe at *Standen*: That on *Monday* we went together to St. *Albans*; and there met us Sir *John Southcoat*, and my Siſter his Wife; and thence I went to *Tixhall*; and there I arriv'd the 8th of *Auguſt*, which was *Thurſday*.

L. C. J. My Lord, I ask you this Queſtion; you ſay, you have a general Apprehenſion, that he did go with you to *Tixhall*: Pray, did he come with you to *Standen* for that purpoſe, to go with you to *Tixhall*?

Lord *Aſton.* I had no Buſineſs with him at all; but he deſired the opportunity to go down in my Company into *Staffordſhire*.

L. C. J. Pray, my Lord, Do you remember you ſaw him within four or five Days after at *Tixhall*?

Lord *Aſton.* To name particular Days, I cannot; but that I ſaw him ſeveral Days at *Tixhall*, I am ſure.

Otes. My Lord, You ſay that Sir *John Southcoat* went with you to *Tixhall*.

Lord *Aſton.* Yes, he did ſo.

Otes. My Lord, I would ask this Nobleman, Whether he was at the Tryal of the five Jeſuits? Or the Tryal of *Ireland*?

Lord *Aſton.* No, my Lord, I was not.

Otes. Then I would ask my Lord, If he ſaw Mr. *Ireland* executed?

Lord *Aſton.* No, I did not.

Otes. Then I would ask him this Queſtion; Whether the *Ireland* that was executed be the ſame *Ireland* he ſpeaks of?

Lord *Aſton.* Amongſt thoſe that knew him well, I have been told it was the ſame.

Otes. That is but Hear-ſay, my Lord; he does not ſpeak of his own Knowledge.

L. C. J. For that matter, I ſuppoſe, you'll produce ſome other *Ireland*, Mr. *Otes*, if it was not the ſame.

Mr. *At. Gen.* Was it this Mrs. *Ireland*'s Brother, that was here a Witneſs now?

Lord *Aſton.* He was ſo reputed, and ſo looked upon.

L. C. J. That is all one. If any body ſhould ask me, if you were the ſame Mr. *Otes* that was at St. *Omers*; I ſhould ſay, I heard ſo; and it would be very good Evidence, unleſs ſome one elſe were produc'd.

Otes. My Lord, I ſubmit; I will be directed by the Court in any thing that is fair, and not injurious to my Defence.

L. C. J. We will not direct you in any thing that's foul, but pray keep to thoſe Queſtions that are pertinent.

Otes. Are you ſure *Ireland* went the whole Journey with you, my Lord?

Lord *Aſton.* I did anſwer that; I have but a general Notion of it, he came to me for that purpoſe.

Otes. Then my Lord is not poſitive he went with him into *Staffordſhire*.

L. C. J. No, he is not; but I would ask you this Queſtion. My Lord *Aſton*, Do you believe he went with you to *Tixhall*?

Lord *Aſton.* I make no doubt of it, I would pawn all I have in the World upon it; only I cannot ſwear it, becauſe I have it not in my Notes, as I have thoſe two other Days.

Mr. *Juſt. Withins.* Do you like him the worſe, becauſe he is cautious, Mr. *Otes*?

Otes. No, Sir, I do not. But pray, my Lord, ask him, becauſe it is a Queſtion here about a point of time; Whether he remembers, that within eight or ten Days, he ſaw *Ireland* at *Tixhall*?

Lord *Aſton.* I cannot ſay any thing as to that.

Mr. *At. Gen.* Swear Sir *Edward Southcoat*.

[*Which was done.*

L. C. J. I thought you had called him Sir *John Southcoat*.

Mr. *At. Gen.* Sir *John* is ſick, and cannot be here.

Otes. I ſuppoſe my Lord *Aſton* is a Roman Catholick?

L. C. J. Ay, that all the World knows very well; but I tell you what, Mr. *Otes*, I obſerve, he is not ſo eaſy in giving his Oath; nay, he is wonderful cautious in ſwearing; I ſpeak it for his Commendation, not as his Fault, he is not very forward at ſwearing.

Mr. *Juſt. Withins.* Well, what do you ask this Gentleman, Mr. Attorney?

Mr. *At. Gen.* We deſire Sir *Edward Southcoat* would give an account, whether he met Mr. *Ireland* at my Lord *Aſton*'s? And when?

Sir *E. Southcoat.* I was with my Lord *Aſton* in his Company.

L. C. J. When was that, Sir?

Sir *E. Southcoat.* The 4th of *Auguſt* I ſaw Mr. *Ireland* at my Lord *Aſton*'s.

L. C. J. Was it the ſame *Ireland* that was afterwards tryed and executed?

Sir *E. Southcoat.* It was the ſame *Ireland* that was commonly reported. I did not ſee him executed.

Mr. *At. Gen.* Was it the ſame that was reputed to be this old Gentlewoman's Son?

Sir *E. Southcoat.* Yes, it was.

L. C. J. Pray, Sir, go on with your Evidence.

Sir *E. Southcoat.* Upon *Monday* we began our Journey to *Tixhall*, and went that Night to St. *Albans*, where we met my Father and Mother, and thence we continued on our Journey the next Day.

L. C. J. Was he with you there that Day you went to St. *Albans*?

Sir *E. Southcoat.* He was with us, I remember very particularly. It was hot Weather, and my Lord *Aſton* invited him into the Coach; for before he was riding by the Coach-ſide, and there I remember a particular Diſcourſe that he and my Lord *Aſton* had; from thence we went on to *Northampton*, and came the *Tueſday* Night.

L. C. J. Was *Ireland* with you there?

Sir *E. Southcoat. Ireland* was with us there.

Otes. My Lord, I did not well obſerve what this Gentleman ſaid.

L. C. J. Pray mind your Buſineſs your ſelf, he ſpeaks plain enough; go on, Sir.

Sir *Edward Southcoat.* Mr. *Ireland* was with us, I ſay my Lord, all the Journey; and I do remember it particularly by a pretty Horſe Mr. *Ireland* rode upon; and I had a Diſpute with my Couſin, who ſhould buy him; I took particular notice every Day of him, as he rode by the Coach, and Converſed with him every Night in the Inn. We went, I ſay, from St. *Albans* to *Northampton* on the *Tueſday*; from *Northampton* we went to *Coventry* on the *Wedneſday*, and from thence to my Lord *Aſton*'s, at *Tixhall*, on the *Thurſday*.

L. C. J. Come, let us go by degrees. Was Mr. *Ireland* with you, when you went from my Lord *Aſton*'s at *Standen* to St. *Albans*?

Sir *Edward Southcoat.* Yes, he was.

L. C. J. You ſay, it was a hot Day, when you ſet out: And my Lord *Aſton* did invite him into the Coach.

Sir *Edward Southcoat.* Yes, my Lord, he came into the Coach on *Monday*, which was the firſt Day we ſet out; and came that Night to St. *Albans*.

L. C. J. You lay there that Night?

Sir *Edward Southcoat.* Yes, my Lord.

L. C. J. Where did you lie there?

Sir *Edward Southcoat.* At the great Inn, at the *Bull*.

L. C. J. Ay, That is the great Inn.

Sir *Edward Southcoat.* The next Night, my Lord, we came to *Northampton*.

L. C. J. Where did you lie there?

Sir *Edward Southcoat.* We lay at the Sign of the *George*; it was Sir *William Farmer*'s Houſe; but made uſe of for an Inn, becauſe the Town was burnt down.

L. C. J. Was Mr. *Ireland* with you all that Day?

Sir *Edward Southcoat.* He rode with us all the Day.

L. C. J. And you took notice of it, becauſe of his Horſe, you ſay?

Sir *Edward Southcoat.* Yes, he had a very pretty Horſe, my Lord; and my Brother bought the Horſe of him, after we came back again.

L. C. J. Whither went ye the next Day?

Sir *Edward Southcoat.* The next Night we lay at the *Bull* in *Coventry*, and from thence on *Thurſday*, we arrived at my Lord *Aſton*'s, at *Tixhall*.

Mr. *At. Gen.* My Lord, the Jury deſires to know what he ſays? For they have not heard it.

L. C. J. He ſays, Mr. *Ireland* went with my Lord *Aſton* in the *Coach*, it being a hot Day, on *Monday* the 5*th* of *Auguſt*, from *Standen*, my Lord *Aſton*'s Houſe in *Hartfordſhire* to St. *Albans*, and lay there at the *Bull* Inn that Night; that he went the next Day, which was *Tueſday*, the 6*th* of *Auguſt*, with them to *Northampton*. That he rode upon a pretty Horſe, which makes him remember it particularly; and that there was a Diſpute on the Road, who ſhould buy him; and when they came back, his Brother bought him. He ſays, they lay on *Tueſday* Night at *Northampton*, at the *George*, which was a Gentleman's Houſe, which was turned into an Inn, becauſe of the Fire: That he went with them the next Day to *Coventry*, which was *Wedneſday* the 7*th* of *Auguſt*, and lay with them that Night at the *Bull* in *Coventry*; and the next Day, which was *Thurſday* the 8*th* they came, and *Ireland* with them, to my Lord *Aſton*'s Houſe at *Tixhall* in *Staffordſhire*.

Mr. *At. Gen.* Pray Sir *Edward Southcoat*, How long did he ſtay with you at *Tixhall*, at my Lord *Aſton*'s?

Sir *Edward Southcoat.* He ſtaid with us there till the *Tueſday* after; and then we began our Journey from my Lord *Aſton*'s Houſe in *Tixhall* into *Wales*, to St. *Winifred*'s Well.

L. C. J. That is *Holy-Well*, you mean.

Sir *Edward Southcoat.* Yes, my Lord.

L. C. J. You ſay, he ſtayed all *Friday*, *Saturday*, *Sunday*, *Monday*, and till *Tueſday* after you came to my Lord *Aſton*'s at *Tixhall*.

Sir *Edward Southcoat.* Yes, my Lord, he did ſo.

Mr. *At. Gen.* So then, my Lord, we are gotten to *Tueſday* the 13*th* of *Auguſt*, which is paſt the time of the Perjury, that is laid ſecond in the Indictment; but in Point of Time, is the firſt that happened; for he ſwore that *Ireland* took his leave of them, and others here in Town, between the 8*th* and 12*th* of *Auguſt*?

Mr. *Sol. Gen.* Where did you go on *Tueſday*, Sir?

Sir *Edward Southcoat.* Towards *Wales*.

Mr. *Jones.* Was he at *Tixhall* the 12*th* of *Auguſt*?

L. C. J. He ſays, he was there till *Tueſday* the 13th. Pray let us not have the ſame Queſtions repeated over and over again.

Mr. *Sol. Gen.* Where did you go on *Tueſday* Night?

Sir *Edward Southcoat.* We went to *Nantwich*, and lay at the *Holy Lamb* there.

L. C. J. Where were you the next Night?

Sir *Edward Southcoat.* The next Day we reached to St. *Winifred*'s Well.

L. C. J. Where did you lie there?

Sir *Edward Southcoat.* At the *Star*, which is the great Inn there.

L. C. J. It is ſo.

Mr. *At. Gen.* Was Mr. *Ireland* there with you?

Sir *Edward Southcoat.* Yes, he was.

Mr. *At. Gen.* Whither did ye go then?

Sir *Edw. Southcoat.* We ſtaid not but one Day at *Holy-well*; for we arrived there pretty late at Night; and all the Morning we ſpent there, and went away in the Afternoon, and came that Evening to *Cheſter*, and lay there only one Night, and came the next Day to *Tixhall* again.

Mr. *At. Gen.* Which was *Friday* the 16*th* of *Auguſt*.

Mr. *Sol. Gen.* Pray, my Lord, be pleaſed to ask him, Whether this Gentleman Mr. *Ireland* was with them all the while, in this Journey to *Holy-well*?

Sir *Edw. Southcoat.* Every Day particularly; I remember it very perfectly.

Mr. *At. Gen.* After he came to *Tixhall* again, How long did he tarry there?

Sir *Edw. Southcoat.* That I cannot ſo well ſay. I do remember truly, but he was afterwards at my Lord *Aſton*'s at *Tixhall*. I remember ſome ſcambling Days; but I can fix upon only two.

L. C. J. which are they?

Sir *Edw. Southcoat.* I cannot tell what Day of the Month it was, or what Day of the Week; but one Day that I remember him there, was Mr. *Chetwind*'s Race with Sir *Henry Gough*; and one other Day.

L. C. J.

L. C. J. When was that Horſe-Race?

Sir *Edw. Southcoat.* My Lord, I cannot tell what Day of the Month it was.

Mr. *At. Gen.* When was the other time you ſpeak of?

Sir *Edw. Southcoat.* I remember him there one *Thurſday*, upon the *Bowling-green* at *Tixhall*, where there was a particular Company.

Mr. *Sol. Gen.* My Lord, We deſire to know, when his Brother did buy the Horſe of Mr. *Ireland*?

Sir *Edward Southcoat.* When we came back; for he came home with us from my Lord *Aſton's*, and we began our Journey, the 9*th* or 10*th* of *September*, from *Tixhall* to *Kingſton*; and when we arriv'd at my Father's Houſe, my Brother bought the Horſe of him.

L. C. J. Did you come home back again with Mr. *Ireland*, do you ſay?

Sir *Edw. Southcoat.* Yes, my Lord, we did.

L. C. J. When did you ſet out from *Tixhall*?

Sir *Edw. Southcoat.* The ninth of *September*, my Lord, I think it was; I am ſure, it was upon a *Monday*, the 9*th* or 10*th*.

L. C. J. When did you come home?

Sir *Edw. Southcoat.* We were four Days on our Journey.

L. C. J. And did you come ſtraight to *London*?

Sir *Edw. Southcoat.* No, we went to my Father's Houſe in *Surry*.

L. C. J. Which way did you come?

Sir *Edw. Southcoat.* The firſt Night we came to the *Bull* in *Coventry*; and from thence, the next Night, we went to the *Altar Stone* at *Banbury*; and from *Banbury*, we came the third Day to *Agmondiſham* (I think, it is called) a little Town in *Buckinghamſhire*: And from thence the fourth Day, to my Father's Houſe, by *Kingſton* in *Surry*.

Mr. *At. Gen.* And then *Ireland* ſold his Brother his Horſe.

L. C. J. How long was he at your Father's Houſe in *Surry*, Sir *Edward*?

Sir *Edw. Southcoat.* My Lord, we came on the *Thurſday*; and as I take it, he went on the *Saturday* to *London*: My Brother, after he had bought his Horſe, lent him the Horſe to Town; and ſent a Man with him, to bring it back again.

Mr. *At. Gen.* That *Saturday*, my Lord, makes it come juſt to the Fourteenth of *September*; and is the very Day Fortnight before *Michaelmas*-Day.

Otes. My Lord, I deſire to ask this Gentleman, Whether he ſaw *Ireland* all *Auguſt*, and till the Fourteenth of *September* in *Staffordſhire*, and elſewhere? And, how long in *Staffordſhire*?

Sir *Edw. Southcoat.* I cannot ſay, as to any particular Days of the Months, after our coming from *Holy-Well*, till our coming from *Tixhall* to *London*.

L. C. J. Marry, if he did, he would contradict what he had ſaid before: For from the time of coming from *Holy-Well*, to the time of coming back to *London*, he could tell but of two Days, and thoſe uncertain: For he remembers not by the Times, but by other particular Circumſtances.

Otes. Pray, my Lord, be pleaſed to ask him this Queſtion, When was the firſt Day he ſaw him in *September*?

Sir *Edw. Southcoat.* Truly, my Lord, I remember not any Day before we began our Journey home?

Mr. *At. Gen.* But, my Lord, this is his Teſtimony: He was in his Company till the ſixteenth of *Auguſt*. It is true, there were other times that he ſaw him at *Tixhall*; but he cannot particularly ſpeak unto them: But by and by, we ſhall go on to every Day, and prove particularly where he was.

Otes. My Lord, I deſire to know, Was Sir *Edw. Southcoat* at the Tryal of *Ireland* a Witneſs, or no?

Sir *Edw. Southcoat.* No, I was not, my Lord.

Otes. Were you at *Whitebread's* Tryal, Sir?

Sir *Edw. Southcoat.* Yes, I was, and gave the ſame Evidence I give now.

Mr. *Sol. Gen.* Then ſwear Mr. *John Southcoat*. [*Which was done.*

Mr. *At. Gen.* This is Sir *Edward Southcoat's* Brother, my Lord.

L. C. J. What, he that bought the Horſe?

Mr. *John Southcoat.* Yes, my Lord, I bought the Horſe of Mr. *Ireland*.

L. C. J. Well, what do you ask him?

Mr. *At. Gen.* Pray, Sir, When did you meet Mr. *Ireland* in *Auguſt* 1678? And where?

Mr. *John Southcoat.* My Lord, I met with Mr. *Ireland*, upon *Monday* the Fifth of *Auguſt*, at the *Bull*-Inn in St. *Albans*, with my Lord *Aſton*: I came thither that Day with my Father and Mother. And the next Day we went to *Northampton*; and there we inn'd at the Sign of the *George*, Sir *William Farmer's* Houſe; which is an Houſe in the Road, us'd for an Inn ſince the Town was burnt: And I converſed with him every Day, in our Journey. And from thence, the next Day, we went to *Coventry*, to the *Bull*-Inn there; and from thence, to my Lord *Aſton's* (on *Thurſday* Night) at *Tixhall*: There we ſtay'd all *Friday*, *Saturday*, *Sunday*, and *Monday*. Mr. *Ireland* was there; I was with him all the while. And then upon *Tueſday* we ſet out for *Holy-Well* in *Flintſhire*; and went that Night to *Nantwich*, to the *Lamb* there. And the next Day we went through *Cheſter* to *Holy-Well*: We ſtay'd that Night at *Holy-Well*; and the next Day, came back again towards Noon, to *Cheſter*; and there lay that Night: And then the next Night, which was *Friday*, we came back again to *Tixhall*.

L. C. J. Was Mr. *Ireland* with you both thoſe Journeys, all the while?

Mr. *John Southcoat.* Yes, my Lord, he was; I did ſee him, and rode with him every Day.

L. C. J. Pray, Sir, How long were you at *Tixhall*, after you came from *Holy-Well*?

Mr. *John Southcoat.* We ſtay'd there till we came away for good and all.

L. C. J. Was Mr. *Ireland* with you all that time?

Mr. *John Southcoat.* No, he was not?

Mr. *At. Gen.* Do you remember, that Mr. *Ireland* came to *Tixhall* the Ninth of *September*; and came along home with you, when you came?

Mr. *John Southcoat.* Yes, I do remember it very well.

L. C. J. What Day did you come home, Sir?

Mr. *John Southcoat.* We came home in Four Days.

Mr. *Sol. Gen.* When did he leave you?

Mr. *John Southcoat.* We came home upon *Thurſday*, and he went to *London* on *Saturday*.

L. C. J.

L. C. J. Pray, Sir, Can you recollect when you did first see him again at *Tixhall*, after you came from *Holy-Well*?

Mr. *John Southcoat*. My Lord, I cannot tell particularly any Day, till the Day we came away.

L. C. J. Do you remember the Horse-Match between Mr. *Chetwind*, and Sir *Henry Gough*?

Mr. *John Southcoat*. I was there, my Lord; but I do not remember Mr. *Ireland* was there.

L. C. J. How long did he stay at your Father's House in *Surry*, Sir?

Mr. *John Southcoat*. Two Days, my Lord.

Mr. *Sol. Gen.* You lent him your Horse you bought of him, I think, Sir?

Mr. *John Southcoat*. Yes, up to *London*, I did; and I sent my Man with him, to bring him back again.

Mr. *At. Gen.* Has Mr. *Otes* any Questions to ask this Gentleman?

Otes. My Lord, I desire to ask Mr. *Southcoat*, Whether or no he is sure, that *Ireland* was in his Company from the Fifth of *August*, to the Sixteenth?

Mr. *John Southcoat*. Yes, every Day, I am sure of it; I remember it very well.

Otes. Pray, my Lord, ask him, Whether or no he testified this that he now swears, at *Ireland*'s Tryal?

Mr. *John Southcoat*. My Lord, I was not at *Ireland*'s Tryal.

Otes. Then I desire to ask him, Whether or no he did testify this at the Five *Jesuits* Tryal?

Mr. *John Southcoat*. No, I was not sent for to any of the Tryals.

L. C. J. I am sorry you were not, Sir: 'Twas pity you were not there. It might have saved some innocent Blood.

Mr. *At. Gen.* Now swear *Harrison*. [*Which was done.*

Mr. *Sol. Gen.* Pray, will you give an Account, when you saw *Ireland*, and where?

Harrison. In the Year of our Lord 1678. my Master, Sir *John Southcoat*, went with my Lady, on *Monday* the Fifth of *August*, to St. *Albans*; and we came with a Coach and four Horses: For my Master had an old Servant, that had a Pair of Horses, which my Master made use of. And there we met my Lord *Aston*, in the Company of Mr. *Ireland*. And the next Morning, my Lord *Aston* went with my Master and Lady towards *Tixhall*: And I rode by, in Mr. *Ireland*'s Company; and came acquainted with him that Day. That Night we came to *Northampton*; and there we Inn'd at a Stone-House, that was used for the Inn, the Town being burnt before. The next Night we went to *Coventry*; and on *Thursday* we came to *Tixhall*: There we stay'd till *Tuesday*. After we went to *Holy-Well*; and the *Tuesday* Night we lay at *Nantwich*: And thence we went to *Holy-Well*, and stay'd there on *Wednesday* Night: And on *Thursday* we came to *West Chester*; and I parted with him upon the *Friday* at *West-Chester*.

Mr. *At. Gen.* Pray, did you know this *Ireland*? Was it he that was Tryed and Executed?

Harrison. I was at Mr. *Ireland*'s Tryal.

L. C. J. Was it the same Man that was Tryed?

Harrison. My Lord, I saw him at his Tryal, the Hair of his Face was grown, and he was a little disorder'd; he did not look so well, because he was not so well dress'd; but it was the same Man, my Lord.

Mr. *Sol. Gen.* Before this Man goes, we have more Questions to ask him: When did you see him again, after you left him in *Chester* you say?

Harrison. I saw him several times at *Tixhall*; I saw at the *Bowling-green* upon a *Thursday*; and I saw him when the Horse-Race was between Mr. *Chetwind* and Sir *Henry Gough*; I cannot tell what Day it was; for I had no reason to keep an Account of the particular Days at that time.

Mr. *At. Gen.* Did you come up with your Master again the 9*th* of *September*?

Harrison. My Lord, I did so; I have a Note wherein I set down the Charges at that Time. It is in this bit of Paper, which I have kept in my Almanack ever since. My Lord *Aston* sent his Coach with us to *Banbury*, where my Master's Coach was to meet him; but came only to *Coventry* the first Night. The next Night which was *Tuesday*, we came to the *Altar-Stone* at *Banbury*, and there we lay: From thence on *Wednesday*, we came to *Agmondisham*, where we were ill lodged. The next Day we baited at *Uxbridge*, and came to *Kingston*, and so to Sir *John Southcoat*'s House, upon the *Thursday* Night. Upon the *Friday* Mr. *Ireland* sold his Horse to Mr. *John Southcoat*, my Master's Son. Upon the *Saturday* Morning, I came with him from my Master's House towards *London*; he did ride upon the Horse he had sold to Mr. *Southcoat*, and so we came up to Town, and took Water; and I took a little Bagg that belonged to Mr. *Ireland* upon my Arm, and we landed at *Somerset House*, and I came with him to his Lodging in *Russel-street*; and when he came there, he went up Stairs, where were two Women met him, and welcom'd him Home: Said they, *We are glad you are come, we thought we had lost you, because we had never heard from you all this while.* There I took my leave of him, and did not see him again till his Tryal at the *Old-Bailey*, and this was *Saturday* the 14*th* of *September*.

L. C. J. Pray let me see your Paper you speak of. [*Which was delivered in, and the Court look'd upon it.*

L. C. J. Did you write this in your Journey?

Harrison. Yes, my Lord, I did it at that time.

Mr. *At. Gen.* Are the particular Days inserted there, my Lord?

L. C. J. No, they are not, Mr. *Attorney*.

Harrison. I could not write well, it was only but *Memorandums* for my self.

L. C. J. What Day of the Month was the *Saturday* he came to Town?

Harrison. It was the 14*th* of *September*, my Lord.

L. C. J. That agrees with all that the Women said, that he came on *Saturday* a Fortnight before *Michaelmas*, being the same Day of the Week as *Michaelmas-Day* was: Thus far it is as clear as the Sun at Noon-day.

Otes. My Lord, There was a time when this was not believed.

L. C. J. Ay, Mr. *Otes*, we know there was a time, when there were *Ignoramus* Juries, and Things were believed, and not believed, as the Humour

Humour went. What can you, Mr. *Otes*, ſay to it? I muſt needs tell you, *prima facie*, 'tis ſo ſtrong an Evidence, that if you have any Senſe in the World, you muſt be concern'd at it.

Otes. Not at all, my Lord; I know who they are, and what is the end of it all.

L. C. J. Upon my Faith, I have ſo much Charity for you, as my Fellow Creature, as to be concerned for you.

Otes. 'Tis not two ſtraws matter, whether you be or no; I know my own Innocency.

L. C. J. Thou art the moſt obſtinately hardened Wretch that ever I ſaw.

Otes. Pray, my Lord, ask him, whether he did not appear at Mr. *Ireland*'s Tryal? And let it be remember'd what Credit he had then for all this Story he tells now. Theſe People come here to ſerve a Turn only, and care not what they ſwear againſt me.

L. C. J. You muſt hold your Tongue.

Otes. My Lord, I muſt ſpeak the truth, and I will ſpeak the truth.

L. C. J. I think, there is ſcarce a Word of Truth comes out of thy Mouth.

Otes. You may think what you will, my Lord; but theſe Popiſh Traitors, I am ſure, will ſwear any thing, and ſuborn Witneſſes upon Witneſſes againſt me to overthrow the Plot.

Mr. *Juſt. Withins.* If you cannot behave your ſelf better than you do, we muſt ſend you elſewhere; we muſt not ſuffer this Behaviour: And therefore either be quiet, or get you gone.

L. C. J. Let him keep himſelf in order, and we'll hear him. If he think by boiſterous Impudency to outface Juſtice, we will not ſuffer it. Go on, Mr. Attorney.

Mr. *At. Gen.* Swear Mr. *George Hobſon.*

[*Which was done.*

Mr. *Sol. Gen.* Were you in the Journey to *Tixhall* with Mr. *Ireland* and my Lord *Aſton* in 78?

Mr. *Hobſon.* Yes, I was ſo, my Lord.

Mr. *Sol. Gen.* Pray tell all your Knowledge of that Matter.

Mr. *Hobſon.* From the 3d of *Auguſt* till the 16th at Night, I was preſent with him every Day.

L. C. J. How do you know you were?

Mr. *Hobſon.* That is to ſay, the 3d of *Auguſt* he came to my Lord's Houſe at *Standen* in *Hartfordſhire* in the Evening, and there he remained till *Monday* the 5th of *Auguſt*; and that Day in the Morning, he went together with other Company to St. *Albans*, where we met Sir *John Southcoat* and his Lady towards the Evening; and we all lodged there, becauſe that was the appointed Place to meet at: We lodged the 6th of *Auguſt* at Night at *Northampton*; upon the 7th at *Coventry*; upon the 8th at *Tixhall*, my Lord's Houſe, where Mr. *Ireland* remained till *Tueſday* the 13th in the Morning. And upon the 13th in the Morning, we ſet forth with my Lady *Aſton*, my Lord's Mother, and Sir *John Southcoat*, and Mr. *Ireland*, and the other Company, towards a Place called *Holy Well* in *Flintſhire*: That Night, being *Tueſday* the 13th of *Auguſt*, we lodged at *Nantwich* in *Cheſhire*; the *Wedneſday* Night we lodged at *Holy Well*, where Mr. *Ireland* was with the reſt of the Company; and on *Thurſday* Night we returned back again to *Cheſter*, and lay there. Upon *Friday* we came back again to my Lord's Houſe at *Tixhall*. After that I did not ſee Mr. *Ireland* till *Monday* the 26th of *Auguſt*, when he came back again to our Houſe: Where he went in the mean time I cannot tell.

L. C. J. Whoſe Houſe is it that this Man means by our Houſe?

Mr. *Hobſon.* I mean my Lord *Aſton*'s Houſe at *Tixhall.*

L. C. J. You knew him very well, did not you?

Mr. *Hobſon.* Yes, my Lord, I knew him very well.

L. C. J. You ſay, he came back the 26th of *Auguſt* to *Tixhall*?

Mr. *Hobſon.* Yes, as I remember, he did ſo.

Mr. *At. Gen.* How long after the 26th of *Auguſt* was it, that you ſaw him at *Tixhall*?

Mr. *Hobſon.* When he went away for *London.*

Mr. *At. Gen.* When was that?

Mr. *Hobſon.* The 9th of *September.*

L. C. J. Did you come along with him to *London*?

Mr. *Hobſon.* No, my Lord; I ſee him go; he was not in the Coach, but he was in the Company.

Otes. My Lord, I would fain ask him a Queſtion, When he was firſt acquainted with Mr. *Ireland*, that he ſpeaks of?

Mr. *Hobſon.* I never ſaw him till he came to my Lord *Aſton*'s at *Standen.*

Otes. Were you at the Tryal of Mr. *Ireland*, Sir?

Mr. *Hobſon.* No, my Lord, I was not; I was then in *Staffordſhire.*

Otes. Then it is material, my Lord, for me to ask him this Queſtion, it relating to a particular Perſon; whether *Ireland* that was executed, was the *Ireland* he ſays he was with?

L. C. J. I will ask him, if you will. Was that the ſame Man that was afterwards tryed and executed?

Mr. *Hobſon.* I believe it was, my Lord.

Otes. I inſiſt not ſo much upon the Queſtion, but only in reference to the Witneſs, his Acquaintance being ſo ſhort with him.

L. C. J. Truly, I think it is not ſo very ſhort; for he ſwears he was with him from the 3d of *Auguſt* till the 16th every Day.

Mr. *Juſt. Withins.* I have no great Acquaintance with you; but I know you, Mr. *Otes*, becauſe I have ſeen you ſo often.

L. C. J. Is it the ſame *Ireland* that was at the Tryal? You, *Harriſon*, you ſaw him then?

Harriſon. The very ſame, and no other.

Mr. *Juſt. Withins.* Certainly no body doubts that.

L. C. J. 'Tis fit he ſhould have his Queſtion anſwer'd, if the Witneſs can. Pray, go on, Mr. Attorney.

Mr. *At. Gen.* Swear *George North.* (*Which was done.*) Pray, will you give an account where you met Mr. *Ireland*, and whether you was with him in his Journey?

North. My Lord, I ſaw him the 4th of *Auguſt*, which was *Sunday*, at *Standen*, my Lord *Aſton*'s Houſe in *Hartfordſhire*: Upon the 5th, he went with my Lord to St. *Albans*; where my Lord met with Sir *John Southcoat* and his Lady; and I was with them. And from thence we went on *Tueſday* to the *George* at *Northampton*: And from thence, on *Wedneſday* the 7th, to the *Bull*

at *Coventry*. And upon the 8th, we came to *Tixhall*, which was *Thursday*. And from *Thursday* the 8th, to *Tuesday* the 13th, I did see him every Day at my Lord's House at *Tixhall*.

L. C. J. Whither went he then?

North. He went with my old Lady, and some other Company to go to *Holy-Well*.

L. C. J. When did you see him again?

North. I did see him several times after that at *Tixhall*: But I took no particular notice of him again till he went away for *London*.

L. C. J. When was that?

North. I did see him the 9th of *September*. He came to go with Sir *John Southcoat* to *London*: Mr. *John Southcoat*, and he. I took my Leave of him.

Otes. What Religion are you of, Sir?

North. I am a Catholick, my Lord.

Otes. I desire to know, how he comes to remember this so well?

North. I waited at the Table; and he was every Day at Dinner with my Lord.

Otes. Were you at the Tryal of *Ireland* a Witness?

North. No indeed, my Lord, I was not.

Mr. *At. Gen.* Swear *Richard Ingletrap*. [*Which was done.*

Mr. *Sol. Gen.* Pray, will you give an account, whether you knew Mr. *Ireland*, and where you saw him?

Ingletrap. The 1st of *August*, my Lord, I was ordered to be at *Standen* in *Hartfordshire*, to wait upon my Lord *Aston*, to go with him to *Tixhall*. And the 3d of *August*, I saw Mr. *Ireland* there at *Standen* Lodge at my Lord's House. The 4th Day he rested there being *Sabbath-Day*.

Mr. *At. Gen.* What are you, an Hackney-Coach-man?

Ingletrap. Yes, my Lord, I am so. And upon the 5th, which was *Monday*, he went with my Lord *Aston* to St. *Albans*; upon the 6th, to *Northampton*; on the 7th, to *Coventry*; and the 8th Day, to *Tixhall* Lodge. He was in the Company, and went all the way with him; and I was there too.

L. C. J. How long did he stay there?

Ingletrap. Till *Tuesday* the 13th.

L. C. J. Did you see him there till *Tuesday*?

Ingletrap. I do not say, that I did see him every Day.

L. C. J. Did you go with them on *Tuesday* to *Holy-Well*?

Ingletrap. No, I did not.

Mr. *At. Gen.* But, my Lord, you observe, that is past one of the Times that he swore *Ireland* was here in Town; that is, between the 8th and 12th of *August*.

L. C. J. It is so.

Mr. *At. Gen.* Pray, what Religion are you of, Mr. *Ingletrap*?

Ingletrap. I am a Protestant, my Lord?

Otes. Were you at the Tryal of the five Jesuits, or that of *Ireland*?

Ingletrap. No, I was not.

Otes. My Lord, I desire you would ask him, he being a Protestant, How he came to be acquainted with *Ireland*, that was a Priest?

L. C. J. Why, Mr. *Otes*, Is there no Conversation to be between Papists and Protestants?

Otes. Truly very little, my Lord: But that is not to the Point now. I desire to have an Answer to my Question.

Ingletrap. There was no great Acquaintance between us, my Lord; for I never saw him before that time.

Mr. *At. Gen.* Swear *Andrew Wetton*. (*Which was done.*) Did you go that Journey with my Lord *Aston* to *Tixhall*?

Wetton. No. I went from *Tixhall* to *Holy-Well*.

Mr. *At. Gen.* What Day did you set out from *Tixhall*?

Wetton. Upon *Tuesday* the 13th of *August*.

Mr. *Sol. Gen.* Where did you lie that Night?

Wetton. At *Nantwich* at the *Holy Lamb*. And the next Day we baited at *Chester*; and from thence we came the next Night to *Holy-Well*: There we stay'd all Night, and till next Day at Noon. We din'd at *Holy-Well*, and came that Night back to *Chester*: And from thence, the next Day, we came home to *Tixhall*.

L. C. J. Was Mr. *Ireland* there all the while?

Wetton. Mr. *Ireland* was there, I look'd after his Horse.

L. C. J. When did he come first to *Tixhall*?

Wetton. He came upon the 8th, and stay'd till the 13th; and then went to *Holy-Well*.

Mr. *Sol. Gen.* Pray, what Religion are you of?

Wetton. I am a Protestant, Sir.

Mr. *At. Gen.* And the 9th of *September* he came away from *Tixhall* for *London*, you say?

Wetton. Yes. I saw them take Coach, and he did ride on Horseback.

L. C. J. Did you see him often at *Tixhall*, between the time he came from *Holy-Well* and the time he went to *London*?

Wetton. Yes, he was there several times; but I cannot tell the particular Days: But, my Lord, if you please, I can tell you the very Money he gave me, which was a Shilling and two Six-pences, when we came back from *Holy-Well*.

L. C. J. And the 16th, you say, he came back from *Holy-Well*?

Wetton. Yes, it was the 16th, upon *Friday*, that he came from *Holy-Well*.

L. C. J. And he says, the 9th of *September* he came back again from *Tixhall* to *London*; and that he saw him several times, in the mean time, at my Lord *Aston*'s House.

Mr. *Sol. Gen.* So, my Lord, we are past one of the Times; and have fix'd him at *Tixhall* upon the 16th.

Mr. *At. Gen.* We have a couple of Witnesses more upon this Point, and then we shall go on to the 17th; and so all along to the 9th of *September*.

Mr. *At. Gen.* Swear *Thomas Sawyer*. (*Which was done.*) When came Mr. *Ireland* to *Tixhall*? Can you tell?

Mr. *Sawyer.* He came the 8th of *August* to *Tixhall*, and continued there till the 13th: And then he went away; but whither he went, I cannot tell: But, as I was told, it was to *Holy-Well*.

Mr. *At. Gen.* When did he come to *Tixhall* again?

Mr. *Sawyer.* When my old Lady *Aston* came home, which was *Friday* the 16th.

Mr. *Sol. Gen.* Do you know when he left *Tixhall* for good and all?

Mr. *Sawyer.* the 9th of *September*, my Lord, he went with Sir *John Southcoat* to go to *London*.

L. C. J.

L. C. J. Can you remember he was there at any time between the 16th of *Auguſt*, and the 9th of *September*?

Mr. *Sawyer.* He was once or twice there; but I cannot tell the particular Days.

Mr. *Sol. Gen.* What Perſwaſion are you of, as to Religion, Sir?

Mr. *Sawyer.* I am one of the Church of *England*, my Lord.

L. C. J. Truth is the ſame in all Perſwaſions.

Mr. *Sol. Gen.* But we would obviate Mr. *Otes*'s Objection, That they are all Papiſts.

Mr. *At. Gen.* Swear *Frances Allen.* (*Which was done.*) Pray, will you give an account, when you ſaw Mr. *Ireland* in *Staffordſhire*?

Mrs. *Allen.* He came the 8th Day of *Auguſt* to *Tixhall*, and continued there the 9th, 10th, 11th, 12th, and to the 13th in the Morning, and then he did go to *Holy Well.*

Mr. *At. Gen.* She will tell you one particular Circumſtance, how ſhe remembers him about that time.

Mrs. *Allen.* The 10th of *Auguſt* was *Saturday*; and that which cauſeth me to remember it, is this; There was a Woman, one *Sarah Paine*, I think her Name was, which teſtified at the Tryal, that he was in Town at that time; but he was not: For he was at *Tixhall* upon the 10th, which was *Saturday*; and the 11th, which was *Sabbath-day*: And I ſaw him in the Chamber thoſe Days.

Mr. *At. Gen.* How came you to know him ſo well?

Mrs. *Allen.* I was a Servant to my Lord *Aſton*, and look'd to Mr. *Ireland*'s Chamber, and waſh'd his Linnen; and thoſe Days I ſaw him in his Chamber.

Mr. *At. Gen.* When he went from *Tixhall* to *Holy-Well* the 13th, when did he come back again?

Mrs. *Allen.* The 16th Day, which was *Friday.*

Mr. *At. Gen.* Did he come afterwards to *Tixhall* at any time?

Mrs. *Allen.* He went away the 17th, and I can tell you by a good Token, that he did ſo: For the 17th I carried his Cloaths into his Chamber, that he was to take with him.

Mr. *At. Gen.* When did he come again to *Tixhall*?

Mrs. *Allen.* He came ſeveral times, but truly I cannot tell what Days particularly.

Mr. *Sol. Gen.* Pray, when did he go away for good and all?

Mrs. *Allen.* I remember his going away with Sir *John Southcoat*, but I cannot tell the time.

Mr. *At Gen.* Pray what Religion are you of?

Mrs. *Allen.* I am a Proteſtant of the Church of *England*; ſo I was Chriſtened, ſo I have lived, and ſo I hope to die before you all.

L. C. J. Upon my Word, ſhe is very kind, ſhe has a mind to die before us: 'Tis a ſign ſhe lives a good Life, ſhe's ſo ready to die.

Mr. *At. Gen.* So, my Lord, you ſee that the 17th of *Auguſt*, he departed from my Lord *Aſton*'s. Now we ſhall call Mrs. *Harwell* to give you an account, whither he went on the 17th. Swear Mrs. *Jane Harwell.* [*Which was done.*

Mr. *Sol. Gen.* Where do you live, Mrs. *Harwell*?

Mrs. *Harwell.* I live now in Town, my Lord.

Mr. *Sol. Gen.* Where did you live in the Year 78?

Mrs. *Harwell.* At *Wolverhampton.*

Mr. *Sol. Gen.* Did you know Mr. *Ireland*, he that was executed?

Mrs. *Harwell.* Very well, my Lord.

Mr. *Sol. Gen.* What time did he come to your Houſe at *Wolverhampton*?

Mrs. *Harwell.* The 17th of *Auguſt* 1678.

Mr. *Sol. Gen.* What Day of the Week was it?

Mrs. *Harwell.* Upon *Saturday.*

Mr. *Sol. Gen.* From whence did he ſay he came at that time?

Mrs. *Harwell.* I do verily believe it was from *Tixhall* that he came; I cannot poſitively ſay.

Mr. *Sol. Gen.* How long ſtayed he there?

Mrs. *Harwell.* He came to my Houſe the 17th of *Auguſt* 1678. He ſupped there that Night, and I think he lay in my Houſe every Night till the 26th of the ſame Month. Upon the 19th Day, after Dinner, I went with him a good part of the Town of *Wolverhampton*; and upon *Friday* following, which was the 23d, he went a little way out of Town, to a Fair hard by; and return'd the ſame Day; and ſtayed at my Houſe the next Day, being *Bartholomew-day.* The next Day being the 25th, being *Sunday*, he was at my Houſe, and he ſtayed, as I ſaid, every Night, and lay at my Houſe; and went away on *Monday* the 26th of *Auguſt.* It was, to the beſt of my remembrance, in the Morning.

Mr. *Sol. Gen.* Whither did he ſay he was going, when he went from your Houſe on the 26th?

Mrs. *Harwell.* I think to *Tixhall*, he ſaid.

Mr. *Sol. Gen.* When did you ſee him again after that?

Mrs. *Harwell.* He returned to me again the 14th of *September* following. That Night he ſupped at my Houſe, and lay there; and he ſtayed at my Houſe *Thurſday* the 5th of *September*, *Friday* the 6th, and he went away on the 7th from me for good and all.

Mr. *At. Gen.* Whither did he go then?

Mrs. *Harwell.* To *Tixhall* I think, I cannot tell.

Mr. *At. Gen.* Whence did he ſay he came, when he came laſt to your Houſe; which was *Wedneſday* the 4th of *September*?

Mrs. *Harwell.* Then he ſaid, he came from *Boſcobel* and *Black-Ladies*, and that way.

Mr. *Sol. Gen.* Can you tell any thing that makes you remember he was at *Boſcobel*?

Mrs. *Harwell.* I have ſome Circumſtances that make me believe and remember it.

L. C. J. Ay, tell us what they are.

Mrs. *Harwell.* My Lord, Upon *Monday* the 2d of *September*, I heard Mr. *Ireland* would be at *Boſcobel*, and I ſaid to my Friend that told me ſo; Sure Mr. *Ireland* will not be there that Night, and I ſo near him. *Yes*, ſaid ſhe, *he will. Then*, ſaid I, *I will write to him*; and ſo I did. And I tell you the 4th of *September*, which was *Wedneſday*, he came to my Houſe, and ſtayed that Night, and the two next Days with me, and went away upon the *Saturday* after.

L. C. J. You ſay, you did write to him upon the 2d of *September*?

Mrs. *Harwell.* Yes, I did ſo.

L. C. J. What was the occaſion of your writing to him at that time?

Mrs. *Har-*

Mrs. *Harwell.* One Madam *Dormer*, was then in thoſe Parts, and he being gone a Viſiting his Friends at *Black Ladies*, I writ to him, and deſired him to give her a Viſit, for I knew ſhe would be glad to ſee him.

L. C. J. He came back to you the 4*th* of *September*, you ſay?

Mrs. *Harwell.* Yes, he did ſo, my Lord.

L. C. J. Did he own upon the Fourth of *September*, that he had received your Letter?

Mrs. *Harwell.* He ſaid he had been at the Place, my Lord, but I know not whether he had received my Letter or no; but I am ſure he waited upon my Lady; for ſhe told me ſo afterwards.

Otes. I deſire to know whether this Gentlewoman was at *Ireland*'s Tryal?

Mrs. *Harwell.* No, my Lord, but I heard that upon the 17*th* of *December* following, Mr. *Ireland* was try'd at the *Old Bailey* for High Treaſon. Upon the 19*th*, I was informed by the Poſt what was ſworn againſt him; and particularly as to this time, which I knew to be falſe: And upon my own Coſt and Charges I ſent an Expreſs away to Town here to a Friend that I knew, upon reading the Letter that was written to me, that Mr. *Ireland* was falſely accuſed; and by that Expreſs alſo I ſent a Petition, humbly beſeeching His late Majeſty, that we might bring in Witneſſes to prove, that Mr. *Ireland* was in *Staffordſhire*, when Mr. *Otes* ſwore he was in Town; and upon that the King ſtaid the Execution about five Weeks. We did hope for a ſecond Tryal, but we could not obtain it; and he was executed. I did it at my own Coſt and Charges: For I thought it my Duty, if I could, to ſave his Life, knowing that to be falſe which was ſworn againſt him.

L. C. J. She ſpeaks gravely and ſoberly upon my Word.

Mr. *Juſt. Withins.* So ſhe does indeed.

Mr. *At. Gen.* We have abundance of them, my Lord. Swear Mr. *William Ruſhton.*

[*Which was done.*

Mr. *Sol. Gen.* Tell my Lord what you know of Mr. *Ireland*'s being at Mrs. *Harwell*'s in *Auguſt* 1678, at *Wolverhampton.*

Mr. *Ruſhton.* My Lord, In the Month of *Auguſt* 1678, I did ſee Mr. *William Ireland* at *Wolverhampton* in the County of *Stafford*; and it was upon the 18*th* of *Auguſt*, and I ſaw him there, from the 18*th* to the 25*th*, every one of the Days but one, and that I cannot be poſitive in. He went that Day to *Litchfield*, which was upon the 23d, as I take it, but I cannot be poſitive; but all the reſt of the Days I did ſee him there once, if not twice or thrice a Day.

Mr. *At. Gen.* Where did he lodge then?

Mr. *Ruſhton.* At Mr. *Fyfford*'s, or Mrs. *Harwell*'s.

Otes. Were you at any of the Tryals of *Ireland*, or the five Jeſuits, Sir?

Mr. *Ruſhton.* No, I was never at one till now.

Otes. Pray, my Lord, what Religion is this Gentleman of, I deſire to know?

Mr. *Ruſhton.* Not of your Worſhip's Religion, Doctor *Otes.*

L. C. J. But anſwer his Queſtion.

Mr. *Ruſhton.* I am a Catholick.

Otes. A Roman Catholick he means, I ſuppoſe.

Mr. *Ruſhton.* Yes, I am a Roman Catholick, and a Loyal Subject.

Mr. *Sol. Gen.* Swear Mrs. *Katherine Winford.*

[*Which was done.*

Mr. *At. Gen.* Mrs. *Winford*, Pray did you ſee Mr. *Ireland* at Mrs. *Harwell*'s, the Year 1678?

Mrs. *Winford.* Yes, I did, Sir.

Mr. *At. Gen.* Pray tell the Court what you do know of that Matter.

Mrs. *Winford.* I did hear at *Wolverhampton*, that Mr. *Ireland* came to Town the 17*th* of *Auguſt*, and I did ſee him there the 18*th*, and I did ſee him there the 19*th*, and I did ſee him there the 20*th*, and I ſaw him there upon the 22*d*, 23*d*, 24*th*, and 25*th*, and that was the laſt time I ſaw him there.

L. C. J. At Mrs. *Harwell*'s was it that you ſaw him?

Mrs. *Winford.* Sometimes at Mrs. *Harwell*'s, and ſometimes at my Father's Houſe, who lived in that Town.

Otes. My Lord, I deſire to know how ſhe comes to remember thoſe Days ſo particularly?

Mrs. *Winford.* I remember them, becauſe St. *Bartholomew*'s Day was the 24*th* of *Auguſt*, and that was the *Saturday* after he came to Town; and the firſt Day I ſaw him was the *Sunday* before, and ſo I reckon it to be on thoſe Days I ſaw him.

L. C. J. Have you any other Queſtions to ask her, Mr. *Otes?*

Otes. No, my Lord, I have not; She was a Witneſs before at *Whitebread*'s Tryal, and was not believed there.

L. C. J. Well, make your Remarks by and by, and let them now go on with their Evidence.

Mr. *Sol. Gen.* Then ſwear Mr. *William Stanley.*

[*Which was done.*

Mr. *At. Gen.* Pray, did you ſee Mr. *Ireland* at *Wolverhampton*, and when?

Mr. *Stanley.* Upon the 18*th* of *Auguſt* 78. It was *Sunday*, I ſaw Mr. *Ireland* in *Wolverhampton* in the Morning, and in the Afternoon he was in my own Houſe. Upon *Monday* the 19*th* I ſaw him twice that Day at my own Houſe; I poſitively ſpeak that, and I verily believe I did ſee him on *Tueſday* the 20*th*, and *Wedneſday* the 21*ſt*; but *Thurſday* and *Friday* I cannot ſay I did ſee him thoſe two Days: For he went upon one of them to *Litchfield.* But upon *Saturday* and *Sunday* I am ſure I ſaw him, and two or three times ſome Days.

Otes. Pray, Mr. *Stanley*, did you know him before?

Mr. *Stanley.* No, I did not, Sir.

Otes. Was you at his Tryal?

Mr. *Stanley.* No, I was not.

Otes. Were you at the five Jeſuits Tryal?

Mr. *Stanley.* No, I was not in *London* ſince, till the laſt Term.

Otes. What Religion are you of, Sir?

Mr. *Stanley.* What Religion are you of, Mr. *Otes?*

L. C. J. Nay, do not ask Queſtions, but anſwer the Queſtions he asks.

Mr. *Stanley.* I am a Roman Catholick.

Mr. *At. Gen.* Mr. *Stanley*, Pray can you recollect any Circumſtance how you came to remember that it was ſuch and ſuch Days that you ſaw him?

Mr. *Stanley.* Yes, my Lord, I can.

L. C. J. What are they, tell them us?

Mr.

Mr. *Stanley*. I buried a Child that Morning, being *Sunday* the 18*th* of *Auguſt*, and he came to my Houſe in the Afternoon, and I entertained him with thoſe Things that I had provided for to entertain my Friends at the Funeral. On *Monday* was a Wake, and the young People went all to the Wake, and left Madam *Harwell* alone, and ſo ſhe came with him to my Houſe, and I entertained him with the ſame kind of Entertainment that I did the Day before.

L. C. J. That is a remarkable Circumſtance indeed.

Mr. *At. Gen.* Swear Mrs. *Dorothy Purcell*. [*Which was done.*

What ſay you, Mrs. *Purcell*, when did you ſee Mr. *Ireland*, at *Wolverhampton*?

Mrs. *Purcell*. I ſaw him the 18*th*, 19*th*, 20*th*, 21*ſt*, 22*d*, and 23*d* Days of *Auguſt*, 1678.

Mr. *At. Gen.* Where did you ſee him?

Mrs. *Purcell*. At a Friend's Houſe in *Wolverhampton*.

L. C. J. How come you to remember thoſe Days of the Month?

Mrs. *Purcell*. I remember them by particular Circumſtances.

L. C. J. What are thoſe particular Circumſtances? Let us hear them, How come you to name thoſe very Days, the eighteenth, nineteenth, and ſo on?

Mrs. *Purcell*. I can remember it as well as any thing in the World.

Otes. I deſire, my Lord, that ſhe may tell how ſhe does remember it.

Mrs. *Purcell*. That's enough, and as much as need to be ſaid, I remember very well.

Otes. But I deſire to know how you come to remember it?

Mrs. *Purcell*. I remember it, I tell you, very well; And I do affirm I ſaw him there.

Otes. But you do not tell what Circumſtances you remember it by.

Mrs. *Purcell*. No, there is no need of it, I am ſure I ſaw him there then.

Mr. *At. Gen.* Tell him ſome Circumſtances.

Mrs. *Purcell*. Thoſe were the Days before *Bartholomew* Eve.

Otes. My Lord, Is this any thing of Evidence?

L. C. J. The Jury hears it, and they will conſider of it.

Otes. What Religion are you of, Mrs?

Mr. *Purcell*. Muſt I tell what Religion I am of?

L. C. J. Yes, anſwer his Queſtion.

Otes. I dare ſay ſhe is a Papiſt, ſhe need not trouble her Head to anſwer it.

Mr. *At. Gen.* Swear Mr. *Scott*. [*Which was done.*

Were you at *Wolverhampton* when Mr. *Ireland* was there?

Mr. *Scott*. Yes, I was.

Mr. *At. Gen.* Did you do any Service for him there?

Scott. I look'd to his Horſe.

Mr. *At. Gen.* When did he come thither, do you remember?

Scott. I cannot tell juſt the time that he came in.

Mr. *At. Gen.* What Day of the Week was it that he came thither?

Scott. It was of a *Saturday*.

Mr. *At. Gen.* What Month was it?

Scott. I cannot tell very well what Month it was; it was in *Auguſt* I think.

Mr. *At. Gen.* How long did he continue there?

Scott. The ſpace of a Fortnight off and on.

Otes. Is that Evidence, my Lord, that he has delivered?

L. C. J. It is but very ſmall Evidence. It is only Circumſtantial to confirm the other Teſtimony.

Mr. *At. Gen.* How long was it before *Ireland* was tryed and executed, can you tell that?

Scott. No, I know nothing of it.

Mr. *At. Gen.* Then ſwear Mr. *John Stamford*. [*Which was done.*

Mr. *Sol. Gen.* Did you ſee Mr. *Ireland* at *Wolverhampton*, and when was it, I pray you?

Mr. *Stamford*. My Lord, in the Year 1675. I was ſent beyond Sea to St. *Omers*, to fetch over two young Gentlemen that were Students there; And there I became acquainted with Mr. *Ireland*, who was then Procurator of the Jeſuits at St. *Omers*. And in *Auguſt* 78. I did ſee him in *Wolverhampton*, upon the *Sunday* after the Aſſumption of our Lady; which was the 15*th* of *Auguſt*, he came to ſee me, and I ſaw him there that Day.

L. C. J. What Day of the Month is the Aſſumption of our Lady?

Mr. *Stamford*. That is always the 15*th* of *Auguſt*, my Lord.

Mr. *At. Gen.* How often did you ſee him there?

Mr. *Stamford*. I ſaw him *Sunday* and *Monday*, and till that ſeven Night, I ſaw him every Day in that Week but one, when he went to *Litchfield*.

Otes. My Lord, I deſire to know how he comes to remember that it was at that time?

L. C. J. He tells you a Reaſon for it, becauſe it fell out to be upon the *Sunday* after the Aſſumption of our Lady, which is always the 15*th* of *Auguſt*.

Otes. My Lord, he ſays he came acquainted with Mr. *Ireland* at St. *Omers*.

L. C. J. Yes, he ſays, that was in the Year, 1675.

Otes. I deſire to know, my Lord, what Buſineſs he had there?

L. C. J. He tells you, he went to fetch over two young Men that were Students there.

Otes. Pray, my Lord, I deſire to know what Religion he is of.

L. C. J. What Religion are you of?

Mr. *Stamford*. I am a Roman Catholick.

Otes. I deſire to know what his Profeſſion?

Mr. *Stamford*. I am a younger Brother, of a good and loyal Family as any of the County of *Stafford*, and that ſuffered as much as any for the late King.

Otes. I believe if it were looked into he is ſomewhat elſe beſides a younger Brother.

Mr. *At. Gen.* Yes, he ſays he is of a Loyal Family.

L. C. J. I am ſure there is ſuch a Family in that County that were great Sufferers for King *Charles* I. and the late King; and were very inſtrumental in Services for the late King, at his eſcape from *Worceſter*; but whether he be of that Family or no, I cannot tell.

Mr. *Stamford*. The Doctor thinks I am a Jeſuit, but I'll aſſure him I have a Wife and Children.

Mr. *At. Gen.* Mr. *Otes* was about to have made him a Prieſt, but it ſeems he hath a Wife and Children, and ſo is out of Danger.

Mr. *Sol. Gen.* Pray, ſwear Mrs. *Katharine Fowler.*

[*Which was done.*

Mr. *At. Gen.* Did you ſee Mr. *Ireland*, Mrs. *Fowler*, at *Wolverhampton*, in 1678?

Mrs. *Fowler.* Yes, I did.

Mr. *At. Gen.* When was it?

Mrs. *Fowler.* I did ſee him on *Saturday* the 17th of *Auguſt* at *Wolverhampton*, he came that Day to my Mother's Houſe, where I was.

Mr. *At. Gen.* How long did he ſtay there?

Mrs. *Fowler.* Till the 27th, which was *Monday* was Seven-night after, I was in his Company every Day in that time unleſs it were *Friday*, which Day they ſay he went to *Litchfield* to the Fair.

L. C. J. Is Mrs. *Harwell* your Mother?

Mrs. *Fowler.* Yes, my Lord, ſhe is, and I lived at that time with my Mother.

L. C. J. How do you remember this, have you any Tokens that you can give us, why you remember it was then?

Mrs. *Fowler.* My Lord, I recollected my ſelf after Mr. *Ireland*'s Tryal, in which Mr. *Otes* ſwore that he was here in Town between the 8th and 12th of *Auguſt*, that that was the very Month that Mr. *Ireland* was in *Wolverhampton*, and thereupon I concluded that Mr. *Otes* had not ſworn true by that Recollection when it was freſh in my Memory, being within half a Year after.

Otes. Madam, Are you Mrs. *Harwell*'s Daughter?

Mrs. *Fowler.* Yes, I am ſo, Sir.

Otes. Did you not know one Mr. *Jenniſon*?

Mrs. *Fowler.* Which *Jenniſon*?

Otes. Mr. *Robert Jenniſon.*

Mrs. *Fowler.* Yes, I do know him.

Otes. Are you not a kin to him?

Mrs. *Fowler.* Yes, but I am ſorry to own I have ſuch a Relation.

Mr. *At. Gen.* Swear Mr. *Gifford.*

[*Which was done.*

Mr. *Sol. Gen.* Did you ſee Mr. *Ireland* in *Staffordſhire*, and when, I pray you?

Mr. *Gifford.* I ſaw him there at *Wolverhampton* the 17th of *Auguſt* 1678, and he continued there till the 26th, I ſaw him there every Day.

Otes. Pray, my Lord, be pleaſed to ask this Gentleman, whether he were at the Tryal of *Ireland*?

Mr. *Gifford.* No, I was not in Court, nor examined as a Witneſs.

Otes. Were you at the Tryal of the five Jeſuits, Sir?

Mr. *Gifford.* I was there, but was not examined.

L. C. J. Was it every Day, ſay you, that you ſaw him at *Wolverhampton*?

Mr. *Gifford.* Every Day.

L. C. J. They ſay, he was one Day out of Town at *Litchfield.*

Mr. *Gifford.* He was out of Town that Day, but I ſaw him.

Mr. *At. Gen.* Swear Mrs. *Elizabeth Gifford.*

[*Which was done.*

Mr. *Sol. Gen.* You hear the Queſtion, Did you ſee Mr. *Ireland* in *Staffordſhire* in 78, and when?

Mrs. *E. Gifford.* Mr. *Ireland* came to *Wolverhampton* the 17th of *Auguſt*, and continued there till the 26th.

Mr. *At. Gen.* How do you remember it?

Mrs. *Gifford.* By a Wake that was juſt hard by, that was at that time; and he came to my Uncle's Houſe upon the *Sunday* following the Aſſumption of our *Lady.*

Mr. *At. Gen.* Did you ſee him every Day till the 26th?

Mrs. *Gifford.* I remember I did ſee him every Day but two Days that I was abroad at the Wake.

Otes. My Lord, I deſire to know, whether ſhe was examined at any of the former Tryals?

Mrs. *Gifford.* Yes, at the five Jeſuits Tryal, I was.

Otes. Were you not at *Ireland*'s Tryal?

Mrs. *Gifford.* No, I was not.

Otes. There was one *Gifford* examined there.

Mr. *At. Gen.* Swear Mrs. *Elizabeth Keeling.*

[*Which was done.*

Mr. *Sol. Gen.* Did you ſee Mr. *Ireland* at *Wolverhampton*, and when?

Keeling. Yes, my Lord, I did ſee Mr. *Ireland* at *Wolverhampton.*

Mr. *Sol. Gen.* Pray tell when it was.

Keeling. It was the 17th of *Auguſt* he came to my Miſtreſs's Houſe.

Mr. *Sol. Gen.* What *Auguſt*?

Keeling. Auguſt before the Plot.

L. C. J. Who was your Miſtreſs?

Keeling. Mrs. *Harwell*, my Lord.

Mr. *Sol. Gen.* How long did he continue there?

Keeling. He came on the *Saturday*, and I ſaw him there till the *Monday.* When I was ſent for to my Mother's Burying I left him and Madam *Dormer* at Dinner, and came back on the *Thurſday.* And in his Chamber I heard him diſcourſe, but I did not ſee him. Upon the *Friday* he went abroad, and returned again that Night. Upon the *Saturday* I ſaw him, and he continued there till *Monday* Morning, and then he went away, and returned on *Wedneſday* the 4th of *September*, and ſtayed till *Saturday* the 7th; and then went away from *Wolverhampton.*

Otes. I deſire to know what Religion this Woman is of?

Keeling. I am a Roman Catholick, God be thanked.

Mr. *At. Gen.* Mrs. *Keeling*, When did Mr. *Ireland* return again do you ſay, after he went firſt to *Wolverhampton*?

Keeling. It was the *Wedneſday* ſeven-night after, Sir.

Mr. *At. Gen.* That was the 4th of *September.*

L. C. J. How long ſtayed he there then?

Keeling. Till *Saturday* in the Forenoon.

Mr. *At. Gen.* Whither did he ſay he was going then?

Keeling. He ſaid he went to *Bellamour* to Dinner.

L. C. J. Did you ſee him at any time after?

Keeling. No, my Lord, I ſaw him no more.

Mr. *At. Gen.* Then ſwear Mr. *Richardſon.*

[*Which was done.*

Mr. *Sol. Gen.* Pray, Sir, will you give an account when you ſaw Mr. *Ireland* and where, in the Year 78?

Mr. *Richardſon.* My Lord, I ſaw a Gentleman that I was informed was Mr. *Ireland*, at *Wolverhampton*, at a Wake; which was *Monday* the 19th of *Auguſt.*

Mr. *At. Gen.* Where did he lodge?

Mr. *Richardſon.* At Mrs. *Harwell*'s.

Mr. *At.*

Mr. *At. Gen.* What, Are you a Tradeſman?

Mr. *Richardſon.* Yes, an Apothecary in *Wolverhampton.*

L. C. J. How many Days did you ſee him at *Wolverhampton?*

Mr. *Richardſon.* I ſaw him only one Day in the Market-place.

L. C. J. You did not know Mr. *Ireland* before?

Mr. *Richardſon.* But I was informed that was he.

L. C. J. What became of that *Ireland* that you were informed was at *Wolverhampton* then?

Mr. *Richardſon.* I heard preſently after that, upon Mr. *Otes*'s Plot, he was ſecured and executed.

Mr. *At. Gen.* What Religion are you of, pray, Sir?

Mr. *Richardſon.* I am of the Church of *England.*

Otes. Pray, Sir, I would ask you this Queſtion.

Mr. *Richardſon.* As many Queſtions as you pleaſe, Mr. *Otes.*

Otes. Who told you it was Mr. *Ireland?*

Mr. *Richardſon.* Mrs. *Harwell.*

Otes. When was it ſhe told you it was *Ireland?*

Mr. *Richardſon.* To the beſt of my Remembrance, it was before he was apprehended as a Traitor.

Otes. He is uncertain when he was told ſo.

L. C. J. Well, make what Advantage you can of it by and by.

Mr. *At. Gen.* Swear Mrs. *Eleanor Graves.*

[*Which was done.*

Mr. *Sol. Gen.* Pray, Miſtreſs, did you ſee Mr. *Ireland* at *Wolverhampton* at any time?

Mrs. *Graves.* Yes, I did, my Lord.

Mr. *Sol. Gen.* When was it?

Mrs. *Graves.* The firſt time was ſix Years ago in *Auguſt*, it is now going on ſeven Years ſince.

Mr. *At. Gen.* What time in *Auguſt* was it?

Mrs. *Graves.* The firſt Day was the 20th or 21ſt, I am ſure I ſaw him upon the 22d; for I din'd with him, and was with him all the Afternoon, and ſupp'd with him. Upon the 23d we went to *Litchfield* together, which was *Bartholomew* Eve. And I ſaw him the 25th, which was *Sunday* after.

L. C. J. Are you ſure it is the *Ireland* we are now ſpeaking of?

Mrs. *Graves.* They ſaid it was the ſame Mr. *Ireland* that was executed. They call'd him ſo.

L. C. J. Nay, there is no great Doubt, but only for Mr. *Otes*'s Satisfaction.

Mr. *At. Gen.* At whoſe Houſe did he lie at *Wolverhampton?*

Mrs. *Graves.* At Mrs. *Harwell*'s.

Mr. *At. Gen.* Where was it you ſupp'd with him, I pray you?

Mrs. *Graves.* He din'd and ſupp'd at a Relation's Houſe of mine.

L. C. J. Who was that? Name him.

Mrs. *Graves.* It was at my Uncle *Winford*'s.

L. C. J. Did you go along with him to *Litchfield* do you ſay on the 23d?

Mrs. *Graves.* Yes, and ſo did my Uncle; and at Night we came back together.

Mr. *Sol. Gen.* What Religion are you of, Miſtreſs?

Mrs. *Graves.* I am of the Church of *England.*

Otes. My Lord, I deſire to ask her, How did ſhe know it was the ſame *Ireland* that was tryed?

Mrs. *Graves.* It was the ſame *Ireland* that they ſaid was afterwards executed. I know no more.

Mr. *Sol. Gen.* Did you go back with him to Mrs. *Harwell*'s from *Litchfield?*

Mrs. *Graves.* I did, to my Uncle *Winford*'s Houſe.

Mr. *At. Gen.* Now we come, my Lord, to another Period of Time, which is from the 26th of *Auguſt*, to the 29th; and for that we firſt call Sir *Thomas Whitegrave*, who is a Juſtice of the Peace, and a worthy Gentleman; a Member of the Church of *England* in that County. Swear him. [*Which was done.*

Mr. *Sol. Gen.* Pray, Sir *Thomas*, will you be pleaſed to give the Court an account, whether you ſaw Mr. *Ireland* in *Staffordſhire* 1678, and what time it was?

Sir *Thomas Whitegrave.* I ſaw Mr. *Ireland* upon the 29th of *Auguſt* before the Popiſh Plot; it was upon a *Thurſday* in the Afternoon upon *Tixhall* Bowling-green; and I diſcourſed with him; he told me he was to go home that Night with Sir *James Simmons*, and Mr. *Heveningham.* They told me afterwards he went on *Saturday* to *Hilderſham*, and went thence on *Monday* following towards *Boſcobel*; ſome time after that, a Rumour came down that Mr. *Ireland* was accuſed with others, of being in a Plot of the Papiſts; and my ſelf and ſome others that were in Commiſſion for the Peace in that County, did reflect upon the time that *Ireland* was in the Country, and we were a little diſturbed, becauſe he had been at particular Places among our Neighbours, whom we knew to be Catholicks.

Mr. *At. Gen.* Can you remember no Day but that one, Sir *Thomas?*

Sir *Thomas Whitegrave.* Only the 29th I ſaw him there, and diſcours'd with him; and afterwards there was Word ſent to me, to deſire me that I would come up to *London* at his Tryal.

L. C. J. And did you come up, Sir *Thomas?*

Sir *Thomas Whitegrave.* No, I did not; I had no *Subpœna*; and being a Juſtice of the Peace, I did not think fit to leave the Country at that time without a *Subpœna.*

Otes. My Lord, I deſire to know of this Gentleman, how long he had been acquainted with Mr. *Ireland?*

Sir *Thomas Whitegrave.* I never ſaw him before, nor ſince.

L. C. J. He goes no further than the 29th.

Mr. *At. Gen.* No, my Lord, he does not. Then ſwear Mr. *William Fowler.*

[*Which was done.*

Mr. *Sol. Gen.* Pray, will you give an account when you ſaw Mr. *Ireland*, and where?

Mr. *Fowler.* I ſaw Mr. *Ireland* upon the 27th of *Auguſt* 78. in *Staffordſhire*, at a Horſe Race at *Etching-hill.* The Race was run between Sir *Henry Gough* and Captain *Chetwind.*

Mr. *Sol. Gen.* Did you ſee him any other Day in that Month?

Mr. *Fowler.* Yes, the 29th of *Auguſt* I ſaw him at *Tixhall* Bowling-green.

Mr. *Sol.*

Mr. *Sol. Gen.* When elſe did you ſee him?

Mr. *Fowler.* I ſaw him the 10th of *Auguſt* before.

Mr. *Sol. Gen.* Where, at *Tixhall*, at my Lord *Aſton*'s Houſe?

Mr. *At. Gen.* Do you remember Sir *Thomas Whitegrave* was upon the Bowling-green the 27th of *Auguſt*?

Mr. *Fowler.* Yes, he was, and did diſcourſe with Mr. *Ireland* there.

L. C. J. What became of Mr. *Ireland* afterwards?

Mr. *Fowler.* He went about the Country for ſome time, my Lord.

L. C. J. Was it the ſame *Ireland* that was executed?

Mr. *Fowler.* Yes, it was the ſame.

L. C. J. You ſay you ſaw him the 29th at *Tixhall* Bowling-green?

Mr. *Fowler.* Yes, I did ſo.

L. C. J. When you heard he was taken up for the Plot, what did they ſay whither he went at that time?

Mr. *Fowler.* I think he went to Mr. *Heveningham*'s, or thereabouts.

Otes. I would fain know this Gentleman's Religion.

Mr. *Fowler.* I am a Roman Catholick.

L. C. J. We ask it only becauſe Mr. *Otes* deſires to be ſatisfied in that Point.

Mr. *At. Gen.* Pray ſwear Mr. *Howard.*

[*Which was done.*

Mr. *Sol. Gen.* What time in *Auguſt* 78 did you ſee Mr. *Ireland* in *Staffordſhire*, and where?

Mr. *Howard.* I came out of *Shropſhire* upon the 27th of *Auguſt*, to the Horſe Race at *Etching-hill*; and there I ſaw this Mr. *Ireland* upon the 28th. I dined at one Mr. *Herbert Aſton*'s Houſe at *Bellamore*, and there I ſaw him again.

Mr. *At. Gen.* What other time did you ſee him?

Mr. *Howard.* Never any other time.

Otes. How does he know it was the ſame Mr. *Ireland*?

Mr. *Howard.* I came up to Town ſoon after, and they told me that knew him, that it was the ſame *Ireland* that ſuffer'd.

Mr. *At. Gen.* Swear Mr. *Drayton.*

[*Which was done.*

Mr. *Sol. Gen.* Where did you ſee Mr. *Ireland*?

Mr. *Drayton.* At *Etching hill* Race.

Mr. *At. Gen.* What Day was that?

Mr. *Drayton.* That was the 27th of *Auguſt* 1678.

Mr. *At. Gen.* When did you ſee him after?

Mr. *Drayton.* The next Day following I did not ſee him; but the *Thurſday* following I ſaw him at *Tixhall*, and he went home with Mr. *Heveningham* to *Aſton*, and I ſaw him on *Friday*, he was with us there, and went a fiſhing, and we catch'd a great Pike of a Yard long; which was not ordinary with us. Upon the 31ſt, which was *Saturday*, my Maſter went to kill a Buck in the Park, and Mr. *Ireland* went along with him, and they went to a little Village hard by, and there I parted with him, and did ſee him no more that Day. Mr. *Gerrard* of *Hilderſham* was to meet my Maſter a hunting, but he was ſick, and did not: Then upon *Sunday* the 1ſt of *September*, I was ſent to ſee Mr. *Gerrard* of *Hilderſham*, and there I ſaw Mr. *Ireland.*

L. C. J. Who was your Maſter, pray you?

Mr. *Drayton.* This Lord *Gerrard* of *Bromeley*'s Father.

Mr. *At. Gen.* He was accuſed by *Dugdale* of the Plot, and died afterwards in *Newgate.*

Otes. Pray ask Mr. *Drayton* what Religion he is of?

Mr. *Drayton.* I am a Roman Catholick.

Mr. *At. Gen.* Swear Sir *James Simmons.*

[*Which was done.*

Mr. *Sol. Gen.* When did you ſee Mr. *Ireland*, Sir *James*?

Sir *J. Simmons.* Upon *Tueſday* the 27th of *Auguſt* 78, I remember very well, I ſaw Mr. *Ireland* at the Horſe Race at *Etching-hill*, between Sir *Henry Gough*, and Mr. *Chetwind*; and I remember particularly, that Sir *Henry Gough*'s Horſe diſtanc'd him. I did not ſee him before he came to the Inn, but there we met, and drank together. And *Thurſday* the 29th of *Auguſt*, being at *Tixhall* Bowling-green, Mr. *Ireland* was there, and came home with my Father *Heveningham* and me, and ſome Gentlemen in the Country; and came to *Aſton*, and ſtay'd there that Night. I remember the next Day was *Pancraſs* Fair, and I went to the Fair, and did not come home.

Mr. *At. Gen.* What Day of the Month is that Fair uſually kept?

Sir *J. Simmons.* It is an unconſtant time; now and then in *September*, now and then in *Auguſt*; and that Year we had a Subſcription to get it regulated to a certain Day.

L. C. J. Did you ſee him after?

Sir *J. Simmons.* My Lord, I cannot ſwear to the *Saturday*, becauſe I cannot ſo well tell whether I came back from the Fair on *Friday* Night, I think I did not.

Mr. *At. Gen.* Swear Mr. *Green.*

[*Which was done.*

Mr. *Sol. Gen.* Did you know Mr. *Ireland*?

Mr. *Green.* Yes, my Lord, I did.

Mr. *Sol. Gen.* When did you ſee him in 78?

Mr. *Green.* The firſt time was *Etching-hill* Race, the 27th of *Auguſt.*

Mr. *Sol. Gen.* What other Days do you remember?

Mr. *Green. Thurſday* the 29th I ſaw him; I belong to Sir *James Simmons*, and Mr. *Ireland* came home with him, and ſome other Gentlemen to Mr. *Heveningham*'s at *Aſton*, and was a ſetting with him on *Friday* the 30th in the Afternoon. And *Saturday* the 31ſt he was a hunting with Mr. *Gerrard*. Nay, more than that, I ſaw him drawn on the Sledge, but not executed. And that was the ſame Man that was there at that time.

Otes. What Religion is this Gentleman of?

Mr. *Green.* I was ever a Roman Catholick.

L. C. J. Pray were they a fiſhing that Day?

Mr. *Green.* In the Morning he was, and they got a great Pike; I ſaw the Pike and did eat part of it.

Mr. *At. Gen.* Swear Mr. *Fallas.*

[*Which was done.*

Mr. *Sol. Gen.* When did you ſee Mr. *Ireland*, Sir?

Fallas. Upon the *Thurſday* after Sir *Henry Gough*'s Race, which was *Thurſday* the 29th of *Auguſt*, Mr. *Ireland* came to Mr. *Heveningham*'s, and I look'd to his Horſe there. Upon *Friday* Morning they went a fiſhing, and got a great Pike; and I did ſee them go out a ſetting after Dinner,

Dinner, he and Mr. *Green*, with my Lady and the Keeper; and I ſaw him come in again. And I ſaw him drink a Glaſs of Table-Beer in the Hall. Upon *Saturday* Morning, which was the 31ſt of *Auguſt*, they went a hunting in Mr. *Gerrard*'s Park, and kill'd a Buck; and afterwards my Maſter asked him to go home with him again, but he would not: For he ſaid he muſt go to Mr. *Lowes* at four, and we parted at three. And I came here, and ſaw him executed; but while he was at my Maſter's Houſe, his Horſe was never out of the Stable but I brought it to him.

Mr. *At. Gen.* When did you ſee him executed?

Fallas. It was the 24th of *January* afterwards, I think.

Otes. What Religion are you of?

Fallas. I am for the Church of *England*, a Proteſtant, I always was ſo.

Otes. Pray, my Lord, ask him when he was acquainted with Mr. *Ireland*?

Fallas. The firſt time was the 29th of *Auguſt*, when he came to my Maſter's Houſe.

Otes. That does not come to my time, my Lord.

Mr. *At. Gen.* But it comes very cloſe to it; it reaches to the 31ſt of *Auguſt*.

L. C. J. It is within a Day of you, upon my Word.

Mr. *Sol. Gen.* And I'll tell your Lordſhip what is yet more conſiderable; this Place is an hundred and twenty Miles from *London*: But we ſhall not leave him there.

Otes. I deſire to know whoſe Servant he is?

Fallas. I am a Servant to Mr. *Hevening ham*, and I ſerve the King; I come to teſtify the Truth. I was here before, but then we muſt not be heard; all the Cry was againſt us, that we were Rogues, and muſt be knock'd on the Head.

L. C. J. Were you here at any of the Tryals?

Fallas. I was at the Council-Table, and there I was in great Danger of being knock'd on the Head.

Otes. Would they have knock'd him on the Head at the Council-Table, does he ſay?

Fallas. I have been in the Room by the Council-Table, where they have cryed, Knock them down, hang them Rogues; do they come to be Witneſſes againſt the Saviour of the World? And they came about me there, and asked me if I knew any of them, or was of their Company? And I was glad to ſay I came thither about a Suit of Law I had with a Brother of mine; and then they pitied me.

Mr. *Sol. Gen.* Now we have brought him, my Lord, every Night where he lodged from the 3d of *Auguſt* to the 31ſt.

Mr. *At. Gen.* And then we ſhall prove that he went to Mr. *Gerrard*'s at *Hilderſome* that they ſpeak of; there he was the 31ſt and 32d——

L. C. J. How, Mr. Attorney, the 32d? I doubt you will hardly be able to tell us where he was that.

Mr. *At. Gen.* The 1ſt of *September* I mean, my Lord.

L. C. J. Ay, we underſtand you very well.

Mr. *At. Gen.* Swear Mr. *John Proctor*.

[*Which was done.*

Mr. *Sol. Gen.* When did you ſee Mr. *Ireland* in 78?

Proctor. I ſaw him the 31ſt of *Auguſt* 78.

Mr. *Sol. Gen.* Where?

Proctor. At *Fulford*.

Mr. *Sol. Gen.* At whoſe Houſe?

Proctor. At Mr. *Lowes*.

Mr. *Sol. Gen.* That was the Place the other Witneſs ſaid *Ireland* told him he was to be at four of the Clock, and therefore went away at three.

Mr. *At. Gen.* When did you ſee him afterwards?

Proctor. I ſaw him the next Day, the 1ſt of *September*.

Mr. *At. Gen.* Where?

Proctor. At Eſquire *Gerrard*'s.

Mr. *At. Gen.* How far is that from Mr. *Lowes*?

Proctor. It is a Mile and an half.

Mr. *Sol. Gen.* Did you ſee him afterwards?

Proctor. Not there, I did not.

Mr. *At. Gen.* What Religion are you of?

Proctor. I am a Proteſtant.

L. C. J. What did you hear became of that *Ireland* afterwards?

Proctor. I ſaw him executed at *Tyburn* afterwards, and it was the ſame Man.

L. C. J. Where did you live then?

Proctor. I lived at *Fulford* then.

L. C. J. What, with Mr. *Lowe*?

Proctor. Yes, my Lord.

Otes. It ſeems he was a Servant to a Papiſt.

L. C. J. What then, what of that?

Otes. My Lord, I deſire you would ask him, whether he ever ſaw *Ireland* before the 31ſt of *Auguſt* which he ſpeaks of?

Proctor. No, I did not.

L. C. J. But you are ſure it was the ſame Man you ſaw executed?

Proctor. Yes, I am ſure of it.

Mr. *Sol. Gen.* What Circumſtance can you tell that he was the 1ſt of *September* at Mr. *Gerrard*'s?

Proctor. I went to Dinner thither that Day: I rode before Madam *Brooke*.

L. C. J. What Day of the Week was that 1ſt of *September*?

Proctor. It was upon a *Sunday*, my Lord.

Mr. *At. Gen.* Was that about *Pancraſs* Fair-time?

Proctor. Yes, my Lord, it was.

Mr. *Sol. Gen.* He can tell you another Circumſtance how he comes to remember him at Mr. *Lowes* the 31ſt of *Auguſt*.

L. C. J. Ay, by what Token do you remember that he was there the 31ſt of *Auguſt*?

Proctor. I went that Day to pay ſome Money, and came home again in the Afternoon; and juſt as I came in, he came thither.

Otes. How does he ſay he knows him to be the ſame Man?

L. C. J. He has told you twice he ſaw him executed.

Otes. What Religion is he of, does he ſay?

L. C. J. He is a Proteſtant.

Mr. *At. Gen.* Then ſwear Mr. *John King*.

[*Which was done.*

Mr. *Sol. Gen.* Pray, do you acquaint the Court and the Jury where you ſaw Mr. *Ireland*, and when.

Mr. *King.* I ſaw Mr. *Ireland* at Mr. *Gerrard*'s of *Hilderſome* the 1ſt of *September* that Year that the Plot broke out, which was in the Year 78. There I ſaw him on *Sunday*; there he ſtayed all Night, and ſo did I; and on *Monday* Morning I went to Mrs. *Crompton*'s where I liv'd, and he came thither to *Millage* as ſoon as I, which is

within a Mile of *Hilderſome*, and dined there the ſame Day.

L. C. J. How far is that from *London* pray you?

Mr. *King*. An hundred and ten miles.

L. C. J. And he was there at Dinner, you ſay?

Mr. *King*. Yes, he was.

L. C. J. How long was it before Dinner was done?

Mr. *King*. I believe he might go thence about two of the Clock.

L. C. J. Where did he ſay he deſigned to go then?

Mr. *King*. He deſigned to go to *Boſcobel* that Night.

L. C. J. Do you remember any body elſe was at Mr. *Gerrard*'s then when you ſaw him?

Mr. *King*. Yes, Mr. *Jerman Drayton* was at *Hilderſome* at that time.

Otes. Pray, what Religion is this Gentleman of?

Mr. *King*. I am a Roman Catholick, Mr. *Otes*.

Mr. *At. Gen.* Pray ſwear Mr. *Francis Lee*.

[*Which was done.*

Mr. *Sol. Gen.* Pray, tell my Lord and the Jury where you ſaw Mr. *Ireland*, and when?

Lee. I was a Servant to Mr. *Gerrard*, and Mr. *Ireland* upon *Saturday* Night came to my Maſter's Houſe, and ſtayed all Night and all Day on *Sunday*, and went away on *Monday* to *Millage*.

L. C. J. What time and what Year was it?

Lee. It was in 78; but I am not certain of the Day of the Month: It was on a *Saturday* he came, and I have Witneſſes to prove I was there at that time.

L. C. J. What Month was it?

Lee. It was in *Auguſt*, as I think, the laſt Day, but I am not certain. And he went on *Monday* to *Millage*, and there dined at Mrs. *Crompton*'s; and from thence he went to *Pancraſs*, and thence he did go to *Boſcobel*, and ſtayed all Night there.

Mr. *At. Gen.* That was the 2d of *September*.

L. C. J. How do you know he went to theſe Places?

Lee. I was told ſo.

Otes. My Lord, I deſire to know how long this Man was acquainted with *Ireland* before?

Lee. I never ſaw him but at that time.

Otes. How does he know it is the ſame Man then?

Mr. *King*. Here is a Man that ſaw me with him, and was preſent at *Ireland*'s Execution.

L. C. J. Who is that, *Proctor*?

Mr. *King*. Yes, my Lord.

L. C. J. Then call *Proctor* again. (*Who came in again.*) Who went along with you to Dinner on *Monday*?

Lee. My Lord, He did ſee me at *Hilderſome* at Mr. *Gerrard*'s.

L. C. J. What ſay you, *Proctor*, was this Gentleman there at that time?

Proctor. Yes, my Lord, I did ſee him there.

L. C. J. Was that the ſame Man that was executed, which you ſaw at Mr. *Gerrard*'s?

Proctor. Yes, it was.

L. C. J. Did you dine with Mr. *Ireland* on *Monday* at Mrs. *Crompton*'s?

Lee. Yes, my Lord, I did, and went afterwards with him to *Pancraſs*, and ſtayed there two Hours, and then he went to *Boſcobel*.

Mr. *Sol. Gen.* There are the two Days gone which Mr. *Otes* ſwore to, and in which he was ſo poſitive that it was either the 1ſt or 2d of *September*.

Mr. *At. Gen.* Then ſwear Mr. *Biddolph*.

[*Which was done.*

Mr. *Sol. Gen.* Pray, Sir, when did you ſee Mr. *Ireland*, and where?

Mr. *Biddolph*. My Lord, I was in *Staffordſhire* the latter end of *Auguſt* and the beginning of *September*, and I was at Mrs. *Crompton*'s Houſe, which is my Aunt, the 2d of *September*, being *Monday*, where I ſaw Mr. *Ireland*, and dined with him that Day; and after Dinner he went with Mr. *Gerrard*'s Son who was to go to School to *Boſcobel*: And I will give your Lordſhip a particular Circumſtance that may ſatisfy you that I am not miſtaken in the time: As I came thorough *Northamptonſhire* that Summer, I was at my Lord *Cullen*'s, and he deſired me to be at a Horſe Race at *Newton-Slade*, where there is a Plate always run for upon the firſt *Thurſday* in *September*, and that Year it was the 5th of *September*. Now when I dined at my Aunt *Crompton*'s, ſhe would have had me ſtay'd all Night at her Houſe, but I excuſed my ſelf, and told her I had promiſed to come to my Lord *Cullen* to be at the Race, and I muſt needs be there before, to be as good as my Word to my Lord; and therefore I went away to *Pancraſs*, and ſo on my Journey, otherwiſe I had ſtayed with my Aunt all Night: And I am ſure this was *Monday* before this Horſe Race.

Otes. My Lord, This Gentleman ſpeaks to no Year particularly.

Mr. *Biddolph*. It was in 1678, the Year before Mr. *Otes*'s Plot broke out.

Mr. *At. Gen.* Now we will call Mrs. *Crompton*: Swear her. [*Which was done.*

Mr. *Sol. Gen.* Pray, when did you ſee Mr. *Ireland*, Mrs. *Crompton*?

Mrs. *Crompton*. He was at my Houſe at *Millage* in *Staffordſhire* at Dinner, the ſame Day that my Nephew *Biddolph* did dine there: As for the Day of the Month I cannot ſo well tell it, becauſe when my Friends dine with me, I do not uſe to note down the Day particularly; but it was, I remember, a pretty remarkable time, for it was about *Pancraſs* Fair. Mr. *Gerrard* of *Hilderſome* came with him, and Mr. *Ireland* being a Stranger, I asked who he was, and they told me it was Mr. *Ireland*: He never was at my Houſe before nor after; he was a meer Stranger to me.

L. C. J. What Day was it, ſay you?

Mrs. *Crompton*. It was the ſame Day my Nephew *Biddolph* dined there.

L. C. J. Was it *Monday* the 2d of *September*, do you remember?

Mr. *At. Gen.* He ſays he was at her Houſe at *Millage* that Day, and ſhe ſays it was the ſame Day he dined there.

Mrs. *Crompton*. But I never note down the particular Days when my Friends dine with me, except I had particular occaſion to do it, as I had none at this time.

Otes. My Lord, I deſire to know what Religion this old Gentlewoman is of?

Mrs. *Crompton*. I am a Roman Catholick, my Lord.

Mr. *At. Gen.* Swear Mrs. *Palmer*.

[*Which was done.*

Mr. *Sol.*

Mr. *Sol. Gen.* Mrs. *Palmer*, Where did you ſee Mr. *Ireland*?

Mrs. *Palmer*. I was at Dinner at Mrs. *Crompton*'s at *Millage*, where there was a Gentleman called Mr. *Ireland* that did dine there.

L. C. J. When was it?

Mrs. *Palmer*. I cannot tell truly what Day it was.

L. C. J. Who was there beſides you at Dinner that Day?

Mrs. *Palmer*. 'Tis ſo long ſince, I cannot remember.

L. C. J. Was Mr. *Biddolph* there?

Mrs. *Palmer*. Not that I remember, my Lord.

L. C. J. What do you bring her for, Mr. Attorney?

Mr. *At. Gen.* She dined there that Day it ſeems; but if ſhe cannot remember it, I cannot help it.

L. C. J. But theſe kind of Witneſſes do but ſlack your Proof.

Mr. *Sol. Gen.* My Lord, I think we do over do our Buſineſs indeed.

Mr. *At. Gen.* We have one Witneſs more to this Point, and that is Mrs. *Mary Holmes*; ſwear her. (*Which was done.*) Where did you ſee Mr. *Ireland* in the Year 78?

Mrs. *Holmes*. I ſaw him at *Millage*, my Lord.

L. C. J. When?

Mrs. *Holmes*. The 1ſt or the beginning of *September*, I am ſure.

Mr. *Sol. Gen.* What Day of the Week was it?

Mrs. *Holmes*. *Monday*.

L. C. J. You have Proof enough of this, Mr. Attorney General.

Mr. *At. Gen.* Truly, I think ſo, my Lord.

Mr. *Sol. Gen.* Pray ſwear Mrs. *Eſther Gifford*. (*Which was done.*) Mrs. *Gifford*, When did you ſee Mr. *Ireland*?

Mrs. *Gifford*. Upon the 2d of *September* 78. I ſaw Mr. *Ireland*, above a hundred Miles from this Place.

Mr. *Sol. Gen.* Where?

Mrs. *Gifford*. At *Pancraſs*.

Mr. *Sol. Gen.* What time of the Day was it?

Mrs. *Gifford*. In the Afternoon about four or five a Clock.

Mr. *Sol. Gen.* Did he ſtay there all Night?

Mrs. *Gifford*. I cannot tell indeed.

Mr. *At. Gen.* Swear Mr. *Pendrel*.

[*Which was done.*

Mr. *Sol. Gen.* Now, my Lord, we are come to the 2d of *September* in the Evening, we ſhall prove where he was that Night and the 3d, and then we ſhall return to the 4th of *September*, when Mrs. *Harwell* ſwears he came back to *Wolverhampton*.

Mr. *Hanſes*. When did you ſee Mr. *Ireland*, Mr. *Pendrel*?

Mr. *Pendrel*. I ſaw him upon the 2d of *September*.

Mr. *At. Gen.* Where did you ſee him?

Mr. *Pendrel*. At *Boſcobel* at my Houſe, there he lodged with me that Night.

Mr. *Sol. Gen.* In what Year was it?

Mr. *Pendrel*. In the Year 1678.

Mr. *At. Gen.* Was it the *September* before the Plot, and before Mr. *Ireland* was executed?

Mr. *Pendrel*. Yes, my Lord, it was.

L. C. J. Did you know him before?

Mr. *Pendrel*. No, I did never ſee him before, as I know of.

L. C. J. How long did he ſtay there?

Mr. *Pendrel*. He ſtayed that Night and the next Day all Day, and went away the 4th of *September* to *Black-Ladies*.

Mr. *Sol. Gen.* Whoſe Houſe is that?

Mr. *Pendrel*. It is Mr. *John Gifford*'s.

L. C. J. You ſay you live at *Boſcobel*; did you hear any thing of a Letter came to your Houſe for Mr. *Ireland*?

Mr. *Pendrel*. Not that I know of, my Lord, there was not any that I remember.

Mr. *At. Gen.* Then ſwear Mrs. *Pendrel*.

[*Which was done.*

Mr. *Sol. Gen.* Pray, Miſtreſs, will you give an account where you ſaw Mr. *Ireland*?

Mrs. *Pendrel*. I ſaw him at *Boſcobel*, at the Royal Oak; he came there the 2d Day of *September*.

Mr. *Sol. Gen.* Can you tell what Year it was?

Mrs. *Pendrel*. It was the firſt beginning of the Plot.

Mr. *Sol. Gen.* How long did he ſtay there?

Mrs. *Pendrel*. He ſtay'd *Tueſday*, and *Wedneſday* he went to *Black-Ladies*, and ſo away to *Wolverhampton*.

Mr. *Sol. Gen.* We have but one Witneſs more, my Lord, for *Wedneſday* the 4th of *September*, and then we have done. Swear Mr. *Charles Gifford*. (*Which was done.*) When did you ſee Mr. *Ireland*?

Mr. *C. Gifford*. May it pleaſe your Lordſhip, I ſaw Mr. *Ireland* at my Father's Houſe at *Black-Ladies*——

Otes. My Lord, I would ask Mrs. *Pendrel* a Queſtion before ſhe goes: Whether ſhe was not a Witneſs at the five Jeſuits Tryal?

Mrs. *Pendrel*. I was in Court, but they would not ſuffer me to ſwear.

Otes. Did ſhe not give Evidence there?

L. C. J. She was examined, but ſhe could not be ſworn, becauſe ſhe came to teſtify againſt the King in a Capital Cauſe.

Mr. *At. Gen.* Pray what ſay you, Mr. *Charles Gifford*?

Mr. *C. Gifford*. My Lord, I ſay I ſaw Mr. *Ireland* at my Father's Houſe at *Black-Ladies*, and he ſtay'd there an Hour and an half, and went thorough *Chillington*, and ſaid he would go to *Wolverhampton*.

Mr. *At. Gen.* What Day of the Month was it?

Mr. *C. Gifford*. I am morally certain, it was the 4th of *September*, and ſo he went to *Wolverhampton*, as I am informed. He came to our Houſe to ſee a Lady that was there.

L. C. J. What Lady was it?

Mr. *C. Gifford*. It was one Madam *Wells*.

Mr. *Sol. Gen.* Thus, my Lord, we have lodged him the 4th of *September* at *Wolverhampton*, when Mrs. *Harwell* ſays, he returned to her; and ſo, my Lord, we have given an account where he was from the 3d of *Auguſt* to the 14th of *September*.

Mr. *Sol. Gen.* We have prov'd where he was every Day in that time, but only the 8th of *September*, and for that we muſt leave it to the Jury. We have proved that he came away from Mrs. *Harwell*'s the 7th, and he ſaid he was to go to *Tixhall*; and the 9th he did go from *Tixhall* in Sir *John Southcoat*'s Company, and came to *London* the 14th.

L. C. J. Well, what ſay you to it, Mr. *Otes*?

Otes.

Otes. Has Mr. Attorney done his Evidence, my Lord?

Mr. *At. Gen.* We ſhall call no more Witneſſes, unleſs you go about to ſupport your own Credit, and then we have other Witneſſes to call.

Otes. I do not value any Witneſſes you can bring againſt my Credit.

Mr. *At. Gen.* Well, for the preſent we do not deſign to call any more Witneſſes.

L. C. J. Then let us hear what you ſay to it.

Otes. My Lord, Here is an Indictment exhibited againſt me, which ſets forth, that I ſhould ſwear at Mr. *Ireland*'s Tryal, that Mr. *Ireland* was in Town the 1ſt and 2d of *September*; and it ſets forth, that in truth he was not in Town: And likewiſe it ſets forth, that I ſwore at the Tryal of the five Jeſuits, that Mr. *Ireland* took his leave of me and others here in Town at his Lodging in *Ruſſel-ſtreet*, between the 8th and 12th of *Auguſt*; whereas the Perjury there aſſigned, is this, That he did not take his leave of me or any other Perſon, betwixt the 8th and 12th of *Auguſt*, at his Lodging in *Ruſſel-ſtreet*. Now, my Lord, I was not the only Witneſs of Mr. *Ireland*'s being in Town in the Month of *Auguſt*; nor the only Witneſs of his being in Town about that time in *September*. My Lord, my Proſecutors have endeavoured to maintain this Charge againſt me thus: The firſt thing they have gone upon, as far as I can remember in the Indictment, is as to the 1ſt or 2d of *September*, or rather they have endeavoured to prove both under one. Now in anſwer to all this Evidence, my Lord, the firſt thing I ſhall offer to your Lordſhip's Conſideration and the Conſideration of the Jury, is the great Hardſhip I lie under, after ſix Years time to be put to diſprove what the Counſel here have now offered againſt me. My Lord, I obſerve firſt, that this Indictment which is now upon Tryal, is founded upon the Tryal of *Ireland*, which was the 17th of *December* 1678, at the *Old Bailey*, and it is now ſix Years after that Evidence of mine was delivered. A ſecond thing is, that the Indictment is found by ſpecial Commiſſion, as appears by the Indictment it ſelf. Now I muſt recommend to the Conſideration of your Lordſhip and this Jury, why the Proſecution of this pretended Perjury has been delayed ſo long, when it appears by the Evidence which has been produced, that the Witneſſes to prove it were known ſix Years ſince, as much as they are now; and there is no colour of Evidence offered, that any new Fact has been lately diſcovered which was not then known. There is no Reaſon, my Lord, that is aſſigned, or can be aſſigned for this Delay, but only that the Hardſhip might be the greater upon me: For now it is difficult, if not impoſſible, for me to maintain the Evidence I then gave, ſo many Perſons being ſince dead or gone beyond the Seas, and many things that were freſh then, are now grown out of Memory; and I beg your Favour to inſiſt upon this, and I think it cannot be denied me. If ſuch a Practice as this be admitted, no Witneſs is ſafe in giving his Teſtimony againſt any Conſpirators whatſoever. For, my Lord, I muſt deſire leave to offer another thing to your Conſideration, before I ſpeak to the particular Evidence, and that is this, That here is nothing but a bare Point of Time upon which this Perjury is aſſigned; when the Subſtance of the Teſtimony that I gave at the Tryals of Mr. *Ireland* and the reſt about the Popiſh Plot, is not aſſigned as any Perjury at all; it is only a Circumſtance of Time and Place: And, my Lord, I ſhall offer this to your further Conſideration, that *Ireland* was convicted for a Treaſonable Reſolution to murder the late King, and not for being in Town in *Auguſt* or *September* 78, or elſewhere; and he was not convicted for his being in his Chamber in *Ruſſel-ſtreet*, and taking his leave there in *Auguſt*, which is one matter of the Perjury now aſſigned. Next, my Lord, 'tis hard and unreaſonable to tye up Witneſſes that come to diſcover Plots and Conſpiracies, to ſpeak poſitively as to Circumſtance of Time and Place; and every little Punctilio in their Evidence to bind them up to ſuch Niceties in the Delivery of their Teſtimonies, as to Time and Place. It is uſual to ſpeak with Latitude, as to ſuch kind of things, and 'tis probable my Evidence, which is now in queſtion, was not, that *Ireland* was the 1ſt or 2d of *September* poſitively here in Town; but, my Lord, I did (I believe) give my ſelf a Latitude, and would not confine my ſelf to either the 1ſt or 2d, 5th, 6th, 7th, or 8th; but, my Lord, that he was in *September* there, I am poſitive: I muſt therefore beg your Lordſhip's and the Court's Opinion, whether that Mr. *Foſter* did prove that I was poſitive and preciſe to the Days of the 1ſt and 2d of *September* 78?

L. C. J. In my Opinion it is a plain Evidence that you did ſwear poſitively to thoſe two Days; and you ſpoke to a Circumſtance very material in your Evidence, that either the 1ſt or 2d of *September* you had twenty Shillings of him in Town here: Now that Circumſtance of his Kindneſs to you, was not a Circumſtance either of Time or Place.

Otes. Then, my Lord, I ſhall begin with my Proofs; but, my Lord, I deſire I may have free Liberty to mind my Buſineſs; for here is a Gentleman behind me that will not let me be at quiet, but is either meddling with me or my Papers.

L. C. J. Who is it? Let me know him, and I will take care to make him quiet, or ſet him farther off. You, Gentlemen that are at the Bar ſhould know better, one would think: He muſt have liberty to make his own Defence; and if he complains and lets me know who meddles with him, they had better do ſomewhat elſe.

Otes. My Lord, The firſt thing that I offer, is, that *Ireland* was convicted of Treaſon, and for that you have the Record.

L. C. J. It is allowed of all ſides, that *Ireland* was convicted and attainted of Treaſon.

Otes. Then, my Lord, the principal Defence which, as near as I can remember, Mr. *Ireland* made at his Tryal, was an Endeavour to prove that he was not in Town between the 8th and 12th of *Auguſt*, nor the 1ſt and 2d Days of *September*, which are the Points now in Iſſue; and he then produced one Mr. *Gifford* and his Siſter and Mother; and fifteen or ſixteen Witneſſes were produced at Mr. *Whitebread*'s Tryal, of which there is another Record, that being ſix Months after Mr. *Ireland* was tryed: There Mr.

Mr. *Whitebread* produces ſeveral Witneſſes, Mr. *Gifford*, I ſay, and ſeveral others, I think to the number of ſixteen, which were to prove *Ireland*'s being out of Town in theſe times that theſe Witneſſes ſpeak of. Now, my Lord, all thoſe ſeveral Witneſſes being produced to prove *Ireland* then out of Town, the very Point that is now in Iſſue, was then ſo; and notwithſtanding all thoſe Witneſſes, the Jurors who tryed Mr. *Ireland*, and the Jurors who tryed Mr. *Whitebread* and the other four Jeſuits, found them guilty; tho' they endeavoured with all their force imaginable to oppoſe my Teſtimony, and it was left to the Conſideration of the Jury what their Witneſſes had ſaid. If your Lordſhip pleaſes to remember, my Lord Chief Juſtice *Scroggs* did obſerve to the Jury, that the Evidence of the Priſoner at the Bar did conſiſt only in Punctilio's of Time; which, as near as I can remember what he ſays, he called a Nicety of time; and in *Whitebread*'s Tryal he was pleaſed to call it catching in Point of Time. And it was obſerv'd at *Ireland*'s Tryal, that his Defence was ſo weak that my Lord Chief Juſtice *Scroggs* upon the Integrity of *Bedloe*'s Evidence and mine, uſes theſe Words to the Jury, (tho' he then endeavoured to do what theſe Witneſſes do now): It is moſt plain the Plot is diſcovered, and that by theſe Men, and that it is a Plot and a villainous one; which ſhews not only the Fulneſs and Satisfactorineſs of our Proof that we gave, but does alſo take notice of the little Shifts and catching Tricks he made uſe of to prove himſelf out of Town; which would not weigh with the Court: Therefore I obſerve it is but the ſame Objection that then was made, and is not a new one now. And my Lord Chief Juſtice that then was, ſpeaking of that Proof he brought (which the Court heard with Patience, but could eaſily ſee thro' the Vanity of it) ſaid, What Arts they have of evading this, I know not; for as they have turn'd their Learning into Subtilty, ſo they have their Religion too. All this is well remembered by thoſe that were by and heard that Tryal: And tho' *Ireland* laboured to diſprove me in that Circumſtance of Time, yet ſtill the Court did juſtify the Evidence that Mr. *Bedloe* and my ſelf had given: And the ſame Chief Juſtice ſaid, I leave it to you to conſider, whether you have not as much Evidence from theſe two Men as can be expected in a Caſe of this nature; and whether Mr. *Otes* be not rather juſtified by the Teſtimony offered againſt him than diſcredited. This was after his Plea was debated and conſidered; and I muſt further obſerve to your Lordſhip, that tho' Mr. *Ireland* by his falſe Witneſſes preſſed this Matter as far as he could then, and urged the Court to believe it; yet when the Jury brought in their Verdict and found him Guilty, the Chief Juſtice expreſſed the Satisfaction of the Court in theſe Words: You have done, Gentlemen, like very good Subjects and very good Chriſtians; that is to ſay, like very good Proteſtants; and now much good may their 30000 Maſſes do them. This, my Lord, was the Caſe of Mr. *Ireland*, at his Tryal, and the ſame point of his being out of Town was again managed before a ſecond Jury at the Tryal of the five Jeſuits; but the Court ſaw the Deſign of the Popiſh Party to blemiſh the Evidence given of the Plot; but yet they look'd upon it only as a Trick: And my Lord Chief Juſtice *Scroggs*, in ſumming up the Evidence at that Tryal, ſays, They fall foul upon Mr. *Otes*, meaning my ſelf; he appears to have been their Agent, and whilſt ſo, bad enough: But if he had not had a mind to have become a good Man, he would not have done us that good he has done in the Diſcovery of the Deſign they had engaged him in. And if your Lordſhip pleaſe to remember, that at that Tryal of the Five Jeſuits, when all Arts were uſed to prove *Ireland* out of Town, and me at St. *Omers*, in the ſame Charge to the Jury, my Lord *Scroggs* did take notice that the Jeſuits were very exact at catching in a Point of time; but now ſays, that is a thing that no Man can preciſely charge his Memory withal; and therefore he does there perſwade the Jury, that that ſhould not be too ſtrictly the Meaſure of their Judgments about Truth and Falſhood, by the Miſtake of ſeven or eight Days; For, ſaid he to the Jury, examine your ſelves how often every Day you do miſtake things that have been tranſacted half a Year ago, and err in Point of Time, taking one Week for another, and one Month for another; and therefore you are not to lay too great a Weight upon the Point of Time. Now if too great weight, my Lord, be not to be laid upon a Point of Time, then this Charge that is now brought againſt me is not of weight at all. And beſides, my Lord, this ought to be conſidered, if this were the great Objection then, and then anſwered, it ceaſes to be an Objection now. And as the Court did obſerve at the ſumming up of the Evidence, that they made their Defence about the Uncertainty of a Point of Time, which was no Defence at all: So that, my Lord, the whole Courſe of my Plea is this: 'Tis a hard Caſe for a Man after ſix Years, to be indicted for a Circumſtance of Time. I will firſt offer the Teſtimony of one Witneſs that is dead, and that is Mr. *Bedloe*, who at his Death confirmed all that he had ſworn of the Popiſh Plot to be true, and affirmed that he had rather ſpoken leſs than the Truth, than more; and for that I deſire that my Lord Keeper may be called, who took his dying Examination.

L. C. J. As for that, Mr. *Otes*, it is a thing very well known to the World, and particularly to a worthy Gentleman that ſits by you, (*Pointing to Mr.* North) that Mr. *Bedloe*, when he was ſick, did make ſome ſuch Proteſtation.

Otes. Then, my Lord, I deſire that Mr. *Blayney* may be ſworn, to give an account what Mr. *Bedloe* teſtified at *Ireland*'s Tryal.

Then Mr. Blayney *was ſworn.*

Otes. Mr. *Blayney*, Pray will you ſee in your Notes of *Ireland*'s Tryal, whether Mr. *Bedloe* did not ſwear that Mr. *Ireland* was in Town, the latter end of *Auguſt* 78, or the beginning of *September*.

Mr. *Blayney*. Whereabouts in the Tryal is it, Sir?

Otes. It is in the Printed Tryal, *folio* 41.

Mr. *Blayney*. My Lord, I do find theſe Words in my Notes, that Mr. *Bedloe* ſhould ſay, about the latter end of *Auguſt*, or the beginning of *September*; but I believe it was the latter end of *Auguſt*, Mr. *Ireland* was at *Harcourt*'s Chamber,

and being asked the Queſtion by my Lord Chief Juſtice *Scroggs*, Whether he ſaid poſitively, it was the latter end of *Auguſt*, he ſaid it was in *Auguſt*, he would not be poſitive to a Day, but he thought the latter end.

L. C. J. 'Tis very well known that too, that *Bedloe* did ſwear *Ireland* was in Town the latter end of *Auguſt* or beginning of *September*, and to confirm it upon Mr. *Ireland*'s denial, you ſwore he was in Town the 1*ſt* or 2*d* of *September*, and gave you Twenty Shillings, that was the Occaſion of your Oath.

Otes. Then, my Lord, I deſire to call ſome Witneſſes to teſtify to the Depoſition that was taken of Mr. *Jenniſon*, about *Ireland*'s being then in Town.

L. C. J. When was that Depoſition taken, and before whom?

Otes. It was taken in the Year 79. by Sir *Edmund Warcup*.

L. C. J. But we cannot admit that in Evidence, unleſs the King's Counſel will conſent.

Otes. My Lord, I will then produce what he ſwore at another Tryal.

L. C. J. Why, where is he, is he dead?

Otes. My Lord, it has coſt me a great deal of Money to ſearch him out; but I cannot any where meet with him, and that makes my Caſe ſo much the harder; that I cannot, when I have done all that Man can do, get my Witneſſes together. I ſent in the depth of Winter for him, when I thought my Tryal would have come on before; but I could never hear of him.

L. C. J. We cannot help that.

Otes. Will what he ſaid at any other Tryal be Evidence here?

L. C. J. Look you, though in ſtrictneſs, unleſs the Party be dead, we do not uſe to admit of any ſuch Evidence; yet if you can prove any thing he ſwore at any other Tryal we will indulge you ſo far.

Otes. Have you the Record of Sir *George Wakeman*'s Tryal there, Sir *Samuel Aſtry*?

Mr. *At. Gen.* Here it is, if Mr. *Otes* have any uſe for it, we will lend it to him.

L. C. J. Put it in, and now prove what you can, what *Jenniſon* ſwore at that Tryal.

Otes. Mr. *Blayney*, have you your Notes of Sir *George Wakeman*'s Tryal here?

Mr. *Blayney.* No, Sir, the Ticket of your *Subpœna* did only mention *Ireland*, *Whitebread* and *Langhorn*'s Tryals. But I did formerly upon another Occaſion look for the Tryal of Sir *George Wakeman*, but could not find it among all my Notes.

Otes. Sir, Can you remember then what *Jenniſon* ſwore at that Tryal, about *Ireland*'s being here in Town?

Mr. *Blayney.* Truly, my Lord, I can never truſt my Memory at all when I take Notes, and it is now ſo long ſince that Tryal, that I dare not undertake to ſay I remember any Particulars of it.

L. C. J. He ſays it is ſo long ſince, that he cannot remember any thing. But there is Sir *Edmund Warcup* now, is he ſworn?

Cryer. Yes, My Lord.

L. C. J. What do you ask him then?

Otes. I would deſire to Examine Sir *Edmund Warcup*, my Lord, about the Depoſition of *Jenniſon* that he took.

L. C. J. But we tell you that cannot be admitted as Evidence, without they will conſent to it on the other Side.

Otes. My Lord, he proves Mr. *Ireland* here the 19*th* of *Auguſt*, and that contradicts theſe Witneſſes.

L. C. J. If they will admit it well and good, elſe we cannot do it.

Mr. *At. Gen.* My Lord, we will be ſo fair with Mr. *Otes*, if he will admit Mr. *Jenniſon*'s Letter that is under his Hand, wherein he does own that he was miſtaken in his whole Evidence about that Matter, we will conſent his Depoſition be read.

Mr. *Juſt. Withins.* If he will not conſent to that, there's no reaſon you ſhould conſent to the other, Mr. Attorney.

L. C. J. Look you, Mr. *Otes*, Mr. Attorney makes you this Offer, You deſire to have Mr. *Jenniſon*'s Depoſitions read; which cannot be done without their Conſent; they tell you they will conſent, if you will let them prove what he has owned ſince about that Buſineſs.

Otes. My Lord, I will conſent with all my Heart; let them read any Letter under his Hand.

L. C. J. Well, do it on both Sides by conſent: And now Mr. *Otes*, do you produce his Examination.

Otes. Pray Sir *Edmund Warcup*, will you pleaſe to give the Court an Account, what Depoſition Mr. *Jenniſon* made before you about *Ireland*'s being in Town in *Auguſt* 78.

Sir *Edmund Warcup.* If my Lord commands me, I will.

L. C. J. Ay, you muſt anſwer his Queſtion.

Sir *Edmund Warcup.* This Mr. *Jenniſon* did make one Information before me, and according to the Duty that was incumbent upon me, I delivered it in to the King and Council, and there it has lain ever ſince; for me to remember the Particulars of it is impoſſible.

L. C. J. Have you his Examination here, Mr. *Otes?* If you have, ſhew it him.

Sir *Edward Warcup.* If I ſee my Hand to it, atteſting it was ſworn before me, I can ſay ſomewhat to it.

Otes. My Lord, he ſays he delivered it into the Council; but it is printed.

L. C. J. That is no Evidence, Man.

Sir *Edward Warcup.* I can ſay nothing to it, unleſs I ſaw it under my own Hand.

Otes. That is impoſſible for me to have, my Lord.

L. C. J. I cannot tell how to help it.

Sir *Edward Warcup.* You have no more to ſay to me, Sir, have you?

Otes. No, Sir, I have not. Pray call *Sarah Batten*.

Mr. *At. Gen.* Is that the ſame that was *Sarah Pain?*

Otes. I think ſo, Sir; I am not ſure it is ſhe, till ſhe come hither.

Cryer. Here is *Sarah Batten*.

Otes. Pray ſwear her, and call Sir *Thomas Doleman*. [*Which was done.*

But Sir *Thomas Doleman* did not appear.

Otes. Pray was not your Name, *Sarah Pain?*

Batten.

Batten. My Lord, I desire my Charges before I speak.

L. C. J. What is your Name, good Woman?

Batten. My Name is *Sarah Batty.*

Otes. Was not your Name *Sarah Pain*, once?

Batty. No, my Maiden name was *Sarah Edmunds.*

Otes. Was not you a Witness at the Tryal of Mr. *Ireland?*

Batty. No, Sir.

Otes. Did not you live with my Lord *Arlington?*

Batty. No, Sir.

Otes. Then I have been at all this Charge for nothing. Are you sure your Name was not *Sarah Pain?*

Batty. No, indeed, Sir.

Otes. They told me that she liv'd at *Uxbridge*, and thither I sent.

Batty. I do live at *Uxbridge*, Sir.

Otes. Upon your Oath, were you a Witness at any of the Tryals, or no?

Batty. No, my Lord, I was not.

Otes. Then I have nothing to say to her.

L. C. J. What other Witnesses have you to call?

Otes. We have laboured all we could to find her out, and searched for her with all the care imaginable; and here we thought we had had her, but it seems it is not she.

L. C. J. We cannot help it.

Batty. I hope, my Lord, you will consider my Charges in coming up hither.

Otes. I will take care of thee, Sweet-heart.

L. C. J. Who do you call next?

Otes. Pray call Mr. *Charles Clare.*

Cryer. He is not here.

Otes. Pray call Mr. *Percival.* My Lord, I desire Mr. *Blayney* may give an Account what she swore about *Ireland's* being in Town, seeing I cannot have her here.

L. C. J. That we cannot do neither, without Mr. Attorney will consent: For this as well as the other, is an extraordinary Thing.

Otes. You see by my bringing this Witness, my Lord, that I have done what I could to find her out.

L. C. J. What say you, Mr. Attorney, will you consent?

Mr. *At. Gen.* No, my Lord, it is so irregular, that we cannot consent to it.

Otes. Pray call Mr. *Percival* and Mr. *Vaughan.*

Cryer. They do neither of them appear.

Otes. Then I must lose the Benefit of her Testimony.

L. C. J. Have you done?

Otes. No, my Lord, I will have done immediately.

L. C. J. Take your own time.

Otes. I desire Sir *Michael Wharton* may be called.

Cryer. He is not here.

Otes. Pray call Mr. *Charles Chetwin.*

Cryer. He is not here.

Otes. Pray call Mr. *Robert Bowes.*

Cryer. He is not here.

Otes. Pray call Mr. *John Savile.*

Cryer. He is not here.

Otes. My Lord, I have served all these with *Subpœna's*; and if they will not come, I cannot help it.

L. C. J. Nor we neither.

Otes. Mr. *Jennison* was used as a Witness in the Tryal of Sir *George Wakeman*, and so was Mr. *Bowes*, and Mr. *Burnet*, who was produced to prove the Circumstance of Mr. *Jennison's* Evidence: But, my Lord, since I cannot have the benefit of his Evidence, nor of *Sarah Pain's*, I must only sum up all I have to say in two or three Words: My Lord, besides that what I did deliver in Evidence at those Tryals, I gave in upon Oath: You have Mr. *Bedloe's* Evidence at the Tryal of *Ireland* testified by Mr. *Blayney*; and the Testimony of him as a dying Man, given into my now Lord Keeper, wherein he averr'd, That what he had spoken of the Plot, was all true: And you hear that he swore Mr. *Ireland* was here in Town in *August*, and so did *Sarah Pain* too, and I think upon my self as very hardly used, to have such a part of my Testimony brought in question, after Witnesses are dead, or gone out of the way. As for Mr. *Jennison*, his Evidence was formerly made use of; and his Evidence was approved of too, as is well known to those that sat Judges upon the late Viscount *Stafford.* But this is that, my Lord, I must needs say for my self, That as I hope to see the Day of Salvation in another World, whatever I have sworn about Mr. *Ireland's* being here in Town betwixt the Eighth and Twelfth of *August* 78. and in the beginning of *September*, is true, as I shall answer it before God another Day. And, my Lord, as to the Evidence this Day brought against me, I desire you would but observe, though that there are many of those Witnesses, yet a great part of them do not come up to the Eighth or Twelfth of *August:* And I hope your Lordship will remember and remark to the Jury, what little Credit those of them had that came to testify in the behalf of Mr. *Ireland* at his Tryal, and at the Five Jesuits Tryals, of which there are two Records before you; and they do first justify this, That *Ireland* and the rest of them were Guilty of what they were accused of; and then, that these Witnesses did not testify the Truth.

Besides these two Tryals, my Lord, you have a third Verdict, and that is at the Tryal of Mr. *Langhorn:* Now the whole Popish Plot almost was laid forth in those three Tryals; and my Lord, I believe verily I am the first Precedent in all *England*, of any one's being Indicted for Perjury that was a Witness for the King in such a Case as this, after six Years times elapsed, after Verdict upon Verdict, and Judgment and Execution upon these Verdicts, and when no new Objection is now offered, but what was then started; and no new Circumstance occurs now, but was as forcible then, except it be the Change of the Season. And I desire it may be considered, when all the Judges of *England* were Commissioners of *Oyer* and *Terminer* at those Tryals, these Matters were fully discussed and debated; and then they did look upon all the Objections as fully answered and confuted.

My Lord, I am confident if I had been a Witness in any other Cause than of a Conspiracy of the Papists, I might have had fairer quarter than I have now: And I do verily believe, that at this rate, it is more safe for Papists to be Traytors, than for any Protestant to discover a Popish Plot.

My

My Lord, and Gentlemen of the Jury, I beſeech you to take my Caſe into your ſerious Conſideration, as to the hardſhip of it; and ſince all my Witneſſes are in Places unknown, or they are ſuch as, conſidering the Times, dare not appear, ſome of them being Lawyers, and under fear they ſhall fare the worſe in their Practice; and others being Perſons that depend upon the Law, and think they ſhall be look'd ill upon, as I am now look'd upon with a hard Eye by the Popiſh Party and their Adherents: Yet I hope, you that are ſworn to do Juſtice, will not let me be ruined by a number of falſe Witneſſes, by the Evidence of Papiſts that are Parties. For if your Lordſhip pleaſe to conſider that Vote of the Lord's Houſe, which is a Court of Record, wherein they do declare that they are fully ſatisfied by the Proofs they have heard, that there then was, and for divers Years laſt paſt had been, a Horrid and Treaſonable Plot and Conſpiracy, contrived and carried on by thoſe of the Popiſh Religion, for the murdering of His Majeſty's Sacred Perſon, and for ſubverting the Proteſtant Religion, and the Ancient and Eſtabliſhed Government of this Kingdom: Which Vote of Parliament, my Lord, does make the Papiſts to be all Parties in this Caſe, and where they are Parties, I hope they ſhall not be admitted as Evidence, or at leaſt not be believed, becauſe there is a Turn to be ſerved by them againſt me, and a Revenge they are reſolved to take upon me; for they have hopes now of bringing in their Religion, and are to welcome that in with my Ruin; and this is the Cauſe of this Proſecution: Their Eyes do ſee now what their Hearts ſo long deſired, that is, the Death of a great Man who died but lately, and againſt whoſe Life they had conſpired ſo often and ſo long. My Lord, if this had been the firſt Conſpiracy that ever the Papiſts were guilty of, there might have been ſome more Scruple and Objection in the Caſe: But if you caſt your Eyes upon *Campian* and others in Queen *Elizabeth*'s Time, of *Garnet*, and the Powder-Jeſuits in King *James*'s Time, and the Deſigns of the Popiſh Party in the Time of the late King *Charles*, the firſt diſcovered to the Archbiſhop of *Canterbury*: If theſe Things do paſs for Truth, and there is no Averment againſt ſo many Records as we have of their Conſpiracies, then my Diſcovery is no ſuch improbable a Thing; and I hope then the Gentlemen of the Jury will take it into their Conſiderations, who they are that are Witneſſes in this Caſe; Men whoſe very Religion is Rebellion, and whoſe Principles and Practices are pernicious to the Government; and thereby they are to be looked upon as dangerous Perſons in Church and State. But, my Lord, if the Letters of *Coleman* be well conſidered, they will juſtify me, that he Correſponded with *Le Cheeſe* the French King's Confeſſor, for the promoting of Popery in *England*, is notorious to all Mankind, that have either read or heard that Tryal: Your Lordſhip was of Counſel for the King in that Caſe, and heard how it was opened, and plainly proved upon him: And when his Letters have been made ſo publick, and proved under his own Hand, nay and confeſſed by himſelf, I think no Man will doubt but that muſt be a plain Proof of the Plot, and will be enough to vindicate me.

My Lord, I have one Word more, and then I have done, and leave it to your Lordſhip and the Jury. My Lord, as they would now fling the Popiſh Plot upon me, ſo there is an evident Deſign to fling the Murder of *Godfrey* upon a Proteſtant Peer; and becauſe an Indictment was upon the Teſtimony of the Traytor *Fitzharris*, againſt that noble Lord, they have reſolved to have profligate Villains to take his Life for that Murder: That is apparent; and ſo they will go on ſtep by ſtep, if they be let alone; and think at length to wipe their Mouths with *Solomon*'s Whore, and ſay, They have done no Miſchief. My Lord, I leave theſe Things to the Conſideration of the Court and Jury; I will not detain you any longer: I have called what Witneſſes I could get, but the diſtance of Time has made it impoſſible for me to have thoſe here now, that did give Evidence in this Matter before.

My Lord, I have one Favour to beg of the Court, I had but a bad Night laſt Night, and am now in a great Pain; I deſire that you would grant me one Requeſt, that I may have Counſel aſſigned me to argue the Errors in Yeſterday's Indictment: My Lord, I am but a poor Man, and cannot be at the Charges of feeing Counſel.

L. C. J. We did aſſign you Counſel before; you may have who you will for Counſel.

Otes. Will your Lordſhip be pleaſed, to do me the Favour to let me have ſome time to prepare and inſtruct Counſel.

L. C. J. Ay, what Time would you have?

Otes. A Week's time, if your Lordſhip pleaſe.

L. C. J. Give him till this Day ſeven-night, there may be no hurt in that.

Otes. Till *Monday* come ſeven-night, if your Lord pleaſe, let me have.

L. C. J. No, no, we cannot do that; we give you a Week's time, which is more than ordinary; for by the Rules of the Court there are but Four Days allowed, and thoſe would be out *Monday* or *Tueſday*.

Otes. I thank your Lordſhip for that Time you have given me, but I hope you will be pleaſed to take the Particulars I have mentioned, into your Conſideration; and I deſire I may have liberty to go Home, becauſe I am not well.

L. C. J. Ay, you may go, if you will.

Mr. *Sol. Gen.* May it pleaſe Your Lordſhip, and You Gentlemen of Jury, the Queſtion that you are to try, is a Perjury, which is charged on the Defendant *Titus Otes*, for ſwearing that *William Ireland* was in Town, upon the firſt or ſecond of *September*, 78. And likewiſe, for ſwearing, that he took his leave of him at his Chamber in *Ruſſel-ſtreet*, between the eighth and twelfth of *Auguſt* 78. And we do aſſign the Perjury in both thoſe Points, that he is forſworn in both, and the Evidence of that Perjury is, that it is impoſſible to be true what *Otes* did ſwear, becauſe Mr. *Ireland* was not in Town between the eighth and twelfth of *Auguſt*, nor the firſt or ſecond of *September*.

Gentle-

Gentlemen, You have heard the Evidence that has been given, and there has been no leſs than between forty and fifty Witneſſes produced to ſhew that it is really impoſſible what *Otes* did ſwear ſhould be true; he tells you that this Matter is in a Circumſtance of Time, wherein it is difficult for a Man to be poſitive to a Day, and a Man may be allowed ſome Latitude in ſuch a Caſe; nay, it is uſual with Witneſſes in Points of Time, to ſwear with a Latitude; but, my Lord, to ſhew that, if we ſhould grant that falſe Doctrine to be true (and falſe moſt certain it is, and of miſchievous conſequence it would be, if, when things are charged upon Men that depend upon Circumſtance of Time and Place, the Witneſſes ſhould not be ſtrictly kept to thoſe Circumſtances) yet, I ſay, granting that Poſition, it is impoſſible it ſhould do him any Service in the Caſe before you: For between the beginning of *Auguſt*, and the 14th of *September*, (which includes both the Times he ſwears to, and the Latitude of above twenty Days to boot) there is not any one Moment of Time wherein his Oath could be true.

Gentlemen, You obſerve what the Witneſſes have ſaid, how they have given you an account of every particular Day of both Months, from the 3d of *Auguſt*, when he firſt left *London*, to the 14th of *September*, when he returned back again: We did ask the Witneſſes, that it might appear to be plainly true, what they ſwear, if they had any particular Circumſtances that made them to remember it; and they have given a great many, and now it lies upon us, to ſhew you that it is Demonſtration, that what they have ſaid and teſtified, muſt be true; and that thoſe Days they ſpeak of, he was in the Places they named.

For take the Periods of Time, and you will find you have him from the 3d of *Auguſt* to the 16th, with my Lord *Aſton*, going from *London* to *Tixhall*, upon the 17th they give you an account of him at Mrs. *Harwell*'s to the 26th; from the 26th to the 4th of *September*, there are others that give you a particular account, by remarkable Circumſtances, where he was every Day in *Staffordſhire*; from the 4th to the 7th you find him at *Wolverhampton*; for the 8th indeed we do give no particular account where he was that Day; but we prove that upon the 9th he was at *Tixhall*, and from thence he came away with Sir *John Southcoat* towards *London*, and there you have a particular account where he was every Day till the 14th, when he returned to his Lodging.

And now, Gentlemen, I ſhall ſhew you, that, if you believe theſe Witneſſes ſaw him in theſe Months; that certainly it was upon thoſe Days they ſpeak of, that they did ſee him.

Firſt, That he went out of Town in *Auguſt*, you have theſe Witneſſes, *Anne Ireland*, *Eleanor Ireland*, Mrs. *Duddle*, Mrs. *Quino*, and my Lord *Aſton*. Well, how come they to remember it was upon the 3d of *Auguſt*? Why the four Women remember it by this particular Remark; Three Days before there was a Holiday, which they keep in Memory of *Ignatius*; and upon that Day they remember Mr. *Ireland* went abroad to take a Recreation, and came home again that Night, tho' the reſt of the Company ſtayed there; becauſe he was to go out of Town. Upon the third Day after, which muſt be the 3d of *Auguſt*: For *Ignatius*'s Day you hear, is always the laſt Day of *July*. And they do poſitively ſwear, that upon the 3d of *Auguſt*, he took his leave of *Anne Ireland* and *Eleanor Ireland*. Mrs. *Duddle* remembers, that he went out that Day. Mrs. *Quino*, whoſe Husband was his Taylor, ſays, he did ſtay a little to have ſomewhat in his Cloaths mended: And ſhe ſaw him in his Boots; and he ſaid he was to go out of Town. Mrs. *Anne Ireland* ſays, they took the Liberty to lodge a Gentlewoman in his Chamber, and ſaw him not again till a Fortnight before *Michaelmas*: And that he did go out of Town upon the 3d of *Auguſt*, is further prov'd by my Lord *Aſton*, who noted it down in his Book at that time that *Ireland* came to his Houſe at *Standen* in *Hartfordſhire*; ſo that here is as ſtrong an Evidence as can be, that he did go on the 3d of *Auguſt*, and that they remember it to have ſo been by all the Circumſtances that can be imagin'd.

Well, the 3d of *Auguſt* he went out of Town. The 4th of *Auguſt* we give an account where he was: He ſtayed that Day with my Lord *Aſton* at *Standen*. The 5th of *Auguſt* he ſet out with my Lord *Aſton*'s Company, and went to St. *Albans*. The 6th, he went to *Northampton*. The 7th to *Coventry*. The 8th to *Tixhall*; and the Company that went with him proves it, which was Sir *Edward Southcoat* and Mr. *John Southcoat*, and *Harriſon* and *Hobſon*, who ſaw him go in the Company; and Mr. *North*, who ſays he ſaw him every Day; and *Ingletrap* the Coachman that drove the Coach, all theſe remember it poſitively; and ſome of them ſpeak of a remarkable pretty Horſe which he rid upon.

Now when he comes from *Tixhall*; (for we have brought him hither by manifeſt Proof, by Men that could not forget, by Men that ſaw him in the Company:) There he remained (as they all teſtify) till the 13th of *Auguſt*, and that was the *Tueſday* after his Arrival at *Tixhall*; and from thence he went that Day a Journey into *Flintſhire* to *Holy-well*; and that is proved by the Witneſſes that were in his Company in that Journey. They tell you, the 13th he lay at *Nantwich*. The 14th at *Holy-well*. The 15th at *Cheſter*. And the 16th he came back again to *Tixhall*. And ſo here you have abundance of Witneſſes, that give you a particular account where he was, in what Company they ſaw him from the 3d of *Auguſt* to the 16th. If he were then in this Company from the 3d to the 16th; he could not be in his Chamber in *Ruſſel-ſtreet* between the 8th and the 12th.

Then we came to the 17th, and then we find him to be at *Wolverhampton*, where he continued to the 26th; and that it muſt be between the 17th and the 26th, is plain; for after that time which Mrs. *Harwell* ſpeaks of, the other Witneſſes give ſuch Circumſtances, that it cannot be otherwiſe: You find him on the 27th at a Horſe Race, which is a remarkable Circumſtance. And theſe are things that Men do very well remember what Days of the Month they happen upon. We then give you an account of the 29th; that at *Tixhall* he was ſeen in Company upon the Bowling green, with Perſons of Quality; Sir *Thomas Whitegrave* and others. So we give you an account where he lodged. The 28th he was at *Bellamore*.

The 29th he went to Mr. *Heveningham*'s; there he lodged till the 1st of *September*; and this is remember'd by particular Circumstances, that he went a Fishing, and a Setting, and a Hunting. Then the next Day, which is the 1st of *September*, and the next Day after, the 2d of *September*, they saw him at Mr. *Gerrard*'s; he din'd upon the 2d at Mrs. *Crompton*'s, and lay at *Boscobel*; there he continued the 3d, and the 4th he came to *Wolverhampton* again.

So that this shews, that what Mrs. *Harwell* did speak of, was true; for if Mrs. *Harwell* did see him, as 'tis not at all doubted but she did: It must be in that Interval of Time between the 16th and the 27th; where we give you an account of him by other undeniable Circumstances, that he lodged at other Places, and could not lodge at her House at *Wolverhampton*.

Besides, Gentlemen, the particular Circumstances that they do remember him by, proves it to be on those Days. Mrs. *Harwell* gives her positive Oath, that he did come there the 17th, and lay there every Night to the 26th, which was on the Monday Seven-night after; and that he came again the 4th of *September* after, and lay there till the 7th.

Then there is *Rushton*, another Witness, that saw him at her House, the 18th, 19th, 20th, 21st, 22d, and 25th. And, I say, it must be those Days, because we have given an account, by other Witnesses, of all the other Days. And it must be that very time that *Otes* speaks of: For it was the *Summer* before *Ireland* was apprehended and executed for the Plot, which was *Michaelmas* 1678.

Mrs. *Winford* she remembers him at *Wolverhampton*, the 18th, 19th, 22d, and 24th.

Stanley remembers the 18th and 19th: And if you ask him, how he remembers it? He tells you by a Circumstance, that most Men would remember; he buried his Child that Day, and entertain'd *Ireland* with the Provision for the Funeral. Now Men usually remark such Accidents as these; for that is a thing a Man cannot forget, that has any Concern in the World for those that are so nearly related to him. And therefore such Circumstances must of necessity evince the Truth of what he speaks; because it is brought to his Mind by an Accident that cannot be forgotten.

Mrs. *Purcel*, which is the next Witness: And she remembers to have seen him the 18th, 19th, 20th, 21st, 22d, and 23d; for she remembers the last of them was the Day before *Bartholomew-day*, which was a remarkable Day.

Then there is another Man, that look'd to his Horse whilst he was there; but his Memory will not serve him to speak to any particular Time: He only evidences, that he was there; and the other Witnesses speak to the Time.

Mr. *Stamford*, he remembers it to be at that time, because he saw him on the *Sunday* after the *Assumption of our Lady*; which is always the 15th of *August*. And the like says Mrs. *Gifford*. These Circumstances verify her Testimony.

And Mr. *Gifford* remembers, he came on the 17th Day: And he saw him every Day, till the 26th Day.

And Mrs. *Fowler*, who is Mrs. *Harwell*'s Daughter: She remembers, he came the 17th Day; and she was in his Company every Day, till the 26th; except one Day, when he went to *Litchfield*; that was the Day before *Bartholomew-day*, which was *Friday*.

Mrs. *Keeling*, she swears, that upon the 17th Day he came there, which was *Saturday*. She saw him on the *Sunday*, and on the *Monday*; and went on the *Monday* in the Afternoon, to the Funeral of her Mother: Which is another Circumstance, that she must needs remember; and by that, has the Remembrance of the Day of the Month when he was there: And she return'd back again on *Thursday*, and heard him that Day, but did not see him. But she saw him every Day after, till he went away: And she remembers his going away was upon the 27th. And she remembers likewise, that he return'd the 4th of *September* after.

Mr. *Richardson*, he proves, That he saw him upon the 19th Day of *August* at *Wolverhampton*; as he was told, it was he: And being ask'd, When he was told so? He says, Mrs. *Harwell* told him so some time before he was apprehended: So that she could not tell it him then, to serve a Turn. And he is a Protestant too.

So is likewise *Eleanor Graves*: Who gives you an account that she saw him there on the 20th, 21st, and 22d; and on the 23d, she went to *Litchfield* with him; and upon the 25th, she supp'd with him at Mr. *Winford*'s.

Now, Gentlemen, you have a full account of it, even to a Demonstration, That he must be in these Places at this time, if you will believe one thing; that is, That these Witnesses saw him at all: And sure none can doubt, but these Witnesses did, upon the Circumstances they have testified, see him in *August* and *September*. And then it must be those particular Times, that they speak of.

At *Wolverhampton* then you have him to the 26th: The 27th Day, you have an account of him at the Horse Race at *Etching-hill*. The 28th, Mr. *Howard* gives you an account, he din'd at *Bellamore*, at Mr. *Aston*'s. The 29th, you find him at the Bowling-green at *Tixhall*: And from thence to Mr. *Heveningham*'s; where he lodg'd that Night, and stayed there the 30th: Which is prov'd by the Circumstances of Fishing in the Morning, and Setting in the Afternoon. And the next Day which was *Saturday* the 31st, you hear he was at the Killing of a *Buck*; where Mr. *Gerrard* was expected, but Sickness prevented his Coming. And you have him the 1st of *September*, which was *Sunday*, at Mr. *Gerrard*'s House, where several of the Witnesses did see him.

And besides, one *Proctor* tells you, He saw him the 31st of *August*, at *Fulford*, at Mr. *Lowe*'s. And he very well remembers that to be the Time, by a remarkable Circumstance: *For* (says he) *the last Day of* August *I went to pay some Money*, (which is a thing Men are generally very punctual in) *and when I came home again, I found him there.* And he swears he saw him at Mr. *Gerrard*'s House, the 1st of *September*, the Day after.

Mr. *King* remembers he saw him at Mr. *Gerrard*'s of *Hildershame*, the First of *September*; and that he dined at Mrs. *Crompton*'s, the Second of *September*; and stay'd there till Two of the Clock in the Afternoon: And went from thence, with an intent to go to *Boscobel*.

Lee

Lee ſays, He ſaw him at Mr. *Gerrard*'s Houſe, and at Mrs. *Crompton*'s : That he dined there, and went from thence to *Pancraſs*, and from thence to *Boſcobel*.

Mr. *Biddulph* remembers, he dined with him on the Second of *September*, at his Aunt's ; and that by this Circumſtance, He was deſired by my Lord *Cullen*, to ſee an Horſe-Race in *Northamptonſhire* ; and promiſed my Lord *Cullen* to come : Which Horſe-Race is always on a certain Day, the Firſt *Thurſday* in *September* ; and that Year it happen'd to be the Fifth of *September* : And it was the *Monday* before, that he din'd at his Aunts'. And becauſe of his Promiſe to my Lord *Cullen*, he would not ſtay all Night. And ſo it muſt be the Second Day of *September*, that he ſaw him there.

Mrs. *Crompton* ſays, It was the ſame Day, that her Nephew, Mr. *Biddulph*, dined there : For he was a Stranger, and ſhe never ſaw him before, nor after.

And there is another Gentlewoman, Mrs. *Palmer*, that ſwears, He dined at Mrs. *Crompton*'s ; but ſhe cannot tell the particular time when,

Mrs. *Gifford* ſaw him at *Pancraſs*, between the Hours of Four and Five in the Afternoon, upon the Second of *September* : And *Lee* went along with him to *Pancraſs* ; and from thence he went to *Boſcobel*.

Mr. *Pendrell* ſays, He ſaw him the Second of *September* at Night. For he came to his Houſe. Which agrees with all that the other Witneſſes ſay, which was, That he intended to go to *Boſcobel* that Night. He and his Wife both teſtify, That there he lodged upon the Second of *September* ; and ſtay'd there the Third of *September* ; and went from thence the Fourth, to *Black-Ladies* : Where Mr. *Gifford* tells you, he dined.

And we have given you an Account before, where he was the Fourth at Night : For then he was returned to *Wolverhampton* ; and there he lodged to the Seventh of *September*. And after the Seventh of *September*, though we do not give you a poſitive Evidence, That upon the Seventh of *September*, at Night, or upon the Eighth, he was at my Lord *Aſton*'s : Yet we have given you that, which amounts almoſt to a Demonſtration, That he muſt be there upon the Eighth of *September*. For he went from thence with Sir *John Southcoat*, to go towards *London*, on the Ninth. And our Evidence is the more Credible, becauſe they ſwear cautiouſly all of them : Unleſs they remember ſome remarkable Circumſtance, they will not take upon them to fix upon a particular time.

Then, *Gentlemen*, we give you an Account, by the Perſons that were in his Company where he was every Day, all along from the time he left *Tixhall*, down to the time he came to Sir *John Southcoat*'s Houſe in *Surry*. And this Journey took up the Ninth, Tenth, Eleventh and Twelfth of *September* : There are Four Days ; and he ſtay'd there one Day. Then he ſold Mr. *Southcoat* his Horſe. Mr. *Southcoat* lent him his Horſe to come to Town ; and the next Day he did come to Town. And ſo we have brought him to *Saturday* the Fourteenth of *September*.

And now, let all the World be judge, if there be any poſſible Room left, that any one Word Mr. *Otes* has ſaid, can be true ; even giving him the Latitude of Time, he himſelf deſires, and ſays, All Witneſſes muſt be allowed. No, there is not one Minute for him, wherein he can be verified in any one Tittle of his Evidence, as to *Ireland*'s being in Town. And this is that which I call (and ſure, well I may ſo call it) a *Demonſtrative Proof*, That what *Otes* did ſwear, is utterly falſe.

Gentlemen, the Jury had not this Evidence at the Tryal of *Ireland* : Some they were, that went out of the Town with him ; and ſome, one or two of *Wolverhampton*, were at the Five Jeſuits Tryals ; but not above Five or Six in all of theſe Forty odd, that now appear. True indeed it is, all theſe were not there ; and *Ireland*, upon that, unfortunately ſuffered ; for ſo I may take leave to ſay, It was *Unfortunately*.

Mr. *Otes* has ſaid one thing unto you, which he lays much ſtreſs upon : He would have you look upon it as a great Hardſhip, That this Proſecution comes ſo late ; and that it is ſtrange, after Six Years time ſpent, this ſhould not be ſet on foot.

But, Gentlemen, I cannot but with much Sorrow remember to you ; and I know you all remember it too well : That there was a time, when the City of *London* was ſo far corrupted, that it was become a Refuge and a Sanctuary for High Treaſon ; when there was no Juſtice to be had for the King there ; when Men lodged themſelves within thoſe Walls, as a Protection for their Conſpiracies ; we all remember the Time, when Indictments were preferred, and a plain Evidence given to a Grand Jury, even to the publick Satisfaction of all that heard it ; and yet they have refuſed to find the Bill : And not only ſo, but were ſo abetted by the Rabble, that it was ſcarce ſafe for the Judges to ſit upon the Bench. Theſe are Things none of us can forget, but muſt be perpetually remembered, to the Shame of the Authors and Contrivers of them : And therefore it is no wonder an Indictment was not preferred againſt Mr. *Otes* at that Time, when the plaineſt Proof againſt Criminals could not be admitted. And this will give every Man Satisfaction, why it has been delayed. And I hope at the ſame time give every Man a Caution, how they fall into the like Circumſtances again.

But, Gentlemen, you have heard the Evidence that is now offered, to prove this Matter of Fact ; and it is a plain Demonſtration, if you will believe that Mr. *Ireland* was ſeen by theſe Men at all, he was ſeen at thoſe very times they have particularly declared : For upon Conſideration of the Circumſtances, it is impoſſible it ſhould be at any other times ; and ſo I leave it to you to judge upon the whole, whether the Defendant be Perjured or no.

L. C. J. Gentlemen of the Jury, this Caſe has taken up a great deal of Time ; but it is a Caſe of that Moment and Conſequence, that ſure no time ought to be thought too long, that is employed for the diſcovering of the Truth, ſo neceſſary to be diſcovered, as the Matter now in queſtion. For as I ſaid at the beginning upon this Occaſion, and I cannot but ſay it again now ; I confeſs, I cannot without Horror and Trembling, reflect upon the many Miſchiefs and Inconveniencies we have been run into, if the Teſtimony given this Day in this Cauſe againſt *Otes* prove true, as I cannot in the

the leaſt imagine, where there ſhould remain the leaſt Objection againſt the Truth of it; I cannot, I ſay, but bewail, that ſo many innocent Perſons (to the Reproach of our Nation be it ſpoken) have ſuffered Death upon this account.

God deliver me, from having the leaſt ſtain of *Innocent Blood* imputed to me; and it is more to be lamented, when we ſee that Impudence, which has brought that Infamy upon our Land, continues with a brazen Face, defying all Shame to this Day. But by this we may be informed, how ſome Men's Conſciences are ſeared, and that there are ſome People that do indeed live without the Fear of God in the World. For if that Man, who has aſſumed to himſelf the Habit and Character of one that ſhould preach to others, Religion, Vertue, and the Things that become true Chriſtians, ſhall become ſuch a Monſter of Impiety and Impudence, in defiance of Heaven and Earth; What greater and more manifeſt Proof can there be of a ſeared Conſcience?

I cannot but lament likewiſe the Wickedneſs of our Age, when I reflect upon the Teſtimony of that other Wretch (indeed I cannot uſe Terms ſevere enough for him) that when he was going into another World, ſhould perſiſt in ſuch groſs Falſities; I mean *Bedloe*, Infamous *Bedloe*; and let his Name be for ever Infamous to all Mankind, that have any regard, or deference for the Truth; that he ſhould with his lateſt Breath dare to affirm, That every Word he had ſaid of the *Popiſh Plot*, was true; when it is as clear as the Sun, by the Teſtimony of this Day; that every Word he ſwore about *Ireland*, was utterly falſe. *Good God of Heaven! What an Age have we lived in, to ſee Innocence ſuffer Puniſhment, and impudent Falſity reign ſo long.*

Gentlemen, I hope all Eyes are opened (I wiſh they had been ſo long ſince;) let us lay the Burden, the Infamy and Reproach of theſe Things, upon them that deſerve it; for we cannot but know, we are reckoned as a By-word to all our Neighbours, and ſhall remain Monuments of Ignominy to all ſucceeding Ages and Times, if we did not endeavour to diſcharge our ſelves, and our Religion, and the Juſtice of our Nation from theſe Scandals.

Gentlemen, I think I am obliged, in the firſt Place, to take notice of what Mr. *Sollicitor General* has mentioned, concerning the Inſolency of thoſe Times; wherein the Faction was grown to that extravagant Height, that, in truth, a Man durſt not appear, with ſafety of his own Life and Fortune, to Teſtify the Truth. And, Is it not a ſhame, that it ſhould be remembred, what one of the Witneſſes this Day Teſtified? That when he came to appear at the Council-Table, to Atteſt a Matter of Fact, before this Innocent Blood was ſpilt (for ſo I muſt call it, if that which has been Sworn this Day is true) the Rabble ſhould be ſo boiſterous, as to cry out; *Where is that Villain, that dares come to give Evidence againſt* OTES, *the* SAVIOUR *of the* NATION? Oh, horrid Blaſphemy, that no leſs an Epithet ſhould be given to ſuch a Profligate Wretch as *Otes*, than that which is only proper to our Bleſſed LORD! As though *Otes* had merited more than all Mankind; and ſo indeed he has, if we take it in a true Senſe: He has deſerved much more Puniſhment, than the Laws of this Land can inflict.

And I muſt needs ſay, Gentlemen, That this is an Inſtance, why there ſeems not to have been Puniſhment enough ordain'd in Law for Perjury, becauſe our Law-makers did not foreſee, that there could ever be ſuch Villains, ſuch Miſcreants, as theſe.

We have indeed another Inſtance in the Law, of a Crime for which there is no adequate Puniſhment; and that is in the Caſe, where a Child kills his Father; Paricide has no peculiar Judgment aſſigned for it; but we are forced, becauſe theſe Things have been ſometimes practiſed, by a Conſtruction in Law, to make that Child as a Servant to his Father, and ſo puniſh him with the Judgment of Petty-Treaſon; but take him immediately as he is a Child, and not as a Servant, and I ſay there is no particular Proviſion in Law, to puniſh ſuch an Offence: And, What is the Reaſon of it? Becauſe it is ſo unnatural, and againſt the Imaginations of Mankind to believe, there ever could be ſuch a wicked Child in the World.

If that be not to be imagined, How could it be imagin'd, that there ſhould ever be ſuch horrid Villains, as ſhould attempt the Deſtruction of the Government of Three Kingdoms? Good Lord! What Times do we live in? Surely, 'tis ſuch an Age, as was never known, from the Creation of the World, to this Day.

And to this muſt be added, what aggravates the Miſchief, That all this is done under the Umbrage, Countenance, and Pretence of Law; the Proceedings of Law, the uſual Methods of Juſtice, are made the Inſtruments of the moſt horrid Injuſtice. The Murder of our late Bleſſed Sovereign, King *CHARLES* the Martyr, of ever happy Memory, though a Crime as high in it ſelf, as the Law knows of; yet I may ſay, it was aggravated very much, that that Unfortunate, but Glorious King, ſhould be brought to the Block, by a Pretext of Law, and Cut off by a colourable Method of Juſtice; 'tis that which makes that Murder ten times more Baſe and Infamous. So, Gentlemen, the Deſtruction of poor innocent Perſons, by falſe Accuſations, by the pernicious Evidence of Perjur'd Witneſſes, in a Court of Juſtice, makes their Crime infinitely more odious, than common Murder.

Gentlemen, I cannot but ſpeak with warmth in a Caſe of this Nature; and I the rather ſpeak ſo, becauſe, at the time when thoſe things were done, we all know, the Nation was in a Hurry, and a ſort of ill-minded Men had crept in among us, who had blown us up to ſuch an height, that nothing but what comply'd with their malicious and Deviliſh Deſigns, was to be believed; when the King could not get common Juſtice done againſt real Traytors; but the very Streams of Juſtice were all Corrupted, though the Fountain (God be thanked) was preſerved pure.

When the Faction (by Cabals and Intrigues) had got Sheriffs of their own Party, and laboured to get all other Officers of their own wicked Principles, then came all thoſe Miſchiefs we ſo long labour'd under. When thoſe Fellows, that had ſo great a ſhare in the late Rebellion, were the only fit Men to be truſted with the Government; and all the while were deſigning to deſtroy it, and to bring us into

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the ſame miſerable Condition we formerly were in.

Was it ever (I ſpeak to you, Gentlemen of the Jury, Citizens of *London*, who know its antient Conſtitution, and have too well experienced its late Convulſions) was it ever known, till Juſtice was deſigned to be Corrupted, that there was any labouring to be Sheriffs? No, Endeavours were always uſed to be excuſed, and Fines paid to get off from that Office: And the reaſon is plain; for never was there a wiſe and wealthy Citizen, that had a mind, out of a principal Part of his Eſtate, to ſquander away ſo much as is neceſſary to defray the Charge of that Office: But it was the Deſign that thoſe Raſcals had upon the Government, that made them ſo greedy of thoſe Places; and they thought they had now an Opportunity to effect their Deſign, upon theſe Fellows pretended Diſcovery. They believed, that becauſe we were hurried into the Miſchiefs of the late Times, by Pretences of *Popery*, the ſame Bait would be ſwallowed now: Therefore the Cry muſt be ſet up, *Popery was a coming in.* They concluded, if they could but make uſe of the ſame Engines, they ſhould have the ſame Effect: Witneſs a Peer, that is now dead, one that was a main Inſtrument of our Confuſion in the late Times, and thereby experienced in Villany, was made uſe of as the Chief Tool in theſe late Contrivances.

But alas! When they found thoſe Pretences and Projects would take no longer, then they fly to that, which was indeed the bottom of All; I mean, *The bloody Conſpiracy*: When they found they could not overthrow the Government by Methods of Law, they betake themſelves to downright Treaſon. For by this time, the Eyes of the honeſt Citizens were opened; and they found what Intereſt was driving on: And it was time to have them open, when a Cauſe in *Guild-Hall* was always Tryed according to the Characters of the Client, and not the Merits of the Cauſe; when, if a Man was blaſted with the name of a *Tory*, he was ſure to loſe it: But if a whining Raſcal was Sanctified with the name of a *Whigg*, he was ſure to have it go on his Side: Witneſs the famous Cauſe of Mr. *Loades*, about his *Limons*.

But when Sheriffs came to be Elected in due manner, ſuch as were fit to be Truſted with the City-Buſineſs: What do they, but break out into a horrid Conſpiracy, to take away the Life of that bleſſed King, that merciful Prince, ſo lately deceaſed, to the Grief and Sorrow of all His loving and loyal Subjects? And not only ſo, but to rob us of His Sacred Majeſty, our preſent moſt Gracious Sovereign; whom I pray GOD to preſerve long to Reign over us. *To which, the Auditory gave a great Acclamation, ſaying*, Amen.

Gentlemen, When theſe Things are thought upon, you muſt give me leave to obſerve (let others think what they pleaſe) that was the real Plot, the true Plot: For there is one thing obſervable, that attends this whole Affair, That every Man who Suffered for the Plot, which the Witneſſes truly call *Otes*'s Plot, to a Man denied it even to the laſt Gaſp; and took it upon their Deaths and Salvations, that they were Innocent: Nay, when they had not thoſe Hopes *Bedloe* had, of Life (for I cannot believe, that he could have been ſo egregious a Villain, as to have Atteſted ſuch notorious Lies, if he had not hoped to have recovered; and thereby increaſed his own Reputation) yet not a Man of the others, but diſowned it with their dying Breath. Now, on the other Side, there was not a Man, that was concerned in the Conſpiracy, of which this was to be the Blind and the Colour, had the Confidence to deny it, when they came to Suffer for it. All this ought to be put in the Ballance, and duly weighed.

For, Gentlemen, becauſe it is a Matter that is not only publick here, but all the World over, we muſt have the Juſtice of the Nation vindicated, and its Diſ-reputation wiped off. And having taken notice of theſe Things, which I could not well omit upon this Occaſion, I muſt now put you in mind, what is neceſſary for you to take into your Conſideration, as to the particular Caſe before you. And,

Firſt, You muſt obſerve, That this Indictment againſt *Otes*, is for Committing wilful and Corrupt Perjury; which is alſo ſaid to be done maliciouſly. And if it were falſe, ſurely it was malicious; becauſe, by his falſe Oath, have Innocent Men been Convicted, Condemned, and Executed.

Secondly, You are to conſider, how far the Thing goes, to make it material to the Iſſue: For if it were upon a Nicety only, or a Catch, or any of thoſe fine Words, that he has been pleaſed to make uſe of; it were not fit to Perjure him upon it. But it is certainly very material: For Time and Place are Matters ſubſtantial to diſcover Truth and Falſhood by, as in the Caſe of *Suſannah*; The Perjury of the *Elders*, as you may remember, was detected by thoſe very Circumſtances. But I ſhall ſhew you the Occaſion of this Oath; and that will manifeſt it to be a material Part, in reſpect of the Time. For,

Firſt, Here was a Conſult held, as he Teſtified, the 24*th* of *April*, 1678. and then he ſwears *Ireland* was in Town, and preſent at the Conſult: But all that *Otes* ſwore, would not do the Feat, becauſe that he was but one Witneſs. Then comes *Bedloe*, his worthy Yoke fellow (a Brace of ſuch Witneſſes, as the Lord deliver all Mankind from) and he aſſigns another Fact upon Mr. *Ireland*, in the Month of *Auguſt*, the latter end of it, or the beginning of *September*; which is material, and makes two Witneſſes againſt *Ireland*, which *Otes* knew well enough: For he is his Arts-Maſter; he knows all the Tricks, and can tell the very Nick that will do. And therefore, when he finds Mr. *Ireland* ſo poſitively affirming, That he was then out of Town; and if ſo, *Bedloe* did not ſwear true: Then does this *Otes* come in (and thereby makes his Teſtimony material to the Point then in Iſſue.) Says he, *The Firſt of* September, *or* (*at leaſt*) *the Second, I will ſwear he was in Town; for he gave me Twenty Shillings:* And that is given as a Token, why he does remember it. And thus he did prop up *Bedloe*'s Teſtimony, againſt Mr. *Ireland*'s Defence. This is proved to you by Mr. *Waterhouſe*, who was one of the Jury. And the ſame thing does the next Gentleman ſwear, which is Mr. *Byfield*: They do both agree in that Circumſtance punctually, That he ſwore, he had then of him Twenty Shillings.

Ay, (but ſays he for himſelf, becauſe I would remove the Objections out of the way, as they occur to me) *'tis very hard, this being now ſome*

six or seven Years ago, that I should be called to question about such a thing; when they might have had a time to disprove it before.

Besides, Gentlemen, the Answer that has been truly given to you, concerning the Miserableness of the Times; when, the Truth of it is, there was no Justice to be had for Protestants, if we speak of the *Church of England-Men* under that Name: For either they were Papists in Masquerade, or Popishly affected; or the Names of *Tory* and *Tantivy*, and I know not what, was enough to do their Work for them: And no body was reckoned of the Sober, Virtuous, Godly Party, but those that were under *Associations* and *Covenants*; as tho' there was no Sanctity to be found in any but those who were bent to destroy all Virtue and Religion. I say, besides that, there is another Answer, which I am sorry has so much Weight in it: Could any Man have believed, that *Otes* should dare so impudently to swear a Falshood, and that in a Cause where Life was concern'd; and the Man hang'd upon his Testimony? To what purpose then should his Relations interpose to disprove *Otes*, after his Death? That would not revive him. But you find there was an Inclination that way; and I wish to God, with all my Heart, it had taken effect: For what says the old Gentlewoman? As soon as she heard what Mr. *Otes* had sworn, which she knew to be false, immediately she dispatch'd an Express to *London*; and sent a Petition to the King, *That either* Ireland *might have a new Tryal, or his Execution might be repriev'd, till they brought up such Witnesses, as would have made it apparent, and as clear as the Light, That what this Fellow had testified, was notoriously false.* But such, such, I must say, was the Misfortune of the Time we were in, that stop'd the Fountain of Mercy it self, from letting forth its wonted Streams; and even compelled that Compassionate Prince, rather than he would give any Disturbance to his People, to permit that Execution against his own Inclination; because there was a Verdict, and Judgment in the Case. For, as he was really the Fountain of Justice; so was he of Mercy too. And it is well known to those that had the Happiness to be near his Person, how oft he expressed his Concern for having consented to this Execution. And this continued with him even to his dying Day, as the Business of my Lord of *Strafford* did with his Royal Father.

And, Gentlemen, I chose to mention this Passage concerning his late Majesty, for this Reason, That when we live in such tumultuous Times, when things are put so hard upon Princes, as to compel them to restrain their Mercy, where they think it due, rather than seem to stop the Current of Justice; this should not be remember'd with any Reflection upon them, but with Infamy to those that are the Causes and Grounds of it: When such prodigious Wretches, as *Otes* and *Bedloe*; for there appears no Evidence before you, but of those two profligate Villains, who came out of Goals: And after having been guilty of Villanies almost of all sorts that ever were committed, came to be sanctified by committing more: And were therefore called, *The Saviours of the Nation.*

Gentlemen, The next Objection that is made against the Evidence for the King, is, *That they are all Papists; who design nothing but to destroy the Government, and ruin the Protestant Religion.* And this must be taken to be the whole Design of all these Persons of Quality, and others, that they come to forswear themselves, and damn their Souls to all Eternity, on purpose only to destroy Innocent, Protestant Mr. *Otes.* Alack-a-day! When, at the same time, I must tell you, if it were necessary, you have about seven or eight Protestant Witnesses of the Church of *England*, that confirm the Testimony of the rest: Not that we must think, or ought to have any such Conception among us, but that Roman Catholicks, in Point of Law, are good Witnesses; and are to be credited as much as any other Witnesses whatsoever, unless there be some Objection made to them; which would be the same against a Protestant as a Papist: For there remains a Right in them; and they ought to have equal Credit given to their Testimony, with those of any other Perswasion, if a regular Objection be not started against them. And sure I am, that has been always the Law; and shall be my Practice, while I have any thing to do with the Administration of Justice. Let the sober Party, as they call themselves, make what Reflections they please upon it, or trouble themselves as they will about it; I value them not, nor their Opinion: Let them send as many Penny-Post Letters and Libels as they have a mind to do; two of which I receiv'd last Night, about Yesterday's Tryal. This I am sure of, Lying is as much the Talent and Inclination of a Presbyterian, as ever it can be of a Papist: Nay, more; For it is as inseparably incident to a Presbyterian, (and such sniveling, whining, canting Knaves) to Lie, as to Speak. They can no more forbear Lying, than they can forbear Speaking; for generally, as often as they do the one, they do the other.

Besides, I must observe to you, with what Caution, Care and Sobriety, both of Expression and Action, all these Gentlemen and Women have delivered their Testimony, with the greatest Tenderness and Care that possibly could be: And as well as they have given it with Caution; so I cannot but put it home to you, Gentlemen at the Bar, to give it it's due Consideration.

For tho' the other Juries did believe *Otes*, and not them at that time; yet that is not to be your Measure, because you have not the same Reason to do it. Could any Person think, that there should be such Villains upon Earth, as impudently to swear downright Treason against their Fellow-Subjects, if there were no Truth in the Accusation? That was the thing that guided those Juries, who were all of them, no doubt, very honest Men; and that was it, which influenc'd the Parliament to do what they did in the Matter. For it was morally impossible to be thought, any such Wickedness could be so publickly attempted.

But, God be thanked, the Eyes of all honest and understanding Men are opened. And we see the Fault was in our Credulity; and that these were Fellows should not have been believ'd: And it concerns us, when the Truth has been so debauch'd, and our Credulity so imposed upon, to shew the World our just Resentment thereof.

And this I say to you, Gentlemen, with a purpose to vindicate those Persons who were concern'd as Jurors, in the Tryals of all those Causes; because that is the thing much harp'd upon, and aim'd at: That because he was believed

lieved before, to disbelieve him now, would caſt a Reflection upon the Juries; whereas, if that Opinion hold, never will there be any ſuch thing as Perjury detected, ſo long as the *Sun* and *Moon* endure: For if a Verdict be obtain'd upon falſe Teſtimony, and it ſhall be enough for the Witneſs to ſay; I was believed at ſuch a Tryal, and therefore do not you offer to proſecute me for Perjury: That would be the fineſt Doctrine that could be taught, to give a Licence to deſtroy all Truths, Juſtice, and human Society.

Therefore I leave it home upon you: Upon your Conſciences be it; for, in the Preſence of the Great God of Heaven and Earth, that ſees all our Hearts, and will judge us for our inward Thoughts at the laſt Day; *Liberavi animam meam.* If you can find all theſe Perſons (in number forty-ſeven) guilty of wilful, downright, malicious, and corrupt Perjury, then you muſt acquit the Defendant.

For the Particulars of the Evidence, which abound in many material Circumſtances in Point of Time and Place, I ſhall run them over as ſhort as I can, and remind you of them; not becauſe I think it extraordinary neceſſary, as tho' there were the leaſt Doubt of the Fact, but for the Satisfaction of all Mankind, that are not under invincible Prejudice againſt the Truth. And I am ſure, upon Yeſterday's Buſineſs there remained not any Doubt with any that heard it, ſave one, who I know had a great ſhare in the Deſign, that was at the bottom of it; and I doubt, was one of thoſe Perſons that ſet this Villain on Work; his Name may be concealed for the preſent, but a few Days will diſcover it here, or in ſome other Place.

Gentlemen, What Mr. Attorney, or Mr. Sollicitor General, or any of the King's Counſel have ſaid, or what the Defendant has ſaid for himſelf, if not proved, and made plain by Evidence, is to be no Guidance at all to you; who are only to go according to the Teſtimony given to you; for that is purſuant to your Oath, which Oath is the Rule of your Enquiry.

The Witneſſes that prove, that he did ſwear ſo in both the Points in the Indictment; I need not mention, they were ſo full: They tell you, he ſwore, that *Ireland* was in Town from the 8th to the 12th of *Auguſt*; but becauſe he fixed upon the 8th at firſt, there was Caution given him, *Be not ſo preciſe to a Day, conſider with your ſelf.* Then comes he to ſtab the Buſineſs to the quick, and to rivet it home: If I cannot be poſitive to the 8th, I will be poſitive between the 8th and 12th. And as to the other Point, I did obſerve before that, becauſe *Bedloe* was at a ſtand, upon *Ireland*'s denying his being in Town the latter end of *Auguſt*, or the beginning of *September*; therefore comes *Otes* up again, to fix it home; and, ſays he, I am ſure he was in Town the 1ſt or 2d of *September*, becauſe he gave me Twenty Shillings: That he ſwore this, is teſtified by three Gentlemen, who were Jury-men at thoſe Tryals.

Now, that this is notoriouſly falſe, falſe to a tittle; and, as Mr. Sollicitor does obſerve, not the leaſt time left to give any ſort of Countenance to what he ſwore, is thus made out to you.

Firſt, You are to take notice, that upon the 3d of *Auguſt*, being *Saturday*, it is ſworn by three or four Witneſſes, that he went out of Town; and this is not ſworn as Mr. *Otes* gave his Evidence poſitively without Circumſtances; but they give you an account how they remember it; becauſe upon the *Wedneſday* before, which was a publick Day of Note among them, and always kept as a Feſtival in Memory of St. *Ignatius*, upon the laſt Day of *July*, as both they and Mr. *Otes* himſelf do affirm, there went Mr. *Ireland*, Mrs. *Anne Ireland*, and their Mother out of Town to a Friend's Houſe to Dinner. Mrs. *Ireland* did deſire him to ſtay there all Night, as ſhe did. No, ſays he, I cannot ſtay all Night, becauſe I muſt go out of Town on *Saturday*, and I muſt provide things neceſſary for my Journey: Nay, that is not all; for it goes yet further: Says his Siſter unto him, Why do you begin your Journey on a *Saturday*? That is an improper Day: Oh! ſays he, I do it, becauſe I am that Night to go to my Lord *Aſton*'s Houſe in *Hartfordſhire*; where I am to meet with Sir *John Southcoat*, and go down with them into the Country: This does the Mother ſwear, and the Siſter. And then the Maid-ſervant, and the Taylor's Wife, do give you another Token, That it was *Saturday* the 3d of *Auguſt*, becauſe he had ſomething to be mended in his Cloaths, and ſtay'd for them; and he was to go out of Town, for he had his Boots on.

There is yet this Circumſtance further, wherein thoſe four do all agree, That as he went out of Town the 3d of *Auguſt*, ſo he did not return till the 14th of *September*; for they ſay it was the *Saturday* Fortnight before *Michaelmas*, and the ſame Day of the Week that *Michaelmas day* was of: So that you will find, that there is a conſtant Proof, and as plain a one as any poſſibly can be in the World, as to the Time of his going out, and coming home. And where he was in the mean time, proved directly by a great Company of Witneſſes, except one Day. For you ſee, the 3d of *Auguſt* he went to my Lord *Aſton*'s at *Standen*: Several there are that ſaw him there the 4th, and dined with him there; particularly, Sir *Edward Southcoat*. And to ſhew that it is not a thing they are poſitive in, and ſwear it roundly without Conſideration, they give you an account of the Reaſons of their Knowledge. You are to conſider alſo the Teſtimony given by my Lord *Aſton*, a Perſon of great Honour and Quality: Says he, Tho' I dare venture all I am worth in the World upon the Truth of it, that *Ireland* did go along with me all the Journey; yet, becauſe I did not take ſuch particular notice of the reſt of the time as I did of thoſe two Days, I will not take upon me to ſwear it. If Mr. *Otes* had had the fortieth Part of that Caution in his Evidence, I dare ſay, you had not had the Trouble of this Day's Tryal.

The *Fifth*, You have a great many Witneſſes who give you an account, that he came on *Monday* Night to St. *Albans* with my Lord *Aſton*; there is Sir *Edward Southcoat*, Mr. *John Southcoat*, my Lord *Aſton*, the Coachman, and all the Servants: Sir *Edward* tells you, that *Monday* was a hot Day, and my Lord *Aſton* took him into his Coach; but he rode a Horſeback all the reſt of the way, and had a fine going Horſe; which Horſe Mr. *John Southcoat* bought of him when the whole Journey was ended. They tell you likewiſe, upon the 6th and 7th Days, the very Inns they lodged at upon the Road; and particularly at *Northampton*, they lay at the *George*, which was Sir *William Farmer*'s Houſe, which was then let to an Inn-Keeper, becauſe of the Fire in that

Town. And, which is moſt material of all, for Mr. *Otes*'s Satisfaction, you have for theſe Times no leſs than four Witneſſes, that are Proteſtants of the Church of *England*, who give you the ſame Account. There are in all no leſs in number than fourteen to this Point; and whether you will believe thoſe fourteen to be wilfully perjured, without Evidence to the contrary, is left to you: And if they do ſwear true, *Otes* that was Yeſterday found Perjured, muſt be Convicted of Perjury again to Day: For in ſhort the Queſtion is, Whether you will believe Perſons of Credit, that have no ſtain upon their Reputation; or *Otes*, that, upon plain Evidence, was found Guilty of Perjury Yeſterday.

When we come to *Tixhall*, we have no leſs number, that teſtify where he was from Day to Day, and from Night to Night, to the 17*th*, and from the 17*th* to the 26*th*. You have fifteen Witneſſes more, all as direct and poſitive, as can be in the World; ſwearing where he was from time to time. It ſeems he came to *Tixhall Thurſday* the 8*th*; there he ſtayed till *Thurſday* following, and then he went to *Holy-Well*; he lay the firſt Night at *Nantwich*; the next Night at *Holy-Well*, at the Sign of the Star, a notorious Inn there; he came to *Cheſter* on *Thurſday*, and ſome of the Company left him there, but others came back with him to *Tixhall*; who ſay, he went away on *Saturday* Morning, which happens to be the 17th. And thus you have a full account of him, quite from the 3d to the 17th, beyond all Controverſy, plainly proved by Perſons of undoubted Credit. And if he were where they ſay he was from the 3d to the 17th, How could *Otes* ſwear true, that he took his leave of him here in Town, between the 8th and 12th?

Now let us come from the 17th to the 26th, and you have no leſs than fifteen Witneſſes, four whereof are Proteſtants; which I urge not as a neceſſary Qualification to be a Witneſs, but to anſwer *Otes*'s Objection, as tho' this was a *Popiſh* Deſign to deſtroy him. They have given you an account where he was from time to time, by convincing Circumſtances, which you have heard, particularly of one Day that he went to *Litchfield*; one of the Witneſſes went with him, and a Proteſtant Witneſs too, that came back with him again, and ſupped with him at her Father's Houſe. The Apothecary tells you the Day that he ſaw him was a Wake-day, which is a remarkable Time in the Country. You are told of the Funeral of one Woman's Mother, that made her ſtay away from *Monday* till *Thurſday*: Of another Man's Child. I mention them but ſhortly to you, becauſe I know you have taken Notes of them, and they are only uſed as Inſtances to manifeſt the Integrity of the Witneſſes, that this was not a thing contrived on purpoſe to make a Story of, but did really happen in the Order they tell it. And I muſt remember you of another Circumſtance ſome of them do ſwear, that whereas *Otes* had a mind to evade their Teſtimony by that Queſtion, Whether this was the ſame *Ireland* that was tryed? It was moſt certainly he; for that is made too evidently to appear, by their ſeeing him executed at *Tyburn*, I am ſorry to ſay, innocently.

From the Third of *Auguſt* to the Twenty-ſixth, there is not one Night, but you hear where he was: And from the Twenty-ſixth of *Auguſt* to the Seventh of *September*, you hear where he was at the Horſe-Match, upon the *Bowling Green* at Mr. *Heveningham*'s, Mr. *Low*'s, Mr. *Gerrard*'s, Mrs. *Crompton*'s, Mr. *Pendrel*'s, Mr. *Gifford*'s, and Mrs. *Harwel*'s: And from the Seventh to the Fourteenth, ſave only one Day, *viz.* the Eighth, you have a particular Account too; and it does not appear by a rambling Evidence, but a faithful Account is given of all the Time, ſave that Eighth Day; which ſhews the Caution of the Witneſſes. And it cannot but be eaſily preſumed, he was either at *Tixhall*, or thereabouts, becauſe he was at *Wolverhampton* the Seventh, coming to *London* the Ninth. How eaſy is it to imagine him there the Eighth, and the rather becauſe where he was the Eighth, is not material to the Point in Queſtion before you, but where he was the Firſt and Second?

And, Gentlemen, If in caſe you had a mind to imagine, he was the Eighth at *London*; it muſt be by a ſtrained Imagination: For you muſt take him to be at *Wolverhampton* the Seventh, and made him ride Poſt to *London* that Night, and return Poſt from *London* the Eighth to *Tixhall*, to be ready there early in the Morning upon the Ninth, or take four Days Journey back again; or elſe you cannot give the leaſt Countenance to any other Imagination, but that he was about *Tixhall* the Eighth of *September*.

Well, at *Tixhall* you have him the 9*th* of *September*; and from thence, you have it teſtified by all the Perſons that came along with him all the way, that he lay one Night at *Coventry*, another at *Banbury*, a Third at *Agmondiſham*: That he Baited at *Uxbridge* the Fourth, which was the 12*th* of *September*; and came to Sir *John Southcoat*'s Houſe that Night, being *Thurſday*: He ſtayed there *Thurſday* Night, and *Friday*; and upon *Saturday* the 14*th* of *September*, Sir *John Southcoat*'s Man went along with him to *London*, whither he rode upon the Horſe he ſold Mr. *Southcoat*; the Man ſaw him at his Lodging; and he ſays, they wondered when he came in, that he had ſtayed ſo long.

And then we return to the Four Witneſſes they begun with at firſt; who make all this Teſtimony to ſtand well together, That he went away the 3*d* of *Auguſt*, and was never in Town till the 14*th* of *September*: And every Day, but the 8*th* of *September*, which makes nothing to the Buſineſs, is particularly ſpoke to: And he muſt be there that Day too, except you will put him upon very hard Service, to ride Poſt to *London* and back again, in Twenty four Hours; for no other reaſon, but only to commit a Treaſon, that none ever found out but Mr. *Otes*. And, I am ſure, if he did, he took a great deal of Pains to a very little purpoſe.

Gentlemen, I have taken up much of your Time, and detained you the longer in this Matter, becauſe I cannot but ſay with grief of Heart, our Nation was too long beſotted; and of innocent Blood there has been too much ſpilt: 'Tis high time to have ſome Account of it. 'Tis a Mercy we ought to bleſs Almighty God for, that we are prevented from ſpilling more innocent Blood! God be bleſſed, our Eyes are opened; and let us have a care for the future, that we be not ſo ſuddenly impoſed upon by ſuch Prejudices and Jealouſies, as we have reaſon to fear, ſuch Villains have too much filled our Heads with of late.

Gentlemen, 'Tis incumbent upon you, to Try according to the Evidence that has been given, whether the Defendant be *Guilty*, or *Not Guilty*.

And

And 'tis incumbent upon us that ſit here as Judges, to ſee the Law executed, as we will anſwer it at the Tribunal of the great Judge of Heaven and Earth, before whom we muſt appear, and receive our Tryals at the Great Day. And God forbid, but we ſhould uſe our utmoſt Endeavours to inflict the greateſt Vengeance, that the Juſtice of the Nation can permit us to inflict upon ſuch Villains as theſe are; that have contracted ſo much Miſchief and Reproach upon us, and ſo much Guilt upon themſelves.

Gentlemen, I am ſorry, I ſay, I have kept you ſo long: 'Tis a Caſe of ſuch Importance, that I could not but ſay what I have done in it. There may be other Circumſtances ariſing from the Evidence, which I may have omitted; but were very largely and fully ſpoken to, by Mr. *Sollicitor*. Whatſoever has been forgotten by him, or by me, I am ſure, will be ſufficiently ſupplied by your own Obſervations: For I know you to be Gentlemen of great Knowledge and Experience in Matters of this Nature.

Then the Jury *withdrew, to Conſider of their* Verdict; *and, after half an Hour's Receſs, returned to the Bar; and, anſwering to their Names, delivered in their* Verdict, *That the* Defendant *was Guilty of the* Perjury *whereof he ſtood Indicted: Which being Recorded, the* Lord Chief Juſtice *ſpoke to the* Gentlemen *of the* Jury, *to this Effect.*

L. C. J. Look ye, Gentlemen, becauſe there has been ſome Notice taken to Day, as there was Yeſterday, concerning the Opinions of *Judges*, about *Verdicts* that have been given; I would ſay a Word or two to you: Not that I much admire the doing of it, at any time; nor would I do it now, for your Sakes; becauſe, I am ſure, you act according to your Conſciences, and affect not Commendation: But becauſe it may be neceſſary, for the Satisfaction of ſome People, that they ſhould know our Opinions alſo in this Matter; I muſt tell you, You have given a *Verdict*, that becomes your Honeſty, Integrity, and Loyalty. And I declare, in the Preſence of Almighty God, the Searcher of Hearts, That had I been of the *Jury*, I muſt have given the ſame *Verdict*. Gentlemen, 'Tis an Honeſt and Juſt *Verdict*, that you have given; and by it, you have Contributed, as much as in you lies, to vindicate the Nation from the Infamy it has ſo long lain under.

Mr. *Juſt. Withins.* For my part, I think, if you had given any other *Verdict*, you had found againſt plain Demonſtration; the Evidence was ſo full and clear.

Mr. *Juſt. Holloway.* The *Court* is very well ſatisfied with the *Verdict*; and you have acquitted your ſelves like worthy, honeſt *Gentlemen*.

Mr. *Juſt. Walcot.* There is nothing can be ſaid to the *Verdict*, but that it is a juſt *Verdict*, and according to the Evidence.

[*And then the Court aroſe.*

Die Lunæ, 11 *Maii* 1685. Banco Regis. *Dominus Rex verſus* Otes.

THis Day Mr. *Wallop* moved, That in regard the Court were pleaſed to give the Defendant time till *Saturday* next, to move in Arreſt of Judgment, upon the Conviction on *Friday* laſt; they would pleaſe to give to the ſame Day, to move in Arreſt of Judgment, upon the Conviction on *Saturday*; which the Court granted. But afterwards, upon the Motion of Mr. Attorney General, they order'd, That a Note of the Exceptions to both Indictments ſhould be ſent to the King's Counſel ſome Days before *Saturday*.

Die Sabbati, 26 *Maii* 1685. Banco Regis. *Dominus Rex verſus* Otes.

THis Day being appointed for the Defendant to move what he could in Arreſt of Judgment, upon the two Convictions of Perjury; he was brought, by Rule from the Priſon, to the *King's-Bench-Court*.

L. C. J. Mr. Attorney General, Have you any thing to move?

Mr. *At. Gen.* My Lord, I pray your Judgment upon *Otes*, who is convicted upon two Indictments, for two notorious Perjuries.

L. C. J. Who is Counſel for *Otes*?

Mr. *At. Gen.* Mr. *Wallop* moved for him.

L. C. J. What is it that Mr. *Wallop* has to ſay?

Otes. My Lord, I deſire I may ſpeak one Word. It was *Thurſday* Night before my Attorney could make an end of examining the Records; Sir *Samuel Aſtry* knows it very well: Then I ſent the Rule to thoſe Gentlemen that were aſſign'd to be my Counſel; and the Exceptions were delivered in but yeſterday. I pray I may have a Day or two more, that my Counſel may be prepared to argue for me.

L. C. J. We cannot do that: We gave you beyond the ordinary Rules, in extending it till to Day.

Mr. *At. Gen.* My Lord, He talks of Examining the Records: He had Copies of them all this long Vacation.

Otes. My Lord, My Attorney will be ready to make Oath, that he finiſhed the Examining but on *Thurſday* Night.

L. C. J. We do all know they were pleaded to the laſt Term; and you have had all this Vacation, to conſider of them: And we have indulged you beyond the ordinary Time.

Otes. My Lord, I deſire but a Day or two more.

L. C. J. No, we cannot do it: We have done more already than we ordinarily do. Perſons that are Convicted uſe to have but four Days allowed them to move in Arreſt of Judgment; but you, inſtead of having but four Days, after had eight.

Otes. If your Lordſhip pleaſes to give me time till *Monday*.

L. C. J. I tell you, We cannot do it. If Mr. *Wallop* have any thing to ſay for you, we'll hear him.

Mr. *Wallop.* I have nothing to ſay.

Mr. *At.*

Mr. *At. Gen.* Here are four Exceptions delivered to me last Night, as made by Mr. *Wallop*.

L. C. J. But he says he has nothing to say. We know not whose these Exceptions are.

Otes. I do deliver in those Exceptions, my Lord: Pray let them be read.

L. C. J. Read them, Sir *Samuel Astry*.

Cl. of Cr. Reads. *Dominus Rex versus* Otes. The Defendant's Exceptions.

I. That a Witness, sworn in the behalf of the King in a Process of High Treason, cannot be punished for Perjury by the King.

II. That it does not appear, that the Indictments of *Ireland*, &c. found in *Middlesex*, were legally transmitted into *London*; and consequently, all the Proceedings thereupon were *Coram non Judice*.

III. That the Perjuries assign'd, are in Matters foreign to the Issue.

IV. It is *Resolutio Signat'* in that part of the Indictment, that mentions what the Defendant swore; and in the Perjury assigned 'tis *Resolutio Signand'*; and it is no good Assignment of the Perjury.

Mr. *Just. Withins.* These are doughty Exceptions indeed.

L. C. J. Mr. *Attorney*, What say you unto them?

Mr. *At. Gen.* Truly, my Lord, I think I need not say much to them; the first Exception is a plain Mistake of the Indictment: For had Mr. *Otes* been indicted upon the Statute, it had been something; but at the Common Law certainly he may be prosecuted by the King, tho' he was Witness for the King before. As to the second, That it does not appear *Ireland*'s Indictment was well transmitted from *Middlesex* to *London*; that sure is well enough: For after it is recited, that they were so and so indicted, it does set forth, that the Tryals were had upon Records there depending before the Commissioners of *Oyer* and *Terminer*, and Goal-delivery; and it shall be taken, that they were well brought before them. As to the third Exception, That the Perjuries assigned are foreign to the Matter in Issue; that is not so: For it is apparent, one of the Indictments is in the express Point of the great Treason charged against them; that is, the Consult of the 24th of *April*. And as to the second Indictment, it appeared upon the Evidence, That there was a treasonable Meeting sworn in *August*; and he swore *Ireland* was here in Town in the beginning of *August*, and in the beginning of *September*. And then for the fourth Matter, That he swore he saw them sign it; and the Perjury assigned is, That he did not carry it to be signed; that receives a plain Answer: For we alledge, he falsly and corruptly swore that he was present, and that he carried the Resolution to be signed, and he saw them sign the Resolution. Now, in these two things, we have laid the Perjury; 1. We say he was not there: And 2. He carried no such Resolution to be signed: Indeed, we do not say that he did not see them signed, nor we need not; for if he were not there, nor did carry it, he could not see them sign it. There is nothing in the Exceptions, my Lord; and therefore I pray your Judgment.

L. C. J. Is there any body of Counsel for Mr. *Otes*, that will say any thing to these Exceptions?

Otes. I pray, my Lord, that I may have liberty but till *Monday*, for my Counsel to prepare.

L. C. J. No, we cannot do it: Indeed, if there had been any colour or weight in the Exceptions, it might have been something; tho' we have indulg'd, in this Case already, more than ever we used to do in Cases of this nature; for it is known to every body that knows any thing of the Course and Practice of the Court, That after Conviction no more than four Days are allowed to move in Arrest of Judgment: And being the Practice of the Court, it is the Law of the Court; and I am sure, as little Favour ought to be shewn in a Case of Perjury, as in any Case whatsoever: But yet, however, because he should not think that the Extremity of the Law was aimed at by the Court in this Case, and he hindered in his legal Defence, the Court did indulge him more time than is usually granted in such Cases. Now, as for the Exceptions, certainly they are very frivolous.

For the *First*, It would be admirable Doctrine indeed, in case it should obtain, That if a Man be a Witness in any Case for the King, and forswear himself, he should not be prosecuted for Perjury at the King's Suit: For we know that no Man can be prosecuted for his Life, (except it be in Cases of Appeal) but at the Suit of the King; and to be sure, all Prosecutions for Treason must be at his Suit. If then Witnesses come and forswear themselves, to take away Men's Lives, and they should not be called in question for it, criminally, by the King; That were a fine way to sanctify the greatest Villainy, and make the Process of Law to become an Instrument of the most infamous Cruelty in the World. I presume, no Gentleman at the Bar would think that an Exception fit to put his Hand to.

Then as to the *Second*, That the Perjury is not assigned in Points material to the Issue, that is plainly otherwise; for the time must needs be very material, because it was impossible that Mr. *Ireland* could be guilty of the Treason sworn against him, at his Chamber in *Russel-street*, between the 8th and 12th of *August*, if he were not in Town between the 8th and 12th of *August*: Nor could he be privy to the Treason sworn by *Bedloe*, the latter end of *August*, or the beginning of *September*, in *Harcourt*'s Chamber, if he were out of Town from the 3d of *August* till the 14th of *September*; and therefore both those Perjuries were in the very Points in Issue.

And then for the 24th of *April*, which is the main Perjury of all; It is not laid in this Indictment, That there was no Consult of the Jesuits upon that Day: nor is there any notice taken, That there was no Consult at the *White-Horse* Tavern; but it says only, that *Otes* did swear, there was a Consult there, and that he was present at it; and that he saw the Resolution written down by *Mico*, if I do not misremember the Name: And that upon the 24th of *April*, he went with it from Chamber to Chamber, to have them sign it. And then comes the Indictment, and assigns the Perjury, *Ubi revera* he was not at the *White-Horse* Tavern that Day; and I think it is pretty plain he was not, for he was then at St. *Omers*.

Then admitting all that Matter about the signing of the Resolution, to be out of Doors, a plain Perjury is assign'd and prov'd. For it was most proper for them to lay it as they did; and so it was in the other Point too, He swore he carried the Resolution from Chamber to Chamber, and saw it signed. Now, say they, He did not carry it from Chamber to Chamber, to be signed; and if so, then he could not see

it

it ſigned; and it will all be well enough ſure. And if any one part of the Oath he ſwore proves falſe, that is ſufficient to maintain this Verdict; and 'tis notoriouſly plain, it was falſe throughout.

And of this Matter he now ſtands Convicted, upon as full and plain an Evidence as ever was given in any Caſe in the World; and I am ſorry to think that any Man, who is guilty of ſuch an Offence, ſhould continue ſo obſtinate and hardened in Villany as he appears to be.

But I think it not amiſs for me to ſay ſomething upon this occaſion, for the Satisfaction of ſome that hear me; and for an Example for the future. The Crime whereof this Man ſtands Convicted, is certainly a very heinous one, attended with ſuch diſmal Conſequences that enſued upon it, that I think no Man can have a true Chriſtian Spirit in him, but he muſt begin to melt with the Conſideration of the great Miſchiefs his Perjury has brought upon himſelf and us: It has brought the Guilt of innocent Blood upon many; to be ſure it hath on his own Head, and I pray God deliver all Men from having any Hand in innocent Blood.

And as the Crime is great, ſo it is to be known, that a proportionable Puniſhment of that Crime can ſcarce by our Law, as it now ſtands, be inflicted upon him. But that you may ſee we have conſidered how to puniſh it, as ſuch a Crime does deſerve; We have conſulted with all the Judges of *England*, that if the Law would allow it, he might have ſuch a Judgment for this heinous Offence, as might be proper to terrify all others from committing the like again. For Puniſhment is not intended only for the ſake of the Offender, to reward him according to his Deſerts; but it has a Proſpect alſo of Example and Terror to all others, that they ſhould take care how they offend in any ſuch manner, and that is as conſiderable a part of the End of the Law as any other.

Gentlemen, It is known, that by the Old Laws of *England* Perjury was puniſhed with Death; it grew a little more moderate afterwards, not to make the Crime the leſs, but becauſe of the Danger there might be of Malice of ſome revengeful Perſons, by endeavouring by Perjury to Convict others of Perjury. But the next Step was cutting out of the Tongue, to ſhew that the Law in all Ages had an Abhorrency of falſe Oaths, and puniſhed that impious Crime of Perjury with the moſt terrible Puniſhments.

Since that time our Anceſtors have yet been more moderate, and have not extended the Judgment to Life and Member; but by the unanimous Opinion of all the Judges of *England*, whom we purpoſely conſulted with upon this Occaſion, It is conceived, That by the Law, Crimes of this nature are left to be puniſhed according to the Diſcretion of this Court, ſo far as that the Judgment extend not to Life or Member.

And I tell you this, Gentlemen, the rather, becauſe I obſerve our Law-Books are more ſilent here, in regard the Judgments for theſe Offences are not ſo ſolemnly and particularly entered up, as they are in Caſes Capital: But they are left more diſcretionary; becauſe that Crimes of this nature may be attended with particular Circumſtances, either to aggravate, or leſſen the Puniſhment: And therefore the Puniſhment might be diſtributed accordingly.

And for that reaſon, Gentlemen, it is well known to us all, that that was the occaſion of taking away the Court of *Star-Chamber*, as the Preamble of the Act for taking it away does manifeſt: That inaſmuch as the Authority, for the Correction of all Offences whatſoever, was by the Common Law of this Land originally fixed in the Court of *King's-Bench*; and the Proceeding by Information in the *Star-Chamber*, when it might be by Proceſs in this Court, was look'd upon as a double way of Vexation: Therefore that Court is aboliſhed, and the Authority of the *King's-Bench* Court left entire. And it is notoriouſly known, how Puniſhments, of all ſorts and kinds, were inflicted by the Court of *Star-Chamber* for Perjury, and ſuch like Offences, while that Court was up; and ſince that time, in *Fox*'s Caſe and others that you have heard of, it has been according to the Diſcretion of this Court, puniſhed, as ſeverely as this Court thought fit, ſo as the Sentence did not extend to Life or Member.

Now I thought it proper for me, not only for the ſake of the Caſe now before us; but alſo for your Learning ſake, to tell you, This was the Reſolution of all the Judges of *England*, upon Conſideration of the Precedents, and of all the Rules of Law; which have been fully debated, and conſidered of: And this, I declare, is their unanimous Opinion.

If then this be ſo, and it is left to the Diſcretion of the Court to inflict ſuch Puniſhment as they think fit; far be it from this Court at any time, as on the one ſide to inflict Puniſhment heavier than the Crimes deſerve (no, we would rather uſe Commiſeration, than extraordinary and exorbitant Severity;) ſo, on the other ſide, to let go Crimes ſo notorious and heinous as theſe, without the ſevereſt Mark that can, by Law, be put upon them. When a Perſon ſhall be convicted of ſuch a foul and malicious Perjury, as the Defendant here is, I think it is impoſſible for this Court, as the Law now ſtands, to put a Puniſhment upon him any way proportionable to the Offence, that has drawn after it ſo many horrid and dreadful Conſequences: We do therefore think fit to inflict an exemplary Puniſhment upon this villanous perjur'd Wretch, to terrify others for the future; which is not my part to pronounce: But what it is, my Brother will tell you.

Mr. *At. Gen.* My Lord, You will be pleaſed to remember there are two Judgments.

L. C. J. There are ſo, we know it very well, Mr. Attorney.

Mr. *At. Gen.* That which was tryed firſt, was about the Conſult on the 24th of *April*; we deſire that ſome particular Mark may be ſet upon that Day.

Then the Judges conſulted a little together, and Mr. Juſtice Withins *pronounced the Sentence thus.*

Mr. *Juſt. Withins. Titus Otes*, You are Convicted upon Two Indictments for Perjury; I ſay, for Perjury: I muſt repeat the Word twice, becauſe you are doubly Convicted. One of the greateſt Offences, that our Law has Cognizance of; 'tis ſo in its own Nature: But your Perjury has

has all the Aggravations that can be thought of to heighten it. If a Man kills another with his Sword, and there be forethought Malice in the Caſe, he is to be hang'd for it: But when a Man ſhall draw innocent Blood upon himſelf by a malicious, premeditated, falſe Oath, there is not only Blood in the Caſe, but likewiſe Perjury, corrupt, malicious Perjury: I know not how I can ſay, but, That the Law is defective that ſuch a one is not to be hang'd. For, if we conſider thoſe dreadful Effects which have followed upon your Perjury, we muſt conclude our Law defective; they are ſuch, as no Chriſtian's Heart can think of, without bleeding for that innocent Blood which was ſhed by your Oath; and every knowing Man believes, and every honeſt Man grieves for. God be thanked, our Eyes are now opened; and indeed we muſt have been incurably blind, if they had not been opened firſt by the Contradictions, Improbabilities, and Impoſſibilities in your own Teſtimony; but likewiſe by the poſitive, plain, direct and full Proof of forty-ſeven Witneſſes to one particular Point: Againſt whom you had not one Word to object, but they were Papiſts and Roman Catholicks; which is no Objection at all: Tho' at the ſame time, it did appear, that nine or ten of them were Proteſtants of the Church of *England*. That was all you had to ſay; you had not one Word to juſtify your ſelf from that great and heinous Perjury you were accuſed of. I hope, I have not been thought a Man of ill Nature; and, I confeſs, nothing has been ſo great a Regret to me in my Place and Station, as to give Judgment, and pronounce the Sentence of Law againſt my Fellow-Subjects, my Fellow-Creatures: But as to you, Mr. *Otes*, I cannot ſay, my Fellow Chriſtian. Yet, in this Caſe, when I conſider your Offence, and the diſmal Effects that have follow'd upon it, I cannot ſay, I have any Remorſe in giving Judgment upon you. And therefore having told you my Thoughts ſhortly about your Crime, and how readily I pronounce your Sentence; I ſhall now declare the Judgment of the Court upon you. And it is this:

Firſt, *The* Court *does Order for a Fine, That you pay a* Thouſand Marks *upon each Indictment.*

Secondly, *That you be ſtrip'd of all your Canonical Habits.*

Thirdly, *The* Court *does award, That you ſtand upon the* Pillory, *and in the* Pillory, *here before* Weſtminſter-Hall *Gate, upon* Monday *next, for an Hour's time, between the Hours of ten and twelve; with a Paper over your Head (which you muſt firſt walk with round about to all the* Courts *in* Weſtminſter-Hall) *declaring your Crime.* And that is upon the firſt Indictment.

Fourthly, (On the ſecond Indictment.) *Upon* Tueſday, *you ſhall ſtand upon, and in the* Pillory, *at the* Royal Exchange *in* London, *for the ſpace of an Hour, between the Hours of twelve and two; with the ſame Inſcription.*

You ſhall upon the next Wedneſday *be whipp'd from* Aldgate *to* Newgate.

Upon Friday, *you ſhall be whipp'd from* Newgate *to* Tyburn, *by the Hands of the Common Hangman.*

But, Mr. *Otes*, we cannot but remember, there were ſeveral particular Times you ſwore falſe about: And therefore, as Annual Commemorations, that it may be known to all People as long as you live, We have taken ſpecial Care of you for an Annual Puniſhment.

Upon the 24th of April *every Year, as long as you live, you are to ſtand upon the* Pillory, *and in the* Pillory, *at* Tyburn, *juſt oppoſite to the Gallows, for the ſpace of an Hour, between the Hours of ten and twelve.*

You are to ſtand upon, and in the Pillory, *here at* Weſtminſter-Hall *Gate, every 9th of* Auguſt, *in every Year, ſo long as you live.* And that it may be known what we mean by it, 'tis to remember, what he ſwore about Mr. *Ireland*'s being in Town between the 8th and 12th of *Auguſt*.

You are to ſtand upon, and in the Pillory, *at* Charing-croſs, *on the 10th of* Auguſt, *every Year, during your Life, for an Hour, between ten and twelve.*

The like over-againſt the Temple *Gate, upon the 11th.*

And upon the 2d of September, *(which is another notorious Time, which you cannot but be remember'd of) you are to ſtand upon, and in the* Pillory, *for the ſpace of one Hour, between twelve and two, at the* Royal Exchange: *And all this you are to do every Year, during your Life; and to be committed cloſe Priſoner, as long as you live.*

This I pronounce to be the Judgment of the Court upon you, for your Offences. And I muſt tell you plainly, If it had been in my Power to have carried it further, I ſhould not have been unwilling to have given Judgment of Death upon you: For, I am ſure, you deſerve it.

L. C. J. Mr. Attorney, We will take care, that the Clerk ſhall diſtinguiſh the Judgments in the Entries.

Then the Priſoner was taken away.

THE

THE

TRYAL

OF THE LADY

ALICE LISLE.

On Thurſday *the* 27th *of* Auguſt, 1685. *the Grand Jury for the County of* Southampton, *at the Seſſions of Oyer and Terminer and Gaol-Delivery, holden for the ſaid County at the City of* Wincheſter, *upon ſpecial Commiſſion from his Majeſty for thoſe Purpoſes, found an Indictment of High Treaſon againſt* Alice Liſle, *Widow, then in Cuſtody in the County Gaol; Upon which ſhe was Arraigned and Try'd in manner following.*

Cl. of Ar. ALICE LISLE, Hold up thy Hand.

[*Which ſhe did.*

Thou ſtandeſt here Indicted by the Name of *Alice Liſle*, of the Pariſh of *Ellingham*, in the County of *Southampton*, Widow; For that thou, as a falſe Traytor againſt the moſt illuſtrious and moſt excellent Prince *James* the Second, by the Grace of God of *England*, *Scotland*, *France* and *Ireland* King, thy ſupream and natural Lord, the Fear of God in thy Heart not having, nor weighing the Duty of thy Allegiance, but being moved and ſeduced by the inſtigation of the Devil, the Love and true, due and natural Obedience which a true and faithful Subject of our ſaid Lord the King, towards him our ſaid Lord the King ſhould, and of right ought to bear, wholly withdrawing, and with all thy might intending the Peace and common Tranquility of this Kingdom of *England* to diſturb, and War and Rebellion againſt our ſaid Lord the King within this Kingdom of *England* to ſtir up and move, and the Government of our ſaid Lord the King within this Kingdom of *England* to ſubvert, and our ſaid Lord the King from the Title, Honour and Regal Name of the Imperial Crown of this his Kingdom of *England* to depoſe, caſt down and deprive, and our ſaid Sovereign Lord the King to Death and final Deſtruction to bring and put, the 28*th* Day of *July*, in the firſt Year of the Reign of our ſaid Sovereign Lord *James* the Second, by the Grace of God of *England*, *Scotland*, *France* and *Ireland* King, Defender of the Faith, *&c.* at the Pariſh of *Ellingham* aforeſaid in the County aforeſaid, well knowing one *John Hicks*, of *Keinſham* in the County of *Somerſet*, Clerk, to be a falſe Traytor, and as a falſe Traytor traiterouſly to have conſpired and imagined the Death and Deſtruction of our ſaid Lord the King, and War, Rebellion and Inſurrection againſt our ſaid Lord the King within this Kingdom of *England* traiterouſly to have levied and raiſed: Thou the ſaid *Alice Liſle* afterwards, to wit, the ſame 28*th* day of *July*, in the firſt year of the Reign of our ſaid Sovereign Lord the King that now is, at the Pariſh of *Ellingham* aforeſaid, in the County aforeſaid, the ſaid *John Hicks* in thy Dwelling-Houſe, ſituate at the Pariſh aforeſaid in the County aforeſaid, ſecretly, wickedly and traiterouſly didſt entertain, conceal, comfort, uphold and maintain; and that thou the ſaid *Alice Liſle* then and there, for the comforting, upholding and maintaining of the aforeſaid *John Hicks*, Meat and

Drink unto the ſaid *John Hicks* then and there maliciouſly and traiterouſly didſt give and deliver, and cauſe to be given and delivered, againſt the Duty of thy Allegiance, againſt the Peace of our Sovereign Lord the King that now is, his Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided. How ſayeſt thou *Alice Liſle*, art thou Guilty of the High Treaſon contained in this Indictment, or Not Guilty?

Liſle. Not Guilty.

Cl. of Ar. Culprit, By whom wilt thou be Tryed?

Liſle. By God and my Countrey.

Cl. of Ar. God ſend thee a good Deliverance.

Then Proclamation was made for the Jurors impanell'd to try the Iſſue between our Sovereign Lord the King, and the Priſoner at the Bar to appear. And the Priſoner deſiring, by reaſon of her Age and Infirmities (being thick of hearing) ſome Friends of her's might be allow'd to ſtand by her, and inform her of what paſs'd in the Court; one Matthew Brown *was nam'd, and allow'd of by the Court to give her all Aſſiſtance that he could in that matter. Then the Names of the Jurors were call'd over, and the Appearance Recorded: And it being a Cauſe of great Expectation and Moment, the Lord Chief Juſtice order'd the Sheriff to take care, that a very ſubſtantial Jury ſhould be Returned of the beſt Quality in the County.*

Then Proclamation for Information and Evidence was made in uſual manner, and the Priſoner was bid to look to her Challenges, and the Jury was Sworn in this Order.

Sworn.	Challenged.
Gabriel Whiſtler, Eſq;	*Robert Barton*
Henry Dawley, Eſq;	*Godſon Penton*
Francis Morley, Eſq;	*William Taylor*
Francis Pawlett, Eſq;	*Thomas Wavell*
Richard Godfrey, Eſq;	*Anthony Yalden.*
Thomas Dowſe, Eſq;	
Dutton Gifford, Eſq;	Sworn.
	John Cager.
	Challenged.
	Robert Forder
	Thomas Lloyd
	Thomas ———
	Philip Rudsby.
Sworn.	
Thomas Crop	
Richard Suatt.	Sworn.
	Matthew Webber.
Challenged.	
Lawrence Kerby	Challenged.
John Fletcher	*George Prince*
William Clarke	*Stephen Steele*
John Haily	*Thomas Merrot.*
Richard Sutton	
Richard Snatt.	Sworn.
Robert Burgeſs.	*John Fielder.*

So the Twelve Sworn were theſe:

Gabriel Whiſtler, *Henry Dawley*, *Francis Morley*, *Francis Pawlett*, *Richard Godfrey*, *Thomas Dowſe*, *Dutton Gifford*, *John Cager*, *Thomas Crop*, *Richard Suatt*, *Matthew Webber*, *John Fielder*. Jur'

Cl. of Ar. Alice Liſle, Hold up thy Hand: You Gentlemen of the Jury that are Sworn, look upon the Priſoner and hearken to her Charge: She ſtands indicted by the Name of *Alice Liſle*, *&c.* Upon this Indictment ſhe hath been Arraigned, and upon that Arraignment ſhe has pleaded thereunto, Not Guilty; and for her Tryal has put her ſelf upon God and the Countrey, which Countrey you are: Your Charge is to inquire, whether ſhe be Guilty of the High Treaſon whereof ſhe is indicted in manner and form as ſhe ſtands indicted, or Not Guilty: If you find her Guilty, you are to inquire what Goods or Chattels, Lands or Tenements ſhe had at the time of the High Treaſon committed, or at any time ſince: If you find her Not Guilty, you are to inquire whether ſhe did fly for it; if you find that ſhe did fly for it, you are to inquire what Goods or Chattels ſhe had at the time of the Flight, as if you had found her Guilty: If you find her Not Guilty, nor that ſhe did fly for it, you are to ſay ſo, and no more, and hear your Evidence.

Mr. *Mundy.* May it pleaſe your Lordſhip, and you Gentlemen that are Sworn; This is an Indictment of High Treaſon againſt *Alice Liſle*, the Priſoner at the Bar; and the Indictment ſets forth, That ſhe, as a falſe Traytor againſt our Sovereign Lord King *James* the Second, her ſupream and natural Lord, not having the Fear of God in her Heart, nor regarding the Duty of her Allegiance, but being moved and ſeduced by the inſtigation of the Devil, and withdrawing the Love and true Obedience which ſhe owed to him as her Sovereign, and intending, as well as in her lay, to diſturb the Peace of the Kingdom, and to depoſe the King and put him to Death, the 28*th* day of *July*, in the firſt year of this King, well knowing one *John Hicks*, late of *Keinſham* in the County of *Somerſet*, Clerk, to be a falſe Traytor, and to have raiſed War and Rebellion againſt the King, ſhe did then at *Ellingham* in this County, in her Dwelling-Houſe traiterouſly entertain, conceal and comfort the ſaid *John Hicks*, and for his maintenance and comfort then gave him Meat and Drink. This is laid to be againſt the Duty of her Allegiance, againſt the Peace of the King, his Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided: To this ſhe has pleaded Not Guilty; if we prove this Fact, you muſt find her Guilty.

Mr. *Pollexfen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel in this Caſe for the King. The Priſoner that ſtands now at the Bar, *Alice Liſle*, is the Widow of one *Liſle*, who was in his Life-time ſufficiently known: The Perſon mentioned in the Indictment to be entertained and concealed by her, *John Hicks*, is a Conventicle-Preacher, and one, that for bringing the traiterous Purpoſes intended in this late horrid Rebellion to effect, was one of the greateſt and moſt active Inſtruments: for he was perſonally in this Rebellion, and did perſuade and exhort ſome loyal Perſons, that happened to have the misfortune of being taken Priſoners by that rebellious Crew, to quit their Duty and Allegiance to the King their Sovereign Lord, and become Partakers with them and the reſt of his traiterous Accomplices, in taking Arms under their falſe pretended Prince. This, my Lord, we ſhall prove to you by plain, evident and undeniable Teſtimony

ny of thoſe very Perſons whom this Seducer thus applied himſelf to. Gentlemen, After it pleaſed God, by his Bleſſing on the victorious Arms of the King, that the Rebels were defeated, their pretended Prince and Head, with ſome of the chief of his Accomplices, were taken Priſoners, and that in a place near the Houſe where the Priſoner lived, when all the Countrey was full of hurry in purſuit after thoſe wicked Rebels: Thus, by God's Bleſſing and Providence diſſipated, and forced, like Vagabonds, to skulk up and down; then does this *Hicks*, having got from the Battle as far as *Warminſter* in the next County, ſend a Meſſenger, one *Dunne*, to the Priſoner's Houſe, to deſire her and requeſt her, that ſhe would receive and harbour him and his Friend (who that was will appear by and by) Mrs. *Liſle* returns an Anſwer by the Meſſenger, that ſhe would receive him, but does withal give particular Direction, that the time when they did come ſhould be late in the Evening; accordingly he comes in the beginning of the Night, at 10 of the Clock, booted and ſpurr'd, and brings with him another Arch-Rebel, one *Nelthorp*, that ſtands Outlaw'd for a moſt black and horrid Treaſon: When they come to the Priſoner's Houſe, they turn their Horſes looſe at the Gate; for the Danger was ſo great, and their Apprehenſions of being taken ſo urgent upon them to conceal and ſhift for themſelves, that they thought it convenient to let their Horſes go where they would. When they came there, the Meſſenger, as we ſhall prove by himſelf, was convey'd away to a Chamber, but Mrs. *Liſle* cauſes Meat and Drink to be ſet before Mr. *Hicks* and *Nelthorp*, and they ſupp'd with her, and afterwards they were lodg'd by her particular Order and Direction. The next Morning Colonel *Penruddock*, who had ſome intimation, in his ſearch after the Rebels, that ſome Perſons lay concealed in Mrs. *Liſle*'s Houſe, comes thither, and tells her, after he had beſet the Houſe, *Madam, You have Rebels in your Houſe, I come to ſeize them, pray deliver them up:* She denied that ſhe had any in her Houſe; but upon ſearch, *Hicks*, and *Nelthorp*, and that other Fellow, the Meſſenger, were all found there, and ſhe thereupon ſecured with them. The Method wherein we ſhall give our Evidence, will be this: We ſhall firſt begin with this piece of Evidence; That we ſhall prove, that *Hicks* was actually in the Army and in the Rebellion; and then we ſhall prove the ſeveral ſubſequent Facts as have been opened. We deſire Mr. *Pope*, Mr. *Fitzherbert* and Mr. *Taylor* may be Sworn.

Liſle. My Lord, As for what is ſaid concerning the Rebellion, I can aſſure you, I abhorr'd that Rebellion as much as any Woman in the World——

Lord Jefferies. *L. C. J.* Look you, Mrs. *Liſle*, becauſe we muſt obſerve the common and uſual Methods of Tryal in your Caſe, as well as others, I muſt interrupt you now: You ſhall be fully heard when it comes to your turn to make your Defence, but any thing you ſay now before-hand is altogether irregular and improper. You, it may be, are ignorant of the Forms of Law, therefore I would inform you: You are firſt to hear what your Accuſation is; you ſhall ask any Queſtions of the Witneſſes that you will, after the King's Counſel have examined them, as they go along, and when all their Teſtimony is delivered, you ſhall be heard to make your own Defence, and have full ſcope and liberty to inlarge upon it as long as you can; it is a buſineſs that concerns you in point of Life and Death; all that you have or can value in the World lies at ſtake, and God forbid that you ſhould be hinder'd, either in time or any thing elſe whereby you may defend your ſelf; but at preſent it is not your turn to ſpeak; for the Forms of Law require your Accuſers firſt to be heard, and it is abſolutely requiſite that the uſual Forms and Methods of Law be inviolably obſerved, and be ſure it does the Priſoner no injury that the Law is kept ſo ſtrictly to; and we have that Charity, as well as Juſtice that it becomes, and is not below all Courts to have for Perſons in your Condition; and we are obliged to take care, that you ſuffer no Detriment or Injury by any illegal or irregular Proceedings: For tho' we ſit here as Judges over you by Authority from the King, yet we are accountable, not only to him, but to the King of Kings, the great Judge of Heaven and Earth; and therefore are obliged, both by our Oaths, and upon our Conſciences, to do you Juſtice, and by the Grace of God we ſhall do it, you may depend upon it: And as to what you ſay concerning your ſelf, I pray God with all my heart you may be innocent. Pray call your Witneſſes.

Mr. *Pollexfen.* Swear Mr. *Pope*, Mr. *Fitzherbert*, and Mr. *Taylor*. [*Which was done.*]

L. C. J. Who do you begin with?

Mr. *Pollexfen.* Mr. *Pope*, Pray will you tell my Lord and the Jury what you know concerning this *Hicks*: Pray tell your whole Knowledge.

Mr. *Pope.* My Lord, I had the misfortune to be taken Priſoner by *Monmouth*'s Army, going about ſome buſineſs of my own; and after I had been taken ſome few days, we happened to be brought to *Keinſham*, and we were put into Sir *Thomas Bridges*'s Stables, and kept under a Guard there: Whilſt we were there, I did ſee that Gentleman that goes by the Name of Mr. *Hicks*, who is now in *Salisbury* Gaol, and there I ſaw him yeſterday; he came and asked for the Priſoners, which were about 4 or 5 in number, and he asked them, How they did? They made him little reply: Then he deſired to know how we were dealt with; whether we were kindly uſed, or no? I replied, No, for we had had but a piece of Bread for two days: He made me anſwer, that he was ſorry for that, for it was otherwiſe intended: And there was with him another Gentleman that was called the King's Chaplain, that is, the Duke of *Monmouth*'s; and afterwards he pretended he would do us a kindneſs in ſpeaking to the King (as he called him) for us. He talked with us ſome little time, and by and by he began to ask us what was the reaſon that we were there; we told him, we were taken Priſoners; upon which, ſaith he, This King (meaning, as I ſuppoſe, the late Duke of *Monmouth*) is a good King, and a Proteſtant; and a great deal to that purpoſe, with ſome reflecting Words on the Government, and upon the Perſon of the King; and he told us, he wonder'd what we had to ſay for our ſelves, being Proteſtants, that we did what we did in ſerving a Popiſh Prince, and not obeying a Proteſtant one. This is the Subſtance of what I have to ſay upon this matter.

L. C. J. Tho' you were pleaſed to phraſe it, Sir, in the beginning of your Teſtimony, a Misfortune that you were taken Priſoner by the Rebels, yet, I ſuppoſe, you could not be without the Conſolation of a good Conſcience, that you ſuffered in the way of doing your Duty.

Mr. *Pope.* My Lord, I am very well ſatisfied I did ſuffer in a good Cauſe.

L. C. J. There is one piece of Happineſs in it; that by that means you are able to give this Teſtimony this day, and do the King this piece of Service. But pray Sir let me ask you this Queſtion; Are you ſure the Man you ſaw yeſterday at *Salisbury*, is the ſame Man that you ſpoke with at *Keinſham*, that goes by the Name of *Hicks*?

Mr. *Pope.* Yes, my Lord; and when I was there yeſterday with him, I asked him whether he knew me; and told him, ſaid I, you may well remember you ſee me at *Keinſham*: Saith he, I do not remember that ever I ſaw your Face before; ſaid I, you remember Sir *Thomas Bridges*'s Stables there? Said he, I remember I did ſee ſome Priſoners; ſaid I, was not it there you ſaw me, and had ſuch a Diſcourſe with me? He ſeemed to deny it, but I told him, a Man of your Coat ſhould not tell Untruths, you cannot but remember you ſaw me there; ſaith he, I will recollect my Memory if I can; and he afterwards ſent to the *George* in *Salisbury* for me, and then he told me, he did recollect that he ſaw and talked with ſuch a Perſon there.

Mr. *Rumſey.* Sir, I would ask you this one Queſtion; Did you ſee him in the Army about the time of the Fight?

Mr. *Pope.* I think I ſaw him about a day or two before.

L. C. J. Had he any Weapon on?

Mr. *Pope.* I think not, my Lord.

Mr. *Pollexfen.* Our next Witneſs is Mr. *Fitzherbert.* Pray, Sir, will you give an Account to my Lord and the Jury, what you know of this *Hicks*.

Mr. *Fitzherbert.* My Lord, During the time that I was a Priſoner with this Gentleman at *Keinſham*, the 25*th* of *June*, I ſaw this Man, *John Hicks*, who held a Diſcourſe with Mr. *Pope* near an Hours time, diſparaging the Government and his Majeſty, and extolling the Duke of *Monmouth*, what a brave Prince, and how good a Proteſtant he was.

L. C. J. Then he was among them, was he?

Mr. *Fitzherbert.* Yes, my Lord, he was, and I ſaw him yeſterday at *Salisbury*.

L. C. J. Is that the ſame man that you ſaw in *Monmouth*'s Army?

Mr. *Fitzherbert.* Yes, he owns himſelf to be the ſame man.

Mr. *Pollexfen.* How often did you ſee him there beſides that time when he diſcourſed with Mr. *Pope*?

Mr. *Fitzherbert.* I ſaw him ſometimes out of the Town, but I never diſcourſed him.

L. C. J. Did you ſee him there before or after that Diſcourſe?

Mr. *Fitzherbert.* It was after.

L. C. J. Would the Priſoner ask this Witneſs, or the other, any Queſtions?

Liſle. No, my Lord.

Mr. *Pollexfen.* Then, Mr. *Taylor*, what ſay you to the matter?

Mr. *Taylor.* My Lord, I ſaw him at the ſame time that theſe Gentlemen ſpeak of, at Sir *Thomas Bridges*'s at *Keinſham*.

Mr. *Pollexfen.* Were you a Priſoner there, Sir?

Mr. *Taylor.* Yes, I was.

Mr. *Pollexfen.* What place was it you ſaw him in?

Mr. *Taylor.* It was in the Stables the firſt time that I ſaw him.

L. C. J. What Diſcourſe had you with him? What did he ſay to you?

Mr. *Taylor.* He ſaid, he wonder'd at us that we ſhould take up Arms againſt ſo good a Prince and a Proteſtant as the Duke of *Monmouth*, and againſt the Proteſtant Religion, and hold up with Popery: Saith he, *York* is but a Papiſt; and a great many ſuch Words.

L. C. J. Did you ſee him afterwards?

Mr. *Taylor.* Yes, my Lord, but I cannot tell particularly the Time and Place; up and down the Army.

L. C. J. Did you ſee him at *Salisbury*?

Mr. *Taylor.* Yes.

L. C. J. Is that the ſame man?

Mr. *Taylor.* Yes it is.

Mr. *Pollexfen.* Next, my Lord, we come to prove the Meſſage and Correſpondence between this ſame *Hicks* and the Priſoner Mrs. *Liſle*.

Mr. *Jennings.* Swear Mr. *James Dunne*.

[*Which was done.*]

Mr. *Pollexfen.* If your Lordſhip pleaſe to obſerve, the Times will fall out to be very material in this Caſe: The Battle at *Kings Edgmore* was the 6*th* of *July*; 3 or 4 days after was the taking of *Monmouth* and my Lord *Grey* at *Ringwood*; upon the 26*th* day of *July*, 10 or 12 days after the taking of *Monmouth*, was this Meſſage ſent by *Dunne* to Mrs. *Liſle*; ſo we call *Dunne* to prove what Meſſage he carried upon the 26*th*, what Anſwer was returned; he will tell you, that *Tueſday* was the time appointed for them to come, in the Night, and all the other Circumſtances: But withal I muſt acquaint your Lordſhip, that this Fellow, *Dunne*, is a very unwilling Witneſs; and therefore, with ſubmiſſion to your Lordſhip, we do humbly deſire your Lordſhip would pleaſe to examine him a little the more ſtrictly.

L. C. J. You ſay well: Hark you, Friend, I would take notice of ſomething to you by the way, and you would do well to mind what I ſay to you. According as the Counſel that are here for the King ſeem to inſinuate, you were employ'd as a Meſſenger between theſe Perſons; one whereof has already been proved a notorious Rebel, and the other is the Priſoner at the Bar, and your Errand was to procure a Reception at her Houſe for him.

Dunne. My Lord, I did ſo.

L. C. J. Very well. Now mark what I ſay to you, Friend: I would not by any means in the World endeavour to fright you into any thing, or any ways tempt you to tell an Untruth, but provoke you to tell the Truth, and nothing but the Truth, that is the Buſineſs we come about here. Know, Friend, there is no Religion that any man can pretend to, can give a countenance to Lying, or can diſpenſe with telling the Truth: Thou haſt a precious immortal Soul, and there is nothing in the World

equal

equal to it in value: There is no relation to thy Miſtreſs, if ſhe be ſo; no relation to thy Friend, nay to thy Father or thy Child, nay not all the temporal Relations in the World can be equal to thy precious immortal Soul: Conſider that the great God of Heaven and Earth, before whoſe Tribunal thou, and we, and all Perſons are to ſtand at the laſt Day, will call thee to an Account for thy reſcinding his Truth, and take Vengeance of thee for every Falſhood thou telleſt. I charge thee therefore, as thou wilt anſwer it to the great God, the Judge of all the Earth, that thou do not dare to waver one tittle from the Truth, upon any Account or Pretence whatſoever: For tho' it were to ſave thy Life, yet the value of thy precious and immortal Soul, is much greater than that thou ſhouldſt forfeit it for the ſaving of any the moſt precious outward Bleſſing thou doſt enjoy; for that God of Heaven may juſtly ſtrike thee into eternal Flames, and make thee drop into the bottomleſs Lake of Fire and Brimſtone, if thou offer to deviate the leaſt from the Truth, and nothing but the Truth: According to the Command of that Oath that thou haſt taken, tell us who employ'd you, when you were employ'd, and where, who cauſed you to go on this Meſſage, and what the Meſſage was. For I tell thee God is not to be mocked, and thou canſt not deceive him, tho' thou mayſt us: But I aſſure you, if I catch you prevaricating in any the leaſt tittle (and perhaps I know more than you think I do; no, none of your Saints can ſave your Soul, nor ſhall they ſave your Body neither) I will be ſure to puniſh every variation from the Truth that you are guilty of. Now come and tell us how you came to be employ'd upon ſuch a Meſſage, what your Errand was, and what was the iſſue and reſult of it?

Dunne. My Lord, there came a man to my Houſe, and deſired me to go of a Meſſage to my Lady *Liſle*'s.

L. C. J. Prithee tell me when it was, and what Hour of the Day?

Dunne. What, when the man came to my Houſe?

L. C. J. Yes.

Dunne. That I will, my Lord.

L. C. J. Be ſure you do, and do not ſpeak one word but what is true, and let the Truth come out o' God's Name.

Dunne. It was *Friday* Night.

L. C. J. What Day of the Month was it?

Dunne. Truly, my Lord, I cannot exactly tell that.

L. C. J. Was it after the Fight at *Weſton*, or before?

Dunne. It was after the Battle, my Lord.

L. C. J. How many Days after was it?

Dunne. I cannot exactly tell.

L. C. J. Was it the *Friday* Se'night after the Fight?

Dunne. No, it was not.

L. C. J. What was deſired of thee at that time?

Dunne. He deſired me to go of a Meſſage to my Lady *Liſle*'s.

L. C. J. Doſt thou know what man it was that came to thee, and deſired thee to go on this Meſſage?

Dunne. My Lord, I can tell what manner of man he was.

L. C. J. Give me a Deſcription of the man?

Dunne. He was a ſhort black man.

L. C. J. You ſay he was a ſhort man?

Dunne. Yes, he was ſo, my Lord.

L. C. J. Was he a ſwarthy, or a ruddy Complectioned man?

Dunne. He was not ruddy, but ſwarthy.

L. C. J. And what did he ſay to thee?

Dunne. He deſired me to go to my Lady *Liſle*'s for him, for one Mr. *Hicks*, and I went accordingly.

L. C. J. What were you to ſay when you came there?

Mr. *Pollexfen.* What Reward were you to have?

Dunne. That man that came to me, promiſed me that I ſhould be well rewarded for my pains.

L. C. J. Where do you live (by the way)?

Dunne. In *Warminſter* Pariſh.

L. C. J. How far is it from my Lady *Liſle*'s?

Dunne. Six and twenty miles, or thereabouts.

L. C. J. You did go, you ſay? When?

Dunne. Upon the *Saturday*.

L. C. J. Well, we are got thus far; you went to my Lady *Liſle*'s upon the *Saturday*, and from one Mr. *Hicks*: What was your Errand?

Dunne. To know of my Lady *Liſle*, whether ſhe would entertain Mr. *Hicks*.

L. C. J. Well, now go on.

Dunne. When I came to my Lady *Liſle*'s Houſe, I went to the Bailiff that belonged to my Lady *Liſle*.

L. C. J. Ay, who was that Bailiff? Tell us his Name? I love to know Men's Names.

Dunne. His Name is *Carpenter*, I think.

L. C. J. Well, and what did you ſay to him?

Dunne. I asked him, whether my Lady would entertain one *Hicks*, or no: He told me he'd have nothing to do with it; but ſent me to my Lady, and to my Lady I went; and when I came, I asked my Lady, whether ſhe would entertain one Mr. *Hicks*, or no? She ſaid, ſhe did not know but ſhe might.

L. C. J. Well, what then?

Dunne. My Lord, I'll tell you.

L. C. J. Ay, prithee take time to recollect thy ſelf; but be ſure thou ſpeak nothing but the Truth. What ſaid my Lady to thee?

Dunne. My Lady ſaid, they might come to her Houſe: And upon thoſe Terms I went away home again, and returned that Anſwer to the Meſſenger that came to me. I came home on the *Sunday* Night, and that Meſſage I delivered unto him, and told him, that upon *Tueſday* Night they might come to my Lady's.

L. C. J. You told him, you ſay, they might come on *Tueſday*?

Dunne. Yes, my Lord, I did.

L. C. J. Therefore I would fain know from you, how you came to tell him, They might come upon *Tueſday*? For you ſaid juſt now, my Lady's Anſwer was, That ſhe did not know but ſhe might entertain him. Had you any ſuch Direction from *Carpenter*, or any one elſe, to tell him, that they might come on *Tueſday*?

Dunne. I had ſuch Directions from my Lady.

L. C. J. Very well; then let us know what were the particular Directions ſhe gave; tell us what further Directions you had from her?

Dunne.

Dunne. I will, my Lord, preſently, when I have recollected my ſelf.

L. C. J. Ay, prithee compoſe thy ſelf, recollect thy ſelf.

[*Then he pauſes for a good while.*

L. C. J. Come now, tell us, Did ſhe give you any Directions what time of the Day they might come thither, remember your ſelf well, and tell us what ſhe ſaid to you?

Dunne. My Lord, I will as near as I can, ſpeak the Truth.

L. C. J. Ay, in God's Name, let's have the Truth whatſoever comes on it?

Dunne. I will, my Lord.

L. C. J. Come then, What time did ſhe give Directions that they ſhould come?

Dunne. On *Tueſday* in the Evening.

L. C. J. Upon your Oath, Did ſhe ſay *Tueſday* in the Evening?

Dunne. Yes, my Lord, ſhe did.

L. C. J. What time in the Evening, early or late?

Dunne. She did not give any Directions at all about that, but only in the Evening.

L. C. J. What elſe did ſhe ſay to you, tell us all the Diſcourſe that paſſed between you?

Dunne. She ſaid nothing elſe that I remember, my Lord.

L. C. J. Prithee, how did ſhe ſay ſhe would receive him, tell us what Words ſhe uſed, for thou muſt needs imagine, we do ſuppoſe there muſt needs be ſome longer Diſcourſe between you, than what you talk of.

Dunne. All that ſhe ſaid was, ſhe would entertain him.

L. C. J. Him, Who?

Dunne. Mr. *Hicks.*

L. C. J. Juſt now you talked of them, and, they; Did you mention no body to her but Mr. *Hicks*?

Dunne. My Lord, I was ſent to ſee whether ſhe would receive Mr. *Hicks.*

L. C. J. Prithee Friend mind what thou haſt ſaid, and recollect thy ſelf, I'll repeat it to thee, becauſe thou ſhalt ſee that I remember it all very well, It ſeems that a Man, a ſhort black Man came to your Houſe in *Warminſter* Pariſh to get you to go for a Meſſage to Mrs. *Liſle*'s, to know whether ſhe would entertain one *Hicks*, and that you went upon the *Saturday*, and firſt, you met with *Carpenter*, and ask'd him that Queſtion, whether his Lady would entertain one Mr. *Hicks*, and he told you he would have nothing to do with it, and thereupon you went to Mrs. *Liſle* and asked her the Queſtion, and ſhe told you that you ſhould tell the Man that they ſhould come the *Tueſday* following, and come in the Evening, and ſhe would entertain him: Is not this what you have ſaid?

Dunne. Yes, my Lord, it is.

L. C. J. Well then, now let us know what other Diſcourſe you had with her?

Dunne. My Lord, I do not remember any thing more.

Mr. *Pollexfen.* Pray Mr. *Dunne*, did ſhe ask you any Queſtions whether you knew Mr. *Hicks* or no?

Dunne. Nothing at all of that, that I remember.

Mr. *Coriton.* Did ſhe believe that you knew Mr. *Hicks*?

Dunne. I cannot tell, my Lord.

Mr. *Coriton.* Do you believe that ſhe knew him before?

Dunne. I cannot tell truly.

L. C. J. Why, doſt thou think ſhe would entertain any one that ſhe had no Knowledge of meerly upon thy Meſſage? Mr. *Dunne*, Mr. *Dunne* have a Care, it may be more is known of this Matter than you think for.

Dunne. My Lord, I tell you the Truth.

L. C. J. Ay, be ſure you do, do not let me take you prevaricating?

Dunne. My Lord, I ſpeak nothing but the Truth.

L. C. J. Well, I only bid you have a Care, Truth never wants a Subterfuge, it always loves to appear naked, it needs no Enamel, nor any Covering; but Lying, and Snivelling, and Canting, and Hickſing, always appears in Maſquerade. Come, go on with your Evidence?

Dunne. My Lord, I ſay I went back again and returned my Anſwer to the ſame Man that brought the Meſſage to me.

L. C. J. Pray let me ask you one Queſtion; Were you got to your Houſe before you found him, or was he waiting there for you?

Dunne. He came to my Houſe after I came home.

L. C. J. It was the ſame Man you ſay?

Dunne. Yes, it was.

L. C. J. Had he no Company with him neither time?

Dunne. No.

L. C. J. Well, and what Anſwer did you return him?

Dunne. I told him, my Lady ſaid ſhe would entertain Mr. *Hicks*; he asked when he might come up, I told him upon *Tueſday*, and upon *Tueſday* they came to my Houſe.

L. C. J. What time did they come to your Houſe?

Dunne. About ſeven of the Clock in the Morning.

L. C. J. What Day of the Month was it?

Dunne. Truly, my Lord, I cannot readily tell what Day of the Month it was?

L. C. J. Was it one or two that came to thy Houſe?

Dunne. My Lord, there were three in all.

L. C. J. Who were thoſe three, prithee?

Dunne. My Lord, there was the little black Man that brought the Meſſage, and two other People.

L. C. J. Prithee deſcribe what two other People theſe were?

Dunne. One was a full fat black Man, and the other was a thin black Man.

L. C. J. Who was that thin black Man?

Dunne. My Lord, I did not know him.

L. C. J. Did you not fanſy which was *Hicks*?

Dunne. My Lord, I never knew any of their Names.

L. C. J. How long did they ſtay at your Houſe?

Dunne. About three Hours.

L. C. J. When did you go away from thence?

Dunne. About eleven of the Clock.

L. C. J. Which way did you go then?

Dunn. We went through *Deverel*, and from *Deverel* to *Chilmark*, and from *Chilmark* to *Sutton*, and from *Sutton* to the Plain, and then one *Barter* met me; I knew the Way no further, and he was to ſhew me the Way from thence.

L. C. J.

L. C. J. Prithee hold, before thou goeſt any further, I deſire to be ſatisfied about a Queſtion or two; Doſt thou ſay thou didſt not know the Way?

Dunne. No, my Lord, after I came to the Plain.

L. C. J. How didſt thou find the Way when thou wentſt on thy Meſſage firſt?

Dunne. My Lord, after I came to *Salisbury-Plain*, I met with one *Barter*, and he ſhewed me the Way.

L. C. J. Where is that *Barter*?

Mr. *Pollexfen.* My Lord, we have him here, we ſhall examine him by and by, there he ſtands. [*Being a very luſty Man.*]

L. C. J. Sure that was not the little Man thou ſpokeſt of?

Dunne. No, my Lord.

L. C. J. Prithee let me underſtand thee then if I can: Thou didſt ſay at firſt there was only a little Man with a black Beard that was concerned with thee about that Meſſage; now thou talkeſt of ſome Guide that thou hadſt, prithee who did guide thee, let us know?

Dunne. My Lord, I ſay I went ſo far as *Fovant*, and ſo to *Chalk*, but when I came upon the Plain I did not know my Way to my Lady *Liſles's* Houſe at *Moyle's Court*, I asked twenty People in the Street which was my way, but no body would tell me, at laſt I ſpoke to one *John Barter* to go with me to my Lady *Liſle's*, and he and I did agree to go together, and he ſhewed me the way and carry'd me to the Houſe.

L. C. J. Thou ſhouldſt have told us this before, Man, that we might have underſtood it. Where did you lie upon the *Saturday* Night?

Dunne. At *Fovant*.

L. C. J. I thought you had ſaid, you had come to Mrs. *Liſle's* on *Saturday*?

Dunne. Yes, my Lord, I did ſo, and came back to *Fovant* that Night.

L. C. J. And where did you lie on *Sunday Night*?

Dunne. I lay at my own Houſe on *Sunday* Night.

L. C. J. And *Barter* came along with you when you came on *Tueſday*?

Dunne. Yes, my Lord.

L. C. J. And did you go the ſame way upon the *Tueſday* that you went upon the *Saturday*?

Dunne. Do you mean, my Lord, the ſame way I came at firſt?

L. C. J. Ay.

Dunne. No, my Lord, we came to *Sutton*, not to *Fovant*.

L. C. J. Why did not you go the ſame way upon the *Tueſday* that you went upon the *Saturday*?

Dunne. Becauſe I had appointed to meet him at ſuch a Place.

L. C. J. Come, prithee anſwer me freely, and according to Truth; Who did deſire thee, or order thee to go another way than that thou went'ſt at firſt? How came it to paſs? Let us know the Truth?

Dunne. My Lord, I did count that to be the nearer way, and therefore I went that way.

L. C. J. That cannot be the Reaſon, for thou wouldſt have gone the neareſt way at firſt, I believe, come, tell us truly?

Dunne. My Lord, I know no other Reaſon.

L. C. J. Come, tell us what Towns and Villages you did go through then upon *Saturday*?

Dunne. My Lord, I went through ſeveral, *Chilmark* and *Fovant*.

L. C. J. And what Villages did you go thro' upon the *Tueſday*?

Dunne. I went through moſt of the ſame Towns.

L. C. J. What, and at Noon-day too?

Dunne. Yes.

L. C. J. And how chanc'd when you went that way, that you appointed *Barter* to meet you in another Place at *Fovant*?

Dunne. Becauſe I did not know the way afterwards.

L. C. J. Then let me ask you another Queſtion: Did you go the ſame way from *Fovant* to my Lady *Liſle's* as you went before?

Dunne. No, we did not.

L. C. J. How came that to paſs?

Dunne. I would have went the ſame way, but they would not.

L. C. J. Which way did you go then?

Dunne. We went through *Chalke* and ſo thro' *Rocksborne*, and from *Rocksborne* to *Fording-Bridge*, and ſo to *Moyle's Court*.

L. C. J. How far is this about now?

Dunne. Truly, my Lord, I cannot readily tell.

L. C. J. How many Miles is it from *Fovant* to my Lady *Liſle's*?

Dunne. My Lord, it is about fourteen or fifteen.

L. C. J. How many Miles was it the way that you went upon the *Tueſday*?

Dunne. It might be twenty, my Lord, for ought I know.

L. C. J. What was the Reaſon that *Barter* went that way?

Dunne. Truly, my Lord, I cannot tell.

L. C. J. Pray let me ask you another Queſtion then; What Diſcourſe had you with *Barter*? Or what Bargain did you make with him for ſhewing you the way? For you would not ask him to go with you without promiſing him ſome Reward.

Dunne. My Lord, I asked him to ſhew me the way to my Lady *Liſle's* Houſe, and told him I was going for one *Hicks*, and ſo he took his Horſe and went with me.

L. C. J. What Reward did you promiſe him?

Dunne. Half a Crown, my Lord, and half a Crown I gave him.

L. C. J. Well, that was the firſt time, and what did you promiſe him the ſecond time?

Dunne. The ſecond time one of the two Men gave him five Shillings.

L. C. J. What Man was it?

Dunne. It was the black Man.

L. C. J. What was his Name? It was not the little black Man that came firſt to deſire you to go on the Meſſage, was it?

Dunne. No, my Lord, it was not he that ſpoke to me firſt.

L. C. J. Did not that little Man that ſpoke to you firſt, promiſe you a Reward for your Pains?

Dunne. No, my Lord, that Man never promiſed me any thing.

L. C. J. Did he go along with you?

Dunne. No, my Lord, he did not.

L. C. J. Who were the two Men that went with you?

Dunne. *Hicks* and *Nelsborp*.

L. C. J. Which of them two was it that gave *Barter* five Shillings?

Dunne.

Dunne. It was *Nelthorp* that gave him five Shillings.

L. C. J. How do you know his Name was *Nelthorp?*

Dunne, At my Lady *Liſle*'s, after he was taken I knew his Name to be *Nelthorp.*

L. C. J. What Name did he go by before?

Dunne. Were I to die preſently, my Lord, I cannot tell it.

L. C. J. Well, you went ſo much about: What time did you get to my Lady *Liſle*'s upon the *Tueſday?*

Dunne. About nine or ten of the Clock at Night, my Lord.

L. C. J. Let us conſider a little; you ſay you went from your Houſe about eleven a Clock: What time did you get to *Fovant?*

Dunne. About two or three of the Clock, my Lord.

L. C. J. Where did you ſtay by the way?

Dunne. No where, my Lord.

L. C. J. Did you ride on ſtill?

Dunne Yes, my Lord.

L. C. J. Was it before nine or after nine that you came to my Lady *Liſle*'s?

Dunne. I believe it was rather after nine, my Lord.

L. C. J. Who came firſt to my Lady *Liſle*'s, prithee tell us frankly?

Dunne. My Lord, we came all three together to the Gate.

L. C. J. Who knocked at the Gate, you or *Barter,* or who elſe?

Dunne. Barter, my Lord, was diſcharg'd before we came near the Houſe, about eight Miles from it.

L. C. J. Sayſt thou ſo; How came you then to know the way without him?

Dunne. My Lord, I'll tell you, they loſt their way, and they ſent me down to *Marton,* and there I went to a Man, my Lord, and told him one *Hicks* deſired to ſpeak with him.

L. C. J. Thou ſayſt well, now muſt I know that Man's Name.

Dunne. The Man's Name that I went to at *Marton,* my Lord?

L. C. J. Yes, and look to it, you tell me right, for it may be I know the Man already, and can tell at what end of the Town the Man lives too.

Dunne. My Lord, I cannot tell his Name preſently.

L. C. J. Oh! pray now, do not ſay ſo, you muſt tell us, indeed you muſt think of his Name a little.

Dunne. My Lord, if I can mind it I will.

L. C. J. Prithee do.

Dunne. His Name, truly my Lord, I cannot rightly tell for the preſent.

L. C. J. Prithee recollect thy ſelf, indeed thou canſt tell us if thou wilt.

Dunne. My Lord, I can go to the Houſe again if I were at Liberty.

L. C. J. I believe it, and ſo could I, but really neither you nor I can be ſpared at preſent, therefore prithee do us the Kindneſs now to tell us his Name?

Dunne. Truly, my Lord, I cannot mind his Name at preſent.

L. C. J. Alack a-day, we muſt needs have it, come, refreſh your Memory a little.

Dunne. My Lord, I think his Name was *Fane.*

L. C. J. Thou ſayſt right, his name was *Fane* truly, thou ſeeſt I know ſomething of the Matter: Well, what didſt thou ſay to him?

Dunne. I told him I came from one Mr. *Hicks.*

L. C. J. And what didſt thou deſire of him?

Dunne. I told him that one Mr *Hicks* deſired to ſpeak with him, and when he came out to Mr. *Hicks,* Mr. *Hicks* did deſire him to ſhew him the Way to Mrs. *Liſle*'s.

L. C. J. Now tell us what kind of Man that was that did deſire this of Mr. *Fane?*

Dunne. My Lord, it was the full fat black Man.

L. C. J. Now we have got him out, now we know which was *Hicks*: Now go on.

Dunne. My Lord, this Man went and rid along with them as far as the new Houſe that is built there, within a Mile of that Houſe *Fane* went along with us, and afterwards, whether *Hicks* or *Nelthorp,* or who knew the way I cannot tell, but to my Lady *Liſle*'s we went.

L. C. J. Who directed you the way when *Fane* left you?

Dunne. My Lord, I cannot tell, for my part I did not know the way.

L. C. J. Who went with you?

Dunne. None but *Hicks* and *Nelthorp.*

L. C. J. How far from my Lady's Houſe was that place where *Fane* left you?

Dunne. My Lord, I cannot directly tell.

L. C. J. Then *Hicks* knew the way it ſeems from thence?

Dunne. So he might, my Lord, for ought I know, for I did not.

L. C. J. Thou art ſtrangely ſtiff, but now we are come thus far with you, tell me what Entertainment you had at my Lady *Liſle*'s, and look to it that you be ſure to tell me Truth, for I know it to a tittle, I can aſſure you that?

Dunne. They went in before me, my Lord.

L. C. J. Who went in before you?

Dunne. Hicks and *Nelthorp.*

L. C. J. But the Door was ſhut when you came, was it not?

Dunne. My Lord, I cannot tell truly.

L. C. J. Then tell me what Entertainment you had there?

Dunne. For my own part, my Lord, I carry'd a bit of Cake and Cheeſe from my own Houſe, and that I eat.

L. C. J. What became of your Companions *Hicks* and *Nelthorp,* I pray you?

Dunne. I never ſee them again till after they were taken.

L. C. J. How is that, prithee recollect thy ſelf?

Dunne. Sure, my Lord, I did not ſee them till then.

L. C. J. Who came to the Door to you?

Dunne. A young Girl, my Lord, I knew not who nor what ſhe was.

L. C. J. Did they go directly into the Houſe?

Dunne. It was dark, my Lord, I did not ſee what they did.

L. C. J. Was there never a Candle there?

Dunne. No, my Lord.

L. C. J. It was dark, very dark, was it not?

Dunne. Yes, my Lord, it was ſo.

L. C. J. Was my Lady ſtirring then?

Dunne. I did not ſee her.

L. C. J. And this is as much as you know of the Buſineſs?

Dunne.

Dunne. Yes, my Lord, this is all that I remember.

L. C. J. Well, and what hadſt thou for all thy Pains?

Dunne. Nothing but a Month's Impriſonment, my Lord.

L. C. J. Thou ſeemeſt to be a Man of a great deal of Kindneſs and good Nature; for by this Story, there was a Man that thou never ſaweſt before, (for I would fain have all People obſerve what Leather ſome Mens Conſciences are made of) and becauſe he only had a black Beard and came to thy Houſe, that black Beard of his ſhould perſwade thee to go 26 Miles and give a Man half a Crown out of thy Pocket to ſhew thee thy way, and all to carry a Meſſage from a Man thou never kneweſt in thy Life, to a Woman whom thou never ſaweſt in thy Life neither, that thou ſhouldſt lie out by the way two Nights, and upon the *Sunday* get home, and there meet with this ſame black-bearded little Gentleman, and appoint theſe People to come to thy Houſe upon the *Tueſday*, and when they come, entertain them three or four Hours at thy own Houſe, and go back again ſo many Miles with them, and have no Entertainment but a piece of Cake and Cheeſe that thou broughteſt thy ſelf from Home, and have no Reward, nor ſo much as know any of the Perſons thou didſt all this for, is very ſtrange.

Dunne. My Lord, the Man that came to deſire me to go on this Meſſage ſaid that *Hicks* ſhould reward me and pay me for my Pains.

L. C. J. But why wouldſt thou take the word of a Man thou didſt not know?

Dunne. I was forced to take his word at that time, my Lord.

L. C. J. There was no neceſſity for that neither; no body could force thee to do it: Alack a-day; Thou ſeemeſt to be a Man of ſome conſideration: I mightily wonder thou ſhouldſt be ſo kind to People thou didſt not know, without any proſpect of Recompence whatſoever.

Dunne. All the reaſon that induced me to it was, they ſaid they were Men in Debt, and deſired to be concealed for a while.

L. C. J. Doſt thou believe that any one here believes thee: Prithee what Trade art thou?

Dunne. My Lord, I am a Baker, by Trade.

L. C. J. And wilt thou bake thy Bread at ſuch eaſie Rates, upon my word, then thou art very kind, prithee tell me, I believe thou doſt uſe to bake on *Sundays*, doſt thou not?

Dunne. No, my Lord, I do not.

L. C. J. Alack a day, thou art preciſe in that, but thou canſt travel on *Sundays* to lead Rogues into lurking Holes: It ſeemeth thou haſt a particular Kindneſs for a black Beard, that's all thy Reaſon for undertaking all this Trouble: Thou haſt told me all the Truth, haſt thou?

Dunne. I have, my Lord.

L. C. J. But I aſſure thee thy Bread is very light Weight, it will ſcarce paſs the Ballance here.

Dunne. I tell the Truth, and nothing but the Truth.

L. C. J. No doubt of that, but prithee tell me whoſe Horſe didſt thou ride when thou wenteſt firſt?

Dunne. The Man's Horſe that came to me to deſire me to go the Meſſage.

L. C. J. How came he to truſt thee with his Horſe?

Dunne. The Lord knows, my Lord.

L. C. J. Thou ſayſt right, the Lord only knows, for by the little I know of thee I would not truſt thee with Two-pence: Whoſe Horſe didſt thou ride the ſecond time?

Dunne. My own, my Lord.

L. C. J. And where didſt thou put thy Horſe when thou cameſt to my Lady *Liſle*'s?

Dunne. In the Stable, my Lord.

L. C. J. Where did they put their Horſes?

Dunne. They left them without the Gate, I think, my Lord, I did not ſee them take them in.

L. C. J. No, thou ſaidſt it was ſo dark thou couldſt not ſee any thing: Pray were you with the two Men when they did alight?

Dunne. We did all three come together.

L. C. J. What did you give *Fane* for his Pains in ſhewing you the Way?

Dunne. He had nothing that I know of.

L. C. J. Well, you are the beſt natur'd and kindeſt hearted People that ever I knew: Whereabouts do you live?

Dunne. At *Warminſter*, near my Lord *Weymouth*'s.

Mr. *Pollexfen.* Pray Mr. *Dunne* will you anſwer me one Queſtion; Was not there ſearching at that time up and down the Country for Rebels that were fled from the Battle?

Dunne. I did hear there was, ſome were taken.

Mr. *Pollexfen.* But did you hear there was ſearching at that time for other of the Rebels?

Dunne. I did not hear of any near me, but there were in other Places.

L. C. J. Then it being ſuch a ſuſpicious time when that little Man with the black Beard came to thee, didſt thou not ask what that *Hicks* was?

Dunne. No, my Lord, I did not.

L. C. J. And when Mr. *Hicks* and the other Man that is call'd by the Name of Mr. *Neltborp* came to thy Houſe, didſt not thou ask their Names?

Dunne. No, my Lord.

L. C. J. Nor didſt not thou ask upon what Occaſion they were to be conducted to my Lady *Liſle*'s?

Dunne. No, my Lord: *Hicks*, the fat Man, told me they were in Debt.

L. C. J. Did not the Man that firſt came to you, and employ'd you to go on this Meſſage; Did not he know *Hicks*?

Dunne. I cannot tell, my Lord.

L. C. J. Did not he tell you, *Hicks* deſired you to go, and that he was in Debt, and therefore deſired to be concealed?

Dunne. Yes, my Lord, he did.

L. C. J. How came you to be ſo impudent then as to tell me ſuch a Lie?

Dunne. I beg your pardon, my Lord.

L. C. J. You beg my pardon? That is not becauſe you told me a Lie, but becauſe I have found you in a Lie. Come Sirrah, tell me the Truth; What did *Hicks* and *Neltborp* with their Horſes when they came to my Lady *Liſle*'s?

Dunne. My Lord, I cannot tell.

L. C. J. Why, you impudent Raſcal, did not you tell me juſt now that they left them at the Door?

Dunne. My Lord, I ſaid I believ'd they might, but cannot directly tell what they did with them, I know not but one or other might have them away, but I did not ſee it.

Mr. *Pollexfen.* Prithee Friend tell the Truth, What did become of the Horſes?

Dunne. I cannot tell truly, my Lord, if any body had them away, I did not ſee them.

L. C. J. Where didſt thou lie that Night?

Dunne. In one of the Chambers.

L. C. J. Who ſhew'd thee the way to thy Lodging?

Dunne. The Girl.

L. C. J. Who elſe didſt thou ſee in the Houſe?

Dunne. I ſaw no body at all.

L. C. J. Then who ſhew'd thee the way to the Stable, and help'd thee with Horſe-meat?

Dunne. No body helped me with Horſe-meat.

L. C. J. Why, thy Horſe did not feed on thy Cake and Cheeſe, did he?

Dunne. There was Hay in the Rack, my Lord.

L. C. J. Was the Stable-door lock'd or open?

Dunne. The Stable-door was latch'd, and I pluck'd up the Latch.

L. C. J. How came you to know the way to the Stable then?

Dunne. Becauſe I had been there before, my Lord.

L. C. J. Thou hadſt need to know it very well, for it ſeemeth thou wenteſt without a Candle or any thing in the World, and put in thy Horſe; Didſt thou ſee that Man *Carpenter* the Bailiff that thou ſpokeſt of?

Dunne. Mr. *Carpenter* gave my Horſe Hay.

L. C. J. Was there any Light in the Stable?

Dunne. Not when I put in my Horſe firſt.

L. C. J. Who brought the Light thither?

Dunne. Goodman *Carpenter.*

L. C. J. Did not he give thy Horſe Hay?

Dunne. Yes, he did.

L. C. J. And did he not give him Oates too?

Dunne. No, my Lord, he did not.

L. C J. Did not he conduct you into the Houſe?

Dunne. Who, my Lord?

L. C. J. That ſame Goodman *Carpenter.*

Dunne. No, my Lord.

L. C. J. Did you ſee any body elſe but that Girl you ſpeak of?

Dunne. My Lord, I did ſee the Girl there.

L. C. J. But you Blockhead, I ask you whether you did ſee any body elſe.

Dunne. I do not know but I might ſee Goodman *Carpenter.*

L. C. J. Why, thou ſaidſt he brought the Light, and gave thy Horſe Hay, but I ſee thou art ſet upon nothing but Prevarication: Sirrah, tell me plainly, Did you ſee no body elſe?

Dunne. No, my Lord.

L. C. J. Not any body?

Dunne. No, my Lord, not any one.

L. C. J. Did you not drink in the Houſe?

Dunne. No, my Lord, not a drop.

L. C. J. Did not you call for Drink?

Dunne. No, my Lord, I did not, I had nothing but my Cake and Cheeſe that I brought thither my ſelf.

L. C. J. Who went up to the Chamber with you?

Dunne. The Girl, my Lord.

L. C J. And no body elſe?

Dunne. No, my Lord.

L. C. J. Was the Bed made?

Dunne. Yes, my Lord, it was.

L. C. J. You eat nothing in the Houſe, you ſay?

Dunne. Nothing but my own Cake and Cheeſe, my Lord.

L. C. J. But you did not drink in the Houſe at all?

Dunne. No, my Lord, I did not.

L. C. J. Did you drink at *Marton* where you did call upon *Fane*?

Dunne. Yes, I did, but not afterwards.

L. C. J. Did you ſee any Body there the next Morning before they were taken?

Dunne. No, my Lord, but after the Houſe was beſet, I ſaw my Lady and Mr. *Hicks*, and I think I ſaw Goodman *Carpenter.*

L. C. J. They and you were taken there together, were not you?

Dunne. Yes.

L. C. J. Did you ſee *Carpenter*'s Wife, upon your Oath, that Night?

Dunne. My Lord, I did not.

L. C. J. Nor no Woman-kind beſides the Girl you ſpeak of?

Dunne. No, my Lord.

L. C. J. Nor no Man beſides *Carpenter*?

Dunne. No, my Lord.

L. C. J. You are ſure of this?

Dunne. I am ſo, my Lord.

L. C. J. You are ſure you did not drink there?

Dunne. I am, my Lord.

L. C. J. And you ſay he brought the Light into the Stable, and gave your Horſe Hay?

Dunne. He did, my Lord.

L. C. J. Now prithee tell me truly, where came *Carpenter* unto you? I muſt know the Truth of that; remember that I give you fair Warning, do not tell me a Lye, for I will be ſure to treaſure up every Lye that thou telleſt me, and thou mayſt be certain it will not be for thy Advantage; I would not terrifie thee to make thee ſay any think but the Truth: But aſſure thy ſelf I never met with a lying, ſneaking, canting Fellow, but I always treaſure up Vengeance for him, and therefore look to it that thou doſt not prevaricate with me, for to be ſure thou wilt come to the worſt of it in the end?

Dunne. My Lord, I will tell the Truth as near as I can.

L. C. J. Then tell me where *Carpenter* met thee?

Dunne. In the Court, my Lord.

L. C. J. Before you came to the Gate, or after?

Dunne. It was after we came to the Gate, in the Court.

L. C. J. Then tell me, and I charge you tell me true, Who was with you when *Carpenter* met you?

Dunne. Hicks and *Nelthorp.*

L. C. J. Was there any body elſe beſides them two in the Court?

Dunne. There was no body but *Hicks* and *Nelthorp*, and I and Mr. *Carpenter.*

L. C. J. You are ſure of that?

Dunne. Yes, my Lord.

L. C. J. Conſider of it, are you ſure there was no body elſe?

Dunne. Truly, my Lord, I did not mind that there was any body elſe.

L. C. J.

L. C. J. Recollect your ſelf, and conſider well of it.

Dunne. Truly, my Lord, I do not know of any body elſe.

L. C. J. Now upon your Oath tell me truly, who it was that opened the Stable door, was it *Carpenter* or you?

Dunne. It was *Carpenter*, my Lord.

L. C. J. Why, thou vile Wretch didſt not thou tell me juſt now that thou pluck'd up the Latch? Doſt thou take the God of Heaven not to be a God of Truth, and that he is not a Witneſs of all thou ſayſt? Doſt thou think becauſe thou prevaricateſt with the Court here, thou canſt do ſo with God above who knows thy Thoughts, and it is infinite Mercy, that for thoſe Falſhoods of thine, he does not immediately ſtrike thee into Hell? Jeſus God! there is no ſort of Converſation nor human Society to be kept with ſuch People as theſe are, who have no other Religion but only in Pretence, and no way to uphold themſelves but by countenancing Lying, and Villany: Did not you tell me that you opened the Latch your ſelf, and that you ſaw no body elſe but a Girl? How durſt you offer to tell ſuch horrid Lyes in the Preſence of God and of a Court of Juſtice? Anſwer me one Queſtion more: Did he pull down the Hay or you?

Dunne. I did not pull down any Hay at all.

L. C. J. Was there any Hay pull'd down before the Candle was brought?

Dunne. No, there was not.

L. C. J. Who brought the Candle?

Dunne. Mr. *Carpenter* brought the Candle and Lanthorn.

L. C. J. It ſeems the Saints have a certain Charter for Lying; they may lye and cant, and deceive, and rebel, and think God Almighty takes no notice of it, nor will reckon with them for it: You ſee, Gentlemen, what a precious Fellow this is, a very pretty Tool to be imploy'd upon ſuch an Errand, a Knave that no body would truſt for half a Crown between Man and Man, but he is the fitter to be employ'd about ſuch Works; What Pains is a Man at to get the Truth out of theſe Fellows, and it is with a great deal of Labour that we can ſqueeze one Drop out of them: A *Turk* has more Title to an Eternity of Bliſs than theſe Pretenders to Chriſtianity, for he has more Morality and Honeſty in him. Sirrah, I charge you in the Preſence of God, tell me true, What other Perſons did you ſee that Night?

Dunne. My Lord, I did not ſee any than what I have told you already.

L. C. J. Then they went out and brought word that thou wert come, and ſo he came out to meet thee; very well: I would have every body that has but the leaſt Tang of Saintſhip to obſerve the Carriage of this Fellow, and ſee how they can cant and ſnivel, and lie, and forſwear themſelves, and all for the good old Cauſe: They will ſtick at nothing if they think they can but preſerve a Brother or Siſter Saint forſooth; they can do any thing in the World but ſpeak Truth, and do their Duty to God and their Governours: I ask you again, Did not *Carpenter* meet you before you left *Hicks* and *Nelthorp*?

Dunne. No, he did not.

L. C. J. Then I ask you again once more, Did not *Carpenter* ask you to drink?

Dunne. No, he did not.

L. C. J. Did not he light you with a Lanthorn and Candle into the Houſe?

Dunne. I went into the Houſe.

L. C. J. Doſt thou believe we think any body thruſt thee in: Did he light thee in, I ask thee?

Dunne. I went in along with Mr. *Carpenter.*

L. C. J. What Room did he carry you into?

Dunne. My Lord, he carry'd me into no Room, the young Woman ſhew'd me into a Room.

L. C. J. What Room was it?

Dunne. Into the Chamber.

L. C. J. Was not thou in the Hall or Kitchen?

Dunne. No, my Lord.

L. C. J. It is hard thou hadſt not one Cup of Drink to thy Cake and Cheeſe.

Dunne. My Lord, I had never a Drop.

L. C. J. No, nor did no body ask you to eat or drink?

Dunne. No, my Lord.

L. C. J. Thou art the beſt natur'd Fellow that ever I met with, but the worſt rewarded: Come, I will ask thee another Queſtion: When was the firſt time thou heardſt *Nelthorp*'s Name?

Dunne. Not till he was taken.

L. C. J. What Name did the Fellow with the black Beard tell thee he had?

Dunne. My Lord, he never told me any Name?

L. C. J. Didſt thou never ask him his Name?

Dunne. No, my Lord, that Man that was afterwards found to be *Nelthorp*, I did not know to be *Nelthorp* till he was taken, nor what his Name was, nor any Name he had.

L. C. J. No, prithee tell the Truth, Did not *Nelthorp* go by the Name of *Crofts*?

Dunne. He did, my Lord.

L. C. J. Then prithee, when did he firſt go by that Name in thy Hearing?

Dunne. My Lord, I only heard *Hicks* ſay he went by the Name of *Crofts.*

L. C. J. When was that?

Dunne. When they were taken.

L. C. J. Did you not hear him call'd by that Name any time of the Journey?

Dunne. I cannot recollect, my Lord, that I ever did.

L. C. J. Thou canſt recollect nothing of Truth: Is this as much as you can ſay?

Dunne. It is, my Lord.

Mr. *Jennings.* You ſay *Carpenter* met you very civilly, and took Care of your Horſe: Did he make no Proviſion for *Hicks* and *Nelthorp*'s Horſes? What became of them?

Dunne. I cannot tell, my Lord.

Mr. *Rumſey.* Did you ſee their Horſes afterwards?

Dunne. No, my Lord, I did not.

Mr. *Rumſey.* When they alighted from them, were they ty'd faſt to the Gate, or how?

Dunne. They were not ty'd at all, as I know of.

Mr. *Jennings.* Did you tell *Carpenter* that their Horſes were there?

Dunne. I did not tell him any ſuch thing.

L. C. J. Thou art a ſtrange prevaricating, ſhuffling, ſnivelling, lying Raſcal.

Mr. *Pollexfen.* We will ſet him by for the preſent and call *Barter*, that is the other Fellow.

L. C. J. Will the Priſoner ask this Perſon any Queſtions?

Liſle. No.

L. C. J. Perhaps her Queſtions might endanger the coming out of all the Truth, and it may be ſhe is well enough pleaſed to have him ſwear as he does; but it carries a very foul Face, upon my Word.

Then Barter *was ſwern.*

L. C. J. Is this *Barter?*

Mr. *Pollexfen.* Yes, my Lord, for his part we have his Examination before two Juſtices of Peace, but we hope he is an honeſt Fellow and will tell the Truth.

L. C. J. That is all one whether you have his Examination or not: I expect he ſhould tell me the Truth, and the whole Truth here. Friend, you know your Soul is at pawn for the Truth of what you teſtifie to us; the other Fellow thou ſeeſt has been prevaricating with us all this while, and ſwearing off and on, and ſcarce told one Word of Truth, I know very well: Now I know as much of thee as I do of him, therefore look to thy ſelf, and let the Truth, and nothing but the Truth come out?

Barter. May it pleaſe your Honour, my Lord, this Man *Dunne* came to my Houſe upon the *Saturday*, and ſpoke to me to ride along with him to *Moyle's-Court*, where my Lady *Liſle* liv'd, and I having no other Buſineſs at that time, did go along with him: He had a Letter in his Pocket, and I ſaw him produce the Letter to my Lady's Bailiff, Mr. *Carpenter*, but he would not meddle with it, ſo I ſuppoſe he went in with it to my Lady; and while I was in the Kitchin my Lady came thither, and asked me, ſaith ſhe, What Countryman art thou? Said I, Madam, I am a *Wiltſhire* Man, ſaith ſhe, Do'ſt thou make Bricks? No ſaid I, Madam, I cannot, I can help in Husbandry Work; ſaith ſhe, If thou could'ſt make Bricks, I will give thee Ten Acres of Ground in ſuch a Place: I told her, no, I could not: And then ſhe goes to this Man *Dunne*, and there ſhe was laughing with him, and looked upon me, and afterwards when we were going along, I asked him what ſhe laughed at?

L. C. J. Ay, and now tell me what he ſaid to thee about it?

Barter. He told me, my Lord, my Lady ask'd whether I knew any thing of the Concern, and that he anſwer'd her, No, this the Fellow told me was that ſhe laughed at: After this I could not eat, nor drink, nor ſleep for Trouble of Mind till I had diſcover'd this to ſome Juſtice of the Peace, and I reſolved at laſt to go to Colonel *Penruddock* and conſult with him about it, ſo I went over and told him of it.

L. C. J. What did you tell Colonel *Penruddock*, let us hear?

Barter. Where I had been the *Saturday* before, and where I ſhould meet them again upon *Salisbury Plain* upon the *Tueſday*, for I did expect to meet them there according to Appointment, and we did agree he ſhould come and take them there; but afterwards miſſing them there, or, for ſome other Reaſon I do not know what, his Mind altered, and he came to take them in the Houſe: So when I met them, we rode on about Ten Miles, and they would have had me to have led them a private Way over the Fording Bridge towards *Moyle's-Court*, but I told them, in Caſe they intended to have me for their Guide, they muſt go the Way that I could tell, but they would go that private way, and ſo loſe their way; then they ſent back this *Dunne* to *Marton*, to one *Fane*, that was the fat Man that ſent him, but I finding that I was of no more Value then, rode away from them, and having a Relation that liv'd on that Side of the Country, I went to let Colonel *Penruddock* know that they were at the Houſe, but before I went away from them, *Nelthorp* gave me five Shillings, half a Crown, and two Shillings and a Six-pence.

L. C. J. Now thou ſayſt *Nelthorp* did, Didſt thou hear his Name named?

Barter. I never could find any of their Names till they were taken.

Mr. *Pollexfen.* Pray *Barter* what Diſcourſe had you with *Dunne* the firſt time you were going to and from my Lady *Liſle's*, concerning the Men that he was to bring thither, and what Eſtates they had?

Barter. My Lord, he ſaid they had half a Score of Thouſands of Pounds a Year a piece.

Mr. *Pollexfen.* Did he tell you they were to come to my Lady's?

Barter. Yes, he told me they were to come upon the *Tueſday*, and they were to come ſuch a Way, and were to come to my Lady's in the Evening.

L. C. J. What wert thou to have for thy Pains?

Barter. I made no Bargain, my Lord.

L. C. J. You are all very free, kind-hearted People, I ſay that for you.

Mr. *Pollexfen.* What did *Dunne* ſay about his Gains?

Barter. He told me he had a very fine Booty for his Part, and that he ſhould never want Money again, and that I ſhould be very well paid, and gave me half a Crown.

L. C. J. Then let my honeſt Man Mr. *Dunne* ſtand forward a little. Come, Friend, you have had ſome time to recollect your ſelf; let us ſee whether we can have the Truth out of you now: You talked of carrying a Meſſage from *Hicks* to my Lady *Liſle*: Did not you carry a Letter?

Dunne. No, my Lord, I did not.

L. C. J. Did not you ſhew a Letter to the Bailiff, *Carpenter?*

Dunne. No, my Lord, I did not.

L. C. J. What ſay you, *Barter*, to that?

Barter. My Lord, I did ſee him produce the Letter to the Bailiff.

L. C. J. Then I will ask you another Queſtion: Did you not tell *Barter* that you ſhould be at *Salisbury Plain*, with two People, upon the *Tueſday?*

Dunne. No, my Lord, I ſaid between *Compton* and *Fovant.*

L. C. J. Did not you tell him, that they were brave Fellows, and had God knows how many Thouſand Pounds a Year apiece?

Dunne. No, my Lord, I did not.

L. C. J. Then one thing more: Did not you tell him, that you told my Lady, when ſhe asked whether he was acquainted with the Concern, that he knew nothing of the Buſineſs?

Dunne. My Lord, I did tell him ſo.

L. C. J. Did you ſo? Then you and I muſt have a little further Diſcourſe: Come now, and tell us, what Buſineſs was that? and tell it us ſo, that a Man may underſtand and believe that thou doſt ſpeak Truth.

Dunne.

Dunne. Does your Lordſhip ask what that Buſineſs was?

L. C. J. Yes, it is a plain Queſtion; What was that Buſineſs that my Lady asked thee, whether the other Man knew; and then you anſwered her, that he did know nothing of it?

Then he pauſed a while.

L. C. J. Remember, Friend, thou art upon thy Oath; and remember withal, that it is not thy Life, but thy Soul that is now in danger: Therefore I require from thee a plain Anſwer to a very plain Queſtion; What was that Buſineſs my Lady enquired after, whether the other Fellow knew, and thou toldſt her, he did not?

Dunne *made no Anſwer, but ſtood muſing a while.*

L. C. J. He is now ſtudying and muſing how he ſhall prevaricate; but thou hadſt better tell the Truth, Friend: Remember what thou haſt ſaid already; Thou haſt ſaid, that thou didſt tell that Man, that the Lady asked you, whether he knew any thing of the Buſineſs, and thou toldſt her, he did not. Now I would know what that Buſineſs was?

Still he made no Anſwer, but ſeemed to muſe.

L. C. J. Look thee, if thou canſt not comprehend what I mean, I will repeat it to thee again; for thou ſhalt ſee what Countreyman I am, by my telling my Story over twice: Therefore I ask thee once again. Thou ſaidſt thy Lady asked thee, whether he knew of the Buſineſs; and thou toldſt her, he did not. Now let us know what that Buſineſs was?

Dunne. I cannot mind it, my Lord, what it was.

L. C. J. But mind me prithee: Thou didſt tell that honeſt Man there, that my Lady *Liſle* asked thee, whether he knew any thing of the Buſineſs, and thou ſaidſt, no. What was that Buſineſs?

Dunne. That Buſineſs that *Barter* did not know of?

L. C. J. Yes, that is the Buſineſs; be ingenuous, tell the Truth: Oh! How hard the Truth is to come out of a lying Presbyterian Knave. Prithee, Friend, conſider the Oath that thou haſt taken; and that thou art in the Preſence of a God that cannot endure a Lie, nor whoſe Holineſs will not admit him to diſpenſe with a Lie: Conſider that that God is an infinite Being of Purity, Holineſs and Truth; and it would be inconſiſtent with his Being to diſpenſe with the leaſt Untruth; and thou haſt called him to witneſs that thou wouldſt teſtifie the Truth, the whole Truth, and nothing but the Truth. I charge thee, therefore, as thou wilt anſwer it to that God of Truth, and that thou mayſt be called to do, for ought I know, the very next Minute, and there thou wilt not be able to palliate the Truth; what was that Buſineſs you and my Lady ſpoke of?

Then he pauſed for half a quarter of an Hour, and at laſt ſaid:

Dunne. I cannot give an Account of it, my Lord.

L. C. J. Oh bleſſed God! Was there ever ſuch a Villain upon the Face of the Earth; to what Times are we reſerved? Do'ſt thou believe that there is a God?

Dunne. Yes, my Lord, I do.

L. C. J. Do'ſt thou believe that that God can endure a Lie?

Dunne. No, my Lord, I know he cannot.

L. C. J. And do'ſt thou believe then that he is a God of Truth?

Dunne. Yes, my Lord, I do.

L. C. J. Do'ſt thou think that that God of Truth may immediately ſink thee into Hell-Fire if thou telleſt a Lie?

Dunne. I do, my Lord.

L. C. J. Do'ſt thou believe that he does obſerve every thing that thou thinkeſt, ſayeſt or doeſt; knows the Secrets of thy Heart, and knows whether thou telleſt a Lie or not, tho' perhaps it may be hid from us, and knows whether thou do'ſt prevaricate or not?

Dunne. I know the Lord does know all things.

L. C. J. Do'ſt thou believe, that he knows the Buſineſs that you and my Lady, the Priſoner, were talking of, as well as you do; that he hath an Almighty Power over all his Creatures, an All-piercing Eye, that looks into the Hearts of every one of them, and from which nothing can be concealed? Do'ſt thou believe it poſſible to conceal that very Diſcourſe of yours from the knowledge of that infinite Being?

Dunne. My Lord, I do believe that there is a God above.

L. C. J. I ask thee then again; Do'ſt thou believe that that God above, who is a God of Truth himſelf, is Omniſcient, Omnipreſent, to whom all Truth is naked and open, that he knows every thing that is either thought, ſaid or done by any of his Creatures, ſees and knows the Hearts of all Hearts; Do'ſt thou believe all this?

He ſtood ſilent for a good while.

L. C. J. Friend, deceive not thy ſelf; the great God does obſerve and know the ſecret workings of thy Thoughts now, and how Truth ſtruggles to get out, but Baſeneſs and Villany keep it in: All the private Imaginations of thy Heart are not only known to him, but regiſtred by him, and thy Conſcience will bear witneſs to thy Accuſation when thou art called to anſwer for them, and anſwer for them thou muſt; for the Scripture, that is the Word of God, tells us, *That every vain Thought we muſt account for.* Do'ſt thou then believe, that any Diſcourſe between you, tho' never ſo private, is private from the Almighty, All-knowing God?

Dunne. My Lord, I know it is not, nor can be.

L. C. J. I therefore once more adjure thee, as thou wilt anſwer it to that God that is the Searcher of the Hearts and Trier of the Reins, to whom all Hearts are open, and from whom no Secrets are hid, that thou make me a plain Anſwer to my Queſtion; and as thou haſt called God to bear Witneſs to the Truth of the Evidence thou giveſt here in this Court; ſo I charge thee, in his Name, to declare the Truth, and nothing but the Truth. Now tell us what was the Buſineſs you ſpoke of?

But

But he made no Anſwer.

L. C. Baron. Friend, mind what my Lord ſays to you, and conſider, how eaſie a thing it is for a Man to ſpeak Truth, and give a plain Anſwer to a plain Queſtion. You cannot but underſtand what my Lord asks of you; you ſaid even now, that you did tell the other Witneſs, *Barter*, that my Lady asked you, whether he knew any thing of the Buſineſs, and you told her, he did not. Now my Lord would have you tell us, what that Buſineſs was?

He ſeemed to turn his Head on one ſide, but returned no Anſwer.

L. C. J. He is going to ask that Man there, whether he ſhall tell the Truth.

Dunne. No, my Lord, I ask no Man any ſuch Queſtion.

L. C. J. Prithee tell us the Truth then now: Thou art to know, that thou ſtandeſt in the Preſence of the God of Truth, and haſt called him to witneſs, that thou wouldſt tell the Truth.

Dunne. My Lord, I do tell the Truth, as far as I can remember.

L. C. J. Then what was that you told my Lady *Liſle*, *Barter* did not know?

Dunne. What *Barter* did not know, my Lord?

L. C. J. Ay, is not that a plain Queſtion? Of all the Witneſſes that ever I met with, I never ſaw thy Fellow.

He ſtood a good while, and made no Anſwer.

L. C. J. I hope, Gentlemen of the Jury, you take notice of the ſtrange and horrible Carriage of this Fellow; and withal, you cannot but obſerve the Spirit of that ſort of People, what a villanous and deviliſh one it is: Good God! That ever the thing called Religion (a Word that People have ſo much abuſed) ſhould ever wind up Perſons to ſuch a height of Impiety, that it ſhould make them loſe the Belief that there is a God of Truth in Heaven; that ſees and knows, obſerves and regiſters, and will puniſh and take vengeance of Falſhood and Perjury. It may well make the reſt of Mankind, that have any ſort of Faith in a Deity and a future Life, to abhor and deteſt both the Men and their Religion, if ſuch abominable Principles may be called ſo. A *Turk* is a Saint to ſuch a Fellow as this, nay a *Pagan* would be aſhamed to be thought to have no more Truth in him. O bleſſed *Jeſus!* What an Age do we live in, and what a Generation of Vipers do we live among? Sirs, is this that you call the *Proteſtant* Religion? Shall ſo glorious a Name be applied to ſo much Villany and Hypocriſie? Is this the Perſuaſion you hope to live, and die, and find Salvation in? Will any of you all, Gentlemen, be contented to die with a Lie in your Mouth? Do not you all expect, according to the Orthodox Doctrine of the true Church of *England*, that eternal Damnation will be the Portion of Liars? And thou wicked Wretch, how durſt thou appear to give Teſtimony before even an Earthly Tribunal with ſo much Impudence and Falſhood, when every Lye will coſt thee ſo dear, and except a ſincere and hearty Repentance, and the infinite Mercy of the great God interpoſe? I charge you once more, as you will anſwer it at the Bar of the great Judge of all the World, that you tell me what that Buſineſs was, you and the Priſoner talked about; do but conſider what a Condition thou bringeſt thy ſelf into by all this Shuffling and Prevarication, even as to any thing of Mercy in this Life, for indeed it is not fit thou ſhouldſt have the leaſt Hopes of Mercy on this ſide Eternity, and truly there is no Man can imagine leſs than infinite Mercy can pardon ſo flagitious a Sin, one that ſo impudently tells and ſtands in a Lye.

Still he would make no Anſwer.

L. C. J. Jeſus God! Was there ever ſuch a Fellow in the World as thou art: Prithee let me ask thee once again, Doſt thou believe that there is a God, that this God is Sporleſs, Truth and Purity it ſelf? Doſt thou believe thou haſt a precious and immortal Soul, that is to live in everlaſting Bliſs or eternal Miſery after this Life accordingly as thou carrieſt it here; if thou doſt believe it, ought not the Concerns of that precious immortal Soul of thine to be much dearer to thee than Ten thouſand Worlds? Does not the bleſſed Word of Truth tell thee, *What will it profit a Man to gain the whole World, and loſe his own Soul, or what ſhall a Man give in exchange for his Soul?* Is not this the Voice of Scripture it ſelf? And wilt thou hazard ſo dear and precious a thing for a Lye, and an unprofitable Lye too? Thou Wretch, all the Mountains and Hills in the World heaped upon one another, will not cover thee from the Vengeance of the great God for this Tranſgreſſion of falſe Witneſs-bearing: What Hopes can there be for ſo profligate a Villain as thou art, that ſo impudently ſtands in open Defiance of the Omnipreſence, Omniſcience and Juſtice of God, by perſiſting in ſo palpable a Lye, I therefore require it of you, in his Name, to tell me the Truth?

Dunne. I cannot tell what to ſay, my Lord.

L. C. J. Good God! Was there ever ſuch an impudent Raſcal, well, I will try once more, and tell thee what I mean; you ſaid you told that honeſt Man (for truly he ſeems ſo to be) that my Lady asked you whether he knew of the Buſineſs, and you told her, he did not, prithee be ſo free as to tell us what that Buſineſs was?

Dunne *paused, but would make no Anſwer.*

L. C. J. Prithee what didſt thou mean, or thy Lady mean by that Buſineſs?

He paused again, but would make no Anſwer.

L. C. J. Why, prithee doſt thou think thou doeſt her any Kindneſs by this way of proceeding, ſure thou canſt not think ſo, for ſuch a ſort of Carriage were enough to convert her, if there were nothing elſe?

Dunne. Truly, my Lord, I do not think to do her any Kindneſs at all.

L. C. J. Then prithee let me perſuade thee to have ſome kindneſs for thy ſelf, look to thy own Soul that is in great peril of everlaſting Ruin and

and Deſtruction by theſe means; Doſt thou call this Religion? It is a prodigious piece of Religion; come, pray tell me what Buſineſs it was you talked of? You ſhould not have asked me a Queſtion ſo often, but I would have given you a plain Anſwer, though I were not under the Obligation of an Oath as you are.

Dunne. My Lord, pray ask the Queſtion over again once more, and I will tell you.

L. C. J. I will ſo, and I will ask it you with all the Calmneſs, and Serioufneſs, and Candour that I can, if I know my own Heart, it is not in my Nature to deſire the Hurt of any body, much leſs to delight in their eternal Perdition; no, it is out of tender Compaſſion to you that I uſe all theſe Words: I would have thee to have ſome Regard to thy precious and immortal Soul, which is more valuable than the whole World; reflect upon that Scripture again which I mention'd before, which muſt be true, becauſe it is the Words of him that is Truth it ſelf: *What ſhall it profit a Man to gain the whole World and loſe his own Soul, or what ſhall a Man give in exchange for his Soul?* If that Soul of thine be taken away, what is the Body fit for, but like a putrid Carcaſe to be thruſt into and covered with the Duſt with which it was made; therefore I ask you, with a great Deſire that thou mayſt free thy ſelf from ſo great a Load of Falſhood and Perjury, tell me what the Buſineſs was you told the Priſoner, the other Man *Barker* did not know?

Dunne. My Lord, I told her, he knew nothing of our coming there.

L. C. J. Nay, nay, that can never be it, for he came along with thee.

Dunne. He did not know any thing of my coming there till I met him on the way.

L. C. J. Prithee mind my Queſtion, Sure enough thou hadſt told him whither thou wert going, or elſe he could not have been thy Guide, ſo that he muſt needs know of thy coming there, but what was the Buſineſs that thou toldſt her, he did not know?

Dunne. She asked me whether I did not know that *Hicks* was a Nonconformiſt.

L. C. J. Did my Lady *Liſle* ask you that Queſtion?

Dunne. Yes, my Lord, and I told her I did not.

L. C. J. But that is not my Queſtion; What was that Buſineſs that he did not know?

Dunne. It was the ſame thing, whether Mr. *Hicks* was a Nonconformiſt.

L. C. J. That cannot be all, there muſt be ſomething more in it?

Dunne. Yes, my Lord, it is all, I know nothing more.

L. C. J. What did ſhe ſay to you when you told her, he did not know it?

Dunne. She did not ſay any thing, my Lord.

L. C. J. Why doſt thou think, that after all this pains that I have been at to get an Anſwer to my Queſtion, that thou canſt banter me with ſuch ſham Stuff as this? Hold the Candle to his Face that we may ſee his brazen Face.

Dunne. My Lord, I tell you the Truth.

L. C. J. Did ſhe ask thee whether that Man knew any thing of a Queſtion ſhe had asked thee, and that was only of being a Nonconformiſt?

Dunne. Yes, my Lord, that was all.

L. C. J. That is all Nonſence, Doſt thou imagine that any Man hereabouts is ſo weak as to believe thee?

Dunne. My Lord, I am ſo baulked I do not know what I ſay my ſelf; tell me what you would have me to ſay, for I am clutter'd out of my Senſes.

L. C. J. Why, prithee Man, there's no body baulks thee but thy own ſelf, thou art asked Queſtions that are as plain as any thing in the World can be, it is only thy own depraved naughty Heart that baulks both thy Honeſty and Underſtanding, if thou haſt any, it is thy ſtudying how to prevaricate that puzzles and confounds thy Intellect; but I ſee all the Pains in the World, and all Compaſſion and Charity is loſt upon thee, and therefore I will ſay no more to thee.

Mr. *Pollexfen.* My Lord, becauſe he pretends to Ignorance what *Hicks* was, I deſire to ask *Barter* one Queſtion; Pray, what did he tell you concerning his Carriage towards theſe People?

Barter. My Lord, he told me, that he had concealed them in his Houſe Ten Days before.

Dunne. That I never did in my Life.

Barter. I know not whether you did or no, but you told me ſo; and I made Anſwer to him again, my Lord, I wonder how he were able to keep them without being diſcovered, there being ſuch Search, and he anſwered, He did keep them in a Chamber all Day, and then they walked out at Night, for the Searches of the Houſes were uſually at Night.

Dunne. My Lord, I can bring Teſtimony to the contrary.

L. C. J. But really I believe it will be no ſtrange thing for me to ſay, I do believe him rather than thee; I would I had half as much reaſon to believe thee, as I have to believe him; I would fain have thee ſpeak Truth if I could. What ſay you to the Queſtion I asked you?

Dunne. I cannot tell what to ſay, my Lord.

L. C. J. Say the Truth, Man.

Dunne. I do, as I hope for Mercy, my Lord.

L. C. J. Do'ſt thou hope for Mercy? Thou haſt very little reaſon for it I aſſure thee. Well, I will try thee with another Queſtion: Didſt thou tell that Man, that it was the beſt Job thou ever hadſt in thy life?

Dunne. No, my Lord, I did not.

L. C. J. Nor nothing to that purpoſe?

Dunne. No, my Lord.

L. C. J. What ſay you, *Barter*, did not he tell you ſo?

Barter. Yes, my Lord, he did; and that he ſhould never lack Money again as long as he lived.

L. C. J. Then I ask you one Queſtion more, *Barter*; Did you tell this to Col. *Penruddock*?

Barter. Yes, I did, my Lord.

L. C. J. Then that will fortifie his Teſtimony; therefore Swear him, becauſe I would make theſe concealed Wretches (for in my Conſcience I know there are ſome ſuch in the bottom of this Buſineſs) know, that the Truth will out one way or other. And as for this Fellow; I expect it from all you Gentlemen of the King's Counſel, and others that are concerned, that you take notice and remember what

what has paſſed here, and that an Information of Perjury be preferred againſt this Fellow.

Then Col. Penruddock *was Sworn.*

L. C. J. Col. *Penruddock*, upon the Oath you have taken; Did that Man *Barter* come to you, and what did he ſay to you?

Col. *Penruddock.* My Lord, That Man *Barter* came to my Houſe in the Morning, upon *Monday*, and told me, he had been with one *Dunne*, upon a Journey to Mrs. *Liſle*'s Houſe, to get Entertainment for ſome People; and that they had appointed to meet him the *Tueſday* following, between 9 and 11, upon *Salisbury* Plain, and there, if I pleaſed, I might take them. I ordered him to go according to the Appointment, and withal, I ſent a Servant of my own to watch when they came by; but it happen'd, I ſuppoſe, by their taking another way, that he miſſed of them; but *Barter* left word, that in caſe he did not find them there, we muſt conclude, that he was gone with them to my Lady *Liſle*'s Houſe; and he told me withal, ſays he, I believe they are Rebels, becauſe he that deſired me to be their Guide, ſaid the ſame to me. So early the next Morning I took ſome Soldiers with me, and beſet my Lady *Liſle*'s Houſe; it was a pretty while before I could get any body in the Houſe to hear; at length that Man that they ſay was the Bailiff, *Carpenter*, came out, and I ſaid to him, Friend, you had beſt be free and ingenuous, and diſcover who are in your Lady's Houſe, for I am ſure there were ſome Strangers came thither laſt Night; let me know who they are, and ſhew me what part of the Houſe they are in? He did confeſs to me there were Strangers in the Houſe, and pointed to ſuch a part of the Houſe; but pray, ſays he, do not tell my Miſtreſs of it. Accordingly we went in, and immediately we took Mr. *Hicks* and this ſame *Dunne* in the Malthouſe.

L. C. J. Was *Dunne* taken in the Malthouſe?

Col. *Penruddock.* Yes, he had covered himſelf with ſome ſort of Stuff there.

L. C. J. Well, what did you do then?

Col. *Penruddock.* My Lady afterwards coming to us, I told her, Madam, you have done very ill in harbouring Rebels, and giving Entertainment to the King's Enemies: Saith ſhe, I know nothing of them, I am a Stranger to it. Pray, ſaid I, Madam, be ſo free and ingenuous with me, and ſo kind to your ſelf, as if there be any other Perſon that is concealed in any part of your Houſe (for I am ſure there is ſome body elſe) as to deliver him up, and you ſhall come to no further trouble. She denied it, and ſaid, I know nothing of them: But we went on, and ſearched, and at laſt diſcovered the other Man *Nelthorp*, hid in a Hole by the Chimney.

L. C. J. Dunne, How came you to hide your ſelf in the Malthouſe?

Dunne. When I heard the ſtir and buſtle, I went thro' the Chamber where I lay, and came into that Room where I was taken.

L. C. J. When thou heardſt a ſtir and a buſtle: Why, wert thou afraid of any thing?

Dunne. My Lord, I was frighted at the noiſe.

L. C. J. Prithee, what needeſt thou be afraid, for thou didſt not know *Hicks*, nor *Nelthorp*; and my Lady only asked thee whether *Hicks* were a Nonconformiſt Parſon: Thou art a very innocent Soul, and ſurely needeſt no occaſion to be afraid: I doubt there was ſomething of that *Buſineſs* in the caſe that we were talking of before, if we could but get out of thee what it was.

Dunne. My Lord, I heard a great noiſe in the Houſe, and I did not know what it meant, and ſo I went and hid my ſelf.

L. C. J. Alack-a-day! That is very ſtrange, that thou ſhould'ſt hide thy ſelf for a little noiſe, when thou kneweſt nothing of the Buſineſs, nor wert acquainted with any thing of the matter at all. But Col. *Penruddock*, I would ask you one Queſtion more: Did that honeſt Man tell you, that *Dunne* had told him, it was the beſt Job that ever he had in his Life; and that he ſhould want no Money?

Penruddock. I cannot tell that truly, my Lord, I do not remember that, but he ſaid, he apprehended them to be Rebels, and that *Dunne* had told him as much.

L. C. J. What do you ſay to that, *Dunne*? It ſeems you told *Barter* that you apprehended them to be Rebels?

Dunne. I apprehend them for Rebels, my Lord!

L. C. J. No, no, you did not apprehend them for Rebels, but you hid them for Rebels. But did you ſay to *Barter* that you took them to be Rebels?

Dunne. I take them to be Rebels!

L. C. J. You Blockhead, I ask you, did you tell him ſo?

Dunne. I tell *Barter* ſo!

L. C. J. Ay, is not that a plain Queſtion?

Dunne. I am quite cluttered out of my Senſes, I do not know what I ſay.

[*A Candle being ſtill held nearer his Noſe.*

L. C. J. But to tell the Truth would rob thee of none of thy Senſes, if ever thou hadſt any, but it ſhould ſeem that neither thou, nor thy Miſtreſs the Priſoner had any, for ſhe knew nothing of it neither, though ſhe had ſent for them thither.

Mr. *Pollexfen.* Pray Colonel *Penruddock*, did you tell her you came to ſearch for Rebels?

Col. *Penruddock.* Yes, Sir, I told her as ſoon as I ſaw her, but we had a good while beſet the Houſe before any body anſwered us, at length, there were ſome Ladies, or Gentlewomen, I imagined them to be her Daughters, that upon our noiſe looked out at the Window; and I told them there were Rebels in the Houſe, and I required them in the King's Name to be deliver'd to me; but I ſaw not my Lady till after I had brought out *Hicks* and *Dunne*.

L. C. J. What ſaid ſhe to you?

Col. *Penruddock.* She ſaid, ſhe knew nothing of their being in the Houſe; but I told her there was ſome body elſe beſides, and ſhe would do well to deliver him without trouble; but ſhe denying of it, we ſearched further, and found *Nelthorp*, as I told you.

L. C. J. But ſhe denied it at firſt, it ſeems?

Liſle. My Lord, I hope I ſhall not be condemned without being heard.

L. C. J. No, God forbid, Mrs. *Liſle*; that was a ſort of Practice in your Husband's time; you know very well what I mean: But God be thanked, it is not ſo now, the King's Courts of Law never condemn without hearing. Col. *Penruddock*, have you any more to ſay?

Col.

Col. *Penruddock*. No, my Lord, but here is one Mr. *Dowding*, that was with me when I ſearched the Houſe.

L. C. J. Swear him. [*Which was done.*

Mr. *Pollexfen*. Mr. *Dowding*, Pray did you go with Col. *Penruddock* to Mrs. *Liſle*'s Houſe?

Mr. *Dowding*. Yes, my Lord: We came to the Houſe and beſet the Houſe round, ſome to the back Gate and ſome to the fore-Gate; we called almoſt half an hour before we got in; and had found two, and we came to my Lady, ſhe ſaid, ſhe knew nothing of any body being in the Houſe——

Liſle. My Lord, This Fellow that now ſpeaks againſt me broke open my Trunk, and ſtole away a great part of my beſt Linnen; and ſure, my Lord, thoſe Perſons that rob me, are not fit to be Evidences againſt me, becauſe it behoves them that I be convicted, to prevent their being indicted for Felony.

L. C. J. Look you, Friend, you ſay you went with Col. *Penruddock* to ſearch the Houſe, did you find any body there?

Dowding. Yes, my Lord, I found this ſame *Dunne* in a little Hole in the Malthouſe.

L. C. J. Was he covered, or not?

Dowding. He had taken ſome ſtuff or other to cover him.

L. C. J. Did you find *Hicks* there?

Dowding. Yes, my Lord, we did find one that ſaid his Name was *Hicks*.

L. C. J. Is that the ſame *Hicks* that is in *Salisbury* Gaol?

Dowding. Yes, my Lord, it is, I ſaw him yeſterday at the *George* in *Salisbury*, when he had that Diſcourſe with thoſe other Gentlemen.

Mr. *Pollexfen*. Swear *Carpenter* and his Wife.

[*Which was done.*]

Dowding. My Lord, *Hicks* acknowledged before me, that he was at *Keinſham*, in the Duke of *Monmouth*'s Army.

Mr. *Pollexfen*. Come, Mrs. *Carpenter*, tell my Lord and the Jury; Did you know the time when theſe Men came to your Lady's Houſe?

L. C. J. Is this the Bailiff's Wife?

Mr. *Pollexfen*. Yes, my Lord, it is.

L. C. J. Well then, what ſay you to the Queſtion: Do you know the time when they came?

Mrs. *Carpenter*. Yes, my Lord, they came at night.

L. C. J. Did you ſee them there?

Mrs. *Carpenter*. Yes.

L. C. J. Were they lodged there?

Mrs. *Carpenter*. Yes but I never made the Bed.

L. C. J. Who did?

Mrs. *Carpenter*. My Lord, I cannot tell.

L. C. J. Had they any Supper, or Victuals there?

Mrs *Carpenter*. Yes, they had.

L. C. J. Who dreſs'd it?

Mrs. *Carpenter*. I did.

L C. J. By whoſe Order did you dreſs it?

Mrs. *Carpenter*. By my Lady's Order.

L. C. J. Prithee where did they eat their Meat?

Mrs. *Carpenter*. In the Chamber, my Lord, where they lay.

L. C. J. Who was with them?

Mrs. *Carpenter*. My Lord, I cannot tell, for I did not ſtay in the Room.

L. C. J. Didſt thou ſee them when they came into the Room?

Mrs. *Carpenter*. My Lord, I dreſs'd the Meat, and carried it within the Door, and my Huſband ſet it upon the Table.

L. C. J. Prithee tell me who was with them? Was thy Lady there?

Mrs. *Carpenter*. My Lady was in Preſence there then.

L. C. J. How long did they ſtay below ſtairs before they went up?

Mrs. *Carpenter*. Truly, my Lord, I cannot tell.

L. C. J. Did your Lady uſe to ſup below ſtairs or above?

Mrs. *Carpenter*. She uſed to ſup below, my Lord.

Mr. *Pollexfen*. My Lord, if your Lordſhip pleaſe, this Woman and her Husband are both unwilling Witneſſes; but we will examine the Husband, and ſee what we can get out of him: Hark you, *Carpenter*, did you meet with this Fellow *Dunne*, at his firſt coming to your Lady's Houſe?

Mr. *Carpenter*. Yes, my Lord, I did ſee him there on the *Saturday*.

L. C. J. Well then, let me ask you a Queſtion: and be ſure you tell me Truth, for it may be I know it already: Did he offer you a Letter to be delivered to your Lady?

Mr. *Carpenter*. No, my Lord.

L. C. J. What do you ſay *Barter*?

Barter. I ſaw him produce it to Mr. *Carpenter*, but he refuſed to meddle with it.

Mr. *Carpenter*. My Lord, he asked me, if my Lady would give Entertainment to one *Hicks*, and another Perſon, but he did not know who that Perſon was.

L. C. J. Did he ſpeak of another Perſon?

Mr. *Carpenter*. Yes, he did.

L. C. J. Who was that other Perſon?

Mr. *Carpenter*. I did ask his Name, but he ſaid, he did not know him.

L. C. J. Well then, when they came there on the *Tueſday* night, how did you receive them?

Mr. *Carpenter*. I did not receive them.

L. C. J. Did not you light the Candle, and bring it in a Lanthorn, to light him into the Stable?

Mr. *Carpenter*. My Lord, that was afterwards.

L. C. J. Did not you bring the Men into the Houſe?

Mr. *Carpenter*. No, my Lord, indeed I did not.

L. C. J. Did not you ſee them all night?

Mr. *Carpenter*. Yes, my Lord.

L C. J. Then where did you ſee them firſt?

Mr. *Carpenter*. In the Room where they ſupp'd and lay.

L. C. J. Did not you meet them in the Court-yard?

Mr. *Carpenter*. No, my Lord.

L. C. J. Who gave you Directions to light *Dunne* into the Stable?

Mr. *Carpenter*. They told me his Horſe was out in the yard.

L. C. J. Who told you ſo?

Mr. *Carpenter*. The Men did.

L. C. J. Where did they ſup?

Mr. *Carpenter*. In the Room above ſtairs.

L. C. J. Who ſupp'd along with them?

Mr. *Carpenter*. I cannot ſay any body ſupp'd with them.

L. C. J. Was not my Lady there?

Mr. *Carpenter*. She was in the Room, but I did not ſee her eat any thing.

L. C. J. What time of the night did they come?

Mr. *Carpenter*. About Ten of the Clock.

L. C. J. And where did they lie?

Mr. *Carpenter*. In the Room where they ſupped.

L. C. J. Who lay there?

Mr. *Carpenter*. *Hicks* and *Nelthorp* lay there.

L. C. J. Was *Nelthorp* named there?

Mr. *Carpenter*. No, I never heard of his Name till after he was taken.

L. C. J. What a kind of Man was he?

Mr. *Carpenter*. A tall, thin, black Man.

L. C. J. Well, what can you ſay more?

Mr. *Carpenter*. My Lord, this Perſon has ſwore, that a Letter was offered me, but I refuſed it; but I aſſure your Lordſhip I never ſaw any Letter.

Barter. I am ſure he met you, and, as I remember, there was a Letter produced.

L. C. J. Thou ſhouldſt not be angry with him for he ſpoke very kindly of thee, that thou refuſedſt to meddle in it, and thereupon *Dunne* went in to thy Lady, and delivered his Meſſage to her.

Mr. *Carpenter*. That, my Lord, I acknowledge.

L. C. J. Then, prithee let me ask thee another Queſtion: Did you carry any Beer up into the Room?

Mr. *Carpenter*. My Lady gave order for the Proviſion.

L. C. J. Did you make *Dunne* drink?

Mr. *Carpenter*. No, I did not.

L. C. J. Did you offer him any Drink?

Mr. *Carpenter*. My Lord, I did not ſee him drink at all.

L. C. J. What ſay you, good Woman; Did not your Lady ſup there?

Mr. *Carpenter*. My Lord, my Wife was little there at all.

Mr. *Rumſey*. Now, my Lord, *Dunne* ſays he will tell all, whether it make for him or againſt him.

L. C. J. Let him but tell the Truth, and I am ſatisfied.

Dunne. Sure, my Lord, I never entertained theſe Men a Night in my Houſe in my life; but this *Hicks* ſent that Man to me, to go to my Lady *Liſle*'s, to know, whether ſhe would pleaſe to entertain him: And when I came, my Lady asked me, whether he had been in the Army or no? I told her, I could not tell, I did not know that he was. She then asked me, if he had no body elſe with him? I told her, I believed there was; this is the very Truth of it, my Lord: I asked her, Might the Men be entertained? She ſaid they might. So when we came to my Lady *Liſle*'s, on the *Tueſday* night, ſome body took the two Horſes, I cannot tell who if I were to die; the two went in, and after I had ſet up my Horſe, I went in along with *Carpenter* up into the Chamber to my Lady, and to this *Hicks* and *Nelthorp*; and when I came there, I heard my Lady bid them welcome to her Houſe; and Mr. *Carpenter*, or the Maid, I cannot tell which, brought in the Supper and ſet it on the Table.

L. C. J. And didſt thou eat or drink with 'em in the Room, or not?

Dunne. My Lord, I will tell every thing that I know; I confeſs I did both eat and drink there in the Room.

L. C. J. I pity thee with all my Soul, and pray to God Almighty for thee to forgive thee, and to the bleſſed Jeſus to mediate for thee; and I pray for thee with as much earneſtneſs, as I would for my own Soul; and I beg of thee once more, as thou regardeſt thy own eternal Welfare, to tell all the Truth.

Dunne. My Lord, I did never know theſe Men were in the Army when I carried the Meſſage to my Lady *Liſle*'s, nor never did entertain them in my Houſe in my lifetime, ſo much as one Night.

L. C. J. Prithee, I do not ask thee what thou didſt not, but what thou didſt?

Dunne. My Lord, I will tell all I know.

L. C. J. What Diſcourſe had you that Night at the Table in the Room?

Dunne. I cannot tell what Diſcourſe truly, my Lord, there was.

L. C. J. Was there nothing of coming from beyond Seas, who came from thence, and how they came? Come, I would have it rather the Effect of thy own Ingenuity, than lead thee by any Queſtions that I can propound, come, tell us what was the Diſcourſe?

Dunne. I do not remember all the Diſcourſe.

L. C. J. Prithee let me ask thee one Queſtion, and anſwer me it fairly, Didſt not thou hear *Nelthorp*'s Name named in the Room?

Dunne. My Lord, I cannot tell whether he were called *Nelthorp*, but it was either *Croſts* or *Nelthorp*, I am ſure one of them.

L. C. J. Prithee be ingenuous and let's have the Truth on't?

Dunne. My Lord, I am ingenuous, and will be ſo.

L. C. J. I will aſſure you *Nelthorp* told me all the Story before I came out of Town?

Dunne. I think, my Lord, he was called *Nelthorp* in the Room, and there was ſome Diſcourſe about him.

L. C. J. Ay, there was unqueſtionably, and I know thou wert by, and that made me the more concern'd to preſs upon thee the Danger of Forſwearing thy ſelf.

Dunne. My Lady asked *Hicks* who that Gentleman was, and he ſaid it was *Nelthorp*, as I remember.

L. C. J. Very well, and upon that Diſcourſe with *Nelthorp*, which I had in Town, did I give particular Direction that the Outlawry of *Nelthorp* ſhould be brought down hither, for he told me particularly of all the Paſſages and Diſcourſes, of his being beyond Sea, and coming from beyond Sea? I would not mention any ſuch thing as any piece of Evidence to influence this Caſe, but I could not but tremble to think, after what I knew, that any one ſhould dare ſo much to prevaricate with God and Man, as to tell ſuch horrid Lyes in the Face of a Court.

Dunne. What does your Lordſhip ask me?

L. C. J. Come, I will ask thee a plain Queſtion; Was there no Diſcourſe there about the Battle, and of their being in the Army?

Dunne. There was ſome ſuch Diſcourſe, my Lord.

L. C. J. Ay, prithee now tell us what that Diſcourſe was?

Dunne.

Dunne. My Lord, I will tell you when I have recollected it, if you will give me time till to morrow Morning.

L. C. J. Nay, but we cannot ſtay ſo long, our Buſineſs muſt be diſpatched now, but I would have all People conſider what a Reaſon there is, that they ſhould be preſſed to join with me in hearty Prayers to Almighty God that this Sin of Lying and Perjury may never be laid at thy Door: What ſayſt thou? Prithee tell us what the Diſcourſe was?

Dunne. My Lord, they did talk of Fighting, but I cannot exactly tell what the Diſcourſe was.

L. C. J. And thou ſaidſt thou didſt eat and drink with them in the ſame Room?

Dunne. I did ſo, my Lord, I confeſs it.

L. C. J. And it was not a little Girl that lighted thee to Bed, or conducted thee in?

Dunne. It was not a little Girl.

L. C. J. Who was it then?

Dunne. It was Mr. *Carpenter*, my Lord.

L. C. J. And why didſt thou tell ſo many Lyes then? Jeſu God! that we ſhould live to ſee any ſuch Creatures among Mankind, nay, and among us too, to the Shame and Reproach be it ſpoken of our Nation and Religion: Is this that that is called the Proteſtant Religion, a thing ſo much boaſted of and pretended to? We have heard a great deal of Clamour againſt Popery and Diſpenſations, what Diſpenſations pray does the Proteſtant Religion give for ſuch Practices as theſe? I pity thee with all my Soul, and pray for thee, but it cannot but make all Mankind to tremble and be filled with Horror that ſuch a wretched Creature ſhould live upon the Earth: Prithee be free and tell us what the Diſcourſe was?

Dunne. My Lord, they did talk of Fighting, but I cannot remember what it was.

L. C. J. Did you lie with them?

Dunne. No, my Lord, I did not.

L. C. J. Well, I ſee thou wilt anſwer nothing ingenuouſly, therefore I will trouble my ſelf no more with thee: Go on with your Evidence, Gentlemen.

Mr. *Jennings.* My Lord, we have done, we have no more Witneſſes.

L. C. J. Then you that are for the Priſoner at the Bar, now is your time to make your Defence; you hear what is charged upon you, and you ſee what a kind of Shuffling here has been to ſtifle the Truth, and I am ſorry to find the Occaſion to ſpeak it, that under the Figure and Form of Religion ſuch Practices ſhould be carried on. What have you to ſay for your ſelf?

Liſle. My Lord, that which I have to ſay to it, is this, I knew of no Body's coming to my Houſe but Mr. *Hicks*, and for him, I was inform'd that he did abſcond, by Reaſon of Warrants that were out againſt him for preaching in private Meetings, but I never heard that he was in the Army, nor that *Nelthorp* was to come with him; and for that Reaſon it was that I ſent to him to come by Night, but for the other Man *Nelthorp*, I never knew he was *Nelthorp*, I could die upon it, nor did not know what Name he had till after he came into my Houſe, but as to Mr. *Hicks*, I did not in the leaſt ſuſpect him to have been in the Army, being a Presbyterian Miniſter that uſed to preach and not to fight.

L. C. J. But I will tell you, there is not one of thoſe lying, ſnivelling, canting Presbyterian Raſcals but one way or other had a Hand in the late horrid Conſpiracy and Rebellion, upon my Conſcience I believe it, and would have been as deep in the actual Rebellion, had it had any little Succeſs, as that other Fellow *Hicks*; their Principles carry them to it; Presbytery has all manner of Villany in it, nothing but Presbytery could lead that Fellow *Dunne* to tell ſo many Lies as he has here told, for ſhew me a Presbyterian, and I will engage to ſhew a lying Knave.

Liſle. My Lord, I abhorred both the Principles and Practices of the late Rebellion.

L. C. J. I am ſure you had great Reaſon for it.

Liſle. Beſides, my Lord, I ſhould have been the moſt ungrateful Perſon living, ſhould I have been diſloyal, or acted any thing againſt the preſent King, conſidering how much I was obliged to him for my Eſtate.

L. C. J. Oh then! Ungrateful, ungrateful adds to the Load which is between Man and Man, and is the baſeſt Crime that any one can be guilty of.

Liſle. My Lord, had I been try'd in *London*, I could have had my Lady *Abergavenny*, and ſeveral other Perſons of Quality, that could have teſtified how much I was againſt this Rebellion, and with what Deteſtation I ſpoke againſt it during the time of it, for I was all that time at *London*, and ſtay'd there till after the Duke of *Monmouth* was beheaded; and if I had certainly known the time of my Tryal in the Country, I could have had the Teſtimony of thoſe Perſons of Honour for me: *But, My Lord, I am told, and ſo I thought it would have been, that I ſhould not have been try'd as a Traytor for harbouring him, till he was Convict for a Traytor*; My Lord, I would take my Death of it, that I never knew of *Nelthorp*'s coming, nor any thing of his being *Nelthorp*, I never asked his Name, and if he had told it me, I had then remembred the Proclamation. I do aſſure you, my Lord, for my own part I did abhor thoſe that were in that horrid Plot and Conſpiracy againſt the King's Life, I know my Duty to my King better, and have always exerciſed it, I defie any body in the World that ever knew the contrary to come and give Teſtimony.

L. C. J. Have you any more to ſay?

Liſle. As to what they ſay of *my denying* Nelthorp *to be in my Houſe, I was in great Conſternation and Fear of the Souldiers, who were very rude and violent, and could not be reſtrained by their Officers from Robbery and plundering my Houſe:* And I beſeech your Lordſhip to make that Conſtruction of it; and I humbly beg of your Lordſhip not to harbour an ill Opinion of me, becauſe of thoſe falſe Reports that go about of me, relating to my Carriage towards the old King, that I was any ways conſenting to the Death of King *Charles* I. for, my Lord, that is as falſe as God is true; my Lord, I was not out of my Chamber all the day in which that King was beheaded, and I believe I ſhed more Tears for him than any Woman then living did; and this the late Counteſs of *Monmouth*, and my Lady *Marlbrough*, and my Lord Chancellor *Hyde*, if they were alive, and 20 Perſons of the moſt eminent Quality, could bear Witneſs for me. And I do repeat it, my Lord, as I hope to attain Salva-

vation, I never did know *Nelthorp*, nor never did ſee him before in my Life, nor did I know of any body's coming but Mr. *Hicks*, and him I did know to be a Nonconformiſt Miniſter; and there being, as is well known, Warrants out to apprehend all Nonconformiſt Miniſters, I was willing to give him ſhelter from theſe Warrants. I was come down but that Week into the Countrey, when this Man came to me from Mr. *Hicks*, to know if he might be received at my Houſe; and I told him, if Mr. *Hicks* pleaſed, he might come upon *Tueſday* in the Evening, and ſhould be welcome; but withal I told him, I muſt go away the *Monday* following from that place, but while I ſtaid I would entertain him. And I beſeech your Lordſhip to believe, I had no intention to harbour him but as a Nonconformiſt, and that I knew was no Treaſon: It cannot be imagined, that I would venture the the hazard of my own Life, and the ruin both of my ſelf and Children, to conceal one that I never knew in my Life, as I did not know Mr. *Nelthorp*, but had heard of him in the Proclamation. And for that white-headed Man that ſpeaks of my denying them, as I ſaid before, he was one of them that rifled and plundered my Houſe, and tore open my Trunk; and if I ſhould not be Convicted, he and the reſt of them may be called to account for what they did, for they ought not to have meddled with my Goods: Beſides, my Lord, I have a Witneſs that can teſtifie what Mr. *Nelthorp* ſaid, when he was examined before——

L. C. J. Look you, Mrs. *Liſle*, that will ſignifie little; but if you have any Witneſſes, call them, we will hear what they ſay: Who is that Man you ſpeak of?

Liſle. *George Creed* his Name is; there he is.

L. C. J. Well, what do you know?

Creed. I heard *Nelthorp* ſay, That my Lady *Liſle* did not know of his coming, nor did not know his Name; nor had he ever told his Name, till he named himſelf to Col. *Penruddock* when he was taken.

L. C. J. Well, this is nothing; ſhe is not indicted for harbouring *Nelthorp*, but *Hicks*: Have you any more Witneſſes?

Liſle. No, my Lord.

L. C. J. Have you any more to ſay for your ſelf?

Liſle. My Lord, I came but five days before this into the Countrey——

L. C. J. Nay, I cannot tell when you came into the Countrey, nor I do not care; it ſeems you came time enough to harbour Rebels.

Liſle. I ſtaid in *London* till all the Rebellion was paſt and over; and I never uttered a good Word for the Rebels, nor ever harboured ſo much as a good Wiſh for them in my Mind: I know the King is my Sovereign, and I know my Duty to him, and if I would have ventured my Life for any thing, it ſhould have been to ſerve him, I know it is his due, and I owed all I had in the World to him: But tho' I could not fight for him my ſelf, my Son did; he was actually in Arms on the King's ſide in this Buſineſs; I inſtructed him always in Loyalty, and ſent him thither; it was I that bred him up to fight for the King.

L. C. J. Well, have you done?

Liſle. Yes, my Lord.

L. C. J. Have you a mind to ſay any thing more?

Liſle. No, my Lord.

L. C. J. Then command Silence.

[*Which was done by Proclamation.*]

Liſle. My Lord, may I ſpeak one word more. My Lord, I beſeech you afford me your Patience and your Advice; *Keinſham*, where Mr. *Hicks* is ſaid to be in Arms, does not lie in this County.

L. C. J. That is nothing: But the Treaſon you committed was in this County.

Liſle. But I aſſure your Lordſhip I never knew he was in the Army; and for any Talk or Diſcourſe in private about his or *Nelthorp*'s being there, I never heard any; indeed one of them asked me, whether the Duke of *Monmouth* was beheaded, and I told them, yes, for ſo he was before I came out of Town: And that is all the Diſcourſe that I can remember, wherein he is concerned.

L. C. J. Well, have you any more to ſay now?

Liſle. No, my Lord.

L. C. J. Then Gentlemen of the Jury: This is a Caſe of very great Example, and withal, of very great Weight and Moment; wherein the Intereſt of the Publick, and the Life of a Perſon of Quality and Fortune are put into your Hands: And the great Buſineſs which has detained both us and you ſo long, has been an endeavour (if it were poſſible) to find out the Truth; which indeed is the buſineſs of all Enquiries of this nature: We ſit not here, nor are you there upon any other Errand; nor is any thing deſired by the Court, or required of you, but that the Truth may be made manifeſt: 'Tis that you are bound to by the Oaths you have taken in this Service; and in that Inquiry you are to be guided by the Evidence that has here been given forth unto you; for your Oath is, *That you ſhall well and truly try, and true deliverance make, between our Sovereign Lord the King and the Priſoner at the Bar, according to your Evidence, as you ſhall anſwer it to God.* So that, Gentlemen, this Oath of yours being your Direction what is your Duty, and you being all Perſons of Quality and Reputation in your Countrey, Men of great Underſtanding and known Integrity, it is to be hoped, that not any thing can move you, either to Compaſſion of the Priſoner on the one hand, or her Allegations and Proteſtations of Innocence; nor on the other hand, to be influenced by any thing that comes from the Court, or is inſinuated by the learned Counſel at the Bar; but that you will entirely conſider what Evidence has been given to you, and being guided by that Evidence alone, you that are Judges of the Fact, will let us know the Truth of that Fact by a ſincere and upright Verdict.

And inaſmuch, Gentlemen, as the Evidence has been long in giving (tho' the Subſtantial part of it, perhaps, be in a narrow compaſs) I will repeat it to you, as near as I can, with all Faithfulneſs and Integrity, as I ſhall anſwer it to the great Judge of Heaven and Earth, before whom you, and we, and all muſt ſtand to be judged; without any Aggravation or Alteration on the one ſide, and without any Omiſſion on the other: And I ſhall do it, purely to help your Memories who are to determine the Fact; and I do pray and adjure, that you would do equally, according to the Truſt repoſed in you, and according to the Oath that you have taken: And I would repeat it once more,

more, that you are not to be led by any Inſinuations of the Priſoner, nor by any Allegations from the Learned Counſel, whoſe Buſineſs it is to open the Fact; but that Fact ſo opened is no further to guide you in your Enquiry than as it is proved.

Gentlemen, Before I come to the particular Evidence of this Fact, I muſt crave leave to ſay ſomething of a Matter in general that is very well known: It was very well obſerved by that Learned Gentleman that opened the Cauſe at the beginning, that we are all of us here unſpeakably oblig'd to bleſs the great God of Heaven, the Father of Mercies, and praiſed for ever be his Holy Name, for his infinite Goodneſs in preſerving and protecting us from the imminent Ruin which the late horrid and deteſtable Rebellion would (had it ſucceeded) have inevitably brought upon us, had not he of his own infinite Mercy and gracious Goodneſs protected and delivered us from our Enemies, they had undoubtedly ſwallowed us up quick: But as the Attempts of our Enemies were very malicious, ſo the Preſervation and Deliverance of our good God was very great and ſignal.

And we have Reaſon to bleſs that great God for many Deliverances he has been pleaſed to give us; We are by no Means to forget his Mercy towards our late Sovereign of bleſſed Memory, and with him towards us, when he brought him out of Exile and Bondage, and us out of that State of Confuſion and Miſery, which our Country had for many Years groaned under: When all Religion as well as Sovereignty, and all Obedience, Duty and Deference to Superiors were quite loſt, God of his infinite Mercy, and of his own moſt gracious bountiful Diſpoſition brought our bleſſed Sovereign (now in Heaven) and his gracious Majeſty that now reigns, and all the Royal Family after a long and tedious Rebellion, into a quiet and peaceable Poſſeſſion of their undoubted Rights and Inheritances, and with him reſtored to us our Religion, the beſt of Religions, the true Proteſtant reformed Religion, the Religion eſtabliſhed by Law, which now is, and I hope will ever remain eſtabliſhed among us, as now profeſſed and practiſed in the Church of *England*; and when we reflect on that Deliverance, we are to this Circumſtance to heighten both our Admiration and our Gratitude, that it was brought about without the leaſt drop of Blood ſhed, by a miraculous Providence, and by the Strength of an Almighty Arm.

Beſides, Gentlemen, we cannot be ſufficiently thankful to our God, for the Mercies we enjoy'd under that bleſſed King, for we are to conſider we liv'd in all the Affluence of Peace and Plenty, we ſafely and uninterruptedly enjoyed our Religion, the greateſt Bleſſing on this ſide Immortality, our Lives, Liberties and Properties inviolably were ſecured; every Man ſafe under the Shadow of his own Vine, and eat the Fruit of his own Labour; and while our Neighbours ſuffered the Calamities of War, we were ſurrounded with all the Bleſſings of Peace, and ſlept ſecurely under the Government of a gracious and merciful King: Every one of us had even what our own Hearts could deſire, and if we wanted any thing, it could be only thankful and dutiful Hearts to our God and our Prince, during whoſe Life we continued in a happy State and Condition.

But, it having pleaſed God, the King of Kings, the great Ruler both of Heaven and Earth, to take that bleſſed Prince to himſelf, What Thanks ought we to pay him for his gracious Goodneſs, in leaving ſo great and ſo glorious a Succeſſor as his Royal Brother, our preſent Sovereign, whom I pray Almighty God may long live and happily reign among us: This gracious Prince, as ſoon as ever he came to the Poſſeſſion of his undoubted Right and Inheritance, upon his Brother's Death, in the Imperial Crown of this Realm, to Entitle himſelf to the good Opinion of his People, and to engage them to the Expreſſion of that Duty which the Chriſtian Religion, and I am ſure particularly the Religion of the true Church of *England* does oblige all it's Followers to: What does he? Even before he was ask'd, in the very firſt Minutes of his Reign, he begins with Bounty to his Subjects and declares his Reſolution to preſerve them ſafe in their deareſt and moſt precious Enjoyments, in their Religion, and not only in that, but in the Laws, Liberties, Rights and Properties, with the moſt inviolable Security to their Lives and all that is dear unto them: And this gracious Declaration came from his Royal Mouth without any Sollicitation or any Inducement, ſave only the generous and gracious Inclination of his own Royal Heart, and to give it the greater Edge, to the Honour of the Church of *England*'s Religion be it ſpoken, he was pleas'd to tell what Opinion he had of our Religion and its true Profeſſors, that they were the true Friends and faithful Supporters of the Government, an Opinion which I hope every honeſt Church of *England-man* will endeavour to cheriſh by a ſuitable Practice of what is certainly the Doctrine of that Religion, Loyalty and Obedience.

But alas! without Horror and Confuſion, we cannot but remember that inſtead of making good Returns of Reſpect and Duty to ſo gracious a Sovereign for his great Bounty, Faction and Sedition, Hypocriſie and Malice had beſotted and bewitched a great Part of his Subjects, and corrupted, blinded, and bigotted them to ſuch an Height of Impiety, that a Rebellion muſt begin his Reign, and all the poiſonous Arts of Diſobedience are made uſe of to inſtigate the King's Subjects, with all the Rancour and Vengeance in the World to riſe againſt him.

Bleſſed God! What is the way that this Devil of Sedition comes to bewitch People to ſuch a height, when Almighty God had ſo lately delivered us from the Miſery and Confuſion of a Civil War? It is that way ſurely, we find it but too plain, which he had always found very ſucceſsful, the Pretence of Sainthip, Conſcience, and that glorious Name, Religion; What Religion can it be? The Chriſtian Religion had this Form of it's great Rule; *Render to Cæſar the things that are Cæſar's, and to God the things that are God's.* But theſe Men act as though that were not Scripture, when yet pronounced by our bleſſed Lord himſelf, and both joined in one Sentence as indiſpenſible Duties; and they will hardly be brought to believe that Rebellion is the Sum of Witchcraft, though the Scriptures have directly given it that Character. Good God!

God! that we ſhould live to ſuch an Age; when Men can call God to aſſiſt and protect them in a Rebellion, for not to reflect upon what was done in former times, it is late enough for us to remember, but not without Horror, that Men have been ty'd by all the Bonds and Contracts Hell could invent in a Combination and Confederacy to murder both the late King and his preſent Majeſty, and all this while this muſt be ſanctified with the Name of Religion: So that a Man that is a Murderer by the Law of God, and an Offender againſt the firſt Precept that God Almighty enjoined, Not to ſhed Innocent Blood, ſhall yet be a Saint for an Aſſaſſination upon the Account of Religion, and this ſhall be accounted a pious Cauſe to obtain Heaven.

Who did theſe Miſcreants, that were juſtly by Law condemned for that barbarous Conſpiracy, when they came to die, invocate? The great God to teſtifie for them, that they died for the ſake of Religion, when they come to ſuffer for Treaſon: They can bleſs God Almighty for the Honour he does them in dying in his Cauſe, and call themſelves Martyrs for it.

Nay, is it not yet more ſtrange and horrid, that ſome Men who call themſelves Miniſters of the Goſpel ſhall come to be Belwethers of Rebellion, and cry out, they are fighting the Lord's Battle, when they are attempting to kill the Lord's Anointed?

Jeſus God! that ever we ſhould have ſuch a Generation of Vipers among us, that can plunge themſelves into the moſt horrid Impieties, and yet think to eſcape Confuſion here, and purchaſe a Crown of Glory hereafter.

When we conſider, Gentlemen, the Ringleader of this late Rebellion, the Center of all our Trouble, the Arch-Rebel and Traitor, *Monmouth* I mean, ſhould arrive to ſuch a Height of Impudence and Villany as to bleſs God that he could with Satisfaction reflect upon a two Year's Life very regularly ſpent; But how? In manifeſt Adultery and Uncleanneſs, nor can it be ſpoke or thought of without inexpreſſible Horror.

Alack! Gentlemen, when we find Religion made uſe of as a Subterfuge and Cloak for ſuch impious Practices, it gives too much Occaſion for our Enemies to think us Atheiſts; the very *Turks* will hate us, and *Pagans* deteſt us, as the moſt irreligious prophane People in the World. When we who profeſs Love and Duty to Jeſus Chriſt as our Holy and Bleſſed Redeemer, do theſe things and even boaſt of them, whom they that deny him bluſh at the very thoughts of, and never ſo much as name, much leſs act without Horror and Confuſion.

Gentlemen, I do not ſpeak this for the ſake of ſpeaking, but I ſhould fain deliver my own Soul and yours from having any hand in ſuch horrible Impieties, and that, by teſtifying our Abhorrence of them, by publickly declaring our ſelves to be Enemies to thoſe Hypocrites the Nonconformiſt Parſons; I mean, that pretend indeed pure Religion to be their great Aim and End, and through a Scrupuloſity of Conſcience, cannot conform to that Decency and Duty which is required of them in the Church; but yet, without remorſe, can kill, or be the occaſion of the Death of Ten Thouſand People, as in the Conſequence of this late Rebellion perhaps it may prove. For do but conſider how many Families by this means are utterly ruined, how many innocent Babes ſtarved, or expoſed to the utmoſt Penury and Want; how many Widows left in a diſtreſſed deſolate Condition, deſtitute of all manner of Proviſion and Maintenance; and all this by the inſtigation of theſe Villains that have preached and pray'd them into it, gilding the Bait that has drawn them into it, by the ſpecious pretence of Religion and Conſcience?

Conſider, Gentlemen, this is that which has brought this poor unfortunate Gentlewoman, the Priſoner at the Bar, into this deplorable Condition: What could prevail upon her to run ſuch a Hazard as this, but only her Affection and deluded Zeal for that Wretch, that had nothing but the name of Religion, for his Soul is blacker in the Eyes of God, and the Thoughts of all honeſt Men, than ever his Coat was? You ſee by the Proofs what an impudent unſanctified Villain he was; for when theſe Gentlemen that have given Evidence, were in the Cuſtody, and under the Power of the Rebels, he muſt tempt and provoke them to leave off and forſake their Duty to their natural Lord and lawful Sovereign the King, whom God had ſet over them, and ſubmit to an Uſurper, a King of their own making; and ſuch a King too, that I dare boldly affirm, the meaneſt Subject within the Kingdom that is legitimate, has a better Title to the Crown than he had; and this all under the pretence of Religion, and the Proteſtant Religion too, and that ſame Prince of their's muſt have the Title of a Proteſtant Prince; and an excellent Proteſtant he lived and died, living in the open Violation of the Law of God, and in manifeſt Rebellion againſt his lawful Sovereign; and he died without any Remorſe for either, boaſting of his own Wickedneſs beyond the bounds of common Modeſty and Humanity.

Gentlemen, Let us all join in hearty Prayers to our God, the God of infinite Mercy; that as he has yet once more delivered our Sovereign, and us with him, out of the Jaws of theſe Lions and ravenous Wolves; ſo he would ſtill pleaſe to preſerve him and us from the hands of all our Enemies; and I pray God it may have that good effect upon all of us, as to make us more careful and conſcientious in our Duty to him, and his Vicegerent the King: To him alone muſt all the Glory be aſcribed; it was not our Hand, or Arms of the King that could have ſaved or protected us, had not the ſpecial Interpoſition of the Divine Power and Goodneſs wrought this Deliverance for us.

But now, Gentlemen, to come to the particular Caſe here before you; and the Fact, upon the Evidence, ſtands thus: It is very notorious this Fellow *Hicks* was actually in this Rebellion; you have it Sworn by three ſeveral Perſons that ſaw him, and they particularized to you ſuch Tokens of their Knowledge and Remembrance, that ſure, if any thing can, muſt make him bluſh at the repetition of them; for they tell you, when they were in Priſon he would have corrupted them from their Duty; and yeſterday they ſaw him in Priſon, and upon diſcourſe of ſome Circumſtances, he could not deny but he was there.

This

This Perſon, Mrs. *Liſle*, the Priſoner at the Bar, ſhe is accuſed for receiving and harbouring this Perſon: And, Gentlemen, I muſt tell you for Law, of which we are the Judges, and not you; That if any Perſon be in actual Rebellion againſt the King, and another Perſon (who really and actually was not in Rebellion) does receive, harbour, comfort and conceal him that was ſuch, a Receiver is as much a Traitor, as he who indeed bore Arms: We are bound, by our Oaths and Conſciences, to deliver and declare to you what is Law; and you are bound, by your Oaths and Conſciences, to deliver and declare to us, by your Verdict, the Truth of the Fact.

Gentlemen, That he was there in Rebellion is undeniably and unqueſtionably proved: That there are ſufficient Teſtimonies to ſatisfie you, that this Woman did receive and harbour him, is that which is left to your Conſideration; and for that, the Proofs lie thus. And truly I am ſorry to have occaſion for repeating the Circumſtances of the Proof; I mean, the great Art that has been uſed to conceal it; how difficult a thing it was to come at it; what time has been ſpent in endeavouring to find out Truth in a Fellow, that in defiance of all Admonition, Threats and Perſuaſion, would prevaricate and ſhuffle to conceal that Truth; nay lie and forſwear himſelf to contradict it: But out of true Chriſtian Charity, as I told him, ſo I tell you; I do heartily pray (and all good Chriſtians I hope will join with me in it) to the God of infinite Mercy that he would have mercy upon his Soul, upon which he hath contracted ſo great a Guilt by the impudence of his Behaviour, and pertinacious Obſtinacy in thoſe Falſhoods which he hath made uſe of in this Caſe.

Gentlemen, I would willingly forget all his Prevarications, but I muſt take notice of them in ſhort, to come to the Truth. Firſt, he ſays, He came upon an Errand from a Man he knows not whom, to my Lady *Liſle*'s Houſe; and thither he is brought by one *Barter*; and when he comes there, he tells her, he comes in the Name of one *Hicks*, who deſired to be entertained there: Then ſhe asks the Queſtion, whether *Hicks* had been in the Army; and he told her he did not know; and he ſwears now he did not: But at laſt it came out, that it was to entertain *Hicks* and another Perſon; but it ſhould ſeem that other Perſon was not named; and *Barter* tells you, that *Hicks* and another Perſon (who afterwards proved to be *Nelthorp*) are promiſed to be entertained, and ordered to come in the Evening. But not to go backward and forward, as he has done in his Evidence, denying what he afterwards acknowledged, that he ſaw any Body beſides a little Girl; That he pulled down the Hay out of the Rack for his Horſe; That he eat any thing but Cake and Cheeſe that he brought with him from home; That he was ever made to drink, or to eat or drink in the Houſe, or ever medled or made with any body in the Houſe. At laſt we are told that *Carpenter* met with him, and came out with a Lanthorn and Candle, took care of his Horſe, carried him into the Room where *Hicks* and *Nelthorp* were, and the Priſoner at the Bar, Mrs. *Liſle*; there they all ſupp'd together; there they fell into Diſcourſe; there *Nelthorp*'s Name was named, and they talked of being in the Army, and of the Fight; and ſo it is all come out, and makes a full and poſitive Evidence.

But then, Suppoſe there was no more than the other Evidence, and that the Fellow remain in an hard-hearted Obſtinacy, then you are to conſider the Circumſtances even from his firſt Evidence, that this was after the Rebellion was all over; for it ſeems during the Rebellion ſhe was in *London*, and it was notoriouſly known the King's Forces were in purſuit of the Rebels, and this without any poſitive Proof would be in it ſelf a ſufficient Teſtimony to convince any conſiderate Perſon, that ſhe was to Conceal thoſe ſhe ought not to Conceal; becauſe ſhe directed the particular time wherein they ſhould come, and that was at Night; and no Prudent Perſon would receive Strangers in the Night, and give ſuch directions in ſuch a Seaſon, without ſome Extraordinary ground for it. When they came there ſhe provided a Supper for them, and you ſee what Care is taken, that the Woman only is permitted to bring that Supper to the Door, and the Husband muſt ſet it on the Table; no body is permitted to attend there but he. Works of Darkneſs always deſire to be in the Dark: Works of Rebellion and ſuch like are never done in the Light.

But then comes that Honeſt Fellow *Barter* (I call him ſo becauſe he appears ſo to be, and he ought to be remembred with a great Remark for his Honeſty) he tells you, he conducted him to the Houſe, and what Diſcourſe paſs'd there in his hearing: The Priſoner asked him, what Countreyman he was, and whether he was a Brick-maker, and promiſed him ſo many Acres of Land in *Carolina*: The Fellow, upon Obſervation and Conſideration, found himſelf under a great Load, could not ſleep nor eat quietly, as Men that have honeſt Minds are uneaſie under ſuch things; Falſhood, and Treaſon, and Hypocriſie are a heavy Load; and, bleſſed be God, things were by this means diſcovered; for he goes and tells Col. *Penruddock*; and witnal, *Dunne* ſwears to *Barter*, it was the braveſt Job that ever he had in his Life; whereas in the beginning of his Story, he would have told you a ſtrange Story of a black Beard, and I do not know what, and that he got not one Groat by it; that he gave the Man half a Crown out of his own Pocket, and was ſo induſtrious, as when he knew the way no further, then he would hire one himſelf to ſhew him the way, and all for nothing, but only for the kindneſs he had for a black Beard.

Beſides, Gentlemen, I am ſorry to remember ſomething that dropped even from the Gentlewoman her ſelf, ſhe pretends to Religion and Loyalty very much, how greatly ſhe wept at the Death of King *Charles* the Martyr, and owns her great Obligations to the late King and his Royal Brother; that ſhe had not had a Being, nor any thing to maintain it for twenty Years laſt paſt but from their Bounty, and yet no ſooner is one in the Grave, but ſhe forgets all Gratitude, and entertains thoſe that were Rebels againſt his Royal Succeſſor: I will not ſay what Hand her Husband had in the Death of

that

that bleſſed Martyr, ſhe has enough to anſwer for of her own Guilt; and I muſt confeſs it ought not one way or other to make any Ingredient into this Caſe what ſhe was in former Times: And I told a Relation of hers, Mr. *Tipping* by Name, that came to me laſt Night to deſire that ſhe might not lie under ſome Imputations that were gone Abroad of her, that ſhe rejoyced at the Death of King *Charles* I. nor that any falſe Report of that Nature might influence the Court or Jury againſt her, that it ſhould not: Be the thing true or falſe, it is to be of no Weight one way or other in the Tryal of this Caſe, nor is ſhe to be accountable for it.

But I muſt remember you of one Particular, that is plain upon this Evidence, and is of very great Moment in this Caſe, that after all theſe private Meſſages and Directions given to come by Night, and the kind Reception they met with when they came, and after all this Care to lodge them and feed them, when Colonel *Penruddock*, after the Diſcovery made by *Barter*, came to ſearch her Houſe, then ſhe had no body in it truly, which is an Aggravation of the Offence teſtified by Colonel *Penruddock* himſelf, whoſe Father likewiſe was a Martyr and died for his Fidelity to the Crown, and who was the Judge of that Father we all very well know. God Almighty is a juſt God, and it may be worth conſidering (eſpecially by her) how God has been pleaſed to make uſe of him as the Inſtrument in this Buſineſs, and ſhe would likewiſe do well to conſider the Finger of God in working upon the Heart of that Man *Barter*, who was imploy'd in all this Affair, and that all the Truth has been told by *Nelthorp*, that blackeſt of Villains *Nelthorp*, that would have murdered the late King and his Royal Brother; that he that was one of thoſe barbarous, malicious Aſſaſſinates in that black Conſpiracy, and Outlaw'd, ſhould be harbour'd by one that pretends a Love for the Royal Family, and entertained and diſcourſed with at Night about being in the Army; yet that he and that other Villain *Hicks*, who pretends to Religion and be a Preacher of the Goſpel, but is found in Rebellion and in the Company of Traytors ſhould be deny'd the next Morning.

I hope they themſelves are all by this time ſatisfied Truth will come out, and I hope you will not be deceived by any ſpecious Pretences. Our fore-Fathers have been deluded, but the Deception, I hope, is now at an end; and I muſt needs ſay, if all theſe Witneſſes that have freely diſcovered their Knowledge, joined to that Truth which is at length drawn from that *Dunne*, be worthy of any Credit, it is as plain a Proof as can be given, and as evident as the Sun at Noon-day.

Gentlemen, Upon your Conſciences be it: The Preſervation of the Government, the Life of the King, the Safety and Honour of our Religion, and the Diſcharge of our Conſciences as Loyal Men, good Chriſtians and faithful Subjects, are at ſtake, neither her Age nor her Sex are to move you, who have nothing elſe to conſider but the Evidence of the Fact you are to try: I charge you therefore, as you will anſwer it at the Bar of the laſt Judgment, when you and we muſt all appear, deliver your Verdict according to Conſcience and Truth: With that great God the Impartial Judge, there is no ſuch thing as reſpect of Perſons, and in our Diſcharge of our Duty in Courts of Juſtice, he has injoined us his Creatures, that we muſt have no ſuch thing as a Friend in the Adminiſtration of Juſtice, all our Friendſhip muſt be to Truth, and our Care to preſerve that inviolate.

Liſle. My Lord, if your Lordſhip pleaſe——

L. C. J. Miſtreſs, you have had your Turn, you cannot now be heard any more after the Jury is charged.

Liſle. My Lord, I did not know *Nelthorp* I declare it before he was taken.

L. C. J. You are not indicted for *Nelthorp*, but we are not to enter into Dialogues now, the Jury muſt conſider of it.

Jury man. Pray, my Lord, ſome of us deſire to know of your Lordſhip, in point of Law, whether it be the ſame thing, and equally Treaſon, in receiving him before he was convicted of Treaſon, as if it had been after?

L. C. J. It is all the ſame, that certainly can be no Doubt; for, if in caſe this *Hicks* had been wounded in the Rebels Army, and had come to her Houſe and there been entertained, but had dy'd there of his Wounds, and ſo could never have been convicted, ſhe had been nevertheleſs a Traytor.

Then the Jury withdrew, and ſtaying out a while, the Lord Jefferies *expreſſed a great deal of Impatience, and ſaid, he wonder'd that in ſo plain a Caſe they would go from the Bar, and would have ſent for them with an Intimation, that if they did not come quickly, he would adjourn and let them lie by it all Night; but after about half an Hour's Stay the Jury returned, and the Foreman addreſſed himſelf to the Court thus:*

Foreman. My Lord, we have one thing to beg of your Lordſhip ſome Directions in, before we can give our Verdict in this Caſe: We have ſome Doubt upon us whether there be ſufficient Proof that ſhe knew *Hicks* to have been in the Army.

L. C. J. There is as full Proof as Proof can be, but you are Judges of the Proof, for my part I thought there was no Difficulty in it.

Foreman. My Lord, we are in ſome Doubt of it.

L. C. J. I cannot help your Doubts: Was there not proved a Diſcourſe of the Battle and of the Army at Supper-time?

Foreman. But, my Lord, we are not ſatisfied that ſhe had Notice that *Hicks* was in the Army.

L. C. J. I cannot tell what would ſatisfie you, Did ſhe not enquire of *Dunne* whether *Hicks* had been in the Army? And when he told her he did not know, ſhe did not ſay ſhe would refuſe him if he had been there, but order'd him to come by Night, by which it is evident ſhe ſuſpected it, and when he and *Nelthorp* came, diſcourſed with them about the Battle and the Army: Come, come, Gentlemen, it is a plain Proof.

Foreman.

Foreman. My Lord, we do not remember that it was proved that ſhe did ask any ſuch Queſtion when they were there.

L. C. J. Sure you do not remember any thing that has paſſed? Did not *Dunne* tell you there was ſuch Diſcourſe, and ſhe was by, and *Nelthorp*'s Name was named? But if there were no ſuch Proof, the Circumſtances and Management of the thing is as full a Proof as can be, I wonder what it is you doubt of.

Liſle. My Lord, I hope——

L. C. J. You muſt not ſpeak now.

Then the Jury laid their Heads together for near a quarter of an Hour, and at length agreed, and being call'd over, deliver'd in this Verdict by the Foreman.

Cl. of Arraignments. Alice Liſle, Hold up thy Hand. Gentlemen of the Jury look upon the Priſoner, How ſay ye, Is ſhe guilty of the Treaſon whereof ſhe ſtands indicted, or not Guilty?

Foreman. Guilty.

Cl. of Ar. What Goods or Chattels, Lands, or Tenements had ſhe?

Foreman. None that we know of.

Cl. of Ar. Look to her Gaoler, ſhe is found guilty of High Treaſon, and prepare your ſelf to die.

Then the Verdict was Recorded.

L. C. J. Gentlemen, I did not think I ſhould have had any Occaſion to ſpeak after your Verdict, but finding ſome Heſitancy and Doubt among you, I cannot but ſay, I wonder it ſhould come about, for I think in my Conſcience the Evidence was as full and plain as could be, and if I had been among you, and ſhe had been my own Mother, I ſhould have found her Guilty.

Then the Court adjourn'd till the next Morning.

Die Veneris 28 Auguſti, 1685.

THis Day *Alice Liſle* was brought to the Bar, and being asked what ſhe had to ſay for her ſelf why Judgment of Death ſhould not paſs upon her, being convicted of High Treaſon, but offering nothing, ſhe was, with the reſt of the Priſoners that were to receive the Sentence of Death, Condemn'd by the Lord *Jefferies*, who paſſed Sentence thus:

L. C. J. Alice Liſle, and you the ſeveral Priſoners now at the Bar, you have been ſeverally Indicted, Arraigned, and now ſtand ſeverally Convicted of Crimes that by the Laws of the Land are to be puniſhed with Death, you ſtand Convicted by your Equals, by a Jury of your Country, againſt whom you might have had, and were allow'd to make (and one of you did make) what Challenges you could, but upon full Evidence, by that Jury of your own Country-men you have been found guilty of thoſe Crimes for which you are to die; and there remains now no more with the Court but to perform their Duty, which is to pronounce that Sentence, that diſmal Sentence of Death, which the Law has provided for ſuch Offenders.

And ſure I am it cannot but be thought uneaſie, and far from pleaſant, not only to me, but to every Body elſe that ſees ſuch a lamentable Object, ſuch a Number of Perſons that might have acquired to themſelves an honeſt Livelihood by Diligence in their lawful Callings, being dutiful to God and obedient to their Sovereign and the Laws of the Land, who yet in Defiance of all theſe have brought themſelves to a ſhameful untimely End by their own wicked Courſes.

Particularly, I cannot but lament the deplorable Condition of you, Mrs. *Liſle*, a Gentlewoman of Quality and of Fortune, ſo far ſtricken in Years, therefore ought to have had more Diſcretion: One, who all your Life-time have been a great Pretender to, and Profeſſor of Religion, and of that Religion which bears a very good Name, the Proteſtant Religion, but that Name has been perverted to very ill Purpoſes by ſome People who have had nothing but the Name to protect themſelves under.

There is no Religion whatſoever (except that hypocritical Profeſſion of theirs which deſerves not the Name of Religion, I mean the canting, whining, Presbyterian, Phanatical Profeſſion) that gives the leaſt Countenance to Rebellion or Faction; and I cannot but lament to find you involved in that Herd.

And I cannot but deplore it withal, as a moſt ſad and diſmal thing, that in this little Caſe ſo many Perjuries ſhould be added to the Crime of Treaſon, ſuch, as for my part I cannot but tremble to remember; Perjuries in defiance of all the Inſtruction and Admonition that true Chriſtian Charity could expreſs, and in defiance of the Omniſcience and Juſtice of the All-ſeeing God of Truth: You ought to reflect upon whoſe Account thoſe Perjuries were committed, and to lay them ſeriouſly to Heart, for e'er long, in a few Hours (deceive not your ſelf) you are to give an Account at a greater Bar for all your Thoughts, Words and Actions.

You would likewiſe do well to bethink your ſelf with all Seriouſneſs and Remorſe, of your own falſe Aſſeverations and Proteſtations, that you upon your Salvation ſhould pretend Ignorance in the Buſineſs, when ſince that time, even ſince the laſt Night, there has been but too much diſcover'd how far you were concern'd; no, 'tis not unknown who were ſent for upon the *Monday* Night, in order to have that rebellious, ſeditious Fellow to preach to them, what Directions were given to come through the Orchard the back and private way, what Orders were given for Proviſion, and how the Horſes were appointed to be diſpoſed of: I only ſpeak this, that you ſhould bethink your ſelf in this ſhort time that you have left here upon Earth, to get theſe Sins of yours duly repented of, and truly pardoned, and not only ſo, but conſider you have it now in your Power to make ſome Recompence to the publick Juſtice of the Nation, by diſcovering the Truth in this Matter, and all Religion enjoins you to do what you can: For without the infinite

Mercy of the great God you are in a deplorable Condition, and without true Contrition and Repentance, of which all the Recompence you can make, both for publick and private Injuries, is a part, you can never hope for the Mercy of that God to be extended to you.

Sirs; It is not in my Province to adviſe you in your Preparation for that Eternity you are all ſuddenly to enter into; but out of pure Charity, and hearty Compaſſion to you, and the miſerable Condition you have brought your ſelves into, and out of a tender regard to your precious immortal Souls, I cannot but aſſure you of my own, and recommend you to the earneſt and fervent Prayers of all good Chriſtians, to the God of infinite Mercy, that he would be merciful unto you all.

And the great God of his gracious Goodneſs grant, that all we that are here may learn ſuch Leſſons as are proper from ſuch Examples: From that Woman the ſad and diſmal Effects of Diſloyalty and Treaſon; and from all the reſt the deplorable Miſchiefs that attend Licentiouſneſs and Debauchery: For by the Courſe of Nature, moſt of theſe might have lived a much longer time, and that with Comfort to themſelves and their Relations; but now, to the anguiſh of their own Hearts, and the unſpeakable Grief of all their Friends, they have ſhortened their own Days, and brought a diſmal Sentence upon themſelves.

And I recommend them not only to my ſelf and others, but chiefly and eſpecially to the Pious, Orthodox and Learned Miniſtry, to give the beſt Aſſiſtance they can, during the ſhort remainder of their time; for their Abode here upon Earth is but ſhort, and God grant they may meet with a bleſſed Immortality.

There remains no more for me to do, I ſay, but to pronounce the Sentence of the Law, which is this; and the Court does award,

That you, Mrs. Liſle, *be conveyed from hence to the Place from whence you came, and from thence you are to be drawn on a Hurdle to the Place of Execution, where your Body is to be burnt alive till you be dead. And the Lord have Mercy upon your Soul.*

The reſt of the Priſoners had the uſual Judgment, as in Caſes of Felony.

L. C. J. Look you, Mrs. *Liſle*, when I left his Majeſty, he was pleaſed to remit the Time of all Executions to me; that wherever I found any Obſtinacy or Impenitence, I might order the Executions with what ſpeed I ſhould think beſt: Therefore, Mr. Sheriff, take notice, you are to prepare for the Execution of this Gentlewoman this Afternoon: But withal, I give you, the Priſoner, this Intimation; We that are the Judges, ſhall ſtay in Town an Hour or two; you ſhall have Pen, Ink and Paper brought you, and if in the mean time you employ that Pen, Ink and Paper, and this Hour or two well (you underſtand what I mean) it may be you may hear further from us, in a deferring the Execution.

Then the Priſoner was taken away.

But afterwards, upon the Interceſſion of ſome Divines of the Church of Wincheſter, *ſhe was Reprieved till* Wedneſday *the Second of* September.

On Sunday *the Thirtieth of* Auguſt, *the following Letter was ſent to the Right Honourable the Earl of* Clarendon, *Lord Privy-Seal, at* Windſor; [*Which the Earl did then read to the King; who anſwered, That he would do nothing in it, having left all to the Lord Chief Juſtice.*]

My Lord,

'UNderſtanding that Mrs. *Liſle* is Condemned, and that many falſe things are reported of her, that may hinder the King from ſhewing her Mercy; particularly, that ſhe was an Enemy to the King's Friends in the time of the late Wars: As to that, we can aſſure your Lordſhip, that ſhe was a Favourer of them in their greateſt extremities; and particularly of us, and of ſome others that are ſince dead: And for theſe late Years we have often been in her Company, and never heard her ſay any thing but what became a Loyal Subject. This we deſire your Lordſhip would be pleaſed to repreſent to the King, and to intercede for her Reprieve; which will be a great Obligation to your Lordſhip's humble Servants,

M. St. Johns.
E. Abergeveney.

On *Monday* the Thirty firſt of *Auguſt*, the following Petition was preſented to the King.

To the King's moſt Excellent Majeſty:

The Humble Petition of Alicia Liſle:

Humbly Sheweth,

'THAT Your Petitioner lieth under a Sentence of Death for Harbouring one *John Hicks*; and is ſentenced to be Burnt on *Wedneſday* next.

'That ſhe is the Daughter of Sir *White Beconſaw*, deſcended of an Ancient and Honourable

'rable Family, and related to ſeveral of the 'beſt Families of the Nobility of this King-'dom.

'Wherefore your Petitioner humbly begs 'your Majeſty, that Execution may be altered 'from Burning to Beheading, and may be Reſ-'pited for four Days:

And your Petitioner ſhall pray, &c.

To which his Majeſty anſwered: *That he would not Reprieve her One Day; but for altering the Sentence, he would do it, if there were any Precedents for it.*

Thereupon the following Precedents, for the altering of the Sentence, were offered to the King.

That Execution may vary from the Judgment, ſee the Regiſter, *Fo.* 165. in Felony, *Parl.* 8. E. 3. where the Judgment always is *Suſpendatur per collum*, yet the Party may be beheaded, which is no Part of the Sentence; ſo was the Duke of *Somerſet* in the Time of *Edw.* VI. for Felony; ſo was the Lord *Audley*, 7 *Car.* I. for Felony (Rape.)

Queen *Katherine Howard* for Treaſon, *Hen.* VIII. and *Jane Grey*, *primo Mariæ*: The Counteſs of *Salisbury* being attainted of Treaſon, *Anno* 1541. was Beheaded 32 *Hen.* VIII.

Whereupon his Majeſty was pleaſed to ſign the following Warrant.

James R.

WHereas we are informed that *Alicia Liſle* has received Sentence of Death for High Treaſon at the Seſſions of *Oyer* and *Terminer*, and *Gaol-Delivery*, held at our City of *Weſtminſter*, for Harbouring of *John Hicks* a Rebel, and that the Sentence is to be executed upon her the Second of *September* next, by burning her alive; And whereas the ſaid *Alicia Liſle* has humbly petitioned Us to alter the Manner of the ſaid Execution, by cauſing her head to be ſevered from her Body: We being graciouſly pleaſed to condeſcend to her Requeſt, have thought fit hereby to ſignifie Our Will and Pleaſure accordingly: And our further Will and Pleaſure is, that you deliver the Head and Body to her Relations to be privately and decently interred: And for ſo doing this ſhall be your Warrant.

Given at Our Court at *Windſor*, the Thirty firſt Day of *Auguſt*, 1685. in the Firſt Year of our Reign.

SUNDERLAND.

To our Truſty and Well-beloved the High Sheriff of our County of Hampts, *and to all others whom it may concern.*

Which Warrant being delivered to the Sheriff, ſhe was, on *Wedneſday* the Second of *September*, in the Afternoon, brought to Execution, which was perform'd upon a Scaffold erected in the Market-place of the City of *Wincheſter*, where ſhe behaved her ſelf with a great deal of Chriſtian Reſolution: She then delivered a Paper to the Sheriff, a Copy of which follows; and after ſome little time was executed, having her Head ſevered from her Body.

A Copy of the Paper delivered to the Sheriff.

Gentlemen, Friends and Neighbours,

'IT may be expected that I ſhould ſay ſome-'thing at my Death, my Birth and Educa-'tion being near this Place: My Parents in-'ſtructed me in the Fear of God, and I now 'die of the reformed Religion, always being in-'ſtructed in that Belief, That if Popery ſhould 'return into this Nation, it would be a great 'Judgment, I die in the Expectation of Pardon 'of my Sins, and Acceptation with the Father, 'by the imputed Righteouſneſs of Jeſus Chriſt, 'he being the End of the Law for Righteouſ-'neſs to every one that believes: I thank God, 'through Jeſus Chriſt, I depart under the Blood 'of Sprinkling, which ſpeaketh better things 'than the Blood of *Abel*, God having made this 'Chaſtiſement an Ordinance to my Soul.

'I did as little expect to come to this Place 'on this Occaſion as any Perſon in this Na-'tion, therefore let all learn not to be High-'minded, but fear the Lord; the Lord is a 'Sovereign, and will take what way he ſees 'beſt to glorifie himſelf by his poor Creatures, 'therefore do humbly deſire to ſubmit to his 'Will, praying him, that in Patience I may 'poſſeſs my Soul.

'My Crime was entertaining a Nonconfor-'miſt Miniſter, which is ſince ſworn to have 'been in the late Duke of *Monmouth*'s Army: 'I am told, if I had not denyed them, it would 'not have affected me; *I have no Excuſe but Sur-'prize and Fear*, which I believe my Jury muſt 'make uſe of to excuſe their Verdict to the 'World.

'I have been told, the *Court did uſe to be Coun-'ſel for the Priſoner, inſtead of which, there was 'Evidence from thence, which, though it were but 'Hearſay, might poſſibly affect my Jury: My De-'fence was ſuch as might be expected from a weak 'Woman, but ſuch as it was, I did not hear it re-'peated again to the Jury*, but I forgive all Per-'ſons that have done me Wrong, and I deſire 'that God will do ſo likewiſe.

'*I forgive Colonel* Penruddock, *though he told me 'he could have taken thoſe Men before they came to my 'Houſe.*

'As to what may be objected, that I gave 'it under my Hand that I had diſcourſed with '*Nelthorp*, that could be no Evidence to the 'Court, or Jury, it being after my Conviction 'and Sentence.

'I acknowledge his Majeſty's Favour in al-'tering my Sentence, and I pray God to pre-'ſerve him that he may long Reign in Peace, 'and the true Religion flouriſh under him.

'Two things I have omitted to ſay, which is, 'that *I forgive him that deſired to be taken from the 'Grand Jury to the Petty Jury, that he might be 'the more nearly concerned in my Death.*

'Alſo I return humble Thanks to Almighty 'God, and the Reverend Clergy that aſſiſted 'me in my Impriſonment.

Primo Gulielmi & Mariæ: Anno 1689.

An Act for annulling and making void the Attainder of *Alicia Liſle*, Widow.

WHereas Alicia Liſle, Widow, in the Month of Auguſt, in the firſt Year of the Reign of the late King James the Second, at a Seſſions of Oyer and Terminer, and Gaol-delivery, holden for the County of Southampton, at the City of Wincheſter in the ſaid County, by an irregular and undue Proſecution, was Indicted for entertaining, concealing and comforting John Hicks, Clerk, a falſe Traytor, knowing him to be ſuch: Though the ſaid *John Hicks* was not, at the time of the Tryal of the ſaid *Alicia Liſle*, Attainted or Convicted of any ſuch Crime: And, by a Verdict injuriouſly extorted and procured by the Menaces and Violences, and other illegal Practices of George Lord Jefferies, Baron of Wem, then Lord Chief Juſtice of the Kings Bench, and Chief Commiſſioner of Oyer and Terminer and Gaol-delivery within the ſaid County, was Convicted, Attainted and Executed for High-Treaſon. May it therefore pleaſe your moſt excellent Majeſties, at the humble Petition of Triphena Lloyd and Bridget Uſher, Daughters of the ſaid Alicia Liſle: That it be declared and enacted by the Authority of this preſent Parliament: And be it Enacted by the King and Queens moſt excellent Majeſties, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons in this preſent Parliament aſſembled, and by the Authority of the ſame, That the ſaid Conviction, Judgment and Attainder of the ſaid *Alicia Liſle* be, and are hereby Repealed, Reverſed, made and declared Null and Void to all Intents, Conſtructions and Purpoſes whatſoever, as if no ſuch Conviction, Judgment or Attainder had ever been had or made, and that no Corruption of Blood, or other Penalty or Forfeiture of Honours, Dignities, Lands, Goods or Chattles, be by the ſaid Conviction or Attainder incurred: any Law, Uſage or Cuſtom to the contrary notwithſtanding.

Ex' *Joh. Brown*, Cleric' Parliamentor'.

THE

The Tryals of John Fernley, William Ring, Elizabeth Gaunt, *and* Henry Corniſh, *Eſq*; *October* 19. 1685. Publiſh'd by Authority.

MOnday, *Octob.* 19*th.* 1685. at the *Seſſions-Houſe* in the *Old-Bayley*, *London*; The Court being met, and Proclamation made for Attendance, the Proceedings were as follow.

Clerk. Set *John Fernley* to the Bar. (Which was done.)

Cryer. O Yes All manner of Perſons are commanded to keep Silence, upon pain of Impriſonment.

Clerk. John Fernley, hold up thy hand. (Which he did.)

Thou ſtandeſt indicted by the Name of *John Fernley*.

Middleſex. 'THE Jurors for our Sovereign 'Lord the King upon their 'Oaths do preſent, That *John Fernley*, of the 'Pariſh of St. *Mary Matfellon*, otherwiſe *White-'Chappel*, in the County of *Middleſex*, Barber, 'as a falſe Rebel and Traitor againſt the moſt 'Illuſtrious and moſt excellent Prince King '*James* the Second, by the Grace of God of '*England*, *Scotland*, *France*, and *Ireland*, King, 'and his natural Lord, not having the fear of 'God in his Heart, nor his due Obedience any 'wiſe regarding, but being mov'd and ſeduced 'by the Inſtigation of the Devil, and his faith-'ful Duty and natural Obedience which a true 'and loyal Subject ought to have towards his 'ſaid Lord the King, and by Law ought to ob-'ſerve, utterly withdrawing; and intending 'with all his Endeavours the Peace and Tran-'quillity of this Kingdom of *England* to diſturb, 'and War and Rebellion againſt our ſaid Lord 'the King to incite and move, and the Govern-'ment of our ſaid Lord the King in this King-'dom of *England* to ſubvert, and our ſaid Lord 'the King from his Title, Honour, and Regal, 'and Imperial Crown of this his Kingdom of 'England to depoſe and deprive, and our ſaid 'Lord the King to Death and utter Deſtruction 'to bring; the 20*th* day of *Auguſt* in the Year 'of the Reign of our Sovereign Lord *James* 'the Second, by the Grace of God of *England*, 'Scotland, *France*, and *Ireland*, King Defender 'of the Faith, *&c.* the firſt, and divers other 'days as well before as after, at the Pariſh of 'St. *Mary Matfellon*, otherwiſe called *White-Chap-'pel*, in the County of *Middleſex*, falſly, mali-'ciouſly, deviliſhly, and traiterouſly, with di-'vers Rebels and Traitors to the Jurors aforeſaid 'unknown, did conſpire, imagine, and intend, 'our ſaid Sovereign Lord the King, now his ſu-'preme and natural Lord, not only of his royal 'State, Title, Power, and Government of this his 'Kingdom of *England* to deprive and depoſe, 'but alſo the ſame Lord the King to kill and 'murder, and the ancient Government of this 'Kingdom of *England* to change, alter, and 'totally ſubvert, and a miſerable Slaughter 'amongſt the Subjects of our Lord the King 'throughout all this his Kingdom of *England* to 'cauſe and procure, and an Inſurrection and 'Rebellion againſt our Lord the King to pro-'cure, promote, and aſſiſt, and the ſame his 'moſt wicked, moſt inhuman, and moſt deviliſh 'Treaſons and Conſpiracies, Purpoſes and trai-'terous Imaginations to fulfill and to effect, he 'the ſaid *John Fernley* as a falſe Traitor, then 'and there, *viz.* on the ſaid 20th day of *Auguſt*, 'in the Year of the Reign of our ſaid Lord the 'King, the firſt as aforeſaid, at the Pariſh afore-'ſaid, in the County aforeſaid, well knowing 'one *James Burton* to be a falſe Traitor, and as a 'falſe Traitor traiterouſly to have conſpired and 'imagined the Death and utter Deſtruction of 'our ſaid Lord the King, and War and Rebel-'lion againſt our ſaid Lord the King within 'this Kingdom of *England* traiterouſly (with 'divers other Rebels to the Jury unknown) to 'have levied and ſtir'd up; he the ſaid *John 'Fernley* afterwards, *viz*) on the ſaid 20th day 'of *Auguſt*, in the Year of the Reign of our 'ſaid Lord the King now the firſt aforeſaid, at 'the Pariſh aforeſaid, in the County aforeſaid, 'the ſaid *James Burton* in the Manſion houſe of 'him the ſaid *John Fernley*, ſituate in the Pariſh 'and County aforeſaid, knowingly, ſecretly, 'wickedly, deviliſhly, and traiterouſly, did 'harbour, conceal, comfort, ſuſtain, and keep, 'and then and there, for the comforting, ſu-'ſtentation, and maintenance of the ſaid *James 'Burton*, the ſaid *John Fernley* Meat and Drink 'to the ſaid *James Burton* maliciouſly and trai-'terouſly did give and deliver, and did cauſe to 'be given and deliver'd, againſt the Duty of his 'Allegiance, againſt the Peace of our ſaid Lord 'the King, his Crown and Dignity, and alſo 'againſt the Form of the Statute in the like 'Caſe made and provided, *&c.*'.

Clerk. How ſayeſt thou, *John Fernley*, art thou guilty of the High Treaſon whereof thou ſtandeſt indicted, or not guilty?

Fernley. Not guilty.

Clerk. Culprit, how wilt thou be tryed?

Fernley. By God and my Country.

Clerk. God ſend thee a good Deliverance.

Set *William Ring* to the Bar. (Which was done.)

William Ring, Hold up thy hand. (Which he did.)

Thou ſtandeſt indicted by the Name of *William Ring*, of the Pariſh of St. *Clements Danes* in the County of *Middleſex*, Taylor.

Middleſex. 'THE Jurors for our Sovereign 'Lord the King do preſent 'upon their Oaths, That *William Ring*, late of 'the Pariſh of St. *Clements Danes* in the County 'of *Middleſex*, Taylor, as a falſe Traitor againſt 'the moſt Illuſtrious and excellent Prince *James* 'the Second, by the Grace of God of *England*, 'Scotland, *France*, and *Ireland*, King, and his 'natural

'natural Lord, not having the fear of God in 'his Heart, nor the Duty of his Allegiance 'any ways weighing, but being mov'd and 'seduced by the Inſtigation of the Devil, and 'the true, due, and natural Obedience which 'true and faithful Subjects of our ſaid Lord the 'King towards our ſaid Lord the King, ſhould 'and of right ought to bear, wholy withdraw 'ing; and with his whole Strength intending 'the Peace and common Tranquillity of this 'Kingdom of *England* to diſquiet, moleſt, and 'diſturb, and War and Rebellion againſt our 'ſaid Lord the King within this his Kingdom 'of *England* to incite and ſtir up, and the Go'vernment of our ſaid Lord the King in this his 'Kingdom of *England* to ſubvert, and our ſaid 'Lord the King from his Title, Honour, and 'regal Name of his Imperial Crown of this his 'Kingdom of *England* to depoſe and deprive, 'and our ſaid Lord the King to Death and final 'Deſtruction to bring and put; the 20th day of 'Ju'y, in the firſt Year of the Reign of our So'vereign Lord *James* the Second, by the Grace 'of God of *England*, *Scotland*, *France*, and *Ireland* 'King, Defender of the Faith, and divers other 'days and times, as well before as after, at the 'Pariſh of St. *Clements Danes* in the County of '*Middleſex*, falſly and maliciouſly, deviliſhly 'and traiterouſly, with divers other Rebels and 'Traitors to the Jurors unknown, he did con'ſpire, imagine, and intend, our ſaid Lord the 'King, our ſupream and natural Lord, not only 'from his royal State, Title, Power, and Go'vernment of his Kingdom of *England* to de'prive and depoſe, but alſo our ſaid Lord the 'King to kill and put to death, and the ancient 'Government of this Kingdom of *England* to 'change and alter, and wholly to ſubvert, and 'a miſerable Slaughter among the Subjects of 'our ſaid Lord the King throughout this whole 'Kingdom of *England* to cauſe and procure, 'and Inſurrection and Rebellion againſt our ſaid 'Lord the King to procure, move, and aſſiſt: 'And his ſaid moſt wicked and deviliſh Treaſons 'and traiterous Conſpiracies, Compaſſings, Ima'ginations and Purpoſes aforeſaid to fulfil, effect, 'and perfect, he the ſaid *William Ring*, as a falſe 'Traitor, then and there, to wit, the ſaid 20th 'day of *July* in the ſaid firſt Year of the Reign 'of our ſaid Lord the King that now is, afore'ſaid, at the Pariſh and County aforeſaid, well 'knowing *Joſeph Kelloway* and *Henry Lawrence* 'to be falſe Traitors, and as falſe Traitors trai'terouſly to have conſpired and imagined the 'Death and final Deſtruction of our ſaid Lord 'the King, and War and Rebellion againſt our 'ſaid Lord the King within this his Kingdom of '*England*, traiterouſly, with divers other Traitors 'to the Jurors unknown, to have levied and 'raiſed and ſtirred up; and he the ſaid *William* '*Ring* afterwards (to wit) the ſaid 20th day of '*July*, in the firſt Year of the Reign of our 'ſaid Sovereign Lord the King aforeſaid, at the 'Pariſh aforeſaid, the ſaid *Joſeph Kelloway* and '*Henry Lawrence*, in the dwelling Houſe of him 'the ſaid *William Ring* ſituated in the Pariſh and 'County aforeſaid, knowingly, ſecretly, wick'edly, deviliſhly, and traiterouſly, he did har'bour, conceal, comfort ſuſtain, and maintain; 'and then and there, for the comforting ſuſtain'ing, and maintaining of the ſaid *Joſeph Kelloway* 'and *Henry Lawrence*, he, the ſaid *William Ring* 'Meat and Drink to the ſaid *Joſeph Kelloway* 'and *Henry Lawrence* maliciouſly and traiterouſly 'did give and deliver, and did cauſe to be given 'and delivered, againſt the Duty of his Alle'giance, againſt the Peace of our ſaid Sovereign 'Lord the King, his Crown and Dignity, and 'againſt the Form of the Statute in this Caſe 'made and provided, *&c.*

How ſayeſt thou, *William Ring*, art thou guilty of the High-Treaſon whereof thou ſtandeſt indicted, or not guilty?

Ring. Not guilty.

Clerk. Culprit, how wilt thou be tried?

Ring. By God and my Country.

Clerk. God ſend thee a good Deliverance.

Set *Henry Corniſh* to the Bar.

Henry Corniſh, hold up thy Hand.

Mr. *Corniſh.* My Lord, I have been confined without any notice given me until *Saturday* about noon of my Tryal. My Lord, I do hope, ſeeing I appear before your Lordſhips and this Honourable Bench, who have known ſomething of my Converſation, that you will be pleaſed to conſider me, and grant me what is cuſtomary, and commonly done to Perſons in my Circumſtances.

Mr. *Jones.* Mr. *Corniſh*, if you pleaſe you ſhall have your time of ſpeaking hereafter, but now you are only to plead without any more ado.

Mr. *Corniſh.* My Lord, I beſeech you hear me a little; I have been ſo confined ——

Lord Mayor. Mr. *Corniſh*, you muſt obſerve the Rules of the Court.

Mr. *Corniſh.* My Lord, I hope I ſhall be allowed what is cuſtomary in ſuch Caſes.

Lord Mayor. What is it you would have?

Mr. *Corniſh.* My Lord, I do deſire, if your Lordſhip will pleaſe to conſider me——

Mr. *Jones.* Wou'd you not be arraign'd, Mr. *Corniſh?* After you are arraign'd and have pleaded, you may ſpeak.

Mr. *Corniſh.* Let me tell your Lordſhip what my Caſe is: Is it reaſonable not to have above half a-days time for Preparation for my Tryal, and no Counſel allowed me?

* Mr. *Recorder.* Nor ought, without leave of the Court, or by his Majeſties ſpecial Appointment.

* Sir *Thomas Jenner.*

Mr. *Corniſh.* I have not had a Friend to come to me, but in the Preſence of Major *Richardſon.*

Mr. *Recorder.* None have in your Circumſtances.

Mr. *Corniſh.* My Lord, ought not I to have a Copy of the Pannel? it is a thing never denied.

Recorder. It hath been denied very often.

Mr. *Corniſh.* My Lord, it is a matter wherein my Life is concern'd; and therefore I hope your Lordſhip will hear me.

Mr. *Jones.* After you are arraign'd you may ſpeak, and put off your Tryal if you can.

Mr. *Corniſh.* My Lord, I cannot go from this before I poſſeſs your Lordſhip with a right Underſtanding of it; it is beyond Precedent: no ſuch Precedent, that any Man ſhould be kept with that Strictneſs I have been.

Recorder. Mr. *Corniſh*, I wonder you will ſay ſo: I tell you there is no Man accuſed of your Crime but is ſo kept.

Mr. *Corniſh.* If your Lordſhip pleaſes to allow me a little time, I do not queſtion but I can very well ſatisfie your Lordſhip, and this honourable Court, that I am a very innocent Perſon.

Mr. *Recorder.*

Mr. *Recorder*. You will have your proper time for that, but now you muſt plead, that you may hear the Particulars of your Charge, and have an Opportunity to make out your Innocence; for we muſt keep the ſame Method with you we do with all other Perſons in your Circumſtances; and therefore you muſt plead as other Perſons do.

Mr. *Jones*. Will you, or will you not, Sir, without any more ado? the Law gives you advantage, you may challenge any body; there are fourſcore returned, honeſt Men, and you may challenge who you pleaſe.

Mr. *Corniſh*. Alas! my Lord, what can I do?

Council. He diſputes out of time; he is to be arraign'd.

Recorder. Come, Mr. *Corniſh*, you muſt plead.

Mr. *Corniſh*. I did underſtand laſt Night His Majeſty was graciouſly pleaſed to refer theſe matters, as to my Tryal, to my Lords the Judges; and, my Lord, I do hope that the Judges, when they hear this matter, that I ſhall have ſome time allowed.

Recorder. Pray, Mr. *Corniſh*, take the Rule of the Court; your buſineſs is now to plead; when you have pleaded, what you have to offer for the putting off your Tryal may be heard then.

Clerk. *Henry Corniſh*, hold up thy Hand.

Mr. *Corniſh*. My Lord, I would do nothing that ſhould be a diſhonour to your Lordſhip and the Court.

Sir *James Smith*. You know the way of the Court Mr. *Corniſh*; you muſt plead.

Mr. *Jones*. If you will not plead, I will move the Court to record your ſtanding mute.

Mr. *Corniſh*. I have known that this Court hath heard what the Priſoner hath to ſay at the Bar; and I have more to ſay perhaps than any Man that ever ſtood at this Bar.

Recorder. Mr. *Corniſh*, when you have pleaded, you have time to ſpeak for your ſelf.

Clerk. *Henry Corniſh*, hold up thy Hand. (Which he did.)

Thou ſtandeſt indicted by the Name of *Henry Corniſh*.

'THAT *Henry Corniſh*, late of the Pariſh of 'St. *Michael Baſſiſhaw*, *London*, Merchant, 'as a falſe Traitor againſt the moſt Illuſtrious 'Prince *Charles* the Second, late King of *Eng-* 'land *Scotland*, *France* and *Ireland*, Defender of 'the Faith, then his natural Lord, not having 'the fear of God in his Heart, nor weighing the 'Duty of his Allegiance, but moved and ſeduced 'by the Inſtigation of the Devil, and the cordial 'Love and true due and natural Obedience, 'which a true and faithful Subject of our late 'Sovereign Lord the King towards our late So- 'vereign Lord the King ſhould and of right 'ought to bear, altogether withdrawing; and 'minding, and with all his Strength intending, 'the Peace and common Tranquillity of this 'Kingdom of *England* to diſquiet, moleſt, and 'diſturb, and War and Rebellion againſt our late 'Sovereign Lord the King, within this King- 'dom of *England* to ſtir up, move, and procure; 'and the Government of our ſaid late Sovereign 'Lord the King of this Kingdom of *England* to 'ſubvert, change, and alter, and our ſaid late 'Sovereign Lord the King from the Title, Ho- 'nour, and Kingly Name of the Crown Impe- 'rial of this Kingdom of *England* to depoſe and 'deprive; and our ſaid late Sovereign Lord the 'King to Death, and final Deſtruction to bring 'and put: the 30th day of *May* in the 35th Year 'of the Reign of our ſaid Sovereign Lord the 'King, and divers other days and times, as well 'before as after, at the Pariſh of St. *Michael* 'Baſſiſhaw, *London*, falſly, maliciouſly, deviliſh- 'ly, and traiterouſly, with divers falſe Traitors 'to the Jurors unknown, did conſpire, compaſs, 'imagine, and intend, our ſaid late Sovereign 'Lord the King, his ſupream and natural Lord, 'not only of his Kingly State, Title, Power and 'Government of this Kingdom of *England* to 'deprive and throw down; but alſo the ſaid late 'King to kill and put to Death, and the ancient 'Government of this his Kingdom of *England* 'to change, alter, and altogether ſubvert, and 'a miſerable Slaughter amongſt the Subjects of 'our late Lord the King thorough this King- 'dom of *England* to cauſe and procure, and In- 'ſurrection and Rebellion againſt our ſaid late 'Lord the King to procure, promote, and aſſiſt: 'And the ſame moſt wicked and deviliſh Trea- 'ſons and traiterous Compaſſings, Imaginations, 'and Purpoſes aforeſaid to fulfil, perfect, and 'bring to effect, He the ſaid *Henry Corniſh*, as a 'falſe Traitor, then and there, to wit, the ſaid '30th day of *May* in the Year aforeſaid, at the 'Pariſh and Ward aforeſaid, falſly, maliciouſly, 'and traiterouſly knowing *James* the late Duke 'of *Monmouth*, *William Ruſſel*, Eſq; and *Thomas* '*Armſtrong*, Knight, and divers other Rebels and 'Traitors, then lately before in the Pariſh and 'Ward aforeſaid within the ſaid City of *London*, 'falſly unlawfully, deviliſhly, and traiterouſly, 'to have conſpired the Death and final Deſtru- 'ction of our ſaid late Sovereign Lord the King; 'he the ſaid *Henry Corniſh*, as a falſe Traitor, then 'and there, to wit, the ſaid 30th day of *May* in 'the Year aforeſaid, within the Pariſh and Ward 'in the ſaid City of *London*, falſly, unlawfully, 'wickedly, and traiterouſly, did promiſe to the 'ſaid divers falſe Traitors and Rebels, then and 'there preſent, That he the ſaid *Henry Corniſh* 'would be aiding and aſſiſting in the Treaſons 'aforeſaid, to be done, perfected, and brought 'to effect; againſt the Duty of his Allegiance, 'againſt the Peace, and againſt the form of the 'Statute, *&c.*

Clerk. How ſay'ſt thou, *Henry Corniſh*, art thou guilty of this High-Treaſon whereof thou ſtandeſt indicted, or not guilty?

Mr. *Corniſh*. This is an heinous Charge.

Council. Anſwer. You know you muſt anſwer.

Mr. *Corniſh*. I am perfectly innocent.

Council. Are you guilty, or not guilty? You muſt take the Words.

Mr. *Corniſh*. Not guilty.

Clerk. Culprit, how wilt thou be try'd?

Mr. *Corniſh*. By the great God of Heaven, and my Country.

Clerk. God ſend thee a good Deliverance.

L. C. J. Jones. I don't know in what ſtate things are here in the Court; I can't tell whether there be a Jury return'd or not.

Clerk. He is arraign'd.

L. C. J. Jones. Why don't you go on with the Jury?

Mr. *Corniſh*. My Lord, I humbly pray your Lordſhip. I have ſome ground for it.——

L. C. J. Jones. You ſhall be heard in good time, Sir.

Mr. *Corniſh*. My poor Children laſt night prefer'd a Petition to His Majeſty, and he was pleaſed to refer it moſt graciouſly to my Lords the

Judges; and I now make my Application to Your Lordſhips.

L. C. J. Jones. Have you any Anſwer to the Petition, from the King?

Mr. *Corniſh.* It was refer'd to your Lordſhips the Judges, to conſider my Caſe.

L. C. J. Jones. We may hear more of your Buſineſs anon, when Mr. Attorney and Mr. Solicitor do come: we will ſtay here till they come, to know whether there be any Order from the King to them concerning you.

Mr. *Corniſh.* My Lord, I hope it will not be offenſive if I ſhould acquaint your Lordſhips what Uſage I have met with ſince I have been under Confinement. I have been under very cloſe Confinement, I had no notice of my Tryal till about twelve a Clock on *Saturday*; no Friend came to me till Eight a Clock at night; and I had no time for Preparation for my Tryal. My Lord, theſe are hard things; but tho' I am denied Council, I truſt in God I ſhall not need Council, for I hope, if your Lordſhip pleaſes to allow me time, to clear my ſelf of all matters; and I hope with ſuch Satisfaction to your Lordſhips, that you will acquieſce in whatſoever I ſhall lay before your Lordſhips. I do not come to make an Harangue and Talk; my Caſe was ſuch, that I had neither Pen, Ink nor Paper.

Mr. *Juſt Withins.* Mr. *Corniſh*, Mr. Attorney and Mr. Solicitor will come, we muſt hear them.

L. C. J. Jones. You ſhall be heard in your proper time: it is a ſtrange thing you won't be ſatisfied: you ſhall be heard, I tell you, in your proper time.

Mr. *North.* We have arraign'd one *Fernley*, if you pleaſe to try him, who (with *Ring*) was brought to the Bar.

Clerk. You the Priſoners at the Bar, thoſe Perſons you ſhall hear call'd, and appear, are to paſs between our Sovereign Lord the King and You, upon your ſeveral Lives and Deaths; if you will challenge them, or any of them, your time is to challenge them when they come to the Book to be ſworn, before they be ſworn.

Cryer. O Yes, all manner of Perſons are commanded to keep ſilence upon pain of Impriſonment.

The *Middleſex* Jury.

Nehemiah Arnold	*William Thompſon*
Francis Stevens	*William Read*
Richard Fiſher	*Samuel Peacock*
John Howlet	*Richard Fitz-gerrard*
John Vigures	*Richard Bromfield*
Samuel Birch	*John Haynes.*

Cryer. O Yes, If any one can inform my Lords the King's Juſtices, the King's Serjeant, or the King's Attorney, before this Inqueſt be taken between our Sovereign Lord the King and *John Fernley* and *William Ring*, the Priſoners at the Bar, let them come forth and they ſhall be heard; for now the Priſoners ſtand at the Bar upon their Deliverance: and all Perſons that are bound by Recognizance to give Evidence againſt either of the Priſoners at the Bar, let them come forth and give their Evidence, or elſe they forfeit their Recognizance, and all Jury-men of *Middleſex* that have appear'd and are not ſworn, let them depart.

Clerk. Set *William Ring* to the Bar, and ſet by the other.

William Ring, hold up thy Hand. You that are ſworn look upon the Priſoner and hearken to his Charge, he ſtands indicted by the name of *William Ring*, &c. (*prout ante.*) Your Charge is, to enquire whether he be guilty of the Treaſon whereof he ſtands indicted, or not guilty, *&c.*

Mr. *Phipps.* You the Gentlemen that are ſworn, the Priſoner at the Bar is indicted for that knowing one *Joſeph Kelloway* and one *Henry Lawrence* to be falſe Traitors, and to have levied War againſt the King on the 20th of *July* did harbour, conceal, and relieve thoſe Traitors, againſt the Duty, *&c.* Upon this he hath pleaded, not guilty, *&c.*

Mr. *Att. Gen.* Gentlemen of the Jury, the courſe of our Evidence will be thus; *Kelloway* and *Lawrence* were in the late Rebellion in the Weſt, in the late Duke of *Monmouth*'s Army; and after that Battle when they were overthrown, they came up to *London*, and the Priſoner at the Bar receiv'd and comforted them, and not only provided a Lodging, and Meat and Drink for them, but afterwards provides another Lodging for them; and this he knew, for they were very merry, telling the whole Story of the Fight; and notwithſtanding this he entertains them. We will firſt ſhew you the Record of the Conviction of *Kelloway* and *Lawrence*, and then call Witneſſes to prove the other things upon the Priſoner. (The Record produced) Mr. *Harcourt* ſworn. Sir *Robert Sawyer.*

L. C. J. Jones. Is that a true Copy of the Record? Mr. *Harcourt* anſwered Yes: whereupon the Clerk reads:

Joſeph Kelloway ſtands indicted by the Name of *Joſeph Kelloway* of *Taunton* in the County of *Somerſet*, Yeoman, and *Henry Lawrence* of the ſame Pariſh and County Yeoman, with a great many others.

L. C. J. Jones. See what they have done.

Clerk. They are indicted of Treaſon for levying War againſt the King, and they have confeſſed the Indictment upon their Arraignment; and the Judgment upon the Indictment is, *That the ſaid* Kelloway, *and the reſt of them there, ſhould be led to the Priſon from whence they came, and from thence to be drawn to the place of Execution, and upon the Gallows there to be hanged, every one of them in the ſaid Indictment, and living to be cut down, and their Entrails to be taken out of their Bodies, their Heads to be taken off from their Bodies, and their Bodies divided into four Quarters.*

Mr. *Att. Gen.* This ſhews they were Traitors. Now we will ſhew you, that in the mean time between their Treaſon and Conviction, this Priſoner did receive them. Call Mr. *Barrington.* (Who was ſworn.)

Mr. *Jones.* Mr. *Barrington*, what do you know concerning Mr. *Ring?*

Mr. *Barrington.* If it pleaſe you my Lord, on the 11th of *July* laſt I was abroad about my Maſter's Buſineſs, and in the mean time when I was abſent, as I was inform'd, there came Mr. *Ring*, who lives in *Witch-ſtreet* at the Sign of the Bible, and when I return'd I was told that Mr. *Ring* was at our Houſe to ſpeak with me, and that there was one Mr. *Lawrence* there at Mr. *Ring*'s at the Bible in *Witch-ſtreet*; and when I came there, there was Mr. *Lawrence* at Mr. *Ring*'s Houſe; and when I came to the Houſe on the right-Hand there was his Wife, as I take it; I asked for Mr. *Lawrence* and ſhe was a little at a ſtand: ſaid I, I underſtand Mr. *Ring* was in ſuch a place to inform me Mr. *Lawrence* deſired to

ſpeak

ſpeak with me, upon that ſhe ſhewed me where he was: I went up to him, and he was lying upon the Bed very weary and tired; and when I had been there a while there came in one *Kelloway*, and they ſaid they came both out of the Weſt Country, and came on *Friday* night, and I ſaw them on *Saturday*. If it pleaſe your Lordſhip, I called there after and knocked at Mr. *Ring*'s Door, and there came a Woman and made Anſwer, That they were gone from thence both of them, and that they were to go on Ship-board to ſee ſome Friends; and I call'd there upon *Wedneſday* the 15*th* day at night, to ſee Mr. *Lawrence* at Mr. *Ring*'s Houſe, and Mr. *Lawrence* told me he was going from thence to the Pewter-Platter in Saint *Johns*; and when Mr. Common Serjeant came to examine me about theſe men, I made a true Confeſſion that they were at Mr. *Ring*'s, and removed to the Pewter-Platter; and when we came to ſearch at the Pewter-Platter, at firſt they did not know any ſuch men, till we deſcribed them; then they confeſſed there were ſuch men there on *Tueſday* and *Wedneſday* night, but not the night before which was *Thurſday* night, from thence we went without *Temple-bar* to Mr. *Ring*'s, where they were at firſt, and Mr. *Criſp* and I went together to enquire for theſe men, and there was a Woman, which I think is Mr. *Ring*'s Wife, I can't tell. I enquired for theſe men, and ſhe made Anſwer, That they were not there at preſent, and ſaid ſhe could not tell at preſent, but that they lay there the laſt night, which was *Thurſday* night; that was *Ring*'s Wife, I take it, ſhould ſay they were there the night before; ſo after that ſhe had owned they lay there on *Thurſday* night, ſhe asked me what this Gentleman was, ſo I told her he was a Friend of mine; ſo afterwards we were at the Caſtle Tavern without *Temple-Bar* by *St. Clements* Church, and Mr. Common Serjeant was pleaſed to ſend for Mr. *Ring* to examine him about theſe men, what Lodgers he had in his Houſe on *Friday* night, *Saturday* night, *Sunday* night, and *Monday* night. Mr. *Ring* knew nothing of any men that came out of the Country; ſo upon that, he denying it, Mr. Common Serjeant ordered his Houſe to be ſearched, and in ſearching they found a Paper upon the Chamber Window that was brought to the Caſtle Tavern, where Mr. *Ring* was, and the Paper was produced, and Mr. *Ring* would confeſs nothing till ſuch time as they found that Paper.

L. C. J. Jones. See, is that the Paper you ſpeak of?

Mr. *Barrington.* That is all I have to ſay, if it pleaſe your Lordſhip.

L. C. J. Jones. Did you ſee them in the Company of *Ring*?

Mr. *Barrington.* I did not ſee him when I was at the Houſe.

Mr. *Finch.* Mr. *Sol. Gen.* You ſay Mr. *Ring* would confeſs nothing till ſuch time as the Paper was found; What did he ſay after the Paper was found?

Mr. *Jones. Ring* was by, what did he ſay upon producing that Paper?

L. C. J. Jones. Was the Paper ſhewed to him?

Mr. *Barrington.* I think not; he would have ſeen it.

Mr. *Juſt. Withins.* You ſay he would confeſs nothing till that Paper was produced.

Mr. *Barrington.* Truly, I can ſay no more of it.

Mr. *Jones.* When the Paper was produced at the Caſtle Tavern, what did he ſay then?

Mr. *Juſt. Withins.* What did *Ring* ſay at the Caſtle Tavern?

Mr. *Barrington.* I can't remember, but that he denied every thing,

Clerk. Call Mr. *Barrow.* (Who was ſworn)

Mr. *Barrow.* Sir, I heard *Ring* confeſs to my *Lord-Mayor* in *July* laſt, that he lodged *Lawrence* and *Kelloway*, and that *Lawrence* and *Kelloway* did tell him, that they had been both in the late Weſtern Rebellion in *Monmouth*'s Army; and that after that he had lodged them two or three Nights, this I heard him confeſs.

Council. Pray ſpeak it again.

Mr. *Barrow*, That *Lawrence* and *Kelloway* had told Mr. *Ring*, they had been in the late Weſtern Rebellion in *Monmouth*'s Army, and that he had lodged them two or three nights in his own Houſe.

Mr. *Common Serjeant.* What did you hear him ſay concerning Mr. *Herle*?

Mr. *Barrow.* There was ſome talk concerning Mr. *Herle* or *Hurle.*

L. C. J. Jones. Did he ſay he lodged them, after they had told him that?

Mr. *Barrow.* After that. That is all I can ſay.

Clerk. Call Mr. *Criſp.* (Who was ſworn.)

Council. Give my Lord and Jury an Account of what you know concerning Mr. *Ring.*

Mr. *Criſp.* I went to ſearch Mr. *Ring*'s Houſe, my Lord, and in the Window there was that Letter under Mr. *Lawrence*'s own Hand, ſealed up and directed to *Newberry* for a Horſe which he had ſtole from his Maſter, and left at *Newberry*; which Letter I brought to the Tavern, and when we came to the Tavern, we examined him, and he denied every thing; but at laſt we ſhewed him the Letter, and he owned he had ſuch a Couſin, and another that he did not know, but that he did not lodge there then: and when he came to the Seſſions-Houſe, *Lawrence* and *Kelloway* were produced before him, and were examined what Account they had given to him when they came to his Houſe; they told him after the Duke of *Monmouth* was beaten they ran away to *London*, and *Kelloway* being his Couſin brought *Lawrence* with him; they told him the Duke was beaten, and lay there *Friday* night, *Saturday* night, *Sunday* night, and *Monday* night.

Mr. *Jones.* He owned he knew *Kelloway*?

Mr. *Criſp.* Yes.

L. C. J. And that *Kelloway* had been in the Duke's Army, and that he was beaten?

Mr. *Criſp.* Yes.

L. C. J. What did *Ring* ſay upon it?

Mr. *Criſp. Ring* ſaid nothing there to it; he confeſs'd he lodg'd them two or three nights.

Council. Swear Mr. *Hardiſty* (Which was done)

Mr. Att. G. Mr. *Hardiſty*, pray will you give my Lord and the Jury an account of his Examination?

Mr. *Hardiſty.* I was directed to attend my Lord Mayor at the Examination of Mr. *Ring*, the Priſoner at the Bar, above here in the Room, and did accordingly: and upon Examination, my Lord, he did make this Confeſſion. This is the Examination, and it is as he gave it in himſelf, and ſigned by himſelf.

L. C. J. Jones. And read to him?

Mr. *Hardiſty.* Yes, half a dozen times I believe.

Mr. *Comm. Serj.* My Lord, upon the appearing of *Lawrence* and *Kelloway* before him, then he confeſſed all.

The

The Examination of *William Ring* of the Parish of St. *Clement Danes* in the County of *Middlesex*, Taylor, taken before the Right Honourable Sir *James Smith*, Kt. Lord-Mayor of the City of *London*, this 18. day of *July*, 1685. who being examined, saith as followeth:

'THat *Joseph Kelloway*, and one *Henry Lawrence*, 'the said *Kelloway*'s Acquaintance, came to 'this Examinants House on *Friday* or *Saturday* last; 'That this Examinant did ask of *Kelloway* (being 'this Examinant's Kinsman) what did drive them 'to Town? That they told this Examinant, that 'they went to *Monmouth*, that he was routed, and 'that brought them to Town, or to that purpose; 'That they were in *Monmouth*'s Army: That the 'night they came, he this Examinant told them, 'he was unwilling to lodge them; That he this 'Examinant did lodge them after this Discourse, '*Saturday*, *Sunday*, and *Monday* nights, and they 'dined twice with this Examinant; That they 'were at his House on *Friday* morning; but where 'they lay on *Wednesday* and *Thursday* saith, he 'knows not. Saith, that *Lawrence* sent this 'Examinant to a Glover in St. *Bartholomews* Close 'who was a Journey man in the House, as this 'Examinant supposeth, and told the Master of 'the House, that there was a Kinsman of his 'Journey man's would speak with his Journey-'man. Saith, *Kelloway* and his Acquaintance told 'this Examinant, that they left their Horses at '*Newberry*. That a Note being produced, directed 'to this Examinant, to deliver several Goods 'therein mentioned, and being examined upon 'the said Note, this Examinant saith, That he 'this Examinant was sent for to the *Castle Tavern* 'near *Shoe lane* in *Fleetstreet*, and one *Bond* brought 'this Examinant the Note above-mentioned, 'and now produced to him; believes the Note to 'be the hand writing of *James Hooper*. That this 'Examinant was there to enquire of one *Hearne*, 'but expected to meet *James Hooper*, who form-'erly told this Examinant that he went by the 'Name of *Hearne*. That being in Discourse with 'James Hooper about the time of the late Duke of 'Monmouth's Landing, *James Hooper* told this 'Examinant, that his the said *Hooper*'s Brother 'was with the Duke of *Monmouth*, and that he 'the said *James Hooper* would go to him the said 'Duke, or to that purpose. Further this Exami-'nant saith, That about a Fortnight ago he car-'ried, according to a Note from *Hooper* to that 'purpose, to a Joyner's House in *Ivy-lane*, *London*, 'a Cravat and a pair of Cuffs, and then enquired 'for *Hooper* of a Woman of the said house; and 'saith, that then he this Examinant did speak 'with *James Hooper* who lay private there, be-'cause, as this Examinant believes, the said 'Hooper was concerned in the Rebellion. Saith, 'he hath not seen him the said *Hooper* this Fort-'night, nor heard from him otherwise than by 'the Note now produced. *Will. Ring.*

Taken before me Sir James Smith, *Lord-Mayor.*

Mr. Att. Gen. Call Mr. *Richardson*, to prove that these were the same men that were carried down. (Who was sworn.) Mr. *Richardson*, pray give an account, whether these were the men you carried down into the *West*.

Mr. *Richardson*. My Lord, those two Persons, that is, *Joseph Kelloway* and *Henry Lawrence*, that were committed for being in the late Rebellion: I carried them both down into the *West*, where they were both Convicted; one is executed, and the other hath a Reprieve.

Mr. *Just. Withins*. *Henry Lawrence* was Capt. *Hunt*'s man.

Mr. *Richardson*. The same, he ran away with his Horse and Arms.

L. C. J. Jones. Can you tell these were the same men, that were present at his Examination?

Mr. *Richardson*. The very same men; they were committed at the same time; he was examined before them, for they were all committed at the same time together.

L. C. J. Jones. What do you say Sir, you the Prisoner at the Bar, what do you say for your self?

Mr. *Ring*. I did not understand what they were.

L. C. J. You knew the Prisoners, one of them was your Kinsman?

Mr. *Ring*. I did know him, but the other I did not know; I did not know what Design they had been upon.

L. C. J. Jones. Your own Examination says, you did.

Mr. *Ring*. Then my Examination is wrong.

L. C. J. Jones. Hear, hear again: You did receive them, and then they told you that they were in *Monmouth*'s Army, and that *Monmouth* was beaten; and afterwards you continued to harbour them in your House three nights.

Mr. *Just. Withins*. And dined twice with them.

Mr. *Ring*. My Lord, I never heard of it.

L. C. Baron. That Gentleman heard you say, they had told you they had been in *Monmouth*'s Army, and you lodged them after.

Mr. *Crisp*. Yes my Lord; and when we were there, the Woman would not own them.

L. C. J. Jones. Why did you hide them in your House, and not confess it?

Mr. *Ring*. At first I did deny it.

Council. Yes, and did deny it, till *Lawrence* and the other man were brought before you.

Mr. *Ring*. My Lord, what I did was ignorantly done.

L. C. J. Jones. Did you hear your Examination now read?

Mr. *Ring*. I heard most of it, I believe.

L. C. J. Jones. Pray let it be read again.

Council. It was read over and over 4 or 5 times.

Mr. *Hardisty*. He was upon it, I believe, an hour together: it was taken first in parts, and as he recollected himself it was compared, and afterwards my Lord Mayor desired him to consider with himself: and then the Examination was written fair over, and he signed it, and it was read several times, 6 or 7 times.

Mr. *Ring*. My Lord, I do acknowledge I did lodge them, but I did not understand what Design they had been upon.

L. C. J. Jones. But you see here you have acknowledged, they said they were in the Army, and you did lodge them afterwards; they were of *Monmouth*'s Party, they had told you so. Read that part again.

Mr. *Hardisty*. *Joseph Kelloway*, and one *Lawrence* the said *Kelloway*'s Acquaintance, came to this Examinant's House on *Friday* or *Saturday* last; that this Examinant did ask *Kelloway* being this Examinant's Kinsman, What did drive them to Town? that they told this Examinant, that they went to *Monmouth*, that he was routed, and that that brought them to Town.

Mr. *Ring*. I never said that Word.

Mr. *Just. Withins*. It is under your Hand.

Mr. *Ring*. If it be under my hand, I never said it.

Mr. *Sol. Gen.* Was that part read to him?

Mr.

Mr. *Hardisty*. Yes.

L. C. J. Jones. Read on.

Hardisty. That they were in *Monmouth*'s Army; that the Night they came, this Examinant told them, he was unwilling to lodge them, and that this Examinant did lodge them after this Discovery, *Saturday*, *Sunday* and *Monday* night, and they dined twice at this Examinant's House.

L. C. J. Jones. What do you say now to this? Can there be any thing more plain?

Mr. *Ring*. I do acknowledge, my Lord, I did lodge them, but I was not sensible what the issue of this Business would be.

L. C. J. Jones. You did not know, That to harbour known Traitors was High Treason.

Mr. *Ring*. My Lord, I don't know whether they came from *Monmouth* or no.

L. C. J. Jones. It is no great matter whether you do or no; they told you so.

Mr. *Ring*. I never heard such a Word from them.

L. C. J. Jones. How came it to be put in your Examination?

Mr. *Ring*. I don't know, my Lord, when it was taken I was in a maze. I think the Parish knew well enough, that I never kept any such Company, nor had any such Design.

Mr. *Just. Withins*. He confesses it over-night, causes it to be writ down next Day, and sets his Hand to it too: Nothing can be more plain.

L. C. J. That is a great Argument you were not in such surprize, that you had not the use of your Understanding; for you confessed the same thing over Night, and you had time to consider of it all Night, and you came the next Morning, and then confessed as now it is written, and put your Hand to it.

Mr. *Ring*. I was ordered to put my Hand to it.

L. C. J. Jones. That is, if you acknowledged it to be true.

Mr. *Ring*. I did not know what was put down.

Mr. *Just. Levins* The matter is so plain, that nothing can be more. When they came to you, they inform'd you where they had been, and afterwards you were unwilling to lodge them; you knew therefore they had been in the Rebels Army and so the matter is plain: and for ought I can hear, this is not the first time you have harbour'd such Men.

L. C. J Jones. There is another thing touching one *Hurle*; but you are not charged with it in the Indictment, and so we don't trouble the Jury with any Evidence concerning that: Have you any more to say?

Mr. *Ring*. I do acknowledge, my Lord, that I lodg'd them; but I did not understand any thing else.

L. C. J. Jones. Why! did not you confess it?

Mr. *Ring*. I did not confess it.

Mr. *Just. Withins*. And you shifted Lodging for them after they were known to you.

Mr. *Ring*. I did not.

L. C. J. Jones. Gentlemen of the Jury, the Prisoner stands indicted of High-Treason for receiving *Joseph Kelloway* and *Henry Lawrence*, who were Traitors, and known to him to be Traitors, and harbouring them in his House, and giving them Entertainment and Comfort: this, Gentlemen, is clearly High-Treason by Law; and tho' this Man himself were not in actual Rebellion, yet, if he do receive any that he knows to have been so, he is equally guilty; he is a principal Traitor by the Judgment of the Law, and however he would now pretend his Ignorance, that he did not know that they were in the Army, or, if he did know they were in the Army, that he had incur'd so great a Danger as the forfeiture of his Life, which now he stands as well as he can to defend; yet it does appear plainly to you, not only by his own Confession taken upon his Examination, but likewise by the Testimony of the Witnesses, who were present at the time when he did confess that these Men had discoursed with him, and acknowledged that they were in *Monmouth*'s Army, and that he was routed, and that yet he did entertain and receive them: The first Witness indeed does not say the very thing, but it is very much inducing to the Evidence that is given more express by the other Witness, for he says, that he was at his House, and he enquir'd for them there, tho' he did not see him at all, but his People; and they not only did confess that they had lodged there, but that there was a Lodging provided for them elsewhere: But however, if that were quite laid aside, and not taken at all into Consideration, yet what is testified by the other Witnesses, and upon his own Examination, makes it as clear and plain as can be, that he did receive these Persons into his House, and comfort them, and entertain them, knowing them to have been guilty of High-Treason, that is, to have been in the Army of *Monmouth*, of that Party, and that they came to *London*, and went away from the *West* because he was beaten; and there is an Expression in the Examination to that purpose: so that I take the Indictment to be very fully and clearly prov'd upon him; and it is not his Ignorance of the Law that will excuse him, that is, his Ignorance of the Danger that he hath incur'd by entertaining these People; altho' you cannot but take notice, that he was in some dread and fear that it was an Offence to do so; for at first he says by his Examination, that he did refuse to entertain them, which shews that he had some Consideration of the Danger that he might incur by receiving them: and yet after this plain Discourse of theirs, that they were in the Army, he entertains them: That they were the same Men that were in the Army, appears plainly; for though at first he did deny it, and did stand in it, before he was confronted by the Men, they being present; yet afterwards he did confess, that they were the Men that were entertain'd by him; and that they were the same Men, doth appear by the Testimony of Captain *Richardson*, who saw them, and afterwards caused them to be brought down to the *West*, where one of them was executed for Treason. So I must leave it to you, Gentlemen. I think it is a very plain Case.

Mr. *Ring*. Here is abundance of these things that I know nothing of.

Council. Set *John Fernley* to the Bar.

(Which was done.)

Clerk. *John Fernley*, hold up thy Hand. You that are sworn, look upon the Prisoner, and hearken to his Charge: He stands indicted by the Name of *John Fernley*, &c. (*prout ante.*)

Mr. *Phipps*. This is an Indictment of High-Treason against *John Fernley*, the Prisoner at the Bar: It sets forth, that the said *John Fernley*, knowing one *James Burton* to be a Traitor, and to have conspir'd against the Life of the King, did traiterously conceal the said *Burton* two Days

and two Nights, and gave him Meat and Drink, againſt the Duty, *&c.*

Mr. *Sol. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, this Priſoner ſtands indicted of Treaſon for receiving and harbouring one *James Burton* who was guilty of Treaſon, he knowing him to have been guilty of Treaſon. And the courſe of our Evidence will be this: We will prove that this *James Burton* ſtood out lawed for Treaſon before he committed a new Treaſon, when he went into the *Weſt*, and was there with *Monmouth* in the late Rebellion; and tho', Gentlemen, the very Outlawry againſt the ſaid *Burton* is enough to ſatisfie any man, that this Man could not be ignorant that he was a Traitor, for no man can imagine, when a Man ſtands out a Proceſs till he become out-lawed for High-Treaſon, that any ſhould be ignorant that he is guilty of Treaſon, and that it would be very dangerous to receive a Man after that, without any more Evidence: But this *Burton*, after he was out-lawed and fled, came again, and was in Arms with *Monmouth* in the Rebellion; and after their Defeat he came up to Town: and *Fernley* knowing he had been then in the *Weſt* with *Monmouth*, he received him, and harboured him; and this we will prove by Witneſſes. Firſt, we will ſhew the Record of the Outlawry.

Clerk.——*An Indictment prefer'd againſt* James Burton *and divers others for High-Treaſon, for which the ſaid* Burton *and divers others ſtand out lawed, by the Return of* Samuel Daſhwood, Eſq; *and* Sir Peter Daniel, *Sheriffs.* This is the Record it ſelf, my Lord.

Council. Swear Mr. *Ward.*

Which was done.

Mr. *Juſt. Withins.* Look upon it, Mr. *Ward*, is that the Record?

Mr. *Ward.* Yes, it is, my Lord.

Mr. *Juſt. Withins.* Pray ſee when the Outlawry was.

Mr. *Hardiſty. Upon Monday next after the Feaſt of St.* Martin, *Biſhop, the ſaid* Richard Rumbold, Richard Goodenough, Francis Goodenough, *here are the Names of a great many Men.*

Mr. *Juſt. Withins.* Is *James Burton* among them?

Mr. *Hardiſty. On Monday next after the Feaſt of St.* Michael, *the ſaid* Richard Rumbold, James Burton Richard Nelthorp, *are out lawed, and every one of them is out lawed.*—— It is *November* was Twelve-month.

Call *James Burton.* (Who was ſworn)

Mr. *North. James Burton*, ſtand up there: Do you give my Lord and the Jury an account concerning your being in the *Weſt*, and your being entertain'd here at Mr. *Fernley*'s Houſe, with all the Circumſtances.

Mr. *Burton.* I came out of the *Weſt* into *London* on *Wedneſday* Night from *Monmouth*'s Army.

L. C. J. Jones. What *Wedneſday* Night?

Mr. *Burton.* Truly, I have forgot the Day of the Month, but it was about three Weeks after the Rout, and I came home to my Wife and ſtayed two Nights, and ſhe was not ſatisfied I ſhould be there, and went to endeavour to get a Lodging for me for two or three Nights, and ſhe went to get leave at Mr. *Fernley*'s for me to be there two or three Nights; and I went thither on *Friday* Night, and on Sabbath-day in the Evening I was taken there.

Mr. *Sol. Gen.* Speak aloud, ſay that again.

Mr. *Burton.* On *Wedneſday* Night I came out of the Country, after I had been in the Army, I came home to my Wife, and ſtayed till *Friday* Night, and on *Friday* Night ſhe got me a Lodging at Mr. *Fernley*'s; there I went about ten a Clock at Night, and ſtayed there till Sunday Night, and I was taken.

Mr. *Juſt. Withins.* Did you ſee Mr. *Fernley?*

Mr. *Burton.* I ſaw him at Dinner on *Sunday*, and not before.

L. C. J. Jones. What Acquaintance had you before? He does not keep a Publick Houſe, does he?

Mr. *Burton.* I had been gone two Years, or very nigh.

L. C. J. Jones. What was the occaſion of your going?

Mr. *Burton.* My Wife was acquainted there.

L. C. J. Jones. What was the occaſion of your going away, and your Abſence for two Years?

Mr. *Burton.* The occaſion of my going then, was, I was in the Proclamation for being with *Rumbold* at the *Mitre* Tavern within *Aldgate.*

Mr. *Juſt. Levins. Fernley* knew you before, did not he?

Mr. *Burton.* He knew me by ſight.

Mr. *Juſt. Levins.* Had you any Acquaintance with him?

Mr. *Burton.* I lived pretty near to him for a while.

Mr. *Juſt. Levins.* How near?

Mr. *Burton.* I lived within two or three Doors of him.

Mr. *Juſt. Levins.* Did he know you?

Mr. *Burton.* Yes, Yes, he did know me.

Mr. *Juſt. Levins.* You came to lodge at his Houſe on *Friday* Night?

Mr. *Burton.* Yes, an't pleaſe you.

Mr. *Juſt. Levins.* Had you no Diſcourſe till *Sunday* you dined together?

Mr. *Burton.* No, not till *Sunday* at Dinner.

Mr. *Juſt. Withins.* Tell your Diſcourſe at Dinner.

Mr. *Burton.* My Lord, I have forgot what altogether the Diſcourſe was; I had ſome Diſcourſe of the Army; he knew I was in the Army.

L. C. J. Jones. I would have you ſpeak the Senſe, ſo far as you remember of the Diſcourſe at that time with him.

Mr. *Burton.* The Senſe, as far as I remember, was, That the Army was routed.

L. C. J. Jones. And that you were there.

Mr. *Burton.* He knew I was there.

L. C. J. Jones. How came he to know you were there?

Mr. *Burton.* I believe I told him ſo my ſelf.

Mr *Juſt.*—Upon your Oath, did he know you fled upon the Account of the Proclamation before?

Mr. *Burton.* It is like he might know it by others, but not by me.

L C. J. Jones. When were you taken? What Day?

Mr. *Burton.* I was taken on *Sunday* in the Evening: I had been four Days in *London*; two Days at Home, and two Days at his Houſe.

L. C. J. Jones. Did you not ſee him before *Sunday* at Dinner?

Mr. *Burton* My Lord, he was in the Shop all *Saturday*; he is a Barber.

Mr *Juſt Withins.* You lay privately at his Houſe all *Saturday?*

Mr.

Mr. *Burton.* Yes, my Lord, privately.

Council. Call *Mary Burton.*

(Who was ſworn)

Mr. *North.* How came this Man to lodge at Mr. *Fernley's* Houſe, can you give an account? and why it was?

Mrs. *Burton.* Becauſe I thought he was not ſafe at home; and having Acquaintance with Mrs. *Fernley,* lodging pretty near, and ſhe being a young Woman, and having Children, I had Acquaintance going to and fro, and we having a cloſe Houſe and no Yard, I had the Privilege of going to dry Linnen there, ſo that we had Acquaintance and a little Familiarity, and, being acquainted, I thought I might have Entertainment there; that is all I can ſay.

L. C. J. Jones. Were you at Dinner upon *Sunday*?

Mrs. *Burton.* Yes, I was at Dinner.

L. C. J. Jones. What Diſcourſe had they at Dinner?

Mrs. *Burton.* Indeed I can't ſay they had any Diſcourſe, I was very ill and laid me down upon the Bed, and fell aſleep.

L. C. J. Jones. You are upon your Oath.

Mrs. *Burton.* I know I am, Sir.

L. C. J. Jones. What Diſcourſe was at Dinner?

Mrs. *Burton.* Whilſt I was eating, I did not mind.

Mr. *Juſt. Levins.* You liv'd cloſe by, why did you ask for a Lodging there?

Mrs. *Burton.* We do not live cloſe by now, I live with my Daughter, I have no Houſe now.

Mr. *Juſt. Levins.* She knew he was your Husband, why ſhould you lodge your Husband at another Houſe than where you lodged your ſelf?

Mrs. *Burton.* What was it you ſaid, my Lord?

Mr. *Juſt. Levins.* Sure you would give the Woman ſome account, why you lodged your Husband at another Houſe than where you lodged your ſelf?

Mrs. *Burton.* She was not altogether a Stranger, and upon the account of the Proclamation there were none of them Strangers.

L. C. J. Jones. For whom did you ask a Lodging?

Mrs. *Burton.* For my Husband.

Mr. *North.* Did you ſpeak with Mr. *Fernley* himſelf?

Mrs. *Burton.* I did not ſpeak with Mr. *Fernley* himſelf.

Mr. *North.* On *Sunday* you ſaw him at Dinner?

Mrs. *Burton.* Yes, I ſaw him at Dinner.

Mr. *Juſt. Levins.* Had you any Diſcourſe with them about the Proclamation?

Mr. *Att. Gen.* About your Husband's going away upon that Proclamation?

Mrs. *Burton.* An't pleaſe you, my Lord, my diſtreſs was ſo great, that I was hardly in my Senſes to diſcourſe with any body; but, I thank God, I am now in my Senſes between whiles.

Mr. *Att. Gen.* Had you any Diſcourſe with your Neighbours about that Proclamation, your Husband went away upon?

Mrs. *Burton.* I had not indeed.

Then Mr. *Reynolds* was ſworn.

Mr. *North.* Mr. *Reynolds,* What do you know concerning Mr. *Burton's* being lodged at Mr. *Fernley's* Houſe?

Mr. *Reynolds.* Towards the beginning of *Auguſt* laſt, hearing that there were ſeveral that were in the *Weſt* lurk'd about *Wapping,* I took the Lieutenant of the *Tower's* Warrant, and we had ſome Intimation, that a ſuſpected Perſon lay at Mr. *Fernley's* Houſe; I went on *Sunday* about eight a Clock at Night, and took Mr. *Burton* in Mr. *Fernley's* Houſe.

Mr. *Juſt. Withins.* You took him there, did you?

Mr. *Reynolds.* I took him there, my Lord?

Mr. *Att. Gen.* Did you ſpeak with *Fernley* before you took *Burton*?

Mr. *Reynolds.* I took *Burton*; and Mr. *Fernley* being Maſter of the Houſe, I wiſhed the Conſtable to ſecure him for harbouring him.

Mr. *Att. Gen.* What did *Fernley* ſay?

Mr. *Reynolds.* Says I, Mr. *Fernley,* how come you to harbour Mr. *Burton* that is in the King's Proclamation; he is a Traytor you know; ſays he, I did not know it was Mr. *Burton,* but my Wife deſired me to lye out of the Chamber where I lay before, that a Friend of hers might lye there for two or three Days.

Mr. *Att. Gen.* Where did you find him?

Mr. *Reynolds.* He was in a Room up one pair of Stairs, up the Chimney, and while we were there he fell down the Chimney, with all the Soot about him: Mr. *Fernley* was then one pair of Stairs higher; I deſired the Conſtable to go up to ſee for him.

Mr. *Att. Gen.* Had you no diſcourſe with him about the buſineſs of being in the Army? with *Fernley,* I mean.

Mr. *Reynolds.* No my Lord.

L. C. J. Did you hear no Diſcourſe between *Burton* and him?

Mr. *Reynolds.* No, my Lord.

Mr. *Juſt. Withins.* He was very friendly to lye out of his own Chamber for him.

Mr. *Reynolds.* They were put in two ſeparate Chambers, by the King's Direction, till they were ſent to *Newgate.*

Mr. *Att. Gen.* Did he tell you on *Sunday* Night that he did not know it was *Burton*?

Mr. *Reynolds.* To the beſt of my Remembrance, he did ſo, when I brought him to the *Tower.*

Mr. *Att. Gen.* And yet he dined with him on *Sunday.*

Mr. *Reynolds.* I looked upon it as an Excuſe.

Mr. *North.* What Day was *Burton* taken?

Mr. *Reynolds.* It was *Sunday.*

Mr. *North.* What time on *Sunday*?

Mr. *Reynolds. Sunday* about eight a Clock at Night. He had been in Bed, my Lord, I believe, and before we could get open the Door I believe he got out of Bed and went to get up the Chimney.

Mr. *Sol. Gen.* Gentlemen, you obſerve in the courſe of the Evidence, that the firſt Evidence we produce is *James Burton*; now *James Burton* ſtood outlawed for Treaſon, and as he ſtands outlawed he is not a competent Witneſs, but now to take off that Objection which the Priſoner ought to make, but we make it for him, we ſhew you here a Pardon whereby that Outlawry is diſcharg'd, ſo that he ſtands now a very legal Witneſs.

Mr. *Juſt. Withins.* You underſtand, Gentlemen, what Mr. *Solicitor* mentions.

(The Pardon produced) and Read.

L. C. J. Jones. What ſay you?

Mr. *Fernley.* My Lord, I am charged for entertaining *Burton.* My Lord, I knew nothing of him when

when he came into my Houſe till Sabbath day at Dinner. I asked my Wife what time *Burton* came in, ſhe told me he came on *Friday* Night, *Saturday* was a buſie Day with me, my Lord, on *Sunday* Morning I got up and went to Church, when I came from Church, I went up to Dinner, and when I came in and ſaw him, I asked him, what in the name of God brought him there? it hath pleaſed God, ſaid he, to preſerve me hitherto, and my Wife interceded ſo far as to procure me a Nights Lodging, which I hope may be no Detriment to you. I wiſh it may not, ſaid I, and at Dinner I asked him, how he made his eſcape, and he told me how he did eſcape. Says I, what do you mean to do? ſays he, ſome Friends will procure me a Paſſage beyond Sea, upon this I conſidered with my ſelf, and diſcours'd with him about the *Weſt*, and his eſcape out of it, and about half an Hour after we had dined, one knocked at the Door.

Mr. *Juſt. Levins.* What Day was this?

Mr. *Fernley.* Sabbath day at Noon, ſome body knocked at the Door, and they told me there was one would ſpeak with me, and I came down, and there was one *Gaunt* in the Shop; ſays he, is Mr. *Burton* within? may I ſpeak with him? Yes, ſaid I: up I went, and *Gaunt* with me; and when we came into the Room they embraced one another, and were very glad to ſee one another, and *Burton* gave Mr. *Gaunt* thanks for a Guinea he had ſent him; ſays *Gaunt*, Mr. *Burton*, I am glad to ſee you; I hope in a little time I ſhall have a Paſſage for you beyond Sea; ſays he, if you had been here a while ſooner you might have gone; there are ſome Gentlemen went away a while ago; ſays I to Mr. *Gaunt*, Who were they? he told me it was Major——— and his Son, and another: ſays I to Mr. *Gaunt*, Do you hear of *Ferguſon*? no ſays he, I hear nothing of him as yet, but in a little time I may hear from him; and *Burton* asked, when he thought he might be going; in a Day or two's time ſaid he: ſays *Burton*, I have no Money nor no Cloaths; ſays he, take no care for that, ſo he named ſome Gentlemen that were to go: He told him of Colonel *Danvers* and Major *Wildman*. Upon this Diſcourſe, within my ſelf I did conſider what way I might do his Majeſty a piece of Service: I thought it better to forbear, and not to ſeize him preſently, till I had acquainted ſome Magiſtrate; and I did think in the Morning to have gone to a Juſtice of Peace and have had him apprehended: *Burton*, my Lord, I knew was ſecure, for he could not eſcape my Hands. I had no Deſign of concealing him; I have ſeveral eminent Gentlemen to teſtify for my Loyalty: I thank God, I never had an ill Thought againſt His Majeſty in my Life, only this Misfortune hath befallen me upon the account of my Wife. I am as innocent as a Child unborn, as to any thing againſt the King.

L. C. J. Jones. But he plainly told you, he came from the Army.

Mr. *Fernley.* He did acquaint me, my Lord, he did ſo; as ſoon as I ſaw him, I was ſtartled; I did look upon it as a thing ſent from God Almighty; for I knew my Lord, that there was 100*l.* for him, I knew there was a Proclamation out againſt him; but as for the Outlawry, I knew nothing of that: a Proclamation I knew there was againſt him, and being a poor Man, there was no Obligation upon me to conceal him and ruine my ſelf and Family.

L. C. J. Jones. What was the reaſon, you were ſo kind as to part with your own Lodging to entertain him?

Mr. *Fernley.* My Lord, I had fitted my Chamber before he came to the Houſe.

Mr. *Juſt. Withins.* It is proved, you did it upon his account

Mr. *Fernley.* My Lord, no body will offer to ſay that.

L. C. J. Jones. That you quitted your Lodging, and that he came into the ſame Lodging, is clearly proved.

Mr. *Fernley.* My Lord, my Chamber was fitted above a Week before he came, not knowing of him, for I had no Thoughts of him.

L. C. J. Jones. Pray, what Servants have you?

Mr. *Fernley.* Only a Boy, my Lord.

L. C. J. Jones. Could not you have ſent out your Boy when he had diſcourſed thus treaſonably with you, but keep him in your Houſe ſeven or eight Hours after you had entertain'd him at Dinner?

Council. Are you a Conſtable?

Mr. *Fernley.* I am a Conſtable my ſelf, and upon the account of my Office I was the more ſecure. I was certain he could not eſcape my Hands, and I thought to do his Majeſty more Service.

L. C. J. Jones How could you do His Majeſty more Service?

Mr. *Fernley.* *Gaunt* told him, he would come again to him.

L. C. J. Jones. When did he come to you?

Mr. *Fernley.* About half an Hour after Dinner.

L. C. J. Jones. But you ſhould have ſeized him immediately after Dinner. How came this Man to take ſo much Freedom before you that were an Officer, as to talk High-Treaſon?

Mr. *Fernley.* My Lord, I thank God if I were to die this Minute, I never harbour'd a Thought againſt the King.

L. C. Baron. If you had had a loyal Heart, you ſhould have kept *Gaunt*, if you had any Thoughts to have done it.

Mr. *Fernley.* My Lord, I will tell you why I let *Gaunt* go, becauſe he promiſed to come again the next Day.

L. C. J. Jones. Would you, being a Conſtable, let a Man go upon his Word, that had confeſſed himſelf guilty of Treaſon?

Mr. *Fernley.* My Lord, if I did any thing, it was ignorantly. My Lord, as for *Gaunt*, when I knew there was a Proclamation out againſt *Danvers* and *Wildman*, I hearing *Gaunt* diſcourſing about their Deſign, I thought (promiſing to come the next Day) to know how they were to go.

Mr. *Juſt. Levins.* For God's Sake, would you truſt all this to your own Breaſt! If you had had an honeſt Intention, you would have gone to ſome Officers, and acquainted them with it; ſome of the King's Juſtices of the Peace, or ſome of the Privy-Council, that ſuch Perſons would be at your Houſe the next Day.

L. C. Baron. By your own Diſcourſe, after you had heard all this Diſcourſe, and after *Burton* had told you this, you could let him go quietly to his own Chamber: If you had ſuch a Deſign as you ſay, you ſhould have firſt ſeized *Burton*.

Mr. *Fernley.* Another Chamber; no, he dined in his Chamber, my Lord.

Mr. *Juſt. Withins.* You went into another Chamber from him. Have you any Witneſſes?

Mr.

Mr. *Juſt. Levins.* They had a Confidence in you, otherwiſe *Burton* and *Gaunt* would not have talk'd ſo freely before you.

L. C. J. Jones. There was a great Confidence in lodging him in your Houſe, being a Conſtable: no body would ſearch a Conſtable's Houſe. Have you any Witneſſes to call?

Mr. *Fernley.* Mr. *William Ruſh*, Captain *Haddock*, (who were call'd.)

L. C. J. Jones. Did *Burton*'s Wife dine with you and him?

Mr. *Fernley.* Yes, my Lord.

L. C. J. Jones. Where did you dine?

Mr. *Fernley.* In the Chamber, my Lord.

L. C. J. Jones. And was this Diſcourſe concerning *Monmouth*'s being beaten in the *Weſt*, at the time of Dinner?

Mr. *Fernley.* The Diſcourſe of it? Yes, my Lord; what Diſcourſe was, was at Dinner?

Mr. *Juſt.* —— Was *Burton*'s Wife at Dinner, or was ſhe upon the Bed?

Mr. *Fernley.* She din'd at the Table, my Lord. My Lord, ſhe went to ſleep when *Gaunt* came in.

Mr. *Juſt. Levins.* Where did ſhe go to ſleep, in the ſame Room?

Mr. *Fernley.* Yes, my Lord.

L. C. J. Jones. Where do you uſe to dine at other times?

Mr. *Fernley.* In the Kitchen, my Lord. My Lord, when I came from Church, the Dinner was ſent up thither.

L. C. J. Jones. Woman, you are upon your Oath, remember that you are oblig'd by your Oath to confeſs the Truth, let it concern whom it will: The Diſcourſe between your Husband and this Man you could not but be privy to; there was only you three at Dinner, your Husband, you and *Fernley* the Priſoner at the Bar: All this Diſcourſe was at Dinner-time, how is it poſſible that you ſhould not hear it?

Mr. *Juſt. Levins. Fernley* himſelf owns he did diſcourſe with your Husband at Dinner that he came from the Rebels in the *Weſt*.

Mrs. *Burton.* An't pleaſe you, my Lord, I did not hear. As I ſaid before, I muſt ſay again, I did not hear.

Mr. *Juſt. Withins.* Nothing about *Monmouth*?

Mrs. *Burton.* No, not one Word, if I were to die as I ſtand here.

Mr. *Juſt.* —— You were at Dinner?

Mrs. *Burton.* Yes, my Lord.

Mr. *Juſt.* —— And this Diſcourſe was at Dinner-time.

Mrs. *Burton.* I did not hear it.

Mr. *Juſt. Withins.* What would you ask him, Sir?

Mr. *Fernley.* What account he can give of my Life and Converſation, how I have behaved my ſelf, and carried my ſelf.

L. C. J. Jones. What are you, Sir? What is your Quality?

Mr. *Ruſh.* I am a Diſtiller, Sir.

Mr. *Juſt Levins* Where do you dwell?

Mr. *Ruſh.* I did dwell two Years ago in *Wapping*, but not now: I live now at *Waltham-Stow*.

Officer. He is a very great *Whig*.

Mr. *Juſt. Withins.* If he be a *Whig*, he can't be a little one.

L. C. J. Jones. How long have you liv'd at *Waltham Stow*?

Mr. *Ruſh.* Two Years and upwards, Sir.

L. C. J. Jones. That is long before any thing that this Man is charged withal.

Mr. *Ruſh.* I formerly knew the Man, he was a Barber, and us'd to trim me: I always looked upon him to be a good ſober Man.

Mr. *Juſt. Withins.* A *Wapping* Man, a ſober *Wapping*-Man.

Mr. *Ruſh.* I hope there is a great many there.

L. C. J. Jones. That is all you can ſay for him.

Mr. *Ruſh.* I have nothing to ſay to his Fact: He demeaned himſelf always well among his Neighbours; I know nothing of the Fact for which he is here.

Mr. *Att. Gen.* Did you know *Burton*?

Mr. *Ruſh.* Yes Sir.

Mr. *Att. Gen.* What was *Burton*? was he reputed an honeſt Man?

Mr. *Ruſh.* I never knew him otherwiſe; I never was in his Company; I know he dwelt cloſe by where I liv'd.

L. C. J. Jones. And you took him to be a very honeſt Man?

Mr. *Ruſh.* Before this: He has not been ſo lately, it ſeems. He is a Perſon I never had any Company or Converſation with in my Life.

Cryer. Captain *Haddock*.

Officer. He won't come in, my Lord.

L. C. J. Jones. Well, well, let him ſtay there.

Cryer. Mr. *Dove*.

Officer. He won't come in, I can't make him come in.

L. C. J. Jones. Here are none that give any Teſtimony for you, at leaſt will. —— What are you?

Mr. *Whittal.* I dwell in *Wapping*, Sir.

Mr. *Juſt. Levins.* What trade are you?

Mr. *Whittal.* A Plumber.

Mr. *Juſt. Levins.* Who knows you?

Mr. *Whittal.* I am well known there, Sir.

Mr. *Juſt. Levins.* Do you go to Church?

Mr. *Whittal.* Here's Mr. *Tanner* knows me, the Clerk of the Peace.

Mr. *Tanner.* Yes, Sir, I know him.

Mr. *Juſt. Levins.* Do you go to Church?

Mr. *Whittal.* Always went to Church.

Mr. *Juſt. Withins.* There were a parcel of them that went conſtantly to Church *trimmingly*.

L. C. J. Jones. Priſoner, what would you ask him?

Mr. *Fernley.* Only to give an account how I behaved my ſelf.

Mr. *Juſt. Withins.* Well, Sir, what do you ſay?

Mr. *Whittal.* All I know is, he behav'd himſelf very well, and went to Church as other Neighbours did; and I never heard him ſpeak againſt the Government.

Mr. *Juſt. Withins.* Did you know *Burton*?

Mr. *Whittal.* No, Sir; he was gone before I came to live there.

L. C. J. Jones. Have you any more to ſay?

Mr. *Fernley.* This, my Lord, may give ſome account that I had no Deſign againſt the Government. I am a poor Man, my Lord, and upon that account I owe a great deal of Money: I knew there was 100 *l.* for ſecuring *Burton*, there was no gain by concealing him; he was not a Perſon could requite me, that I ſhould harbour him, and loſe 100 *l.* which was certain for taking him; which (my Lord) ſhews I had no Deſign.

L. C. J. Jones. No, this argues you to be a ſtronger Confederate; and that you were ſo firm

to your Party, you would not gain 100 *l.* though you might have it for doing your Duty.

Mr. *Fernley.* My Lord, I look'd upon it as ſure as if I had it in my Pocket. I knew nothing of him till *Sabbath-day* at Noon, and I did not deſign to conceal him afterwards, any farther than to ſerve the King.

L. C. J. Jones. You tell us a Story of your ſelf, it is to no purpoſe to try any Priſoner, if his Saying muſt be taken for Evidence: We will hear what Witneſſes you have to produce, or if you can object to the Evidence that's againſt you.

Mr. *Fernley.* My Lord, I own it to be true, I have declared more than the Witneſſes have ſaid againſt me; but my Lord, I am innocent in it, God knows my Heart, I had no deſign in it. It was but ſix Hours I knew of him.

Mr. *Juſt. Withins.* You lay out of your Bed before.

Mr. *Fernley.* My Lord, not upon his account, I was a Week before out of that Bed, to prepare it for my Wife to lie-in.

L. C. J. Jones. Is your Wife delivered?

Mr. *Fernley.* No.

L. C. J. Jones. You made great haſt.

Mr. *Fernley.* It was my Wife's fault.

L. C. J. Jones. Gentlemen of the Jury, this Priſoner ſtands indicted for harbouring and relieving one *James Burton*, knowing him to have committed Treaſon. Gentlemen, you are to be acquainted, that this *James Burton*, was not only guilty of the late Rebellion in the *Weſt*, but he was likewiſe charg'd by Proceſs with being guilty of the Plot at the *Rye houſe*, and thereupon there was ſuch Proceedings by Law, that he was Outlawed, the Record of which Outlawry hath been produced to you; ſo that if there were no more, if you be perſwaded that he is the Perſon guilty, whether he were in the Rebellion in the *Weſt* or no, that may induce you to find this Indictment, for the Priſoner receiving him after the Rebellion in the *Weſt*, and knowing him to have committed Treaſon, whereupon he was Outlawed, it equally makes him liable to the Offence wherewith he is charg'd. But, Gentlemen, that is not all; you have expreſs Teſtimony from *Burton* himſelf, who it ſeems was acquainted with him, and who had fled from his Neighbourhood, by the ſpace of two Years almoſt, and yet he receives this *Burton* into his Houſe: I will not ſay, at the firſt time that he came into his Houſe, it doth appear by any Evidence, that he knew him to have been in the Rebellion in the *Weſt*, but when he came thither upon *Friday*, he was ſo kind to him as to leave his own Chamber, and to let him have that for his Lodging, although now he gives you another Excuſe plainly frivolous and falſe, that is, a Pretence of making way for his Wife to lie-in, who yet is not delivered. He lies there upon *Saturday* Night, and dines with him upon *Sunday*. *Saturday* perhaps might be a buſy Day, and there is no Teſtimony at all given by any Evidence of any Diſcourſe that was between them upon that Day, but upon *Sunday*, when they dined together, *Burton* ſwears, that he did tell him that he had been in the *Weſt* in the Rebellion there, and he came thither for ſhelter: This Man being acquainted with this, allowed him to dine with him, and harboured him in his Houſe for the ſpace of ſeven or eight Hours more, without bringing him before any Juſtice of Peace, or any Magiſtrate who had Authority to commit him, although he had a particular Authority of his own (as he was Conſtable) for the Conſervation of the Peace, yet he forgets his Oath as well as his Duty and Allegiance, and ſuffers him ſtill to remain there. It is true the Wife of *Burton* dined with them, as *Burton* himſelf ſays, and the Woman confeſſes, but ſhe was ſo buſie at her Victuals, that ſhe can remember nothing, ſhe did not hear that there was any Diſcourſe concerning *Monmouth*. But leſt you ſhould want another Witneſs, for *Burton* is but one Witneſs to that particular, you have him plainly confeſſing it himſelf, which is above a Thouſand Witneſſes, you have him confeſſing that *Burton* did acknowledge he had been in the *Weſt*, and that *Monmouth* was Routed, and yet he continues him in his Houſe, nay more, this Man doth appear to be a Perſon in whom there was that great Confidence, that another Perſon, *Gaunt* came, and he bids him come into his Houſe, and there he diſcourſt of ſome Traytors, and the means of conveying away *Burton*, though he had confeſſed it himſelf. Gentlemen, what he tells you, is, that he did mean to diſcover; when did he intend to diſcover? He did not diſcover to any body, before the Man was apprehended by an Officer: he lets *Gaunt*, who plainly appears to be as arrant a Traytor as could be in the World, to go away meerly upon his own Parole, without taking any courſe to apprehend him. He pretends he is a poor Man, and he might have gain'd 100 *l.* if he had diſcover'd him, and ſurely he would have diſcover'd him, to gain 100 *l.* but this is a ſtrong Argument, that he was deep in the Rebellion himſelf, and one in great Eſteem with them, that being a poor Man, he would not do his Duty, for which he might have had a Reward of 100 *l.* but ſuffers him to eſcape. This is the Caſe, Gentlemen, that is before you, if you believe he did knowingly, as he himſelf upon the matter doth confeſs, give any comfort or relief to *Burton*, knowing him to be a Rebel, you ought to find him guilty.

Then the Jury withdrew to conſider the Evidence.

Clerk. Set *Elizabeth Gaunt* to the Bar, (which was done.) *Elizabeth Gaunt*, hold up thy Hand, (which ſhe did.)

'THOU ſtandeſt indicted by the Name of '*Elizabeth Gaunt*, Wife of *William Gaunt*, 'of the Pariſh of St. *Mary White-Chappel*, in the 'County of *Middleſex* Yeoman: As a falſe Traytor 'againſt our late Serene Lord *Charles* the Second, 'by the Grace of God her then natural Lord; 'not having the fear of God in her Heart, nor 'weighing the Duty of her Allegiance, but 'moved and ſeduced by the Inſtigation of the 'Devil, and the true and natural Obedience 'which a true and faithful Subject of our ſaid 'Sovereign Lord the King towards our ſaid late 'Lord the King of right ought to bear withdrawing, and with all her Strength intending the 'Peace and common Tranquillity of this Kingdom of *England* to diſquiet, moleſt and diſturb, 'and War and Rebellion againſt our ſaid late Sovereign Lord the King, within this Kingdom 'of *England* to ſtir up and move, and the Government of our ſaid late Sovereign Lord the King 'in this his Kingdom of *England* to ſubvert, and 'our ſaid late Sovereign Lord the King from 'the Title, Honour, and Kingly Name of the 'Crown Imperial of this Kingdom of *England*

' to depoſe and deprive, and our ſaid late Sove-
' reign Lord the King to Death, and final De-
' ſtruction to bring and put. The 24th Day of
' *September*, in the 36th Year of the Reign of
' our ſaid late Sovereign Lord *Charles* the Second,
' and divers other Days and Times as well before
' as after, within the Pariſh, *&c.* Falſly, mali-
' ciouſly, deviliſhly and traiterouſly with divers
' Rebels and Traitors, to the Jurors unknown,
' ſhe did conſpire, imagine, and intend our ſaid
' late Sovereign Lord the King, her then ſupream
' and natural Lord, not only from his Kingly
' State, Title, Power and Government of this
' Kingdom of *England* to deprive and throw
' down, but alſo our ſaid late Sovereign Lord the
' King to kill and put to Death, and the ancient
' Government of this Kingdom of *England* to
' alter and wholly ſubvert, and a miſerable
' ſlaughter amongſt the Subjects of our ſaid late
' Sovereign Lord the King throughout this King-
' dom of *England* to cauſe and procure, and In-
' ſurrection and Rebellion againſt our ſaid late
' Sovereign Lord the King to procure and aſſiſt.
' And the ſaid moſt wicked and deviliſh Treaſons
' and traiterous Compaſſings, Imaginations, and
' Purpoſes aforeſaid, to fulfil, perfect, and bring
' to paſs, the ſaid *Elizabeth Gaunt*, as a falſe Tray-
' tor, then and there, to wit, the ſaid 24th Day
' of *September*, in the Year aforeſaid, at the Pa-
' riſh and Ward aforeſaid, well knowing one
' *James Burton* to be a falſe Traytor, and as a
' falſe Traytor traiterouſly to have compaſſed
' and imagined the Death and Deſtruction of our
' ſaid late Sovereign Lord the King, and War and
' Rebellion againſt our ſaid late Sovereign Lord
' the King within this Kingdom of *England*, to-
' gether with other Traytors (to the Jurors un-
' known) to have intended to be raiſed; ſhe the
' ſaid *Elizabeth Gaunt* afterwards, to wit, the ſaid
' 24th Day of *September*, in the Year aforeſaid,
' within the City of *London* aforeſaid, the ſaid *James*
' *Burton*, in a certain Houſe of a Perſon to the Ju-
' rors unknown, knowingly, ſecretly, wickedly,
' deviliſhly and traiterouſly, did entertain, conceal,
' comfort, ſuſtain, and maintain, and then and
' there, for the comforting, ſuſtenance, and
' maintenance of him the ſaid *James Burton*,
' Meat Drink, and 5 *l.* in Money for the Main-
' tenance and Suſtenance of him the ſaid *James*
' *Burton*, unto the ſaid *James Burton*, maliciouſly,
' and traiterouſly, ſhe did give and deliver, and
' cauſe to be given and delivered, againſt the
' Duty of her Allegiance, and againſt the
' Peace, *&c.* and againſt the Form of the Sta-
' tute, *&c.*'

Clerk. How ſayeſt thou, art thou guilty or not guilty?

Mrs. *Gaunt.* I deſire to have more time to conſider of it.

L. C. J. Jones. You know whether you be guilty of this Offence; what need you have any time of Conſideration for that?

Mrs. *Gaunt.* I don't know, Sir; I am ignorant in the Law, and in things of that nature.

L. C. J. Jones. But this is not matter of Law; it is, whether you did receive theſe Traytors or no knowingly; this *James Burton*, knowing him to have committed Treaſon: Can't you tell whether you did or no?

Mrs. *Gaunt.* Not guilty.

Clerk. How wilt thou be try'd?

Mrs. *Gaunt.* By God and my Country?

Clerk. God ſend thee a good Deliverance.

Then the Middleſex *Jury returning, Mrs.* Gaunt *was ſet aſide, and* Ring *and* Fernley *brought to the Bar, who were both brought in guilty by the Jury.*

Clerk. Set *Henry Corniſh* to the Bar, and *Elizabeth Gaunt*, (which was done.) — You the Priſoners at the Bar, theſe Men that have been now called, and here appear, are to paſs between our Sovereign Lord the King and you, upon your ſeveral Lives or Deaths: If you challenge any of them you muſt ſpeak as they come to the Book to be ſworn, before they are ſworn.

Mr. *Corniſh.* My Lord, I muſt humbly beg leave of your Lordſhip and this honourable Court, that I may renew my Requeſt. The time of notice given me for my Tryal being ſo ſhort, it hath no Precedent, I think: I humbly pray your Lordſhip I may have time allowed for my Tryal; I have had no Council, no Pannel, no help in the World; I had not Pen, Ink, nor Paper, my Lord, theſe are very hard things. My Lord, His Majeſty was petitioned laſt Night by my Children, and he was graciouſly pleas'd to ſay, that he would refer it to my Lords the Judges. I only pray your Lordſhips, that you would be pleaſed to allow me time: Though here is a grievous Indictment brought againſt me, yet I doubt not but to clear my ſelf of what is alledged againſt me, if I have but time to prepare my ſelf for it: therefore I humbly pray I may have time allotted.

L. C. J. Jones. You told us ſo before, that you had exhibited a Petition to the King and that the King did refer it to the Judges, you ſhew us nothing of that

Mr. *Corniſh.* My Lord, I can but only ſignifie to your Lordſhip what I hear; my Children were with me, and told me they had petitioned the King, and his Majeſty was pleaſed graciouſly to receive it.

Mr *Att. Gen.* The King left you to the courſe of the Law.

Mr. *Corniſh.* It is very hard meaſure; I have no preparation at all, no more than at the firſt moment; but I bleſs God I hope I ſhall in time ſatisfie you of my Innocency.

L. C. J. Jones. You were apprehended and ſeized upon *Tueſday* laſt, this is almoſt a week; you knew what you were charged withal.

Mr. *Corniſh.* My Lord, I did not know what I was charged withal. I had no liberty of Friends to come to me; my Wife at length obtained leave, but it was in the preſence of Major *Richardſon*; I had no Friend with my Wife, no Pen, Ink, nor Paper.

L. C. J. Jones. Was Pen, Ink, and Paper deny'd you? did you ask it?

Mr. *Att. Gen.* As ſoon as he petition'd for it he had it.

Capt. *Richardſon.* He had Pen, Ink, and Paper.

L. C. J. Jones. When was that?

Capt. *Richardſon.* On *Saturday.*

Mr. *Corniſh.* My Lord, it was eight a clock at night.

Mr. *Juſt. Levins.* Mr. *Corniſh*, I would not have you think you are uſed otherwiſe than other men are; for I muſt tell you it is not uſual to have Pen, Ink, and Paper, without leave.

Mr. *Corniſh.* I know it hath been allowed in the like caſe.

Mr. *Juſt. Withins.* Ay, upon petition, never elſe.

Mr. *Juſt. Levins.* There are many men, and of as good quality as you, tried for killing men: does

does any body give them notice? Is there any more neceſſity of notice in point of Treaſon, than in point of Murther?

Mr. *Juſt. Withins.* I told you what your offence was, when you were committed.

Mr. *Corniſh.* My Lord, I remember in my Lord *Ruſſel*'s Caſe he had at leaſt ſeven or eight days allowed him.

Mr *Juſt. Levins.* It may be ſo; but it is not neceſſary. Priſoners that are tried here generally have no notice at all; if one man hath a ſingular favour, another man cannot claim it.

Mr. *Corniſh.* My Lord, I have a material Witneſs above 140 miles off.

L. C. J. Jones. My Lord's Trial, I think, was put off but till the afternoon.

Mr *Corniſh.* With ſubmiſſion to your Lordſhip, I think he had eight days aſſign'd him. But my Lord, I humbly conceive I have a Witneſs that is very material in my Caſe, that is 140 miles out of Town, in *Lancaſhire*; I humbly pray I may have time allotted me to ſend for him.

L. C. J. Jones. Why did not you ſet forth that in your Petition to the King?

Mr. *Corniſh.* My Lord, I did not underſtand the caſe.

L. C. J. Jones. Were not you committed for High-Treaſon?

Mr. *Juſt. Withins.* I told you ſo my ſelf: I ſhew'd you the Commitment; therefore you can't pretend you were ignorant of it.

Mr. *Corniſh.* My Lord, it did not mention this King or the laſt: And I am not a Lawyer, I am not skill'd in theſe things; I am very ignorant, and hope your Lordſhip will conſider me; my Innocence will appear as bright as any mans that ever ſtood at this Bar.

L. C. J. Jones. I don't believe you want that Evidence 140 miles off. Is he the only man that can make your Innocence appear?

Mr. *Corniſh.* My Lord, by what I apprehend he will be the moſt material Witneſs I have. My Lord, I ſhall deſire nothing but with ſubmiſſion to your Lordſhip and the Bench; but I humbly conceive it is very reaſonable I ſhould have time, I humbly pray your Lordſhip to conſider it.

L. C. J. Jones. Mr. Attorney, have you any directions?

Mr. *Att. Gen.* No, my Lord.

Mr. *Corniſh.* I do not doubt, if I might have a little time, to make my defence.

Mr. *Juſt. Withins.* You ſhould have applied your ſelf to the King, it does not lie in our power.

Mr. *Corniſh.* My Lord, I humbly pray you to conſider my caſe.

Mr. *Juſt. Withins.* Mr. *Bridgman* here on the Bench ſays, there was a Petition before the King for putting it off, and the King abſolutely refus'd it.

Mr. *Juſt. Levins.* We have nothing to do, Sir; we are here by Commiſſion to try you.

Mr. *Corniſh.* My Lord, I have been denied a copy of the Pannel, I hope that is reaſonable; I muſt deſire a copy of the Pannel.

Mr. *Att. Gen.* That is none of your right, Mr. *Corniſh.*

Mr. *Corniſh.* Mr. Attorney, with ſubmiſſion, I hope I ought to have it.

Mr. *Att. Gen.* No, you ought not to have it; You have your peremptory challenges, you may challenge 35 without cauſe.

L. C. J. Jones. You ſhall have a copy of the Pannel here.

Mr. *Att. Gen.* Yes, here he may.

Mr. *Corniſh.* It is a very hard caſe, when I have a material Witneſs ſo far out of Town, that I can't have a little time allotted.

L. C. J. Jones. Can't every man that comes here to be tried ſay the very ſame thing, that he hath a material Witneſs in *France*, *Spain*, or any where elſe, and that when that Witneſs comes his Innocence will be as clear as the Sun?

Mr. *Corniſh.* My Lord, my Witneſs is in *Lancaſhire*, I cannot help it; I beſeech your Lordſhip to conſider me: I apt to believe that he would ſo much vindicate my Reputation in this matter, that it would be a very great ſatisfaction to your Lordſhips; and I am ſure you are not for oppreſſing any man.

L. C. J. Jones. No, Sir, that we are not.

Mr. *Corniſh.* I am ſure you are for the juſt vindication of the Government, for executing of Juſtice, and I will deſire no other than that.

L. C. J. Jones. Mr. Attorney, if you pray he may be tried, we can't deny it.

Mr. *Att. Gen.* Mr. *Corniſh*, I cannot defer it, I have no authority; and why you ſhould be in another condition than other Priſoners, I don't know; you have not deſerved ſo well of the Government.

Mr. *Corniſh.* I have not the names of the Wards where theſe men live, and their Trades.

Mr. *North.* He hath a copy of the Pannel, and that is ſufficient.

L. C. J. Jones. You may ask them where they live.

Mr. *Corniſh.* I hope I may have Pen and Ink, my Lord.

L. C. J. Jones. Ay, ay.

Then the Jury were called, and after Mr. Corniſh *had challenged* 35 *of them, the Jury ſworn were as followeth:*

Thomas Rawlinſon	*William Clowdſly.*
Thomas Langham.	*Richard Holford.*
Ambroſe Iſtead.	*William Longboat.*
Thomas Pendleton.	*Steven Coleman.*
John Grice.	*Robert Clavel.*
Thomas Oneby.	*William Long.*

Proclamation being made, *If any one can inform*, &c. Mr. *Corniſh* was ſet aſide, and *Elizabeth Gaunt* at the Bar.

Clerk. Elizabeth Gaunt, hold up thy hand. (which ſhe did.) ——You of the Jury, look upon the Priſoner, and hearken to her Cauſe: She ſtands indicted by the name of, *&c. (as before in the Indictment.)* Upon this Indictment ſhe hath been arraigned, and thereunto pleaded not guilty, and for her Trial hath put her ſelf upon her Country, which Country you are. Your Charge is, to enquire whether ſhe be guilty of this High-Treaſon whereof ſhe ſtands indicted, or not guilty. If you find her guilty, *&c*

Mr. *Phipps.* May it pleaſe your Lordſhip, and you Gentlemen that are ſworn, *Elizabeth Gaunt* the Priſoner at the Bar ſtands indicted, for that ſhe knowing *James Burton*, together with other Traitors traiterouſly to have conſpired the death of the late King, and to raiſe Rebellion in this Kingdom, did harbour the ſaid *James Burton*, and gave him five Pounds in Money.

Mr. *Att. Gen.* May it pleaſe your Lordſhip, and you Gentlemen that are ſworn, the Priſoner ſtands indicted for harbouring of *Burton*, who was

a great Traitor, and for procuring a way for his eſcape beyond-ſea, and alſo for giving him 5*l.* to bear his charges. In the former Trial you had an account of her Husband, and in this you will hear ſhe and her Husband were the great Brokers for carrying over ſuch Traitors, as my Lord *Shaftsbury* and others; theſe have taken care to convey them over at all times. We will produce our Witneſſes. Call *Burton* and his Wife.

Mr. *Burton* ſworn.

Mr. *Att. Gen.* Do you know Mrs. *Gaunt*?

Mr. *Burton.* Yes, Sir.

Mr. *Att. Gen.* Pray give my Lord and the Jury an account how ſhe harbour'd you, and all the paſſages that paſt between you and Mrs. *Gaunt*. Pray tell firſt whether you were engag'd in the matter of the *Rye*?

Mr. *Burton.* How I came concerned I will tell you, if it pleaſe you.

Mr. *Att. Gen.* Speak.

Mr. *Burton.* The firſt time I knew any thing of it, Mr. *Keeling* came to me one *Saturday* morning, and asked me if I was to go to *London*: I ſaid, Yes, I was to go to the *Exchange*; and he deſir'd me to meet him at the *Miter Tavern* within *Aldgate*, and ask for *Number Five*. I came at the time, and no body being there, I was going away, and met with a Countrey-man with a ſtick in his hand, that had but one Eye; he came and ask'd for the ſame Number: So the Gentleman ſent his Boy after me, and told me one ſtay'd for me: When I came, he ask'd me if I ask'd for *Number Five*; and I ſaid, Yes. *By whoſe appointment?* By *Joſiah Keeling*'s, ſaid I. So he ask'd the man of the houſe to ſhew a Room: He ſhew'd a Box, but he would have a Room, and went up ſtairs, and call'd for Pipes and a Candle, and a pint of Wine. In a little while *Keeling* came in, and brought *Barber* and *Thompſon*, and no body ſpake almoſt any thing but *Rumbold*, (that was *Rumbold* with one eye, for *Keeling* when he came in call'd him Capt. *Rumbold*) and *Rumbold* talk'd about Priviledges and ſuch things at firſt and he ſaid his houſe was a convenient houſe, and there they might do the buſineſs: but before they had done, I found they deſign'd to kill the King, but nothing troubled him but killing the Poſtillion, *to kill a man in cold blood.* But then ſays we, *If you are for killing, we have done*, and ſo broke up; that was the end of that. A while after Mr. *Keeling* went in, and made a Diſcovery: I never came among them afterwards. So after Mr *Keeling* had diſcovered, I was in the Proclamation for being there at that meeting, and abſconded my ſelf, and lay hid. A matter of two months after, Mrs. *Gaunt* came to enquire of my Wife where I was, to ſpeak with me; ſhe brought her to me. She told me there were ſome perſons about to make an eſcape, and would have me go along with them. I told her with all my heart: So I ask'd her which way and how they intended to go: She told me they had provided Horſes to ride down to *Rochford*-Hundred, and there was a Veſſel to carry them over; and, ſays ſhe, *be ready by ſuch an evening, and I will call for you.* Accordingly ſhe did and had me into *Biſhopſgate-ſtreet*, and in *Half-moon Alley* in a little Brew-houſe, up ſtairs in a Chamber, there were both the *Rumbolds*, one of them did not go, and the other and I lay there all night, and in the morning a man came and called us away, and we went to *White-Chappel* to take Horſe, to ride down to *Rochford*-Hundred, and ſtaid for the Veſſel two days; and when we met the Veſſel, it was a ſmall Veſſel, and bad weather, and the Maſter of the Veſſel had but one hand, and two Boys, one a very little one; and we went down the Creek, and I asked the man where he did intend to land us; and he told us at *Oſtend*. ſaid I, I underſtood we were to go for *Holland* to the *Brill*. Says he, My Veſſel is only able to go to *Oſtend* or *Dunkirk*, either of them. Says *Rumbold*, I don't underſtand the Sea. Says I, This is a very ſmall Veſſel, and leaky, and the man not able to manage it. Says I, I will go back again to *London*. Says he, I will do as you do; and we both parted at *London*, and I never ſaw him afterwards till I ſaw him at *Amſterdam* I lay by a great many months after; then Mrs *Gaunt* came to me again, and told me there was two other perſons going and I might have a paſſage if I would go: So ſhe bid me be ready by ſuch an evening, and I was ready, and a Boat being ready at the water ſide, carried me to *Graveſend*, where I went in a Veſſel to *Amſterdam*.

Mr. *Att. Gen.* Where were you?

Mr. *Burton.* I was with my Wife at my Daughters: I had a Daughter married, her Husband was drown'd.

Mr. *Att. Gen.* How came Mrs. *Gaunt* to take ſo much care of you? give the Court an account.

Mr. *Burton.* She might think I knew ſomething of her Husband if I ſhould be taken; I ſuppoſe that might be the chief thing.

Mr. *Att. Gen.* What had her Husband done?

Mr. *Burton.* Her Husband, I ſuppoſe, knew ſomething of the buſineſs.

Mr. *Att. Gen.* What buſineſs?

Mr. *Burton.* About ſeizing the *Tower*: He came to me, and would have had me gone with him with Capt. *Walcot* to the *Tower*, to ſee what force there was of Soldiers; and Capt. *Walcot* ſaid he had a deſign to take an houſe over againſt the *Tower*, to put in ſome men there to break in upon the *Tower*, and *Gaunt* was with him.

L. C. J. Jones. What diſcourſe had you with her about the Plot?

Mr. *Burton.* Nothing with her.

Mr. *Att. Gen.* What was it ſhe would help you away for?

Mr. *Burton.* I ſuppoſe this was the reaſon, becauſe ſhe knew I knew her Husband was concern'd.

Mr. *North.* Did ſhe aſſiſt you with any money?

Mr. *Burton.* Yes.

Mr. *North.* How much?

Mr. *Burton.* She gave me a parcel of money juſt as I was going away; I put it among other money.

Mr. *North.* How much? 30 or 40 *s.*?

Mr. *Burton* More than that.

Mr. *Sol. Gen.* Were you gone from your own houſe when this woman came to you?

Mr. *Burton.* My own houſe was broke up a great while before.

Mr. *Sol. Gen.* Did you appear publickly when ſhe came to you?

Mr. *Burton.* No an't pleaſe you.

L. C. J. Jones. Had there been any ſearch for you before?

Mr. *Burton.* Yes.

Mr. *North.* You were in the Proclamation at this time?

Mr. *Burton.*

Mr *Burton*. Yes an't pleaſe you, Sir.

Mr. *Att. Gen.* Did ſhe carry you to *Rumbold*?

Mr. *Burton*. Yes.

Mr. *Att Gen.* Was there any diſcourſe between *Rumbold* and her?

Mr. *Burton*. No. There was an elderly man in the houſe, I did not know him, carried me up to *Rumbold*, there was both of them.

Mr. *Att. Gen.* What money had you of her?

Mr. *Burton*. I believe about 5*l*. I told her I had lain a great while, and money was very bare with me; and ſhe told me ſhe would get me a little.

Mr. *Att Gen.* Did ſhe know what you were conceal'd for?

Mr. *Burton*. Every body knew that, becauſe I was in the Proclamation.

Mr. *North*. What directions did ſhe give you how you ſhould behave your ſelf when ſhe went with you to *Biſhopſgate-ſtreet*? how did ſhe ſay you muſt carry your ſelf?

Mr. *Burton*. Nothing there, ſhe gave no order about that.

L. C. J. Jones. Did ſhe tell you you were concern'd in the Plot with her Husband?

Mr. *Burton*. She did not tell me ſo, Sir.

L. C. J. Jones. Did you tell her you were concern'd in the Plot with her Husband?

Mr. *Burton*. I did not tell her ſo.

Mr. *Att. Gen.* Who were the two Men that were prepared to go with you that time?

Mr. *Burton*. One *Patchil*.

Mr. *Att. Gen.* He was kill'd in the Fight. Was *Patchil* in the Fight?

Mr. *Burton*. Yes, an't pleaſe you, he was killed.

Mr. *Att. Gen.* And who was the other?

Mr. *Burton*. T'other was a Man liv'd in *Southwark*; I never ſaw him before.

Mr. *Com. Serj.* What Directions did ſhe give you about your own Name, or any others when you went in the Boat?

Mr. *Burton*. If I knew any body, that I ſhould not take notice I knew them.

L. C. J. Jones. You were not to take any Acquaintance of any body in the Boat?

Mr. *Juſt. Withins*. Heark you, Sir, you looked upon all thoſe to be engaged in the Plot. All that ſhe endeavour'd to ſave were of the ſame level?

Mr. *Burton*. *Rumbold* was; *Rumbold* was in the Proclamation.

L C. J. Jones. Did ſhe tell you, that you were in the Proclamation?

Mr. *Burton*. No, an't pleaſe your Lordſhip, ſhe did not tell me ſo.

Mr. *North*. Did ſhe never diſcourſe of your being in the Proclamation?

Mr. *Burton*. No, not as I remember; it was a general thing.

Mr. *Juſt. Withins*. But why ſhould ſhe come to you to tranſport you, if it were not for ſuch a thing?

Mr. *Burton*. Her Husband was with me about going to the *Tower*.

Mr. *Att. Gen. Burton*, pray thus, when you came from the *Weſt*, what Overtures were to help you here from her or her Husband?

Mr. *Burton*. Her Husband was with me at *Fernley*'s Houſe, and he told me there were two or three Perſons to go in two or three Days, and I ſhould go along with them.

Mr. *Att. Gen.* You named your Daughter, what is her Name?

Mr. *Burton*. *Mary Gilbert*.

Then Mary Gilbert *was called and ſworn.*

Mr. *Att. Gen.* Do you know Mrs. *Gaunt*?

Mary Gilbert. Yes, Sir, I know her; ſhe was our Neighbour.

Mr. *Att. Gen.* Then give an account of her coming to you about your Father.

Mary Gilbert. She came to our Houſe that Night my Father went away. I never heard a Word of the Diſcourſe that paſt, for I always went out of the way.

Mr. *Juſt. Withins*. Why did you go out of the way?

Mary Gilbert. Becauſe they were not willing I ſhould hear the Diſcourſe.

Mr. *Com. Serj.* You are upon your Oath, Miſtreſs, you muſt tell the Truth.

Mary Gilbert. I do, Sir, I will tell no more.

Mr *Sol Gen.* Did you ſee your Father go away? Who did he go with, in what Company?

Mary Gilbert. I can't tell.

Mr. *Att. Gen.* Did Mrs. *Gaunt* go with him?

Mary Gilbert. I met my Father and Mrs. *Gaunt* in *Houndſditch*, my Mother and I were to meet them in *Biſhopſgate-ſtreet*.

Mr. *Com. Serj.* Well, what was the reaſon why you did not meet?

Mary Gilbert. We were to meet at ſeven a Clock, and we went to the Houſe, and they were not come; and we were coming home, and met them in *Houndſditch*, and my Father had Mrs. *Gaunt* under the Arm, and went back to a Houſe without *Biſhopſgate*.

Mr. *Sol. Gen.* Did Mrs. *Gaunt* carry him thither?

L. C. J. Jones. Do you know why your Father was to go away?

Mary Gilbert. He went upon the account of the Proclamation.

L. C. J. Jones. Then you knew of the Proclamation?

Mary Gilbert. Yes, Sir, I knew of the Proclamation.

Mr. *Com. Serj.* Whoſe Acquaintance was the Man in *Biſhopſgate-ſtreet*?

Mary Gilbert. He was none of mine.

Council. When your Father went up Stairs into a Room, did you ſee any body with him?

Mary Gilbert. Yes, Sir, it was a Man that had but one Eye, a full ſet Man, full of Pock holes; but I never ſaw him before nor after.

Council. How came you to ſee him?

Mary Gilbert. By going up Stairs to ſee my Father.

Mary Burton ſworn.

Mr. *Att. Gen.* Do you know Mrs. *Gaunt* there?

Mrs. *Burton*. Yes, Sir.

Mr. *Att. Gen.* Pray will you tell the Court, how ſhe came to enquire after your Husband?

Mrs. *Burton*. Yes Sir, at my Daughter's Houſe.

Mr. *Att. Gen.* What Diſcourſe happened between you?

Mrs. *Burton*. No Diſcourſe, but ſhe ſaid if I was willing, my Husband ſhould go away, and ſhe would take care.

Mr. *Att. Gen.* But why ſhould he go away?

Mrs. *Burton*. I don't know why, but only upon the Proclamation.

Council. Woman, did ſhe take notice your Husband was gone from home, and had left his Houſe?

Mrs.

Mrs. *Burton.* I knew my ſelf, my Lord.

Mr. *Juſt. Levins.* Where did you go?

Mrs. *Burton.* My Husband went out of Doors by his own ſelf, by Appointment, and we were to meet, my Child and I together, without *Biſhopſgate* by the *Catherine-wheel.*

Mr. *Com. Serj.* Who made that Appointment?

Mrs. *Burton.* Mrs. *Gaunt.*

Mr. *Com. Serj.* Upon what account did ſhe come to you to ſecure your Husband?

Mrs. *Burton.* Upon the account he was in the Proclamation, and I thought within my ſelf, for fear my Husband ſhould know any thing againſt her Husband; but I never ſaid ſo, for I was glad my Husband ſhould be helped away, willing to ſave his Life, for I knew it was Death.

Mr. *Juſt. Levins.* And you took that to be the meaning of it in reference to the Proclamation.

Mr. *Att. Gen.* How far did you live from her?

Mrs. *Burton.* Formerly we dwelt pretty near one another, when Mr. *Gaunt* kept a Tallow Chandlers Shop.

L. C. J. Jones Woman, do you verily believe ſhe knew your Husband was in the Proclamation?

Mr. *Juſt.* —— Did you never ſee the Priſoner at the Bar at any time in *Holland?*

Mrs. *Burton.* No.

Mr. *Att. Gen.* Nor her Husband?

Mr. *Burton.* Nor her Husband.

Mr. *Att. Gen.* I ask you at this time when your Husband went away, and his Houſe was ſearch'd, how far did ſhe live from you then?

Mrs. *Burton.* She had but Lodgings, I don't know where her Dwelling-houſe was.

Mr. *Att. Gen.* Where were her Lodgings?

Mrs. *Burton.* At the upper end of *Old Gravel-Lane,* and my Daughter in the middle of *Gravel-Lane,* in *Worſter-ſtreet,* as far as it may be to *Newgate,* thereabouts.

Mr. *Att. Gen.* Was it taken notice of all over the Street that the Houſe was ſearched and your Husband gone? Was that taken notice of in the Neighbourhood?

Mrs. *Burton* Yes, yes.

Council. Between the time your Husband went firſt away, and the time ſhe came to take care of him, had you no Diſcourſe about the reaſon of his going away, nor of the Proclamation?

Mrs. *Burton.* No.

L. C. J. Jones. What ſay you Woman, to this Evidence, ſeveral Witneſſes ſay you were very buſie in contriving the eſcape of *Burton,* what was the reaſon why you would ſend him away?

Mrs. *Gaunt.* I did not contrive to ſend him away.

L. C. J. Jones. The Woman ſays ſo, *Burton* ſays ſo, the Daughter ſays the ſame.

Mrs. *Gaunt.* Where Sir?

L. C. J. Jones. At *Biſhopſgate* or *Houndſditch.*

Mrs. *Gaunt.* I deny it.

L. C. J. Jones. And you gave him Money afterwards.

Mrs. *Gaunt.* Who ſaw me give it him?

L. C. J. Jones. He ſwears it.

Mrs. *Gaunt.* He was the more beholden to me.

L. C. J. Jones. Did you or did you not?

Captain *Richardſon.* She ſays ſhe is not come here to tell your Lordſhip what ſhe did.

L. C. J. Jones. Woman, did not you hear that *Burton's* Name was in the Proclamation about *Rumbold's* Plot?

Mrs. *Gaunt.* It is like I might.

L. C. J. Jones. You might hear it.

Mrs. *Gaunt.* Yes.

L. C. J. Jones. And yet you would by all means help him to eſcape?

Mrs. *Gaunt.* I can ſay nothing againſt it, if they ſwear it.

L. C. J. Jones. Do you know what you are charg'd withal? You are accuſed for relieving and comforting *Burton,* whom you knew to have committed Treaſon.

Mrs. *Gaunt.* My Lord, he ſays ſo.

L. C. J. Jones. And for helping him to eſcape, and giving him Money in order to it.

Mrs. *Gaunt.* He ſays ſo.

L. C. J. Jones. He ſwears ſo; what do you ſay?

Mrs. *Gaunt.* Is that ſufficient?

Mr. *Juſt.* —— Ay, and another ſwears it, that is ſufficient.

Mrs. *Gaunt.* I have not heard any body elſe ſwear it.

Mr. *Juſtice* ——— Yes, his Wife.

Mrs. *Gaunt.* Not about the Money.

Mr. *Juſtice* ——— You came and ſollicited him to go ſeveral times.

Mrs. *Gaunt.* It is very untrue, my Lord.

L. C. J. Jones. Did you know his Houſe had been ſearch'd to find him?

Mrs. *Gaunt.* I did not know it a great while, ſince I might know.

Here Burton's *Pardon was produced again.*

Mr. *Juſt. Withins.* It is a Pardon for *Burton,* now he is a good Witneſs, Gentlemen.

L. C. J. Jones. Have you any more, Woman, to ſay for your ſelf? if you can, tell us any other Cauſe than that he was guilty of Treaſon wherein your Husband was concern'd.

Mrs. *Gaunt.* No, I deny that, that I knew my Husband was concern'd in any thing of that kind.

L. C. J. Jones. Wherefore then would you take ſo much care to ſend him away?

Mrs. *Gaunt.* I don't tell you, my Lord.

L. C. J. Jones. You don't tell us, but the Witneſſes have ſworn it.

Mrs. *Gaunt.* I muſt leave it to them.

L C. J. Jones. Gentlemen of the Jury, this Woman ſtands indicted for High Treaſon for concealing, comforting and relieving one *James Burton,* a Perſon that had committed High Treaſon; and for endeavouring that he might make his eſcape, and giving him 5 *l.* in Money. Gentlemen, the Evidence that is given, is by *Burton,* his Wife and his Daughter. *Burton* ſays that this Woman was very ſolicitous ſeveral times to help to ſend him beyond Sea. He does tell you, that when there was a Plot againſt the Life of the King, wherein *Rumbold* was concern'd, and one of the chief Actors, that he himſelf was preſent at one of the Conſultations concerning it, and that afterwards he did withdraw himſelf from the Company, as he ſays; but he ſays, that this Woman's Husband being likewiſe concern'd in the Plot, and this Woman, as he believes, knowing that he was able to make ſome Diſcovery concerning her Husband, and knowing alſo his danger in reſpect of his own guilt, ſhe endeavours to ſend him away firſt to *Rochford,* and ſo to go beyond Sea. And afterwards in another place in *Houndſditch,* and from thence he was to be conveyed beyond Sea. It is true, there is no direct Proof that there was any particular mention that *Burton* was in the Proclamation for that Treaſon, but the Woman ſays, and *Burton* him-

ſelf ſays, that they do both verily believe, that the Priſoner at the Bar did know he was in the Proclamation, and therefore there was no particular Diſcourſe concerning it; and ſhe her ſelf being examined, ſays, ſhe might hear that his Name was in the Proclamation, and ſhe might hear that his Houſe was ſearched, and that he could not be found; and yet notwithſtanding all this, ſhe endeavours to conceal him. What can be the meaning of all this in this Woman, but that ſhe was very zealous to maintain the Conſpiracy, and was a great Aſſiſtant to all Perſons that were concern'd in it? She will not tell you any other Cauſe wherefore ſhe ſhould be concerned to convey this Man beyond Sea, and therefore in all reaſon you ought to conceive it was for this; it was a known Cauſe, made known to all People by the King's Proclamation. If you believe ſhe did know or believe *Burton* to have been guilty of that Treaſon, and that ſhe did help to convey him away, as the Witneſſes have proved that ſhe did, by giving him Money, and ſoliciting him ſeveral times to be gone, then you ought to find her guilty.

Then the Jury deſiring to ask a Queſtion, Burton *was called again, but being gone out of Court, was ſent for, and Mr.* Corniſh *was ſet to the Bar.*

Clerk. Henry Corniſh, Hold up thy Hand; you of the Jury, look upon the Priſoner and hearken to his Cauſe; he ſtands indicted by the Name of *Henry Corniſh,* late of the Pariſh of St. *Michael Baſſiſhaw,* in the Ward of *Baſſiſhaw, London,* Merchant, *&c.* as before in the Indictment. Upon this Indictment he hath been arraign'd, and thereunto pleaded Not Guilty, *&c.*

Mr. *Phipps.* May it pleaſe your Lordſhip, and you Gentlemen that are ſworn, *Henry Corniſh,* the Priſoner at the Bar, ſtands indicted, for that he knowing that the late Duke of *Monmouth, William Ruſſel,* Eſq; the late Lord *Gray,* and other Traytors, had conſpired the Death of the late King, and to raiſe Rebellion in this Kingdom, did promiſe to aid and aſſiſt them in compaſſing this wicked Imagination, againſt the Duty of his Allegiance, *&c.* to this he hath pleaded not guilty, *&c.*

Mr. *Corniſh.* I am innocent of the whole matter.

Officer. Burton is come.

L. C. J. Jones. Let us make an end of that firſt. In the Evidence that you give againſt *Elizabeth Gaunt,* you ſaid that you did receive Money from her, 5 *l.* or ſome ſuch Sum.

Mr. *Burton.* Yes, an't pleaſe your Lordſhip.

L. C. J. Jones. Did ſhe owe you any Money?

Mr. *Burton.* No, my Lord.

L. C. J. Jones. Upon what accompt was it you receiv'd that Money?

Mr. *Burton.* She gave it me.

L. C. J. Jones. Upon what accompt was it? To aſſiſt you in your eſcape?

Mr. *Burton.* She knew I was bare of Money, and gave it me of her free Will.

L. C. J. Jones. And it was at that time you went away?

Mr. *Burton.* Yes.

Mr. *Juſt. Withins.* It was to aſſiſt you in your eſcape?

Mr. *Burton.* Yes, I believe ſo.

Mr. *Com. Serj.* Who paid your Boat-hire?

Mr. *Burton.* I paid none, I don't know, the Waterman can tell.

Mr. *Att. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, Mr. *Corniſh,* the Priſoner at the Bar, ſtands indicted for contriving the Death of the late King, and for raiſing Rebellion in the Kingdom, and is charged that he did conſent to be aſſiſting to that Rebellion that was then deſigned; it is not unknown to you, Gentlemen, for there have been ſeveral Tryals of that Conſpiracy, that there was a great Rebellion deſign'd in *England* by the late Duke of *Monmouth,* the Lord *Ruſſel,* and Sir *Thomas Armſtrong*; and particularly Gentlemen, there was a Meeting (which already hath appeared in publick) at Mr. *Sheppard's* Houſe, where the Lord *Ruſſel,* the late Duke of *Monmouth,* Sir *Thomas Armſtrong,* Mr. *Rumſey,* and the late Lord *Gray,* met to conſider and adjuſt matters. At that Meeting Mr. *Corniſh* indeed came in very late (for he was invited and knew their Deſign then) he came in late, and ſo was not at the whole Diſcourſe; but there was a Declaration framed to be put out when they ſhould Riſe, and they did acquaint Mr. *Corniſh* with it, and they read it to Mr. *Corniſh,* and Mr. *Corniſh* did like it very well, and promiſed he would be aſſiſting, as we will prove to you Gentlemen. Another inſtance of Mr. *Corniſh's* Rebellion, for I need not tell you what part he acted when he was Sheriff, and maintain'd That that was the ground Work of the Rebellion, ſetting the Commonalty againſt the Government of the City. Another inſtance we will give you is, His Under-Sheriff that was employed to divide the City, and to raiſe Men within the City, having diſcourſe with Mr. *Corniſh* about ſettling that matter, he liked it very well, and promis'd he would be aſſiſting to him, and you may eaſily preſume Mr. *Goodenough* the Under-Sheriff was very privy to all the Acts of Mr. *Corniſh* at that time. We will call our Witneſſes. Mr. *Rumſey.*

Mr. *Corniſh.* I deſire the Witneſſes may be kept apart.

Mr. *Att. Gen.* They are ſo two times.

Mr. *Corniſh.* You will find me guilty of neither; I am as innocent as any Perſon in this Court.

Mr. *Att. Gen.* So was my Lord *Ruſſel* to his Death, Mr. *Corniſh*: do you remember that?

Mr. *Corniſh.* Mr. *Attorney General,* I ſpeak in the Preſence of the great God, I am as innocent as any Man in this Court.

Mr. *Att. Gen.* Mr. *Rumſey,* pray will you give my Lord and the Jury an account of the Inſurrection that was to have been in *England,* in the late King's Time, and what concern the Priſoner had in that Affair.

Mr. *Rumſey.* My Lord, about the latter end of *October,* or the beginning of *November,* my Lord *Shaftsbury* deſired me to go to Mr. *Sheppard's* Houſe, where there was a Meeting of thoſe Gentlemen that I did name before, the Duke of *Monmouth,* my Lord *Ruſſel,* my Lord *Gray,* Sir *Thomas Armſtrong,* and Mr. *Ferguſon,* and Mr. *Sheppard,* and accordingly I went; I came late there my ſelf, for they were juſt going away, when I came in; I told them my Meſſage, and they told me they were diſappointed by Mr. *Trenchard.* I had not been there a quarter of an Hour, but we were going away, and Mr. *Sheppard* was call'd for by his Man, and he went down Stairs and brought up Mr. *Corniſh*; and when he came into the Room, he told the Gentlemen there met, that Mr. Alderman *Corniſh* was come; ſo as ſoon as Mr. Alderman *Corniſh* came into the Room, he made his Excuſe to the Gentlemen that he did not come

ſooner,

ſooner, and that he could not ſtay with them; the reaſon why he could not ſtay with them, he told them, was, that they were to meet that Night about their Charter, and there was never another Alderman in Town but himſelf, and therefore he could not ſtay, there was a neceſſity of an Alderman to be there. And upon that Mr. *Ferguſon* opened his Boſom, and from under his Stomacher pull'd out a Paper; they told him, they had that Paper read, and deſired to read it to him: Mr. *Ferguſon* read it, and Mr. *Sheppard* held the Candle all the while that it was reading; and after they had read it, they asked him how he liked it, and he did ſay he liked it very well.

L. C. J. Jones. What were the Contents of that Paper?

Mr. *Rumſey.* The firſt part of it was complaining of the miſgovernment of the late King; there were two Points in it that I do remember very well, that they would declare for: One was, *Liberty of Conſcience*; and t'other was, That all thoſe that would aſſiſt in that Inſurrection, that had any Lands of the Church, or the Kings, in the late War, ſhould have them reſtored to them.

L. C. J. Jones. Was there any thing in that Paper that did engage any Body to an Inſurrection?

Mr. *Rumſey.* I did not hear all the Paper, nor did I take great notice of it; but thoſe two Points were in it, to engage them that would aſſiſt.

Mr. *Att. Gen.* What was the effect of the Paper?

Mr *Rumſey.* It was to be a Declaration upon the Riſing; when the Riſing was to have been, this was to have been diſperſed abroad.

Mr. *Att. Gen.* Mr. *Rumſey*, was there a Riſing intended at that time?

Mr. *Rumſey.* Yes, and they met there for that purpoſe; and Mr. *Trenchard* was the Man to manage the Buſineſs about *Taunton*, and he diſappointed them.

Mr. *Att. Gen.* What was your Meſſage from my Lord *Shaftsbury* to them?

Mr. *Rumſey.* It was to know what iſſue they had come to about the Riſing, and to preſs them to it, for ſuch a matter as that was not to be long kept afoot; either let them come to a Reſolution to riſe, or let it fall for good and all.

Mr. *Att. Gen.* After Mr. *Corniſh* had expreſſed his liking of this Buſineſs and Declaration, what follow'd?

Mr. *Rumſey.* He did ſay, he liked it very well; and that poor Intereſt he had, he would joyn with it.

Mr. *Att. Gen.* Speak that again.

Mr. *Rumſey.* Mr. *Corniſh* did ſay, he did like the Declaration, and with the ſmall Intereſt he had, he would appear to back it, or Words to that Effect.

Mr. *Corniſh.* My Lord, ſince he takes the Freedom to charge me with theſe things, I never was at a Conſult in my Days.

Mr. *Juſt. Levins.* You were not then at Mr. *Sheppard's* that Night?

Mr. *Att. Gen.* Will you deny you were at Mr. *Sheppard's* that Night?

Mr. *Corniſh.* I do declare, I never was at Mr. *Sheppard's* in any Conſult in my Life, as he declares; but I have had great Dealings with Mr. *Sheppard.*

L. C. J. Jones. You ſhall be allowed your Liberty; pray, Sir, be not tranſported with Paſſion. I doubt, before this time, notwithſtanding the Confidence you ſeem to have, there are few believe you to be as innocent as any Perſon preſent.

Mr. *Att. Gen.* You will hear more from his Oracle.

Mr. *Juſt. Levins.* Were you there when my Lord *Ruſſel* was there?

Mr. *Corniſh.* I was not there when my Lord *Ruſſel* was there, as I remember.

L. C. J. Jones. Were you preſent, hear, hear, Sir: were you preſent at *Sheppard's* when *Ferguſon* was there?

Mr. *Corniſh.* My Lord, I have been at *Sheppard's* ſeveral times, but I never liked the Man for his Morals, and therefore never liked to be in his Company.

L. C. J. Jones. He pull'd the Paper out of his Boſom.

Mr. *Corniſh.* It is as great an untruth as ever was told in the World; but, my Lord, ſeeing he takes this Freedom to charge me, I deſire to know whether he ſtands here as a lawful Evidence?

L. C. J. Jones. What is your Exception?

Mr. *Corniſh.* He ſtands charged guilty of Treaſon.

L. C. J. Jones. That it ſelf does not diſable him to be a Witneſs.

Mr. *Corniſh.* Before he hath his Pardon, my Lord?

L. C. J. Jones. I don't know whether he hath his Pardon or not.

Mr. *Att. Gen.* There is no Indictment at all upon him.

Mr. *Juſt. Levins.* If he were convicted, or outlawed of Treaſon, it were ſomething; an innocent Man may be charged.

Mr. *Rumſey.* My Lord, Mr. *Corniſh* and I have been very well acquainted theſe fourteen Years or thereabouts, and have had great Concerns together; for during the time that I managed the King's Cuſtoms at *Briſtol*, ſix Years I was there Collector, he did return between three and four hundred thouſand Pound for me; he is a very honeſt Gentleman, and I appeal to himſelf, whether I take delight to appear here to accuſe him.

Mr. *Corniſh.* But Colonel, what is the reaſon that you have not accuſed me all this while?

Mr. *Rumſey* Mr. *Corniſh*, I hope that is not an Objection, I think I ſuffer for it and not you; it was Compaſſion, and the ſame Compaſſion makes you deny it to ſave others; if you would deal openly, I make no doubt, but you might partake of the King's Favour yet, as well as I have done.

Mr. *Corniſh.* I do thankfully accept of His Majeſties Favour at all times, but I thank God I am innocent in this matter, and do not ſtand in need of it.

Mr. *Rumſey.* And you ſay I accuſe you falſely; then Mr. *Corniſh*, you don't ſtand there nor I here.

Mr. *Att. Gen.* Pray, will you ask him any Queſtions?

L. C. J. Jones. But pray don't enter into a long Harangue.

Mr. *Corniſh.* My Lord, I do humbly conceive, that he does not ſtand here as an Evidence.

L. C. J. Jones. You have the Judgment of the Court for that.

Mr. Corniſh. Before he is pardon'd?

L. C. J. *Jones.* I don't talk of a Pardon; what Record have you againſt him?

Mr. Att. Gen. You were preſent and heard that reſolv'd before in my Lord *Ruſſel*'s Caſe.

Mr. Corniſh. My Lord, Mr. *Rumſey* did upon his Evidence give in, and he was obliged by his Oath to ſpeak the whole Truth——

L. C. J. *Jones.* Now you are making your Speech, it is not your proper time; you ſhall urge any thing againſt Mr. *Rumſey*'s Evidence, or the credibility of it when it is your time.

Mr. Corniſh. My Lord, I do here deſign it.

Mr. Att. Gen. Mr. *Rumſey*, pray recollect; had you never any Diſcourſe with him at other times?

Mr. Rumſey. We have had a long Acquaintance, fourteen Years, but in my Life, I never heard him ſpeak any thing before or ſince that, to my Knowledge.

Mr. Att. Gen. Mr. *Corniſh*, will you ask him any more Queſtions?

Mr. Corniſh. I deſire to know——

Mr. Rumſey. What would you know?

Mr. Corniſh. Whether did you and I diſcourſe of theſe matters at any other time?

Mr. Rumſey. No.

Mr. Juſt. Levins. You muſt not ſtand to dialogue between one another, but ſpeak as we may hear you.

L. C. J. *Jones.* You ſhall argue if you will, when you come to make your Defence in the proper time, the improbability of any thing that he hath ſaid, or the impoſſibility, or repugnancy to any Truth, or any Evidence that you can give to the contrary; but I ſay, this is not your time.

Mr. Corniſh. I never was at any Conſult in my Life.

Mr. Att. Gen. That is a Name he gives it; was you never at a Meeting about a Riſing?

Mr. Goodenough ſworn.

Mr. Att. Gen. Mr. *Goodenough*, are you acquainted with Mr. *Corniſh*?

Mr. Goodenough. Yes, Sir.

Mr. Corniſh. My Lord, I humbly conceive he is not a Witneſs, he ſtands indicted upon an Outlawry; I can produce it.

Mr. Att. Gen. We do admit it.

L. C. J. *Jones.* They admit your Exception, and will anſwer it by producing a Pardon.

Mr. Corniſh. I need not ſay any thing againſt him, he is known well enough.

Mr. Juſt. Withins. He was your Under Sheriff, *Mr. Corniſh.*

Mr. Corniſh. Much againſt my Will; I oppos'd him to the utmoſt; and this is nothing but Malice againſt me.

Mr. Goodenough's Pardon Read.

Mr. Corniſh. I do humbly conceive this can't be done, but by a Writ of Errour, or an Act of Parliament.

L. C. J. *Jones.* Can't the King pardon an Outlawry?

Mr. Juſt. Withins. That is no piece of Law, I am ſure of it.

Mr. Att. Gen. Goodenough, pray what do you know of a Riſing intended againſt the late King?

Mr. Goodenough All that I have to give an account of is a Diſcourſe——

Mr. Att. Gen. Anſwer what I ask you; what do you know of a Riſing by others?

Mr. Goodenough. I know nothing of that Buſineſs of my Lord *Ruſſel*'s; but there was a Deſign to riſe, Sir, in *London*; we deſign'd to divide it into twenty parts, and out of each part to raiſe five hundred Men, if it might be done, to make an Inſurrection.

L. C. J. *Jones.* What were theſe Men to do when they were raiſed?

Mr. Goodenough. They were to take the *Tower*, and drive the Guards out of Town.

Mr. Att. Gen. Pray, acquaint my Lord and the Jury what Diſcourſe you had with Mr. *Corniſh.*

Mr. Goodenough. Before this was agreed on by us, I chanced to be at Alderman *Corniſh*'s; Sir, ſaid I, now the Law won't defend us, tho' we be never ſo innocent; but ſome other way is to be thought on; upon this, ſaid he, I wonder the City is ſo unready, and the Country ſo ready. I ſaid to him again, Sir, there is ſomething thought of to be done here; but, ſays I, in the firſt place, the *Tower* ought to be ſeized, where the Magazine is; upon this he made a little Pauſe, and ſaid, I will do what I can, or what good I can, to this purpoſe he anſwered me; and about ſome time after, he met me upon the Exchange, and asked me, how Affairs went? which I underſtood to be relating to what we diſcours'd; this is all that I can ſay. I never met after this, but only upon the *Exchange*, he ask'd how matters went.

Mr. Att. Gen. Was there any Diſcourſe about ſeizing the Guards?

Mr. Goodenough. I have told you the whole Diſcourſe.

Mr. Att. Gen. Pray, repeat it.

Mr. Goodenough. I told him, ſays I, Sir, now it is plain, the Law will not defend us, tho' we are never ſo innocent, or to this purpoſe.

Mr. Sol. Gen. Upon what occaſion was that Diſcourſe?

Mr. Goodenough. Every thing going againſt us.

Mr. Sol. Gen. How?

Mr. Goodenough. This was in *Eaſter* Term, as near as I can remember, 83.

Mr. Att. Gen. Ay, 83.

Mr. Goodenough. Therefore, ſays I, ſomething elſe is to be thought on, ſome Courſe elſe is to be taken: to this purpoſe he anſwered me, I wonder the City is ſo unready, and the Country ſo ready.

L. C. Baron. What Country?

Mr. Goodenough. He had been in the Country, as I underſtood before, that I don't know.

Mr. Corniſh. What time was this, Sir?

Mr. Goodenough. In *Eaſter* Term, or thereabouts, 83. I told him then, Sir, there is ſomething thought of to be done here in *London*, to this purpoſe; but ſays I, in the firſt place, the *Tower* is to be ſeiz'd, where the Magazine is; ſo he anſwered me, after ſome Pauſe (he pauſed upon it) ſays he, I will do what good I can, or what I can, to this purpoſe.

Mr. Sol. Gen. Did he ſeem to diſlike ſeizing the *Tower* at all?

Mr. Goodenough. Not at all, Sir, it did not appear ſo to me.

Mr. Sol. Gen. What Diſcourſes had you any other time?

Mr. Goodenough. I never had any Diſcourſe of this matter, or any thing relating to it at any other time, but only when I came upon the *Exchange*, how things went.

Mr. *Sol. Gen.* And did you give him an account?

Mr. Goodenough. I ſaid, Well. I gave him a general Anſwer, for that was not a place to talk in, and that I apprehended of this Diſcourſe.

Mr.

Mr. Sol Gen. Had you any other matters?

Mr. Goodenough. I had ſome other matters of managing the Riot, that was brought againſt him, and ſeveral others, and my ſelf alſo.

L. C. J. *Jones.* Will you ask him any Queſtions, Mr. *Corniſh*?

Mr. Corniſh. Whether his Pardon be allowed?

L. C. J. *Jones.* We heard it read.

Mr. Corniſh. This being a Court inferiour to the King's Bench———

L. C. J. *Jones.* Here is a Pardon under the Great Seal, Sir, and here is a Pardon of that Offence which you charge him with, and which you take to be a ſufficient Exception againſt his being a Witneſs, we are ſatisfied it is ſufficient.

Mr. Corniſh. Pray, my Lord, is not this Pardon ſpecial?

L. C. J. *Jones.* What do you mean by that?

Mr. Corniſh. Becauſe, my Lord, he hath been in an Act of Treaſon ſince; therefore, my Lord, if he be not pardoned of that———

L. C. J. *Jones.* No, no, he is not indicted for it; we can't try him now for any Treaſon of that nature.

Mr. Corniſh. I humbly conceive he hath not had a Pardon for his laſt Treaſon.

L. C. J. *Jones.* I muſt tell you, if he be guilty of Treaſon, till he is tried and convicted, it doth not take off his Teſtimony.

Mr. Corniſh. Pray, Mr. *Goodenough*, remember all your Tricks, whether or no, was there any body preſent when this Diſcourſe paſt between you and I?

Mr. Goodenough. No body but you and I.

Mr. Corniſh. You were not ſo converſant in my Houſe, I know.

Mr. Goodenough. Sir, I came to you about the buſineſs of the Riot.

Mr. Corniſh. How many times might you be at my Houſe? not three times, I believe.

L. C. J. *Jones.* You ask a Queſtion, and anſwer it your ſelf.

Mr. Corniſh. My Lord, I deſire to know, where it was theſe Words were ſpoke.

Mr. Goodenough. Sir, in your lower Room.

Mr. Corniſh. In my own Houſe?

Mr. Goodenough. Yes, Sir.

Mr. Corniſh. And no Company there?

Mr. Goodenough. And no Company.

Mr. Corniſh. That is very ſtrange, and that afterwards you ſhould meet me, and diſcourſe this matter again.

Mr. Goodenough. No, Sir, all I ſay, is this, you met me upon the *Exchange*, and asked me how things went.

Mr. Corniſh. That might be in Reference to the Suit you were managing for the Rioters; I know of nothing elſe.

Mr. Juſt. Withins. And I tell you, Mr. *Corniſh*, that was a Branch of the Plot; take that from me.

Mr. Corniſh. My Lord, he was Attorney in that Cauſe, and I might ask, how matters went in reference to that Tryal, but I take God to witneſs, nothing elſe, as I remember.

L. C. J. *Jones.* But here you ſay, it was a ſtrange thing that Mr. *Goodenough* and you ſhould be in a Room alone, when you acknowledge him to have been the Attorney in a Cauſe of mighty Conſequence among you.

Mr. Corniſh. He was concern'd for all, and I ſtedfaſtly believe he was never with me twice about that Suit; but he hath been at Sir *Thomas Player's*; there he often went about that Affair; and I do not believe that ever he came to me about that Buſineſs.

L. C. J. *Jones.* Is that all you have to ſay to him, Sir?

Mr. Att. Gen. Will you ask him any more Queſtions? if not, go on, we have done.

Mr. Corniſh. My Lord, Colonel *Rumſey* is a Perſon that hath acquainted the Court, that there was a long acquaintance between him and me. I have ſerved His Majeſty in my Place, and do it to this Day. My Lord, it is a very improbable thing, that I ſhould meet him at Mr. *Sheppard's*, where I ſaw ſuch wicked horrible Doings; and that he ſhould never afterwards ſpeak to me about that affair; he came to my Houſe, I remember, about the return of ſome Monies for his own private Uſe; for he was then out of his Majeſties Employment. He does declare here, he never ſaid a Word to me, never ſpake to me any thing of it but there. My Lord, it is a very ſtrange thing, that there ſhould be ſuch a Contrivance to ruin the King and Kingdom, and that I ſhould be one in this Buſineſs, this Villany, and not be conſulted how to carry it on, it is very ſtrange, they ſhould ſee me and never ſay a Word of it afterwards to me. My Lord, I hope, and you Gentlemen of the Jury, that you will conſider the improbability of it; it is as improbable as any thing in the World. I hope it doth appear to your Lordſhip and this Bench, that there is no probability in it; he owns we had a great deal of Freedom; he owns we were acquainted for fourteen Years together, and that I ſhould be at ſuch a wicked villainous place once, and ſee him ſo often afterwards, and never ſpeak of it, and never ſay any thing of it, the Great God of Heaven and Earth, before whom I ſtand, knows that I know nothing of all that he hath ſworn againſt me: He muſt ſwear theſe things to ſave his own Life; if he will take away my Life, he will take away many others, without queſtion, if he can ſave his own. I ſhould not urge this, but God is my Witneſs, I never heard any thing of a Contrivance or Plot, till my Lord *Ruſſel's* Tryal: Theſe are very ſtrange things, if ſo be ſo good a Government as we have, ſhall not protect ſuch innocent Men; truly, my Lord, I am as innocent as any Man in this Court, if I were to appear before the great God in Judgment this Moment.

L. C. J. *Jones.* Look you, Mr. *Corniſh*, I would with all my Heart allow you all the Liberty imaginable, to ſpeak pertinently to your Defence, but to oppoſe Confidence, and very great Aſſurance, upon your being in the Preſence of Almighty God, againſt expreſs Teſtimony, is the weakeſt Defence that can be; if you have any Witneſſes, if you have any thing to urge againſt the Teſtimony of any of theſe Perſons, beſides the improbability of it, which you have often mentioned over and over again; you ſhall be heard with all Patience, if you have Witneſſes that you will call, we will hear them likewiſe.

Mr. Corniſh. My Lord I think his Treaſon being confeſſed, and not being pardoned———

Mr. Juſt. Withins. Is that all you will ſay, Mr. *Corniſh*?

Mr. Corniſh. I hope you will bear a little with me, I am highly concerned.

L. C. J. *Jones.* You are ſo.

Mr.

Mr. *Corniſh.* I have had no help, and it is well known, I am not skilful in the Law. I don't underſtand what to ſay, nor how to plead my Cauſe, having no help, nor no aſſiſtance allowed me. My Lord, it is a moſt improbable thing that I ſhould be at this place, where this horrible Wickedneſs was, and that it ſhould lie all this time never mention'd: I have been my Lord, ſeveral times in Priſon this Year, and I think my Vertue will be ſo much the greater, to be again and again purged, as I have been; that which hath pleaſed me very much, hath been my innocency: Would any Man in my Circumſtances have ſtayed and continued in this Nation, if he had not known himſelf perfectly innocent? Others have gone away, and I could as freely have gone, after I have been taken up four times.

L. C. J. Jones. I doubt there are a great many are not gone, Mr. *Rumſey* hath told you plainly, it was Compaſſion to you, though Injury to himſelf, that he did not accuſe you ſooner.

Mr. *Juſt. Levins.* Here is *Gaunt* ſtayed here till within this Week or Fortnight, and never ſtir'd.

Mr. *Juſt. Withins.* Mr. *Corniſh*, my Lord hath put you in the right way for your Defence, if you can invalidate the Teſtimony, or call any Witneſſes, do it, but to talk at this rate, you may do it this Month (for ought I know) and 'twill ſignifie no more than it hath done already.

Mr. *Corniſh.* The improbability is ſo manifeſt.

L. C. J. Jones. Is it enough to ſay, improbability, improbability, improbability? Is that enough? Have you ſaid any more?

Mr. *Corniſh.* My Lord, I have ſaid this, that this Gentleman that ſhould be ſo converſant in the Town, I in his Company, and he in mine. Is it not improbable? ——

Mr. *Juſt. Levins.* Look you, Mr. *Corniſh*, I will tell you what the Method is, to give Evidence firſt, and then apply it in ſumming up the Evidence; if you were ſumming it up, the Court hath all the reaſon in the World to hear you; if you have Evidence, the way is to give your Evidence, and apply it if you can.

Mr. *Juſt. Withins.* Have you any Witneſſes.

Mr. *Corniſh.* Againſt Mr. *Rumſey.*

Mr. *Juſt. Withins.* Againſt any body, Mr. *Rumſey* if you will.

Mr. *Corniſh.* My Lord, I humbly conceive that this Witneſs, Mr. *Rumſey*, ought not to ſtand; if your Lordſhip ſatisfies me, I ſhall be very much obliged to your Lordſhip: He declared upon his Oath, when he ſwore againſt my Lord *Ruſſel*, that he had nothing elſe to ſwear againſt any Man.

Mr. *Juſt. Withins.* How does it appear?

Mr. *Corniſh.* I will produce it, if your Lordſhip pleaſe to give me time.

Mr. *Juſt. Withins.* But afterwards he diſcover'd a great deal more.

L. C. J. Jones. Look you, Sir, if you have any Exception againſt Mr. *Rumſey*'s Teſtimony, we will hear you, propound a legal Exception.

Mr. *Corniſh.* My Lord, I humbly conceive, he not producing his Pardon, his Evidence is not good.

L. C. J. Jones. You have had the Opinion of the Court

Mr. *Corniſh.* If your Lordſhip over-rule me.

L. C. J. Jones. We muſt over-rule you.

Mr. *Corniſh.* If that will not be granted me.

L. C. J. Jones. Then you have no more to ſay?

Mr. *Corniſh.* But for my innocency, for that (I know) I have enough to ſay.

L. C. J. Jones. That is in your own Breaſt, the Jury can't ſee that; will you call any Witneſſes?

Mr. *Corniſh.* I have ſome Witneſſes to call here, as to Mr. *Goodenough*, my Lord.

L. C. J. Jones. What is your Exception againſt Mr. *Goodenough*?

Mr. *Corniſh.* My Lord, it was my moſt great Unhappineſs and Misfortune, that this *Goodenough* was admitted into the Office of Under-Sheriff; and my Lord, that I might fully convince your Lordſhip and this Court, all that I deſire is, ſome few Men may be call'd; beſides, I think there are a thouſand, I may ſay, that will bear me witneſs, I did oppoſe him.

L. C. J. Jones. But pray, Mr. *Corniſh*, is that an Exception that he does not ſwear true, becauſe you would not let him be your Under-Sheriff?

Mr. *Corniſh.* It looks like Malice.

L. C. J. Jones. You did admit him to be Under-Sheriff, all the World knows that.

Mr. *Corniſh.* But I can ſet forth that I did oppoſe him, and the reaſons why I did oppoſe him.

L. C. J. Jones. You may, if you will, give Evidence, what an Inſtrument he was to you, and how he ſerved you in your Office, when you were Sheriff: is this to the purpoſe?

Mr. *Corniſh.* Yes.

L. C. J. Jones. It is not at all to the purpoſe.

Mr. *Corniſh.* My Lord, I was impoſed upon by my Partner.

L. C. J. Jones. You could not be impoſed upon, you had equal Power with your Partner.

Mr. *Corniſh.* If your Lordſhip pleaſes to conſider the Temper of that Man.

L. C. J. Jones. What Man?

Mr. *Corniſh. Bethel*, I mean, what an obſtinate Man he was. My Lord, I hope I can purge my ſelf greatly in theſe matters.

L. C. J. Jones. If you will, tell to what you will call them.

Mr. *Corniſh.* The great Averſion that I had.

Mr. *Att. Gen.* We will admit that, he did oppoſe him, becauſe he would have had more Money.

Mr. *Juſt. Withins.* You have heard the Opinion of the Court.

Mr. *Juſt.*——It is not material whether he came in with or without your Conſent.

Mr. *Corniſh.* Mr. *Gosfright*, will you be pleas'd to declare to my Lord, how I was impos'd upon, by ſuffering *Goodenough* to be Under-Sheriff?

Mr. *Gosfright.* My Lord, after that *Bethel* and *Corniſh* were choſen Sheriffs, they had ſome Meetings together concerning an Under-Sheriff; Mr. *Bethel* he named *Goodenough*, Mr. *Corniſh* he named another; they could not agree, the difference did ariſe in three or four, or more Days Debate, as I remember, and Mr. *Corniſh* did tell Sheriff *Bethel*, He was reſolved if *Goodenough* were Under-Sheriff he would fine, and not hold, and told him the reaſon why: He ſaid he was a Man that he would not truſt a hair of his Head with, and he had no Knowledge he believ'd of the Buſineſs, but withal, he told him, he was a Man obnoxious to the Government, and he was an ill

Man,

man, and had done ill things, and he would not truſt his Eſtate and his Reputation in the hands of ſuch an Under-Sheriff: *Bethel* he inſiſted upon it, and he was reſolved he would have *Goodenough*, and *Corniſh*'s Man ſhould not be.

L. C. J. Jones. Who was *Coniſh*'s Man?

Mr. *Gosfright.* I know the Man, but forget his Name.

——— *Millman.*

L. C. J. Jones. Can you tell what *Goodenough* was to give for the Under-Sheriffwick?

Mr. *Gosfright.* No, indeed.

L. C. J. Jones. Was there no diſcourſe?

Mr. *Gosfright.* Not in my hearing.

L. C. J. Jones. Was *Goodenough* Under-Sheriff to *Corniſh* at laſt?

Mr. *Gosfright.* Yes Sir.

L. C. J. Jones. How did they agree?

Mr. *Gosfright.* I believe the animoſities were ſo great, that they were never reconciled, for *Corniſh* had ſo beſpatter'd *Goodenough* that he was ſo ill a man, that *Goodenough*, I believe, could never digeſt it well.

L. C. J. Jones. Did you hear any angry words, after he was admitted to be Under-Sheriff?

Mr. *Gosfright.* Truly, I never was at Alderman *Corniſh*'s while he was Sheriff: But I heard that character of him.

L. C. J. Jones. And that was the reaſon you did not go to Mr. *Corniſh*.

Mr. *Gosfright.* No, I believe *Goodenough* never came there, but I was at neither of their Houſes.

Mr. Juſt. *Levins.* Pray, how many Juries did you help him in?

Mr. *Gosfright.* Truly I was ſo little acquainted, I could not help him.

Mr. Juſt. *Levins.* I hear other People ſay the contrary.

Mr. *Gosfright.* I was but newly come into *England*, and could know no Man.

Mr. *Corniſh.* Alderman *Love.*

L. C. J. Jones. To what purpoſe do you call him, Sir? To the ſame?

Mr. *Corniſh.* It is evidently to declare how much I was impoſed upon.

L. C. J. Jones. Pſha, I will tell the Jury, I will do this for you, upon this Man's Teſtimony, that you were unwilling that *Goodenough* ſhould be Under-Sheriff.

Mr. *Corniſh.* My Lord, there is a great deal more in it.

L. C. J. Jones. What is there more? he never heard an angry word between you, during the time, he ſays, afterwards you admitted him to be Under-Sheriff?

Mr. *Corniſh.* Mr. *Love*, will you pleaſe to declare to the Court, what averſion I had to Mr. *Goodenough* being the Under-Sheriff.

Mr. *Love.* My Lord, I did receive a Sub-pœna laſt Night, and I wonder'd at it, I confeſs, ever ſince I was ſo happy to get out of publick Employment, having apply'd my ſelf to my private Affairs, I never came to *Guild-Hall.* But all I can ſay, is this, that when it was publickly talkt upon the *Exchange*, meeting Mr. *Corniſh* upon the *Exchange*, I did hear him inclined to have another Man (one I don't know,) to be his Under-Sheriff, and that he did not like Mr. *Goodenough*, but was inclin'd to another Man, but it is ſo long ago, I believe I might perſwade him, having been Sheriff above twenty years ago, to Mr. *Haſtings*, an honeſt Man, I got my *quietus eſt*, without trouble: But I muſt ſay this for the Gentleman, I did hear him complain, that he was impoſed upon to take this Man.

L. C. J. Jones. How long was this after the time?

Mr. *Love.* It was before they had pitched upon a man, and he was much inclined to one Mr. *Milbourne* or *Millman*, or ſome ſuch name, that is all I can ſay.

L. C. J. Jones. Do you think we ſit here to hear impertinencies; God forbid, Sir, I ſhould hinder you from giving any Evidence: but this is not at all material.

Mr. *Corniſh.* If your Lordſhip pleaſe to let Mr. *Jekyl* come, he will tell you what this man did declare, why I was againſt him.

L. C. J. Jones If you had not entertain'd Mr. *Goodenough*, then there might be ſomething of malice in it, but you did receive him.

Mr. *Corniſh.* I had private Covenants with *Bethel*, before I would let him come into the Office. Mr. *Jekyl*, pray will you declare to my Lord, and the Jury, what averſion I had againſt Mr. *Goodenough*'s being Under ſheriff?

Mr. *Jekyl.* Truly, my Lord, Alderman *Corniſh* and I, living near together, I had occaſion to go to him, ſeveral times, about Bills of Exchange; and he told me, when he was Sheriff, how he was troubled with *Bethel*, becauſe he would put *Goodenough* upon him, for I don't intend to have him, ſays he, for I know he is obnoxious to the King and Government, and deſired me to ſpeak to Mr. *Bethel* about it, but I I had no acquaintance with him 'till he was Sheriff: And ſome came to me, to deſire me to ſpeak to Alderman *Corniſh* to receive *Goodenough*. Truly, ſays I, I find him ſo averſe againſt him, that it is not for me to perſuade him, to take a Servant he muſt put ſuch truſt and confidence in, for I ſaw Alderman *Corniſh* was ſo averſe to it, that I would not do it.

Mr. *Sol. Gen.* Pray do you think, in your Conſcience, he was more obnoxious to the Government than his Partner, Sheriff *Bethel*, was?

Mr. *Jekyl.* I muſt confeſs, I have heard much of Sheriff *Bethel*, but I never heard that *Corniſh* was any diſaffected man to the Government.

Mr. *Sol. Gen.* But which was the moſt diſaffected man to the Government, *Bethel*, or *Goodenough*?

Mr. *Jekyl.* Truly, as I remember, he ſaid, he would not have him, becauſe he was obnoxious to the King and Government.

Mr. *Juſt. Withins.* This Gentleman was in a limb of the Plot himſelf, as great a Rioter, and as hot as any of them, this Evidence that they call: I remember you, Mr. *Jekyl*, I'll aſſure you.

Mr. *Corniſh.* If Sir *William Turner* be upon the Bench, I deſire him to ſpeak.

L. C. J. Jones. We will hear Sir *William Turner* any thing.

Mr. *Corniſh.* I deſire he would declare how I was uſed.

Sir *William Turner.* I don't remember that ever I ſaw Mr. *Goodenough*'s face before this time, ſo I have nothing at all to ſay againſt him, nor can I ſay any thing, but what Mr. *Corniſh* told me, and that was, he once came to my Houſe ſome time after he was choſen Sheriff, and told me, that Mr. *Bethel* preſſed very much for taking *Goodenough* to be his Under-ſheriff, that he had no mind to accept him, and he would propoſe

poſe another, and it cauſed a great difference, but it was at laſt compoſed, but how I can't tell.

L. C. J. Jones. Now, Mr. *Corniſh*, by my conſent, if you will, call all the Aldermen upon the Bench; whether they will, or will not, ſay the ſame thing, for my part, I will agree, that they have given Evidence (if they will be contented themſelves) to the ſame purpoſe.

Mr. *Corniſh.* My Lord, I ſhall not give your Lordſhip unneceſſary trouble, but I think it is convenient to call ſome Witneſſes, to prove the manner of my Life and Converſation.

L. C. J. Jones. Your Life hath not been in the dark.

Mr. *Corniſh.* The Dean of *Canterbury*, Dr. *Tillotſon*, (who did not appear.)

L. C. J. Jones. Will any man atteſt your Loyalty in *London?*

Mr. *Corniſh.* The Dean of *Norwich*, Dr. *Sharp.* Is the Dean of *Norwich* here?

Officer. No, Sir.

Mr. *Corniſh* My Lord, hear is Mr. *Lane*, I deſire he may be asked what he knows.

Mr. *Lane.* Upon the Tryal of my Lord *Ruſſel*, according as Mr. *Corniſh* deſires I may be heard, it is with reſpect to Colonel *Rumſey*'s Evidence; Colonel *Rumſey* ſays, in my Lord *Ruſſel*'s Tryal, he did not hear the Declaration read, becauſe it was read before he came there.

Mr. *North.* Were you preſent at my Lord *Ruſſel*'s Tryal?

Mr. *Lane.* No, Sir.

Mr. *Juſtice Levins.* Sir, that ſignifies nothing.

Mr. *Corniſh.* That is a very material thing, my Lord.

L. C. J. Jones. What is? it is no proof at all.

Mr. *Corniſh.* Not the Printed Tryal?

L. C. J. Jones. No.

Mr. *Corniſh.* It is by Authority.

L. C. J. Jones. Any body that was preſent may ſwear it.

Mr. *Corniſh.* My Lord, I deſire I may have the Miniſter of the Pariſh, Dr. *Calamy*, for my conſtancy at my Pariſh Church, and receiving the Sacrament, according to the Rites of the Church of *England*, that I am, to all appearance, a Perſon that does as well affect the Government as any man.

L. C. J. Jones. I doubt you are all appearance.

Dr. *Calamy.* My knowledg of Mr. *Corniſh* hath been ſince I came to be Miniſter of the Pariſh, which is about two years, a little above two years; whenever he was in Town he did uſe to come to Church as conſtantly as any one, and come with his Family to Prayers, and did come to the Sacrament, and he did not only come at *Eaſter*, to ſave himſelf from a Preſentment, but at our monthly Communion, and ſince I have been Miniſter of the place, I have often converſed with him: All that I can ſay, is, that I never heard him ſay a diſreſpectful word of the Government.

L. C. J. Jones. I hope he took you to be a man of another Kidney.

Dr. *Calamy.* I marked his words, becauſe of the Character I had heard of him.

Mr. *Att. Gen.* Pray, what was the Character he had before thoſe two years?

Dr. *Calamy.* That was what was publick.

Mr. *Corniſh.* Joſeph Reeve, *Eſq;*

Mr. *Reeve.* My Lord, I received a Sub-pœna, from the Priſoner at the Bar, yeſterday. I have been acquainted with him about fourteen or fifteen years, and had a conſiderable trade with him, and ſometimes we had ſome converſation, and drank a glaſs of Wine together; I thought he was always very Loyal, and drank the late King's Health, and this King's Health, and all the Royal Family. I have no more to ſay.

Mr. *Corniſh.* Mr. *John Cook.*

L. C. J. Jones. What do you examine this Witneſs to?

Mr. *Cook.* My Lord, I have dealt with him for theſe twenty years laſt paſt, I alwavs found him a very honeſt man, and a juſt man, and very upright in his dealing, I always reckon'd him a very honeſt juſt man: I have dealt with him for great ſums, and always knew him very juſt and upright.

L. C. J. Jones. Your Obſervation of him, as to the Government.

Mr. *Cook.* I never knew any thing to the contrary, but that he was always very Loyal.

Mr. *Corniſh.* Mr. *John Knap.*

L. C. J. Jones. Mr. *Corniſh*, it is not impoſſible for you to produce men enough, that ſhall ſay, they know nothing againſt you, concerning the Government, and that you have been a Loyal man, ſure thoſe you chuſe will ſay ſo, you have choſe them; and, perhaps, if it were the buſineſs of the King's Council, they could do contrary: you are not accuſed touching your general Converſation, but concerning a particular Fact.

Mr. *Corniſh.* It is improbable I ſhould be a Perſon ever concern'd in theſe matters, if you conſider, you find *Corniſh* mentioned only about being there.

L. C. J. Jones. Does not Mr. *Rumſey* tell you the meaning why?

Mr. *Corniſh.* It is very ſtrange a Man ſhould be at ſuch an Helliſh Meeting, and I ſee him over and over ſo many times, and never ſpeak of it again.

L. C J. Jones. Mr. *Corniſh*, Do not you know that *Goodenough* could not be produced, till the Rebellion in the *Weſt?*

Mr *Corniſh.* Is it probable that I ſhould entertain any Treaſonable Diſcourſe with Mr. *Goodenough*, when I had ſo much oppoſed him in coming in to the Office?

L. C. J. Jones But you let him in.

Mr. *Corniſh.* It is known to hundreds in this Town, that I was impoſed upon by an unreaſonable Man, my Innocency is as great as any Man's, and my Virtue ſhould be conſidered, when I have been under theſe impoſitions; I have been Loyal and Dutiful to my Prince, and Faithful to the Government in all reſpects; I have oppoſed all manner of Heats, as much as any Man whatſoever; I can bring hundreds to ſhew, that where I heard Heats I allay'd them, and it is ſtrange I ſhould be ſuch a Man as I am repreſented here.

L. C. J. Jones. Have you done, Sir?

Mr. *Corniſh.* My Lord, I have thus much further to ſay, that I do think there is no probability that I could be at this Meeting; though a Man ſhould have a care how he takes Gods Name in vain, I have ſaid it, and I do in the preſence of the Great God of Heaven declare it, I was never at the Debate about theſe Affairs; I take the Great God to Witneſs, I would not do it for a whole World, if I were not innocent. My Lord, it is moſt improbable what Mr. *Rumſey* ſays.

L. C. J.

L. C. J. Jones. It is a probable thing that *Rumſey* ſhould forſwear himſelf, it is a probable thing that *Goodenough* ſhould forſwear himſelf, who have taken the Great God to witneſs to the truth of what they ſwear againſt you, but it is improbable that Mr. *Corniſh* ſhould not ſpeak the truth.

Mr. *Corniſh.* I will call ſome other Friends, if your Lordſhip pleaſe, to prove my Loyalty.

Mr. *Knap.* I ever found him a fair, good Pay-maſter.

Mr. *Attor. Gen.* He calls you for his Loyalty. Did you never hear him ſpeak any thing againſt the Government?

Mr. *Knap.* I have not been in his Company but now and then.

Mr. *Corniſh.* Did you ever know me ſpeak any thing againſt the Government?

Mr. *Knap.* No Sir.

L. C. J. Jones. I marvel that you, who have been an Alderman a great while, don't call ſome of the Aldermen; you have call'd Sir *William Turner*, a very worthy Alderman, I wonder you don't call ſome others of your Brethren, that are known Perſons.

Mr. *Corniſh.* Mr. *Carleton.*

Mr. *Carleton.* I have been acquainted with my Couſin *Corniſh* ever ſince the year 61, when, being a Merchant, Trading in Cloth, I began my acquaintance with him, and afterwards, he recommended me to the Party I married, and being Relations, we had great intimacy together; I have been ſeveral times at his Houſe, he did always aſſure me of his Loyalty; I have told him what I have heard People ſay abroad, but he did aſſure me he was Loyal, and I do hope the very ſame of him.

L. C. J. Jones. But you remember you have heard that he was not a Perſon of ſuch eminent Loyalty.

Mr. *Carleton.* That was upon the account, my Lord, of his being in with *Bethel*, but he he did always aſſure me of it.

Mr. *Corniſh.* My Lord, I hope your Lordſhip will conſider what temper the Man was of that I was to be with, and how obſtinate he was, and I hope I ſhall not anſwer for his Crimes.

Mr. *Juſt.*—Mr. *Corniſh*, Why did you qualifie your ſelf to ſerve with him? for you were not at firſt qualified.

Mr *Corniſh.* I had been Travelling up and down in the Country.

Mr. *Juſt.*—At that time to qualifie your ſelf to be an Officer, then you could lay aſide all your Scruples, and receive the Sacrament.

Mr. *Corniſh.* *Joſeph Smart*, Eſq;

Mr. *Smart.* I have known Mr. *Corniſh* above theſe twenty years, and dealt with him conſiderably, I never knew him but a very fair Dealer.

Mr. *Corniſh.* Mr. *William Crouch.*

Mr. *Crouch.* I have had acquaintance a great while with Mr. *Corniſh*, and have had ſeveral dealings, I found him a very honeſt Dealer, and a good Pay-maſter.

L. C. J. Jones. What know you of his Loyalty?

Mr. *Crouch.* For his Loyalty, I took it as the Town did, though I never knew any Diſloyalty from him.

Mr. *Corniſh.* Mr. *James Weſt.*

L. C. J. Jones. Do you think you profit your ſelf with this Teſtimony?

Mr. *Corniſh.* I would not offend you.

L. C. J. Jones. No, no, you don't offend, I would gladly hear you, if there were any thing pertinent to your Defence.

Mr. *Juſt. Withins.* Mr. *Corniſh*, you have this happineſs, that you will be Tried by your fellow Citizens, of very good Quality and Underſtanding, I muſt needs tell you.

Mr. *Corniſh.* I am ſatisfied I have appeared here with all the Care and Caution that becomes an honeſt Man, I have ſpoke nothing but what I have conſider'd as I have been in Preſence of the great God, I never was at any Meeting, nor never heard any thing of this till the Tryal about my Lord *Ruſſel*, never heard one Word.

L. C. J. Jones. Gentlemen of the Jury, The Priſoner at the Bar, Mr. *Corniſh*, is indicted, that knowing that there was an Inſurrection intended to be againſt the late King, of Bleſſed Memory, he did promiſe to be aiding and aſſiſting in it, this is the ſubſtance of the Indictment, there have been two Witneſſes produced, Mr. *Rumſey* and Mr. *Goodenough*: *Rumſey*'s Teſtimony (ſo far as I am able to remember, after ſo long a Diſcourſe, and ſo much time that hath been ſpent) was to this purpoſe; That the Duke of *Monmouth*, the Lord *Ruſſel*, *Ferguſon*, and others, being in Mr. *Sheppard*'s Houſe, there came at length Mr. *Corniſh*, and excus'd himſelf for coming late, and ſaid That he was to depart from them very ſpeedily, becauſe he was to go to attend the Buſineſs (as I take it) of the Charter, where the Preſence of an Alderman was neceſſary, and none like to be there but himſelf; That *Ferguſon* pull'd a Paper out of his Boſom, ſo ſays Mr. *Rumſey*, and upon the deſire of the Company, it was read to Mr. *Corniſh*, and *Sheppard* held the Candle; there were theſe two Points, *Rumſey* ſays, they had agreed on in that Paper, when the Riſing ſhould be, they would declare for Liberty of Conſcience, and for the Reſtitution of thoſe Lands, Biſhops Lands, and King's Lands, to thoſe Perſons from whom they had been taken after the King's Reſtauration: This Paper being read to Mr. *Corniſh*, he ſaid, He did like it very well (theſe were the very words of *Rumſey*) and with that poor intereſt that he had in the World, he would join in the Aſſiſtance of them, for thoſe Ends and Purpoſes that were mentioned in that Declaration. Then comes *Goodenough*, and he tells you, That he came to him in his Parlour, when he was Sheriff, ſaid Now there was no ſafety, no defence at all by Law, all was gone, there muſt be ſome other Courſe taken, for the Law would not ſufficiently protect them: Why? ſays Mr. *Corniſh*, I marvel they are ſo ſlow in the City, when they are ſo ready in the Country: Ay, but ſays *Goodenough* again to him, there hath been ſomething done in the City; this was after the time that the City had been put into ſeveral Diviſions. I don't ſee there is any Teſtimony from Mr. *Goodenough*, that Mr. *Corniſh* knew any thing of that, but ſays he, There is ſomething done here, the *Tower* is to be ſeiz'd, there is the Magazine, and that is to be ſeized upon, and then we ſhall be able to do ſomething: ſays he, I will do what good I can, or ſays he, what I can, he is not confident whether of theſe Expreſſions he did uſe, I will do what good I can or I will do what I can. Afterwards he meets Mr. *Corniſh* upon the *Exchange*, here I confeſs, it is not ſo expreſly to be applied to this Purpoſe, that it doth faſten directly upon the point in the Indictment; but

ſays he, How do Affairs go? How do our Affairs go? ſays he, very well: This is the Teſtimony given againſt him. If this be true, notwithſtanding Mr. *Corniſh*'s Proteſtations of his innocency, ſure there is nothing doth more plainly prove this Indictment, than this Teſtimony. He ſays it is improbable, very improbable that I in my Circumſtances, that I ſhould ſay ſo, it is improbable, becauſe Mr. *Rumſey* had Acquaintance with me for fourteen Years together, that I have dealt with him for vaſt Sums, and that I ſhould ſay it in his Preſence never but once, and that *Rumſey* does ſay, He never heard him ſpeak any thing to that purpoſe, but that one time, and therefore it is mighty improbable I ſhould ſay ſo. But what is the reaſon, ſays he, that this was not diſcover'd before? To this *Rumſey* gives a poſitive anſwer, Truly, ſays he, Mr. *Corniſh*, I had more Compaſſion for you, than for my ſelf, I have ſuffer'd for it, you have not ſuffer'd for my ſilence. Then *Goodenough* ought not to be allowed to be a competent Witneſs, becauſe when Mr. *Corniſh* and *Bethel* were choſen Sheriffs of the City, Mr. *Corniſh* was much againſt receiving *Goodenough* to be his Deputy, and *Goodenough* muſt ſay all this maliciouſly againſt him, becauſe he ſo much oppoſed his being Under-Sheriff to him and *Bethel*. He hath produced ſeveral Witneſſes to that purpoſe, and they ſay there was ſome reluctancy in him to the receiving *Goodenough* to be his Under Sheriff, but it is plain and clear to you all, Gentlemen, and every body in the City knows that *Goodenough* was his Under Sheriff, and how well he ſerv'd him, and to what purpoſes I believe many of you very well know. Another improbability is, That he ſhould admit *Goodenough* to come into his Parlour alone, a Man that he had ſo much diſpleas'd, but if ſo be he was once againſt him, he did afterwards take him not only to be his Under Sheriff, but employ'd him to be his Attorney and then he might very well admit him into his Parlour alone, to diſcourſe of his Buſineſs as an Attorney, and this might fall in among other Diſcourſe: Gentlemen, there are ſeveral other Witneſſes produced concerning the honeſty of his Dealing, and the honeſty of his Converſation, that they have nothing at all to ſay againſt; but Gentlemen in a popular City, where he is, and hath been ſo well known, it is a very eaſie matter to bring Millions of Men to give the very ſame Teſtimony, and certainly he will bring none, having the choice of them, but ſuch as ſhall ſpeak in his Favour; but he ſpeaks in the Preſence of God, he ſpeaks from the bottom of his Heart, that he never had any ſuch diſloyal Thought entred into his Mind: Gentlemen, hath no body any Senſe of the Preſence of God but Mr. *Corniſh*? Hath not *Rumſey* call'd God to be a Witneſs to his Oath? and *Goodenough* hath done the like? Why is it maliciouſly againſt the Life of Mr. *Corniſh*? for I don't know he does, in the leaſt, object any thing againſt *Rumſey*, that there was ever any Diſpleaſure between them two: Why ſhould he deliver this Teſtimony if it were not the Teſtimony of his Heart? and that which he ſays himſelf, he had too long concealed out of the Compaſſion he had for him. Gentlemen, if a great many Proteſtations and Aſſeverations ſhould make a Man as innocent as confident, no Man ſhould die by the Sentence of the Law; it is an eaſie matter for any Man to take up the ſame Aſſurance and Confidence that he hath done: And for his being ſuch a Church-man, as he now pretends himſelf to be, for that is one thing by which he would argue the improbability of the thing, and he would have you believe very much of his Loyalty from it. Gentlemen, all the Evidence he hath given, is but of two Years ſtanding, and ſince the Tryal of my Lord *Ruſſel*; and ſuch a Man as he, and many Men that were conſcious to themſelves of their guilt, did think it very fit to purge themſelves that way, to gain themſelves a good Opinion that they were loyal to the Government: But it is not deny'd by Mr. *Corniſh*, that before that time he did not frequent the Church, nor receive the Sacrament.

Mr. *Corniſh*. Theſe ſeven Years, my Lord.

L. C. J. Jones. Who did ſay ſo? Sure no body ſaid ſo yet. I repeat the Evidence truly, all you ſaid of that was out of the Mouth of Dr. *Calamy*.

Mr. *Corniſh*. Dr. *Calamy* came in but lately, and his Predeceſſor Dr. *Whitchcot* is dead.

Mr. *Juſt. Withins*. Sir, you were not qualified for your Office if you had not took the Sacrament.

L. C. J. Jones. You did lay aſide all your Scruples to qualifie your ſelf to be Sheriff by receiving the Sacrament, which otherwiſe you could not have been. Others that have ſpoken of your Converſation likewiſe ſay, That the report was abroad, that you were not ſo loyal and firm to the Government as you ought to have been. Gentlemen, you have heard the Evidence; I have done my endeavour to repeat it faithfully, if you believe that he did Promiſe to aid or join, or agree with that Rebellion or Inſurrection, then you ought to find him guilty of this Indictment.

Mr. *Corniſh*. I am as innocent as any mortal Man.

Then the Jury *withdrew, and after a conſiderable time return'd.*

Mr. *Corniſh*. My Lord, I hope I may have one word.

Mr. *Juſt. Withins*. No, not till your Verdict.

Mr. *Bar. Gregory*. No, no, Mr. *Corniſh*, we can't.

Mr. *Corniſh*. I had a Witneſs more that was very material, but I would not offend your Lordſhip: Mr. *Rumſey* ſaid Mr. *Sheppard* held the Candle.

Mr. *Juſt. Withins*. Why did not you call him? You called a great many impertinent Witneſſes.

Mr. *Corniſh*. I was not come to him, I would have call'd them in order.

Mr. *Bar. Gregory*. Why did not you produce him then?

Mr. *Corniſh*. Becauſe your Lordſhip ſeemed to be angry.

Mr. *Bar. Gregory*. No, not at all.

Mr. *Corniſh*. I did forbear purely upon that account. I pray, my Lord, let him be call'd.

Mr. *Bar. Gregory*. Here were eight Judges and my Lord Chief Juſtice, and now here is only two: Do you think we will defer things of this Nature? It is never asked. Apply your ſelf to the Judges: It is a ſtrange thing.

Mr. *Juſt. Withins*. This is only to delay time.

Mr. *Bar. Gregory*. If he does ſo, the Jury muſt go out again.

Mr.

Mr. *Juſt. Withins.* After the Jury hath been out an Hour, we muſt have new Allegations.

Mr. *Corniſh.* I was tender of offending.

Mr. *Juſt. Withins.* That is a Reflection upon the Court; under favour, Mr. *Corniſh*, I told you my ſelf, over and over to call your Witneſſes.

Clerk. Elizabeth Gaunt, hold up thy Hand.

Mrs. *Gaunt.* My Lord, I beſeech you, hear me, you won't take advantage I hope of me.

Mr. *Juſt. Withins.* I declare my Opinion freely, it ought not to be done.

Recorder. I think ſhe ought to have it as well as t'other.

Mr. *Bar. Gregory.* You call'd never a Witneſs.

Mrs. *Gaunt.* No, Sir, I could not tell, I have ſome to call.

Mr *Juſt. Withins.* I am of that Opinion you ought to take the Verdict.

The Judges *came again upon the Bench, and the* Jury *found Mrs.* Gaunt *guilty.*

L. C. J. Jones. Is *Rumſey* come in?

Captain *Richardſon.* I have ſent for him, he will be here preſently.

Mr. *Corniſh.* My Lord, I muſt pray your Lordſhip, to conſider my Tenderneſs in offending you, which made me omit calling Mr. *Sheppard*, I had him in my paper, he is in my paper.

L. C. J. Jones. Don't you begin your Preface ſomething untowardly, as though the Court would not do you all the Kindneſs poſſible, half a dozen times you were admoniſh'd to call for pertinent Witneſſes, you did call I am ſure a great many impertinent Witneſſes. Had you Mr. *Sheppard's* Name in your paper?

Mr. *Corniſh.* Yes, my Lord, but I was tender of offending; pray, my Lord, be pleaſed to remember Mr. *Rumſey's* Evidence.

L. C. J. Jones. Is Mr. *Rumſey* here? Sir, pray hold your Tongue.

Mr. *Att. Gen.* I would acquaint you, my Lord, I ſent a Subpœna for Mr. *Sheppard*, but could not find him, but I underſtand that Mr. *Corniſh's* Son was with him Yeſterday, and he has abſconded; this I will give an account of upon Oath: This my Lord, is a dangerous Practice after Examination, and after the Jury is withdrawn.

Mr. *Corniſh.* I pray do not aggravate the matter.

Mr. *Att. Gen.* I muſt do my Duty for the King.

Mr. *Corniſh.* My Son went to him, and found him at Church.

Mr. *Att. Gen.* Now Mr. *Atterbury* is gone. I deſire you ſhould have all your right, but not have Tricks put upon the King's Evidence.

Mr. *Corniſh.* His Evidence was, Mr. *Sheppard's* holding the Candle.

Mr. *Juſt. Levins.* For God's ſake, could you examine ſo many to your Reputation, and forget an evidence that was material; but I muſt tell you, if you will bring Mr. *Sheppard* to be examined, ſure it is requiſite, that the Witneſs that ſwears what you did there, ſhould be face to face with him, therefore Mr. *Rumſey* ſhould be here certainly.

Mr. *Juſt. Withins.* It is fit to have *Atterbury* here, to enquire if he did abſcond; if Mr. *Corniſh's* Son was with him, and he abſconded upon that account, it is very material. This is a meer Trick put upon the King's Evidence.

L. C. Baron. Mr. *Corniſh*, if you intend to produce Mr. *Sheppard* for that, to contradict *Rumſey's* Teſtimony, I wonder that you ſhould miſs him, without you have had ſome notice ſince.

Mr. *Corniſh.* My Lord, I was not come to him: my Lord, though I have ſuch a vile Charge, I am perfectly innocent.

Mr. *Juſt. Withins.* Now you may ſee what we have got.

Mr. *Corniſh.* I beſeech you, my Lord, conſider me, it is as improbable a thing as any in the World.

L. C. J. Jones. This is running over the ſame thing twenty times. Where is *Sheppard?*

Mr. *Corniſh.* He was here within this quarter of an Hour.

Mr. *Juſt. Withins.* Mr. *Corniſh*, Is this fairly done, when you ſaid he was upon the ſpot?

Mr. *Att. Gen.* He was Subpœna'd by you, he would not be found to be Subpœna'd by the King.

Mr. *Juſt. Levins.* To make the Court come down, and then to have no notice of the Perſon at all; ſure you may give the Court leave to take notice that they are not civilly dealt with.

L. C. J. Jones. Who told you he was here?

Mr. *Corniſh.* This Gentleman ſays, he ſaw him. Pray, my Lord, don't be offended.

L. C. J. Jones. I never ſaw ſuch a thing, the time was, you and your Partner would not have allowed it.

Mr. *Att. Gen.* If he comes, I will give him his Oath.

Mr. *Corniſh.* My Lord, here is Major *Richardſon* can bear Witneſs, I ſaid I muſt Subpœna Mr. *Sheppard*; I named him before Major *Richardſon* again and again, and ſaid, I muſt not omit him.

Mr. *Juſt. Levins.* Sir, I tell you what; you han't ſhewed ſo little skill to Day here, but that you could maintain ſo long a Diſcourſe with Mr. *Rumſey* as you were allow'd to do, and ſhould not offer to call *Sheppard* to contradict him, you dwelt half an hour upon it.

Mr. *Bar. Gregory.* And relyed only upon the improbability of the thing.

Mr. *Rumſey.* There is another Gentleman in the *Tower*, the late Lord *Grey*, that was in Company when the Declaration was read.

Mr. *Bar. Gregory.* Have you been in Company at *Sheppard's?*

Mr. *Corniſh.* I have been at *Sheppard's* very often. Pray, my Lords, don't be offended, my Life will do you no good, I don't know but here is a Gentleman that hath been in my Company forty times over ſince that Buſineſs.

Mr. *Rumſey.* Pardon me, Mr. *Corniſh*, not above three times ſince, and then there was other Company.

Mr. *Juſt. Withins.* It is impoſſible for any, but thoſe that were Complices with you, to give ſuch Evidence, and, becauſe they were your Complices, now you won't believe them.

L. C. J. Jones. Are you Sub-pœna'd by Mr. *Corniſh*?

Mr. *Sheppard.* I have a Sub-pœna from the King.

L. C. J. Jones. But were you Sub-pœna'd by Mr. *Corniſh*?

Mr. *Sheppard.* Yes.

Mr. *Att. Gen.* When?

Mr. *Sheppard.* Laſt Night, this Morning I was not at home.

Mr. *Att. Gen.* Was Mr. *Corniſh*'s Son with you Yeſterday in the Afternoon?

Mr. *Sheppard.* Yes, Sir.

Mr. *Att. Gen.* And what Diſcourſe had you with his Son?

Mr. *Sheppard.* He was very preſſing and urgent with me to be here to Day, and I told him, I could not tell whether I could or not.

Mr. *Att. Gen.* Is there any Account between you and Mr *Corniſh*?

Mr. *Sheppard.* Yes, Sir.

Mr. *Att. Gen.* To what Sum?

Mr. *Sheppard.* We were always Trading.

Mr. *Att. Gen.* That is very true, you were Trading —— To what Value?

Mr. *Sheppard.* About one or two Hundred Pounds.

Mr. *Att. Gen.* Who is Debtor?

Mr. *Sheppard.* I am Debtor.

Mr. *Sol. Gen.* Mr. *Sheppard*, ſince when did you Contract that Debt?

Mr. *Sheppard.* Since when, Sir;

Mr. *Sol. Gen.* Ay.

Mr. *Sheppard.* I believe it was ſome ſix or eight Months ago.

Mr. *Sol. Gen.* For what was it? Upon what Accompt?

Mr. *Sheppard.* For Cloth, Sir?

Mr. *Sol. Gen.* Was there no Money lent?

Mr. *Sheppard.* Mony lent me?

Mr. *Sol. Gen.* Ay, Sir.

Mr. *Sheppard.* No, Sir.

L. C. J. Jones. Is the Debt due to Mr. *Corniſh*?

Mr. *Sheppard.* My Lord, the Debt is due to him.

L. C. J. Jones. Or ſome body for whom he is a Factor?

Mr. *Sheppard.* I am indebted to Mr. *Corniſh*, for whom it is I can't tell.

Mr. *Sol. Gen.* Did you leave word, whither you went, when you went out Yeſterday?

Mr. *Sheppard.* No, Sir.

Mr. *Sol. Gen.* Which Sub-pœna was ſerved firſt upon you?

Mr. *Sheppard.* Mr. *Corniſh*'s Yeſterday.

Mr. *Sol. Gen.* What time was it ſerved upon you?

Mr. *Sheppard.* Preſently after I came out of Church in the Afternoon, Sir.

L. C. J. Jones. What have you to ſay?

Mr. *Corniſh.* My Lord, Mr. *Rumſey* was pleaſed to give in his Evidence, that I had been at a Conſult or Meeting at Mr. *Sheppard*'s Houſe, where Mr. *Ferguſon* ſhould pluck out a Declaration out of his Boſom, and ſhould read it by the Candle, and Mr. *Sheppard* ſhould hold the Candle to him while he read it.

L. C. J. Jones. Do you remember Mr. *Corniſh* was ever at your Houſe?

Mr. *Sheppard.* At one of thoſe Meetings that was at my Houſe, Mr. *Corniſh* came into the Houſe to ſpeak a few Words with the Duke of *Monmouth*, or ſome other, I can't be poſitive in that, it is ſo many Years ago, and did not ſtay half a quarter of an Hour in the Houſe; I came up Stairs, and went out with him, and there was not one word read, and no Paper ſeen while he was there.

Mr. *Juſt. Levins.* Was Mr. *Corniſh* in the Room with the Duke of *Monmouth* and thoſe others?

Mr. *Sol. Gen.* Mr. *Sheppard*, Do you remember that the late Duke of *Monmouth*, the Lord *Ruſſel*, the Lord *Grey*, and Sir *Thomas Armſtrong* were there together, and the Declaration read?

Mr. *Sheppard.* I remember there was a Declaration read, *Ferguſon* pull'd out a Declaration out of his Shoe, he pull'd off his Shoe, and pull'd it out there.

Mr. *Sol. Gen.* Do you remember Mr. *Corniſh* was by, any time that Night?

Mr. *Sheppard.* Truly I can't ſay whether it was that Night when the Paper was read, but I do poſitively ſay, that there was no Paper read, for he was not looked upon to be of the Company: Mr. *Ferguſon* told me poſitively, there is the Duke of *Monmouth*, my Lord *Grey*, my Lord *Ruſſel*, Sir *Thomas Armſtrong*, Col. *Rumſey*, my ſelf and you.

Mr. *Sol. Gen.* Who did Mr. *Corniſh* come to ſpeak with, when he came to your Houſe?

Mr. *Sheppard.* Truly I don't know whether it was with the Duke of *Monmouth*.

Mr. *Sol. Gen* How came Mr. *Corniſh* to know the Duke of *Monmouth* was there?

Mr. *Sheppard.* Truly my Memory will not call it.

Mr. *Sol. Gen.* Did his Coach ſtand publickly at your Door?

Mr. *Sheppard.* Whoſe Coach?

Mr. *Sol. Gen.* The late Duke of *Monmouth*'s.

Mr. *Sheppard.* No, Sir, they all came private, there was no Coaches at the Door as I ſaw, I let none of them in.

Mr. *Sol. Gen.* Was Mr. *Corniſh* but once there, when the Duke of *Monmouth* was there?

Mr. *Sheppard.* But once.

Mr. *Sol. Gen.* Did he call the Duke of *Monmouth* out to him?

Mr. *Juſt. Street.* How came you to carry him up to the Duke of *Monmouth*, if he were none of the Company?

Mr. *Sheppard.* Mr. *Corniſh* did go up into the Room and ſpake to the Duke of *Monmouth*, or ſome other Perſon, but I think the Duke of *Monmouth*.

Mr. *Sol. Gen.* Do you remember he was there in Company, when Col. *Rumſey* was there?

Mr. *Sheppard.* No I can't remember that.

Mr. *Rumſey.* My Lord, when I came to Mr. *Sheppard*'s Houſe, Mr. *Sheppard* came down and fetch'd me up, and I deliver'd my Meſſage I had to the Duke of *Monmouth*, and to the Company, and indeed I was not a quarter of an Hour there, I believe, but by that time I had ſpoke my Words ſome body knock'd at the Door, and Mr. *Sheppard* went down, and immediately brought up Mr. *Corniſh* into the Room, without asking a Queſtion of any body; and when he was come into the Room, Mr. *Corniſh* ſaid, he could not come ſooner, becauſe he had buſineſs; and could not ſtay, becauſe there was a Committee for the Management of the Charter, to meet that Night, and there was a neceſſity of his being there, becauſe there was never another Alderman in Town, and there muſt be an Alderman there.

Mr.

Mr. *Att. Gen.* Mr. *Sheppard*, Do you remember any thing of that?

Mr. *Sheppard.* No, Sir, I do not remember it, I'll aſſure you.

Mr. *Sol. Gen.* Did you let him in at the Door?

Mr. *Sheppard.* No, Sir, I had word brought me up Stairs, that Alderman *Corniſh* was below, and I went down, and brought him up.

Mr. *Sol. Gen.* Did you ask for Mr. *Corniſh* to come up?

Mr. *Sheppard.* I don't remember I did: When Mr. *Corniſh* was there, there was not above three Perſons.

Mr. *Sol. Gen.* Who were they?

Mr. *Sheppard.* There was the Duke of *Monmouth*, and there was Mr. *Ferguſon*, and truly I can't tell whether t'other was my Lord *Ruſſel* or my Lord *Grey*.

Mr. *Juſt. Levins.* You acknowledge now, Sir, you did carry the Priſoner up to the Duke of *Monmouth* and thoſe Perſons. Did you uſe to carry all Perſons up there?

L. C. J. Jones. There was a Cabal of Rebels met together, and you go and bring up this Man to them, without any leave or licence from them, which is incredible certainly, unleſs you knew him to be one of the Company, and equally engaged with them.

Mr. *Sol. Gen.* Mr. *Sheppard*, you ſay, when Mr. *Corniſh* came up, there was not half the Company there. Had they been there, or were not they yet come?

Mr. *Juſt. Withins.* Look you, Sir, it is marvellous how Mr. *Corniſh*, if he were none of the Parties, ſhould have notice that the Duke of *Monmouth* was there, who came in privately at the Back-Door, and came to ſpeak with him there.

Mr. *Sheppard.* My Lord, I have no Back-Door.

Mr. *Juſt. Withins.* He came in privately.

Mr. *Juſt. Levins.* Mr. *Sheppard*, I think I heard you ſay, they came privately without their Coaches.

Mr. *Sheppard.* Yes, Sir, they had no Coaches.

Mr. *Juſt. Levins.* They came privately, I ſuppoſe, that no body ſhould know they were there.

Mr. *Sheppard.* I ſuppoſe ſo, Sir.

Mr. *Juſt. Levins.* Why then did you carry Mr. *Corniſh* up? If you were below in the Houſe, he might come about your own buſineſs; but to be carried into the Chamber where they were, looks as if it were about their buſineſs.

Mr. *Corniſh.* I never heard any thing of the Buſineſs, my Lord.

Mr. *Att. Gen.* So far, Gentlemen, you remember he confirms what Mr. *Rumſey* ſays, that Gentleman denyed he was there with the Duke of *Monmouth*.

Mr. *Corniſh.* Pray Mr. *Attorny* don't ſtrain, I have dealings with Mr. *Sheppard*, and have often been there, but never at any Meeting.

Mr. *Att. Gen.* He ſays, you ſpake with the Duke of *Monmouth*.

Mr. *Corniſh.* I never ſaw the Declaration, he declares it.

L. C. J. Jones. Had you any dealings upon account with the Duke of *Monmouth*?

Mr. *Corniſh.* Never for a Farthing.

Mr. *Juſt. Withins.* What buſineſs had you with him then?

Mr. *Corniſh.* I don't know but I might enquire for him in other places.

L. C. J. Jones. Your own Witneſs carried you up.

Mr. *Corniſh.* My Lord, if he did, I did not ſtay, he ſays Mr. *Sheppard* held the Candle.

Mr. *Juſt. Withins.* Mr. *Corniſh*, he confirms great part of what Mr. *Rumſey* ſays.

Mr. *Corniſh.* Not one Tittle, for he declares I was not of the Company.

L. C. J. Jones. He ſays no ſuch thing.

Mr. *Sheppard.* My Lord, to my Knowledge, I can ſafely ſay, he knows nothing of it.

L. C. J. Jones. And yet you could bring him up among them.

Mr. *Sheppard.* My Lord, I declare I never ſpake any thing to him in my Life about the Buſineſs, nor never in any Company.

Mr. *Juſt. Withins.* It is plain, Mr. *Rumſey* ſays he was the Man that brought you up; How ſhould Mr. *Rumſey* know that?

Mr. *Att. Gen.* Mr. *Sheppard*, I will ask you this Queſtion; Had you order from that Company not to bring up any Perſon? Do you remember you ſwore ſo at a former Tryal?

Mr. *Sheppard.* I remember when I was there, they deſired I would let none of my Servants up, and that I would go down and fetch up what they wanted, and I fetch'd up Wine and what they wanted.

Mr. *Sol. Gen.* Mr. *Sheppard*, Why were none of your Servants to come up?

Mr. *Sheppard.* Becauſe they were in private, Sir.

Mr. *Sol. Gen.* Were Strangers to come up therefore?

Mr. *Sheppard.* It is ſo long ago, I cannot remember.

Mr. *Juſt. Levins.* They came privately, without Coaches, becauſe none ſhould know they were there, and you carry Mr. *Corniſh* up to them.

Mr. *Corniſh.* I think this Witneſs is confronted.

L. C. J. Jones. Hold your Tongue Sir, he hath not done yet.

Mr. *Rumſey.* My Lord, as ſoon as Mr. *Corniſh* had made his excuſe for his not coming ſooner, and that he could not ſtay, I could not make that, and Mr. *Corniſh* can't ſay I would do any thing maliciouſly or ſpitefully againſt him; my Lord, as ſoon as he had done, all the Company went about him, and ſome Body did tell him, They would tell him what they had done; they told him the Declaration had been read, that Mr. *Ferguſon* had prepared it, and they ſaid, Look you, Mr. *Corniſh*, you ſhall hear it read, and with that, this Gentleman, though he denies it, did take the Candle, and held it, they did not come to the Table, but the Company ſtood round while Mr. *Ferguſon* pull'd it out of his Boſom.

Mr. *Juſt. Withins.* Mr. *Sheppard*, you are very forward.

Mr. *Att Gen.* My Lord, I would ask Mr. *Sheppard* a Queſtion.

Mr. *Rumſey.* My Lord, the Declaration was read, and Mr. *Corniſh* did approve of it, and did ſay, With that ſmall Intereſt, or little Intereſt, or words to that effect, that he had, he would aſſiſt.

Mr. *Att.*

Mr. *Attor. Gen.* I wonder why you did not give me notice when you came in the morning. Why did not you give notice?

Mr. *Sheppard.* I was here attending from Eleven a Clock, till half an hour after three.

Mr. *Attor. Gen.* Did you ſend in any word?

Mr. *Sheppard.* I could not tell who to ſend in: I was here expecting to be call'd.

Mr. *Juſt. Street.* You have had a favour that no Man ever had.

Mr. Sol. Gen. Gentlemen, there hath been a very great indulgence given to the Priſoner, and it is to ſhew you what tenderneſs a Court of Juſtice hath, and always will have, of the lives of the King's Subjects: After a full Evidence, though he had neglected his Defence, yet you were again ſent for into Court, to hear what further Evidence he had to offer to you; I cannot but obſerve, this looks like a ſubtile Contrivance on the Priſoners part; you ſee what endeavours have been made by Mr Attorney General, to have had him here a witneſs for the King, you have obſerved he hath told you he had a Subpœna for him, but he was abſent, in what Company he was abſent yeſterday, he hath told you, With Mr. *Corniſh*'s Son; this morning he was not to be found, after he had received this Subpœna, and a Subpœna from Mr. *Corniſh*; he ſtays without, and gives no notice, but when you are withdrawn, can ſend intelligence to Mr. *Corniſh*, that he hath ſomething to ſay, that he hopes will excuſe him; now what that is, I muſt beg you a little to obſerve: Truly I am very glad for the ſatisfaction of all men, that Mr. *Sheppard* hath now been here, and he is ſo far from invalidating any one part of the Teſtimony, that by all the circumſtances you can collect from this Evidence that is given, it is a corroboration of it: Mr. *Corniſh* was accuſed of being preſent at Conſultations that have been held againſt the Life of the King, and for raiſing Rebellion at Mr. *Sheppard*'s Houſe; his excuſing his not coming there is a ſufficient Argument to prove he was privy to their Meeting, he hath gone on further, and proved to you the reading the Declaration; now what ſays *Sheppard* to this Witneſs? Mr. *Corniſh*, by the way, I muſt obſerve to you, before, did deny his being there; he had been ſometimes in company with *Ferguſon*, but he did not like the man, he ſays, becauſe of his Morals; now the Witneſs he hath produced hath given you this Teſtimony, that Mr. *Corniſh* hath been there in that Company, that he came in ſuch a manner, that no man but muſt be ſatisfied he was privy to their Deſigns, and did know of their Meeting, for he comes when the Duke of *Monmouth*, and the reſt of the Conſpirators, were there met in private, with a direct charge to Mr. *Sheppard*, that is the Witneſs, that they ſhould be ſo private, that no one Servant ſhould come up into the Room, yet Mr. *Sheppard* tells you, that when Mr. *Corniſh* came he carried him up into the Room, without ſo much as acquainting any one of the Company that Mr. *Corniſh* had a deſire to come, but brings him up as if he were (and I make no doubt but you will imagine, he was) one of the Company; when he comes there, he ſays his buſineſs is with the Duke of *Monmouth*, the Head of that Conſpiracy, and he himſelf tells you he never had any dealings with the Duke of *Monmouth* in his life; What can a man imagine of that man that had no dealings with the Duke of *Monmouth*, to find him out in a place, where no mortal could know, and none was to know, and coming to him at that time and at that place, under thoſe circumſtances of concealment, no man almoſt but out of his own mouth muſt believe that he was privy to that Conſpiracy; therefore though this Witneſs doth ſeem to forget ſome part of the Evidence, the reading the Declaration, and holding the Candle; yet theſe are ſuch circumſtances that in themſelves do carry a proof of the Charge, and do confirm all the reſt that the Witneſs hath ſaid, and this muſt be a great ſatisfaction to you, that he was there preſent and privy to that Deſign. And ſo I leave it to your Conſideration.

Then the Jury *withdrew for a ſhort time, and returning, brought Mr.* Corniſh *in Guilty, and found* One Hundred *and* Forty Pounds *for the King in Mr.* Sheppard's *Hands.*

Clerk. Set *Elizabeth Gaunt* to the Bar, (which was done.)

Cryer. Oyez all manner of Perſons are commanded to keep ſilence, whilſt Judgment is giving, upon pain of Impriſonment.

Clerk. Elizabeth Gaunt, hold up thy Hand, thou ſtandeſt guilty of High-Treaſon, *&c.*

Recorder. You *Elizabeth Gaunt*, you have here been indicted for that great Crime of High-Treaſon, and that particular part of it, for Harbouring, and Comforting, and Aſſiſting, and Cheriſhing of Traytors, more eſpecially of one *Burton*; you have had your Tryal, and a very fair Tryal, and upon that, the Jury have found you Guilty: It is the Duty of my Place to pronounce the Sentence the Law hath provided for ſuch High Crimes as theſe are, and that is no other but this,

That you are to be carried back to the place from whence you came, from thence you are to be Drawn, upon a Hurdle, to the place of Execution, and there you are to be Burnt to death, and the Lord have Mercy upon your Soul.

Mrs. *Gaunt.* I ſay that this Woman did tell ſeveral Untruths of me.

Recorder. Is that all you have to ſay?

Mrs. *Gaunt.* I don't underſtand the Law.

Clerk. Bring *Henry Corniſh* to the Bar.

Henry Corniſh hold up thy Hand, *&c.*

Mr. *Corniſh.* My Lord, now the Law hath paſt upon me, I do humbly pray your Lordſhip, and this Honourable Bench, that you will be pleas'd to intercede for me with his Majeſty, I ſhall lead a Peaceable, Quiet, and Dutiful Life: and I hope, when you come to reflect upon what hath been ſaid to Day, that perhaps you will be of another Mind, and have more Charity for me than you had upon my Tryal, for, in the ſimplicity of my Heart, and in the preſence of God, I do declare, I am Innocent, and if your Lordſhip, and this Honourable Bench, intercede with his Majeſty, it will be an Eternal Obligation upon me, and I ſhall live Faithfully, Peaceably, and Loyally as long as I Live. I preſume to beg this, and I promiſe my ſelf, and hope it will ſtir up the Hearts of ſome Perſons, that they will not leave me deſtitute of Friends in ſuch a Caſe as this, having a Wife and ſeveral Children, it will be an Act of Charity.

Recorder.

Recorder. The Court does give you your Requeſt, and if there be any miſery brought upon your Family, it is done by your ſelf.

Clerk. William Ring, hold up thy Hand, *&c.*

Mr. *Ring*. I had no notice given me, an't pleaſe your Lordſhip.

Recorder. Where is the Executioner, is he here?

Executioner. Yes.

Recorder. Why don't you do your Duty to Mr. *Corniſh*?

Clerk. John Fernley, hold up thy Hand; thou ſtandeſt convicted of High Treaſon, for trayterouſly harbouring one *James Burton*; what canſt thou ſay for thy ſelf? *&c.*

Mr. *Fernley*. It is very hard meaſure I have had, I have nothing to ſay, but the King's Mercy.

Recorder. Is that all you have to ſay?

Mr. *Fernley*. I have nothing but the King's Mercy.

Recorder. Tye him up then, tye him up.

Cryer. Oyez, all manner of Perſons are commanded to keep ſilence, whilſt Judgment is giving, upon pain of Impriſonment.

Recorder. You, the ſeveral Priſoners at the Bar, you have been ſeverally indicted here of the high Crime of Treaſon; for you, Mr. *Corniſh*, I apply my ſelf firſt to you, your Crime is for Treaſon that was committed in his late Majeſties Life-time, being one of thoſe notorious Conſpirators that deſigned to raiſe Rebellion, and others ſome of them immediately deſigned the Life of his Majeſty that then was, and his preſent Majeſty, that was the deſign of ſome of them; and others they had another part, that was, to raiſe Rebellion, and particularly ſome of them in and about this City, and it was carried on ſome time before it was diſcover'd, may be a Year or more, under colour and pretence of Law: For ſo did they invade the Government firſt of all by packing of Juries, there was the Foundation laid whereby to bring on that buſineſs, which they had at laſt deſign'd, when they could bring it to a ripe Head. Too many Perſons in that buſineſs, I believe, were very buſie, medling with that they had not to do with; clubbing and cabaling how to bring their Deſigns about, in oppoſition to the Government, not to ſupport it in the leaſt, but to overthrow it if it were poſſible: But then, at laſt, then they muſt take another Courſe, for no longer could they carry it on by pretence of Law, as you have heard to Day: Now we muſt take other Meaſures, and take down right Blows. This is the buſineſs, Mr. *Corniſh*, that you have been indicted for; and, I muſt tell you, whatever Apprehenſions you have to the contrary, and may pleaſe your ſelf in, I am ſorry to ſee ſuch a ſort of pleaſure in your Countenance, as if you had had no favour ſhewed you. I believe the Court hath ſhewed you more favour, and had more patience with you than ever any Man that ſtood in your place had; for calling a Witneſs after the Jury hath been out, is a thing I never ſaw a Precedent for: And I am glad it was done, for I think it hath clear'd the thing beyond all manner of Contradiction, before it looked ſomething dark for want of *Shippard*, and ſo it is a Happineſs that that Man was called to convince you of many things that you proteſted ſo ſolemnly againſt, which I am ſorry to ſee in you; in this Condition that you are, to make ſuch ſolemn Proteſtations, and afterwards call a Witneſs to confront you in them. For the other two, here is Mr. *Ring* is very notorious for harbouring a couple of Traytors, knowing from whence they came; and if it were not for ſuch Perſons as theſe are, that do harbour them when they fly, it may be there would not be ſo many bold Attempts to commit ſuch Crimes as theſe are: To provide for them, and nouriſh them, and comfort them, after they have committed their Villanies, this does encourage them to commit their Villanies as they do, and ſo I reckon Harbourers to be worſe than Traytors themſelves, they are like Receivers to Thieves; there would not be ſo many Traytors, if there were no Harbourers: You have been convicted of theſe great Crimes; it is too late, and not fitting to ſpend time any longer, but to pronounce the ſeveral Sentences againſt you, which is this,

You muſt, every one of you, be had back to the place from whence you came, from thence you muſt be drawn to the place of Execution, and there you muſt ſeverally be hanged by the Necks, every one of you by the Neck till you are almoſt dead, and then you muſt be cut down, your Intrails muſt be taken out and burnt before your Faces, your ſeveral Heads to be cut off, and your Bodies divided into four parts, and thoſe to be diſpoſed of at the Pleaſure of the King; and the Lord have Mercy upon your Souls.

The Tryal of Charles Bateman, *Chirurgeon,* *December 9. 1685.*

THE *Seſſions* of Peace, *Oyer* and *Terminer*, and Goal Delivery of *Newgate*, for the City of *London* and County of *Middleſex*; beginning at *Juſtice-Hall* in the *Old-Bayly*, on the 9th of *December*, 1685. *Charles Bateman*, againſt whom an Indictment of *High Treaſon* had been found, for conſpiring the Death of the late King, *&c.* was brought in the Cuſtody of the Keeper of *Newgate* in order to his Arraignment; and being ordered to hold up his hand, he deſired that he might firſt ſay ſomething for himſelf, in order to put off his Tryal, but was told by Mr. *Recorder*, he muſt plead before he could be heard; whereupon deſiring to know whether he might have the ſame advantage after his pleading as before, as to gain longer time for his Tryal, and being anſwered he might, he held up his Hand, and then the Indictment was read:

Mr. *Bateman* pleaded not guilty, and deſired his Tryal might be put off, ſaying, *He was not prepared to make his Defence*, and therefore prayed a longer time, ſaying, *He had been cloſe Priſoner for the ſpace of ten Weeks, and was over and above very much indiſpoſed*; and farther alledged, *He had had no notice nor Pannel of the* Jury; as for notice of Tryal, he was anſwered, that it was not uſual to give any in that Court, but that he ought to have expected it, and prepared for it accordingly, and as for the Pannel it was not denyed him; then he prayed a Copy of the Indictment, but was told it could not be allowed; and upon his further alledging his unpreparedneſs and no notice of Tryal, and the like, the King's Council urged that he had Opportunity enough to take notice of his Tryal, for that it was upon an Indictment of the precedent *Seſſions*: Then he asked what time he might have between his Arraignment and Tryal, and was anſwered, as much as would ſtand with the conveniency of the Court; and after ſeveral Hours reſpit, he a ſecond time was brought to the Bar, and then upon his humble Requeſt, Pen, Ink, and Paper was allowed him, and his Son to aſſiſt him; and then were ſworn to try the Iſſue,

Richard Aley, Eſq;	*Edward Rhediſh*
Richard Williams	*George Lilburn*
John Cannum	*Daniel Fouls*
Patrick Barret	*Peter Floyer*
John Palmer	*Lawrence Cole*
James Raynor	*John Cooper.*

And he making no Exceptions to them, then the Indictment was read.

The Jurors, *&c.*

'THAT *Charles Bateman*, late of the Pariſh of St. *Dunſtan* in the *Weſt*, in the Ward of *Farringdon without*, *London*, Chirurgeon, as a falſe Traytor, againſt the moſt illuſtrious and excellent Prince, *Charles* the ſecond; late King of *England*, *Scotland*, *France* and *Ireland*, Defender of the Faith, and his natural Lord; not having the fear of God in his Heart, nor weighing the Duty of his Allegiance; but being moved and ſeduced by the Inſtigation of the Devil, the cordial Love, and true due and natural Obedience, which a true and faithful Subject of our late Lord the King, towards him ſhould, and of right ought to bear, altogether withdrawing, and practiſing, and with all his Strength, intending the Peace and common Tranquillity of this Kingdom, to diſquiet, and diſturb, and War and Rebellion againſt our late Lord the King, within this Kingdom to ſtir up, move, and procure; and the Government of our late Lord the King, of this Kingdom to ſubvert, and our ſaid late Lord the King, from the Stile, Title, Honour, and Kingly Name, of the Imperial Crown of this Kingdom, to depoſe and deprive, and our ſaid late Lord the King to Death, and final Deſtruction to bring and put, the 30th Day of *May*, in the 37th Year of his Reign, and divers other Days and Times, as well before as afterwards, at the Pariſh and Ward aforeſaid, falſly, maliciouſly, deviliſhly, and traytorouſly, with divers other Rebels and Traytors to the *Jurors* unknown, did conſpire, compaſs, imagine, and intend our ſaid late Lord the King, then his ſupream and natural Lord; not only of his Kingly State, Title, Power, and Government of his Kingdom of *England*, to deprive and depoſe, but alſo our ſaid late Lord the King, to kill, and to Death to bring and put, and the ancient Government of this Kingdom to change, alter, and ſubvert; and a miſerable Slaughter amongſt the Subjects of our ſaid late Lord the King, to cauſe and procure, and Inſurrection and Rebellion, againſt our ſaid late Lord the King to procure and aſſiſt, and the ſame moſt wicked Treaſons and traytorous Conſpiracies, Compaſſings, Imaginations and Purpoſes aforeſaid to effect, and bring to paſs: He the ſaid *Charles Bateman*, as a falſe Traytor, then and there, (to wit) the ſaid 30th Day of *May*, in the 35th Year aforeſaid, and divers other Days and Times, as well before as afterwards; at the Pariſh and Ward aforeſaid, falſly, unlawfully, moſt wickedly, and traytorouſly, did promiſe and undertake to the ſaid other falſe Rebels and Traytors then and there being preſent: *That* he the ſaid *Charles Bateman would be aſſiſting and aiding, in the taking and apprehending the Perſon of our ſaid late Lord the King, and in taking and ſeizing the City of* London, *and the* Tower *of* London, *the* Savoy, *and the* Royal Palace *of* White-Hall, *againſt the Duty of his Allegiance, againſt the Peace*, &c. *and againſt the Form of the Statute in this Caſe made and provided*, &c.

Mr.

Mr. *Phipps*, Council for the King opened the Nature of it, and was ſeconded by Mr. Serjeant *Selby* and Mr. *Charles Moloy*, after which, Mr. *Joſias Keeling* was ſworn, whoſe Evidence was, That he had been at divers Meetings and Conſults, where the Methods had been propoſed for the Purpoſes aforeſaid; and more particularly one time with *Rumbold* the *Maltſter*, ſince executed for *High Treaſon*, and that then, three papers were produced by *Rumbold* and opened, containing the Model of the Deſign, to divide the City into twenty Parts, and to raiſe five hundred Men in each Part, to be under one Chief, and nine or ten Subordinates whom he ſhould appoint, the Names of the Lanes and Streets of each Diviſion being likewiſe inſerted therein; and at that time *Rumbold* propoſed the buſineſs of the *Rye-Houſe*, ſaying, *He had a Houſe very convenient to plant Men in, to ſeize the King in his return from* New-Market, but that he ſomewhat boggled about the killing the Poſtillion, which had been propoſed the better to ſtop the Coach, becauſe it looked too much like an Exploit in cold Blood: He further depoſed, that he had been at divers other places where it had been diſcourſed to the ſame Effect, and that Mr. *Bateman* was looked upon as a Perſon fitting to manage one Diviſion in order to an Inſurrection, to ſeize the *Tower*, *City*, &c. This being the Sum of Mr. *Keeling*'s Evidence; Mr. *Bateman* ſaid, that what he had ſworn, did not affect or charge any Treaſon upon him; and was anſwered by the Court that it did not, and bid the Jury take notice, that what Mr. *Keeling* had ſworn, was only to the Conſpiracy in general, and did not affect the Priſoner in particular.

Then *Thomas Lee* was ſworn, and gave Evidence, That he being made acquainted with the Deſign by Mr. *Goodenough*, &c. and how the City was to be divided into twenty Parts and managed; and being asked who was a fit Man to manage one part, he nominated Mr. *Bateman*, and thereupon was deſired to go to him, and ſpeak with him about it as from Mr. *Goodenough*; and when he came to diſcourſe him about that Affair, he apprehended very plainly, that he was no Stranger to it, nor boggled to give his Aſſent, and ſeem much deſirous to ſpeak with Mr. *Goodenough* about it: That he likewiſe went one Day to the late Duke of *Monmouth*'s Houſe with Mr. *Bateman*; and Mr. *Bateman*, after he had had ſome Diſcourſe with one of the Duke's Servants, came to him and told him, the Duke was willing to engage in the Buſineſs, and aſſur'd him, that he had divers Horſes kept in the Country, to be in a readineſs when matters ſhould come to Extremity; and from thence he went with him to the *King*'s *Head Tavern*, and there had diſcourſe to the ſame Effect; and from thence, they came to the *Devil-Tavern* within *Temple-Bar*, where Mr. *Bateman* propoſed the ſeizing the *City*, *Tower*, *Savoy*, *White-Hall*, and the Perſon of the late King, and promiſed not to be wanting therein. At another time, he met him at the *Half-Moon-Tavern* in *Alderſgate-ſtreet*, where diſcourſing about the Condition the Conſpirators were in, As to the intended Inſurrection, he ſaid, *If he could but ſee a Cloud as big as a Man's Hand, he would not be wanting to employ his Intereſt*, and that there were other Diſcourſes tending to the Inſurrection, but were broke off by the coming in of one *John Allmeger*, before whom Mr. *Bateman* would not diſcourſe, becauſe he knew not of his coming.

Mr. *Lee* being asked the Deſign of that Meeting, replyed it was upon the account of carrying on the Conſpiracy, and that Mr. *Bateman* had told him, that he intended to take a Houſe near the *Tower*, to place men in, in order to ſurprize it, and that he had held divers Conferences with ſome Sea Captains on that Affair; and that he had been with them at *Coffee-Houſes*, &c. at ſundry other times, but there to prevent diſcovery, they ſpoke of the Deſign at a great diſtance.

To this Evidence, Mr. *Bateman* objected, that if he had been conſcious of what was laid to his Charge he was fit for *Bedlam*; ſaying, *He wonder'd if he had heard him ſpeak ſuch words, he had not accuſed him ſooner*; but was anſwered, that Mr. *Goodenough* was not to be had till after the Rebellion in the *Weſt*; and that *Lee*'s ſingle Teſtimony in Caſe of *High Treaſon* in ſo high a nature was not ſufficient.

Then Mr. *Richard Goodenough* was called, who being ſworn, depoſed, that being in Company with Mr. *Bateman* (to the beſt of his Remembrance) at the *King's Head Tavern* in St. *Swithings-Alley* near the *Royal Exchange*, and having ſome Diſcourſe about the intended Inſurrection, and of *Wade* and others that had engaged to promote it. Mr. *Bateman* not only *approved of the Deſign, but promiſed to uſe his Intereſt in raiſing Men; and not only to be aſſiſting in the Diviſion allotted him, but in ſurpriſing the* City, Savoy, *&c. and in driving the Guards out of* Town. To this he objected, that he was not at the *King's-Head* with *Goodenough*, to which Mr. *Goodenough* replyed, *He had not ſworn poſitive to the place, though he verily believed that was the place; but however, as to the Diſcourſe and Words then ſpoken by Mr.* Bateman, *he was poſitive.*

The Evidence being thus full againſt Mr. *Bateman*, and Liberty granted him to make what Defence he could, he deſired that Sir *Robert Adams* might be heard, in relation to a falſe Report the ſaid Mr. *Lee* had raiſed of Sir *Robert* and others, and Sir *Robert* being in Court, gave Evidence that there had been a Report abroad, ſaid to be raiſed by Mr. *Lee*, that he (*viz.*) *Mr.* Lee *had beaten three Knights, and that Mr.* Lee *came to him and asked his Pardon, acknowledging the thing in it ſelf was altogether falſe.*

To the ſame purpoſe Sir *Simon Lewis* was called, but appeared not.

Ames Child being called by Mr. *Bateman*, to teſtifie his Knowledge of Mr. *Lee*; and being asked what he could ſay againſt him, declared, *That he knew nothing to the contrary, but Mr.* Lee *was an honeſt Man.*

One *Baker* being called by Mr. *Bateman*, to teſtifie that Mr. *Lee* would have ſuborned him againſt him to his Prejudice, ſome Years ſince, of which he had made an *Affidavit* before Sir *William Turner*, and the ſaid *Baker* not then appearing in Court, he deſired Sir *William Turner* to give ſome account of *Baker*'s Examination, which the ſaid Sir *William* had taken, but it being

being about two Years ſince, Sir *William* declared, *He could not charge his Memory with any of the Particulars contained therein.*

Mr. *Tompkins*, Sir *William Turner's* Clerk, being called and asked what he could ſay concerning any Examination of *Baker's* taken before Sir *William*, that related to *Lee*; he ſaid, *there was an Examination taken* Anno 1683. *wherein Mr.* Lee *was mentioned; but to the beſt of his Remembrance it was returned before the King and Council, and he could not give any account of the Particulars.*

Then Mr. *Bateman* deſired to know upon what Statute he was Indicted, and was informed by the Court, That *the* Treaſon *wherewith he ſtood charged, was Comprehended within the* 25*th.* of Edward *the* 3*d. and the* 13*th of* Car. 2. *by* Overt-Act; and having little more to ſay in his own Defence, after a favourable hearing of all he had materially to offer, and his Son having been allowed by the Court to aſſiſt him, in looking over his Notes, and calling his Witneſſes, by reaſon he through ſickneſs pretended himſelf incapable. Then the *Lord Chief Juſtice* of the *King's Bench* Sum'd up the Evidence at large, and omitted nothing that might be for the advantage of the Priſoner, whereby the matter was fairly, fully, and clearly left to the Jury; and thereupon Mr. *Bateman* was taken from the Bar; after which, the other Priſoners being called and Tryed, and the Jury ready to go forth to conſider of their Verdict, Mr. *Batcman's* Daughter came in and beſought the Court, *that* Baker, *whom ſhe ſaid ſhe had found out, might be heard againſt Mr.* Lee, but Mr. *Lee* being gone, and the Tryal already over, the King's Council oppoſed it, unleſs Mr. *Lee* could be found (which he could not be at that time) and the Court having deliver'd their Opinion that it was not convenient to examine any Witneſs after the Jury had received their Charge, it being a very ill Preſident and of dangerous Conſequence; yet ſome of the Jury deſiring it, the Court to prevent any Objections that might be made, conſented, and *Baker* had leave to ſpeak, whoſe Evidence was, *that being in Company with Mr.* Lee, *ſome time in the Year* 1683. *and diſcourſing about divers matters, he bad him go to the Sign of the* Peacock, *and to the* Angel *and* Crown, *to a* Chirurgeon, *and a* Linnen-Draper *whom he named, the former of which he remembred to be the Priſoner, and to inſinuate himſelf into their Company and diſcourſe them; and when he demanded of Mr.* Lee *to what end he ſhould do it, or about what he ſhould diſcourſe them, he told him it might be about State Affairs, and by that means he would find a way to make him a great man; and when he excuſed his attempting to intrude into ſuch Company as was above him, he being but a Shooe-maker, Mr.* Lee *told him he knew that he kept Company with ſuch and ſuch men, and why could he not as well do it with thoſe he had mentioned,* and of this he ſaid his Examination was taken before Sir *William Turner*; but this being nothing to the purpoſe, but was rather looked upon as a Deſign Mr. *Lee* had to make a diſcovery of the Conſpiracy, if he could have procured further Evidence to have corroborated his own, and *Baker* being looked upon as a broken Fellow and that he lodged near the *Seſſions Houſe*, and yet came not in before, though often called, the conſideration of the whole matter was left to the Jury, and an Officer being ſworn to attend them went out, and after about half an hours debating that, and what elſe was before them, gave in their Verdict, *that* Charles Bateman *then at the* Bar, *was Guilty of the* High Treaſon *as laid in the Indictment*, which Verdict was accordingly Recorded, and the Priſoner re-conveyed to *Newgate*; and being again brought to *Juſtice-Hall*, on *Friday* the 11*th.* of *December*, in order to receive Sentence; and upon holding up his hand, being asked *What he could ſay for himſelf, why the Court ſhould not give Judgment againſt him according to the* Law: *He deſired to know whether Mr.* Goodenough *was fully pardoned,* and was told, *that as for the Out-lawry he was pardoned, and that his Pardon hath been allowed and approved of in that Court, and in the Court of* King's-Bench, *and for any thing elſe he was not Proſecuted*: Then he ſaid *his Opinion was altogether for Monarchy, and that he hoped he ſhould have an Advocate with the King,* but had nothing more material to offer.

Then Mr. *Recorder*, after having ſpoke ſeveral things in aggravation of that great Crime, whereof, after a fair and favourable Tryal, he was Convicted; adviſed him not to flatter himſelf with hopes of Life, and thereby delay his Repentance neceſſary for his future Happineſs, pronounced the Sentence, which was, *That he ſhould return to the place from whence he came, from thence be drawn to the place of Execution, there to be Hang'd by the Neck, and whilſt alive be Cut down, and his Bowels to be taken out and Burnt; his Head to be ſevered from his Body, and his Body divided into four Parts, and that his Head and Quarters be diſpoſed at the pleaſure of the King.*

Upon this, he prayed a Divine might have leave to come to him, as likewiſe his Relations, which being allowed, he departed the Court, and was on *Friday* the 18*th* of *December*, Executed at *Tyburn* according to Sentence.

Remarks

Remarks upon the Tryals of Edward Fitzharris, Stephen Colledge, *Count* Coningſmark, *The Lord* Ruſſel, *Colonel* Sidney, Henry Corniſh, *and* Charles Bateman; As alſo on the Earl of *Shaftsbury*'s Grand Jury, *Wilmer's Homine Replegiando*, And the Award of Execution againſt Sir *Thomas Armſtrong*: By Sir *John Hawles* afterwards Solicitor General.

THE ſtrange Revolution which hath of late happen'd in our Nation, naturally leads one into the Conſideration of the Cauſes of it. The Danger of ſubverting the Eſtabliſh'd Religion, and invading Property, alone could not be the Cauſes. For if it be true, that the ſame Cauſes have generally the ſame Effect: it is plain, that in the Reign of a precedent Monarch, the Subverſion of the Eſtabliſh'd Religion was as much deſign'd, or at leaſt was believ'd to be ſo, as of late; and it is not material whether what was ſuſpected was true, or not; and Property was as much invaded as of late, by impoſing Ship-Money, and other Taxes in the Nation, but more eſpecially Ship-Money: which at firſt was light and eaſy, but in progreſs of time was increas'd, according as it was found the Nation would bear it. And at length it was feared, as there was juſt reaſon ſo to do, that it would become as burdenſome, as what is now impoſed on the *French* Nation by the *French* King; and yet when the War broke out, if the Hiſtory of thoſe Times, or the Perſons who liv'd about thoſe Times, are to be believ'd, the Majority of the Nation took part with the King. There was therefore ſome other Reaſons for the Diſaffection of the Nation to the late Government, and they may be rank'd under theſe ſix Heads.

Exorbitant Fines; Cruel and illegal Proſecutions; Outrageous Damages; Seizing the Charters, Diſpenſing with the Teſt and Penal Laws; and undue Proſecutions in Criminal, but more eſpecially in Capital, Matters.

For the firſt I ſhall only obſerve, That when the Houſe of Commons in the Parliament 1680. took that Matter into conſideration, and intended to impeach ſeveral Perſons for the ſame, the higheſt Fine at that time complain'd of, was but 1000*l.* and yet in few Years they were heightned to 10000*l.* 20000*l.* 30000*l.* and 40000*l.*

For the Second, The Puniſhment of *Oates*, *Dangerfield*, and Mr. *Johnſon*; and the cloſe Impriſonment of Mr. *Hamden*, Sir *Samuel Barnardiſton*, and of ſeveral other Perſons, as they were againſt the Law, ſo they were without Precedent.

For the Third, Tho the Damages given to *Bolſworth* were the firſt outrageous Damages given, which were taken notice of, and in truth were ſuch; yet in little time Damages for matters of like kind were quickly improved to 10000*l.* 20000*l.* 40000*l.* nay 100000*l.* The truth of which a great many living Witneſſes to their ſorrow can teſtifie.

For the Fourth, The ſeizing the City and other Charters, upon the pretences they were queſtion'd, was without Example.

For the Fifth, The diſpenſing with the Teſt and Penal Laws, was as miſchievous as it was illegal; it making Perſons capable, who were incapacitated by Law of being in Places, of exerciſing Offices, for whom the Perſons who had Power to confer or beſtow the ſame, had more affection than for the Perſons who at that preſent enjoy'd them: the Conſequences of which was quickly ſeen, in turning out the preſent Poſſeſſors to make Room for others; which was the thing which, as a *Scotch* Biſhop ſaid of another Matter, *ſet the Kiln afire.*

Of theſe five Particulars ſomething hereafter may be ſaid; at preſent this Treatiſe is only to conſider, how far the Proceedings in Capital Matters of late Years have been Regular, or Irregular: And as to that I ſhall not at all conſider how far the Perſons hereafter mention'd were guilty of the Crimes of which they were accus'd, but how far the Evidence againſt them was convincing to prove them Guilty, and what Crimes the Facts prov'd againſt them in Law were.

Remarks on Fitzharris's *Tryal.*

THE firſt Perſon I ſhall begin withal ſhall be *Fitzharris*; and that it may not be wonder'd, that the Tryal and Condemnation of a Perſon who was confeſſedly an *Iriſh Papiſt*, ſhould be complain'd of; and one whoſe Crimes were ſuch, that if the Law declar'd had not made Capital, it had been juſt, in reſpect of the Malefactor, for the Legiſlative Power to have enacted, that he ſhould ſuffer the ſevereſt Puniſhment uſually inflicted for the higheſt Crime: yet in reſpect of the Common Good, it had been juſt and fit to have pardon'd him, if he would have confeſs'd who were his Conſpirators and Setters on; for I am apt to think, that if that Matter had been thorowly look'd into, ſome Perſons afterwards Witneſſes in the Lord *Ruſſel*'s, Colonel *Sidney*'s, and Mr. *Hamden*'s Trials, had either never been produc'd, or had not been credited,

credited if produc'd; nor would my Lord of *Eſſex*'s Throat have been cut; and my Lord *Ruſſel* and Colonel *Sidney* might have worn their Heads on their Shoulders to this Day.

All will agree, that there was a great ſtruggle between the *Whigs* and *Tories*, as they were then call'd, for hanging or ſaving that Man: Both agreed he deſerv'd to be Hang'd; the firſt thought it their advantage to ſave him if he would confeſs; the laſt thought it was fit to Hang him for fear he would confeſs. And to explain the Matter, it is fit to go a little higher: It cannot but be remembred, that before the breaking out of the Popiſh Plot, Mr. *Claypole* was Impriſon'd in the *Tower* for deſigning to Kill the King, in ſuch place and manner as *Oates* afterwards diſcover'd the Papiſts intended to do it. In *Trinity* Term 1678. he had an *Habeas Corpus* to the *King*'s *Bench*, and was brought thither in order to be Bail'd, and produced Perſons of Worth to Bail him; but the Penalty of the Bail ſet by the Court was ſo high, and the Court ſo aggravated the Crime for which he was Committed, and the likelyhood of the Truth of it, that the Bail refus'd to ſtand, and *Claypole* was remanded to the *Tower*. But the Term after, when the Matter of which he was accus'd appear'd barefac'd to be the Deſign of other People, he was let go, for fear the Examination of it ſhould go further in proving the Popiſh Plot, than any thing at that time diſcover'd. And if it were now diſcover'd, upon whoſe and what Evidence he was committed, it would go a great way in diſcovering the Truth of many Matters as yet in the Dark (but that Deſign miſcarry'd, becauſe the Intrigue was diſcover'd before it took effect, and yet a like Deſign was ſtill carried on; and many of the Clergy of the Church of *England* had been prevail'd with to cry the *Popiſh* up as a *Fanaticks* Plot.) The *Papiſts* and the Clergy of the Church of *England* being in the late Times equally Sufferers, and oppreſt by the *Fanaticks*, they naturally grew to have a Kindneſs for each other, and both join'd in hating the *Fanaticks*, and therefore pretended at leaſt that they did not believe any thing of the *Popiſh Plot*, but that Report was given out by the *Fanaticks*, whilſt they themſelves were deſigning ſomething againſt the Church of *England*. The *Papiſts* having ſo great a Part of the Clergy of the Church of *England*, ready to believe any thing of a *Fanatick Plot*, which they ſhould forge, and obſerving that that which gave Credit to the *Popiſh Plot*, was Writings concurring with Oral Teſtimony, which it did; for very little of the Truth of the *Popiſh Plot* depended on the Credit of *Oates*, *Bedloe*, or any other Perſon, moſt of the Facts of that Deſign, when diſcover'd, proving themſelves: To inſtance in one, *Oates* diſcover'd *Coleman* had Intelligence with *Le Chaiſe* of a Deſign on *England*, and that *Coleman* had Papers teſtifying as much; when thoſe Papers were ſeiz'd, and own'd by *Coleman*, and the purport of them was what *Oates* ſaid they were, it was not material, whether *Oates* was a Man of Truth or not, the Papers, without *Oates* his further Evidence, ſufficiently prov'd the Deſign. I ſay, the *Papiſts*, having obſerv'd what the Evidence was which gave Credit to that Plot, reſolv'd to purſue the ſame Steps, and therefore *Dangerfield* was made uſe of to leave Papers in Colonel *Manſel*'s Lodging, who was an Acquaintance of my Lord *Shaftsbury*'s, importing a Plot; but that was ſo fooliſhly carried on, and the then *Attorney General*, who had the Examination of that Matter, not being qualify'd with the Aſſurance his Succeſſor had, to carry on a thing that had neither Senſe nor Honeſty in it, made ſuch a ſcurvy Report of the matter to the King and Council, that they were enforc'd to vote *Manſel* Innocent, *Dangerfield* Guilty, and that it was a Deſign of the *Papiſts* to lay a Plot to the Diſſenters Charge, and a further proof of the *Popiſh Plot*. But that *Attorney General* being remov'd to a place of more Honour, tho' of leſs Profit, and another put in his place, the *Papiſts* reſolv'd to carry on the ſame Deſign, and no Perſon a fitter Inſtrument than *Fitzharris*, in reſpect of his Religion, and his Acquaintance; but before his Deſign came to Perfection, it was diſcover'd.

He was firſt impriſon'd in *Newgate*, where ſome Perſons (amongſt whom Mr. *Corniſh*, as I remember, then Sheriff, was believed to be one, and it was not the leaſt of his Crime, that he endeavour'd to look into that *Arcanum*) went to Examine him as to the particulars of that Deſign; which was quickly taken notice of, and the Priſoner, in breach of the *Habeas Corpus* Act, remov'd from thence to the *Tower*, where he was kept cloſe Priſoner.

The Parliament at *Oxford* meeting ſoon after *Fitzharris* his Apprehenſion, and the Houſe of Commons being inform'd of as much of his Deſign as was then diſcovered, they thought themſelves highly concern'd to examine him; but how to do it they knew not; only they reſolv'd (upon a Report which one of their Members made them of one *Hubert*, who confeſſed himſelf Guilty of Firing the City of *London*, upon which it was reſolv'd to examine him in the Houſe of Commons the next Morning, but before the Houſe ſat *Hubert* was Hang'd) that *Fitzharris* ſhould not be Hang'd without their Knowledge and Conſent; and to effect it, they remember'd a Deſign to try the five *Popiſh* Lords in the *Tower* upon Indictments, whereupon if they ſhould be acquitted, it was thought that thoſe Acquittals might be pleadable to Impeachments: to prevent which, the Houſe had exhibited general Impeachments of High Treaſon againſt them in the Houſe of Lords; which had ſuch Succeſs, that the Lords were never, and the Judges gave their Opinion that they could not be, Tried on the Indictments, as long as the Impeachments were in being; for which Reaſon, the Houſe of Commons exhibited a general Impeachment of High Treaſon in the Houſe of Lords againſt *Fitzharris*, which was receiv'd; after which the Houſe of Lords made an Order, that *Fitzharris* might or ſhould be try'd in the *King's Bench* for the ſame Treaſon; ſuddenly after which, that Parliament was diſſolv'd. Whether *Fitzharris* his Buſineſs was the break-neck of that Parliament, I know not, but it was ſhrewdly ſuſpected it was.

There was at that time a Chief Juſtice in the *King's Bench*, who was himſelf under an Impeachment of High-Treaſon, and had not for that reaſon ſat in Court for ſome Terms preceeding: and the Tryal of *Fitzharris* being generally look'd upon to be as Illegal as it was Odious, it was thought convenient to carry it on by a Perſon of better Credit; whereupon one who had been a puiſny Judge of that Court, and had behaved himſelf very plauſibly, and had gained Credit by

being turn'd out, was thought to be the firteſt Perſon to undertake it: and accordingly the then preſent Chief Juſtice was remov'd, and the other was preferred to his place.

It being reſolv'd that *Fitzharris* ſhould be try'd, the buſineſs was how to get Witneſſes to give Evidence to a Jury, and how to get Juries to find the Bill, and to convict the Priſoner, which were difficult Preliminaries.

A Perſon who had been one of the Houſe of Commons which had exhibited the Impeachment, was a principal Witneſs: but if he ſhould give Evidence on the Indictment, he knew not how far he might be hereafter queſtionable and puniſhable for it, when a Parliament ſhould ſit again: but at laſt that Perſon was prevail'd upon to give Evidence, but by what means is beſt known to himſelf. And as for the Juries, Grand and Petty, they were ſatisfy'd with the Direction of the Court, that they not only might, but ought to find the Bill, and Verdict according to their Evidence. And I think the Court was ſo far in the Right.

That matter being adjuſted, a Bill of High-Treaſon was found againſt the Priſoner, whereupon he was preſently arraigned; and after much Conteſt and Declaration of the Court, that they could hear nothing till he had pleaded in chief, (which if he had done, the *Plea* he afterwards pleaded, which was to the Juriſdiction of the Court, had come too late) he had leave given him to plead the ſpecial matter of the Impeachment, and accordingly Council were aſſign'd him to draw up and argue his *Plea* put in to the Juriſdiction of the Court; which was, *That he was impeached in a Superior Court for the ſame Treaſon.*

Great endeavours were uſed to have the *Plea* over-rul'd, without ſo much as hearing the Priſoner's Council for the maintaining it; the pretences were, that the Priſoner on his *Plea* ought to have produced the Record of his Impeachment, and that the *Plea* of the Impeachment for High Treaſon in general was naught, without ſpecifying what the High Treaſon was for which he was impeach'd; for an Impeachment or an Indictment of High Treaſon in general was naught; that the King had power to proceed on an Impeachment or Indictment for the ſame thing at his Election: That the Allegation, that *Fitzharris* was impeach'd, which Impeachment ſtood in full force, not having mention'd an Impeachment before, was naught. But afterwards the *Attorney General* demurred, and the Priſoner join'd in the Demurrer. And then a Day was given to argue the *Plea* till *Saturday* the *7th* of *May*, at which time the *Attorney* added to the Exceptions he took to the Plea, whether a Suit in a Superiour Court can take away the Juriſdiction of another inferiour Court, who had an Original Juriſdiction of the Cauſe, of the Perſon, and of the Fact, at the time of the Fact committed?

To maintain the Plea, the Council for the Priſoner alledged, that an Impeachment differ'd from an Indictment; the firſt was at the Suit of the Commons of *England*, and was like an Appeal, or rather an Appeal reſembl'd an Impeachment; that the proceedings were different in the Tryals: in the firſt, the Tryal is by the Houſe of Lords; in the laſt, of a Commoner, by a Jury of Commons: In the laſt, but little time was allowed for giving or conſidering of the Evidence; in the firſt a much longer time: That this matter was never practiſed before; that the King may pardon a Criminal proſecuted by an Indictment, but not by an Impeachment, no more than if proſecuted by an Appeal: If he ſhould be acquitted on the Indictment, it might be a Queſtion whether that may be pleaded in Bar to the Impeachment; and if not, the Priſoner ſhould be brought twice in jeopardy of his Life for the ſame Crime, contrary the Rule of Law.

To the Objection, that the *Plea* was not certain, it being pleaded as an Impeachment of High Treaſon, not ſetting forth the High-Treaſon in particular, it was anſwer'd, that an Impeachment differ'd from an Indictment: for by the Cuſtom of *Parliament*, which is the Law of the Land, ſuch a general Impeachment is good; but by the Law, a general Indictment of High Treaſon, without ſpecifying what, when, where, or how, is not good; and therefore the *Plea* of an Indictment and an Impeachment is variant.

To the Objection, that there was no Impeachment mention'd before the averment of *quæ quidem impetitio*, it was frivolous; for it was before mention'd that he was impeach'd, and then by a neceſſary Conſequence there was an Impeachment.

As to the Objection, that the King might, in which Court he would, proſecute for High-Treaſon, it was little to the purpoſe; for the Caſe did not come up to it, the Impeachment being the Suit of the Commons, and not of the King; and that the Courts of *Weſtminſter-Hall* had refus'd to meddle with Matters relating to the *Parliament*. That though the Impeachment was general, yet it was made certain by the Averment; that it was for the ſame Crime for which the Indictment was: That the *Attorney General* might have taken Iſſue; that there was no ſuch Impeachment as was pleaded; or elſe he might have ſaid, that the Impeachment was not for the ſame Treaſon, for which he was Indicted; but having Demur'd, he had confeſs'd both to be true: That at Common Law, if an Appeal of Murder had been brought, the King could not proceed on the Indictment, till the Appeal was determin'd; that the Judges, whereof ſome were then in Court, had given their Opinions to the King and Council, concerning the five Popiſh Lords, that they could not be try'd upon Indictments, ſo long as general Impeachments were depending for the ſame Treaſon; and yet their Caſes and this differ'd, there the Indictments were found before the Impeachments prefer'd, and here, after the Impeachment.

In the Reply to vitiate the *Plea*, it was inſiſted, that it did not conclude *ſi curia procedere debeat* as well as *vult*, as was uſual for *Pleas* of that nature to do; that perhaps this matter, if the Priſoner had been acquitted upon the Impeachment, might have been pleaded in Bar to the Indictment, but it was not pleadable to the Juriſdiction of the Court; that in the Caſe of the five Lords the Indictments were removed into the Houſe of Lords; that Appeals in Treaſon are taken away by the firſt of *Henry* the *4th*; that in the *Plea* it ought to be aver'd, what *Lex & Conſuetudo Parl.* are; that till Articles carried up, no Man impeach'd is oblig'd to anſwer; that in all Caſes of Appeals a Man is put twice in jeopardy of his Life, if he be try'd upon an Indictment within a Year.

To

To take a ſhort Review of what hath been recited, it was thought the King's Council run the Court upon a Rock, and it was hard for them to get off. The Court had adviſ'd them to take time to conſider what Courſe they would take; but the King's Council were haſty, as they always were when they were reſolved to carry a matter right or wrong; and having three bad Ways, they choſe the worſt.

If they had taken iſſue on the Record, or the Averment, that the Impeachment and Indictment were not for the ſame Treaſon, they might have pretended that the Journal of the Houſe of Lords was not a Record, or that the Debates in the Houſe of Commons were not good Evidence; or if they had reply'd the Order of the Houſe of Lords, for trying the Priſoner in the *King's Bench*, to the Plea, they might have inſiſted on the Power of the Houſe ſo to do: but having demur'd, they confeſſed the Truth of all the matter of the Plea, and wav'd the Benefit of that Order, and ſtood upon Points of Law, either conceded by the Court, or reſolv'd by the Judges before, or ſuch neceſſary Inferences from them as were impoſſible to be deny'd.

It could not be deny'd, but a general Impeachment of High Treaſon by the Cuſtom of Parliament was good; it could not be deny'd, but, by the Reſolution of the Judges in the Caſe of the Lords in the *Tower*, a general Impeachment of High Treaſon ſtopt proceedings upon an Indictment for the ſame matter. It did not differ the Caſe, that the Indictments in the *King's Bench* againſt the Lords were remov'd into the Houſe of Lords; for every one knows new Indictments might have been prefer'd againſt them for the ſame Crimes. And if that had been the Reaſon of the Judges Reſolution, why did not the Judges then in Court, all or moſt part of whom were Judges at the giving that Opinion, deny the Opinion, or the Reaſon alledg'd? which they did not. It was not a Reaſon to diſallow the Plea, becauſe particular Articles uſe to follow general Impeachments, and the impeacht are not bound to anſwer till the particular Articles were exhibited, which is true; for by the ſame Reaſon, a Defendant cannot plead an Action depending againſt him for the ſame matter in a ſuperior Court, unleſs the Plaintiff hath declar'd againſt him in the ſuperior Court, which is not true. It was not a Reaſon that all Records in inferior Courts muſt be pleaded particularly, as Indictments and the like; becauſe ſuch Records muſt be certain and particular, or elſe they are erroneous, and cannot be pleaded; but an Impeachment may be general.

Where the matter of a Plea is naught, no Form can make it good; tho' where the matter of a Plea is good, an ill Form may ſpoil it. If therefore a general Indictment or Record is naught, as in all the Caſes cited againſt the Plea, it was no ſpecial Averment to reduce it to a certainty; or any Form can make it a good Plea: but a general Impeachment is good, and therefore it may and muſt be pleaded generally; and pleading it ſpecially, would make it falſe, if there were no ſubſequent Articles, as in this Caſe there were not to aſcertain it.

It is to no purpoſe, to run thro' all the Ramble of the Counſel or Court againſt the Plea, when they all ſaid the matter of the Plea was not in queſtion, but the Form; and yet when ſo often ask'd in what of the Form it was defective? they were not able to anſwer. If it be agreed that the matter of a Plea is good but it is defective in Form, they always ſhew how it ought or might have been mended, which in this Caſe was never done: And as this Caſe was new in ſeveral particulars, ſo it is in this, that in reading all the Arguments of this Plea, no Man knows, by what was diſcours'd, what was the point in queſtion.

After the Arguments, the Chief Juſtice, in ſhew at leaſt, very favourably offers the Priſoner's Counſel Liberty to amend the Plea, if they could; which they (apprehending, as they had Reaſon, for I think none can ſhew how it might have been mended, rather a Catch than a Favour) refus'd to do; whereupon the Court took time to conſider of it, and on the 11th of *May*, there being a great Auditory, rather to hear how the Judges would bring themſelves off, than to know what the Law of the Plea was, the Chief Juſtice, without any Reaſons, deliver'd the Opinion of the Court, upon Conference had with other Judges, that his Brothers *Jones*, *Raymond*, and himſelf were of Opinion that the Plea was inſufficient, his Brother *Dolben* not reſolv'd, but doubting concerning it, and therefore awarded the Priſoner ſhould plead to the Indictment, which he did, *Not Guilty*; and his Tryal order'd to be the next Term.

I think it would puzzle any Perſon to ſhew, if ever a Court of *Weſtminſter Hall* thought a matter to be of ſuch difficulty as fit to be argu'd, that they gave their Judgments afterwards without the Reaſons: 'Tis true, that the Courts of Civil Law allow Debates amongſt the Judges to be private among themſelves, but the Proceedings at Common Law always were, and ought to be, in *aperta curia*. Had this Practice taken place heretofore, as it hath of late (but all ſince this Precedent) no Man could have known what the Law of *England* was, for the Year Books and Reports are nothing but a Relation of what is ſaid by the Council and Judges in giving Judgment, and contain the Reaſons of the Judgment, which are rarely expreſt in the Record of the Judgment; and it is as much the Duty of a Judge to give the Reaſons why he doubts, as it is of him who is ſatisfied in the Judgment. Men ſometimes will be aſham'd to offer thoſe Reaſons in Publick, which they may pretend ſatisfy them, if conceal'd; beſides, we have a Maxim in Law undeniable, and of great uſe, that any Perſon whatever may rectify or inform a Court or Judge publickly or privately, as *amicus curiæ*, a Friend to the Court, or a Friend to Juſtice: But can that be done, if the Standers by know not the Reaſon upon which the Court pronounce their Judgment? Had the three Judges, who were clear in their Opinion, given their Reaſons of that Opinion, perhaps ſome of the Standers by might have ſhew'd Reaſons unthought of by them, to have made them ſtagger in, if not alter that Opinion; or if Juſtice *Dolben* had given the Reaſon of his doubt, perhaps a Stander by might have ſhewn him a Reaſon unthought of by him, which would have made him poſitive, that the Plea was, or was not, a good Plea.

If

If a Man ſwears what is true, not knowing it to be true, tho' it be logically a Truth as it is diſtinguiſh'd, yet it is morally a Lye; and if a Judge give Judgment according to Law, not knowing it to be ſo, as if he did not know the Reaſon of it at that time, but bethought himſelf of a Reaſon for it afterwards, tho' the Judgment be legal, yet the pronouncing of it is unjuſt.

Judges ought to be bound up by the Reaſons given in publick, and not ſatisfy or make good their Judgment by after-thought-of Reaſons. How very ill did it become the Chief Juſtice *Popham*, a Perſon of Learning and Parts, in the attainting Sir *Walter Rawleigh*, of which Tryal all ſince that time have complain'd? when he gave his Opinion that the *Affidavit* of the Lord *Cobham*, taken in the Abſence of Sir *Walter*, might be given in Evidence againſt him, without producing the Lord *Cobham* face to face to Sir *Walter* (which was deſir'd by him, altho' the Lord *Cobham* was then forth coming.) When he ſum'd up the Evidence, he ſaid, *Juſt then it came into his Mind, why the Accuſer ſhould not come face to face to the Priſoner, becauſe he might diſtract his Evidence, and when he ſhould ſee himſelf muſt dye, he would think it beſt that his Fellow ſhould live to commit the like Treaſon, and ſo in ſome ſort ſeek Revenge.* Which beſides that it is againſt the Common Law, and Reaſon, it is againſt the expreſs Statute of *E.* 6. which takes care that in Treaſon the Witneſs ſhall be brought face to face of the Perſon accus'd.

Did it become a juſt Man to give his Opinion, and bethink himſelf of a Reaſon afterwards? And I am miſtaken if it will not herein appear, that many Perſons complained of, have been guilty of the ſame Weakneſs or Injuſtice, call it which you will; ſo fooliſh are the beſt Lawyers and plauſible Speakers, when they reſolve to carry a Point, whether juſt or not: However they may deceive the Ignorant, yet they talk and argue very abſurdly, to the apprehenſion of the Majority of Mankind. And they had been ſooner diſcover'd, but that the Diſcoverers were quickly ſuppreſt and cruſhed, as Scandalizers of the Juſtice of the Nation: And I think this may be juſtly called the firſt mute Judgment given in *Weſtminſter-Hall.*

But to return to *Fitzharris*'s Tryal, which came on the 9th of *June*; and then the King's Council made uſe of their Arts in managing the Jury. And firſt, there were a great many Perſons for Jurors, to whom Mr. Attorny had no Stomach; ſome challenged for Cauſe, for that they were no Freeholders, as *John Kent, Giles Shute, Nathaniel Grantham*, and ſeveral others; and the Challenge allow'd to be a good Challenge by all the Court; for tho' the Chief Juſtice only ſpoke, yet all the Court aſſent to what one Judge ſays, if they do not ſhew their Diſſent. I do not take notice of this, as complaining of it, for I think it is a good Cauſe of Challenge in Treaſon; but then I cannot but wonder at the Aſſurance of the ſame King's Council, who denied it to be a good Cauſe of Challenge in the Lord *Ruſſel*'s Tryal. It is true, that was a Tryal in the City; but that matter had no Conſideration in the Judgment: for after the Lord *Ruſſel*'s Council had been heard, all the Judges deliver'd their Opinions, That at Common Law, *No Freehold* was no Challenge in Treaſon; and that the 1. & 2. *Phil.* & *Mar.* had reſtor'd the Tryal in Treaſon to be what it was at Common Law: of which number of Judges, Sir *Francis Pemberton* and Sir *Thomas Jones* were two; nay, Sir *Francis Pemberton* ask'd Mr. *Pollexfen, Whether he found any Reſolution at Common Law, that no* Freehold *was a Challenge in Treaſon.* And that Judgment is afterwards cited in Colonel *Sidney*'s Tryal, *fol.* 63. as the Opinion of all the Judges of *England*, That *no Freehold* was no Challenge to a Juror in Treaſon at Common Law; and Colonel *Sidney*'s Tryal was in a County at large.

But if it was not a Challenge at Common Law, I would know how it came to be a Challenge in *Fitzharris*'s Caſe? There was no intervening Act of Parliament to alter the Law between the two Tryals that I know of.

Another Art us'd, was to challenge for the King without Cauſe, where no Cauſe could be ſhewn, ſuch Jurors as they did not like.

The Priſoner was troubled at this, and appeals to the Court, whether the Attorney General was not oblig'd to ſhew his Cauſe of Challenge; but is anſwered by the Court, that he need not till all the Pannel was gone thro', or the reſt of the Jurors challeng'd, which is true; but had the Priſoner been adviſ'd to challenge the reſt of the Jury, as he would have been if he had had Council, the Attorny muſt have wav'd his Challenge, or put off the Trial. And ſince he was not allowed Council, why ſhould not the Court, according to their Duty, as they have ſaid it is, have adviſ'd him ſo to do? I am ſure in Count *Coningsmark*'s Tryal, when Sir *Francis Winnington* challenged a Juror without Cauſe for the King, the Court preſently ask'd the Cauſe; and ſuch Anſwer was made by the Proſecutor's Council as was made to *Fitzharris*: Whereupon the Court told the Count, that the way to make them ſhew their Cauſe of Challenge, was to challenge all the reſt of the Jury; and thereupon the Challenge was waved. They were different Practices, tending to different Ends; and accordingly it ſucceeded, *Fitzharris* was convicted, and the Count acquitted.

Upon the Tryal the Evidence was this, *Fitzharris* was the 21*ſt* Day of *February*, 1681. with *Everard*, and gave him Heads by word of Mouth, to write the Pamphlet in the Indictment mentioned, to ſcandalize the King, raiſe Rebellion, alienate the Hearts of the People, and ſet them together by the Ears; the Libel was to be preſented to the *French* Ambaſſador's Confeſſor, and he was to preſent it to the *French* Ambaſſador, and it was to ſet theſe People together by the Ears, and keep them claſhing and miſtruſting one another, whilſt the *French* ſhould gain *Flanders*, and then they would make no Bones of *England*: For which Libel *Everard* was to have forty Guineas, and a monthly Penſion, which ſhould be ſome thouſands of Pounds; *Everard* was to be brought into the Cabal, where ſeveral Proteſtants and Parliament Men came, to give an account to the Ambaſſador how things were tranſacted. *Everard* asked what would be the uſe of the Libels? *Fitzharris* ſaid, we ſhall diſperſe them we know how; they were to be drawn in the name of the *Nonconformiſts*, and to be put and fathered upon them: This was the ſum of *Everard*'s Evidence.

Mr.

Mr. *Smith* prov'd *Fitzharris*'s giving Inſtructions to *Everard*; and Sir *William Waller* and others prov'd the Libel, and the Diſcourſe about gaining *Flanders* and *England*: Other Witneſſes were examin'd to prove *Fitzharris*'s Hand. For the Priſoner, Dr. *Oates* ſaid, *Everard* told him the Libel was to be printed, and to be ſent about by the Penny-Poſt to the proteſting Lords and leading Men of the Houſe of *Commons*, who were to be taken up as ſoon as they had it, and ſearched, and to have it found about them. He ſaid the Court had an hand in it, and the King had given *Fitzharris* Money for it already, and would give him more if it had Succeſs.

Mr. *Corniſh* ſaid, when he came from *Newgate* to the King, to give him an account in what Diſpoſition he found the Priſoner to make a Diſcovery, the King ſaid he had had him often before him and his Secretaries, and could make nothing of what he did diſcover; that he had for near three Months acquainted the King he was in purſuit of a Plot, of a matter that related much to his Perſon and Government, and that in as much as he made Proteſtations of Zeal for his Service, he did countenance and give him ſome Money; that the King ſaid he came to him three Months before he appeared at the Council-Table.

Colonel *Manſel* ſaid, that Sir *William Waller* gave him an account of the buſineſs in the Preſence of Mr. *Hunt*, and ſeveral others, and ſaid, that when he had acquainted the King with it, the King ſaid he had done him the greateſt piece of ſervice that ever he had done him in his Life, and gave him a great many thanks: But he was no ſooner gone, but two Gentlemen told him, the King ſaid he had broken all his Meaſures, and the King would have him taken off one way or other, and ſaid that the Deſign was againſt the Proteſtant Lords, and Proteſtant Party. Mr. *Hunt* confirm'd the ſame thing, and added, that he ſaid the Deſign was to contrive thoſe Papers into the Hands of the People, and make them Evidences of Rebellion; and appealed to Sir *William Waller* who was preſent, whether what he ſaid was not true. Mr. *Bethel* ſaid, *Everard* before he had ſeen *Bethel*, or heard him ſpeak a word, put in an Information of Treaſon againſt him, at the Inſtigation of *Bethel*'s mortal Enemy; which Information was ſo groundleſs, that tho' it was three Years before, yet he never heard a word of it till the *Friday* before.

Mrs. *Wall* ſaid, *Fitzharris* had 250 *l.* 200 *l.* or 150 *l.* for bringing in the Lord *Howard* of *Eſcrick*; ſhe added, that *Fitzharris* was looked upon to be a Roman Catholick, and upon that account it was ſaid to be dangerous to let him go near the King, that he never was admitted to the King.

The Lord *Conway* ſaid, that the King had declared in Council, that *Fitzharris* had been employed by him in ſome trifling buſineſſes, and that he had got Money of him; but added, as of his own Knowledge, that the King never ſpoke with him till after he was taken, which was the 28th of *February* laſt.

All the Evidence being over, it was ſum'd up by the Council, That upon all the Circumſtances of it, *Fitzharris* was the Contriver and Director of the Libel; that it was a treaſonable Libel, and a Jeſuitical Deſign; that the Excuſe he made, as if *Everard* drew him into it, or trepanned him into it, was vain, nothing of that being prov'd. That *Everard* could do nothing alone, and therefore Sir *William Waller* muſt be in the Contrivance; but that was unlikely: That the Priſoner would inſinuate that the King hir'd him to do it, becauſe the King gave him Money, but that was out of Charity; and therefore concluded, with a great many words, that an *Engliſh* Proteſtant Jury of twelve ſubſtantial Men, could not but find the Priſoner guilty.

The Court added, that tho' Dr. *Oates* ſaid, *Everard* ſaid it was a Deſign of the Court, and was to be put on ſome Lords, and into ſome Parliament Men's Pockets; yet *Everard* was there upon Oath, and teſtified no ſuch thing in the World; and for the Impeachment in the Lords Houſe, they were not to take notice of it.

After which the Jury inform'd the Court, that they heard there was a Vote in the Houſe of Commons, that the Priſoner ſhould not be try'd in any inferior Court: To which the Chief Juſtice ſaid, That that Vote could not alter the Law, and that the Judges of that Court had Conference with all the other Judges concerning that matter; and it was the Opinion of all the Judges of *England*, that that Court had a Juriſdiction to try that Man. After which, Juſtice *Jones* was of Opinion, that if he were acquitted on that Indictment, it might be pleaded in Bar to the Impeachment; and Juſtice *Raymond* deliver'd his Opinion to the ſame purpoſe. It is ſtrange that all the Judges ſhould be of that Opinion; yet before it was ſaid, Juſtice *Dolben* doubted. It is more ſtrange, that if Juſtice *Dolben* was not of that Opinion, he would hear it ſaid he was, and not contradict it. It is moſt ſtrange, that if the Judges of that Court were of that Opinion, they had not declar'd ſo, in the arguing or giving Judgment on the Plea; for that was the matter of it, being pleaded to the Juriſdiction of the Court, that they had not power to try the Priſoner for that Crime, ſo circumſtanced.

If the Plea had been over-rul'd as to the matter, none would have been ſo impertinent, as to go about to maintain the form of it.

Now to ſay truth in behalf of the Publick, and not on behalf of *Fitzharris*, the Evidence was unfairly ſummed up; for *Everard* never pretended *Fitzharris* drew him in, or was to trepan him: It is true, he ask'd *Fitzharris* what the deſign of the Pamphlet was, and whether he was not put upon it to trepan others? who anſwer'd, he was not. But afterwards being too nearly preſt by the Attorny General, he ſaid, *Fitzharris* told him the uſe of the Libels was to diſperſe them he knew how; that they were to be drawn in the Name of the *Nonconformiſts*, and put upon them. And *Oates* ſaid, *Everard* ſaid the Libels were to be printed, and ſent abroad by the Penny-Poſt to the proteſting Lords, and leading Men of the Houſe of Commons, and the Perſons ſeiz'd with them in their Pockets; which is all ſtrong Evidence that the Libel was deſign'd to trepan others, and that was all along the import of *Fitzharris* his Queſtions, tho' cunningly not anſwer'd by ſome of the Witneſſes,

neſſes, and as cunningly omitted in ſumming up the Evidence.

It is true, the Chief Juſtice ſaid, *Everard* ſaid no ſuch thing as *Oates* had ſaid; but why was not *Everard*, who was then preſent, ask'd whether he ſaid what *Oates* had given in Evidence?

There cannot be ſhewn any Precedent where a Witneſs contradicts, or ſays more or leſs than a Witneſs that went before him, by the hearſay of that Witneſs; but the firſt Witneſs is ask'd, what he ſays to it? Why was not Sir *William Waller*, who was alſo preſent, ask'd what he ſaid to the Evidence of Mr. *Manſell* and Mr. *Hunt*? and who it was that inform'd Sir *William* what the King ſaid? It was no way in proof, nor pretended by *Fitzharris*, that any Perſon was concern'd in that matter, but *Everard* and *Fitzharris*, tho' it was ſhrewdly ſuſpected by the Houſe of Commons; and no Man that reads the Tryal, but believes there were many more concern'd, not yet diſcover'd: but the Council might have brought in any Judge of the Court by the Head and Shoulders to be a Confederate, as well as Sir *William Waller*, who was a *Jack a-lent* of their own ſetting up, in order to knock him down again.

It was not pretended by *Fitzharris* that the King gave him any Money to frame that, or any other Libel; there was Evidence, that he had got Money of the King for ſome little matters he was imployed in, perhaps for bringing in Libels diſperſed abroad, or diſcovering Plots.

Upon the whole Evidence, it was plain that *Fitzharris* was an *Iriſh* Papiſt; it was plain he was the only viſible Contriver of the Libel; who were behind the Curtain, is not plain, and to know them, was the deſign of the Impeachment.

It was plain it was a deviliſh Jeſuitical Deſign, as the Court and Council, in ſumming up the Evidence, agreed it to be; it was plain, that the Libel was ſuch, that if diſperſt with intention to ſtir up the King's Subjects againſt him, it had been High Treaſon within the Statute of the 13*th* of the King: but what the Intention of the contriving the Libel was, was not very certain; and therefore, conſequently what the Crime of it was, was uncertain.

To take the Evidence all the ways, as to the Deſign of the contriving of the Libel, it is capable of being interpreted; the eaſieſt Conſtruction is to ſay, he fram'd a Libel with intention to pretend to the King, that he had intercepted a Libel privately diſperſed; and to make it more likely, it ſhould be framed in the Nonconformiſts Names, to make his Report the more credible (for of Papiſts or Churchmen it could not be believed) to get more Money of the King; and that matter, by all his Queſtions to the Witneſſes, he moſt drove at; and that would at moſt be but a Cheat.

A more criminal, but leſs credible Conſtruction, is to believe he deſign'd to diſperſe them, to excite and prevail upon the diſcontented to take up Arms.

For what effect had that Pamphlet, when it was, for it was afterwards, diſperſed, upon the Minds of the People? or what effect could any Man of Senſe think it could have? for tho' it was a virulent, yet it was as fooliſh a contriv'd Libel as ever was writ; yet I own if it had been writ and diſperſed with that Deſign, it had been High Treaſon within the Statute of E. 3.

But the moſt natural Conſtruction of the worſt Deſign of it, was to trepan the Parliament Men, and make the Libels Evidences of a rebellious Conſpiracy: This *Everard* confeſſes *Fitzharris* told him was the uſe to be made of them; and *Everard* could not know the Deſign of them, but by what *Fitzharris* told him. And *Oates* well explains what *Everard* meant by the Words, in his Evidence, *put the Libel on the Nonconformiſts*, by what *Everard* told him.

But yet even that, tho' in it ſelf the higheſt Crime a Man can be guilty of, next to putting it in Execution, is but a Conſpiracy, which was mildly puniſh'd in *Lane* and *Knox* their Caſe, tho' this exceeded that; that being a deſign only againſt one Perſon, this againſt many.

Yet tho' this was of no higher Crime by the Law as now eſtabliſh'd than a Miſdemeanor, it was fit for the Legiſlative Power to have puniſh'd it in the manner it was puniſh'd, which yet the Legiſlative Power ought to reſent as an Injury, for an inferior Court's ſnatching the Exerciſe of that Power out of their Hands, which only belongs to the ſupream Authority.

That this Crime, upon Conſtruction of the Evidence taken in the beſt Senſe, is no Treaſon: tho' the Libel ſhould in all probability incite the Subject to levy War, which it was not likely to do, or in Fact it had been the cauſe of a Rebellion, yet if it was not deſigned by the Contriver to that purpoſe, it was not Treaſon by the Statute of *Edward* the Third, or *Charles* the Second; for in the laſt Statute it is deſigning to levy War, and in the Statute of *Edward* the Third, it is a ſtrained Conſtruction, to make deſigning to levy War Treaſon; yet none ever pretended to ſtrain the Senſe of that Statute farther than deſigning to do it.

If the ill Effects the Libel did, or might produce, made it Treaſon, then Sir *Samuel Aſtrey*, who read it in Court at the Tryal, and the Printer, that afterwards printed and publiſh'd it, and Sir *William Waller*, who read it to Mr. *Hunt* and others, were guilty of Treaſon; for the Libel carried no Venom or Charm with it the more, for being fram'd by *Fitzharris* or *Everard*, or for being publiſhed by either of them, than if publiſh'd by another Perſon.

The difference is, *Aſtrey* read it aloud, as his Duty; the Printer printed and publiſhed it for gain; Sir *William Waller* publiſh'd it as a Novelty; and if *Fitzharris* contriv'd it to put it upon the Nonconformiſts or Parliament Men, and not to ſtir up a Rebellion, tho' it tended to all the ill Conſequences mention'd in his Indictment, yet it was not Treaſon.

But it will be urged, how ſhall *Fitzharris*'s Intention be proved? It was a Queſtion which made a mighty ſputter in arguing the Plea. How ſhall it be proved, that the Impeachment was for the ſame Treaſon for which the Indictment was? But in the Tryal of *Fitzharris*, that Queſtion was fully cleared; for it was proved there, that the very Libel then produced in Court, was the ſame Libel read in the Houſe of Commons, upon which the Impeachment was voted.

And to ſay Truth, nothing can be put in Iſſue, but is capable of Trial: *Quo animo* a thing is done in all overt Acts of a deſign, is one of the main queſtions; or to ſpeak in Law Phraſe, whether done *proditorie* or not, an Adverb of great uſe and ſenſe, tho heretofore ſlighted; and under which I believe a great many Perſons will be enforc'd to ſhelter themſelves from being puniſhed by the Law eſtabliſh'd.

No man will pretend, that Libel did any Man miſchief but the Contriver, nor in probability could have done, if not uſed to the purpoſe *Everard* ſaid to *Oates*. Yet other Perſons have been guilty of as illegal Acts, of worſe Conſequences in proſpect, and much worſe in effect, and it did not amount to Treaſon I dare ſay, the Allegation, that they diſturb'd the Kingdom by their Acts, and War caus'd to be mov'd againſt the King, is true of them, and they are guilty of all the Aggravations us'd in Indictments of Treaſon.

To inſtance in ſome of many, did it not make a mighty heart-burning in the City againſt the Government, and rais'd great Jealouſies between the King and People, when the Sheriffs *North* and *Rich* were impos'd on the City? Did not the taking away the City's right of Electing Sheriffs, and the ſuſpicions for what end it was done, beſides the Illegalities that followed? If what Sir *Edward Herbert* ſays in his late Vindication, *fol.* 16. be Law, as it hath an Aſpect as if it were, that Grand Juries return'd by ſuch as are Sheriffs in Fact, but not in Right, are illegal, and Convictions on their Preſentments are illegal and void, give great diſturbance, and that Opinion ſeems to be countenanc'd by my Lord *Coke*'s 3*d Inſtit. Fol.* 32. in his Comment on the 11*th* of *Henry* the 4*th*, and conſequently my Lord *Ruſſel*'s and other Attainders void? Did it not add to the heart-burning, the puniſhing thoſe Citizens as Rioters, who were at *Guildhall* innocently conteſting their right of Electing? Was it not an increaſe of the miſchief, the bringing the *Quo Warranto* againſt the City, whereby the Credit of the City was loſt, and many Orphans ſtarved, and more impoveriſhed, beyond the poſſibility of recovery? And it was yet heightned by the Judgment given in the higheſt Caſe that ever came into *Weſtminſter-Hall*, by two Judges only, and that without one word of Reaſon given at the pronouncing, according to the pattern of *Fitzharris* his Caſe, and was the ſecond mute Judgment? Did it not fright all honeſt Men from being on Criminal Juries, when *Wilmer* was ſo illegally proſecuted for not giving a Verdict againſt his Conſcience, by an *homine replegiando* and Information? And did not that make all Merchants, who had Tranſactions beyond Sea, afraid to ſend their Servants thither, for fear they might be laid by the heels till they fetch'd them back again? Did it not ſtartle the Lords and the Leading Men of the Houſe of Commons mention'd ſo often in *Fitzharris* his Trial, when the Earl of *Eſſex*, Lord *Ruſſel*, Colonel *Sidney*, Mr. *Hamden*, and ſeveral others were clapt up cloſe Priſoners in the *Tower*? Did it not deter any honeſt Man from appearing to witneſs the Truth, when Sir *Patience Ward* was convicted of Perjury? Did it not provoke two Great and Noble Families, when the Lord *Ruſſel* and Colonel *Sidney* were ſo illegally and unhandſomly dealt withal, as ſhall be hereafter declar'd? Did it not provoke all the Nation, except the Clergy and Soldiery, when all the Charters of *England* were ſeiz'd, and not regranted, but at exceſſive Rates, to the ſtarving the Poor, who ſhould have been fed with the Mony which went to purchaſe the new Charters, and reſerving the Diſpoſition of all the places of Profit and Power, within the new Corporations, to the King, but which indeed the Confederates ſhar'd amongſt themſelves? Nay the very Election of Burgeſſes, the freeneſs of which is the great Fundamental of the Government, was monopoliz'd, and put into a few hands. Did not the unreaſonable Fines, and cruel Puniſhments inflicted, oppreſs many, terrify all, and conſequently made the Government odious to the Subject? Did not the Cruelties acted in the *Weſt*, enrage above a third part of the Nation? Did not the turning out many of the Soldiery and Clergy, without any reaſon; and for that purpoſe erecting Arbitrary Courts, and granting Diſpenſations to Perſons by Law diſabled, to enable them to have and enjoy the Places and Offices of ſuch as were illegally turn'd out, and of all who ſhould be in like manner turn'd out? And was it not ſeen what the Conſequences of thoſe things would be, by all who did not wink their Eyes, or who were not blinded by the Profit they made of ſuch illegal and cruel Acts? Was not the King at laſt ſenſible, that the Conſequence of what is before recited would be what afterwards happen'd? And did he not in leſs than a Months time, when too late, throw down all that *Babel* of Confuſion which had been ſo long a building, and did all in his Power, and would have done more if he could, to have ſet things as right as they were before the Parliament of *Oxon*; for from thence the Extravagances may be dated. But alas! more miſchief can be and was done by weak Brains, than the beſt Wits can retrieve; thoſe that were dead could not be brought to Life; the Reſtitution of the Cities Charters was but in ſhew a Relief. How ſhall all thoſe defend themſelves who have acted under all the illegal Sheriffs conſtituted and not elected? How ſhall thoſe defend themſelves, who have acted under Officers appointed by the new Charters, which by the Reſtitution are gone as if they never had been? How ſhall Sheriffs, Goalers, and other Officers, who have had, or now have Cuſtody of Priſoners; and having not taken the Teſt, truſt to the validity of a Diſpence, behave themſelves? Shall they continue to keep their Priſoners in Cuſtody, or let them go? If the laſt, they are ſubject to Actions of Eſcape; if the firſt, they are liable to falſe Impriſonment. Theſe and a great many more Miſchiefs, not yet ſeen, are the natural reſults of theſe illegal Actions.

I never reflect on theſe things, but I remember *Tully* in his Offices lays down as a Rule, that nothing is Profitable but what is Honeſt, and gives many Reaſons for it; but nothing ſo convincing, as the Examples he brings in publick and private Matters: and tho the Empire was vaſt, and he bore a great Figure in it, and was very knowing, and was well read in the Greek and Roman Hiſtories, yet he was not able to bring a 100*th* part of Examples, to prove his Poſition, as have been in this little Iſland in the ſpace of eight Years. And the Perſons, by whoſe advice theſe things were tranſacted, are the more inexcuſable, if it be true what a certain Nobleman (who bore a conſiderable Character in the two late Kings Council) once ſaid to me was true. He was complaining that the King was miſled by the Advice of his Lawyers.

I ask'd him whether the King put his Judges and Council upon doing what was done, without conſidering whether it was Legal; as the common Vogue was he did; or that his Lawyers firſt adviſ'd what to be done, was Law? He anſwer'd me, on his Honor, the King's Council at Law firſt adviſ'd the King might do by Law what he would have done, before he commanded them to do it.

Yet I agree, none of thoſe matters, tho ſo inconvenient and grievous, are Treaſon by the Statutes of *E.* 3. or *C.* 2.

For Profit in ſome Caſes, Revenge in others, the endeavoring means to eſcape Puniſhment, and a natural propenſity to Cruelty in many, were the rrue ends driven at, and not the bringing their Prince into the hatred of his Subjects, tho that was a neceſſary conſequent of all recited and of many more matters omitted: And let *Fitzharris* his Crime, and thoſe recited, be but examin'd, his was but a *Peccadillo* to the leaſt of thoſe; tho this was acted by an *Iriſh Papiſt*, and theſe by *Engliſh Proteſtants*, Sons of the Church of *England* as by Law eſtabliſh'd, as they call themſelves; tho I doubt, not ſincere Proteſtants, as my Lord *Ruſſel* ſaid; words which were matter of Laughter to thoſe who brought him to the Block.

But, tho neither *Fitzharris* his Crime, taken in the laſt Senſe, nor the above Crimes were High Treaſon by any Statute; and the Judges have not Power to puniſh any other Treaſons: yet in all times the Parliaments have practiſed, and it is neceſſarily incident to all Supreme Powers, in all Governments, to enact or declare extravagant Crimes to be greater than by the eſtabliſhed Law they are declared to be, not by vertue of the Clauſe in the Statute of *Edward* the 3*d.* whereby ſome have, by miſtake, thought that a Power was reſerved to the *Parliament* to declare other matters Treaſon, than what is therein expreſt: for admit that Clauſe had been omitted, there are none can doubt, but in point of Power, the *Parliament* could (how far in Juſtice they might, is another Queſtion) have declar'd any other matter to be Treaſon; and the words of that Clauſe are very improper Expreſſions, either to veſt or reſerve a Power in the *Parliament*; for the words are only prohibitory to the Judges, to adjudg any other Matters Treaſon, than thoſe expreſt in the Act, tho they were ſomewhat like thoſe expreſs'd, and therefore might be ſuppos'd Treaſons; and it is a ſort of monition to Offenders, that they ſhould not preſume to be guilty of Enormous Crimes upon preſumption that they were not Treaſons within that Act. For in the Preamble 'tis ſaid, becauſe many other like Caſes of Treaſon (which in Senſe are Caſes like Treaſon declared in that Act) may happen in time to come, which could not be thought of or declared at that preſent; therefore if any ſuch ſhould happen before any Juſtice, the Juſtice ſhould tarry, and not proceed to give Judgment of Treaſon on it, till it ſhould be judg'd in Parliament, Treaſon or Felony. How well the Judges in late days have obſerved this prohibitory Law, let the World judg; and moſt certainly the Parliament might have declar'd in *Fitzharris* his Caſe, as they may in thoſe other, that the Crimes were Treaſon, Felony, Miſpriſion of Treaſon, Treſpaſs or what other Crime known in the Law, and inflict what Puniſhment they thought fit; and it is no injuſtice for the Supreme Power to puniſh a Fact in a higher manner than by Law eſtabliſh'd, if the Fact in its nature is a Crime, and the Circumſtances make it much more heinous than ordinarily ſuch Crimes are. It was not injuſtice in the Parliament of the ſecond and third of *Philip* and *Mary* to enact, that *Smith* and others, who were ſuppos'd to be guilty as Acceſſaries to a barbarous Murder, and were equally if not more guilty than the Principal, to enact, as they did, that if they ſhould be found guilty as Acceſſaries, they ſhould not have their Clergys, which at the time of committing the Fact Acceſſaries to Murder were allow'd to have. It is true, to declare or enact a Fact, after it is committed, to be a Crime, which when committed was in it ſelf none, ſuch as tranſporting Wool beyond Sea, and the like, would be high Injuſtice.

Remarks upon Colledge's *Tryal.*

BUT to return whence I have digreſt, *Fitzharris* being Executed according to his Sentence, though there was great grumbling amongſt the Proteſtants, that thoſe who ſet him on Work were conceal'd, and never like to be diſcover'd now he was Dead; yet all was quiet, and the Conſpirators, who reſolv'd, though *Fitzharris* miſcarried in his Deſign, yet the *Plot* ſhould go on, but what it ſhould be, or where the Scene of it ſhould be laid, or who the *Plotters* ſhould be, they were not well reſolv'd.

Great noiſe of Warrants being iſſu'd out there was, but at laſt all center'd in an inconſiderable Fellow, one *Stephen Colledge*, a *Joyner* by Trade, who for his Honour, as a Priſoner of State, was committed to the *Tower* for High Treaſon. At firſt it was deſign'd to lay the Scene in *London*, and accordingly a Bill of Indictment of High Treaſon was exhibited to the Grand Jury (whereof *Wilmer* was Foreman) at the Seſſions Houſe: But the Buſineſs of *Fitzharris* was ſo new, and ſmelt ſo Rank, that the Bill could not be digeſted, but was ſpew'd out with an *Ignoramus*; for which *Wilmer* was afterwards forc'd to fly his Country.

Then it was reſolved the Scene ſhould be at *Oxford*, and accordingly the King's Council, with *Iriſh* Witneſſes, at the Aſſizes, poſt thither, and prevail with the Grand Jury to find the Bill; but by what Arts is not known, for he was privately ſhut up with them: and I ſhould wonder, if he, who frequently in the hearing of thoſe who underſtood better than himſelf, had Aſſurance enough to impoſe upon the Courts, ſhould ſcruple in private to impoſe any thing on an ignorant Jury.

I know not how long the Practice in that Matter of admitting Council to a Grand Jury hath been; I am ſure it is a very unjuſtifiable and unſufferable one. If the Grand Jury have a Doubt

in Point of Law, they ought to have recourſe to the Court, and that publickly and not privately, and not rely upon the private Opinion of Council, eſpecially of the King's Council, who are, or at leaſt behave themſelves as if they were Parties.

It is true, it is ſaid they are upon their Oaths; and though it be not expreſt in their Oaths, that they ſhould do right between the King and Subjects, yet that is imply'd in the Oath I agree. But have they behav'd themſelves as if they were under an Oath? beſides, all Men are not capable of giving Advice to be rely'd on in ſo great a Matter as Life; but the Manner of doing it being in private, can never be juſtify'd. I know in *Fitzharris*'s Caſe, the King's Council were cajoling the Grand Jury in private for ſome Hours: but I did not think fit to take notice of it in that Tryal, becauſe I think both the Grand and Petty Jury did very well, they acted according to the beſt of their Underſtanding, which is all that God or Man requir'd of them; they ask'd pertinent Queſtions, they were over-rul'd in ſome, not fully anſwer'd in others: not that I think either of them gave a Verdict according to Law upon the Fact, as it appear'd upon the Evidence; but that was not the Fault of the Jury, but of the King's Council, and of the Court who miſled the Jury. I thought it more proper to take noce of it in this Trial, wherein the firſt Bill was rejected by an underſtanding Jury; and all Men wonder'd how the ſecond came to be found *Billa Vera*; and for that reaſon one of the King's Council boaſted at Court of his Service and cunning Management in the Matter.

The Bill being found, the next Matter was to bring the Priſoner to his Tryal: and as he had more Honour than what uſually is beſtow'd on ſo mean a Man to be committed to the *Tower*, though in truth it was to keep him from all means of Defence; ſo to carry the Matter on, he was allow'd to have, by order of the King and Council, a Council and Sollicitor to come to him, and adviſe him for his Defence at all Events; a Favour deny'd to *Fitzharris*, for his Council was to adviſe to the Matter of the Plea only: but that Favour in ſhew was only to betray him, as ſhall be ſhewn. And a third Favour he had, which no Man of his Quality ever had; there were then three of the King's Council ſent from *London*, and all the Council that could be pick'd up upon the Spot, which were three more, and no leſs than four Judges to proſecute and try him; but that was to make ſure Work of him.

The 17*th* of *Auguſt*, 1681. he came to his Tryal: his Indictment, as to part, was in common Form for Treaſon, but particularly for deſigning to ſeize the King's Perſon at *Oxford*, mixt with Words he ſhould ſay, as, That there was no good to be expected from the King, he minded nothing but Beaſtlineſs, and that he endeavour'd to eſtabliſh Arbitrary Power and Popery. To which being requir'd to plead, he deſir'd a Copy of the Indictment, a Copy of the Jury, to know upon what Statute he was Indicted, and Council to adviſe him whether he had any thing pleadable in Bar, all which were deny'd him. Then he deſir'd he might have his Papers, which were taken from him after he was brought from the Priſon, and before he came into Court, at an Houſe over againſt the Court; for ſo it ſeems the King's Council had order'd the Matter, that the Goaler *Murrel*, and the Meſſenger *Sawel*, after they had him out of the Priſon, ſhould run him into an Houſe, and take away all his Papers, which they believ'd were the Inſtructions, as in truth they were, of the Council aſſign'd him when in the *Tower*, and bring the Papers to them, whereby they would not only diſable him of his Defence, but they could be better inſtructed how to proceed in a way for which he had not provided himſelf of any Defence.

Murrel and *Sawel* did as the King's Council directed them; much wrangle there was whether he ſhould have his Papers or not, all the Court agreed he ſhould not have them till he had pleaded *Guilty* or not *Guilty*; and afterwards he ſhould have the Uſe of ſome, and not of others, becauſe they did not appear to be written by himſelf, but by ſome Council or Sollicitor; and as they ſaid, none is allowed in Treaſon, unleſs aſſign'd by the Court. The Chief Juſtice *North* ſaid they were not taken away by him; but ſays *Colledge*, they were taken away by the Keeper under pretence of bringing them to his Lordſhip. The Court ſaid they knew not what Papers he meant, and knew nothing of it; he ſaid the Indictment mention'd ſomething of Miſdemeanor as well as Treaſon, but he knew not how to make his Exceptions without his Papers. I have thought fit to mention all theſe things, becauſe this Tryal was the inlet to all that follow'd, and gave Encouragement to ſpill nobler Blood. The Injuſtice of the Violence us'd to the Priſoner, muſt be meaſur'd from the Reaſons given for it, that the Papers were Inſtructions from Council and Sollicitors, and none in Law was allow'd in Treaſon. 'Tis true, no Council are allow'd for the Priſoner in a Tryal upon an Indictment of any Capital Matter; but in an Appeal for Capital Matters, Council are allow'd even on the Trial. The reaſon given, that the Indictment is the Suit of the King, and no Council or Witneſs is allowable in a Capital Matter againſt the King, is fooliſh, as ſhall be hereafter ſhown; and as vain is the Reaſon that the Judges are Council for the Priſoner, which they ought to be: but I doubt it will be ſuſpected, that in this Caſe and many others, they did not make the beſt of their Clients Caſe; nay generally have betray'd their poor Client, to pleaſe, as they apprehended, their better Client, the King; for ſo they ſay, they are to be Council likewiſe for the King in Indictments, that is to ſay, they are to be indifferent and upright between both, ſo certainly they are to be in Appeals; therefore that is not the Reaſon why no Council is allowed the Priſoner in the Indictment, but the true Reaſon in probability is, that the Priſoners in Indictments are generally ſo very poor that they could not be at the Charge of having Council, and ſo Non-uſage gave Colour of a Law.

The other Reaſon my Lord *Coke* gives for it, *viz.* that much of the Truth may be diſcern'd by the Priſoner's Behaviour, or Anſwers, which would be conceal'd if he ſpoke by another, is not ſatisfactory; for the ſame is to be ſaid in an Appeal. As to the publick, it is not material whether a Man is proſecuted and puniſht by an Indictment, or an Appeal; and that Appeals are leſs frequent than Indictments, is only that the firſt is more chargeable than the laſt, for though we hear not of late of any Appeals but in Murder, yet they lie in Robbery, Burglary, Felony,

and

and in all Crimes at Common Law puniſhable by loſs of Life or Member: but though the Rule in Indictments is, That no Council is allow'd, yet it is confin'd to the Tryal; no Law, Common or Statute, nor any Uſage ſays, a Priſoner ſhall not have Council to adviſe him before or after the Tryal; and in Murder and all other Crimes, it is always admitted; and why not in Treaſon?

In Treaſon ſay ſome, 'tis Criminal for one to Adviſe or Sollicite for the Priſoner; and the King's Council ſaid, he had known one indicted for being a Sollicitor for one in High Treaſon; and ſays the Court, it is Criminal for one to be Sollicitor or Council in Caſes of High Treaſon, unleſs aſſign'd by the Court: and whether it be ſo or no is worth Inquiry.

Firſt, No Law Book as to this Matter makes any difference between Treaſon, and other Crimes; and Adviſing and Solliciting is ſpoken of in general Terms, which being reduc'd to Particulars, will ſhew the Abſurdity of it.

Suppoſe I obſerving the Indictment on which the Priſoner was arraign'd, was erroneous, and ſhould therefore adviſe him to move and quaſh it for that Error: for, ſay I, if you ſhould be try'd on this Indictment, and found guilty, unleſs you move in Arreſt of Judgment, you will be attainted, and then you can take no Advantage of that Error; and if you be acquitted you may be indicted again, and try'd again, becauſe the firſt Indictment was erroneous.

If this be Law, as none can deny it, is it not lawful to adviſe him? and is it not fit for the Court to quaſh the Indictment faulty, notwithſtanding all the Cant of Dilatories, Subterfuges, and defending himſelf by plain Matter of Fact? Or ſuppoſe I adviſe in Fact that I hear that ſuch a Witneſs is to come againſt him, I know he is hired to do the Job, and I will prove it on him if call'd. Or ſuppoſe I tell him, I know ſuch a Witneſs is convict of Perjury, and if he will call me, I will produce the Records of his Conviction; can any Lawyer ſay theſe things are Criminal? but if I ſhould adviſe a Priſoner to eſcape out of Priſon, ſhewing him the Way of doing it, it is criminal.

In all Caſes comforting a Traytor is Treaſon, but it is meant where you do it to keep him from Juſtice; for elſe feeding a Traytor in Priſon is Treaſon, which none will affirm. So that reducing general Words to particular Facts, clears the Sophiſtry of them; nor is it criminal to be a Sollicitor in Treaſon, for where there is no poſitive Law, as in this Caſe there is not, natural Reaſon muſt take place; and better Reaſon cannot be given than what the Priſoner in this Caſe gave: If a Man be coop'd up and not ſuffer'd to go about his Buſineſs himſelf, and no Friend muſt be employ'd to do it for him, how is it poſſible for him to make his Defence? I know it is ſaid his Innocency muſt defend him, but the Folly of that ſaying ſhall be ſhewn in another place. But ſay they, The Court ſhall aſſign him a Council and Sollicitor; but when, and for what? only for a Point of Law. May not a Priſoner want a Sollicitor for a Matter of Fact? Suppoſe he had occaſion for a Witneſs which he could not readily find, or occaſion for a Copy of Record, for want of which Mr. *Corniſh* ſuffer'd; was it not reaſonable for him to have a Sollicitor? And when ſhall the Court aſſign him a Sollicitor? only when the Priſoner comes upon his Tryal, and then it is too late to have any uſe of him; as *Colledge* was arraign'd at twelve, and try'd at two a Clock the ſame Day, and as was Mr. *Corniſh*'s Caſe. But, ſay the King's Council, they had known one indicted for High Treaſon for being a Sollicitor in ſuch a Caſe; tho' I do not believe it, yet that Authority goes no farther to prove the Matter, than an Indictment I knew againſt a Perſon once, for ſtealing an Acre of Land; and againſt another for wickedly and deviliſhly breaking an Award, whereby two unjuſt Arbitrators directed the Priſoner to convey his Land to a certain Lord, without any Satisfaction or Recompence, prov'd thoſe Matters to be Felonies.

But tho' a Priſoner may be adviſ'd, yet that Advice muſt not be reduc'd to writing. Then ſuppoſe one Man's Memory be good, and can bear all the Advice given him, and another Man's Memory bad, and cannot do it: Is not the laſt hang'd for having a bad Memory, rather than for his Crime? But tho' it may be reduc'd to writing, yet it muſt be his own Hand writing, and not another's; how ridiculous is the Diſtinction? Suppoſe the Priſoner cannot write, then is he hang'd for his Parents Fault or Misfortune, for not educating him, or for not being able to educate him better.

Which is ſomewhat of kin to the late practice in the *Weſt*, where many Men were hang'd for having old *Jewiſh* Names, as *Obadiah*, or the like, with a Jeſt, that their Godfathers hang'd them. But ſuppoſe it is not lawful in general to be a Council or Sollicitor, with, or to a Priſoner committed for High Treaſon; yet the Proſecution being the King's, he may give a Privilege which the Law of Courts doth not allow, and in this Caſe it was ſo done; for, to the Confuſion of thoſe who did this Injury, and of thoſe Judges who would not do the Priſoner Right, they have printed the Orders of the King and Council, which appointed Mr. *Weſt* and *Aaron Smith* to be his Council and Sollicitor.

If it was lawful for the Priſoner to have Council, and to have Advice in writing; it was very unlawful, and as high a Miſdemeanour in the King's Council to order his Papers to be taken away, as they were capable of being guilty of, both the Priſoner and the Matters of his Defence being under the Protection of the Court.

It is not an ancient Practice the ſeizing of Papers, tho' of late us'd; it began, I believe, upon my Lord *Coke*, whoſe Papers were ſeiz'd and carry'd to the Secretaries Office, upon the like Pretences as of late, and when return'd, were gelt of many Bonds and other Securities, to a great many thouſand Pounds value, which never came to Light. It was afterwards practis'd upon ſome Members of Parliament, and, as I remember, voted Illegal, as undoubtedly it is: for tho' ſometimes you may meet with Papers which may be evidence againſt the Priſoner; yet it is poſſible that other Papers than the Priſoner's may be mix'd with his to make good an Accuſation; nay, which is worſe, ſome of the Papers may be withdrawn, which may be the only Matter of his Defence, and that hath been often practis'd. And I cannot but remember a Story about this Matter: When Sir *William Jones* died, it was ſaid, that one from *Whitehall* offer'd Sir *William Jones* his Ser-

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vant a great Sum of Money but to let him ſearch his Maſter's Study, to find a Paper which would diſcover great Matters. A certain Perſon diſcourſing with a Privy-Counſellor about it, the Privy-Counſellor ſaid, It was not true; for, ſays he, if we had a mind to have done it, could we not ſend a Meſſenger on pretence of ſearching for treaſonable Papers, and bring all the Study to *Whiteball*, and keep what we would of them?

But tho' that hath been often practis'd, yet this was the firſt time that ever a Priſoner had the Inſtructions for his Defence taken away from him; and the manner was worſe than the thing, it being done juſt as he was coming to his Tryal, relying upon his Writing, not his Memory, for his Defence; beſides the Agony ſo great an Injury put him in, when he had ſo great a Concern upon him, as the Tryal for his Life, and he could not but know by all that Preparation, that it was more than ten to one againſt him: all which is well ſeen in his Tryal, where he ſo pathetically and ſenſibly preſs'd the Court for Juſtice in this Matter, which they excus'd with ſuch mean Anſwers, that all Mankind muſt ſee they were ſatisfy'd of the Injuſtice, and were reſolv'd not to do him Right: They knew not which way he came by the Papers, they knew not but he may be criminal who brought them him; they knew nothing of his Papers, they knew not what Papers he meant; that his Lordſhip did not take them away, and ſuch like ſtuff: as if it was not the Duty of the Court to relieve the Priſoner againſt the Oppreſſion of any ſuch Perſons but themſelves; elſe why did they not ask *Murrel* and *Sawel* who ſtood by, and were charged with taking them, for the Papers, and have ſatisfy'd themſelves of them? but in truth they knew before what they were. And *Colledge* was a true Prophet, when finding his Life ſo beſet, he ſaid, This was a horrid Conſpiracy to take his Life: but it would not ſtop there, for it was againſt all the Proteſtants in *England*. And the Rule the Court made at laſt was as unjuſt, That he ſhould have the uſe of ſome of his Papers after he had pleaded not Guilty, but not before; for ſuppoſe there was Matter in them which could not be made uſe of after ſuch Plea, as a Plea to the Juriſdiction of the Court, a Pardon, otherwiſe acquitted, and the like, could not be pleaded, or advantage taken of them after not Guilty pleaded; altho' there was not ſuch, yet there might have been ſuch Pleas for ought the Court knew. How unjuſt then was it for him to plead not Guilty before he ſhould have the uſe of his Papers? but there was Matter in them for quaſhing the Indictment; and he hinted ſo much to the Court, as that the Indictment contain'd Crimes of different nature, as Treaſon and Miſdemeanour, and I think it was good Cauſe to quaſh the Indictment.

In all Civil Matters, two Matters of different Natures cannot be put into one Action, as Debt and Treſpaſs; two Capital Crimes of different Natures cannot be join'd in one Indictment, as Murder and Robbery: and for the ſame, and another Reaſon, Treaſon and Miſdemeanour cannot be join'd in one Indictment; for the Jury may obſerve that one part of the Indictment, which in it ſelf is but Miſdemeanour, as that he ſaid, The King minded nothing but Beaſtlineſs, *&c.* tho' charg'd in the Indictment as Treaſon, was prov'd, and not the material Parts of the Indictment, as deſigning to ſeize the King's Perſon, *&c.* and finding ſome part of the Indictment prov'd, might find him guilty generally, which extends to every Article of the Indictment, and ſo the Jury deceiv'd, and the Priſoner in danger; or ſuppoſe he was acquitted of ſuch an Indictment, if it ought to have been quaſh'd, whether the Priſoner ſhew the Error or not, he may be try'd again upon another good Indictment for the ſame Treaſon. If therefore what he offer'd was an Error, or but like an Error in the Indictment, by the Law which favours Life, and the jeopardy on Life, the Court ought not to have try'd him on that Indictment, but have directed another Indictment to have been found. It is a vain Objection to have ſaid, That that would have been troubleſom. Is the Miſchief of that comparable to that of putting a Man twice in jeopardy of his Life for the ſame thing? but it would have been a delay. I ſay none; for there was a Grand Jury in Court, and within the two hours time the Court adjourn'd (to give the King's Council Opportunity of viewing the Priſoner's Papers which were taken from him, and to conſider of the Method of his Proſecution by them, which they did, and alter'd it from what they at firſt deſign'd it) the King's Council might have had a new Bill found; but peradventure they could not prevail with that Grand Jury to have found a new Bill; they remembred they had ill luck with the firſt Bill at *London*, which I believe was the true reaſon: but I'll do the Court no Injury, in ſuppoſing that to be the Cauſe of the Adjournment which was not; 'tis true, in the printed Tryal 'tis pretended they adjourn'd in order to dine; yet thoſe that knew the Adjournment was by the Direction of the King's Council, and overheard their whiſpering with the Chief Juſtice (which is both an indecent and an unjuſt thing, and is neither better nor worſe than a Plaintiff or Defendant's whiſpering a Judge while his Caſe is before him trying) and I know that the Judges had breakfaſted but a little before, and had no great ſtomach to their Dinners, and therefore believe, that that before aſſign'd, and not what was pretended, was the true Cauſe. They might better have put off their Dinner to their Supper, than their Supper to their Breakfaſt, as they did, the Tryal laſting till early next Morning.

But becauſe all Irregularities of Court and Council, in all theſe Matters, are ſhifted off and excus'd by two Sayings not underſtood generally; the firſt whereof is, That the Court is to act for the King, and the Council are for the King, and no Perſon muſt come near the Priſoner to the Prejudice of the King, as in *Fitzharris*'s Caſe was often ſaid; a Witneſs was permitted to go on in an impertinent Story, of a Tranſaction between him and my Lord *Shaftsbury*, in my Lord *Ruſſel*'s Tryal, of which the Priſoner complain'd that it was deſign'd to incenſe the Jury; and tho' the Chief Juſtice declar'd it was not Evidence, yet a great while afterward he went on in a like manner; nay, the Council in ſumming up the Evidence, repeated the ſame Matter, which was permitted becauſe it was *for the King*; and yet when the Earl of *Angleſey* began to ſay what the Lady *Chaworth* told him, he was ſnub'd, and cut ſhort; and Mr. *Edward Howard* was ſerv'd the

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ſame Sauce, becauſe it was *againſt the King*: It is fit therefore to know what is meant in Law by thoſe words. No body doubts what the Courts or King's Council of late Days meant; but in Law they are not ſo meant, for tho' many things are ſaid to be the King's as the Protector of his People, and more concern'd in their Welfare than any private Perſons; yet they are ſo in Preſervation, and not in Property or Intereſt. The Highways are the King's, in preſervation for the Paſſage of his Subjects; and whoever obſtructs them wrongs the King, as he is hurt when his Subjects are hurt: but in Property the Soil generally belongs to private Perſons. The King is hurt when his Subjects are oppreſt by Force, becauſe he has engag'd to defend them; and therefore the Offender is puniſh'd by the King, to deter the Offenders and others from committing the ſame Offences, which is for the benefit of the Publick. But as a Man may be oppreſt by open Force, ſo he may be oppreſt by private Inſinuations and falſe Accuſations, and the King has engag'd to defend his Subjects from ſuch; not that it is poſſible to prevent them but by Conſequence, that is, by puniſhing ſuch as ſhall be found guilty of thoſe Crimes, which heretofore were puniſh'd with the higheſt arbitrary Puniſhments we read of: The Conſequence is, That it is for the King to puniſh Offenders, to acquit the falſe accus'd, and to puniſh the falſe Accuſers; that is to ſay, In all Caſes to do right according to Law and Truth.

Surely Queen *Elizabeth* gave the beſt Explanation of the Words, when the Lord *Burleigh*, ſeeing Sir *Edward Coke*, the then Attorney General coming towards her, he ſaid, *Madam*, here is your Attorney General, *Qui pro domina Regina ſequitur.* Nay (*ſays ſhe*) I'll have the words alter'd, for it ſhould be, *Qui pro Domina Veritate ſequitur.*

For the King and *for Truth*, they are ſynonymous words; *for* the King *againſt* the Truth is a Contradiction. And the Judges and King's Council having taken an Oath to adviſe the King according to the beſt of their cunning, which is according to Law and Truth; if therefore the King's Council uſe Means, and the Court permit them ſo to do, to ſuppreſs Truth, or to diſable the Priſoner from making his Innocence appear, as in *Colledge*'s Caſe was done; if they urge things as Evidence of the Crime whereof the Priſoner is accus'd, which by Law are not Evidence, as in this Caſe, in the Lord *Ruſſel*'s Caſe, Col. *Sidney*'s Caſe, Mr. *Hamden*'s and Mr. *Corniſh*'s Caſe, and in many more they did, and as in ſome of them ſhall be hereafter ſhewn, If they inſinuate any Fact as Evidence, which is not prov'd, as in my Lord *Ruſſel*'s Tryal, That my Lord of *Eſſex* kill'd himſelf; if they wreſt as Evidence of the Fact, what in Senſe is not ſo, as in Colonel *Sidney*'s Caſe, the writing his Book (nay, for any thing appear'd, it was writ before King *Charles* the Second came to the Crown) they are Council againſt the King, being againſt Truth as well as againſt the Priſoner.

I think no Man will deny the truth of this Propoſition. That it is as much the King's Intereſt to have an Innocent accus'd of Treaſon, acquitted, as it is to have a Nocent accus'd of Treaſon, convicted. If that be true, then let any one ſhew me a reaſon if he can; for there is no Law againſt it, why he may not have the ſame Liberty of clearing his Innocence, as the Proſecutor hath of convicting him; I mean by free and private acceſs of all Perſons to the Priſoner, as is us'd in all other capital Matters. If it be ſaid he may get ſome to corrupt the Witneſſes againſt him, or ſuborn others for him, the ſame may be ſaid in all other Matters; but in Treaſon that is not a likely matter, for generally the Priſoner never knows what he is accus'd of, and conſequently cannot know his Accuſer, nor how to provide a Counter-Evidence, till he comes to be arraign'd, and then it is too late: for generally he is preſently tried after his Arraignment, as was the Caſe of *Colledge*, and my Lord *Ruſſel*, and Mr. *Corniſh*; and Perſons committed for Treaſon are ſo much the leſs able to corrupt or ſuborn Witneſſes than any other Criminals, that they generally, according to the late Practice, have no Accuſer brought face to face to them on their Commitment as all other Criminals have, who always are committed upon an Accuſation made upon Oath in their hearing, and their Defence heard before their *Mittimus* made; and whatever the Pretence may be, yet in Experience, it is found that more Perjuries are committed in Proſecutions for Treaſon by the Accuſers, than by the Witneſſes for the Priſoner.

One reaſon is, A Witneſs in Treaſon is more difficultly convicted than in any other Crime: for Treaſon is an *Ignis fatuus*, 'tis here and there, as *Colledge* was firſt in *London*, then in *Oxford*; it is not confin'd to place or time, as all other Crimes are; in all other Crimes, as Murder, Robbery, or the like, it muſt be prov'd to be within the County where laid; it muſt be of the Perſon named in the Indictment, which are Evidences of Fact, which in ſome ſort prove themſelves. And there was but one that I remember (for *Oates* I do not count one) was ever juſtly convicted of Perjury in Treaſon, and that too was for want of cunning, for he fooliſhly ſwore to Time as well as Place, which a Witneſs in Mr. *Hamden*'s Tryal would never be brought to do: Beſides, Malice and Revenge, which in Proſecutors and Accuſers in Treaſon are generally the Motives, go farther than Money or Kindneſs, which if us'd in any Caſe, are the Motives of falſe Witneſſes for the Priſoner.

Now as *for the King* and *for the Truth* are the ſame, ſo *for the King* and *for the Law* are the ſame. The Laws are the King's, as he is to ſee the Execution and Preſervation of them; ſo *for* the King *againſt* the Law is a Contradiction.

Therefore to try a Priſoner upon a vicious Indictment, as was done in *Colledge*'s and Colonel *Sidney*'s Caſes, is againſt the King as it is againſt Law, for by that means he is in danger to be hang'd if convicted; or tried twice, if acquitted, which is againſt Law.

It is no Salve of the Matter what the Judges ſaid in *Colledge*'s Caſe, that the Evidence of Miſdemeanour is no Evidence of Treaſon; for the ſame may be ſaid in an Indictment of Murder and Robbery; nor that the Judges would take care to inform the Jury which was Evidence of Treaſon, which of Miſdemeanour, which they promis'd to do, but were not as good as their Words, as ſhall be ſhewn; for the Court may forget ſo to do, and the Jury may forget what the Court ſaid to them of that Matter.

But notwithſtanding all this, if the Priſoner was innocent, there could be no harm done to him, for his Innocence would defend him: This was a Saying, and as mortal it was to *Fitzharris*, to *Colledge*, to Colonel *Sidney*, to Mr. *Corniſh*, and ſeveral others, as was the Letter ⊖ amongſt the *Greeks*. It is true, my Lord *Coke* us'd the Expreſſion, but in another Senſe than that of late practis'd. I would fain know what they meant by the Expreſſion; Is it, that no Man will or ever did ſwear falſely againſt a Priſoner in Treaſon? If that be true, how came the ſame Perſons to be ſo violent againſt *Oates* for what he ſwore againſt *Ireland*? Or do they mean, that, let an Accuſer ſwear never ſo violently and circumſtantially againſt a Priſoner, yet if he be innocent it will do him no harm? If that be true, I would fain know how the Priſoner ſhall eſcape; is it that his Innocence ſhall appear in his Forehead, or an Angel come from Heaven and diſprove the Accuſer? Neither of which we have obſerv'd, tho' all have ſaid, and I believe, that ſome Perſons have been very innocently executed. Or ſhall the Accuſer be detected by the bare Queſtions of the Priſoner? that I think will not be neither; and therefore to inſtance in the only Perſon who hath of late eſcap'd in a Tryal of Treaſon, where there was a Deſign againſt his Life, which was my Lord *Delamere*, if he had not had Witneſſes to have prov'd the Perſons mention'd to have been with him at the place and time ſworn againſt him to be in other places, it was not his denial had ſerv'd his turn, but he would have run the ſame Fate with my Lord *Brandon*. Nay, I am apt to think had he been tried by a Jury of Commoners pack'd, as at that time they uſually were, he had not eſcap'd.

The truth is, when I conſider the Practice of late times, and the manner of Uſage of the Priſoners, it is ſo very much like or rather worſe than the Practice of the Inquiſition, as I have read it, that I ſometimes think it was in order to introduce Popery, and make the Inquiſition, which is the moſt terrible thing in that Religion, and which all Nations dread, ſeem eaſy in reſpect of it. I will therefore recount ſome undeniable Circumſtances of the late Practice: A Man is by a Meſſenger, without any Indictment precedent, which by the Common Law ought to precede, or any Accuſer or Accuſation that he knows of, clapt up in cloſe Priſon, and neither Friend or Relation muſt come to him; he muſt have neither Pen, Ink or Paper, or know of what, or by whom he is accus'd; he muſt divine all, and provide himſelf a Counter-evidence, without knowing what the Evidence is againſt him. If any Perſon adviſe or ſollicite for him, unleſs aſſign'd by the Court by which he is try'd, they are puniſhable: He is try'd as ſoon as he comes into the Court, and therefore of a Sollicitor there is no occaſion or uſe; if the Priſoner deſires Council upon a point of Law, as was done in my Lord *Ruſſel*'s Tryal, the Council nam'd muſt be ready to argue preſently, and the Court deliver their Judgment preſently, without any Conſideration. The Priſoner indeed hath liberty to except to thirty five of the Jury peremptorily, and as many more as he hath cauſe to except to, but he muſt not know beforehand who the Jury are; but the King's Council muſt have a Copy of them: He muſt hear all the Witneſſes produc'd to prove him guilty together, without anſwering each as he comes, for that is breaking in upon the King's Evidence, as it is call'd; tho' it hold many hours, as it happen'd in moſt of the Tryals: he muſt not have any Perſon to mind him what hath been ſworn againſt him, and forgotten by him to anſwer; for if that were allow'd, the Priſoner perhaps may eſcape hanging, and that is againſt the King: There is a Proclamation to call in all Perſons to ſwear againſt him, none is permitted to ſwear for him; all the impertinent Evidence that can be given is permitted againſt him, none for him; as many Council as can be hir'd are allow'd to be againſt him, none for him. Let any Perſon conſider truly theſe Circumſtances, and it is a wonder how any Perſon eſcapes; it is downright tying a Man's Hands behind him, and baiting him to death, as in truth was practis'd in all theſe Caſes. The Tryal of *Ordeal*, of walking between hot Iron Bars blindfold, which was aboliſh'd for the Unreaſonableneſs of it, tho' it had its Saying for it too, That God would lead the Blind ſo as not to be burnt if he were innocent, was a much more advantageous Tryal for the ſuſpected than what of late was practis'd, where it was ten to one that the accus'd did not eſcape. If any of theſe things have been legally practis'd, I have nothing to ſay againſt it, but I have never read any thing of Common or Statute-Law for it. And I can with better aſſurance ſay than any Perſon who hath practis'd theſe things that no Law in *England* warrants them; and if not, then conſider the unreaſonableneſs of theſe Methods.

There is yet one Objection to be anſwer'd, which being a very great Hardſhip upon the Priſoner, gives ſome colour of impoſing other Hardſhips upon him, to wit, That a Witneſs cannot be examin'd for the Priſoner on his Oath in a Tryal upon an Indictment of a capital Matter. It is not becauſe the Matter is Capital, for then no Witneſſes ought to be examin'd upon Oath for the Appellee in a capital Matter: Neither is it becauſe it is againſt the King, for then no Witneſs ought to be examin'd on Oath for the Defendant in a Tryal upon an Indictment of any criminal Matter; yet in Indictments of all criminal Matters, not capital, 'tis permitted to the Priſoner.

To ſay Truth, never any reaſon was yet given for it, or I think can be, if you believe my Lord *Coke*, 3*d Inſtit. fol.* 79. of which Opinion my Lord *Hales* is, in his Pleas of the Crown, that that Practice is not warranted by any *Act of Parliament*, Book Caſe, or ancient Record, and that there is not ſo much as *ſcintilla Juris* for it; for he ſays, when the Fault is deny'd, Truth cannot appear without Witneſſes. As for what is pretended, that it is ſwearing againſt the King, and therefore it is not allow'd of; 'tis a canting Reaſon, which put into ſenſible Engliſh, a Man will be aſham'd to own. And as ſlight is the Reaſon, that it being a matter of ſo high moment as a Man's Life, the Priſoner will be the more violent and eager, and the Witneſſes may be more prevail'd upon to ſwear falſly, more than they would be in a matter of leſs moment: The Weakneſs of that Reaſon hath been in part, and ſhall be further ſhewn. I think none will deny, but the end of Tryals in any matters Capital, Criminal, or Civil is the diſcovery of Truth: Next, 'tis as neceſſary for the Priſoner

to

to have Witneſſes to prove his Innocence, as it is for the King to have Witneſſes to convict him of the Crime; which Propoſition is agreed by the Practice, it being always permitted, that the Priſoner ſhall produce what Witneſſes he can, but they are not to be upon Oath. In the laſt place, ſince Truth cannot appear but by the Confeſſion of the Party, or Teſtimony of Witneſſes of both ſides, it is neceſſary to put all the engagement as well on the Witneſſes of part of the Priſoner, as of part of the King, to ſay the Truth, the whole Truth, and nothing but the Truth, as the nature of the Matter will bear: and as yet no better means has been found out than an Oath; which if deny'd to the *Priſoner's Witneſſes*, either he is allow'd too great an advantage to acquit himſelf, or he is not allow'd enough.

If all that his Witneſſes ſay without Oath, ſhall have equal credit as if they ſwore it, then he hath too much advantage; for Men may be found who will ſay falſly what they will not ſwear, as is plain enough. How often doth a Defendant ſay in a *Plea* at Law, that a Deed is not his, which yet in an Anſwer in *Chancery* he will confeſs to be his? If his Witneſſes ſhall not have Credit becauſe not ſworn, to what purpoſe then is it permitted him to produce them? If they ſhall have Credit, but not ſo much as if ſworn, I ask how much Credit ſhall be given? Is it two, three or ten Witneſſes without Oath ſhall be equivalent to one upon Oath? And beſides, that Queſtion never was or can be anſwered, what Credit ſhall be given them? There is an unreaſonable Diſadvantage put on the Priſoner, that a Witneſs produc'd on his part, of equal Credit with the Witneſs againſt him, ſhall not have equal Credit given him, becauſe he is not on his Oath; whereas he is ready to deliver the ſame things on his Oath, if the Court would adminiſter it to him, and yet that difference was taken in *Fitzharris's* Caſe, as to the Credibility of *Everard* and *Oates*, the firſt being upon his Oath, the laſt not.

I do not offer this as any Reflection upon the late Proceedings, but as a reaſon why matters in capital Proceedings ought not to have been carried further than heretofore they were, againſt the Priſoner, by example of ſo unreaſonable a Practice.

But to return to the Trial of *Colledge*, which came on in the Afternoon, when the Attorny inſiſted that the King's Witneſſes ought not to be examin'd out of the hearing of each other; in which he was over ruled, but the Rule not obſerv'd, nor was it material: for the King's Council having the Priſoner's Writings, and by them obſerv'd how he intended to make the Witneſſes againſt him contradict themſelves, they did not produce ſuch Witneſſes as were not inſtructed to concur in the Evidence of the ſame matter, but produc'd only ſuch as were inſtructed to give Evidence of diſtinct matters. And therefore *Dugdale* was firſt produc'd, who gave Evidence of vilifying words ſpoke of the King at ſeveral times at *Oxford* and *London*, by the Priſoner to himſelf alone; that he ſhew'd the Witneſs ſeveral ſcandalous Libels and Pictures, and ſaid he was the Author of them; that he had a ſilk Armour, a brace of Horſe Piſtols, and a Pocket Piſtol and Sword; that he ſaid, he had ſeveral ſtout men to ſtand by him, and that he would make uſe of them for the defence of the Proteſtant Religion; he ſaid the King's Party was but an handful to his Party. *Stevens* ſwore the finding of the Original of the *Raree Show* in the Priſoner's Chambers. *John Smith* ſwore his ſpeaking ſcandalous Words of the King, and of his having his Armour, and that when he ſhew'd it the Witneſs, he ſaid, *Theſe are things that will deſtroy the pitiful Guards of* Rowley; that he ſaid, he expected the King would ſeize ſome of the Members of Parliament at *Oxford*; which if done, he would be one ſhould ſeize the King; that he ſaid, *Fitzgerald* at *Oxon* had made his Noſe bleed, but before long he hop'd to ſee a great deal more Bloodſhed for the Cauſe; that if any, nay if *Rowley* himſelf, came to diſarm the City, he would be the Death of him. *Haynes* ſwore he ſaid, Unleſs the King would let the *Parliament* ſit at *Oxon*, they would ſeize him, and bring him to the Block; and that he ſaid, the City had one thouſand five hundred Barrels of Powder, and one hundred thouſand men ready at an hours warning. *Turbervile* ſwore, he ſaid at *Oxford*, that he wiſh'd the King would begin; if he did not, they would begin with him, and ſeize him; and ſaid, he came to *Oxford* for that purpoſe.

Mr. *Maſters* ſwore, That in diſcourſe between him and the Priſoner, he juſtified the *Proceedings* of the *Parliament* in 1640. at which the Witneſs wondred, and ſaid, how could he juſtify that *Parliament* that raiſ'd the Rebellion, and cut off the King's Head? to which the Priſoner reply'd, That that *Parliament* had done nothing but what they had juſt Cauſe for, and that the *Parliament* which ſat laſt at *Weſtminſter* was of the ſame Opinion; that he call'd the Priſoner Colonel in mockery, who reply'd, Mock not, I may be one in a little time.

Sir *William Jennings* ſwore as to the Fighting with *Fitz Gerald*, and the words about his bleeding.

For the Priſoner.

Hickman ſaid he heard *Haynes* ſwear *God damn him*, he car'd not what he ſwore, nor whom he ſwore againſt, for it was his Trade to get Mony by ſwearing. Mrs *Oliver* ſaid, *Haynes* writ a Letter in her Father's Name, unknown to her Father. Mrs. *Hall* ſaid ſhe heard *Haynes* own that he was employ'd to put a *Plot* on the Diſſenting Proteſtants. Mrs. *Richards* ſaid, ſhe heard him ſay the ſame thing. *Whaley* ſaid, *Haynes* ſtole a Silver Tankard from him. *Lun* ſaid, *Haynes* ſaid the *Parliament* were a Company of Rogues for not giving the King Mony, but he would help the King to Mony enough out of the *Phanaticks* Eſtates. *Oates* ſaid, *Turberville* ſaid a little before the Witneſſes were ſworn at the *Old Baily*, that he was not a Witneſs againſt the *Priſoner*, nor could give any Evidence againſt him: And after he came from *Oxford*, he ſaid he had been ſworn before the Grand Jury againſt the *Priſoner*, and ſaid the Proteſtant Citizens had deſerted him, and *God damn him* he would not ſtarve: That *John Smith* ſaid, *God damn him* he would have *Colledge's* Blood: That he heard *Dugdale* ſay, that he knew nothing againſt any *Proteſtant* in *England*; and being taxt that he had gone againſt his Conſcience in his Evidence, he ſaid it was long of Colonel *Warcup*, for he could get no Mony elſe; that he had given out that he had been poiſon'd, whereas in truth it was a Clap. *Blake* ſaid, that *Smith* told him *Haynes* his Diſcovery was a ſham Plot, a Meal Tub Plot.

Bolron ſaid, *Smith* would have had him given Evidence againſt Sir *John Brooks*, that Sir *John* ſhould ſay there would be cutting of Throats at

Oxford, and that the Parliament-men went provided with four, five, ſix, or ten Men apiece; and that there was a Conſult at *Grantham*, wherein it was reſolv'd, that it was better to ſeize the King than to let him go, whereas he knew of no ſuch thing; that he would have *Bolron* to be a Witneſs againſt *Colledge*, and told him what he ſhould ſay, leſt they ſhould diſagree in their Evidence; that he heard *Haynes* ſay he knew nothing of a Popiſh or Presbyterian Plot, but if he were to be an Evidence, he car'd not what he ſwore, but would ſwear any thing to get Mony. *Mowbray* ſaid, *Smith* tempted him to be a Witneſs againſt *Colledge*, and was inquiſitive to know what diſcourſe paſſed betwixt him and my Lord *Fairfax*, Sir *John Hewly*, and Mr. *Stern* on the Road; and ſaid, that if the Parliament would not give the King Mony, and ſtood on the Bill of Excluſion, that was Pretence enough to ſwear a Deſign to ſeize the King at *Oxford*.

Everard ſaid, *Smith* told him he knew of no *Presbyterian* or *Proteſtant Plot*, and ſaid, Juſtice *Warcup* would have perſuaded him to ſwear againſt ſome Lords, a *Presbyterian Plot*, but he knew of none; he ſaid, *Haynes* told him it was Neceſſity and hard Pay drove him to ſpeak any thing againſt the *Proteſtants*; and being queſtion'd how his Teſtimony agreed with what he formerly ſaid? anſwer'd he would not ſay much to excuſe himſelf, his Wife was reduc'd to that neceſſity, that ſhe begg'd at *Rouſe*'s Door, and mere neceſſity drove him to it, and ſelf-preſervation, for he was brought in Guilty when he was taken up, and was oblig'd to do ſomething to ſave his Life, and that it was a Judgment upon the King or People; the *Iriſhmens* ſwearing againſt them was juſtly fall'n on them, for outing the *Iriſh* of their Eſtates.

Parkhurſt and *Symons* ſaid, they had ſeen at *Colledge* his Houſe his Arms, about the latter end of *November*. *Yates* ſaid, *Dugdale* beſpoke a Piſtol of him for *Colledge*, which he promis'd to give *Colledge*. And upon Diſcourſe ſometime after the *Oxford* Parliament, *Yates* ſaid *Colledge* was a very honeſt Man, and ſtood up for the good of the King and Government. *Yes*, ſaid *Dugdale*, *I believe he does, and I know nothing to the contrary*. *Deacon* and *Whitaker* ſaid they knew *Colledge* was bred a Proteſtant, and went to Church, and never to a Conventicle that they knew of, and thought him an honeſt Man. *Neal*, *Rimington*, *Janner* and *Norris* to the ſame purpoſe; and *Norris*, that *Smith* (in company where was diſcourſe of the Parliament Mens being agreed to go to *Oxford*) ſaid, he hop'd they would be well provided to go, if they did go. *El. Hunt* ſaid, a Porter in her Maſter's abſence brought the Prints taken in *Colledge*'s Houſe eight Weeks before: and ſaid, *Dugdale* told her, after her Maſter was in Priſon, he did not believe *Colledge* had any more hand in any Conſpiracy againſt his Majeſty than the Child unborn, and he had as lieve have given an hundred pounds he had never ſpoke what he had, and that he had nothing to ſay againſt her Maſter, which would touch his Life.

Having ſummed up all the material part of the Evidence in the order it was given, for or againſt the Priſoner, let us ſee whether upon the whole, an honeſt underſtanding Jury could, with a good Conſcience, have given the Verdict the then Jury did; or whether an upright Court could, with a good Conſcience, have declar'd they were well ſatisfied in the Verdict given, as all the four Judges in that Caſe did, tho the Chief Juſtice *North* only ſpoke the words. And tho it is too late to advantage the deceaſed, yet it will do right to the Memory of the Man, to whoſe dexterous management on his Trial many now alive owe the continuance of their Lives to this Day: it was not their Innocence protected the Lord *Fairfax*, Sir *John Brooks*, and many others before mention'd, and many not named in the Tryal, but *Colledge*'s baffling that Crew of Witneſſes, and ſo plainly detecting their falſhood, that the King's Council never durſt play them at any other Perſon but the Earl of *Shaftsbury*, as ſhall be ſhewn; and failing there, they were paid off, and vaniſht, and never did more harm viſibly; what under hand Practices they might be afterwards guilty of, I know not.

Who could believe any one of thoſe four Witneſſes, *Dugdale*, *Haynes*, *Turbervile*, and *Smith*, if it were for no other reaſon than the improbability of the thing; for (as *Colledge* ſaid) was it probable he ſhould truſt things of that nature with Papiſts, who had broke their Faith with their own Party, who could lay greater Obligations of ſecrecy upon them than he was able to do? That he, a Proteſtant, ſhould truſt People who had been employed to cut Proteſtants Throats? And neither of them ever diſcovered any of the things they ſwore, till after the *Oxford* Parliament, tho moſt of them were pretended to be tranſacted and ſpoken before.

Who could believe *Dugdale* in any of his Evidence againſt the Priſoner, when *Oates* teſtified againſt him, that he ſaid he knew nothing againſt any Proteſtants in *England*? And being taxt by *Oates*, that he had gone againſt his Conſcience in his Evidence againſt *Colledge* to the Grand Jury at *London*, he ſaid, *it was long of Colonel* Warcup, *for he could get no Mony elſe*; which was a plain Confeſſion he had ſworn wrong, and of the Cauſe for which he did it, and of the Perſon who induced him to do it? That he had given out that he was poiſon'd, whereas his diſeaſe was a Clap; which was an ill thing in him, as it imply'd a Charge of poiſoning him on other Perſons? And when *Elizabeth Hunt* teſtified againſt him, that he ſaid, after *Colledge* was in priſon, that he did not believe *Colledge* had any more hand in any Conſpiracy againſt the King, than the Child unborn; and that he had as lieve have given an 100*l.* he had never ſpoken what he had, and that he had nothing to ſay againſt *Colledge* which could touch his Life? And when *Yates* teſtify'd againſt him, that when *Yates* ſaid *Colledge* was an honeſt Man, and ſtood up for the good of the King and Government; *Yes*, ſaid *Dugdale*, *I believe he does, and I know nothing to the contrary*?

Who could believe *Haynes* in any part of his Evidence againſt the Priſoner, when Mrs. *Hall* and Mrs. *Richards* ſaid, he own'd he was employ'd to put a Plot upon the Diſſenting Proteſtants? when *Whaley* teſtified againſt him that he was a Thief, and had ſtole *Whaley*'s Tankard? when *Lun* teſtify'd that *Haynes* ſaid the Parliament were a Company of Rogues, for not giving the King Mony, but he would help the King to Mony enough out of the *Phanaticks* Eſtates? when *Hickman* teſtified againſt him he heard him ſay, *God damn him* he car'd not what he ſwore, nor againſt whom he ſwore, for 'twas his Trade to get Mony by ſwearing? when Mrs. *Oliver* ſaid that he had writ a Letter in her Father's name, without her Father's knowledg? when

Bolron teſtified againſt him, that he ſaid he knew nothing of a *Popiſh* or a *Presbyterian-Plot*, but if he were to be an Evidence, he cared not what he ſwore, but would ſwear any thing to get Mony? when *Everard* teſtified againſt him, that he ſaid Neceſſity and hard Pay drove him to ſay any thing againſt the *Proteſtants*; and being taxt that his Evidence againſt *Colledge* agreed not with what he had formerly ſaid, *he ſaid, he could not excuſe it, but his Poverty and ſelf-Preſervation drove him to it*? which was a plain Confeſſion of the falſhood of his Evidence, and of the reaſon of it? and added, it was a Judgment upon the King or People, the *Iriſh* Mens ſwearing againſt them, for outing the *Iriſh* of their Eſtates: which can have no other ſence, than the *Iriſhmens* forſwearing themſelves againſt the *Engliſh* was a Judgment, *&c.*

How could *Turbervile* be believed in any part of his Evidence againſt *Colledge*, when *Oates* teſtified againſt him, that he ſaid a little before the Witneſſes were ſworn againſt *Colledge* at the *Old-baily*, that he was not a Witneſs againſt him, nor could give any Evidence againſt him: and yet afterwards at *Oxon Turbervile* told him he had ſworn againſt *Colledge* to the Grand Jury, and ſaid the Proteſtant Citizens had deſerted him, and *God damn him he would not ſtarve*: which words I think need no explanation.

And laſtly, how could *Smith* be believed in any part of his Evidence againſt the Priſoner, when it was teſtified againſt him by *Blake*, that he ſaid *Haynes* his diſcovery was a Sham Plot, a Meal-Tub-Plot; The meaning of the words I think are well known. That he would have had *Bolron* ſwear againſt Sir *John Brooks*, the Lord *Shaftesbury*, and *Colledge*, things of which he knew nothing, and told him what he ſhould ſwear, leſt they ſhould diſagree in their Evidence. When it was teſtified againſt him by *Oates*, that he ſaid *God damn him* he would have *Colledge*'s Blood? when it was teſtified againſt him by *Mowbray*, that he tempted *Mowbray* to be a Witneſs againſt *Colledge*, and Sir *John Brooks*, and was very inquiſitive to know what diſcourſe he had with the Lord *Fairfax*, Sir *John Hewly*, and Mr. *Stern* on the Road to *Oxon*; and ſaid, if the Parliament did not give the King Mony, but ſtood on the Bill of Excluſion, that was pretence enough to ſwear a deſign to ſecure the King at *Oxon*? when *Everard*, and many others teſtified he ſaid he knew of no *Presbyterian* or *Proteſtant Plot*. Now if *Colledge* his Witneſſes were credited, it was impoſſible the King's Witneſſes could be credited, that was agreed by the Court to be true upon the Trial. The anſwer on the Trial was, that the King's Witneſſes were on their Oaths, the Priſoner's were not; which was a Reaſon but in Words and not in Senſe.

And ſurely what *Colledge* ſaid on that matter, without any knowledg in the Law, cannot be anſwer'd. *It is not fair dealing*, ſaid he, *with a Man for his Life, becauſe the Witneſſes againſt him upon their Oaths deny the things the Witneſſes for him prove, therefore the Witneſſes againſt him muſt be believed and the Witneſſes for him disbelieved, when yet the Witneſſes for him were ready on their Oaths to maintain what they ſaid for him.*

Nor is the Law ſo: for taking the Law to be, that a Witneſs for the Priſoner ſhall not be ſworn, which is only made good by practice; the ſame Law, that is to ſay Practice, is, that a Witneſs without Oath for the Priſoner, is of equal Credit with the Witneſs againſt him upon Oath, and none can ſhew the contrary till of late days.

To give one Example of many, where it was neceſſary for the Priſoner to produce a Witneſs to prove his Innocency, and where the Witneſs for him was as much believed as the Witneſs againſt him. There was a Perſon, whoſe name I do not remember, arraign'd (at the ſame time that an Indictment of High Treaſon was endeavour'd to be found againſt the Lord *Shaftesbury*) for robbing another of Mony and of a hired Horſe, of which likewiſe the Perſon was rob'd; the robbing of the Mony and a Horſe was prov'd by himſelf and ſeveral others, but that the Priſoner was the Perſon that committed the Robbery, none poſitively ſwore but the Perſon rob'd, who likewiſe ſwore that the Horſe on which the Priſoner was taken, was the Horſe taken from him; againſt which the Priſoner prov'd, by the Perſon of whom the Horſe was agreed to be hired, that the Horſe the Priſoner was taken upon was not the Horſe he let to hire to the Perſon rob'd: whereupon the Priſoner was acquitted; and yet the Priſoner's Witneſs was not on his Oath, and the Perſon robbed was on his Oath: which, beſides that it proves the matter for which it is brought, ſhews the Folly as well as Injuſtice of the Practice of impriſoning Men without letting them know for what, and without confronting them with the Witneſſes againſt them, upon the Commitment. For how could this Man have known what Witneſſes to produce, unleſs he had known what in particular he was indicted for? and how could he have ſent to ſuch Witneſſes, unleſs he had had the liberty of ſending to the Perſons who were to be Witneſſes for him? And it ſhews the Folly of thoſe ſayings, that a Man's Innocence muſt defend him, and that the Evidence againſt the Priſoner muſt be as clear as the Sun at noon Day: All will agree that the Priſoner in this Caſe was innocent, and yet that alone, without producing a Witneſs to prove his Innocence, would have ſtood him but in little ſtead; and how could he have known what ſort of Evidence to have ready, unleſs he knew what he was accus'd of?

I do not mean what Crime he was accus'd of, as Treaſon, Murder, Robbery, Theft, or any other Crime; but unleſs he knew the Perſon robbed, when, where, and other Circumſtances: which, ſay ſome, is not to be permitted in Proſecutions of High Treaſon; for if ſo, then no Man ſhall be hanged for High Treaſon; unleſs there was as ſtrong proof againſt him, as is requir'd in any Indictment of any Capital matter; and that, they ſay, is not to be expected in Treaſon; for no Man will call two Witneſſes to be Evidences of his Words or Actions, being Overt Acts of his Deſign of High Treaſon. The Objection is too fooliſh to be anſwer'd; for it is neither better nor worſe, than that if a Man ſhall not be hang'd for Treaſon without Evidence, he ſhall never be hang'd for Treaſon; for no Evidence, and Evidence which the Law rejects, is the ſame in ſence, tho different in words; and as the intent of the mind is difficult to prove on the part of the King, ſo is the Priſoner's part of producing Counter-Evidence much more difficult: and therefore the Law hath taken care by the Statute of *Edward* the 3*d*, that the Intent ſhall be prov'd by an Overt Act;

and by the Statute of *Edward* the 6th, that that Overt Act ſhall be proved by two Witneſſes. And therefore, ſince the Law hath taken care that there ſhall be a ſtricter proof in High Treaſon than in any other Crime, for the Judges to ſay a leſs proof may be admitted to convict one of High Treaſon than of any other Crime, is very ridiculous; unleſs they will at the ſame time ſay, that the Parliament who made thoſe Statutes, were Men of little Underſtanding, and not to be regarded. And certainly it was a good Counter-evidence, which was given in behalf of the Priſoner by ſome Witneſſes, tho' ſlighted by the Court, and not permitted by the Court to be given by others, that there were great endeavours to ſet up ſham-Plots, and charge the *Proteſtants* with them: For let any one ſhew me a Reaſon, why the Evidence of ſham-Plots, tho' they do not immediately concern the Priſoner, is not as good Evidence for him, as the Evidence of a real Plot, in which he was not concerned, is againſt him. The laſt was permitted to be given in Evidence againſt my Lord *Ruſſel*, Colonel *Sidney*, and others; tho' the firſt was not permitted to many Witneſſes in this Tryal, and it was a material Objection which *Colledge* made, *That there was no proof of any Perſons being concerned with him in the Deſign of ſeizing the King.*

It was an unadviſed anſwer the Court gave, that he alone might be ſo vain as to deſign it alone: For if from thence an Inference is made, as was inſinuated by the Court to the Jury, that therefore he did alone deſign it, it was an Evidence of his being a Mad-man, not a Traytor. Had the Evidence been of the miſchiefing the King by means which a ſingle Perſon is capable of uſing, as Stabbing, Shooting, and the like, the matter is not impoſſible; but it being by means which it is impoſſible for a ſingle Perſon to execute, it carries ſuch disbelief with it, that it is impoſſible to find a Man in his Senſes at the ſame time guilty of it: And a Man that is *non compos mentis*, if my Lords *Coke* and *Hales* are to be believ'd, cannot be guilty of High Treaſon within that Branch of the Statute, *Compaſſing, and imagining*, &c.

It is true, a Mad-man may be guilty of Treaſon, in attempting the King's Perſon; but for that he is no more ſaid to be puniſh'd, than Beaſts of Prey are when kill'd, which are more properly ſaid to be deſtroy'd than puniſh'd for the publick good. But if ſo good a Counter-proof in *Colledge*'s Caſe was not made, as ought to have been, ſome Allowances ought to be made for the Priſoner's ignorance of what he was accus'd of, his uſage and ſtrict Impriſonment before his Tryal, the ruffling him juſt before his Tryal in the manner before declar'd, the depriving him of his Notes, the giving an Evidence of many Hours long againſt him, before he was permitted to anſwer any part of it. And the uſe of Pen, Ink and Paper, was but of little advantage to him; for a Man that hath not been uſed to do it, cannot take Notes of any uſe. And in Truth, he complain'd he had not taken Notes of half ſaid, but relied on the Court to do him Juſtice in ſumming up the Evidences, which they promiſed to do, but broke their Words.

It muſt likewiſe be conſider'd, that the concern a Man hath upon him, when he is upon Tryal for his Life, is ſo far from fortifying that it weakens his Memory: Beſides, the foul Practice, without any remorſe, put upon him and his Witneſſes; ſome of them impriſon'd, that he could not have them at the Tryal; others ſo threaten'd, that they durſt not appear for him, and the Cry of the Auditory againſt him and his Witneſſes, were mighty Diſcouragements. All theſe things being conſider'd, how could any underſtanding Jury take it on their Oaths, *That the Evidence againſt the Priſoner, of a Deſign to ſeize the King*, &c. *was as clear as the Sun at noon Day?*

As for the Evidence which Mr. *Maſters* gave, if it were true, it was no Evidence of Treaſon; an erroneous Opinion may make an *Heretick*, but not a Traytor: it is a very diſtant Conſequence, that becauſe he affirm'd that the Parliament in Forty had done nothing but what was juſt in reſpect of King *Charles* the Firſt, therefore the Priſoner was guilty of a Deſign againſt King *Charles* the Second: beſides, that in all probability, tho' Mr. *Maſters* might inveigh againſt the Parliament, *Colledge* might only juſtify them, by throwing the ill things done in that time upon the *Papiſts*, as *Colledge* in his Defence ſays; and Mr. *Maſters*, after much pumping, recollected himſelf, and ſaid he thought the Priſoner ſaid, the *Papiſts* had a Hand in thoſe things; which prov'd the Truth of *Colledge*'s Aſſertion.

As for the Evidence of *Colledge*'s ſaying he might be a Colonel in time; if he hop'd for what he ſaid, it was no Crime, or Proof of a Crime, 'tis no more than what every private Soldier hopes for, and he himſelf had been one.

As for the Evidence of *Atterbury*, *Sawel*, and *Stevens*, of their ſeizing the Pictures; admit they ſwore true, it did not amount to the Proof of the Treaſon in the Indictment, or of any ſort of Treaſon: And yet if *Colledge*'s Maid ſaid true, it looks as if the Finders or ſome other Perſon ſent them to *Colledge*'s Houſe, in order to find them there.

Of all ſorts of Evidence, the finding Papers in a Perſon's Poſſeſſion is the weakeſt, becauſe no Perſon can ſecure himſelf againſt Deſigns upon him in that kind. And after *Dangerfield*'s Deſign upon Colonel *Manſel*, and the Evidence in *Fitzharris*'s Tryal, that the Deſign of that Pamphlet was to convey Copies of it into ſome Members of Parliaments Pockets, and then ſeize them, that piece of Evidence ought to have been ſpar'd, till thoſe and other Practices of like kind had been forgotten.

The laſt Witneſs was Sir *William Jennings*, of *Colledge*'s ſaying he had loſt the firſt Blood in the Cauſe, but it would not be long before more would be loſt; what was that more, than that he thought more would be loſt in the Cauſe, which he interpreted the Proteſtant Cauſe? Suppoſe he thought ſo without Reaſon, and was miſtaken, where was the Crime? But if he thought ſo upon good Reaſon, and good Reaſon he had to think ſo, there was no pretence of a Crime in it. I believe moſt Men thought as *Colledge* did, from the time of the Buſineſs of *Fitzharris*; and what Imputation was it to him? Why were not all the Expreſſions he us'd in his Tryal as good Evidence againſt him as that Saying? For he then ſaid *it was an horrid Conſpiracy to take away his Life, and would not ſtop at him, for it was againſt all the Proteſtants of* England, and the like; which was his Opinion, and after times ſhewed him a true Prophet.

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One thing was very diſhoneſtly inſinuated, that the Priſoner was a *Papiſt*, which was only to incenſe the Jury againſt him, and it had its Effect; whereas it was very plain that he was a *Proteſtant*, tho' perhaps a Diſſenter, and therefore had not lately come to the publick Church; and under that notion the *Papiſts* and ſome *Proteſtants* were contented that Diſſenters ſhould be puniſh'd as *Papiſts*; yet if they could have prov'd him a *Papiſt*, no doubt they would have done it; for the Deſtruction of the Man was the Deſign of the Proſecution, and it matter'd not for what Treaſon he was convicted, ſo he was convicted. And he himſelf gave a pretty ſort of Evidence againſt himſelf, if they could have prov'd him a *Papiſt*: he prov'd, and confeſs'd, he was educated a *Proteſtant*; and if they could have prov'd him reconcil'd to the *Popiſh* Religion, which was Treaſon, he helpt them a great deal in their Proofs: It was therefore very diſingenuous in the Chief Juſtice to reproach him at his Condemnation, that he had not made that Proof of his Religion as it was expected, when his Religion was not the Matter of which he was indicted; that was ſlily inſinuated to exaſperate, and no Proof pretended to be made of his being a *Papiſt*. But he had more Reaſon to complain of the Injuſtice of the Court in ſumming up the Evidence, who did it in ſuch a manner, that if they had been Council for the Priſoner, as they pretended, they would have been juſtly ſuſpected to have taken a Fee of the other ſide to betray their Client.

For, as *Colledge* readily ſaid, if the Chief Juſtice had looked on his Notes, he would have found more Evidence againſt *Turbervile* and *Dugdale* than he had repeated And it was a lame Excuſe for the Chief Juſtice to ſay, he refer'd it to the Memory of the Jury, for he could not remember more; when as I dare ſay, after about thirteen Hours Evidence, the Jury remember'd no more than that they were to find him Guilty.

The Truth is, upon the whole, what *Colledge* ſaid was true; they took away all helps from him for defending himſelf, and therefore they had as good have condemned him without a Tryal. Notwithſtanding all which, the Courage of the Man never fainted, but after he was condemn'd, boldly ask'd, *when he was to be executed?* To which the Lord Chief Juſtice reply'd, it depended on the King's Pleaſure; but ſmoothly ſaid, in thoſe Caſes of High-Treaſon they did not uſe to precipitate the Execution, it ſhould not be ſo ſudden but that he ſhould have Notice to prepare himſelf. And in truth he had from the eighteenth, on which he was condemn'd, to prepare himſelf, to the one and thirtieth of *Auguſt* 1681, on which he was executed; a much longer time than was allow'd my Lord *Ruſſel*, or Mr. *Corniſh*, and many others. And the true Reaſon of ſo long a Reprieve, was to ſee how the Nation would digeſt the matter, and whether the Man by the Terror of Death could be prevail'd upon to become a Tool to deſtroy other Innocents: but when it was found that the People were quiet, and that the Priſoner could not be prevail'd upon to do an ill thing to ſave his Life, his Execution was order'd; yet, as a ſhew of Mercy, his Quarters were permitted to be bury'd; a Favour he ſlighted, with ſaying that he car'd not whether he was eaten up with Flies or Worms. The ſame Favour was likewiſe ſhew'd *Fitzharris*, but the true Reaſon of both was, That they had a mind that the Tryals and pretended Crimes for which *Fitzharris* and *Colledge* were condemn'd, ſhould be forgotten; which would not be ſo ſoon done, if their Quarters were always expos'd to view. But tho' all People were quiet, yet there was great grumbling, and moſt honeſt Men were afraid; and the conſtancy of *Colledge* at his Execution was ſuch, that it made the moſt violent againſt him relent.

Remarks on the Earl of Shaftsbury's *Grand Jury.*

THE next Perſon queſtion'd was the Earl of *Shaftsbury*, againſt whom a Bill of High Treaſon was prefer'd to the *Grand Jury*, at the *Seſſions Houſe*, on the 24*th* Day of *November* 1681. The Evidence was publickly given in Court, and was this; Mr. *Blathwaite* ſwore he found the Papers then produc'd in a Velvet Bag in the great Trunk, which was taken by Mr. *Gwynne* in the Lord *Shaftsbury*'s Houſe. Mr. *Gwynne* ſwore, all the Papers in the Velvet Bag, when he deliver'd them to Mr. *Blathwaite*, were taken by him in the Lord *Shaftsbury*'s Houſe: Sir *Leoline Jenkins* ſwore, the Paper produc'd was the Paper deliver'd him by Mr. *Blathwaite*, and it was unalter'd. Then the Paper was read, the Effect of which was a Project of an *Aſſociation* ſign'd by no Perſon, and whoſe Hand-writing it was none knew. *John Booth* ſwore, that he was engag'd to Captain *Wilkinſon*, who pretended to have a Commiſſion from the Lord *Shaftsbury* and ſeveral others to go for *Carolina*; he was about that time introduc'd into the Earl's Acquaintance by the Captain, where was a Diſcourſe about *Carolina* Buſineſs; he was four or five times between *Chriſtmas* and *March*, with the Earl and the Captain: that the Captain told him he was to command fifty Men to be the Earl's Guard at *Oxon*, and would have had him to be one: That if the King did not conſent to ſeveral *Acts* of *Parliament* and other things, they were to purge the *Guards* and *Court* of ſeveral Perſons; and tho' the Captain told him that firſt, afterwards he heard the *Earl* ſay the ſame things, particularly about a Week or ten Days before the Parliament ſat at *Oxon*, he gave ſome Intimation of this to *Walter Banes*, and then writ it down, and ſent it to the Council ſealed in a Cover. *Turberville* ſwore, that the Lord *Shaftsbury* ſaid about *February*, there was but little good to be done with the King as long as his Guards were about him. *Smith* teſtify'd a great deal of Diſcourſe between him

and

and the Lord *Shaftsbury* of ſomething ſaid reflecting on the *King*; and that he ſhould ſay, that if the King ſhould offer any Violence to the *Parliament* at *Oxford*, he would meet with a ſtrong Oppoſition, for that the Gentlemen, who came out of the Country, came well provided with Horſe and Arms to oppoſe, and that they might lawfully do it, if he offer'd any Violence to them whilſt they ſat. *Haynes* ſwore, that the Earl ſaid if the King did not give *Haynes* his Pardon, he and others would raiſe the Kingdom againſt him; that *Haynes* gave the Earl an exact account of Tranſactions ſince King *Charles* the *Firſt*'s coming to the Crown, and that the Earl ſaid the Duke of *Buckingham* had as much Right to the Crown as any *Stuart* in *England*. *John Macnamarra* ſaid, the Earl ſaid, the King was *popiſhly affected*, and took the ſame Methods his Father did, which brought his Father's Head to the Block, and they would bring his thither; and this was ſaid in the Preſence of *Ivey*, and he thought of his Brother; and ſaid, the King deſerv'd to be depos'd as much as King *Richard* the IId. *Dennis Macnamarra* likewiſe teſtify'd the laſt Words, and that it was the latter end of *March*, or beginning of *April*. *Ivey* ſaid, the Earl ſaid, if the King deny'd *Haynes* a Pardon, they would riſe upon him and force him to give one, and that they deſign'd to depoſe him and ſet up another in his ſtead. *Bernard Dennis* ſaid, he had a great deal of Diſcourſe with the Earl, who bid him ſpeak to his Friends in *Ireland* to be in a readineſs to aſſiſt the Commonwealth of *England*; for they intended to have *England* under a Commonwealth, and extirpate the King and his Family.

Then the Court told the Jury the Indictment was grounded on the Statute of King *Charles* the IId, but they ought to conſider of that Statute, as alſo the 25th of *Edward* the IIId.

The Queſtion is, whether the *Grand Jury* ought to have found the Bill on this Evidence. Firſt it ought to be conſider'd, what the Duty of a *Grand Jury* is; and I think it is not what the *Chief Juſtice* ſaid, to conſider only whether there be probable ground for the King to call the Perſon accus'd to an account, much leſs do I think that the reaſon of finding a Bill by the *Grand Jury* was for the Honour of the King, or Decency of the Matter, leſt Perſons accus'd ſhould be call'd to an account by the King, where there is no kind of Suſpicion of the Crime committed by them, as the Court ſaid (which laſt Matter was never aſſign'd as a Reaſon of finding a Bill by the *Grand Jury* before) but I take the Reaſon of a *Grand Jury* to be this, that no Man for a capital Matter ſhall ever be *queſtion'd by the King*, unleſs a *Grand Jury* take it on their Oaths that they believe the Matter of the Accuſation true; I put an Emphaſis on the Words *queſtion'd by the King*.

It is true, it is generally ſaid, that the Buſineſs of a *Grand Jury*, in capital Matters, is *in favorem vitæ*; but that taken ſimply is not true, for then what Reaſon can be aſſign'd, why a Man ſhall be arraign'd on an Appeal of Murder, Robbery or the like, which touches his Life, as much as an Indictment of thoſe Crimes, without having the Matter of the Appeal firſt found to be true by a *Grand Jury*? But the true Reaſon of a *Grand Jury* is the vaſt Inequality of the *Plaintiff* and *Defendant*, which in an Indictment is always between the King and his Subjects; and that doth not hold in an Appeal, which is always between *Subject* and *Subject*: and therefore the Law in an Indictment hath given a Privilege to the Defendant, which it hath done in no other Proſecution, on purpoſe, if it were poſſible, to make them equal in the Proſecutions and Defence, that equal Juſtice may be done between both. It conſiders the *Judges*, *Witneſſes* and *Jury* are more likely to be influenc'd by the King than the Defendant; the *Judges* as having been made by him, and as it is in his Power to turn them out, puniſh, to prefer or reward them higher; and tho' there are no juſt Cauſes for them to ſtrain the Law, yet they are ſuch Cauſes, which in all Ages have taken place, and probably always will. This was the Reaſon of running *Prerogative* ſo high in their Judgment of *High Treaſon* before the *Stat.* of *Ed.* III. that no Man, as that Statute ſays, knew what was not *High Treaſon*: This was the Reaſon of expounding that *Statute* oftentimes between the making of it, and the making of the Statute of Queen *Mary*, that People were at as great a loſs, till the laſt Statute, as they were before the making of the firſt; and even ſince the Statute of Queen *Mary*, the Expoſition on the Statute of *Ed.* III. has been ſo extravagant and various, that People are at this Day as much at a loſs to know what is not *High Treaſon*, as they were before the Statute of *Ed.* III. Nor was it, nor is it poſſible, but that the great Power of enriching, honouring, rewarding and puniſhing lodg'd in the King, always had, and yet muſt have an Influence on the *Witneſſes* and *Jury*; and therefore it is that the Law has order'd, that at the King's Proſecution no Man ſhall be criminally queſtion'd, unleſs a *Grand Jury*, upon their own Knowledge, or upon the Evidence given them, ſhall give a Verdict, that they really believe the Accuſation is true.

I own of late Days, they have ſaid the Duty of the *Grand Jury* is to find, whether the Accuſation be probable or no, But that Saying is warranted by no poſitive Law, or ancient Authority; and therefore the Duty of the *Grand Jury* muſt be founded in the *Oath* adminiſter'd to them, which is as ſtrict as the *Oath* adminiſter'd to the *Petit Jury*: and to ſay Truth, the Verdict of the *Petit Jury* takes credit from the Verdict of the *Grand Jury*; which is not only the Reaſon of the difference in the Names of the two Juries, but is likewiſe the Reaſon why an Attaint for a falſe Verdict doth not lie againſt a *Petit Jury*.

The Oath of the Grand Jury is, *To preſent the Truth, the whole Truth, and nothing but the Truth*: The Oath of the *Petit* Jury is, *well and truly to try, and true Deliverance make, between the King and the Priſoner at the Bar*, &c. which ſignifies the ſame thing as to preſent the Truth, *&c.* It is true, ſome Reaſons have been offer'd, which if conſider'd, are Words without Senſe; as that the Preſentment of the *Grand Jury* is but in order to bring the Priſoner to his Tryal, and he is not before the *Grand Jury* to make his Defence himſelf: but that can be no Reaſon why Probabilities ſhould ſatisfy the Jury, becauſe it doth not anſwer the Deſign of the Law, which will have a Man convicted by the poſitive Oaths of *two Juries*, conſiſting of more than twenty four, in all Indictments.

Next, why is a *Grand Jury* compos'd of more ſubſtantial and underſtanding Men than a *Petit Jury*, if their Buſineſs be mere Formality, or a Matter of leſs weight than the buſineſs of a *Petit Jury*? In the laſt place, why is leſs Evidence requir'd to convict a Man in his abſence, than is requir'd to convict him if preſent? It is far from an Argument, that leſs Evidence is requir'd to convict one if abſent than if preſent, that it ſeems to me that more Evidence ſhould be requir'd to do it. Men may, and often do make very fair Stories in the abſence of a Perſon accus'd, that when preſent, he eaſily anſwers; and there being no poſitive Law for the Direction of a *Grand Jury* in that Matter, a *Grand Juryman* is excuſable, nay, it is his Duty to give a Verdict according to the plain underſtanding of the Words of his Oath, which is to preſent the Truth, as far as he is convict of it; and that Truth muſt be found according to his Knowledge, or as it is repreſented to him by Witneſſes.

And as for the Witneſſes, they muſt be Perſons of Credit; and all Perſons are ſuppos'd to be ſo, unleſs the *Grand Jury* know the contrary, or have been ſo credibly inform'd. 'Tis true, a *Grand Jury* ought not to believe *Coffee-houſe* Stories, or light Stories; but common Fame by credible Perſons, which is *vox Populi*, ought to prejudice them againſt a Witneſs, ſo as to disbelieve him: and it is no Anſwer to ſay, as the *Chief Juſtice* in this Caſe ſaid, that the Credibility of the Witneſs is not to be conſider'd by the *Grand Jury*, becauſe the King is not preſent to defend the Credit of his Witneſſes; tho' the Fact in that Caſe was not true, for the King's Attorney, Sollicitor and Council were preſent, and I think the King is no otherwiſe preſent at any Criminal Proſecution; and the Jury knew by *Colledge*'s Tryal and by *Wilkinſon*'s Depoſitions before the King, that the Evidence of all the Witneſſes produc'd, except what were to the Paper, was queſtion'd, but even that was afterwards quitted by the Court when it would not be ſwallow'd by the *Grand Jury*; for afterwards the Court told them, that if they of their own Knowledge, knew any thing againſt the Witneſſes, they might conſider of it, but not of what they were credibly inform'd by others: and beſides the Credibility of the Witneſſes, the Poſſibility or Probability of the thing ſworn is to be conſider'd by the *Grand Jury*; an impoſſible thing they ought not to believe, tho' ſworn by never ſo many credible Witneſſes, and a very improbable thing they cannot poſitively on their Oaths ſwear they believe.

And not only the Fact, but what the Crime of the Fact alledg'd in the Bill of Indictment, the *Grand Jury* as far as they are capable of judging Matter of Law, ought to conſider; ſo they were told in the Charge given them. 'Tis true, if they were ignorant in the Law, and the Court in their Directions miſled them, as if the Court ſhould tell them ſtealing a Horſe is High Treaſon, and the *Grand Jury* find it accordingly, it is excuſable in the *Grand Jury*, tho' puniſhable in the Court. But wrong Directions by the Court in finding a Fact where there is no Evidence, do not excuſe the *Jury*.

Now to examine the Matter in hand by theſe Rules, could any Perſon who knew my Lord *Shaftsbury*, or that had heard of, or believ'd his Character to be what it was, believe that it was poſſible for him to diſcourſe with the Witneſſes at the rate they ſwore, to ſome of them at the firſt, to others of them the ſecond time he ſaw them; to diſcourſe of Matters of Policy, with *Booth* at one time, and afterwards with *Haynes*, and afterwards with *Macnamarra*, Fellows of ſo little Senſe, that he would have been aſham'd to have entertain'd them in the meaneſt Office about him; and yet as they pretended, he makes them his Privadoes in the Secret, of not ſo much what he would have had them, but of what he intended himſelf to do?

Who could believe any thing, *Turberville*, *Smith* or *Haynes* ſhould ſay, where there was ſo much of their Falſhood and of their Deſigns to ſwear falſly, prov'd againſt them in *Colledge*'s Tryal? or of *Ivey* and the three *Macnamarras* after that Tryal, who tho' they were not produc'd at it, becauſe the King's Council by *Colledge*'s Notes ſaw he was able to falſify them, yet ſome Witneſſes in that Tryal prov'd their Deſign of ſwearing falſly?

Who could believe *Booth*'s Story of liſting ſo many Men under *Wilkinſon*, to be at my Lord *Shaftsbury*'s diſpoſe at *Oxon*, after *Colledge*'s Tryal, and after what *Wilkinſon* had teſtify'd to the King and Council, tho' not then prov'd to the *Grand Jury*?

A Judge indeed cannot take notice of any thing not prov'd (tho' he may and ought to be a Witneſs, if he knew any thing material of the Matter try'd before him and others) but a *Grand Jury* may take notice of any thing they know or believe. The Paſſages at *Colledge*'s Tryal were pretty notorious, being authentically publiſh'd by *Fra. North*, and the Examination of *Wilkinſon* by as authentick a Paper.

It was unaccountable, that the Witneſſes conceal'd what they heard the Earl ſpeak ſo long, of which none of them pretended to give any Reaſon; nor was it any Excuſe to thoſe who ſign'd a Petition to the City, in which they ſuggeſted they were tempted to ſwear againſt their Conſciences, to ſay they knew not what was in the Petition: he that ſets his Hand to a thing as if he aſſented to it, but doth not, is a Man of Falſhood. Suppoſe one ſets his Hand to a Bond, ſaid to be ſeal'd and deliver'd, not having ſeen it ſeal'd and deliver'd, is not he guilty of little leſs than *Forgery*? But admitting thoſe Witneſſes had ſworn Truth, yet the Jury ought not to have found the Bill; for they ought to find the Bill true according to all the material Circumſtances of it, as well as the Subſtance of it, which was *High Treaſon*: One material Circumſtance of it was, that it was ſaid to be High Treaſon within the Statute of *Charles* IId. And that made another Circumſtance of the Indictment material, which was the time when that Treaſon was committed; becauſe by that Statute the Proſecutions of Treaſon on that Statute ought to be within ſix Months after it is committed, and the Indictment ought to be within three Months after the Proſecution: and he being impriſon'd in *July*, and the Bill ſuggeſting that the ſuppos'd Treaſon was committed the 18th of *March* before, and divers other times both before and after, which might be interpreted to have been after the Priſoner's Commitment; had the Jury found the Bill as laid, they had found the Treaſon to have been committed, not only within the time the *Proſecution* by that Statute ought to be, but alſo within the time the *Indictment* ought to have been prefer'd; whereas in truth the

the Earl had been impriſon'd above three months before the *Indictment* prefer'd, and there was no Evidence of any Treaſon committed by him after his Impriſonment: and therefore the finding the Bill as laid had been injurious, to bring a Man in queſtion for his Life on that Statute, whereas by Law he ought not to have been.

For it was reſolv'd in *Colledge*'s Caſe, that the Proſecution for Treaſon on that Statute ought to be within ſix Months, and the Indictment within three Months, tho' the Court was of another Opinion in the Lord *Ruſſel*'s Tryal.

And that this Indictment was on that Statute, was expreſly ſaid to the *Grand Jury*, and upon good Reaſon; for the Court in their Charge ſaid, that the Intention of levying War, or deſigning to impriſon the King, was not Treaſon, till the Statute of *Charles* the Second; tho' in the Lord *Ruſſel*'s Tryal it was held to be Treaſon by the Statute of *Ed.* 3. and therefore the Time of the Treaſon committed was material to be found by the *Jury*.

As for the Writing found in the Earl's Study, it was no manner of Evidence of Treaſon, admitting what the Witneſſes ſwore as to the finding it to be true; becauſe it was not prov'd that it was proſecuted or compos'd by the Earl of *Shaftsbury*, or by his Order, and that piece of Evidence was in that particular a meer Original.

In *Fitzharris*'s Caſe, it was prov'd the Libel was compos'd by his Direction; Colonel *Sidney*'s Book was prov'd to be like his Hand; it was pretended that *Colledge* ſaid he was the Author of the *Raree-ſhow*, and no Example of this Evidence was ever made uſe of before.

Neither was it Evidence of Treaſon as to the Matter, for there was not one word againſt the preſent King, but his Succeſſor, if he ſhould be ſuch a Perſon.

It is true, one of the King's Council ſaid that one Paſſage in it was, that they would join to deſtroy the Mercenary Forces about *London*, and thence infer'd it was down right levying War againſt the King and his Guards; whereas there is not any ſuch word or thing in the Paper as he pretended to cite: and if it had been in the Paper, it would have been but Evidence of a Treaſon within the Statute of the late King. And then the time of writing it ought to have appear'd; and if that had been clear'd, yet for the above Reaſons it was no Evidence; and the *Grand Jury*, tho' ſome of them afterwards ſmarted for it upon other Pretences, did like honeſt underſtanding Gentlemen; and had they done otherwiſe, to avoid the Ignominy of being call'd, tho' in truth it was an honour to be, an *Ignoramus Jury*, they had juſtly deſerv'd the Reproach which ſince have lighted on other Juries, ſuch as Mr. *Corniſh*'s, and the like. And having ſpoken of this *Ignoramus Jury*, for which two of them, if not more, were afterwards upon other Pretences ſeverely handled; I think fit to ſay ſomething of the Sufferings of one, for being in a preceding *Ignoramus Jury*, becauſe it was a meer Novelty, and that was Mr. *Wilmer*.

Remarks on Mr. Wilmer's Homine Replegiando.

HIS Proſecution, tho' it was but Criminal and not Capital, did as much Miſchief, as it ſtruck a Terror into all *Grand Juries*, as any the before mention'd Matters; and it was by the *Homine Replegiando* iſſued out againſt him. As for the Information againſt him I ſhall ſay nothing, becauſe the Injuſtice of both will appear in the Diſcourſe of the firſt. Mr. *Wilmer* had ſent a Boy beyond Sea by Agreement, as Mr. *Wilmer* ſaid, whether true or not as to this Matter is not material; a *Homine Replegiando* is granted againſt Mr. *Wilmer* for this, at whoſe Proſecution is not material: for any Perſon upon Suggeſtion, back'd by an *Affidavit*, may have it granted. The *Sheriff* would have return'd on the Writ, that the Boy was ſent by his own Agreement and Conſent with Mr. *Wilmer*; which Return was not allow'd, and the Sheriffs were told that they muſt either return they had replevied the Boy, and they muſt have him in Court, or elſe they would be laid by the Heels; or elſe they muſt return that Mr. *Wilmer* had *Eſſoigned* him, which is carrying him away, where the Sheriff could not find him; and then a *Withernam* would iſſue againſt Mr. *Wilmer*, upon which he would be taken and kept in Priſon till he produc'd the Boy: and no other Return ſhould be allow'd than one of thoſe two, and if they did not make one of thoſe two Returns, they ſhould be committed. Now if the Law be ſo, the Court were innocent, but the Law ought then to be reform'd in that Particular; but if the Law was not ſo, as I think it is not, I think Mr. *Wilmer* and the Nation had great Injuſtice done them; for it was quickly ſeen what the miſchief of that Judgment was, and therefore it was endeavour'd to be reform'd by an Act of King and Council afterwards: Firſt, I ſay, it is lawful for a Maſter to covenant with a Servant to ſerve him beyond Sea; in the next place it is lawful for a Maſter to ſend his Servant beyond Sea according to ſuch Agreement. And if both theſe Propoſitions be true, as I think no Man will ſay they are not, it is a natural Conſequence to ſay, that the Law hath provided a Return upon a Writ of *Homine Replegiando*, if it ſhould be ſued out againſt ſuch Maſter for a Servant ſo ſent beyond Sea, which may indemnify the Maſter in ſo doing; and that Return can be no other than the ſpecial Matter, which in this Caſe was refuſed to be accepted. 'Tis no Argument that no ſuch Return is ever read of in any Book: For the Law hath determin'd, that ſome Returns are good, and others bad; yet it hath not ſaid what are all the good Returns which may be made on an *Homine Replegiando*, and the Sheriff is no more confin'd to Returns, than a Man in the pleading of his Caſe, which my Lord *Coke* ſays may vary according to the nature of his Caſe; and yet the Law hath ſaid what is a good Plea, and what a bad one, but hath not expreſt

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all the good or bad Pleas. And therefore it is no Argument againſt ſuch a Return, that no Precedent of it can be found, 'tis enough that no Judgment can be produc'd againſt it; and the reaſon of both may be, that the Caſe never happen'd before, that is to ſay, that never any Perſon was ſo malicious before, as to ſue out an *Homine Replegiando* againſt a Maſter for a Servant ſent by Agreement beyond Sea: and Returns muſt be vary'd according to the Caſe. Perhaps no Precedent can be found of a Return on that Writ, that the Perſon ſought for is dead; yet all Perſons will agree it is a good Return, it is ſo in Replevin of Cattel, and even that Example falſifies the Doctrine of the Court, that there are but two Returns on that Writ allowable by Law. It is not an Argument for diſallowing the Return, that the Perſon ſent beyond Sea was a Child not capable of making ſuch a Contract (tho' I believe if the Matter were look'd into, he was of Age ſo do) for nothing of that doth, or can appear in the Writ or Return: It ſtands therefore ſimply upon this, whether the Sheriff may on an *Homine Replegiando* return, that the Perſon ſuppos'd to be in Cuſtody, being of full Age, was by mutual Agreement ſent beyond ea by the Perſon in whoſe Cuſtody by the Writ he is ſuppos'd to be, which I think is far from a Doubt. But notwithſtanding all theſe Hardſhips on *Juries*, it was ſeen to be plainly impoſſible to procure any Bills of Indictment for *High Treaſon*, much leſs any Perſons to be convicted on the like Evidence except in *London*, where are ſome of the beſt as well as the worſt of Men in the Nation; and even there it was not to be done as long as the *Juries* were ſenſible and honeſt Men, which would be as long as the Election of Sheriffs was in the Citizens; and to the honour of the City, it was ſeen that they choſe only honeſt Men to be their Sheriffs, and that when they ſaw the Publick Safety depend on honeſt Officers, tho' at other times they had rather pay a Fine, than undergo the trouble and charges of that Office, yet at that time no Man legally choſen refus'd to ſtand, tho' they were reproach'd and puniſh'd for it; and if Mr. *Box* refus'd, it was becauſe he would not join with *North* who was impos'd on the City, for which reaſon it was reſolv'd to take from the City the Right of chuſing Sheriffs, but by what means was not preſently reſolv'd on.

That the City might forfeit their right of Electing, there was no great doubt; as if the Sheriffs were dead, and new ones were not choſen in a convenient time, ſo that there was a defect of Juſtice or the like: but nothing of that kind could be laid to their Charge, and therefore a new unheard of Matter was thought on and ſet a foot, which was to make the City forfeit their being a Corporation, and being annihilated, the Grants made to them by the Crown, as the Right of Electing Sheriffs was, would revert to the Crown again.

A *Quo Warranto* was therefore brought againſt the City in *Hilary* Term 1681. to ſhew by what Warrant they pretended to be a Corporation, and to have the Privileges mention'd in the Writ, to which the City pleaded and ſet forth their Right; and the King reply'd, and ſet forth ſeveral Matters done by them, contrary to the Duty of a Corporation: upon which there was a *Demurrer*, of which Judgment was not given till *Trinity* Term 1683. I will ſay nothing of the Right of the Proceeding, it having been largely and learnedly argu'd for the City; but if the Matter were ſo clear a Caſe, as the King's Council and Court would have it to be, how came it to paſs that in *Henry* the Eighth's Time, when the King was ſo earneſtly bent to diſſolve the Religious Corporations, in which the publick Inclination join'd with him, the doing it by *Quo Warranto* was not thought of? It was very plain, that thoſe pretended Religious did not obſerve the Rules, nor perform the Ends for which they were incorporated; and certainly their Miſdemeanours againſt the intent of their being incorporated were better Cauſes of Forfeiture than was the Cities petitioning for a Parliament, *&c.* Yet that King took other Methods, he had formal Conveyances of their Lands from moſt of thoſe Corporations, and formal Surrenders of their Corporations ſign'd by every Individual of the Corporations, and thoſe afterwards confirm'd by Act of Parliament. And ſure the late King had as much Right to bring a *Quo Warranto* againſt *Maudlin College* for refuſing, contrary to their Duty, to admit the Preſident the King nominated, if the King had a Right to nominate the Preſident (as ſome Judges aſſerted he had) as King *Charles* the Second had againſt the City: and it was once in debate, whether the Proceeding againſt that College ſhould be by *Quo Warranto*, or before the *Eccleſiaſtical Commiſſioners*; the laſt was reſolv'd on, not as more legal or effectual, but as more expeditious, in the one the Proceedings being *de die in diem* in the other from Term to Term. This only I will obſerve, that when the Judgment againſt the City was given, which was of the greateſt Concern to the Nation ever conteſted in any Court of *Weſtminſter-Hall*, it was done by two Judges only, and no reaſon of that Judgment rendred, whereof *Withins*, who was one, I think, heard but one Argument in the Caſe. It is true, they ſaid *Raymond*, when alive, was of the ſame Opinion, and ſaid *Saunders* who was then paſt his Senſes was of the ſame Opinion, tho' I was told by one who was preſent, when the two Juſtices came to ask his Opinion in the Matter, he had only Senſe enough to reproach them for troubling him about the Matter, when they were ſenſible he had loſt his Memory. And to ſay truth, the delivering the Senſe of an abſent Judge, tho' it hath been ſometimes practis'd, is not allowable; for ſometimes they deliver another Opinion than what the abſent Judge is of. Judge *Withens* did ſo in ſeveral Caſes, when he deliver'd the Opinion of Sir *Edward Herbert*, which Sir *Edward Herbert* afterwards in open Court diſown'd: Judge *Holloway* ſerv'd Judge *Powel* the ſame Trick, if the laſt ſaid true. The long depending of the *Quo Warranto* had alarm'd all the Nation, who yet were quiet, hoping that Judgment would be given for the City, as ſome of the Judges and of the King's Council had given out it would; but the contrary was reſolv'd on, and therefore the Nation at the time of the giving the Judgment muſt be amus'd with ſomewhat elſe, and nothing ſo proper as a Plot: but there was difficulty in that alſo, for if the pretended Plotters ſhould be acquitted, it would make the Matter worſe; and nothing would ſecure that, but impoſing what Sheriffs they

pleas'd on the City, and accordingly *North* and *Rich* being pitch'd on, the one by a ſhameleſs Trick, and the other by open Force, were impos'd on the City.

Having gain'd that Point, the Proceedings in the *Quo Warranto* were much quicker than before, and two Arguments were only permitted in it of each ſide, the one in *Hilary* Term, the other in *Eaſter* Term; and ſo the Caſe was ripe for Judgment in *Trinity* Term following, but muſt be, and was uſher'd in with the diſcovery of a pretended Plot, which ſo amaz'd the Nation, that tho' Judgment in the *Quo Warranto* was given two days after the pretended Diſcovery, no body took any notice of it for ſeveral Months after it was given. The truth was, no body durſt mutter againſt it, or queſtion the legality of it; it was enough to have brought any Perſon into the Plot to have done it, it would have been call'd flying in the Face of the Government, queſtioning the Juſtice of the Nation, and ſuch like *Cant.*

Remarks on the Lord Ruſſel's *Tryal.*

THE Plot being nois'd abroad, the Perſons before hand reſolv'd on were ſeiz'd on, and the Lord *Ruſſel* and others were clapt up cloſe Priſoners.

The Lord *Ruſſel* having been for ſome few Weeks a cloſe Priſoner in the *Tower*, was the 13*th* of *July*, 1683. brought to the *Old Baily*, and arraign'd for High-Treaſon, in deſigning to raiſe a Rebellion, *&c.* and the ſame Morning was try'd. He deſir'd he might not be try'd that Day, for he had ſome Witneſſes which would not be in Town till Night: Which being deny'd, then he deſir'd that the Tryal might be put off till the Afternoon; which was likewiſe deny'd. He ask'd whether he might not make uſe of any Papers he had? which was allow'd. He deſir'd he might have a Copy of the Pannel of the Jury that was to paſs on him; he was told he had a Copy deliver'd to his Servant ſome days before.

The Jury being call'd, he challeng'd the Foreman for being no Freeholder in *London.* To argue which, Council were aſſign'd him; who preſently came into the Court, and having excus'd their not ſpeaking more to the Matter for want of time to conſider of it, argu'd, That it was a good Challenge, becauſe at Common Law every Juryman ought to be a Freeholder; that the Statute of 2 *Hen.* 5. provides none ſhall be a Juryman in capital Matters, but a Freeholder of forty Shillings yearly: That there is no difference between a City and County, and a County at large at Common Law, nor by that Statute 7 *Hen.* 7. which takes away the Challenge of no Freehold in the Ward in *London*, and ſhews it was a good Challenge in *London* before that time: the 4th *Hen.* 8. which likewiſe takes away the Challenge of no Freehold in *London*, ſhews it was a good Challenge before that time, and the ſame was infer'd from the 23*d* of *Henry* the 8th: But tho' none of thoſe Statutes extended to Treaſon, yet if it was a good Challenge in Treaſon in *London* before thoſe Statutes, it was ſo ſtill.

The King's Council ſaid, at Common Law it was not neceſſary that a Juryman in Treaſon ſhould be a Freeholder; and tho' Treaſon is within the 2*d* of *Henry* the 5*th*, yet by the Statute of Queen *Mary*, the Statute of the 2d of *Henry* the Fifth, as to Treaſon, was repeal'd; that it was a Point they would not have loſt to the City of *London*; that if the Priſoner ſhould peremptorily challenge thirty five, as by Law he might, there would ſcarce be found thirty five more Freeholders in the City, the Inheritance of the City being moſtly in the Nobility and Corporations, and conſequently Treaſons may be committed in the City, and there would not be enough to try it; and in the Caſe of the City of *Worceſter*, in a *Quo Warranto* brought againſt them, that Challenge was taken and over-rul'd by the *King's-Bench*, by Advice of the Judges of the *Common-Pleas*; that the *Venire* mentions no Freehold, but only *Probos & Legales Homines de Vicineto.*

Then the Chief Juſtice ask'd Mr. *Pollexfen*, Whether he did find any Judgment in Treaſon at Common Law, that no Freehold was a Challenge? who anſwer'd, He did not. Whereupon the Chief Juſtice reply'd, That then he did not ſpeak *ad idem*; for he took it in Caſe of Treaſon and Felony, at Common Law it was no Challenge; and the Statute of *Henry* the Fifth in that Point was introductive of a new Law, and that Statute as to Treaſon was repeal'd by that of Queen *Mary*; and that a Caſe cannot be found of ſuch a Challenge in Treaſon ſince the Statute of Queen *Mary*, but it was a buſineſs of great Importance.

The Chief Baron was of the ſame Opinion; for the ſame reaſon Juſtice *Windham* and Juſtice *Jones* were of the ſame Opinion; the laſt added, the rather becauſe the Priſoner is allow'd to challenge thirty five peremptorily: and Juſtice *Charlton* was of the ſame Opinion. and the rather becauſe no Precedent had been offer'd of ſuch a Challenge before: Juſtice *Levins* was of the ſame Opinion, for the ſame Reaſon: Juſtice *Street* was of the ſame Opinion, for the ſame Reaſons, and thought they had been very nice when the Life of the King lay at ſtake, and all the Cuſtoms and Privileges of the City of *London* ſeem'd to be level'd at in that Point: Juſtice *Withens* was of the ſame Opinion.

Then the Chief Juſtice told the Priſoner, the Court over-rul'd his Challenge; but that he had no hardſhip put upon him, for the Reaſon of Law for Freeholders was, that no ſlight Perſons ſhould be put upon the Jury, but in his Caſe there were Perſons of Quality and Subſtance put upon the Jury, which was the ſame in ſubſtance with a Jury of Freeholders.

Theſe being the Reaſons of over ruling that Challenge, they may be ranked under theſe Heads. There was no ſuch Challenge at Common Law; if there were, yet not in Treaſon. And if it were a Challenge in Treaſon, where the Tryal is in a County at large, yet not where it is in a City and County; and if in a City and County, yet not in *London.*

The aſſigning many Reaſons for one and the ſame thing, makes the Judgment juſtly ſuſpected: for if when two Witneſſes to one Fact varying in the Circumſtances of it, are juſtly ſuſpected in point of Truth, ſeveral Reaſons for the ſame Judg-

Judgment make the Knowledg or Integrity of the Judges juſtly ſuſpected; every Caſe in Law, as my Lords *Coke* and *Hales* ſay, ſtanding upon its own particular Reaſon: and therefore when many Reaſons are given, it looks as if the Judges were hunting about for Reaſons to make good what before hand they are reſolv'd to vent for Law, rather than that their Judgment is the Reſult of thoſe Reaſons.

But to conſider them ſingly, I do indeed think there is no expreſs Reſolution, that at Common Law, in any Caſe of any capital Matter, it was a good Challenge (except the Caſe of *Fitzharris*, already taken notice of) but in civil matters my Lord *Coke* is expreſs, that at Common Law it was a good Challenge; and with him Sir *John Forteſcue* ſeems to concur, who in his Expoſition on the Statute of *Henry* the *5th* ſays, if the Debts or Damages be under forty Marks, the Juryman ſhall have Land to a competent Value, according to the Diſcretion of the Juſtices. My Lord *Coke* ſaith, in ſuch Caſe any Freehold ſufficeth; now how can that be true, if it were not neceſſary at Common Law to have ſome Freehold? for the Statute makes no Proviſion for Debt or Damages under forty Marks. It muſt therefore be by Common Law, that ſome Freehold was neceſſary, and that any Freehold ſhall ſuffice. And ſurely, if in civil Matters it was neceſſary for a Juror to have a Freehold, much more in capital Matters, and moſtly in Treaſon. It is very plain, that at Common Law no Man was thought to be a ſufficient Man but a Freeholder; and tho now, and for ſome time paſt, the Value of Trade is equal to that of Land, yet heretofore it was not ſo, and by what was heretofore, the Common Law is to be known.

The matter of Trade was heretofore ſo inconſiderable, and the Traders themſelves for that reaſon ſo vile, that it was a Diſparagement for a Freeholder to marry with a Tradeſman, as is to be ſeen by the Statute of *Wharton:* and therefore mere Tradeſmen, and not Freeholders, were not to be truſted with the concern of a Tryal in a civil Matter, and much leſs in a capital, and leaſt of all in a Tryal of High-Treaſon.

The Chief Juſtice *Pemberton* ſays, that the reaſon of Freeholders was, that no ſlight Perſons ſhould be put upon a Jury where the Life of a Man, or his Eſtate is in queſtion; it is plain therefore, the Concern of the thing to be tryed, is the meaſure of the ſubſtance of the Jury-man. If that be true, the Tryal in Treaſon is of the higheſt concern: How then is it true, as ſome of the Judges concluded, that tho Freehold might be requiſite in ſome Caſes at Common Law, yet in Treaſon certainly not? it is indeed a Paradox to me.

And the peremptory Challenge of thirty five allowed the Priſoner, is no Reaſon againſt the Challenge of no Freehold; for that is only a Privilege allowed the Priſoner *in favorem Vitæ*; and it might as well be argued, that no Challenge at all to the petty Jury ſhall be allow'd the Priſoner, becauſe he had a Grand Jury paſt upon him before, which is alſo *in favorem Vitæ*; that no Man at the King's Suit ſhall be ſo much as queſtion'd for his Life, till above the number of twelve ſubſtantial Men have on their Oaths ſaid they think the Accuſation true; and after that, he is allow'd to challenge peremptorily thirty five, and with Cauſe without number. To affirm therefore that no Freehold is not a cauſe of Challenge, becauſe he may challenge peremptorily thirty five, is a *non ſequitur*: and tho Non-uſage, that is to ſay, that this Challenge was never taken in Treaſon, was then us'd as an Argument, yet it is the weakeſt of Arguments, which is to be found in *Littleton*; tho even that Fact was not true, for the Challenge was taken and allow'd before, unleſs you will diſtinguiſh and ſay, that in that Caſe it was taken by the King, and therefore good, and in this by the Priſoner, and therefore bad. I'm ſure that difference cannot be warranted, either by Authority or Reaſon; and what tho *Cook* and the other Regicides and other Perſons did not take that Challenge is it an Argument that they could not, or that they thought they could not? perhaps they had forgotten to do it, as much as the Judges in this Caſe had forgotten their Reſolution in *Fitzharris*'s Caſe; or perhaps they could not take it, their Jury being Freeholders; or perhaps it was to no purpoſe, they being tried in *Middleſex*, where a Jury of Freeholders would quickly be found. Nor is it an Argument that no Caſe of this Challenge at Common Law is to be found in the Books; for ſince the Statute of *Henry* the *5th* to the time of Queen *Mary*, it could never be a Caſe, and from that time to this it could never be a Caſe in Felony: and the Law being ſo very plain, that if the Fact were with the Priſoner it was always allowed, if againſt the Priſoner it was diſallowed, not as not good in point of Law, but as not true in point of Fact; therefore the Challenge perhaps was not taken notice of in the Books, which only report Difficulties.

It is true of late, and it is but of late Practice, the whole Tranſactions of a Tryal are publiſhed for the benefit of the Publiſher, rather than for the common Good; and that indeed was the Motive of publiſhing *Fitzharris*'s Tryal ſigned by *Fra. Pemberton*, and of *Colledge*'s Tryal ſigned by *Fra. North*, and of my Lord *Ruſſel*'s ſigned by *William Pritchard* Mayor, and Col. *Sidney*'s Tryal ſigned by *George Jefferies*, and Mr. *Corniſh*'s Tryal ſigned by *Th mas Jones*. And that is the reaſon, why ſince that Statute we find no Caſe of ſuch a Challenge in capital Matters, and before that Statute the Year-Books go but a little way.

It is enough there was no Reſolution that it was not a good Challenge, for it will be of the King's ſide to ſhew why that ſhould not be a good Challenge in Treaſon, which was in moſt if not in all other Caſes.

It is pretty to obſerve what ſteps were made in over-ruling this Challenge, ſome were of Opinion that it was no Challenge in any Caſe at Common Law; ſo ſaid the Attorney and Sollicitor General, the Chief Baron, Juſtice *Windham*, and Baron *Street*. The Chief Juſtice thought it no Challenge at Common Law in Treaſon or Felony only, but that the Statute of *Henry* the *5th* made it a Challenge in Treaſon and Felony, but whether the Statute of *Henry* the *5th* made it a Challenge in Treaſon, the Chief Baron and Juſtice *Windham* doubted. Juſtice *Jones* thought it no Challenge at Common Law in Treaſon; Juſtice *Levins* would not determine whether it was a good Challenge in any Caſe at Common Law, but he and Baron *Street* were clearly of Opinion it was not a good Challenge in *London*. The Chief Juſtice thought it a buſineſs of great Conſequence, not only for the Priſoner,

but for all other Perſons: Baron *Street* thought the Judges had been very nice in the Matter, which in the Phraſe of the Law is giving themſelves a great deal of trouble in a matter very clear, or of no moment.

But tho they differ'd in their Reaſons, yet all agreed in this, and in this only, that tryed he ſhould be, and that preſently.

Then as for the Cuſtom of the City of *London*, to try without Freeholders, how did it appear to the Judges that there was any ſuch Cuſtom? Did they ever read of any ſuch Cuſtom in the City of *London*? Nay, were not the Statutes which were cited, where no Freehold was made no Challenge in *London* in particular Caſes, as ſo many expreſs Reſolutions, that there was no ſuch Cuſtom in the City? for if there had been ſuch Cuſtom, what need thoſe Statutes? To which the Judges never vouchſafed any Anſwer, becauſe in truth they could make no Anſwer.

But it was objected, there was the Reſolution in the City of *Worceſter*'s Caſe, which I agree was of as good Authority, and of no better than the Judgment in the principal Matter of the *Quo Warranto*. And it was likewiſe objected, there would be a Failure of Juſtice in Cities, if the Challenge were good for want of Freeholders.

I ask, would it have been a Failure of Juſtice at Common Law, or by reaſon of ſomewhat which hath happened of late Times? There is none who pretends to know any thing of the Hiſtory of *England*, that will ſay, that heretofore the Cities were not inhabited moſtly by the Gentry, and eſpecially the City of *London*; partly for Luxury, partly for their Security; and then there was no want of Freeholders in the Cities, but when matters became more quiet, and Trade encreaſed, and made Houſes in the Cities more valuable, then were Houſes of equal Convenience, and leſs Price, ſituate in the Suburbs, or in the Country; the Gentry by degrees parted with their Houſes in the Cities to Tradeſmen for Profit, and remov'd themſelves to other Places. And I believe it may be remembred, that even the *Strand*, in the memory of Man, could have furniſh'd the County of *Middleſex* with a ſufficient number of Freeholders; and yet now, for the above Reaſons, you can hardly find a Jury of Freeholders there.

Beſides it muſt be remembered, that *London* heretofore had many of the King's Palaces in it, and the Countries did not then, as now, take up with Lodgings, but were Inhabitants of Houſes: and if the Failure of Juſtice happen by the above means, I am ſure it is againſt the Oath of the Judges to ſupply that Defect with their Reſolution; but it ought to have been ſupplied by an Act of the Legiſlative Power.

If the Neceſſity of the thing warrants the Judgment, how unlearned were the Judges in *Henry* the *7th* and *Henry* the *8ths* Times, that they did not ſupply the defect in Law in the City of *London*, and other Cities by their Reſolutions? How vain were the Parliaments in thoſe Times, who ſupplied thoſe defects in Law, mentioned in the Acts cited by thoſe Statutes, which were Works of time and trouble, if they had thought the Judges by their Reſolutions had Power to do it? for if they had Power to do it, they could have done it *extempore*, as in this Caſe.

For the laſt Objection, that the Writ mentions only *Probos & Legales Homines*, and ſpeaks nothing of Freeholders; *Legales* may be very well interpreted, to imply Men qualify'd by Law; but I take it, that *Homines* implies it, for by *Homines de Comitatu* are meant Freeholders of that County; and all others, in point of Truſt, are not conſider'd in Law. My Lord *Coke* in his Comment upon the 28th of *Eliz.* 1. *cap.* 8. which gives the Election of Sheriffs to the People of the County where the Sheriffwick is not in Fee, ſays, People there means Freeholders of the County; and the ſame is underſtood by Writs to the Counties to chooſe *Coroners*, *Verderers* and the like, tho' the Writ ſays *per communitatem Comitatus*, *& de aſſenſu Comitatus*.

And tho' the Writs of *Venire* in civil Matters, of late days, mention what Freehold each Juror ſhall have, yet that is by the Statute of the *35th* of *Hen.* 8. *cap.* 6. which expreſly commands the Writ ſhall ſo expreſs it, in all Iſſues join'd in *Weſtminſter*, to be tried between Party and Party: before which time it is plain, the *Venire*, even in civil Matters, did not expreſs any Freehold, and that Statute doth not extend to iſſues join'd on Indictments.

Now if upon all which hath been ſaid, it is not plain, that the Challenge ought to have been allow'd, yet ſure it was doubtful; and if ſo, and a matter of great Conſequence, as the Chief Juſtice ſaid it was, why might not the Council for the Priſoner have had a little more time to have conſider'd of the Challenge before they had argu'd it, or the Judges have taken a little time to conſider the matter before they had given their Judgement? I dare ſay, none of them could remember any poſitive Reſolutions one way or other, nor upon a ſudden was it expected they ſhould; and therefore for their own ſakes, if not for the Priſoner's, they might have taken the Morning, if not the Day. The Priſoner deſir'd his Tryal to be put off, for to have conſider'd of it; in that time perhaps ſome of them might have remembred, or others might have put them in mind of their Reſolutions in *Fitzharris*'s Caſe; they might have conſider'd how to diſtinguiſh between that Caſe and this, and not run away with it, that that Challenge was never made in Treaſon, as all the Judges affirm'd. But my Lord *Ruſſel* was told by the Court, that they always tried the Priſoner in Treaſon the Day he was arraign'd, and could not put off the Tryal for a Morning without the Attorny General's Conſent; but ſurely that is not true, *Plunket* and *Fitzharris* were try'd the Term after they were arraign'd, tho' the Attorny General oppos'd it. It is true, he ſubmitted to the Rule, as it was as much his Duty to do as the Priſoner's; but if there be a difference between an Arraignment at *Weſtminſter* and the *Old-Baily*, as to the ſpeeding the Tryal, the Place will not vary the reaſon of the thing, if there be not any Law for it, as there is not; but even at the *Old-Baily*, the Tryal in Treaſon hath been put off to another Seſſions, it was done in *Whitebread*'s Caſe, and in many other Caſes. If it be ſaid that was by the Attorny General's Conſent, I ſay that makes no difference, for the Judge is to be indifferent between the Attorny General and the Priſoner. If the Court muſt order nothing but what the Attorny aſſents to, why is not the Priſoner try'd and judg'd by the Attorny alone? or what needs all the Formality of a Tryal? If it be ſaid that that Tryal was put off, becauſe the King's Witneſſes were not ready; I ſay there is the ſame Reaſon to put off a Tryal, becauſe

cauſe the Priſoner's Witneſſes are not ready, and that was the pretended, tho' not the true Reaſon of putting off *Fitzharris*'s Tryal to another Term, and there is no Law to the contrary.

It is totally in the Diſcretion of the Judges to put off a Tryal, which Diſcretion ought to be govern'd by Reaſon.

But indeed this was extraordinary and without any Precedent: it can never be ſhewn in the Caſe of the greateſt or meaneſt Perſons, being accus'd of the greateſt or leaſt Crime, that ever the delay of a Day, much leſs of a Morning, for his Tryal was denied, where he ſhew'd but any Colour for what he ſaid, when the Seſſions were to continue after the time he deſir'd, as in this Caſe it did. *Fitzharris* ſaid his Witneſſes were in *Holland*, and tho' he nam'd no Perſons, yet his Tryal was put off to the next Term; my Lord *Ruſſel* ſaid his Witneſſes could not be in Town till that Night, yet the Reſpite till next Day was deny'd: all Perſons agreed, that there was ſome extraordinary Reaſon for it, and before the Tryal was over the Riddle was out.

My Lord of *Eſſex* was kill'd, or to be kill'd that Morning; as to this Matter, it is not material whether by his own or another's Hand: they were ſenſible the Evidence againſt my Lord *Ruſſel* was very defective, and that Accident was to help it out, but that would not avail unleſs it were a ſurprizing matter upon the Jury; ſhould the Jury have had a Days or but a Mornings time to conſider of it, People might have been talking with the Jury. It was very material to ask, what influence that Accident would have on my *Ruſſel*'s Tryal, whether it was any Evidence againſt him: they might have been told what was true, that no Perſon kill'd was in Law ſuppos'd to have kill'd himſelf, till a Coroner's Inqueſt had ſat upon the view of his Body, and found it ſo; and if it had been ſo found, yet even that had been no Evidence againſt another, becauſe the Coroner's Inqueſt never found the reaſon why a Man kill'd himſelf; and if they ſhould find the reaſon, yet even that was no Evidence againſt another, becauſe that other was never call'd before the Coroner's Inqueſt to make his Defence. They might have been told a great many Circumſtances of the Improbability of the killing himſelf; they might have obſerv'd that the King's Council were ſo far ſenſible, that it was no Evidence againſt my Lord *Ruſſel*, that they never attempted to prove the Earl of *Eſſex* was dead or kill'd himſelf: it was only ſlily inſinuated, together with the reaſon of it, which had its Effect, if the Report be true of ſome of the Jurymen's ſaying it went farther with them than all the Evidence of the Witneſſes produc'd; and if that be true, there was a reaſon, tho' not a juſt one, for ſpeeding that Tryal beyond the ordinary Methods of Tryals at the *Old Baily*.

But tho' my Lord *Ruſſel* had ſeemingly leſs favour in that Matter than any other Perſon, even than *Colledge*, who had the reſpite of two or three hours between his Arraignment and Tryal, (tho' that was not in favour to *Colledge*, but only to examine his Papers which they took from him, and inſtruct their Witneſſes accordingly) yet in other things he had more Favour or Juſtice done him: his Papers were not taken from him; it was agreed to be his Right to uſe them without queſtioning from whom he had them, what they were, or the like, as in *Colledge*'s Caſe was done; he had a Copy of the Pannel of the Jury, even before his Arraignment, given him; and the Chief Juſtice ſaid it was never denied in Caſe of Life that he knew of, which was denied *Colledge* before he pleaded; becauſe then 'twas pretended there was no Iſſue join'd, till *Plea pleaded*, after which the *Venire* is awarded; tho' all Men know, that the Sheriff ſummons the Jury before the Arraignment, and even after Iſſue join'd. *Colledge* was denied a Copy of the Pannel, only he was told, he ſhould look every Juryman in the Face before he was ſworn; and as far as the Looks of a Man betrays him, he ſhould be ſatisfy'd whether he was honeſt or not, which is an ill way of judging; for I think the Perſon that gave that Rule, would have deceiv'd any Man by his Countenance, who had known his Practices.

But ſays the Attorny General, in my Lord *Ruſſel*'s Caſe it was matter of Favour, and not of Right, therefore no Injuſtice to *Colledge*. I confeſs of all Men who ever came to the Bar, he hath laid down the moſt Rules, which depend totally upon the Authority of his own ſaying; in *Colledge*'s Caſe he affirm'd, that the King's Witneſſes ought not to be kept out of the hearing of each other, when they gave their Evidence (a method us'd in civil Matters, the reaſon of which is well known, and none can ſhow any Law or Reaſon why it ſhould not be us'd in capital Matters) with as much Reaſon and Authority as what now ſaid.

Firſt, I do affirm there is no Authority in Law, which ſays a Priſoner ſhall not have a Copy of the Pannel; in the next place I affirm, that after a Jury ſtruck in a civil Matter, each Party ought to have a Copy of the Pannel, in order to provide himſelf of a Challenge, if there be any Cauſe: In the laſt place, I affirm, that by Law more Favour is allow'd a Defendant in a capital Matter to defend himſelf, than in a Civil. And if theſe Propoſitions be true, let any Perſon if he can make out the Law, or Reaſon of the above Aſſertions.

Of a like Stamp was the Saying, when my Lord deſir'd a Copy of the Matter of Fact laid againſt him, of the Attorny that he had notice of it; for Queſtions were put to him about it, and he was with his Lordſhip himſelf, and examin'd him upon thoſe Queſtions, which was a Favour to him, that he might know what the Matter was he was accus'd of.

I do not affirm that ever it was practis'd, to give the Priſoner a Note of the Fact, to be given in Evidence againſt him, proving Treaſon, or that it was ever denied till then, nor do I know of any Law *pro* or *con* in the Caſe; but if one would judge by Reaſon or Practice in parallel Caſes, I think it ought not to be deny'd.

I know not at preſent of more than two ſorts of general Indictments, and thoſe are of Treaſon and Barretry; the laſt is a general Indictment, for ſtirring up Suits without Reaſon, and without mentioning any Suit in particular: and therefore if by the Rule of the Court the Defendant was not help'd, which obliges the Proſecutor to give the Defendant, ſome reaſonable time before the Tryal, a Note of what Suits he intends to give in Evidence againſt him, it was impoſſible for the Defendant to eſcape, if it had been his Misfortune to have had five or ſix Suits.

For

For I never yet ſaw a Witneſs produc'd againſt the indicted, but he would ſwear the indicted brought an Action againſt him without Reaſon; and yet I have often ſeen, that the indicted having had notice, that that was one of the Suits he was intended to be charg'd with, hath been able to prove that he had good, or at leaſt probable Cauſe of Suit, which he could not have done if he had not notice. And in Treaſon, for deſigning to kill the King, there have been ſo many Interpretations of Facts tending that way, that it is almoſt impoſſible for an Innocent to defend himſelf, unleſs he had notice of the Fact intended to be inſiſted on at the Tryal.

There are yet ſome Expreſſions which mightily puzzle me: the King's Council ſaid in the Argument of the Challenge, that they would not have the Point of being a *Juryman*, tho' not a Freeholder, loſt to the City of *London*; and one of the Judges ſaid, 'twas the Privileges of the City were ſtruck at in that Point. If by thoſe Expreſſions be meant, that it is for the benefit of the Publick that there ſhould be no failure of Juſtice, I agree to it; but if it be meant that it is for the benefit of the Citizens to be *Jurymen*, I deny it: and I think nothing ſhews it plainer, than that it is a Privilege that a Citizen ſhall not be drawn out of the City to be a *Juryman*; that a Nobleman ſhall not be on a *Jury*; that it is a Matter of Prerogative in the King, and Favour to a particular Perſon, to grant a Charter of Exemption from being on a *Jury*. So that if I conſider the Law, I know what is meant by thoſe Expreſſions; if I conſider allow'd Practice, it is true, a *Juryman* may earn his Eight-pence for a Tryal; but that is too inconſiderable pay for Perſons of Subſtance, as the *Jurymen* in this Caſe were ſaid to be, to be fond of the Employ, or to account it a Privilege. Yet even that was but in civil Matters; in criminal Matters, not Capital, the *Jury* were heretofore paid if they acquitted the Defendant, but not if they found him guilty; tho' of late it hath been practis'd to give them more, and treat them higher if they convicted the Defendant, than if they acquitted him: But in capital Matters, as the Caſe in queſtion was, it was never allow'd, or at leaſt own'd to pay the *Jury*, be the Verdict which way it would.

Having ſpoken to the *Preliminaries*, I proceed to the Tryal, wherein Colonel *Rumſey* was firſt produc'd: he ſaid, he was ſent by my Lord *Shaftsbury* about the end of *October*, or beginning of *November*; who told him, he ſhould meet at one *Sheppard*'s the Duke of *Monmouth*, Lord *Ruſſel*, Lord *Gray*, Sir *Thomas Armſtrong* and Mr. *Ferguſon*, to know of them what Reſolution they were come to about the Riſing of *Taunton*: *Sheppard* carry'd him where they were, and anſwer was made, Mr. *Trenchard* had fail'd them, and there would be no more done in the Matter at that time; thereupon the Lord *Shaftsbury* took a Reſolution to be gone: Mr. *Ferguſon* ſpoke moſt of the Meſſage, and he thought the Lord *Gray* ſpoke ſomething to the ſame purpoſe; he did not know how often he had been at that Houſe, he was there more than once, or elſe he heard Mr. *Ferguſon* make a Report of another Meeting to the Lord *Shaftsbury*, my Lord *Ruſſel* was in the Room, and that was all they ſaid at that time that he remembred, he was not there above a quarter of an hour. There was ſome Diſcourſe about ſeeing in what poſture the Guards at the *Mews* and *Savoy* were in by all the Company, to know how to ſurprize them if the Riſing had gone on; Sir *Thomas Armſtrong* and Mr. *Ferguſon* began, all debated it; he thought the Duke of *Monmouth*, the Lord *Gray*, and Sir *Thomas Armſtrong* were ſent to view them; the Riſing was appointed to be the 19th of *November*; he was ſpoke to by the Lord *Shaftsbury* to go to *Briſtol* if the Riſing had gone on, but in what Quality was not determin'd: The Lord *Ruſſel* agreed to the Debate. Being ask'd if my Lord *Ruſſel* ſaid any thing there, and what; he anſwer'd, My Lord *Ruſſel* ſpoke about the Riſing at *Taunton*: Being ask'd what my Lord *Ruſſel* ſaid, he anſwer'd, My Lord *Ruſſel* diſcourſed of the Riſing; being ask'd if my Lord gave his Conſent to the Riſing, he ſaid he did.

The next Witneſs was Mr. *Sheppard*, who ſaid, In *October* laſt Mr. *Ferguſon* came to him in the Duke of *Monmouth*'s Name, and deſir'd the conveniency of his Houſe for himſelf and ſome Perſons of Quality, which he granted. In the Evening the Duke of *Monmouth*, Lord *Gray*, Lord *Ruſſel*, Sir *Thomas Armſtrong*, Colonel *Rumſey*, and Mr. *Ferguſon* came, not all together, but the one after the other. Sir *Thomas Armſtrong* deſir'd, that none of his Servants might come up, and that they might be private; ſo what they wanted he went down for, a Bottle of Wine, or ſo: the ſubſtance of the Diſcourſe was, to ſurprize the King's Guards; and in order to it, the Duke of *Monmouth*, the Lord *Gray*, and Sir *Thomas Armſtrong*, went one Night, as he remembred, to the *Mews*, or thereabouts, to ſee the Guards; and the next time they came to his Houſe, he heard Sir *Thomas Armſtrong* ſay, the Guards were very remiſs in their places, and not like Soldiers, and the thing was feaſible if they had but ſtrength to do it: he remembred but two Meetings there; they came in the Evening; he neither heard nor ſaw any Coaches at his Door: When they came in, as he remembred, the Lord *Ruſſel* was both times there; he had no buſineſs with the Lord *Ruſſel*, nor the Lord *Ruſſel* with him at that time, but ſince he had: He did not remember Colonel *Rumſey* diſcours'd the Lord *Ruſſel* about any private Buſineſs, nor remember'd any farther Diſcourſe; he remember'd no Writings nor Papers read at that time: upon recollection he remember'd one Paper read by Mr. *Ferguſon* in the nature of a Declaration, ſetting forth the Grievances of the Nation, the Particulars he could not tell; it was a pretty large Paper, it was ſhew'd for Approbation as he ſuppos'd, when to be ſet out was not diſcours'd; 'twas ſhew'd to Sir *Thomas Armſtrong*, and as he remember'd the Duke of *Monmouth* was preſent, and he thought Colonel *Rumſey* was preſent: Colonel *Rumſey* ſaid, he was not preſent, it was done before he came. Mr. *Sheppard* went on and ſaid, the deſign of the Paper was in order to a Riſing, as he ſuppos'd by the Purport of it; he would not ſay the Lord *Ruſſel* was there when that Paper was read, but he was there when the talk was about ſeizing the Guards; he could not be poſitive as to the times of thoſe Meetings, but it was when the Lord *Shaftsbury* was abſent from his Houſe, he abſented about *Michaelmas* Day; he could not be poſitive that my Lord *Ruſſel* was at both Meetings; he thought he was at both, he was ſure he was at one.

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The laſt Witneſs was the Lord *Howard.* He ſaid he brought Captain *Walcot* acquainted with the Lord *Shaftsbury*; and upon his account Captain *Walcot* ſoon gain'd a confidence with the Lord *Shaftsbury*: *Walcot* told him, the People were ſenſible all their Intereſt was going to be loſt by the Violence offer'd to the City in the Election of Sheriffs, and that they were reſolv'd to take ſome courſe to put a ſtop to it: that there were ſeveral meetings about it, and ſome Perſons began to prepare to act; that ſome had good Horſes, and kept them in private Stables, and he reſolv'd to be one in it: He having an Eſtate in *Ireland*, he diſpatch'd his Son thither, and order'd his Son to turn his Stock into Mony; the Son went about *Auguſt*: that the 30*th* of *September*, *Walcot* din'd with him; told him, that the Lord *Shaftsbury* was ſecreted, and deſir'd to ſpeak with him: *Walcot* brought him to the Lord *Shaftsbury*, who complain'd of the Duke of *Monmouth* and the Lord *Ruſſel* for deſerting him; but there was ſuch preparation made in *London*, that now he was able to do it of himſelf, and intended to do it ſuddenly; he had above 10000 briſk Boys ready to follow him when he held up his Finger, they would poſſeſs themſelves of the Gates, and in twenty four hours they would multiply to five times the number, and would be able to poſſeſs *Whitehall* by beating the Guards. The Lord *Howard* went to the Duke of *Monmouth*, told him the Lord *Shaftsbury*'s Complaint, who ſaid, the Lord *Ruſſel* and he told the Lord *Shaftsbury* from the beginning, that there was nothing to be done by them in the Country at that time. The Matter of the Diſcourſe between him and the Duke of *Monmouth*, him and the Lord *Shaftsbury*, and him and *Walcot*, is too tedious to relate, and as little to the purpoſe, if the Jury had underſtood Matter of Law which they did not; in it he takes care to ſhew what Confidence my Lord *Shaftsbury* had in him, more than in the Duke of *Monmouth* or the Lord *Ruſſel*; how very cautious he was, and how precipitate the Lord *Shaftsbury* was, and that what he told the Duke of *Monmouth* the Duke told the Lord *Ruſſel*; and he heard the Lord *Ruſſel* had been with the Lord *Shaftsbury*, and put off the intended Riſing. At which the Lord *Ruſſel* interrupted him, and ſaid, he thought he had very hard meaſure, there was a great deal of Evidence given by hearſay only: Whereupon the Chief Juſtice ſaid, it was nothing againſt the Priſoner; he declar'd it to the Jury, but the Attorny General bid the Lord *Howard* go on in the method of Time, and that it was nothing againſt the Priſoner, but the Witneſſes were coming to it if his Lordſhip would have patience, he aſſur'd him ſo. The Lord *Howard* went on where he left off, with a ſtory between him and *Walcot* of an intended Riſing, and of ſome dark Sayings let fall by *Walcot* and the Lord *Gray*, importing a Deſign upon the King's Perſon; but the Lord *Howard* was very careful to put all off, but at laſt it was reſolv'd to riſe on the 17*th* of *November*: But the Lord *Howard* fearing it had been diſcover'd, becauſe he ſaw a Proclamation a little before forbidding Bonefires without the Lord Mayor's leave, that of the 17*th* of *November* was alſo diſappointed, and the Lord *Shaftsbury* went away and died; but conſidering they had gone ſo far that it was not ſafe to retreat, and likewiſe that ſo great an Affair as that, conſiſting of ſuch infinite Particulars, was to be manag'd with ſo much fineneſs, they erected a Cabal of ſix Perſons, the Duke of *Monmouth*, Lord of *Eſſex*, Lord *Ruſſel*, Mr. *Hamden*, *Algernon Sidney*, and himſelf, about the middle of *January* laſt; and about that time they met at Mr. *Hamden*'s Houſe, where it was conſider'd whether the Inſurrection ſhould be in *London*, or in a place diſtant; what Countries and Towns were fitteſt and moſt diſpos'd to Action; what Arms neceſſary to be provided; how to raiſe twenty five or thirty thouſand Pounds, and how they might ſo order it as to draw *Scotland* into a Conſent with them.

About ten days after they met at the Lord *Ruſſel*'s Houſe, and reſolv'd to ſend ſome Perſons into *Scotland* to the Lord *Argyle*, to invite ſome Perſons hither to give an Account of that Kingdom; the Perſons to be invited were Sir *Jo. Cockram*, Lord *Melvil*, Sir *Campbel*; that Matter was refer'd to Col. *Sidney*, who told him he had ſent *Aaron Smith*; they agreed not to meet again till the return of the Meſſenger: The Meſſenger was gone about a month, it was ſix Weeks or more before he return'd, and then his Lordſhip was forc'd to go into *Eſſex*, where he had a ſmall Concern; there he ſtaid three weeks, and when he return'd, he was inform'd Sir *John Cockram* was come to Town, and afterwards he was forced to go to the *Bath*, where he ſpent five weeks; and from that time to this was five weeks, all which time was a Parentheſis to him; and that he and the five mention'd erected themſelves by mutual Agreement into that Society.

Atterbury ſwore *Campbel* was in his Cuſtody: then Col. *Rumſey* was ask'd, whether my Lord *Ruſſel* heard him when he deliver'd his Meſſage to the Company, and in what place of the Room the Company were: who anſwer'd, that when he came in, they were ſtanding by the Fire-ſide, but all came from thence to hear him; and when my Lord *Ruſſel* ſaid, Col. *Rumſey* was there when he came in, *Rumſey* ſaid, No, the Duke of *Monmouth* and Lord *Ruſſel* went away together.

Then in behalf of my Lord *Ruſſel* the Earl of *Angleſey* was examin'd, who ſaid, that viſiting the Earl of *Bedford*, the Lord *Howard* came in, and told the Earl of *Bedford*, that his Son could not be in ſuch a Plot, or ſuſpected of it; and that he knew nothing againſt the Lord *Ruſſel*, or any body elſe, of ſuch a barbarous Deſign: And he was going on again with what the Lady *Chaworth* had told him, but was interrupted by the King's Council, telling him, as the Court would not permit them to give Hear ſay in Evidence againſt the Priſoner, ſo they muſt not permit his Lordſhip to give Hear-ſay in Evidence for the Priſoner.

Mr. *Howard* ſaid, that the Lord *Howard* took it upon his Honour, and his Faith, he knew nothing of any Perſon concern'd in that Buſineſs, and not only thought my Lord *Ruſſel* unjuſtly ſuffer'd, but he took God and Man to witneſs, he thought my Lord *Ruſſel* the worthieſt Man in the World.

Dr. *Burnet* ſaid, the Lord *Howard* was with him, and he did then, as he had done before, with Hands and Eyes lift up to Heaven, declare, he knew nothing of any Plot, nor believ'd any, and treated it with great Scorn and Contempt.

The Lord *Cavendiſh* teſtify'd as to the Life and Converſation of the Lord *Ruſſel*, and thence concluded, it was not likely he ſhould be guilty of

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any ſuch Matter, and heard the Lord *Ruſſel* ſpeak of *Rumſey*, as if he had an ill Opinion of him, and therefore it was not likely he ſhould truſt him. Dr. *Tillotſon* ſpoke of his Converſation. Dr. *Burnet* and Dr. *Cox* ſpoke of his Converſation, and of his Averſneſs to all Riſings. Dr. *Cox* teſtify'd, that my Lord *Ruſſel* ſaid the Lord *Howard* was a Man of luxuriant Parts, but he had the luck not to be truſted by any Party. The Duke of *Somerſet* ſpoke of the Lord *Ruſſel*'s Converſation. The Lord *Clifford*, Mr. *Leveſon Gore*, Mr. *Spencer*, and Dr. *Fitzwilliams* ſpoke of the Lord *Ruſſel's* Converſation. The Lord *Howard* being ask'd by the Jury what he ſaid to the Earl of *Angleſey*'s Evidence, own'd what the Earl ſaid, but he did it to outface the Matter; and if he ſaid untrue, he ought not to be believ'd on his Oath, and inſinuated, that he meant what he ſaid to be meant of a Deſign of murdering the King, which he did not believe the Duke of *Monmouth* or the Lord *Ruſſel* guilty of.

This being the ſum of the Evidence given againſt, or for my Lord *Ruſſel*, let us conſider how far it will juſtify the Verdict given againſt him: firſt conſider the Improbability of *Rumſey*'s Evidence, if my Lord *Cavendiſh* ſaid true, that he ſhould truſt *Rumſey* to hear the debate about ſeizing the Gards, when the Lord *Ruſſel* had an ill Opinion of *Rumſey*. As for *Rumſey*'s delivering the Meſſage, there was no great Matter in that, it is impoſſible to hinder Peoples ſpeaking, and it is not Treaſon to conceal what's ſaid; beſides it was well known, it was *Rumſey*'s way to talk extravagantly, in order to accuſe thoſe that heard him, if they did not diſcover it. But beſides the Improbability of the Evidence in reſpect of the Perſon, the manner of delivering the Evidence, and the Evidence it ſelf was ſuch as carry'd no Colour of Truth with it: he ſaid he deliver'd his Meſſage, and had an Anſwer to it, and being ask'd what the Company ſaid further, anſwer'd, that was all that was ſaid at that time that he remember'd, and gives a very good Reaſon for it, for he ſtay'd not above a quarter of an hour, and added that he was not certain whether he then heard ſomething of a *Declaration* there, or whether Mr. *Ferguſon* reported it to my Lord *Shaftsbury*, that they had debated it; and yet when *Sheppard* ſaid *Rumſey* was there when the *Declaration* was read, he deny'd it, and ſaid it was read before he came in. Being ask'd to what the *Declaration* tended, he anſwer'd to another Matter, *viz.* that there was ſome diſcourſe about ſeeing what Poſture the Guards were in, and ſaid that all the the Company debated it; and being drawn on by Queſtions, ſaid it was in order to ſeize the Guards, if the Riſing had gone on. Now how doth that Part of the Evidence agree with what he ſaid before, that there was nothing more ſaid than the delivering his Meſſage, and the Anſwer to it? and how doth it agree with the time he ſaid he ſtay'd, which was not above a quarter of an hour? whereas that debate, if all the Perſons preſent being ſix debated it, as he ſaid they did, it would certainly have taken up a larger time. How does the firſt and laſt part of his Evidence agree, when he ſaid, my Lord *Ruſſel* agreed to the Anſwer of his Meſſage? and being ask'd whether and what he ſpoke to it, ſaid, he ſpoke about the riſing at *Taunton*, but doth not ſay what; and yet in the firſt part of his Evidence he ſaid, when ask'd who ſent the Meſſage back, Mr. *Ferguſon* deliver'd the Anſwer, the Duke of *Monmouth* and the Lord *Ruſſel* were preſent, and he thought the Lord *Gray* ſaid ſomething to the ſame purpoſe. But what Credit could be given to any part of a Man's Evidence, whoſe Memory was ſo ſhallow, that he could not remember whether he was at two Meetings, or whether Mr. *Ferguſon* related one of them to the Lord *Shaftsbury*? yet both were ſuppos'd to be within the Compaſs of a year, whereas a Man of Senſe is ſuppos'd to remember all his own Acts for ſeven years paſt, which is the Reaſon why the Chancery obliges a Man to anſwer as to his own Acts poſitively for ſeven years, without ſaying as he believeth, or as he remembreth, or the like. What Credit is to be given to a Witneſs who teſtifieth what was ſaid in company, and by whom, when his Memory doth not ſerve to anſwer poſitively, whether he was in the Company, or whether another told him what was there ſaid? he might as well have ſaid he was there, or dreamt he was there, or that he heard the Diſcourſe or dreamt of it, which had carry'd equal Credit with it.

It was plain, the Man was not of ſane Memory enough to make a Will, much leſs to be a Witneſs in the Tryal of a Man's Life; and nothing can be ſaid for him, but that he was a Witneſs for the King, that is to ſay, a mad Man may be a Witneſs to take away a Man's Life, which is as good Law as a great deal of other *Cant* vented as a part of the Prerogative.

It is true one of the King's Council recommends *Rumſey* to the Jury, as a very credible Witneſs under the notion of an unwilling Witneſs: but had the ſame Perſon been a Council for the Priſoner, he would have call'd *Rumſey* a dancing Witneſs, for he ſaid backwards and forwards; and an amaz'd Witneſs, for being ask'd one thing, he anſwer'd another; being ask'd as to the *Declaration*, he anſwer'd to the ſeizing of the *Guards*; being ask'd whether my Lord *Ruſſel* aſſented to the Anſwer of the Meſſage, he reply'd, yes, becauſe he talk'd of the Riſing, *&c.* which might be as well againſt as for it.

Sheppard's Evidence was to the Deſign of ſeizing the *Guards*, and as to the *Declaration*, he remember'd but two Meetings, at both which he ſaid, as he remember'd, my Lord *Ruſſel* was preſent, but he could not be poſitive in that, and the times of the *Meetings* he did not remember: he ſaid, the ſubſtance of the Diſcourſe was, how to ſurprize the King's *Guards*, and that the Duke of *Monmouth*, the Lord *Gray* and Sir *Tho. Armſtrong* went to ſee the *Guards*, as he remember'd; and the next time they came to the Houſe, Sir *Tho. Armſtrong* ſaid the *Guards* were very remiſs, *&c.* Taking this *Evidence* by it ſelf, without tacking *Rumſey*'s Evidence to it, it was ſo far from being *Evidence* of Treaſon, that it was no Crime; for he doth not ſay, it was intended to be put in practice, notwithſtanding all ſaid by him; both the Diſcourſes and the Perſons viewing the *Guards* (which laſt was not *Evidence*, nor ought to have been given in *Evidence*) might be a *Matter* to try each others Judgments, as well as an *Evidence* of a thing deſign'd: and if it be capable of two Interpretations, the Law hath ſaid, it ſhall be taken in *mitiore ſenſu*, in favour of *Life*; that diſtinction was taken by the Chief Juſtice in *Plague*'s Caſe, the day after this Tryal, where the Evidence againſt him was a Diſcourſe about taking the Tower, as high a Crime as ſeizing

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the Guards; and upon that *Blague* was acquitted. It is true *Rumſey* ſaid it was in order to be put in practice, when the Riſing ſhould be in the Country, but that he did not ſay at firſt; but was afterwards led to it by queſtions; nor did he ſpeak it as a thing at that or at any other time determin'd, but as his own ſurmiſe or gueſs, becauſe he knew of an intended Riſing. Yet how fooliſhly did he contradict himſelf? for ſays *Rumſey* it was to have been put in practice, if the intended Riſing had gone on, and yet at the ſame Meeting he had ſaid before, the Riſing was put off: how contradictory therefore is it to ſay they made Preparations for a thing they had laid aſide before? And it is plain *Sheppard* ſpeaks of the ſame time; for both agree, *Rumſey* was at that Meeting, tho they do not agree how ſoon he came: beſides, how could *Sheppard* ſpeak poſitively of the Diſcourſe, or of the Deſign of it, when he owns he did not hear all their Diſcourſe, and gives a very good Reaſon for it? for he ſaid he went ſeveral times down to fetch Wine, Sugar and Nutmeg, and did not know what was ſaid in his Abſence: he ſaid he heard nothing about a Riſing, nor heard any further diſcourſe; but on recollection, he heard ſomething about a Declaration of Grievances in order to a Riſing, as he ſuppos'd; the Particulars he could not tell. Now what ſort of Evidence was that? In all civil matters, a Witneſs ſhall not be permitted to give Evidence of the Content of a Deed or Writing without producing the Deed or Writing it ſelf, or a true Copy of it, and upon very good Reaſon? for he may make an untrue Conſtruction of it. I remember a Witneſs who ſwore to the Content of a Deed of Intail, and being ask'd whether he knew a Deed of Intail, and by what he knew the Deed he ſpoke of to be a Deed of Intail, anſwer'd he knew a tailed Deed very well, and he knew the Deed to be a tailed Deed, becauſe it had a Tail half as long as his Arm, meaning the Label of the Deed. And if this be the Practice and the Reaſon of the Practice in civil Matters, ſhew me any Authority or Reaſon any thing ſhould be permitted to be given in Evidence in Treaſon, which is not permitted to be given in Evidence in the Tryal of any civil Matter.

If you ſay, as Juſtice *Levins* ſaid in a like Caſe in *Colledge*'s Tryal, that it would be the difficulteſt thing in the World to prove Treaſon againſt a Man, if the Law were not ſo, and the King would in no ſort be ſafe; on the other hand I ſay as *Colledge* there ſaid, if the Law ſhould be ſo, no private Perſon is ſafe: and if there be Miſchief of either hand, the Law is and muſt be Judg, which hath taken care (tho to no purpoſe, becauſe it hath not been obſerv'd) that there ſhall be a ſtricter Proof in Treaſon than in any civil Matter, or in any other Crime: and how the Judges came to permit that looſe Evidence in Treaſon to be given, which of late years they have done, no juſt or honeſt Account can be given.

The laſt material Witneſs againſt my Lord *Ruſſel* was my Lord *Howard* (as for *Atterbury*'s Evidence, it ought not to have been permitted to be given, as ſhall be ſhewn, nor was it material) to no part of whoſe Evidence any Credit ought to be given, even by his own Confeſſion: he was ſurely in the right, when he ſaid that the Religion of an Oath is not ty'd to a Place; and I'll add, not to a Form, but receives its Obligation from the Appeal therein made to God; and therefore if he ſaid (tho I own he was not bound to ſay it) to the Earl of *Bedford*, Mr. *Howard* and Dr. *Burnet*, what was teſtify'd againſt him, he ought not to be believ'd in any part of his Evidence. Did he ſay true to my Lord *Bedford*, when unſent for and unask'd (for ought appears after my Lord *Ruſſel* was clapt into the Tower) that ſure his Son could never be in any ſuch Plot as that, or ſuſpected for it, and that he knew nothing againſt him, or any body elſe, of ſuch a barbarous Deſign; and yet he knew if he ſwore true that my Lord *Ruſſel* was guilty of ſuch a barbarous Deſign, that nothing but the Lord *Howard*'s Duty to God, the King and the Country, could prevail with him to give it in Evidence againſt a Perſon for whom he had ſo great an Affection as he had for my Lord *Ruſſel*. How was it conſiſtent with the truth of his Evidence what he ſaid to Mr. *Howard*, that he knew nothing of any Man's being concern'd in that buſineſs, and particularly of my Lord *Ruſſel*, whom he highly commended, and ſaid he thought the Lord *Ruſſel* unjuſtly ſuffer'd; or with what he ſaid to Dr. *Burnet* with Hands and Eyes lift up to Heaven, which is as much an Appeal to God as may be, that he knew nothing of any Plot, nor believ'd any? It was an idle Evaſion to ſay, when he ſpoke of my Lord *Ruſſel*, he meant my Lord *Ruſſel* was not guilty of the Deſign of murdering the King (for which that Man, as he ſaid, was committed, meaning *Walcot*, the Lord *Ruſſel*, or any other Perſon) for he is ſtill at liberty to explain himſelf, and I am apt to think they were all committed by Warrants of the ſame Form. I know not how dextrous he is at paring an Apple, but he muſt be an excellent *Logician* that can reconcile the truth of his Evidence and Sayings. The truth is, a Man that has thoſe Niceties in his Head ought to have no Credit; for no Man knows whether he underſtands what he ſays aright, and I am apt to think his Lordſhip could ſhew, that he did not intend what he ſaid at my Lord *Ruſſel*'s Tryal in the Senſe it was underſtood by the Court or Jury. To ſay, that he was to outface the thing for himſelf and his Party, was as vain (for beſides that I think he was of no Party, becauſe, as my Lord *Ruſſel* ſaid, he had the luck to be truſted by none) Where was the Senſe of making thoſe Proteſtations to Perſons who could do him no good, and would do him no harm, both which my Lord *Pemberton* could; and therefore 'twas not alike? It is true, the Attorny General commends the Lord *Howard* as a Perſon of great Credit amongſt the Party, and inſinuates the Lord *Gray* was left out of the Cabal for his Immorality, and the Lord *Howard* was taken in his place. But to paſs from the General of his Evidence to the Particulars of it, for about two leaves in the Print of it; it is a diſcourſe between my Lord *Shaftsbury* and *him*, wherein he makes my Lord *Shaftsbury* have a wondrous Confidence in him, and diſcovers all the Deſign to him, and what number of Men he had at Command; but who they were, or what they were, was never yet diſcover'd, and yet the Lord *Howard* had not at that time been concern'd in the Matter, nor did then aſſent: he very prudently was reſolv'd to ſee whether it was likely to take effect or not before he would enter on it. It was indeed a Matter of great Wonder

to thoſe who knew my Lord *Shaftsbury*, and knew what Opinion he had of the Lord *Howard* from the time he diſcover'd that the Lord *Howard* frequented the Dutcheſs of *Portſmouth*, which was before *Fitzharris* his Tryal (tho after that Tryal the Matter was publickly own'd, which was before ſuſpected by moſt known to the Lord *Shaftsbury*) that he ſhould ſo readily truſt the Lord *Howard* with the ſecret, who was unconcern'd in the management before, as he ſays himſelf, and yet ſecreted himſelf from the Duke of *Monmouth* and my Lord *Ruſſel*, who were equally guilty, if what was ſworn was true. I cannot but obſerve that in all the time of the Lord *Shaftsbury*, the Lord *Howard* was no otherwiſe concern'd in the pretended Deſign, but in raiſing Difficulties, and being in great fear leſt there ſhould be a Riſing or an Attempt upon the King's Perſon: and if he ſaid true, he was the Man that put off the intended Riſings, and likewiſe the intended Deſign on the King's Perſon, inſomuch that I think he was ſo far from ſtanding in need of a Pardon for Treaſon, that he deſerv'd a conſiderable Reward, if it were for nothing elſe than for his fearing the Deſign was diſcover'd by the *Proclamation* againſt Bonefires, which, as he ſaid, put off the Riſing intended to be the 17*th* of *November*; and yet he and others being afraid, the middle of *January* they erected themſelves into a Cabal of ſix Perſons, of which there is but one Perſon in all his Narrative he pretends to have ſpoken to about that Matter before, which is the Duke of *Monmouth*, and but one more he pretends even by hearſay to be concern'd in it before, which is my Lord *Ruſſel*. How improbable therefore was it, that thoſe ſix Perſons ſhould, as it were on ſight, put themſelves upon ſuch a dangerous Deſign, eſpecially conſidering the Reaſon he gives for it, which was their Fears, that what had been tranſacted was, or might be diſcover'd? This likewiſe is obſervable, that from the 30*th* of *September*, the time the Sheriffs entred upon their Office, to the 17*th* of *November* following, he is very exact as to the time of each Matter, when there was no Perſon could contradict him; for my Lord *Shaftsbury* was dead, *Walcot* was convicted, and the Duke of *Monmouth* was gone, who are all the Perſons mention'd to be concern'd in that time: yet when he comes to ſpeak of the Matter in which my Lord *Ruſſel* was concern'd, then he ſays it was about the middle of *January*, about ten days after, about ſix weeks after, about three weeks and five weeks; for had he been preciſe in the times, he might have been diſprov'd in the Meetings he gave Evidence of: and it is much his Memory was ſo very good as to the former times, to be ſo very preciſe in them as he was, and ſo very defective in the latter times; and yet thoſe times do not make up the ſpace between the middle of *January*, and the time of the Tryal by many weeks, unleſs you will give large Allowances to the word *about*; an Exception which was taken to *Mowbray*'s Evidence, tho he rectify'd it by his Account in his *Almanack*; but it would not be admitted, tho *Colledge* very ſenſibly deſir'd of the Court for Juſtice ſake to look on the *Almanack*, to ſee whether it was newly writ, as if done for that purpoſe.

Beſides the Improbability, if ſuch a thing was in hand, as the Lord *Howard* pretended, for him to run into the Country, and then to the *Bath*, when the Matter was juſt come to a *Criſis* as it were, ſhews him, if he ſwore true, rather a Madman than a Traitor.

But the Uſage of the King's Council and the Court toward the Priſoner was very unjuſt and unfair; they permitted the Lord *Howard* to go on with a long Story of him and my Lord *Shaftsbury*, at which when my Lord *Ruſſel* took Exceptions, the *Chief Juſtice* it is true ſaid it was no Evidence; yet the *Attorny General* bidding him go on in the Method of time, he went on where he left off, intermixing Stories of Deſigns and of Attempts by other Perſons upon the King's Perſon to exaſperate the Jury, as my Lord *Ruſſel* ſaid rightly againſt him; a thing which no Council durſt have done, and no Court would have ſuffer'd in any other Caſe, nor even in that would the Court or Council ſuffer it for the Priſoner. How was my Lord *Angleſey* checkt when he began to tell what my Lady *Chaworth* ſaid, and Mr. *Edward Howard* when he did not ſpeak of his own Knowledge? How unjuſt was it for the King's Council to repeat all the Evidence the Lord *Howard* gave, when they ſum'd it up, even that which the Court told them before was not *Evidence*! How unjuſt was the inſinuating of the Death of my Lord of *Eſſex*, as Evidence againſt my Lord *Ruſſel*! And why did not the Court in ſumming up the Evidence take notice of the Liberty the *Witneſſes* and *Council* had taken, and have told them what was not *Evidence*? No other Reaſon can be given than what *Colledge* ſaid at his Tryal upon his Obſervation of *Fitzharris*'s buſineſs and his own, That the Matter was not to ſtop at him.

Remarks on Colonel Sidney's *Tryal.*

THE Lord *Ruſſel* being executed, and the ſame day, what was called his Speech being publiſhed, than which nothing in Print was ſo eagerly accepted or ſought after, which ſhewed the Inclination of the People, there was ſome reſpite for quieting the Minds of the People; but it was not to ſtop there, as *Colledge* ſaid, and therefore Colonel *Sidney* (who was talk'd to Death under the Notion of a Commonwealthsman) was the 17th of *November*, 1683. brought to *Weſtminſter* to be arraign'd on an Indictment of High-Treaſon. The Indictment at the time he came to the Hall, was ſo far from being found by the Grand Jury, that it was

was not ſo much as preſented to them; but the King's Council, who had packt the Jury, knew well enough that it would be accepted, that is, found upon ſight by the Jury, without any Conſideration, which was accordingly done, and Colonel *Sidney* thereupon arraign'd. The Indictment was for deſigning to depoſe the King, and to perſwade the King's Subjects to rebel; and that he did write a certain Libel wherein it was contain'd, that he (meaning King *Charles* the Second) is ſubject to the Law of God as he is a Man, to the People who made him ſuch, as a King, *&c.* To which Indictment he would have put in ſome Exceptions, expreſt in a Parchment in his Hand, but was told by the Court, he muſt either plead or demur, and upon no other Terms Exceptions could or ought to be admitted; after which he pleaded Not guilty.

The 21ſt of *November* he was try'd, at which time he inſiſted to have a Copy of his Indictment, as he had done when he was arraign'd; but was both times denied. The firſt Witneſs againſt the Priſoner was Mr. *Weſt*, againſt whom Colonel *Sidney* objected, becauſe he was not pardon'd; but it was anſwer'd by the Court, that he was a good Witneſs in my Lord *Ruſſel*'s Tryal, and therefore ſhould be in that. Then Colonel *Sidney* deſired Mr. *Weſt* might ſpeak nothing but what he knew of Colonel *Sidney*, but was anſwer'd by the Court, he might give Evidence of a Plot in general, tho' Colonel *Sidney* was not concern'd in it, and it was call'd Sir *William Jones*'s Law. Then Mr. *Weſt* went on, and gave Evidence of what Colonel *Rumſey*, Mr. *Nelthorp*, and Mr. *Ferguſon* told him of Colonel *Sidney*, but of his own Knowledge he could not ſay any thing of the Priſoner. *Rumſey* give a like Evidence he had done an my Lord *Ruſſel*'s Tryal, with an Addition of what Mr. *Weſt* and Mr. *Goodenough* told him. *Keeling* gave Evidence of what *Goodenough* told him, all which the Court agreed was no Evidence againſt the Priſoner. Then the Lord *Howard* gave the like Evidence from the middle of *January* to that time, as he had done in the Lord *Ruſſel*'s Tryal, ſaving that he ſaid the Earl of *Salisbury* was brought into the Cabal, who was not mention'd before, and ſave that he ſaid the meeting at my Lord *Ruſſel*'s was about a Fortnight or three Weeks after the meeting at Mr. *Hamden*'s; whereas in my Lord *Ruſſel*'s Tryal, he ſays it was about ten days after the meeting at Mr. *Hamden*'s Houſe: and here he makes two notable Speeches for Mr. *Hamden* at the opening of the Conſult, both which he had forgotten at my Lord *Ruſſel*'s Tryal, nor could remember at Mr. *Hamden*'s Tryal, tho' in the laſt he was led by a great many Queſtions to put him in mind of them. After his Evidence given, Colonel *Sidney* was ask'd whether he would ask the Witneſs any Queſtions, who anſwer'd, he had no Queſtions to ask him; whereupon the Attorny General ſaid ſilence——You know the Proverb.

The Record of the Lord *Ruſſel*'s Conviction and Attainder was given in Evidence. Sir *Andrew Foſter* ſwore Sir *John Cockram* and the two *Campbells* came to *London*. Sir *Philip Floyd* proved the ſeizing of ſome Papers in the Priſoner's Houſe, and he did believe the Papers ſhewn in Court to be ſome of them. *Sheppard*, *Cary*, and *Cook* ſwore the Writing produced was like the Priſoner's Hand-writing; the Attorny General deſired ſome part of the Writing ſhould be read; the Priſoner deſired all of it might be read, but was anſwer'd by the Court, that the Attorny muſt have what Part of it he would to be read, and afterwards the Priſoner ſhould have what Part of it he would to be read; but he perſiſted to deſire all of it ſhould be read; then the Writing was read, (which was plainly an anſwer to a Book, but what Book was not mention'd) in which the Right of the People was aſſerted. The Earl of *Angleſey* gave the ſame Evidence for the Priſoner, of the Lord *Howard*'s ſpeaking of my Lord *Ruſſel* and the Plot, as he had done in my Lord *Ruſſel*'s Tryal. The Earl of *Clare* ſaid that the Lord *Howard*, after Colonel *Sidney*'s Impriſonment, ſaid, if he was queſtioned again, he would never plead; the quickeſt Diſpatch was the beſt, he was ſure they would have his Life; and ſpeaking of the Primate of *Armagh*'s Prophecy, he ſaid, the Perſecution was begun, and he believed it would be very ſharp, but hoped it would be ſhort; and ſaid, he thought Colonel *Sidney* as innocent as any Man breathing, gave him great Encomiums, and bemoaned his Misfortune; and as for Colonel *Sidney*'s Papers, he ſaid he was ſure they could make nothing of them. Mr. *Philip Howard* ſaid, the Lord *Howard* ſaid it was a Sham-Plot; Dr. *Burnet* gave the ſame Evidence as he did in my Lord *Ruſſel*'s Tryal: Mr. *Ducas* gave Evidence, that the Lord *Howard* ſaid he knew nothing of Colonel *Sidney*'s being in any Plot. The Lord *Paget* gave Evidence to the ſame purpoſe. Mr. *Edward Howard* gave Evidence to the ſame purpoſe. *Tracy* and *Penwick* gave Evidence to the ſame purpoſe. Mr. *Blake* teſtified, that the Lord *Howard* ſaid he had not his Pardon, and could not aſcribe it to any other reaſon, than that he muſt not have it till the Drudgery of ſwearing was over. Now to review what hath been ſaid, it is ſtrange to ſee what a Progreſs was made in the Reſolutions of Points of Law, to take away a Man's Life; to ſay it in Colonel *Sidney*'s Words, as if the Court and Council thought it their Duty to take away a Man's Life any how. Mr. *Weſt* and ſeveral others are admitted to give Evidence by hearſay againſt the Priſoner, and their Evidence ſummed up and urged as Evidence to the Jury; and the reaſon given for it was, that he was admitted a good Witneſs of a like matter, in the Lord *Ruſſel*'s Tryal, which beſides that it was not true, for it was rejected in that Tryal, as it appears it was in the Print; yet if he had been admitted, of no Authority, as Colonel *Sidney* ſaid, becauſe perhaps he was not excepted to. Of a like ſtamp is the Evidence of the Conviction of the Lord *Ruſſel*, tho' I agree the Lord *Ruſſel*'s Conviction was as good Evidence againſt Colonel *Sidney*, as the Earl of *Eſſex*'s Murder was againſt my Lord *Ruſſel*, and no better. The ſame may be ſaid of *Rumſey*, *Keeling*, *Foſter* and *Atterbury*'s Evidence. Againſt the Lord *Howard*'s Evidence there were the ſame Objections, as in the Lord *Ruſſel*'s Tryal, with the addition of ſeveral other Perſons teſtifying, he ſaid he knew not, nor believed any thing of the matter; and that he could not have his Pardon, till he ſwore others out of their Lives, which in truth was the Senſe of his Expreſſions.

The King's Council indeed had thought of ſomething ſince the Tryal of my Lord *Ruſſel* to palliate the matter of the Lord *Howard*'s ſayings (for they lean'd hard upon his Reputation, and lookt as if he would perjure himſelf at the expence of ſome Perſons Lives, as his Words are in the Lord *Ruſſel*'s Tryal) Would you, ſay they, have had him confeſt the matter to thoſe Perſons to whom he had denied it?

I think there is a difference between confeſſing and denying: Who ask'd him the Queſtion? What did it avail him to deny it to the Perſons teſtifying againſt him? and therefore when he voluntarily ſaid a thing untrue, unasked, not provoked or compelled to do it, and which could do him no good, it was good Evidence of his Untruth, and that no Credit ought to be given to what he ſwore.

As for the laſt part of the Evidence, which was about the Writing, both the Indictment and the Evidence was defective.

As for the Evidence, if the Subject Matter of the Writing had been Evidence of Treaſon, the Indictment ought to have expreſt that he publiſhed it, which the Indictment in this Caſe did not; and upon good reaſon, which was, that the Jury might be put in mind, that the Publiſhing of it was neceſſary to make it known; whereas they very well knew that the Evidence would not, nor did come up to it. This was the firſt Indictment of High-Treaſon, upon which any Man loſt his Life, for writing any thing without publiſhing it; for in *Fitzharris*'s Indictment, he was charged with publiſhing his Libel; and ſo in all other Indictments for Writing, and upon good reaſon: for this being made an overt Act of Treaſon, it muſt be an Evidence of a Deſign to kill or depoſe the King, or the like; and as the Conſequence of what the Writing contain'd, which was that the Power was in the People, *&c.* being in its nature no other, nor urged by the King's Council to any other intent than to corrupt the Subjects minds, could not be Evidence of ſuch matter, unleſs proved he had writ and publiſhed it, whereof the laſt was not pretended to be proved.

That it was neceſſary to be expreſt in the Indictment, and proved at the Tryal, appears by the Reſolution of all the Judges of *England* in *Hugh Pines* Caſe, reported in *Cro. Car. Fol.* 89. at a time when Prerogative run pretty high; wherein beſides the reſolution that no Words charging the King with any perſonal Vice, was Treaſon, there is the Caſe of one *Peacham*, in 33*d* of *Henry* the 8*th*, cited, who was indicted for Treaſon, for Treaſonable Paſſages in a Sermon never preached, nor intended to be preached, but found in writing in his Study; he was found guilty, but never executed; for many Judges at that time were of Opinion it was not Treaſon, as the Book ſays: which I think, according to the Evidence here given, was the expreſs Caſe of Col. *Sidney*, admitting he writ the Book produced, and that the Paſſages in it were Treaſonable.

And as this Indictment was an Original in the particular before mentioned, ſo it was a ſecond of an *Innuendo* Indictment of Treaſon, *Fitzharris* was the firſt. The Proſecution againſt *Car*, as I remember, was an Information, and Judgment arreſted after a Verdict, becauſe it was by *Innuendo*, of which no Precedent could be produc'd; and altho in Actions for Words it was permitted, yet in Criminal Matters being Penal, it was reſolv'd it ought not to be permitted, and certainly much leſs in Treaſon: and as this Indictment was an Original in one part, and a Second in another, the Evidence on it was an Original in another part, which was proving the Book produc'd to be Col. *Sidney*'s Writing, becauſe the Hand was like what ſome of the Witneſſes had ſeen him write; and Evidence never permitted in a criminal Matter before. The Caſe of the Lady *Carre* was well cited by Col. *Sidney*, againſt whom there was an Indictment or Information of Perjury, in which it was reſolv'd that Compariſon of hands was no Evidence in any criminal Proſecution: and it muſt be own'd that at that time, beſides *Keeling* and *Twiſden*, there then ſat in that Court Sir *Wadham Windham*, whom all will own to have been the ſecond beſt Judg which ſat in *Weſtminſter-Hall* ſince the King's Reſtoration: and if it be not Evidence in a Proſecution of Miſdemeanor, much leſs in Treaſon, as Col. *Sidney* ſaid; which Inference, beſides the reaſon of the thing, is backt by the Authority of my Lord *Coke*.

But admitting Col. *Sidney* wrote that Book, and publiſhed it; yet if it were not done with a deſign to ſtir the Subjects up into a Rebellion, but was writ and publiſhed only *diſputandi gratia*, as the import of the Book ſhews plainly it was, it was no more Treaſon than the diſcourſe between *Blague* and Mate *Lee* about taking the Tower was. And ſuppoſe it was wrote with that deſign, yet it not appearing when it was writ, how could a Jury upon their Oaths ſay it was done with a deſign to raiſe Rebellion againſt King *Charles* the Second, when for ought appeared it was writ before he was King or thought of? It might for ought appeared be writ in King *Charles* the Firſt his time, or *Cromwel*'s time, and deſign'd againſt either of them, or any Foreign Prince, and therefore could not be Treaſon againſt King *Charles* the Second.

The Evidence was an Original in this Particulr; alſo it was the firſt time that ever a particular Expreſſion in a Writing was given in Evidence againſt a Man in Treaſon without reading the whole Writing, and for a very good reaſon given by the Jury in *Fitzharris* his Caſe, which was, that there might be ſomething in the Writing not expreſſed in the Indictment, which may explain the Clauſes in the Indictment, ſo that they may bear another conſtruction: and in that Tryal it was agreed, the whole Writing ought to be read, and was read accordingly; and it was the duty of the Court to have ordered it, whether the Priſoner or Jury had deſired it or not, as they are upon their Oaths to do right: but in Col. *Sidney*'s Caſe, when preſſed by him, it was denied; only ſome particular Paſſages he might have read if he would, which he did not accept, upon a very good reaſon which he gave, which was, that he knew not the Paſſages of the Book, or at leaſt he did not remember them, and therefore could not call for them. 'Tis true that Practice in Civil Matters is allowed to ſave time, where the miſchief is not very great: becauſe of a Paſſage in a Deed or Writing material for either Party omitted in reading, the Matter may be brought about again; but in Criminal, much leſs in Capital Proſecutions, they cannot be, unleſs a way can be found to bring a Man to Life again.

Almoſt

Almoſt all the Circumſtances of this Tryal are Originals; the ſumming up of the Evidence againſt him was barbarous, being Invectives and no Conſequences. It was ſaid he was not only guilty of the Practices he was accuſed of, but that he could not have been otherwiſe, becauſe his Principles led him to it; and it might with as good reaſon have been urged, that he not only was become, but was born a Traitor. The laſt Matter remarkable in the Tryal was that of an Overt Act, of which the Court ſaid it was reſolved by all the Judges of *England*, that if I buy a Knife of *J. S.* to kill the King, and one Witneſs prove I bought a Knife, and another prove I bought it for that purpoſe, it is two Witneſſes of an Overt Act within the Statute of *Edward 6th*.

It were fit to know who the Judges were who gave that Reſolution, if it were but for the Authority of the Caſe; for I doubt the reaſon of it will convince no Man: they might as well have reſolved that eating or drinking, or the moſt ordinary Acts of a Man's Life, is an Overt Act of High Treaſon.

The Law hath taken that care for the Evidence of High Treaſon, which it hath not done in any other Caſe, that it muſt be proved by an Overt Act, proved by two Witneſſes. One would think at firſt ſight of the Statute that there ſhould be two Witneſſes to the ſame Fact; but that hath been adjudged otherwiſe, yet ſtill it was reſolved there muſt be two Witneſſes: but if this Reſolution be Law, it is plain there needs but one. Tis true, if a Man does an Act for which he can give no reaſon, as placing a Mine of Powder in a Place the King uſually paſſeth over, or planting a piece of Cannon to ſhoot at a place the King uſually paſſeth by, if he cannot give a credible reaſon why he did it, and another ſwears the purpoſe of the thing, it is two good Witneſſes within the Act.

It hath been ſaid, if a Man be bound to his good behavior, and wears a Sword, it is a breach of the good behaviour; and perhaps heretofore when Swords were not uſually worn but by Soldiers, it might be ſo, becauſe it ſtruck a Terror in other People as much as a Blunderbuſs, or the like unuſual Weapon, or the going armed in a Coat of Mail for any Perſon but a Soldier doth at this day. Yet no Man will ſay that now Swords are uſually worn by all ſorts of People, it is a breach of the good behaviour; and ſo that which heretofore was a Crime, by Cuſtom now is become none. It is therefore the unuſualneſs and the unaccountableneſs of the Circumſtance make it an Evidence, which cannot be aſſigned as a reaſon in the Overt Act mentioned.

The laſt thing I take notice of is, that Col. *Sidney* refuſed to ask the Lord *Howard* any Queſtions, from whence was inferred that he aſſented to the truth of the Matter ſworn: but it is well known, 'tis no Prudence to ask a thorow-pac'd Witneſs a queſtion; in Mr. *Hamden's* Tryal, his Council refuſed ſo to do for that Reaſon.

The next who fell a Sacrifice, according to *Colledge's* Prophecy, was *James Holloway*; he was outlawed and taken beyond Sea; and being induced with promiſes of Life to accuſe himſelf of things (whether Guilty or not) enough to make good an Indictment of High Treaſon againſt him, it was indeed generouſly offered him that his Outlawry ſhould be ſet aſide, and he have the liberty to be tried, and defend himſelf as well as he could: but knowing that what he had ſaid ſince he was taken would be brought in Evidence againſt him, he refuſed his Tryal; and becauſe he would not purchaſe his Pardon at the expence of innocent Mens Blood, by accuſing others, of what he did not know they were guilty (if his dying Speech is to be believed) he was executed.

I ſhould not have mention'd this, but for the ſake of the next Perſon's Caſe, which was Sir *Thomas Armſtrong's*, who was outlawed for High Treaſon; when he was beyond Sea, he was taken and brought to the Kings-Bench-Bar.

Remarks upon the Award of Execution againſt Sir Thomas Armſtrong.

AT Common Law, if a Perſon was beyond Sea when an Outlawry was pronounc'd againſt him, it was an Error in Fact, for which the Outlawry was to be revers'd; and it is an Error in all Outlawrys but for High Treaſon to this day. By the *6th* of *Edward* VI. that Error is taken away in High-Treaſon, but there is a *Proviſo* in that Statute, that if the Perſon outlaw'd ſhall within a Year after the Outlawry pronounc'd, yield himſelf to the Chief Juſtice of the *Kings-Bench*, and offer to traverſe his Indictment, and on his Tryal ſhall be acquitted, he ſhall be diſcharg'd of the Outlawry. Upon the Conſtruction of this Statute, no Judgment was ever given that I knew of; and the reaſon is, no Man outlaw'd was ever deny'd a Tryal till this time, if he was taken within a competent Time. The reaſon of making that Statute was this; Men would commit Treaſon, and preſently fly beyond Sea, and ſtay there till the Witneſſes who ſhould prove the Treaſon were dead; then return, and reverſe the Outlawry for the Error of their being beyond Sea; and the Witneſſes being dead, they were ſafe: and therefore this Statute takes away that Error in part, tho not in the whole, and doth in effect ſay, that the Perſon outlaw'd ſhall not have advantage of that Error, unleſs he comes and takes his Tryal within a competent time, which that Statute limits to a Year after the Outlawry pronounc'd.

This being plainly the Senſe of the Statute, it was Injuſtice to deny the Favour or Right of a Tryal to Sir *Thomas Armſtrong*, which was never deny'd any Perſon before nor ſince, where it

was

was agreed that all the Witneſſes againſt the Perſon accus'd were alive, as in Sir *Thomas Armſtrong's* Caſe they were, barely upon the quibble of the word *render*, which in no Caſe that ever I read was differenc'd from *taken*, but in one Caſe, which is *Smith* and *Aſhes* Caſe in *Cro. Car.* 42. in an Outlawry for Debt againſt Husband and Wife, which will not extend to, or warrant the Judgment in this Caſe: and if there were but a Doubt in the Caſe, as it cannot be deny'd there was, the Outlawry ought to have been wav'd, or at leaſt Council for the Priſoner heard as to the Point.

It was a vain and unjuſt Reaſon (and only tending to incenſe the thing) aſſign'd by the Attorny, That the Priſoner was one who actually engag'd to go, upon the King's haſty coming to Town, to deſtroy him by the way; whereas the Priſoner offer'd to prove his Innocence in that and other Matters of which he was accus'd: and even that Objection againſt him was an Invention of the Attorny's for any thing appears; but then it was reſolv'd to ſtop at nothing, and Succeſs had made them fearleſs. *Fitzharris* and *Colledge* 'twas own'd had hard meaſure, and that their Caſes might be forgotten, their Quarters were buried; but Sir *Thomas Armſtrong's* were expos'd, tho the Proceedings againſt him were equally as unjuſtifiable as in the other two Caſes.

Remarks on the Tryal of Count Conningſmark.

I Think fit to remember in the ſame Reign, tho before this time, one Caſe, to ſhew how the Courts of Juſtice were remiſs or violent, according to the ſubject Matter.

All will agree, that the Murder of Mr. *Thynne* was one of the moſt barbarous and impudent Murders that ever was committed; and of that Murder Count *Conningſmark*, tho he eſcap'd Puniſhment, was the moſt Guilty.

I do not complain that in that Tryal the Chief Juſtice directed the Priſoner the way to make the King's Council ſhew the Cauſe of Challenge againſt the Perſons call'd on the Jury, and challeng'd for the King, without any Reaſon. It was his Duty ſo to do; and he ought to have directed *Fitzharris* the ſame Method, which he did not: but he was blameable that he did not ask the *Lieutenant* and *Polander* what they had to ſay for themſelves, which was always done before and ſince that time, and ought to be, which was an Injuſtice; and therefore two of the Priſoners at the time of their Sentences ſaid, they were never try'd, tho I believe no great Injury to them, becauſe they had little or nothing to have ſaid for themſelves.

But if they had been askt, they would have ſaid as they did before their Tryals to the Juſtice of Peace who committed them, and as they did after their Condemnations, that Count *Conningſmark* put them upon doing what they did, which might have influenc'd the Jury to have found the Count guilty, which was contrary to the Deſign of the Court; and it was for the ſame Reaſon the Chief Juſtice would not permit the Juſtice of Peace to read the Examination of *Stern* and *Borosky*.

I do agree, that what they ſaid before the Juſtice of Peace was not Evidence againſt the Count; I agree that the Count being indicted and try'd as Acceſſory, at the ſame time the Principals were indicted and try'd, the Principals could not be good Witneſſes againſt the Count, becauſe properly a Principal ought to be convicted before the Acceſſory be try'd: and therefore tho for Expedition both are try'd together, yet the Verdict always is and ought to be given againſt the Principal, before that of the Acceſſory.

But I deny what was in that Tryal laid down for Law, that the Acceſſory being in the ſame Indictment with the Principal, muſt be try'd at the ſame time. It is true, the Count deſir'd his Tryal might be put off for two or three days, which the Court knowing what was beſt for the Count deny'd, and not for the above pretended Reaſons; for an Indictment againſt many may be joint, and yet the Tryals may be ſeveral: the truth is, in ſuch Caſes the Indictment is joint and ſeveral.

Suppoſe the Acceſſory, at the Tryals of the Principals, had not been in Cuſtody; will any Perſon ſay, that if afterwards he was taken, he can't be try'd upon that Indictment in which he was join'd with the Principals?

But beſides a hundred Precedents not printed, there is the Caſe of *George Salisbury & al.* in *Plowden Fol.* 100. where it was reſolv'd, that tho an Indictment againſt many is joint, yet the *Venire* may be ſeveral againſt each Perſon, and conſequently the Tryals may be ſeveral; and if ſo, then the times of the Tryals may be ſeveral: but that which is to be complain'd of is, that the Count in the Opinion of all Mankind at that time and ſince was the moſt guilty Man, yet the care taken to puniſh the leſs guilty, as *Sterne* and *Borosky*, was in order to let the moſt guilty eſcape; for I think both *Sterne* and *Borosky* might, and would have been good Witneſſes againſt the Count if the Court would have permitted it: the Count might have been indicted as Acceſſory to *Wratts* only; for the Acceſſory to all the Principals is Acceſſory to every of them ſeverally: and when the Court in their private Conſciences were ſatisfy'd the Count was moſt guilty, they ought to have been cunning, *aſtuti*, as my Ld *Hobart* calls it, to have brought him to Puniſhment. But 'twas ſaid, *Sterne* and *Borosky* being indicted of the ſame Crime with the Count, they could not be good Witneſſes againſt him, which I think is no more Law than Truth: Truth it was not, for the Count was indicted as Acceſſory, the reſt as Principals. But taking it that all were indicted and try'd as Principals for the ſame Fact at the ſame time, why is not the Evidence of the one good againſt the other?

First,

Firſt, I think there is no expreſs Reſolution for that Point of Law, but a late Rule given at *Kingſton* Aſſizes upon the Tryal of a Maid and one *Saterwaite* for burning of an Houſe; and therefore there is a liberty to examine by Reaſon how the Law is. I agree, if a Man is indicted and try'd for killing another, he ſhall not be admitted to ſay, *B.* did it by himſelf; but I think he may be a good Witneſs to prove that he and *B.* did it, that is to ſay, he ſhall not give any Evidence againſt another, which tends to acquit himſelf as well as accuſe another; and I think he may give Evidence which accuſes another of the ſame Crime whereof he is indicted, if it doth not tend to acquit himſelf.

For it is agreed on all hands, that being guilty of the ſame Crime, doth not diſable a Witneſs; for then *Rumſey* and ſeveral Perſons in the Lord *Ruſſel's Plot*, as it was call'd, had not been good Witneſſes. In the next place, the Circumſtances of an Indictment againſt the Witneſſes for the ſame thing he teſtifies againſt another, do not diſable him; *Widdrington* was indicted for the ſame things, of which he gave Evidence againſt ſeveral others as his Complices in Robberies. Nay, the Law hath given ſomewhat more credit to the Evidence of a Perſon indicted, as a Witneſs of the ſame things againſt others, than it does to a Perſon not indicted; as in the Caſe of an Approver, which, as *Stamford* ſays, was a Perſon in Priſon (not at large) for the Fact for which he was indicted, arraign'd upon an Indictment, or an Appeal of Felony, who before a Coroner aſſign'd by the Court, confeſſes himſelf guilty of the Felony of which he is indicted, and not of any other, and confeſſes other Perſons naming them as Coadjutors with him in committing the Crime of which he is indicted, and not of any other Crime; ſo much Credit ſhall be given to that Confeſſion, that Proceſs ſhall be made out againſt the Perſon peach'd, who, if taken, ſhall be arraign'd on that Approvement, as if an Indictment by a Grand Jury had been found againſt him: and if the Law gives ſo much Credit to an Approver, I think no Perſon can ſhew me a Reaſon why a Perſon indicted is not a good Witneſs againſt another for the ſame Crime.

It is true, *Stamford* ſays, if a King gives an Approver a Pardon, he is a good Witneſs; which implies, that otherwiſe he is not: But it muſt be conſider'd, that the reaſon of that is, that an Approver being indicted, as he always is, and confeſſing the Indictment, is convicted. and a Perſon convicted of Felony cannot be a Witneſs till pardon'd. But it will be no Argument why *Sterne* or *Borosky* had not been good Witneſſes againſt the Count before they were convicted; and it was a like Piece of Juſtice, that whereas the Count was the moſt guilty, he was acquitted.

Wrats being the next greateſt Offender, was honourably interr'd. and *Sterne* and the *Polander*, who were the leaſt Offenders in that Matter, were hang'd in Chains.

It was ſomewhat like the *New England* Law, remember'd by *Hudibraſs*, of hanging an uſeleſs innocent *Weaver* for an uſeful guilty *Cobler*.

Remarks upon Mr. Corniſh's *Tryal.*

THERE yet remain two Perſons Proſecutions to ſpeak of; the one is Mr. *Corniſh*, who was taken the —— of *October* 1685. and was arraign'd on an Indictment of High-Treaſon the Monday after, for conſpiring to kill the late King *Charles* the Second; and knowing *James* Duke of *Monmouth*, *William Ruſſel*, Eſq; and Sir *Thomas Armſtrong* to be Rebels and Traitors, promis'd to be aſſiſting to them in their Treaſons: To which he pleaded Not Guilty. He deſir'd to put off his Tryal, becauſe he had no notice till the Saturday before at twelve a Clock, and he could get no Friend to come to him till eight a Clock at Night, and then he was permitted to ſpeak with no body but in the preſence of the Goaler; he had been allow'd no Pen, Ink, or Paper. He was told by the Court he ought not to have it, without leave given on a Petition prefer'd by him, and that he was taken Tueſday before, which to that time was almoſt a Week. He ſaid his Children had petition'd the King the Night before to put off his Tryal, and it was refer'd to the Judges; he did not know whether he was committed for High-Treaſon againſt the preſent, or the former King, and he had a material Witneſs an hundred and forty Miles off; but was told by the Court, they had no Power to put off his Tryal. It is true, they ſaid the Lord *Ruſſels* Tryal was put off till the Afternoon (which was true) but that was a Favour which could not be challeng'd by another Perſon as a Right. He complain'd he had not a Copy of the Pannel, but was anſwer'd it was not his Right to have it. Then the Attorny ſaid, he had not deſerv'd ſo well of the Government as to have his Tryal delay'd, and therefore he was preſently try'd.

Rumſey ſwore, that about the latter end of *October*, or beginning of *November*, the Earl of *Shaftsbury* deſir'd him to go to Mr. *Sheppard's* Houſe, where was a Meeting of the Duke of *Monmouth*, Lord *Ruſſel*, Lord *Gray*, Sir *Thomas Armſtrong*, Mr. *Ferguſon*, and Mr. *Sheppard*; he came late, and they were juſt on going away; he deliver'd his Meſſage, and they told him that Mr. *Trenchard* had diſappointed them: he had not been there above a quarter of an hour, but Mr. *Sheppard* was call'd down, and brought up Mr. *Corniſh*, and told them Mr. *Corniſh* was come, who came into the Room, and excus'd his not coming ſooner, and that he could not ſtay, for he was to meet about the Charter; whereupon Mr *Ferguſon* open'd his Boſom, and under his Stomacher pull'd out a Paper: they told Mr. *Corniſh* they had had it read, and deſir'd to read it to him: Mr. *Ferguſon* read it, Mr. *Sheppard* held the Candle while it was reading, and afterwards they ask'd Mr. *Corniſh* how he lik'd it; who ſaid, he lik'd it very well: he remember'd two Points in it very well, the one was for Liberty of Conſcience,

ſcience, the other was, that all who would aſſiſt in that Inſurrection, who had Church or Kings-Lands in the late War, ſhould have them reſtor'd to them. He did not hear all the Paper, and obſerv'd only theſe two Points, it was a Declaration on a Riſing, and when the Riſing was to have been, it was to have been diſperſed abroad; there was a Riſing intended at that time, and Mr. *Corniſh* ſaid, he lik'd the Declaration, and what poor Intereſt he had he would join with it. He had great dealings with Mr. *Corniſh*, and Mr. *Corniſh* was a very honeſt Man, it was out of Compaſſion he had not accus'd Mr. *Corniſh* before.

Mr. *Goodenough* ſaid there was a Deſign to riſe in *London*, and for that Purpoſe to divide the City into twenty parts, and to raiſe five hundred Men out of each part, to take the *Tower*, and to drive the *Guards* out of Town. Before that was agreed on, he being by chance at Mr. *Corniſh*'s Houſe, ſaid, the Law will not defend us; ſome other way was to be thought on. Mr. *Corniſh* ſaid, he wondred the City was ſo unready, and the Country ſo ready: Mr. *Goodenough* reply'd, there is ſomething thought of to be done here, but in the firſt place the *Tower* muſt be ſeiz'd, where the Magazine is; Mr. *Corniſh* paus'd a little, and ſaid, I will do what good I can, or what I can, or to that purpoſe, he ſaid.

He afterwards met Mr. *Corniſh* on the *Exchange*, who ask'd him how Affairs went, and this was in *Eaſter Term* 1683. He had ſome Matters with Mr. *Corniſh* about managing the Riot, which was brought againſt him, Mr. *Corniſh*, and others: He came to Mr. *Corniſh*'s Houſe about the buſineſs of the Riot, and no Perſon was by at the diſcourſe. Mr. *Gosfright* teſtify'd for Mr. *Corniſh*, that he oppos'd Mr. *Goodenough*'s being Under-Sheriff, and ſaid he would not truſt an Hair of his Head with him, he was an ill *Man*, obnoxious to the Government, and had done ill things, and he would not truſt his Eſtate and Reputation in the Hands of ſuch an Under-Sheriff; and he believ'd Mr. *Goodenough* and Mr. *Corniſh* were never reconcil'd. Mr. *Love*, Mr. *Jekil* and Sir. *William Turner* teſtify'd to the ſame purpoſe; Mr. *Lane* ſpoke out of the printed Tryal of my Lord *Ruſſel*, and ſaid *Rumſey* in that Tryal ſaid he did not hear the Declaration read, for it was read before he came. Dr. *Callamy* ſaid, Mr. *Corniſh* did often come to Church, and receive the Sacrament; Mr. *Sheppard* ſaid he was *ſubpœna'd* by the King, and by Mr. *Corniſh* the Night before; and that Mr. *Corniſh* his Son was with him the Afternoon of the day before, who preſt him to be at the Tryal the next day; that there were Accounts depending between him and Mr. *Corniſh*, whereon there was about one or two hundred Pounds due to Mr. *Corniſh*, and Mr. *Corniſh*'s *Subpœna* was ſerv'd firſt upon him. At one of thoſe Meetings at his Houſe, Mr. *Corniſh* came to ſpeak a few Words with the Duke of *Monmouth* or ſome other, he could not be poſitive in that, it was many years ago; he did not ſtay above half a quarter of an Hour in the Houſe; *Sheppard* came up Stairs, and went out with Mr. *Corniſh*, and there was not one Word read, nor no Paper ſeen while Mr. *Corniſh* was there: he remembered there was a Declaration read, *Ferguſon* pull'd it out of his Shoo: he could not tell whether Mr. *Corniſh* was at his Houſe the Night the Declaration was read, but he was poſitive no Paper was read while Mr. *Corniſh* was there, for Mr. *Corniſh* was not look'd on to be one of the Company: he did not know who Mr. *Corniſh* came to ſpeak with, when he came to his Houſe; Mr. *Corniſh* was but once at his Houſe when the Duke of *Monmouth* was there: he did not remember that Mr. *Corniſh* was in the Company when Mr. *Rumſey* was there; he ſaid, he had attended the Court from eleven a Clock till half an Hour paſt three.

This being the Sum of the Evidence given in the Tryal for and againſt the Priſoner, let us ſee whether thoſe Inferences could be made from it as were made by the Court and Council: and whether on the whole an honeſt Jury, tho but of little underſtanding, could have found him guilty of the Treaſon in the Indictment.

It is agreed on all hands, that a petty Jury may and muſt conſider the Credibility of a Witneſs (tho in the Lord *Shafsbury*'s Caſe it was ſaid a *Grand Jury* ought not ſo to do) and if ſo, ſurely *Rumſey* was not a credible, tho he was not a diſabled Witneſs, no more than a Man who owns himſelf to be a Man of Falſhood, a profligate Wretch, and perjur'd by his own Confeſſion, tho not convicted of it; he had notoriouſly confeſſed himſelf guilty of High-Treaſon, and of being in the Deſign of an intended barbarous Murder; he had ſworn in the Lord *Ruſſel*'s Tryal, he had nam'd all the Perſons at the Meeting he ſpoke of, of which Mr. *Corniſh* was none; and being taxt in this Tryal with it, he excuſes his Perjury with Compaſſion to the Priſoner, which was mean, fooliſh and contradictory: he perjur'd himſelf to ſave the Priſoner, and then ſwore Truth to hang him. He had not preſence of mind enough to excuſe himſelf in the manner a Witneſs in the Lord *Ruſſel*'s Tryal did, that his God, his King and his Country put him unwillingly to act that part: beſides that in the Lord *Ruſſel*'s Tryal, *Rumſey* ſwore he was not at the reading the Declaration, and contradicted *Sheppard*, who ſwore he thought he was there.

But that paſſage was prov'd only by a Witneſs who had read it in the Tryal, which I confeſs in ſtrictneſs of Law is not Evidence; nor if the Witneſs had ſaid, he heard *Rumſey* ſwear ſo at the Lord *Ruſſel*'s Tryal, it had not been Evidence, unleſs a Record of that Tryal had been produc'd in Court, which was not done. But all thoſe things being but mere Circumſtances, ſhew the Injuſtice of ſpeeding his Tryal, and denying him Council: Would not any Council have told him that in ſtrictneſs of Law a Paſſage in a printed Tryal was not Evidence, and was it not eaſy for him to have got a Witneſs to have ſaid that he had heard *Rumſey* ſwear ſo at that Tryal? were not all the Judges who ſat upon him, and all the King's Council who were againſt him, preſent at the Lord *Ruſſel*'s Tryal, and perfectly remembred what *Rumſey* then ſwore as to the pretended Declaration, and might he not have *ſubpœna'd* them to have teſtify'd that Matter? Nay, was it not their Duty to have done it even without a *Subpœna*?

To ſay it was againſt the King, and therefore they could not do it; or they were in the Commiſſion to try him, and therefore they could not do it, is neither Law nor Reaſon. Every Man knows that a Judg in a civil Matter try'd before him, and a Council even againſt his Client, has been enforc't to give Evidence (provided it be not of a Secret communicated to him by his Client) for in that particular a Judg ceaſes to be a Judg, and is a Witneſs; of whoſe Evidence the Jury are the Judges, tho he after re-aſſume

his

his Authority, and is afterwards a Judge of the Juries Verdict.

A Judge may ſue, and muſt be ſued in his Court, but in that Caſe he ceaſes to be a Judge and is a Suitor, tho' he re-aſſumes his Authority in all other Matters: and if it be ſo in civil Matters, let any Man ſhew me a Reaſon why the Law is not ſo in criminal Matters; there is no expreſs Law againſt it, and it will be abſurd in reaſon to ſay the Law is not ſo; for at that rate the King may put any Witneſs, he knows the Priſoner intends to produce for himſelf, into the Commiſſion for trying him, and ſo deprive the Priſoner of the benefit of his Evidence; as in this Caſe *Sheppard*, whoſe Evidence ought to have been of great uſe (as ſhall be ſhewn) tho' it was not of any avail to the Priſoner, might have been put into the Commiſſion to have try'd Mr. *Corniſh*, for he was as much qualify'd for it, as Sir *James Smith* then Lord *Mayor*, or any Judge upon the *Bench*: and if they might have been Witneſſes for the Priſoner, if *ſubpœna'd*, they might have been Witneſſes for him even without asking; and it was a Duty incumbent on them, tho' not as Judges, yet as Chriſtian Men, ſo to be.

Humanity commands the Diſcovery of Truths, which prevent the ſhedding innocent Blood; and Chriſtianity commands a Man to do as he would be done by. I think the Queſtion need not be ask'd what they would have had done, if it had been their Caſe.

The reaſon that all matters of Law are, or ought to be tranſacted publickly, is, That any Perſon, unconcern'd as well as concern'd, may, as *amicus Curiæ*, inform the Court better, if he thinks they are in an Error, that Juſtice may be done: and the reaſon that all Tryals are publick, is, That any Perſon may inform in point of Fact, tho' not *ſubpœna'd*, that truth may be diſcover'd in civil as well as criminal Matters.

There is an Invitation to all Perſons, who can inform the Court concerning the matter to be try'd, to come into the Court, and they ſhall be heard. It is true, if the Judges or any Perſon had teſtify'd what *Rumſey* ſaid at my Lord *Ruſſel*'s Tryal, it had not been Evidence without the Record of the Tryal; and it is as true, that neither the Record, nor a true Copy of it could have been procur'd between Mr. *Corniſh*'s Commitment, if it were on *Friday* (as I have heard it was) tho' the Court ſaid it was on *Tueſday*, much leſs between the notice of his Tryal which was *Saturday-noon*, and the time of his Tryal which was *Monday-morning*.

But then what Juſtice was there in ſpeeding his Tryal, ſo as to deprive him of the Circumſtances of his Defence? for that was but a Circumſtance, and not an eſſential Matter. And what account can be given why the Court, when they were well ſatisfy'd that it was in the Priſoner's power to procure ſuch a Witneſs, and ſuch a Record, did not ſtay till he did it? or if it would be too long in doing, why ſhould they not have put off the Tryal for that time, and given the Priſoner a convenient time to do it?

The firſt in civil Matters hath been frequently done, when a Deed or Witneſs hath been wanting, if it could be done in a convenient time, and a Tryal has been put off before it came on, tho' after it came on they have not done it, becauſe there is no great Miſchief in that, for either Party hath Power to bring it about again; but not ſo in capital Matters, and therefore Juries in capital Matters have been frequently diſcharg'd after ſworn, where the Evidence hath been defective.

It is true, my Lord *Coke* ſaith that a Jury once charg'd with a Priſoner cannot be diſcharg'd but muſt give their Verdict; but it is as true that he ſays ſo in favour of the Priſoner, that when the Evidence againſt him appears defective, he ſhall not be continued a Priſoner till more Evidence can be found, or procur'd againſt him, tho' the Practice of late days hath been quite contrary, *viz.* to diſcharge the Jury where the Evidence againſt the Priſoner hath been defective, but enforce them to give a Verdict where the Priſoner's Defence hath been defective, tho to their Knowledge if he had longer time to do it, he had been able to produce the Witneſſes who could clear him, but by what Law or Reaſon I am to ſeek. Yet I confeſs, if *Rumſey*'s owning his Perjury in the Lord *Ruſſel*'s Tryal, in the very point ſworn againſt the Priſoner, and ſo frivolouſly excuſing it, would not diſcredit him, I know nor that any Record, Witneſs, or Evidence would have avail'd Mr. *Corniſh*.

And add to *Rumſey*'s contradicting himſelf, that *Sheppard*, who never contradicted himſelf, and had been a Witneſs in both Tryals, agrees, that what *Rumſey* had ſworn in my Lord *Ruſſel*'s Tryal as to Mr. *Corniſh*'s not being there, was true.

But admitting *Rumſey* had never perjur'd himſelf, but was of equal Credit with *Sheppard*, yet when they contradicted each other in a point, which carried no probability or improbability with it; in a capital Matter the Jury ought to believe *in favorem vitæ*; for it makes the matter at leaſt doubtful: and therefore the Jury ought to have acquitted the Priſoner, for a reaſon in Law, and which was given in Colonel *Sidney*'s Tryal (tho' ſhewiſhly) by the Court, *viz.* that it is better that twenty Nocents ſhould eſcape than one innocent ſuffer.

But to paſs from the credibility of the Witneſs to the matter of his Evidence, this was the ſecond time that this ſort of Evidence in any Caſe criminal or civil was permitted to be given in Evidence; and there are the ſame Exceptions to it, as are above aſſign'd to the Evidence of *Sheppard*. As to the Declaration in my Lord *Ruſſel*'s Tryal, if a true Copy of part of a Deed or Writing was never yet permitted to be given in Evidence, much leſs hath or ought the purport of part of a Writing be given in Evidence, eſpecially when ſuch a reaſon is given why the Witneſs remembred but part of it, as is given by *Sheppard* in my Lord *Ruſſel*'s Tryal, and by *Rumſey* in this Tryal, *viz.* that he did not hear all the Paper read.

And ſurely *Goodenough* could no way fortify *Rumſey*'s Evidence, being clearly of another matter, and that ſo very uncertain that no heed ought to have been given to it. When *Goodenough* told Mr. *Corniſh* ſomething ought to be done in the City, but in the firſt place the *Tower* ought to be ſeized, to which he anſwer'd he would do what he could, or what good he could, theſe words may as well relate to *Goodenough*'s preſent Diſcourſe, where he complains

that the Law would not defend them tho' innocent, as well as to the ſeizing the *Tower*; and if they ſhould refer to the laſt, yet they may well enough be interpreted, that he would do what he could, or what good he could, to prevent the ſeizing the *Tower*: and if they are capable of two Senſes, they ought to be interpreted in the beſt for the Priſoner.

Beſides, the Words are ſpoken not as a thing deſigned, but as a matter without which all other matters were in vain, and might be meer matter of Diſcourſe, as was that between *Blague* and Mate *Lee* about taking the *Tower*: and if there was ſuch a Deſign on foot, it doth not appear that Mr. *Corniſh* was ever acquainted with it. The ſame may be ſaid as to what he asked *Goodenough*, when he ask'd how Matters went: may not thoſe words well enough be applied to the buſineſs of the Riot, *Goodenough* managed for Mr. *Corniſh* and others? And if what *Goodenough* ſaid was Evidence of a Deſign of ſeizing the *Tower*, that, as well as the Treaſon againſt the Guards, was Treaſon by the Act of the late King, and not by the 25*th* of *Edward* the Third, if it be true Doctrine which was laid down in the Charge to the Earl of *Shaftsbury*'s Grand Jury: and if ſo, he ought to have been proſecuted for it within ſix Months, and indicted within three Months, if the Doctrine in *Colledge*'s Tryal be true; and yet this Deſign, if true, was in *Eaſter* Term 1683. and the Proſecution not till *October* 1685.

There was yet one piece of Evidence urged againſt him, *viz.* of his own Witneſs *Sheppard*, who poſitively teſtify'd for him as to the main, yet in a Circumſtance ſeem'd to teſtify againſt him, which was Mr. *Corniſh*'s being at his Houſe when the Duke of *Monmouth* and the reſt were there, when the Declaration was read; and upon that piece of Evidence, as if it had contradicted what Mr. *Corniſh* ſaid before, there was a mighty Triumph: whereas, the moſt that could have been made of it was, that Mr. *Corniſh* in part of his Defence was guilty of an untruth, and even that was not ſo in Fact; for being charged to have been at *Sheppard*'s the Night the Declaration was read, he anſwered he was never at a Conſult in his Life, he never was at *Sheppard*'s in any Conſult, he never was there with my Lord *Ruſſel*, as he remembred; he had been at *Sheppard*'s ſeveral times, but never liked *Ferguſon* for his Morals, and therefore never liked to be in his Company, and he did not know but that he might enquire for the Duke of *Monmouth* in other Places, and this is all Mr. *Corniſh* ſays to that matter.

Sheppard ſays, Mr. *Corniſh* came into his Houſe at one of the Meetings to ſpeak with the Duke of *Monmouth* or ſome other, he could not be poſitive in that, it was ſo many Years ago, and did not ſtay half a quarter of an hour; he could not ſay it was the Night the Declaration was read; he did not know whether Mr. *Corniſh* came to ſpeak with the Duke of *Monmouth* or not; he could not remember whether Mr. *Corniſh* was there in Company when *Rumſey* was there; there were not above three Perſons there when Mr. *Corniſh* came, which was the Duke of *Monmouth*, Mr. *Ferguſon*, and he could not tell whether the other was the Lord *Ruſſel*, or the Lord *Gray*.

Now it would be hard to find out the Contradiction between Mr. *Corniſh*'s Sayings and *Sheppard*'s Evidence; both agree that Mr. *Corniſh* hath been often at *Sheppard*'s Houſe, and neither denies or affirms that he was or was not there the Night the Declaration was read, for a good reaſon, which was, that Mr. *Corniſh* knew nothing of it, and *Sheppard* knew not which of the Nights he was there: Mr. *Corniſh* ſaid he was not there with my Lord *Ruſſel* as he remembred, and *Sheppard* doth not affirm he was there with the Lord *Ruſſel*; *Sheppard* ſays that he was there when the Duke of *Monmouth* was there, and Mr. *Corniſh* doth not ſay that he was not there with the Duke of *Monmouth*; *Sheppard* ſaid, he ſpoke to the Duke of *Monmouth*, or ſome other Perſon, but he thought it was the Duke of *Monmouth*, which is no direct Affirmation that he ſpoke to the Duke; and Mr. *Corniſh* doth not ſay, he did not ſpeak to the Duke of *Monmouth*. So that if the account of the Tryal, ſet out by the Authority of, and ſigned by *Thomas Jones*, be true, I cannot ſee any manner of Contradiction between Mr. *Corniſh* and *Sheppard*: and therefore, as the Court and King's Council did infer, that *Sheppard*'s Evidence, who poſitively denies the Truth of *Rumſey*'s Evidence, was ſo far from invalidating, that it corroborated *Rumſey*'s Evidence, and cleared the thing which was before ſomewhat dark, beyond all manner of Contradiction, is a piece of effrontery; ſo admitting *Sheppard* had ſaid Mr. *Corniſh* was at his Houſe the night the Declaration was read, and had contradicted Mr *Corniſh*, is it a neceſſary Conſequence, that he heard the Declaration read, and promiſed his aſſiſtance to it? which muſt be the Inference, if it muſt ſupport *Rumſey*'s Evidence.

If it be not a neceſſary Conſequence, but a probable one, that ought not to weigh with a Jury, to convict a Perſon of a capital Crime, eſpecially not of Treaſon. The Statute of *Edward* the Third ſays, probably Convict, that is, ſays my Lord *Coke*, convicted upon direct and manifeſt Proof, not upon probable conjectural Preſumptions, or Inferences, or Strains of Wit: And to ſay truth, when Verdicts have been given on ſuch Evidence, they have been often faulty.

To give ſome Inſtances of many, it is remembred in our time where Perſons were convicted of the Murder of a Perſon abſent, but not dead, barely by Inferences upon the Evidence of fooliſh Words and Actions; but the Judge before whom it was tried, was ſo unſatisfy'd in the Matter, becauſe the Body of the Perſon ſuppoſed to be murdered was not to be found, that he reprieved the Perſons condemned; yet in a Circuit afterwards, a certain unwary Judge, without inquiring into the Reaſons of the Reprieve, ordered Execution, and the Perſons to be hanged in Chains, which was done accordingly, and afterwards, to his Reproach, the Perſons ſuppoſed to be murdered appeared alive.

My Lord *Coke* relates a Story in his Time, of an Uncle who beat his Niece that had an Eſtate, which on her Death would deſcend to him; the Girl was heard to cry, good Uncle do not kill me; after which ſhe run away, and conceal'd herſelf ſome few Miles from *London*: the Girl being miſſing, and the Neighbours remembring the Cry of the Girl, and tacking it to the Probability that the Uncle might be induced, for his Advantage, to murder his Niece, apprehends

him, and he was indicted for it at the Seſſions; and the Judges being unſatisfy'd in the Evidence, by reaſon the Body of the ſuppoſed murdered Girl did not appear, the Uncle ſaying that ſhe was run away, they gave him time to the next Seſſions to find her out, which he being not able to do, thought to defend himſelf by producing another Girl very like his own Niece, which he did accordingly; and being detected, it increaſed the Suſpicion, and by Inferences from all thoſe Circumſtances, he was convicted, and afterwards executed.

Some Years after which the Girl appeared, and claimed her Eſtate: and therefore it is a moſt dangerous and unwarrantable thing for a Jury, in capital Matters, eſpecially in Treaſon, to convict a Perſon upon the Evidence of Probabilities.

As the Evidence in this Caſe againſt the Priſoner was weaker than in any of the precedent Caſes, ſo the uſage of the Priſoner was more rigorous than in any of them: in all the other Caſes, the Priſoners had more Weeks allowed them to prepare for their Tryals, than this Perſon had Days; all the other Perſons, after notice of their Tryal, were permitted to have Friends, nay Council, freely to come to them, and confer with them in private, without the Preſence of a Goaler, which was denied this Perſon; all the others, except Colonel *Sidney*, had ſoft Words given them on their Tryals; but this Perſon was rudely handled.

How often was he ſnub'd and bid hold his Tongue? How often did he beg the Patience of the Court, to hear him and his Witneſſes? and when he was heard, how was all he ſaid ridicul'd? and if he ſaid he was innocent, he was bid remember my Lord *Ruſſel* ſaid ſo to his Death, when he ſaid he was as innocent as any Perſon in the Court, he was told for all his Confidence few believed him. If he ſaid the Matter ſworn againſt him was improbable (which hath been taken for a pretty good Topick for the disbelief of a Matter teſtify'd) how is it ridicul'd by *Improbability, Improbability, Improbability*? If he go to prove he is an honeſt Man, he is told that is all Appearance. If he ſays he employed *Goodenough* about the Riot, he is told that is a Branch of the Plot. If he call Mr. *Goſpright* as a Witneſs for him, the Witneſs is reproached with having helpt the Priſoner in packing Juries; if he call one to prove he received the Sacrament, he is told, that was in order to qualifie himſelf to be a Sheriff, and as ſuch his uſage before, and at the Tryal, ſuch was it afterwards, to order him to be ty'd when he was ſentenc'd, was an Indignity not uſed to Perſons of his Quality, a thing indeed permitted, not commanded to be uſed, on boiſtrous Criminals, who may be ſuſpected to do a ſudden Miſchief, if their Arms were at liberty.

Of like kind was the Reproaching him with the Chearfulneſs of his Countenance at his Condemnation, and that it might be all of a Strain, his Quarters were expoſed, a Severity us'd to none abovementioned, but Sir *Thomas Armſtrong*; and in all theſe Tryals, *Colledge* made the beſt Defence, and perhaps, Circumſtances conſidered, the beſt Defence ever made upon an Indictment of a Capital Matter, and Mr. *Corniſh*'s was the weakeſt, though it ſignified nothing; for I believe that none who reads his Tryal, but will plainly ſee he was ſo beſet, that the Defence he, or any for him could make, would have availed him nothing, and no account can be given for the Proceedings againſt Mr. *Corniſh*, in the above manner, but that ſome of the Judges, whereof three of them on the Bench, had newly come out of the *Weſt*, where they had been ſo fluſht and hardned, that nothing ſeem to them rigorous or cruel, and the reſt ſeemed to vie with them in the Practice.

Remarks on the Tryal of Charles Bateman.

THE laſt Perſon which concluded the Tragedy, was one *Charles Bateman* a Chyrurgeon, his Demerits were, that he had been, or at leaſt was reputed to have been, Chyrurgeon to the Earl of *Shaftsbury*, and one whom his Lordſhip had a Kindneſs for, and therefore according to the Cant of the Time, he was called a factious Fellow; and he had reviv'd the Memory of his Demerits, by attending when *Oates* came from his Whipping, and letting him Blood; whether either of thoſe Circumſtances were true or not, I know not, but they were believed: And therefore the 9th of *December* 1685. he was indicted and try'd for High Treaſon. On his Tryal he ſeemed to be diſtracted, and therefore out of abundance of Charity, the Court appointed his Son to make his Defence for him.

The Witneſſes againſt him were *Keeling*, who only ſpoke of a Deſign in general, without mentioning *Bateman* to be concern'd in it. *Thomas Lee* and *Richard Goodenough* ſwore, at ſeveral times and places, his Diſcourſe to them ſeverally, of ſeizing the *Tower*, *City* and *Savoy*. *Baker* for the Priſoner ſaid, *Lee* in the Year 1683. would have had him inſinuated himſelf into the Priſoners Company, and diſcourſe about State Affairs, and by that he would find a way to make *Baker* a great Man: upon the Evidence the Priſoner was found guilty. Againſt *Goodenough*'s Evidence, there is only this to be ſaid, that he was pardon'd but ſo far only, as to qualifie him to be a Witneſs, though not a very credible one, not only the Guilt ſticking to him, but even the Puniſhment of what he had then lately done, hanging over his Head; and what was ſaid for ſome time, of all the Witneſſes for the King, at that time, and for ſome time before, was true, they hunted like Cormorants with Halters about their Necks, though even that

matter by one of the Kings Council was boaſted to the Jury, as a circumſtance of more credibility; for he aſſured them there was not a Witneſs which he produced had a Pardon, as the Witneſſes in the Popiſh Plot had. 'Tis true, in the Popiſh Plot, upon very good reaſon the Witneſſes having confeſſed what they pretended to know, of matters in which they had an hand, it was not thought proper to uſe them as Witneſſes, though they had uſed them as Informers, till they were pardon'd, leaſt it might happen to be, or at leaſt it would have been ſuſpected, that the terror of the Puniſhment of the Crimes confeſs'd might influence them to ſwear falſly to the jeopardy of other Mens Lives, to ſave their own, which as the Lord *Howard* truly ſaid, was the drudgery of Swearing. But to *Lee*'s Evidence, beſides the Evidence of *Baker* againſt him, that he would have procured *Baker* to have been a Witneſs againſt the Priſoner, and enticed him with the promiſe of making him a great Man, and beſides that it appears in *Rouſe* his Tryal, that *Rouſe* and he were upon the Trepan with each other, to bring each other into the pretence of a Plot, in order to make ſome advantageous diſcovery of it, of which *Lee* got the ſtart of *Rouſe*; the objection which was made to his Evidence, why *Lee* had not accuſed the Priſoner ſooner, there being near three Years between the pretended deſign, and the diſcovery of it, was never ſatisfactorily anſwered. It was a fooliſh ſtory to ſay *Goodenough* could not be had before, and a ſingle Teſtimony in High-Treaſon was not ſufficient; every one knows, that though a ſingle Witneſs is not enough to convict a Man of High-Treaſon, yet a ſingle Perſons Teſtimony is enough to commit a Perſon accuſed, and upon Conviction on the Teſtimony of a ſingle Witneſs, to make him a Priſoner for his life, witneſs Mr. *Hamden* and others, beſides the ſubjecting him to other Corporal puniſhments, inflicted at diſcretion, witneſs Mr. *Johnſon* and *Oates*; and in 1683. when the words were pretended to be ſpoken, *Bateman* had not been ſpared if accuſed; and though it be a good reaſon for the Court to have given, why they did not proceed againſt the Priſoner till that time, becauſe there were not two Witneſſes againſt him, yet it was no reaſon for *Lee*, why he did not accuſe the Priſoner before that time, eſpecially he having been ſeveral times before that time examined, not only of what he knew, but of what Perſons he knew concerned: but to ſay truth, *Lee* in the Tryal did not pretend to anſwer the Objection, but the Court in the manner before endeavoured to anſwer it for him.

The laſt Matter obſervable in this Tryal, was the permitting *Bateman*'s Son to make his Father's Defence, which was an extraordinary unparallel'd favour, it was the firſt and laſt time that, or any thing like it, had been done; the Lord *Ruſſel*'s Lady indeed was permitted to take Notes at the Tryal for her Lord, but he only was permitted to make uſe of them. *Fitzharris* his Wife when ſhe but whiſper'd her Husband, or but told him what Jurors he ſhould challenge, and what not, was ſeverely corrected, and threatned to be thruſt out of Court, for doing it in prejudice of the King. In *Colledge*'s Tryal, he was told that Perſons that adviſ'd a Priſoner in Treaſon, even before a Tryal, were guilty of a high Miſdemeanour; nay, a Sollicitor had been indicted of High-Treaſon for it: and therefore nothing can excuſe the allowing the Priſoner Council in matter of Fact, as was done in this Caſe (it is not material, whether the Son was a Barriſter at Law or not) but the weakneſs of the Priſoner, who to all appearance was mop'd mad.

But the Court by excuſing their Favour upon that account incurred a worſe Cenſure; for nothing is more certain in Law, than that a Perſon who falls mad after a Crime ſuppos'd to be committed, ſhall not be try'd for it; and if he fall mad after Judgment, he ſhall not be executed: tho I do not think the reaſon given for the Law in that Point will maintain it, which is, that the End of Puniſhment is the ſtriking a Terror into others, but the execution of a Madman had not that effect; which is not true, for the Terror to the living is equal, whether the Perſon be mad or in his Senſes; and that is the reaſon of breaking the Perſon executed for Treaſon, and expoſing his Quarters, which is done rather to deter the living, than for puniſhing the dead. But the true reaſon of the Law I think to be this, a Perſon of *non ſana Memoria*, and a Lunatick during his Lunacy, is by an Act of God (for ſo it is call'd, tho the means may be humane, be it violent, as hard Impriſonment, terror of Death, or natural, as Sickneſs) diſabled to make his juſt Defence, there may be Circumſtances lying in his private Knowledg, which would prove his Innocency, of which he can have no advantage, becauſe not known to the Perſons who ſhall take upon them his Defence; and that is the reaſon many civil Actions die with the Perſons againſt whom they lay in their Life-times, and that is the reaſon why in criminal Matters, Perſons by ordinary courſe of Law cannot be convicted after their deaths.

For in all civil Actions there is as much reaſon for the Perſon injur'd, to have ſatisfaction out of the Eſtate of the Perſon who injur'd him, in the hands of his Heir or Executor after his death, as there was to have it out of the Eſtate of the Injurer in his own hands in his Life time: and there is as much reaſon that the Heir or Executor of a Perſon who hath committed a Crime, which by Law would have forfeited his Eſtate, if in his Life-time he had been attainted of the ſame, ſhould forfeit the Eſtates they claim from him, as if he had been attainted in his Life-time, which had prevented the ſaid Eſtates veſting in them. And it hath been ſometimes practis'd, where the Crimes of the Perſons deceas'd have been notorious, and without any doubt; as was the Caſe of ſeveral Perſons mention'd in the Act of Pains and Penalties, which Act had example from many other Acts of Parliament in other Reigns, where the Perſons were dead before Puniſhment overtook them.

And tho of late Years it hath been pretended, that the King's Safety depends upon the ſpeedy Tryal and Execution of a Perſon guilty of High-Treaſon; yet this was never thought ſo heretofore, nor in truth in it ſelf is ſo: for it is plain, in Reaſon as well as Experience, that what is ſaid of Witches is true of all Malefactors when once they are in Cuſtody, their Power of doing Miſchief ceaſes.

The King is therefore no otherwiſe benefited by the deſtruction of his Subjects, than that the Example deters others from committing the like Crimes; and there being ſo many to be made Examples of, beſides thoſe on whom the misfortunes

fortunes of Madneſs fall, it is inconſiſtent with humanity to make Examples of them; it is inconſiſtent with Religion, as being againſt Chriſtian Charity to ſend a great Offender quick, as it is ſtil'd, into another World, when he is not of a capacity to fit himſelf for it. But whatever the reaſon of the Law is, it is plain the Law is ſo; and for remedying it in High-Treaſon, was the 33*d* of *Henry* the Eighth made, whereby it is enacted, That if a Man fall mad after he hath committed High-Treaſon, he ſhall notwithſtanding be try'd in his abſence; and if a man fall mad after he is attainted of High-Treaſon, he ſhall notwithſtanding be executed. Which Statute extending only to High-Treaſon, the Law continu'd, and yet is as it was at Common Law in all other capital Matters; and even that Statute was call'd a cruel and inhumane Law, and therefore liv'd not long, for it was afterwards repeal'd: ſo that the Law as to this Matter when this Man was try'd and executed, was as it was at Common Law; and therefore if he was of *non ſana Memoria*, he ought not to have been try'd, much leſs executed.

I know it will be objected, that if this Matter of *non ſana Memoria* ſhould be permitted, to put off a Tryal or ſtay Execution, all Malefactors will pretend to be ſo: But I ſay there is a great difference between Pretences and Realities, and *ſana* and *non ſana Memoria* hath been often try'd in capital Matters, and the Priſoners have reap'd ſo little benefit by their Pretences, it being always diſcover'd, that we rarely hear of it. In this Caſe the Priſoner might have been try'd as well abſent as preſent, according to that repeal'd Statute, for any advantage he did or could reap by being preſent: and it ſeems very probable the Court thought him diſtemper'd; for if he was of ſane Memory, his Son ought not to have been permitted to make his Father's Defence; if he was diſtemper'd, he ought not to have been try'd, much leſs executed. And this Perſon being the laſt Man, as far as I can remember, or can find by the printed Tryals, who ſuffer'd for the Plot of High-Treaſon firſt ſet on foot by *Fitzharris*, and carry'd on againſt *Colledge*, and the other Perſons herein mention'd; and the Deſign ſtopping here, I think fit to end my *Remarks* on the Proceedings of all Capital Matters with him. But I think it is fit for me to make ſome Apology for the thing, and for my ſelf, for taking on me to cenſure the Opinions and Actions of Perſons whoſe Characters carry'd Authority with them. I confeſs I never thought that either the great Seal or a Garment added to a Man's Senſe, Learning or Honeſty; but he remain'd juſt ſuch as to thoſe Qualities after his preferment as he was before: and as to many of the Perſons reflected on in theſe Remarks, the Cenſure of Col. *Sidney* was true; and for the beſt of them, it is plain they not only vary'd from one another in their Opinions, but even from themſelves in the Judgment of the ſame Caſe, but always tending to the deſtruction of the Perſon try'd for his Life, witneſs the Opinion of the Court in the Challenge of Jurors not having a Freehold and the deſigning to levy War not Treaſon within the Statute of *Ed.* 3: and forty other Matters. And that not only gives a liberty to enquire, but naturally puts one upon the enquiry which of the two Opinions is right; tho it is impoſſible for one not to think meanly of the Perſon, who in ſo great a Concern as a Man's Life, ſhould be ſo raſh as to give his Opinion without Conſideration, or ſo unſteady as to give different Opinions in the ſame Caſe: for if the Truth of a Man who tells Hiſtory backward and forward, is juſtly ſuſpected in point of Truth, the knowledge and ſincerity of a Man, who gives different Opinions in the ſame Caſe, is juſtly ſuſpected in point of Law, which together with the fulſom, but injurious ſtuff vented for Crown-Law, was the firſt Matter which put me on conſidering and writing what I have done.

And for my ſelf, if *Tully* thought it a Reproach to his Son if he did not abound with Philoſophy, having heard *Cratippus* for the ſpace of a whole Year, and that at *Athens*; ſurely one who hath had his Education at one of the three great Schools for ſome Years, and afterwards at the Univerſity, and laſtly twenty five Years conſtant Reſidence in an *Inn* of *Court*, and twenty Years attendance at *Weſtminſter-Hall*, and not diverted by the uſual Employs of a *Solicitor* or *Attorney*, may be allow'd without the imputation of Confidence to give his *Cenſure*, upon Conſideration, on the *extempore* Judgments or Opinions of *Perſons*, tho' of greater Standing and Character than himſelf.

The Tryal of John Hambden, *Gent.* on the 30*th* of *December*, 1 Jac. II. 1685.

THIS Day being appointed for the Tryal of Mr. *Hamden*, after the Judges came to the Court, and the Court was called, the Officer was commanded to proceed to call over the *Jury* whilſt Mr. *Hamden* was bringing down.

Cryer. O Yez, you good Men of the County of *Middleſex*, ſummon'd to appear here this Day, to try the Iſſue which ſhall be between our Sovereign Lord the King, and the Priſoner that ſhall be call'd to the Bar, anſwer to your Names as they ſhall be call'd, every one at the firſt call, upon Pain, and Peril that ſhall fall thereon.

Clerk. Sir *Hugh Middleton* of *Twittenham*, Baronet.

Sir *Richard Dunton* of *Thiſtleworth*, Knt.

Sir

Sir *John Berry* of *Stepney*, Knt.
Sir *Robert Clark* of *Holbourn*, Knt.
Sir *Thomas Roe* of the *Strand*, Knt.
Sir *John Friend* of *Hackney*, Knt.
Sir *Henry Johnſon* of *Blackwall*, Knt.
Richard Morley of *Chelſey*, Eſq;
John Shales of the Pariſh of St. *Martins* in the *Fields*, Eſq;
Robert Foſſet of *Marybone*, Eſq;
Joſias Clark of *Chiſwick*, Eſq;
John Foſter of *Kenſington*, Eſq;
Jeffery Nightingale of *Cripplegate*, Eſq;
William Cleave of the ſame, Eſq;
Charles Hinton of *Covent-Garden*, Eſq;
John Stokes of *Hatton Garden*, Eſq;
Henry Hawly of *Brainford*, Eſq;
Thomas Caſh of *Bow*, Eſq;
Andrew Lawrence of the Pariſh of St. *Martins* in the *Fields*.
Nehemiah Arnold of *Weſtminſter*, Eſq;
Simon Smith of the ſame, Eſq;
William Preſſgrave of the ſame, Eſq;
Nicholas Barter, of the Pariſh of St. *Martins* in the *Fields*, Eſq;
Humphrey Bradſhaw of the *Savoy*, Eſq;
Gilbert Herring of the Pariſh of St. *Martins* in the *Fields*, Eſq;
Walter Bridall of the ſame, Eſq;
Thomas Elton of *Stepney*, Eſq;
Matthew Bateman of *White Chappel*, Eſq;
Thomas Curtis of the Pariſh of St. *Clement Danes*, Eſq;
Peter Lugg of the Pariſh of St. *Giles* in the *Fields*, Eſq;
John Meridale of St. *Giles* in the *Fields*, Gent.
James Supple of the Pariſh of St. *Martins* in the *Fields*, Gent.
Thomas Whitfield of the ſame, Gent.
Richard Cook of the ſame, Gent.
George Clisby of the ſame, Gent.
John Hains of the ſame.
John Leeſon of the ſame.
Richard Bromfield of *Holbourn*, Gent.
Michael Dod of *Clerkenwel*, Gent.
James Fern of the Pariſh of St. *Martins* in the *Fields*, Gent.
Robert Brook of the ſame, Gent.
John Vigures of *Weſtminſter*, Gent.
Edmund Aubrey of the Pariſh of St. *Martins* in the *Fields*, Gent.
John Cannon of the Pariſh of St. *Giles* in the *Fields*, Gent.
John Baily of the ſame.
Thomas Barnes of the ſame.
Francis Edmunds of the ſame.
Robert Longland of the ſame.
Edward Hampſtead of the ſame.
Thomas Hinton of the ſame, Gent.
Joſeph Bliſſet of *White-Chappel*, Gent.
Zechariah Grant of the ſame.
Richard Fitz-Gerrard of the Pariſh of St. *Martin* in the *Fields*.
Benjamin Boltby of St. *Giles* in the *Fields*.
Richard Dorrel of the *Savoy*, Gent.
Anthony Hall of the ſame.
Stephen Phillips of the Pariſh of St. *Martin* in the *Fields*.
William Stevens of the ſame.
John Davis of the ſame.
Richard Hutchinſon of the ſame.
Anthony Nurſe of *Fulham*, Gent.
Robert Moon of the Pariſh of St. *Clement Danes*, Gent.
Samuel Peacock of *Weſtminſter*, Gent.
Richard Boiſe of the ſame.
Samuel Birch of the ſame.
Peter Reeve of the ſame.
Thomas Hutchins of the ſame, Gent.
John Hewlet of *Weſtminſter*, Gent.
John Towers of *Convent-Garden*, Gent.
Richard Aubrey of *White-Chappel*, Gent.
John Wells of *Marybone*, Gent.
William German of St. *Clement Danes*, Gent.
Thomas Harris of *Holbourn*, Gent.
Bar. Parr of *Eaſt Smithfield*, Gent.
John Caſſels of the Pariſh of St. *Martin* in the *Fields*, Gent.
Samuel Biſhop of St. *Clement Danes*, Gent.
William Wheatly of the Pariſh of St. *Giles* in the *Fields*, Gent.
Chriſtopher Chambers of the ſame.
Samuel Brown of the ſame.
Benjamin Dun of the *Savoy*.
Samuel Jewel of the ſame.
Hugh Hammerſhey of the ſame.
Abraham Harriſon of the *Strand*, Gent.
Thomas Nichols of *Pancras*, Gent.
William Dean, of the Pariſh of St. *Martin* in the *Fields*, Gent.
Thomas Parnel of the ſame.
Matthias Cooper of the ſame, Gent.
William Merchant of the ſame, Gent.
Richard Campion of the ſame, Gent.
Simon Smith of *Woodſtreet*, *Weſtminſter*, Gent.
Thomas Green of *Weſtminſter*, Gent.

Clerk. Set *John Hambden* to the Bar.
(Which was done.)
John Hambden hold up thy Hand.
(Which he did.)

Middleſex. 'THE *Jurors* for our Sovereign Lord the King, upon their 'Oaths preſent, that *John Hambden*, late of the 'Pariſh of St. *Giles* in the *Fields*, in the County 'of *Middleſex*, Gent. as a falſe Traytor, againſt 'the moſt Illuſtrious and Excellent Prince, our 'Lord *Charles* the Second; late King of *England*, 'Scotland, France and Ireland, Defender of the 'Faith, thy Natural Lord; the fear of God in 'thy Heart not having, nor the Duty of thy 'Allegiance any ways weighing; but being 'moved and ſeduced by the Inſtigation of the 'Devil, the cordial Love, and true due and na-'tural Obedience, which a true and faithful 'Subject of our ſaid late Lord the King, to-'wards him our ſaid late Lord the King of 'Right, ought to bear, wholly withdrawing; 'and imagining, practiſing, and with thy whole 'Strength intending the Peace and common 'Tranquillity of this Kingdom of *England* to 'diſquiet, moleſt and diſturb, and War and 'Rebellion againſt our ſaid late Lord the King, 'within this his Kingdom of *England* to ſtir 'up, move, and procure, and the Government of 'our ſaid late Lord the King, of this his King-'dom of *England* to ſubvert, change and al-'ter; and our ſaid late Lord the King, of the 'Title, Honour, and Royal Name, of the Im-'perial Crown of this his Kingdom of *Eng-'land* to depoſe and deprive: And him our ſaid 'late Lord the King, to Death, and final De-'ſtruction to bring and put, the 20th Day of 'July, in the Year of the Reign of our ſaid 'late Lord the King, *Charles* the Second of 'England, &c. the 35th, and divers other Days

'and

' and times, as well before as after, at the Pa-
' riſh of St. *Giles* in the *Fields*, in the County of
' *Middleſex*, falſely, maliciouſly, deviliſhly, and
' traitorouſly, with divers other falſe Rebels and
' Traytors unknown, didſt conſpire, compaſs,
' imagine, and intend our ſaid late Lord the
' King, then thy ſupream and natural Lord,
' not only of his Royal State, Title, Power,
' and Government of this his Kingdom of
' *England*, to deprive and caſt down, but alſo
' our ſaid late Lord the King, to kill, and to
' Death, to bring and put, and the ancient
' Government of this Kingdom of *England* to
' change, alter, and wholly to ſubvert; and
' a miſerable Slaughter amongſt the Subjects of
' our ſaid late Lord the King, through his
' whole Kingdom of *England*, to cauſe and pro-
' cure, and Inſurrection and Rebellion, againſt
' our ſaid late Lord the King, within his King-
' dom of *England* to procure, and theſe thy
' wicked, abominable and deviliſh, Treaſons
' and traytorous Conſpiracies, Compaſſings,
' Imaginations and Purpoſes aforeſaid, to ſul-
' fill, perfect and bring to paſs, Thou the ſaid
' *John Hambden* as a falſe Traytor, then and
' there, (to wit) the ſaid 20th Day of *July*, in
' the Year of the Reign of our ſaid late Lord
' the King, 35th aforeſaid, and divers other
' Days and times, as well before as after; at the
' Pariſh of St. *Giles* in the Fields aforeſaid, in
' the ſaid County of *Middleſex*, falſly, unlaw-
' fully, wickedly, deviliſhly and traitorouſly,
' with *James* late Duke of *Monmouth*, and di-
' vers other falſe Traytors unknown: Did aſ-
' ſemble your ſelf, meet together and conſult,
' and conſent to move and procure divers great
' ſums of Money, and a great number of Men
' armed, to War and Rebellion, againſt our
' ſaid late Lord the King, within this King-
' dom of *England*, traytorouſly to levy and
' make againſt the Duty of thy Allegiance, and
' againſt the Peace of our ſaid late Lord the
' King, and againſt our Lord the King that now
' is, their Crown and Dignity, and againſt the
' Form of the Statutes in that Caſe made and
' provided, *&c.*

Mr. *Hambden.* My Lord, I perceive that I am here indicted for a Fact, for which I was indicted above two Years ago, and I was convicted of it, and did ſuffer Impriſonment in Execution upon the Judgment that was given againſt me, and am ſtill under Execution for the Fine that was ſet upon me by way of Puniſhment for that Fact. I think, my Lord, I have as much to ſay in point of Law for my ſelf, as any Priſoner that ever came before your Lordſhip upon ſuch an account, twice tried, twice convicted, and twice puniſhed, for the ſame Fact muſt be very extraordinary, but, my my Lord, I do paſs by all Pleas whatſoever, and caſt my ſelf wholly upon the King's Mercy; that is my Reſolution, my Lord.

L. C. J. Then you muſt plead Guilty or not Guilty. But you ſay you have been tried twice for the ſame Fact, were you ever tried for High-Treaſon before? The very Puniſhment that you alledge to be inflicted upon you for it, is a plain Proof that you were not tried for High-Treaſon, for that is not uſually puniſhed by Fine and Impriſonment.

Mr. *Hambden.* My Lord I only inſinuate that the Fact is the ſame.

L. C. J. You muſt plead Guilty or not Guilty.

Clerk. Are you Guilty or not Guilty of the High-Treaſon, whereof you ſtand indicted, *John Hambden?*

L. C. J. You muſt plead directly; ſay you are Guilty, or you are not Guilty.

Mr. *Hambden.* My Lord, I do plead Guilty to the *Indictment.*

Will your Lordſhip be pleaſed to hear me: My Lord, I do confeſs my offence againſt the King is very great, I am very ſorrowful for it. My Lord, I know the King is the Fountain of Mercy as well as Juſtice, an inexhauſtible Fountain of Mercy, and if I may be ſo happy to obtain your Lordſhips interceſſion to his Majeſty on my behalf; I doubt not but that Grace and Goodneſs which hath been extended to others, may be beſtowed upon me.

L. C. J. Mr. *Hambden*, as the King is the Fountain of Mercy, ſo it comes freely from him. I confeſs as the circumſtances of your Caſe are, you have pleaded the beſt plea to find Mercy, but how far the pleading guilty when there is full Evidence to prove you ſo, may move the King to have Mercy upon you I don't know; you muſt apply your ſelf to the King.

Mr. *Hambden.* I humbly beg your Lordſhip's interceſſion, I know none can do it better than your Lordſhip.

L. C. J. You muſt record the Plea.

Mr. *Hambden.* My Lord, I humbly beg your Lordſhip that you would be pleaſed to repreſent to his Majeſty what my paſt ſufferings have been, and how ſorrowful I am for having offended his Majeſty, and that your Lordſhip would be pleaſed to beg his Majeſties gracious Pardon in my behalf, I humbly beſeech your Lordſhip to do it, and it ſhall be the endeavour of all my Life to behave my ſelf as Dutiful and Loyal Subject as any the King hath.

L. C. J. The King ſhall have an account of what you ſay.

Mr. *Hambden:* My Lord, there is one thing I would humbly beg the Liberty for; there are words in the Indictment concerning the death of the King, my Lord, what conſtruction the Law may put upon ſuch an Action I am ignorant of, but for any direct intention of taking away the Life of the King, no Man does abominate and abhor more than I have done.

L. C. J. Mr. *Hambden*, it is but a neceſſary conſtruction that the Law puts upon it, it is a conſtruction confirm'd by woful Experience. We ſee that Rebellion, let the beginning be what it will, never ſtops, unleſs by God's great Mercy and the Juſtice of the King's Cauſe, but it will end in the Death of the King, it hath a natural tendency that way, but however you are underſtood that you had not any thoughts of killing the King, but only to raiſe Rebellion within the Kingdom, which muſt neceſſarily end in the Death of the King.

Mr. *Hambden.* My Lord, no Man doth abhor that more than I do.

L. C. J. You may ask Mr. *Hambden* if he hath any thing to ſay why Sentence of Death ſhould not paſs upon him.

Clerk. John Hambden, hold up thy Hand. Thou ſtandeſt Convicted of High Treaſon by your own Confeſſion, what can you ſay for your ſelf why Sentence ſhould not paſs upon you?

Mr. *Hambden.* My Lord, I humbly caſt my ſelf upon the Kings Mercy. My Lord, I would humbly

humbly move your Lordſhip in one thing, that I may have the liberty of my Friends and Relations to come to me in Priſon as they did before.

L. C. J. You muſt apply your ſelf to the King.

Mr. *Hambden.* Will your Lordſhip be pleaſed to order it, my Lord; I had two or three of my own Relations the King was pleaſed to grant to come to me.

L. C. J. It is eaſie for you Mr. *Hambden*, to make your Application to the King, it will be better for you: I direct it as the better way to apply your ſelf to the King.

Mr. *Hambden.* I only beg it my Lord.

L. C. J. In the preſence of a Keeper I don't know why his Relations ſhould not come to him, but I think it had been better to apply your ſelf to the King.

Mr. *Hambden.* My Lord, I have two or three near Relations allowed to be without the preſence of a Keeper.

L. C. J. Mr. *Hambden*, that we cannot do, that was an extraordinary favour, and as that came from the King, ſo you muſt apply your ſelf to the King again, but in the preſence of a Keeper we grant it, we cannot grant it without a Keeper, if you will apply your ſelf to the King for that you may.

Cryer. Gentlemen of *Middleſex*, that have been Summon'd upon the Kings Service this Day, the Court diſcharges you.

Then after the Judges did withdraw, the Clerk was commanded to proceed.

Clerk. John Hambden, hold up thy Hand. You ſtand Convicted of High Treaſon by your own Confeſſion, what can you ſay for your ſelf, why the Court ſhould not pronounce Sentence upon you?

Mr. *Hambden.* I only plead the Kings Mercy. I rely upon no other thing.

Cryer. Oyez, all manner of Perſons are commanded to keep ſilence whilſt Judgment is giving upon pain of impriſonment.

Mr. *Recorder.* Mr. *Hambden*, you have been Indicted for High Treaſon, and the Indictment hath been read to you, and whereupon according as the Law doth require, it hath been demanded of you, that you ſhould plead to it, and thereupon you have pleaded Guilty to this Indictment, which is recorded accordingly; and therefore I need not ſay any thing for to let you know the heinouſneſs of this Crime, for I perceive you are ſenſible enough of it your ſelf, and I do verily believe you have taken a very wiſe and diſcreet Courſe to confeſs the truth, for you were brought hither to be Tryed for this Crime in caſe you had pleaded not Guilty to this Indictment, which now you have prevented by this your candid Confeſſion. However it is the Duty of my Place to pronounce the Judgment that the Law hath provided for ſuch Crimes as theſe are, and that is this,

You muſt be had to the place from whence you came, and from thence you muſt be drawn to the place of Execution, and there you are to be hang'd by the Neck, and whilſt you are alive you muſt be cut down, and your Entrails be taken out, and Burnt before you, and your Head muſt be cut off, and your Body quartered, and your Head and your Quarters to be diſpoſed of at the Kings pleaſure, and the Lord have mercy upon your Soul.

Mr. *Hambden.* My Lord, I hope I ſhall have your Lordſhips interceſſion with his Majeſty.

Mr. *Recorder.* I don't doubt, Mr. *Hambden*, but you have uſed the beſt means to obtain ſo great a Favour, and as it is the Duty of my place to give an account of this to His Majeſty, ſo I ſhall truly and faithfully repreſent it with the advantages your Demeanour this day hath deſerv'd.

Mr. *Hambden.* My Lord, I humbly beg the Favour that my Wife may come to me without the preſence of a Keeper.

Mr *Recorder.* Mr. *Hambden*, 'tis too late for us to give any directions in this matter, becauſe you ask'd this while the Judges were here, but I don't doubt upon your Application to His Majeſty, but you will have all things that you can reaſonably deſire, if you pleaſe to apply your ſelf to him for this and what elſe you ſhall be adviſed may be fitting and convenient for you to beg.

The Tryal of Henry *Lord* Delamere.

1 Jac. 2. 1685.

Cl. of Cr. SErgeant at Arms, Make Proclamation.

Serj. at Arms. Oyez, O yez, Oyez. My Lord High Steward of *England* his Grace doth ſtraightly charge and command all manner of perſons to keep ſilence, and to give ear to the King's Majeſty's Commiſſion to his Grace my Lord High Steward of *England*, upon pain of Impriſonment.

Then the Commiſſion was read, his Grace and all the Peers ſtanding up bare headed.

Then the Staff being carried between Garter King at Arms, *and the* Gentleman Uſher of the Black Rod, *was with three Reverences delivered upon the knee to his Grace, and by him redelivered to the* Gentleman Uſher of the Black Rod, *to hold during the Service.*

Cl. of Cr. Serjeant at Arms, Make Proclamation.

Serg. at Arm. Oyez, His Grace my Lord High Steward of *England* doth ſtraightly charge and command all manner of perſons here preſent, except Peers, Privy Councellors, and the reverend Judges now aſſiſtant, to be uncovered.

Cl. of Cr. Make Proclamation.

Serg. at Arms. Oyez. My Lord High Steward of *England* his Grace ſtraightly chargeth and commandeth all Juſtices, Commiſſioners, and all and every other perſon and perſons to whom any

any Writ or Precept has been directed for the certifying of any Indictment or Record before his Grace my Lord High Steward of *England*, That they do certifie and being in the ſame forthwith, according to the Tenor of the ſame Writ and Precept, to them or any of them directed, upon Pain and Peril ſhall fall thereon.

Then Sir Edward Lutwich, *one of his Majeſty's Sergeants at Law, and Chief Juſtice of* Cheſter *delivered in his Writ and Return at the Clerks Table.*

The Writ of Certiorari *and the Return thereof were read in* hæc verba.

L. H. Steward. Call the Lieutenant of the Tower to return his Precept, and bring his Priſoner to the Bar.

Cl. of Cr. Make proclamation.

Serg. at Arms. Lieutenant of the Tower of *London*, return thy Writ and Precept to thee directed, together with the Body of *Henry* Baron of *Delamere*, thy Priſoner, forthwith, upon Pain and Peril ſhall fall thereon.

The Priſoner was brought to the Bar by the Lieutenant of the Tower: The Writ and Return thereof, together with his Grace's Precept, and the Return thereof were read in hæc verba.

Cl. of Cr. Make proclamation.

Serg. at Arms. Sir *Roger Harſnet* Knight, Sergeant at Arms to our Sovereign Lord the King, return the Precept to thee directed, together with the Names of all the Lords and Noblemen of this Realm of *England*, Peers of *Henry* Baron of *Delamere*, by thee ſummoned, forthwith, upon Pain and Peril ſhall fall thereon.

The Sergeant at Arms delivered in his Precept and Return at the Clerks Table.

L. H. Steward. Read the Precept and the Return.

They were read in hæc verba.

Cl. of Cr. Make an O Yez.

Serg. at Arms. O Yez. All Dukes, Earls, Viſcounts, and Barons of this Realm of *England*, Peers of *Henry* Baron of *Delamere*, who, by Commandment of my Lord High Steward of *England* His Grace, were ſummoned to appear here this Day, and are now preſent in Court, anſwer to your Names, upon Pain and Peril will fall thereon.

The Peers ſummoned were called over, and thoſe that appeared, ſtanding up uncovered, anſwered to their Names, each making a Reverence to the Lord High Steward.

Cl. of Cr. Laurence Earl of *Rocheſter* Lord High Treaſurer of *England*.

L. H. Treaſ. Here.

C. of Cr. Robert Earl of *Sunderland* Lord Preſident of His Majeſty's Privy Council.

Lord Preſid. Here.

Cl. of Cr. Henry Duke of *Norfolk* Earl Marſhal of *England*.

D. of Norf. Here.

Cl. of Cr. James Duke of *Ormond* Lord Steward of His Majeſty's Houſhold.

He did not appear.

Cl. of Cr. Charles Duke of *Somerſet*.

D. of Som. Here.

Cl. of Cr. Chriſtopher Duke of *Albermarle*.

He did not appear.

Cl. of Cr. Henry Duke of *Grafton*.

D. of Graft. Here.

Cl. of the Cr. Henry Duke of *Beaufort* Lord Preſident of *Wales*.

D. of Beauf. Here.

Cl. of Cr. John Earl of *Mulgrave* Lord Chamberlain of His Majeſty's Houſhold.

E. of Mulg. Here.

Cl. of Cr. Aubery Earl of *Oxford*.

E. of Oxf. Here.

Cl. of Cr. Charles Earl of *Shrewsbury*.

E. of Shrewſ. Here.

Cl. of Cr. Theophilus Earl of *Huntingdon*.

E. of Hunt. Here.

Cl. of Cr. Thomas Earl of *Pembroke*.

E. of Pemb. Here.

Cl. of Cr. John Earl of *Bridgwater*.

E. of Bridgw. Here.

Cl. of Cr. Henry Earl of *Peterborow*.

E. of Peterb. Here.

Cl. of Cr. Robert Earl of *Scarſdale*.

E. of Scarſd. Here.

Cl. of Cr. William Earl of *Craven*.

E. of Craven. Here.

Cl. of Cr. Richard Earl of *Burlington*.

He did not appear.

Cl. of Cr. Louis Earl of *Feverſham*.

E. of Feverſh. Here.

Cl. of Cr. George Earl of *Berkeley*.

E. of Berk. Here.

Cl. of Cr. Daniel Earl of *Nottingham*.

E. of Notting. Here.

Cl. of Cr. Thomas Earl of *Plimouth*.

E. of Plim. Here.

Cl. of Cr. Thomas Viſcount *Falconberge*.

L. Falconberge. Here.

Cl. of Cr. Francis Viſcount *Newport* Treaſurer of His Majeſty's Houſhold.

L. Newport. Here.

Cl. of Cr. Robert Lord *Ferrers*.

L. Ferrers. Here.

Cl. of Cr. Vere Eſſex Lord *Cromwell*.

L. Cromwell. Here.

Cl. of Cr. William Lord *Maynard* Comptroller of His Majeſty's Houſhold.

L. Maynard. Here.

Cl. of Cr. George Lord *Dartmouth* Maſter General of His Majeſty's Ordnance.

L. Dartmouth. Here.

Cl. of Cr. Sidney Lord *Godolphin*.

L. Godolphin. Here.

Cl. of Cr. John Lord *Churchill*.

L. Churchill. Here.

Then his Grace the Lord High Steward addreſſed himſelf to the Lord Delamere *the Priſoner at the Bar in this manner.*

L. H. Steward. My Lord *Delamere*, the King being acquainted that you ſtand accuſed of High Treaſon, not by common Report or Hearſay, but by a Bill of Indictment found againſt you by Gentlemen of great Quality, and known Integrity within the County Palatine of *Cheſter*, the place of your Reſidence, has thought it neceſſary in Tenderneſs to you, as well as Juſtice to himſelf, to order you a ſpeedy Tryal.

My Lord, if you know your ſelf innocent, in the name of God, do not deſpond, for you may be aſſured of a fair and patient hearing, and in your proper time a free Liberty to make your full Defence: and I am ſure you cannot but be well convinced, that my Noble Lords that are here your Peers to try you, will be as deſirous and ready to acquit you, if you appear to be innocent, as they will to convict you if you be guilty.

But, my Lord, if you are conſcious to your ſelf that you are guilty of this heinous Crime,

give Glory to God, make amends to his Vicegerent the King by a plain and full diſcovery of your Guilt, and do not, by an obſtinate perſiſting in the Denial of it, provoke the juſt indignation of your Prince, who has made it appear to the World, that his Inclinations are rather to ſhew Mercy than inflict Puniſhments. My Lord, attend with patience, and hear the Bill of Indictment that hath been found againſt you read. Read the Bill of Indictment to my Lord.

Cl. of Cr. *Henry* Baron of *Delamere*, Hold up thy hand.

L. Delamere. My Lord, I humbly beg your Grace would pleaſe to anſwer me one Queſtion, whether a Peer of *England* be obliged by the Laws of this Land to hold up his hand at the Bar, as a Commoner muſt do; and I ask your Grace this queſtion the rather, becauſe in my Lord *Stafford*'s Caſe it was allowed to be the priviledge of the Peers not to hold up their hands.

L. H. Steward. My Lords, this being a matter of the priviledge of the Peerage, it is not fit for me to determine it one way or the other; but I think I may acquaint your Lordſhips, that in point of Law, if you are ſatisfied this is the Perſon indicted, the holding, or not holding up of the hand is but a Formality, which does not ſignifie much either way.

L. Delamere. I humbly pray your Grace's direction in one thing farther, whether I muſt addreſs my ſelf to your Grace when I would ſpeak, or to your Grace with the reſt of theſe Noble Lords my Peers.

L. H. Steward. You muſt direct what you have to ſay to me, my Lord.

L. Delamere. I beg your Grace would pleaſe to ſatisfie me, whether your Grace be one of my Judges in concurrence with the reſt of the Lords?

L. H. Steward. No, my Lord. I am Judge of the Court, but I am none of your Tryers. Go on.

'*Cl. of Cr.* HEnry Baron of *Delamere*, thou ſtandeſt Indicted in the County Palatine of *Cheſter* by the Name of *Henry* Baron of *Delamere* of *Mere* in the ſaid County of *Cheſter*, For that thou as a falſe Traytor againſt the moſt Illuſtrious and moſt Excellent Prince *James* the Second, by the Grace of God of *England*, *Scotland*, *France* and *Ireland*, King, thy natural Lord, not having the fear of God in thy Heart, nor weighing the duty of thy Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, the cordial Love, and true, due, and natural Obedience which a true and faithful Subject of our ſaid Lord the King, ſhould and of right ought to bear, wholly withdrawing; and contriving, practiſing, and with all thy might intending, the Peace and common Tranquillity of this Kingdom of *England* to diſquiet, moleſt, and diſturb; and War and Rebellion againſt our ſaid Lord the King, within this Kingdom of *England*, to ſtir up, move, and procure, and the Government of our ſaid Lord the King of this Kingdom of *England* to ſubvert, change and alter, and our ſaid Lord the King from the Title, Honour, and Kingly Name of the Imperial Crown of his Kingdom of *England* to depoſe and deprive, and our ſaid Lord the King to Death and final Deſtruction to bring and put; the fourteenth day of *April* in the firſt Yeat of the Reign of our ſaid Lord *James* the Second now King of *England*, &c. and divers other Days and times as well before as after, at *Mere* in the County of *Cheſter* aforeſaid, falſly, malicioufly, deviliſhly, and traiterouſly, with divers other falſe Traytors and Rebels, to the Jurors unknown, didſt conſpire, compaſs, imagine, and intend our ſaid Lord the King, thy ſupreme, true and natural Lord, not only from the Kingly State, Title, Power and Government of his Kingdom of *England* to deprive and caſt down, but alſo the ſame our Lord the King to Kill, and to Death to bring and put, and the antient Government of this Kingdom of *England* to change, alter, and wholly to ſubvert, and a miſerable Slaughter among the Subjects of our ſaid Lord the King throughout his whole Kindgom of *England*, to cauſe and procure, and Inſurrection and Rebellion againſt our ſaid Lord the King within this Kingdom of *England* to procure and aſſiſt, and the ſame thy moſt wicked, moſt impious, and deviliſh Treaſons and traiterous Compaſſings Imaginations and Purpoſes aforeſaid to fulfil and bring to effect, thou the ſaid *Henry* Baron of *Delamere*, as a falſe Traytor then and there, to wit, the ſaid fourteenth day of *April* in the firſt Year aboveſaid, and divers other days and times as well before as after, at *Mere* aforeſaid, in the County aforeſaid, falſly, unlawfully, wickedly, and traiterouſly with *Charles Gerrard*, Eſq; and other falſe Traytors to the Jurors unknown, didſt aſſemble thy ſelf, gather together, conſult, and agree to raiſe and procure divers great Sums of Money, and a great number of armed Men, War and Rebellion within this Kingdon of *England* to levy and make, and the City of *Cheſter* in the County of the ſame City, as alſo the Caſtle of our ſaid Lord the King of *Cheſter* at *Cheſter* in the County of *Cheſter* aforeſaid, and all the Magazines in the ſame Caſtle then being, to enter, take, ſeize, and ſurpriſe, and into thy poſſeſſion and power to obtain; and that thou the ſaid *Henry* Baron of *Delamere* afterwards, to wit, the 27*th* day of *May* in the firſt Year aboveſaid, falſly, unlawfully, wickedly, and traiterouſly didſt take a Journey from the City of *London* unto *Mere* aforeſaid, in the County of *Cheſter* aforeſaid, thy traiterous purpoſes aforeſaid to fulfil and perfect: And that thou the ſaid *Henry* Baron of *Delamere*, afterwards, to wit, the fourth day of *June*, in the firſt Year aboveſaid, at *Mere* aforeſaid, in the County of *Cheſter* aforeſaid, in further proſecution of thy unlawful, moſt wicked and traiterous purpoſes aforeſaid, divers Liege People and Subjects of our ſaid Lord the King, to the Jurors unknown, with thee the ſaid *Henry* Baron of *Delamere*, and the aforeſaid other falſe Traytors, to the Jurors unknown, falſely, unlawfully, and traiterouſly, in the War and Rebellion aforeſaid, and in thy traiterous purpoſes aforeſaid, to join and adhere didſt excite, animate, and perſwade, againſt the duty of thy Allegiance, againſt the Peace of our ſaid Lord the King that now is, his Crown and Dignity, and againſt the form of the Statute in that caſe made and provided. How ſay'ſt thou *Henry* Baron of *Delamere*, art thou Guilty of this High Treaſon whereof thou ſtandeſt Indicted, and haſt been now Arraign'd, or not Guilty?

L. Delamere.

L. Delamere. My Lord, I humbly beg the Indictment may be read again.

L. H. Steward. Let it be read again. (Which was done).

L. Delamere May it pleaſe your Grace, I humbly beg the favour to be heard a few words before I plead to this Indictment.

L H. Steward. My Lord *Delamere*, I am very unwilling to give your Lordſhip any interruption, but according to the Methods of Law, which muſt be obſerved in your Caſe, as well as all others, You muſt plead to the Indictment before you be heard to any thing elſe.

L. Delamere. May it pleaſe your Grace, I have ſomething to offer to your Grace's and their Lordſhips conſideration which is a matter of Law.

L. H. Steward. I know not what matter of Law you have to offer: If you have a mind to demur to the Indictment, you may.

L. Delamere. Will your Grace pleaſe to hear what I have to ſay? and then I ſhall ſubmit it to your Grace's Judgment.

L. H. Steward. I would hear what you have to ſay, my Lord, with all my heart, if I could: But I muſt then paſs by all the Forms and uſual Methods of proceeding, and that without any advantage to you too, and that I ſuppoſe your Lordſhip will not deſire of me. Ask my Lord, Whether he be guilty, or not guilty?

Cl. of Cr. How ſayſt thou, *Henry* Baron of *Delamere*, Art thou guilty of this High-Treaſon whereof thou haſt been indicted, or not guilty?

L. Delamere. I beſeech your Grace to hear me what I have to ſay; I ſhall not detain your Grace very long, but I beg your Grace to hear me.

L. H. Steward. My Lord *Delamere*, I muſt keep you to the known Rules and Methods of Law: This is not your time to ſpeak but to plead; in your proper time you ſhall be fully heard whatſoever you have to ſay.

L. Delamere. If your Grace pleaſe, I have ſomething to ſay which concerns all the Peers of *England* in point of Right.

L. H. Steward. My Lord, you muſt either plead, or demur to this Indictment, that is the uſual Practice before any thing elſe can be done.

L. Delamere. My Lord, I have a Plea to offer to your Grace and my Lords; and it is with reference to the Priviledg and Right of the Peers of *England*.

L. H. Steward. If you have any Plea to offer, it muſt be received, my Lord.

L. Delamere. My Lord, amidſt the hardſhips I have lain under by my frequent Impriſonments and cloſe Confinement——

L. H. Steward. My Lord *Delamere*, You muſt keep up to the Legal Method of Proceedings: In Caſes of this nature I would, as far is poſſible for me to do, indulge a Perſon of your Quality, and in your condition; but withal I muſt do right to the Court, and not permit any Breach to be made upon the Legal Courſe of Proceedings. You muſt plead, or demurr to the Indictment before you are heard to ſay any thing.

L. Delamere. Will your Grace be pleaſed to hear me tell you my Reaſons why I offer you a Plea of this nature to the Indictment.

L. H. Steward. My Lord, if you have any Plea, put it in.

L. Delamere. Will your Grace be pleas'd to accept it as I have done it? It may be it is not ſo formal, becauſe I have had no Council allowed me to peruſe and ſign it. But as it is, I here offer it to your Grace's conſideration.

L. H. Steward. Ay, put it in.

Then it was delivered to the Clerk.

L. H. Steward. Read it.

Cl. of Cr. *The humble Plea of* Henry *Lord* Delamere, *to the Indictment of High Treaſon againſt him, now to be tryed by the Lord High Steward and Peers here aſſembled.*

THE ſaid Lord *Delamere* ſaving to himſelf all benefit of Advantage of any further or other matter of exception to the Generality, Incertainty or Inſufficience of the ſaid Indictment, and all matters and things which do or may concern the ſame, for Plea hereunto ſaith,

That he was by His Majeſty's Writ Summoned to this preſent Parliament which began the Nineteenth Day of *May* laſt, and attended his Duty there as a Peer of this Realm.

That for High Treaſon ſuppoſed to be committed by him, during the Sitting of the ſame Parliament; he was the Twenty ſixth Day of *July* laſt, committed, by Warrant of the Earl of *Sunderland* one of his Majeſty's Principal Secretaries of State, to the Tower of *London*.

That the Peers in Parliament aſſembled, taking Notice by his Petition of the Ninth of *November* laſt, of his being abſent from his Attendance in Parliament, ſent a Meſſage to His Majeſty to know the reaſon why he the ſaid *Henry* Lord *Delamere*, a Peer of that Houſe, was abſent from his Attendance there.

Upon the Tenth Day of *November* laſt the Lord Treaſurer reported His Majeſty's Anſwer to the ſaid Meſſage, *viz.* That the ſaid Lord *Delamere* was abſent from his Attendance in Parliament, becauſe he ſtood committed for High Treaſon, for levying War againſt the King this laſt Summer, teſtifyed upon Oath, and that his Majeſty had given directions that he ſhould be proceeded againſt with all ſpeed according to Law.

The Houſe of Peers not being ſatisfied with this Anſwer, the Debate thereof was adjourn'd till the Monday morning following.

On which Day the Lords reſuming the Debate concerning the Lord *Delamere* and the King's Meſſage; after ſome Debate, the Lord Chancellour, by His Majeſty's Command, gave the Houſe an account what Proceedings had been againſt the Lord *Delamere* ſince his Majeſty's Anſwer to their Addreſs concerning his abſence from the Houſe, which was to this Effect:

That the King had given Order for a ſpeedy Proſecution of him: That the Treaſon whereof he was accuſed was committed in *Cheſhire*; and that being a County Palatine, the Proſecution ought to be there, and not in the King's Bench; as it might be if the Treaſon had been committed in another County: and that therefore his Majeſty had given Order for a Commiſſion of *Oyer* and *Terminer* into *Cheſhire*, in order to the finding of an Indictment againſt him for the ſaid Treaſon: And that accordingly a Commiſſion of *Oyer* and *Terminer* was already ſealed; and if the Indictment be not found before the end of the Term, the ſaid Lord *Delamere*'s Prayer being entred in the Kings Bench, he ſhould be Bailed.

All which Proceedings do more fully appear in the Journals of the ſaid Houſe of Peers; to

which the ſaid *Henry* Lord *Delamere* doth refer himſelf.

Afterwards, that is to ſay, upon the Day of the ſaid Parliament was Prorogued by His Majeſty unto the Tenth Day of *February* next, as by the ſaid Journals it doth appear.

Upon all which Matters the ſaid *Henry* Lord *Delamere* doth humbly tender this his Plea to the Juriſdiction of your Lordſhips in this Cauſe, and doth humbly conceive your Lordſhips ought not to proceed in the Tryal of him upon the Indictment of High Treaſon now before you: And that for theſe following Reaſons.

Firſt, Inaſmuch as it appears by the ſaid Petition of the ſaid *Henry* Lord *Delamere*, and the ſeveral Orders of the Lords, and the King's Anſwers to the Meſſage of the Lords thereupon, That the ſaid Houſe are already poſſeſſed of his ſaid Cauſe, which is the ſame ſuppoſed Treaſon for which he was at firſt committed, and which is the ſame Treaſon for which he now ſtands indicted before your Lordſhips. And for this Reaſon your Lordſhips, as he humbly conceives, by the Law and Cuſtom of Parliament, which is part of the Law and Cuſtom of the Land, ought not to proceed againſt him upon the ſaid Indictment; but his ſaid Cauſe ought wholly to be determined and adjudged in the ſaid Houſe of Peers, and not elſewhere, as in like Caſes has been formerly done.

Secondly, Whereas it is the Right and Privilege of the Peerage of this Realm, That no Peer thereof ought to be Tryed or proceeded againſt for High Treaſon during the continuance of the Parliament, except in the ſaid Houſe of Peers, and before the whole Body of the Peers there. And whereas the aforeſaid Parliament is now continuing by Prorogation until the tenth day of *February* next aboveſaid, the ſaid *Henry* Lord *Delamere* humbly conceives that by the Law and Cuſtom of Parliament hitherto uſed, which is part of the Law and Cuſtom of the Realm, he ought not, nor can be Tryed before your Lordſhips for the ſaid Treaſons, becauſe the ſaid Parliament is ſtill continuing, and not diſſolved.

And laſtly, The ſaid *Henry* Lord *Delamere* doth further ſay, That he is the ſame *Henry* Lord *Delamere* mentioned in the Commitment, Petitions, Meſſages, Anſwers and Indictment now read unto him, and the ſaid Treaſon for which he was Committed is the ſame Treaſon mentioned in the Commitment, Petition, Meſſages, Anſwers, and Indictment, as aforeſaid.

To which ſaid Indictment he humbly conceives he is not bound by Law to make any further or other Anſwer.

L. Delamere. May it pleaſe your Grace, and you my Noble Lords, I do not offer this Plea out of any diffidence or diſtruſt in my Cauſe, nor out of any diſlike I have to any of your Lordſhips that are here Summoned to be my Tryers; I cannot hope to ſtand before any more juſt and noble, nor can I wiſh to ſtand before any others; but your Grace and my Lords will pardon me if I inſiſt upon it, becauſe I apprehend it a Right and Priviledge due to all the Peerage of *England*; which, as it is againſt the Duty of every Peer to betray or forego, ſo it is not in the power of any One, or more, to wave it, or give it up without the conſent of the whole Body of the Peers, every one of them being equally intereſted.

This, my Lord, I humbly demand as my Right and Priviledge as a Peer of *England*, and ſubmit to the direction of your Grace and my Noble Lords.

L. H. Steward. What ſay you to it, Mr. *Attorny?*

L. H. Steward. May it pleaſe your Grace; This Plea that is here offered by this Noble Lord, is a Plea to the Juriſdiction, but, with ſubmiſſion, it needs very little Anſwer, for it has very little in it: The Force of the Plea is, That he ought to be Tryed by the whole Body of the Houſe of Peers in Parliament, becauſe the Parliament is ſtill continuing, being under a Prorogation and not diſſolved; and becauſe there was ſome agitation of the matter concerning this Proſecution, upon his Petition, in the Houſe of Lords; and therefore it concludes, That he ought not to be Tryed by your Grace and theſe Noble Lords upon this Commiſſion, but by all the Lords in Parliament. With ſubmiſſion, my Lord, This is contrary to all the ancient Precedents, and againſt the known Rules of Law; for the Law is, If the King pleaſes to try a Peer in Parliament, then the Record may be brought into the Houſe, and there they proceed as in other Caſes, and all the Peers are Judges. Thus it is in the time of a Seſſion of Parliament; but if the Parliament be Prorogued, there are many inſtances (and indeed none to the contrary) that after a Prorogation, the Proceedings are before the High Steward by Commiſſion. And as to the other part of the Caſe, I have this to ſay to it, That there is nothing at all depending in the Houſe of Lords that can out this Court of the Juriſdiction; for there was not ſo much as any Indictment returned there, no, nor ſo much as found during the Seſſion of Parliament. All the agitation was only upon my Lords Petition, and the King's Anſwer; that he intended as ſpeedy a Proſecution as could be: Beſides, my Lord, your Grace ſees it is a Plea in Paper and in Engliſh, without any Council's Hand, and therefore I hope your Grace does not expect that I ſhould formally Demur to a Plea in this Form, and that contains no more of Subſtance in it. But I muſt deſire your Grace to over-rule it, and that the Priſoner may plead in chief.

L. Delamere. My Lord, I humbly pray that I may have Council aſſigned me, to put my Plea into Form, and to argue the matter of it.

L. H. Steward. My Lord *Delamere*, I am ſure I ought and ever ſhall be as tender of the Priviledges of the Peers of *England*, as any other Perſon whatſoever: For I am concerned, as well in intereſt as inclination ſo to be, having the Honour to be one my ſelf: But I know your Lordſhip will not think the Priviledge of the Peers is concerned in this matter; nor will your Lordſhip, I dare ſay, inſiſt upon matters that are purely dilatory, if your Lordſhip be ſatisfied that they are ſo: And therefore give me leave, my Lord, to mind you of a few things, whereby your Lordſhip will eaſily ſee, That the chief things on which you inſiſt are grounded upon miſtakes: Firſt, You ſay, The Houſe of Peers was poſſeſſed of the Cauſe; which could not be, and I will tell you why: Becauſe there was no Indictment ever removed thither or lodged there. Which plainly proves that the Lords were never poſſeſſed of the Cauſe. Nor indeed was the Bill found, upon which you are now arraigned, till after the Prorogation of the Parliament.

So

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So that they could never come to be poſſeſſed of this matter. Theſe are miſtakes in Point of Fact, and your Lordſhip cannot but well know them to be ſo.

And there is as great a miſtake in the Law, That during the continuance of a Parliament (though it were Prorogued, yet if not Diſſolved) a Peer cannot be tryed but by the Houſe of Lords. This certainly is a very ſtrange Doctrine, and is not only againſt the reaſon and methods of Law, but contrary even to your Lordſhips own Experience. For your Lordſhip cannot but very well remember, that during the continuance of the Parliament, after a Prorogation, the Lord *Cornwallis* was tryed before the High Steward, and ſuch a number of Peers as were then Summoned, upon ſuch a Commiſſion as I now ſit here by. But indeed during the Sitting of the Parliament, then all the Peers are both Tryers and Judges, as was in the Caſes of my Lord *Stafford*, and my Lord of *Pembroke*; they being a Court of Judicature, then actually ſitting; and therefore this Plea is grounded as upon miſtake in Fact, ſo, upon a miſtake in point of Law. So that though, as I ſaid at firſt, it is both my duty and intereſt to preſerve the priviledges of the Peers, yet I muſt take care that no injury be done the Law, and truly I take this Plea to be altogether dilatory, and I ſuppoſe your Lordſhip is ſatisfied of it, and will not inſiſt upon it.

L. Delamere. If your Grace pleaſe, It was alledged and agreed in the Caſe of my Lord of *Briſtol*, that the Cauſe of a Peer in time of Parliament properly belong'd only to the Houſe of Lords; And that which poſſeſſed the Houſe of Lords of his Caſe, was, as I apprehend, no more than is in my Caſe, a Petition upon the account of being abſent; and there the Lords claim the cognizance of the whole Cauſe, and nothing was done but in the Houſe of Lords. And as to the Inſtances your Grace has mentioned of my Lord *Cornwallis*, (and there was another of them, my Lord *Morley*) this Queſtion was never under Debate in thoſe Caſes; therefore I ſuppoſe they cannot be admitted as Precedents.

L. H. Steward. But, my Lord, it would have been an Error in the whole Proceedings, if this Court had not Juriſdiction: And ſure the Judges, who are always called to aſſiſt in ſuch Caſes: and who, in matters of Life, even in the Caſes of common Perſons, are ſo tender and careful, that there be no irregularity in the Proceedings, would not have let things paſs in that manner, had they been erroneous.

L. Delamere. My Lord, I think no other Precedents are produced but thoſe two, and there the Queſtion was never debated.

L. H. Steward. I only put you in mind of thoſe that were lately within Memory; but no queſtion of it there are a great many more Inſtances to be given.

Mr. *Attor. Gen.* I pray your Grace's Judgment to over-rule the Plea, and that my Lord may plead in chief.

L. Delamere. I hope your Grace will be pleaſed to aſſign me Council to put my Plea in Form; and that I may have time for it, that they may be heard to make a ſolemn Argument in Law.

L. H. Steward. My Lord, if you inſiſt upon it, and think it worth the while to have Council heard, we will hear them.

L. Delamere. I ſubmit it to your Grace, I only offer it that I may not be wanting to the ſupport of the Peers Privileges; I aſſure your Grace, I ſpeak not to put off the Cauſe, for I am willing to come to my Tryal, and I have reaſon ſo to be, for I queſtion not but to make my innocence appear.

L. H. Steward. My Lord, I tell you what my opinion of the Plea is, but if you inſiſt upon it to have your Council heard, I will hear them.

L. Delamere. I have no Council here, if your Grace pleaſe to give me time to ſend for them, and that they may prepare to argue it.

Mr. *Attor. Gen.* No, my Lord. If your Grace will hear Council, I for the King muſt pray that it may be done preſently; for a Plea to the Juriſdiction is never favoured, nor is the party to be allowed time to maintain it, but he muſt be ready at the time it is offered.

L. Delamere. Pray, my Lord, how was it done in the Caſe of *Fitzharris*? His Plea was a Plea to the Juriſdiction, and he had four days allowed him to put his Plea in form, and to inſtruct his Council.

L. H. Steward. I am not able at preſent to remember what was done in ſuch or ſuch a particular Caſe: But according to the general method and courſe of Law, the Plea to the Juriſdiction is not favoured, nor time allowed to it, but the party muſt be ready to maintain it preſently.

Mr. *Attor. Gen.* But, with Submiſſion, my Lord, that Caſe of *Fitzharris* is nothing to this noble Lord's Caſe neither: There was a formal Plea put in Writing, and drawn up in Latin, and a formal Demurrer joined; and thereupon I did take time to ſpeak to it. But, with your Grace's favour, by the Law, the Priſoner muſt be always ready to make good his Plea, if he will ouſt the Court of their Juriſdiction.

L. H. Steward. Mr. Attorney, if my Lord *Delamere* does inſiſt upon having his Council heard, it is not fit for me to refuſe hearing what they can ſay.

Mr. *Attor. Gen.* But that muſt be preſently then, my Lord.

L. Delamere. It is my Duty, my Lord, to ſubmit to what your Grace and my noble Lords ſhall determine: I would inſiſt upon nothing that ſhould offend your Grace or them.

Mr. *Attor. Gen.* If your Grace pleaſes, you are the only Judge in this Caſe in Matters of Law: For theſe noble Lords, the *Peers*, are only Tryers of the Fact. Therefore, I appeal to your Grace's Judgment, and pray for the King, that this Plea may be over-ruled; it being vitious and naught, both in Form and Subſtance.

L. H. Steward. My Lord *Delamere*, I muſt acquaint you, That according to the Conſtitution of this Court, Matters of Law are determined by me, as the ſole Judge, while I have the Honour to act under this Commiſſion: But if your Lordſhip inſiſt upon it, to have your Council heard, God forbid that I ſhould deny it You: I will hear what your Council will ſay; and afterwards I will, according to the beſt of my Underſtanding, deliver my Judgment.

L. Delamere. My Lord, I have never had any Council aſſigned me.

L. H. Steward. My Lord, if you have any Council ready, we will hear them.

L. Delamere. If your Grace pleaſe to aſſign me Council, and give me Time to ſend for them,

and

and them Time to prepare, I will obey your Grace's Directions; but I could have none here ready, becauſe none were aſſigned me.

L. H. Steward. My Lord, You cannot, by the Courſe of Law, have Council allowed You in the Caſe of a Capital Crime, till ſuch time as the Court, where You are called to Anſwer, is apprized, that there is ſome matter of Law in your Caſe, that may need Council to be heard, to inform their Judgment, and which they may think convenient to hear Council to: For if in caſe any Priſoner at the Bar ſhall before-hand be allowed to have Council to ſtart frivolous Objections, ſuch as this (and we all know, that there are ſome, who will be eaſily prevailed with to endeavour to pick Holes where there are none) and to offer Matters foreign from the things whereof the Party ſtands accuſed; and upon the Priſoner's bare Requeſt, Council muſt be heard to every trivial Point, the Courts of Law would never be at an end in any Tryal; but ſome dilatory Matter or other would be found to retard the Proceedings: But it does not conſiſt with the Grandeur of the Court, nor your Lordſhip's Intereſt, to let ſuch a frivolous Plea interrupt your Lordſhip's Tryal. However, if your Lordſhip has Council ready, I will not refuſe to hear them.

L. Delamere. My Lord, I hope the Priviledge of the Peers of *England*, is not frivolous. I aſſure your Grace, I do not offer this Matter, as if I thought it more conducing to my Intereſt, than my Tryal now. No, my Lord, it is not for my ſelf, but for the whole Body of Peers, of which I have the Honour to be a Member: And if my *Lords* here are ſatisfied it is not the Right and Priviledge of the Peers, I acquieſce.

L. H. Steward. Pray, good my Lord, do not think that I ſhould ſay any ſuch thing, that the Priviledge of the Peers is frivolous; for you do not hear me ſay, That this is one of their Priviledges. As I would not willingly miſtake You; ſo I deſire your Lordſhip would not miſapprehend or miſrepreſent Me. I ſpoke not at all of the Peers Priviledge, but of your Plea: I tell your Lordſhip, I think your Plea is not a good Plea, to Ouſt this Court of the Juriſdiction of your Cauſe. But if your Lordſhip have a mind to have your Council heard to it, in Gods Name, let them come; they ſhall be heard: And when that is done, to ſatisfie you the more, I will adviſe with my Lords the Judges, that are there to aſſiſt, what they take to be the Law in the Caſe; and, upon the whole, I will deliver my Judgment as well as I can.

L. Delamere. I hope, your Grace will be pleas'd to adviſe with my Lords the Peers here preſent; it being upon a Point of Priviledge.

L. H. Steward. Good my Lord, I hope You that are a Priſoner at the Bar, are not to give Me direction, who I ſhould adviſe with, or how I ſhould demean my ſelf here.

L. Delamere. I beg your Grace's Pardon; I did not intend to give your Grace any Direction.

L. H. Steward. My Lord, I ſhall take care to perform that Duty that is incumbent upon me, and that with all Tenderneſs to your Lordſhip: And, I aſſure your Lordſhip, I will have as much care that I do not injure You, as I will that I do not wrong my own Conſcience; and I will endeavour to diſcharge my Duty to both, with the utmoſt Fidelity.

L. Delamere. I humbly thank your Grace; I queſtion it not: But if your Grace pleaſe——

L. H. Steward. My Lord, you muſt pardon Me; I can enter into no further Interlocutions with your Lordſhip. If your Lordſhip have any mind to have Council heard, and your Council be ready, we will hear them.

L. Delamere. If your Grace require of Me to produce Council preſently, and they to argue it immediately, I muſt acquaint your Grace, I cannot do it: For I have none here.

L. H. Steward. My Lord, I cannot tell how to help it; the Plea muſt then be over-ruled and rejected.

Clerk of the Crown. Henry, Baron of *Delamere*, Art thou Guilty of the High-Treaſon whereof thou ſtandeſt Indicted, and haſt been now Arraign'd, or Not Guilty?

L. Delamere. Not Guilty.

Clerk of the Crown. Culprit, How wilt thou be Tryed?

L. Delamere. By God, and my *Peers*.

Clerk of the Crown. God ſend thee a good Deliverance. *Sergeant at Arms*, Make Proclamation.

Sergeant at Arms. Oyez. If any one will give Evidence on behalf of our Soveraign Lord the King, againſt *Henry*, Baron of *Delamere*, the Priſoner at the Bar, concerning the High Treaſon whereof he ſtands Indicted, let them come forth, and they ſhall be Heard; for now he ſtands at the Bar, upon his Deliverance.

Then His Grace gave the Charge to the Peers Tryers in this manner:

L. H. Steward. My Lords, I know You cannot but well remember, what unjuſt and inſolent Attempts were made upon the rightful and unalterable Succeſſion to the Imperial Crown of theſe Realms, under the pretence of That, which has been ſo often found to be the Occaſion of Rebellion, I mean, the ſpecious Pretence of *Religion*; by the fierce, froward, and Phanatical Zeal of ſome Members of the *Houſe of Commons*, in the laſt *Parliaments* under the late King, *CHARLES* the Second, of ever Bleſſed Memory.

Which, by the wonderful Providence of Almighty *God*, not prevailing, the Chief Contrivers of that horrid Villany, conſulted together how to gain that Advantage upon the *Monarchy* by open Force, which they could not obtain by a pretended Courſe of Law.

And in order thereto, it is too well known, how they had ſeveral Treaſonable Meetings, made bold and riotous Progreſſes into ſeveral Parts of the King's Dominions; thereby endeavouring to debauch the Minds of the well-meaning, though unwary and ignorant, Part of the King's Subjects.

But theſe their evil Purpoſes, it pleaſed *God* alſo to fruſtrate, by bringing to Light that curſed Conſpiracy againſt the Life of His Sacred Majeſty, King *CHARLES* the Second; as alſo, againſt That of our dread Sovereign, that now is, whom *God* long preſerve.

Theſe Helliſh and damnable Plots one would have thought, could not have ſurvived the juſt Condemnation and Execution of ſome of the chief Contrivers of them; eſpecially conſidering, that after it had pleaſed Almighty *God*, to take to Himſelf our late Merciful and dread Sove-

Soveraign; no ſooner was his Sacred Majeſty, that now is, Seated in the Royal Throne of his Anceſtors, but he made it his utmoſt Endeavours, not only to convince the World, that he had quite forgot thoſe impudent and abominable Indignities that had been put upon him, only for being the beſt of Subjects, and the beſt of Brothers: but did alſo give forth the moſt Benign Aſſurances imaginable to all his loving People, that he would approve himſelf to be the beſt of Kings.

And further to evince the reality of theſe his Gracious and Heroick Reſolutions, he immediately called a *Parliament*; and therein repeated, and ſolemnly Confirmed his former Royal Declarations of having a particular Care of maintaining our Eſtabliſh'd Laws and Religion: With which that Wiſe, Great, and Loyal Aſſembly, were ſo fully and perfectly ſatisfied, that they thought they could not make ſufficient Returns of Gratitude for ſuch Gracious and Princely Condeſcenſions.

And yet, my *Lords*, while the *King* and the *Parliament* were thus, as I may ſay, endeavouring to out do each other in Expreſſions of Kindneſs, that wicked and unnatural Rebellion broke out; and thereupon the Arch-Traytor, *Monmouth*, was, by a Bill brought into the *Lower Houſe*, and paſs'd by the general Conſent of *Both Houſes*, (and I could wiſh, my *Lords*, for the ſake of that *Noble Lord* at the Bar, that I could ſay, it had Paſs'd the Conſent of every particular Member of each *Houſe*) juſtly Attainted of *High-Treaſon*.

My *Lords*, What ſhare my *Lord* at the Bar had in thoſe other Matters, I muſt acquaint You, is not within the Compaſs of this Indictment, for which you are to try him, as his *Peers*; For That is for a Treaſon alledged to have been Committed by him, in his Majeſty's Reign that now is.

Give me Leave, my *Lords*, to detain You but with a Word or two more on this Occaſion; and that is, To let You know, That as my *Lord* at the Bar may, with great Safety and Security to himſelf, rely upon your *Lordſhips* Candor and Integrity, that You will be tenderly careful, and ready to acquit him of the Treaſon whereof he is accuſed, if upon the Evidence that ſhall be given You, You ſhall find him Innocent: So I muſt tell You, the King has an entire Confidence in your Reſolution, Fidelity, and good Affections to Him, that you will not, by reaſon of the Priſoner's Quality, and nearneſs to You, as being a *Peer* of this Realm, acquit him if he ſhall appear to be Guilty.

My *Lords*, I have one thing further to mind your *Lordſhips* of, That, according to the uſual Forms of Proceedings in theſe Caſes, if your *Lordſhips* have any Queſtions to propound, wherein you would be ſatisfied as to any Matter either of Fact or Law, your *Lordſhips* will be pleaſed to put thoſe Queſtions to Me, and I ſhall take care to give your *Lordſhip* the beſt Satisfaction I can.

L. Delamere. My *Lord High Steward*, I beg the Favour of your Grace, I may have One to write for me.

L. H. Steward. Ay, by all means. Let my *Lord* have whom he pleaſes to write for him.

Then Sir Thomas Jenner, *One of His Majeſty's Serjeants at Law, and Recorder of the City of* London, *opened the Indictment thus:*

Mr. *Recorder.* May it pleaſe your Grace, my *Lord High Steward* of *England*, and You my *Noble Lords*, the *Peers* of the Priſoner at the Bar: *Henry* Baron of *Delamere*, the Priſoner at the Bar, ſtands indicted for that 'He, as a Falſe Traytor againſt 'the moſt Illuſtrious and moſt Excellent Prince, 'our Soveraign Lord the King that now is; not 'having the Fear of *God* in his Heart, nor weighing the Duty of his Allegiance, the *Fourteenth* 'Day of *April* laſt, at *Meer*, in the County of *Cheſter*, did maliciouſly Conſpire, with other 'Falſe Traytors, to the Jurors unknown, the 'Death and Depoſing of the King: And for the 'better, and more effectual fulfilling of thoſe 'his Treaſons, the ſaid *Fourteenth* Day of *April*, 'at *Meer* aforeſaid, did Maliciouſly and Traytero'uſly Aſſemble, Conſult, and Agree with '*Charles Gerrard*, Eſq; and other Falſe Traytors, 'to Raiſe great Summs of Money, and procure 'Numbers of Armed Men, to make a Rebellion 'againſt the King, and the City and Caſtle of '*Cheſter* to ſeize, with the Magazines there: 'And that afterwards, the *Twenty Seventh* Day 'of *May* laſt, he took a Journey from *London* to '*Meer* aforeſaid, to accompliſh his Treaſonable 'Intentions. And further, That upon the *Fourth* 'Day of *June*, in further Proſecution of his 'Trayterous Purpoſes at *Meer* aforeſaid, he did 'encite divers Subjects of our Lord the King, 'to joyn with him, and other falſe Traytors, in 'his Treaſon:' And this is laid to be againſt the Duty of his Allegiance, againſt the Peace of our Soveraign Lord the King, his Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided. To this Indictment, may it pleaſe your *Grace*, and the reſt of theſe *Noble Lords*, my Lord *Delamere*, the Priſoner at the Bar, has pleaded *Not Guilty*; and for his Tryal has put himſelf upon his *Peers*. We ſhall therefore call our Witneſſes for the King; and if We prove him Guilty, We do not queſtion, but your *Lordſhips* will find him ſo.

Mr. *Att. Gen.* May it pleaſe your Grace, my *Lord High Steward* of *England*, and You my Noble Lords the *Peers*: My Lord *Delamere*, the Priſoner at the Barr, ſtands Indicted for Conſpiring the Death of His Majeſty, and in order thereunto to Raiſe a Rebellion in the Kingdom.

My *Lords*, In proving this Charge upon him, we crave Leave to give your *Grace*, and your *Lordſhips*, ſome ſhort Account by Witneſſes, that we have here, of a former Deſign that was previous to this Matter, for which this *Noble Lord* ſtands here accuſed: And We ſhall not trouble your *Grace*, and your *Lordſhips*, with any long Evidence, becauſe it has received many ſolemn and repeated Tryals; and, as to the Proof of it, has been Confirmed by as many Verdicts. But We do it rather, to give ſome Account as an Introduction to a Material Evidence, by ſhewing, That *Cheſhire*, which was the Province of this *Noble Lord*, was One of the Stages, where that *Rebellion* was principally to be acted; and that, preparatory to it, great Riotous Aſſemblies, and Tumultuous Gatherings of the People, were ſet on foot by the *Conſpirators*.

We

We ſhall then ſhew, my *Lords*, That after the late *Duke of Monmouth*, (the Head of the Conſpiracy) went beyond Sea, (eſpecially after the Death of the late *King*) frequent Meſſages, and Intercourſe of Correſpondency, were ſent and held between him, and the reſt of his *Accomplices* abroad, and their Fellow-*Conſpirators* here at home.

And particularly, We ſhall prove, That a little before the *Rebels* came over laſt *Summer* into the *Weſt*, the *Duke of Monmouth* did diſpatch one *Jones* (who was one of the moſt conſiderable Agents in this Contrivance) to come from *Holland* into *England*, to let his Friends know, that though he had intended to go into *Scotland*, and begin his Work there; yet now his Reſolutions were for *England*; where he hoped, his Friends would be prepared for him. And with this Meſſage, and Reſolution of his, *Jones* was to acquaint ſome Lords, (who they were, the Witneſs will tell your *Lordſhips*; but) among others, this *Noble Lord*, the Priſoner, was one: And to acquaint them beſides, That he would immediately ſet ſail for *England*, whither he would come ſo ſoon as he could get. That he had a Deſign to have Landed in *Cheſhire*, where he expected to be moſt readily receiv'd; but finding That inconvenient, they ſhould have notice Four or Five Days before-hand, of the Place of his Landing; which he intended, ſhould be in the *Weſt*. And among the Directions that *Jones* had to give to thoſe *Lords*, one was, That they ſhould immediately repair into *Cheſhire*, there to wait for the News.

Theſe Inſtructions *Jones* had given him in Writing; but Sealed up with an Injunction, not to open them till he came to Sea; and then he was to peruſe that Writing, and deliver his Meſſage according to his Inſtructions: And in that Writing was the Name of this *Noble Lord*, as one that was principally relyed on, to carry on the Rebellion in *Cheſhire*. And We ſhall give You an Account, That the late *Duke of Monmouth* did look upon *Cheſhire*, as one of his main Supports; and upon my Lord *Delamere*, as a Principal Aſſiſtant *There*.

My *Lords*, This Meſſage was *Jones* to communicate to Captain *Mathews*, and Captain *Mathews* was to tranſmit it to this *Noble Lord*, and the other Perſons that were concern'd with him. *Jones* arrived with this Meſſage here in *England*, upon the *Twenty Seventh* of *May*; [And I muſt beg your *Lordſhips*, to obſerve the Time particularly:] But Captain *Mathews*, to whom he was directed, was not to be found; nor Major *Wildman*, to whom, in the Abſence of Captain *Mathews*, he was to apply himſelf, as You will hear more fully from the Witneſs's own Mouth: Thereupon he ſends for one *Diſney*, (a Name which your *Lordſhips* cannot but know, he being ſince Executed for *Treaſon*) and one *Brand*, whom your *Lordſhips* will likewiſe hear of; and they meet with this ſame *Jones*, who communicates his Meſſage to them, and they undertake to deliver it to the Perſons concern'd; Captain *Mathews* being out of Town, and Major *Wildman* not to be found.

That very Night, my *Lords*, this ſame *Brand* and *Diſney* they meet this *Noble Lord*, my Lord *Delamere* at the Coffee-Houſe, and give him an Account of the Meſſages: And as ſoon as ever he had received the Meſſage, upon that *Twenty Seventh* of *May*, at Ten of the Clock at Night, does my Lord *Delamere* diſpatch out of Town, with only one Servant to attend him, and two other Friends that he had pickt up, or appointed to meet him, and go with him.

With all theſe Badges of Plot and Deſign, does my Lord *Delamere* ſet out that Night. It was the ſame Night that *Jones* came to Town: It was late at Night. He changed his Name, and went by the Name of *Brown*. He choſe to go all the By-Roads, and would not keep the High-Common-Road; and went with great ſpeed, as We cannot but preſume according to the Meſſage delivered by *Jones*, on purpoſe to repair into *Cheſhire*.

And if your *Lordſhips* pleaſe to obſerve, You will find ſeveral remarkable Inſtances of Plot and Contrivance in the matter: Firſt, That a Nobleman, and one of ſo conſiderable a Character in his Country, as my Lord *Delamere*, ſhould make ſuch haſt out of Town with ſo ſmall an Equpage, as but one Servant; Then, that he ſhould go ſo late at Night: Again, that he ſhould change his Name; and That ſhould prove to be a Name not caſually taken up, as the firſt Name he could think of next his own; but a Name of diſtinction, that he was known by among all his own Party: For all the Communications between the Confederates and him, were managed, as to him, under the Name of *Brown*: By that Name, ſeveral of the late Duke of *Monmouth*'s Trayterous *Declarations* were ſent for; which were to be ſent to him, or by him, into *Cheſhire*: And that alone, with Submiſſion, my *Lords*, would be a ſhrewd Circumſtance of Suſpicion, that a Noble Lord, ſuch an one as my Lord *Delamere*, ſhould aſſume the Name of a Commoner, and poſt out of Town ſo ill accompanied in a Diſguiſe at that time of Night; eſpecially the *Parliament* being then Sitting, as really it was.

But beſides all this Circumſtantial Evidence, We ſhall prove, by Poſitive Teſtimony, what the haſty Buſineſs was, that made my *Lord* undertake this Journey in this manner: For, having notice of the Duke of *Monmouth*'s Intention to Land ſpeedily in *England*, when he comes into *Cheſhire*, he actually ſets about the Work to put that County in a forwardneſs to aſſiſt in the *Rebellion*, endeavours to ſtir up the People to joyn with him; and acquaints One that he imployed in that Affair, with the whole Deſign, that he was engaged to raiſe ſo many Thouſand Men, and ſo much Money, to be ready by ſuch a Day.

Nor does my *Lord* reſt here: But, after the Duke of *Monmouth* was Landed in the *Weſt*, to corrupt the Minds of the People, We ſhall prove what Diſcourſes he had, (and theſe will teſtifie his Inclinations to the Cauſe) concerning the great Victories he had obtained over the King's Forces, and how he applauded his Conqueſts.

My *Lords*, We ſhall plainly ſhew You all this that I have opened in plain Proof; And then, We ſhall ſubmit it to your *Lordſhips* Judgments, Whether this *Noble Peer* be Not Guilty, as he has Pleaded to his Indictment.

L. H. Steward. Call your Witneſſes, Mr. *Attorney*; Who do you begin with?

Mr. *Att. Gen.* My Lord *Howard* of *Eſcrick*: We deſire he may be firſt ſworn.

(Which was done.)

L. H. Steward. Well, what do you ask my Lord *Howard*?

Mr.

Mr. *Att Gen.* My Lord, I call You to give an Account what You know of a Design of an Insurrection that was to have been; and in what Parts; and what share *Cheshire* was to have had in it, in the late King's Time.

Lord H. Steward. You hear the Question; What say you to it, my Lord?

Lord *Howard.* My Lord I am to direct my self to speak to what was done in the late King's Time: For as to that *Noble Lord* at the Bar, I have nothing to say against him.

Lord H. Steward. My Lord *Howard*, if I apprehend Mr. *Attorney* aright, You are not called as a particular Witness against my Lord *Delamere*; but only to give an Account, what was agreed upon in any Consultations, where You were present, in the late KING's Time, about a Conspiracy for an Insurrection?

Lord *Howard.* If so, my Lord, then I am called, not to be an Evidence against my Lord *Delamere*, but, against my Self; that is to repeat what I have often delivered at several Tryals, in the Courts of Justice; and which I must always repeat with Shame and Confusion for my Guilt, as I cannot but always reflect upon it with Sorrow and Horror. But if it be for the Service of his Majesty, and this Honourable Court, for me so to do, I shall endeavour to comply with it, and repeat it as well as I can, by the Assistance of a broken Memory; it being an Account of things done several Years past, and from a Memory interrupted by such Accidents as are very well known, and as have disabled me to make a more distinct and particular Relation before so great an Auditory.

My *Lords*, I suppose, it will be expected, I should begin my Account with the Occasion and Ground, and the Time when those Things happened.

L. H. Steward. Take your own Method, my Lord.

L. Howard. Truly, my Lord, I am not able to fix the particular Time, unless you will give me leave to reckon the Years by the Sheriffs of *London*, as the *Romans* used to do theirs by their *Consuls*; for I have no other means of computing the exact Time.

L. H. Steward. Pray, my Lord, tell the Times as near as you can, and use what helps for your Memory you think best.

Lord *Howard.* My Lords, It was in that Year, when Mr. *Shute* and Mr. *Pilkington* were Sheriffs for the City of *London*: And at that time, it is well known how great Heats did arise upon the Contests that were in the City, about Election of Officers for the Year ensuing,——

Mr. *Att. Gen.* May it please your Grace, My Lord *Delamere* seems to be faint with standing: If your Grace please, a Chair may be provided, for my Lord to sit in.

L. H. Steward. Ay, by all means: Let a Chair be provided for my Lord to sit down. Go on, my Lord.

Lord *Howard.* My Lord, I was saying, that the Contest about the disputed Election of Sheriffs, had occasioned such heats in the City of *London*, and other Places, that it was even beyond the common expressions of discontent: I knew nothing of any particular Design there was in hand till about six Weeks after, when Captain *Walcot* came to me, a Person I had known some time before, and upon discourse, acquainted me, that he had found out that there were some Persons engaged in a considerable Action that was near its Execution, and that in order to it, he had had notice given him to make preparation, and thereupon he had thought fit, for that reason, to withdraw from the place where he did at that time lodge, (which was in *Red-Lyon* Court in *Fleet-street*, as I remember) and betake himself to a private Lodging, that he might be the readier for Action; and to put himself into a better Equipage for joyning in the Enterprise, he had bought himself a Horse, and sent his Son into *Ireland* to turn all he could into ready Money, and return it, that he might be the better able to go through with the Undertaking. My Lords, this was a great surprize to me; for though I knew, as all the rest of the World did, that there were great discontents, yet, till then, I never had any intimation of any particular design: I told him I was going into the Country, but should be glad to know how things went, and desired him to write to me, and gave him a little *Cabala* or *Cypher* to disguise the matter he was to write about: and when I was in the Country, I did receive several Letters which intimated something of a design that was going on, and at last he writ, with some warmth to me, of a necessity we were under to enter into Action; and of the readiness of my Correspondents; (for the Style of the Letters was that of Merchants, for so was the Cant that I had given him): But truly I was not over-hasty in my return to *London*, because I rather chose to see what would be the issue of what was then projected, before I did intermeddle in such an Affair, and so made use of all the delays I could to retard my return, and came not to Town till that Week which determined the long continued Controversy in *London*; Nay, and then also avoided meeting with any body in any set-way, till I could better see how things were managed, and what event they would probably come to; thereupon I would not go to my own House, but took up my Lodging at *Mile-end*, and lay there three or four Days, till the Day came for confirming the new elected Sheriffs, and the election of a new Lord Mayor, which, as I take it, is on the day before *Michaelmas*-day, and *Michaelmas*-day: When that day was over, I could not find there was any intention of entring into any sort of Action; I found indeed there were great murmurings in the Mouths of all sorts of People, and very angry warm speeches, and nothing else: So I thought the business was over for that time, and thereupon away I went to my own House. This, my Lords, was upon the *Saturday* as I remember: Upon the *Monday* Morning, Captain *Walcot* came to me, and desired that he might have some private discourse with me in my Garden; and there he told me, My Lord *Shaftsbury* had withdrawn himself, and that he did believe things were in a great Preparation for Action: I desired him to tell me what it was; he answered me, That he desired to be excused in that, for I must go to my Lord *Shaftsbury*, who would give me an account of the whole; and withall he told me, my Lord *Shaftsbury* had been much deserted and ill used by those Lords upon whose concurrence he had rely'd, and that was the reason why he had withdrawn himself, and kept himself so private: I told him, I did not know my Lord *Shaftsbury* had any desire to speak with me; yes he said

ſaid he had, for he had ſent him to me on purpoſe, and he was to bring back my anſwer, whether I would joyn or no. I told him, if my Lord deſired to ſpeak with me, I would wait upon him, and thereupon I went with him, and he carried me to a place where my Lord *Shaftsbury* was retired in the City, ſomewhere about *Foſter-Lane* or *Wood-Street*, at the houſe of one *Watſon*: When I came there, after Salutation, my Lord *Shaftsbury* began to make great reflections upon the miſery and badneſs of the times, particularly, upon the iſſue of that great Affair, the election of the Sheriffs, which had ended ſo unfortunately to the terror of all good men: For whereas before, the great and ſure reſort of innocency was to the Integrity of our Juries, when returned by fair and equal Sheriffs, they looked upon the eagerneſs of getting thoſe Perſons ſworn that were then in Office to be a deſign to intrap the innocent, the elected Sheriffs being eſteemed perſons that would accommodate themſelves to the humour of the Court; and now every man muſt be run down for crimes that he was no way guilty of, if the finger of the Court did but point him out to deſtruction. The apprehenſion of this, he ſaid, had made him withdraw himſelf, not knowing how ſoon he might be ſeiz'd, ſhould he have remain'd in publick; and he thought the danger was as imminent upon, and likely to reach to others, as well as to him; and particularly to my ſelf, and therefore, he ſaid, the ſence of this danger ought to put every Engliſhman that had a value for his Country, and any thing that was dear to him in it, upon uſing his utmoſt endeavours to give ſome prevention to thoſe calamities which were impendent over us, and which threatned the deſtruction of all men that ſtood up for the rights of the people; and this, he ſaid, was his reſolution.

My Lord, In order to this, he declared to me, what Preparations had been made for the Raiſing of Force for this purpoſe; he ſaid, there were eight or ten Thouſand Men (I cannot fix the particular number) that he was well aſſured to have ready in the City; That there had been divers Horſe (I think about Fourſcore or an Hundred he named) that about a Fortnight before, had been, by parcels, drawn into the Town, without being obſerved; and theſe were in daily expectation to go into Action; but through the unhandſome Diſappointment of the Duke of *Monmouth*, and the other Lords that adhered to him, who were to have joyned in the Action, and have ſet the Wheels at work in other Parts, he was left alone to do the whole in his Province of *London*, they being not ready to concur according to their Engagement: But as he ſhould have the greater Danger, ſo he ſhould have the greater Glory; and he reſolved to go through with the Attempt, or Periſh in the Execution. To all this Diſcourſe, I gave ſuch an Anſwer as the nature of the thing required: I told my Lord *Shaftsbury*, I could not deny all thoſe things to be true, as he had repreſented them in his Diſcourſe; and that I would not diſtruſt his Judgment ſo much, as to ſuppoſe, he would enter upon ſuch an Affair, without due deliberation of all the Circumſtances requiſite to it; and ſo I would not queſtion, but there was ſuch Preparations, and that he had aſſurance of ſuch a Force, as he had ſpoke of, whenever they ſhould begin any Action: But I told him ſomething ſtuck with me, and troubled me very much, That, in a time of ſuch difficulty, when the convenient Help of the Nation was all little enough to joyn in the Work, he ſhould ſtand by himſelf, and engage in ſuch an Enterprize, in Separation from thoſe other Lords, of whoſe Help there would be ſo much need: He ſaid, he could not help it, they had appointed this time and that, but now, when it came to the puſh, they were not ready to do their parts; but the People were now in ſuch expectation of ſomething to be done, eſpecially in *London*, that it was impoſſible to reſtrain them, and as impoſſible to get thoſe Lords ready to joyn with them: I told him, I was altogether unacquainted with the proceedings in this Affair, and that all of it was wholly new to me: But pray, My Lord, ſaid I, give me leave to act that part in this buſineſs, that, I think, will moſt conduce to the Succeſsful Iſſue of it, which is, to be a Mediator between You; and let me deſire you to let things reſt as they are, till I have endeavoured to create a better Underſtanding between your Lordſhip, and thoſe Lords, of whoſe Tergiverſation you ſeem to complain. Upon this, my Lord was in a great heat, and expreſs'd himſelf with great warmth; but at laſt, with much ado, he gave me Permiſſion to go to the Duke of *Monmouth*, and aſſure him, and the reſt of the Lords that were concern'd, and tell them from him, That, if they would be ready to take the Poſts that were aſſign'd them, according to their own former Agreement, and immediately enter upon Action, he would joyn with them; but if not, he was reſolved to go on alone. This was, as I remember, upon *Tueſday*, the Second of *October*; upon the *Wedneſday* Morning, I went to find out the Duke of *Monmouth*, but coming to his Lodgings, he was gone to *Moor*-Park, where, when I came, I found ſeveral Perſons with him, but after a little time, I ſeparated him from the Company, and whiſpering to him, I gave him to underſtand, how great a Diſorder I found my Lord *Shaftsbury* in, and how great a Complaint he made of his being deſerted by him, and the other Lords engaged with him, and what Reſolution he had taken to ſet upon the Work alone: "My ' Lord, ſays he, I think the Man is Mad, his Fear ' makes him loſe his Underſtanding; I do not ' know why he hides himſelf from his Friends, ' that no body can tell where he is; but as to ' that which he ſpeaks of, of our forſaking him, ' and breach of Faith, he is miſtaken; For, 'tis ' true indeed, we are about doing the Thing, ' that he is ſo eager for, but we are not for doing ' it ſo haſtily, as his Fears precipitate him to do; ' and he muſt excuſe us, if we comply not with ' his Humour, to hazard the whole Undertaking ' by a raſh beginning. Upon that, I ſaid to him, My Lord, I ſhall not diſcourſe the Particularities of the buſineſs with your Grace; but this is all that I at preſent addreſs to your Grace for, to be a means, if I can, with your Grace, as I have been with him, to procure a Meeting between you, that you may ſettle it with one another. ' With all my heart, ſays the Duke, ' pray let it be ſo; for, though my Lord *Shafts-* ' *bury* is angry without a cauſe, yet I would not ' have him loſe himſelf in a temerarious Under- ' taking: My Lord, ſaid I, I will tell him what you ſay, and will ſee if I can work him to a Complyance with the Propoſal. The next day, being *Thurſday*, my *Lord*, I went to my Lord *Shaftsbury* again, and reported to him the Diſ-

courſe

courſe I had with the Duke of *Monmouth*, and what Anſwer he had given to his Complaint of their deſerting him: He Reply'd, 'It was falſe, 'they had poſitively ingaged to be ready by ſuch 'a time, and had appointed the very Day; but 'now they were off, and would not tell when 'they would be ready; and withal, he told me, he greatly ſuſpected the Duke of *Monmouth* to have a ſecret Correſpondence with the King. I then deſired him, That he would pleaſe to conſent to the Treaty that was propoſed, and give the Duke of *Monmouth*, and the Lords a Meeting; he, in great heat, Replyed, *No*, he would come no more at them: It is ſtrange, my Lord, ſaid I, that you ſhould have ſuch an Opinion of theſe Men, that they would go about to betray you; they are not Men of that ſize: but he perſiſted in it, that they had dealt perfidiouſly with him: For, after a poſitive Agreement, when the Thing was brought juſt to the Birth, they withdrew their helping-hand; but he was ſure, in *London*, he could Raiſe a ſufficient Force to do the Work, and if he were but once ſet on Horſe-back, he would head them himſelf: But yet he was willing to put it off for a Fortnight, or three weeks longer, if they would be ſure to keep pace with him. With this Propoſal I went the next day, which was *Friday*, to the Duke of *Monmouth*, and had the ſame Anſwer from him, that I had before; but withal, he bid me tell my Lord *Shaftsbury*, That he did make it his earneſt Requeſt to him, to give him, and his other Friends a Meeting before he engaged in this buſineſs: For he found by his precipitation, he was about to deſtroy himſelf, and all that adhered to him. Thereupon, I came to my Lord *Shaftsbury* again, upon the *Saturday*; and when I came there, after a long and importunate urging all the Arguments I could think of; I ſo far prevailed with him, that he agreed to give them a Meeting, upon condition, that it ſhould be the next day; and becauſe it ſhould be ſo private, that no notice might be taken of it, he choſe to have the Meeting at his own Houſe, where no body would ſuſpect him to be, and whither he would be conveyed, under the Diſguiſe of a Parſon. I went back with this Meſſage to the Duke of *Monmouth*, who did undertake, that the other Lords ſhould be there.

Lord H. Steward. My Lord *Howard*, not to interrupt you, Did he name thoſe other Lords? If he did, pray acquaint my Lords, who they were?

Lord *Howard.* My Lord *Shaftsbury* named my Lord *Ruſſel*, and my Lord *Gray*, and a great many more that ſhould bear their parts. I went to the Duke of *Monmouth*, and told him of it, I ſay, and he engaged, that they ſhould certainly be there: But, upon the *Sunday* Morning, when I came to the *Temple*, there I found a Meſſage left for me, That my Lord *Shaftsbury* had receiv'd an Alarum, That there was ſome great *Toryes* living near his Houſe in *Alderſgate*-Street, who were continually Spying about; and ſo great a Company might make their more than ordinary Obſervation. That this gave him ſuch a Jealouſy, as would not permit him to meet according to his Appointment: Afterwards, I came to a better underſtanding of the Reaſon of this, and found there was ſome fineneſs in it, which I could not comprehend before; But after this time, I never ſaw my Lord *Shaftsbury*, for he removed then to other Lodgings. So that, what I now ſpeak of him, is only what I had, by hear-ſay, from others: For, I had no knowledge of what paſs'd, as to him, but what I had from Capt. *Walcot*; who told me, That after that, there were ſeveral days of Meeting appointed, but ſtill, from time to time, put off; but upon what reaſon, I cannot particularly remember.

This is all I know of my Lord *Shaftsbury*; and the latter Part is wholly by Hear-ſay from *Walcot*: But by reaſon of this Agitation, we continued under Expectation till ſuch time as my Lord *Shaftsbury* went into *Holland*; where he ſhortly after died. And truly, I thought, at that time, much of the Deſign was quaſhed, and laid aſide: But, ſoon after, *Ferguſon* came over; who, when he came here, began to revive and quicken the Buſineſs, and puſh it on to Execution. I ſpoke with him at the *One Bell* in the *Strand*; and there he gave me an Account of all the Steps that had been taken: He told me what Preparations had been made in the City, in general; what to ſeize the Gates of the City; what to poſſeſs themſelves of the *Tower*; what to attacque the Guards; and ſeveral other Things, which I can't now ſo well remember; the Impreſſions of them being worn out of my Memory, by length of Time, and other Accidents.

This, in general, is all that I can ſay, as to what was previous to the particular Engagement wherein I was concern'd: For, at laſt, after many Diſcourſes, the Troubles and Difficulties of the Times increaſing, and the Dangers that threatned us, as we thought, growing higher and higher, this gave an Occaſion for our uniting Councels, and entring into a kind of *Junto*; which, I ſuppoſe, is Foreign to this Affair before your *Lordſhips*; and therefore, I ſuppoſe, would be likewiſe impertinent for me, to trouble your *Lordſhips* with.

L. H. Steward. Mr. *Attorney*, Do you deſire my Lord *Howard* ſhould give an Account of the other Meetings, and Conſultations, at which he was preſent?

Mr. *Att. Gen.* My Lord, I think there will be no need of it; and I am unwilling to take up your *Grace*'s Time, to no purpoſe.

Lord *Howard.* As for that *Noble Lord* at the Bar, I know nothing concerning him.

Lord H. Steward. Then, Gentlemen, Will You have him asked any more Queſtions?

Mr. *Att. Gen.* No, my Lord.

Lord H. Steward. My Lord *Delamere*, Will You ask him any Queſtions?

Lord *Delamere.* No, my Lord.

Mr. *Att. Gen.* Before my Lord *Howard* goes, I would ask him one Queſtion in general, Whether he knew of any Deſign of a Riſing in *Cheſhire*?

Lord *Howard.* No, my Lord, I knew of none at all.

Mr. *Att. Gen.* Then we deſire my Lord *Gray* may be ſworn.

(Which was done.)

Mr. *Att. Gen.* Pray, Will You give his *Grace* and my *Lords* an Account, what You know of any Deſigns of an Inſurrection or Rebellion, when You were beyond Sea, or before? and who were engaged in it?

Lord *Gray.* My Lord, I am *Subpœna'd* hither on behalf of the King; and I am alſo *Subpœna'd* on behalf of my Lord, the Priſoner at the Bar. I do not know any thing, that I can ſpeak of my own Knowledge, againſt the Priſoner; nor have

I any thing to ſay, that I know of, that will be for his Advantage. But I am here ready to anſwer ſuch Queſtions, as ſhall be ask'd me, either of one ſide, or the other.

Mr. *Attor. Gen.* My Lord, the Queſtion I ask you, is, what do you know of any Deſign of a Riſing in *Cheſhire*, and when?

Lord *Gray*. About the Time of Election of *Sheriffs* for the City of *London*; I mean, that memorable Time of the conteſted Election, which furniſhed the World with ſo much Diſcourſe, and was the occaſion of ſuch Heats and Animoſities: About that time, the *Duke of Monmouth*, and my Lord of *Shaftsbury* began to diſcourſe about making uſe of that, as an Opportunity to accompliſh their Deſign; for they thought the Ferment was ſo high, that Men would eaſily be diſpoſed to an Inſurrection: and after many Diſcourſes to that purpoſe, they came to this Reſolution, That they would apply themſelves to make what Intereſt they could, to procure a Riſing in three ſeveral Parts of the Kingdom at once: one in *Cheſhire*, whither the Duke of *Monmouth* was to betake himſelf; and there be adviſed by my Lord *Macclesfield*, my Lord *Brandon*, my Lord *Delamere* that then was, and the Priſoner at the Bar, what Gentlemen were proper to apply to, for joyning in the Deſign: The ſecond was in *London*, which was aſſigned to be the Province of my Lord of *Shaftsbury*: And the third was, in the *Weſt*; which was committed to the Care of my Lord *Ruſſel*. The Duke of *Monmouth* did accordingly go his Progreſs into *Cheſhire*, as is very well known; and, upon his Return, was taken into Cuſtody by the *Serjeant at Arms*: Upon which, Sir *Thomas Armſtrong* was ſent Poſt to Town, to get an *Habeas Corpus*; and withal, to deliver a Meſſage to me, to be Communicated with my Lord *Ruſſel*, and my Lord *Shaftsbury*: Which Meſſage, as near as I remember, was to this Effect; That he had been kindly receiv'd by the Gentlemen of the County; and had diſcours'd the Matter with them, and found them all inclined very much to his Satisfaction: That upon his being Arreſted, he had been adviſed to make his eſcape into *Cheſhire*, and riſe immediately; but that he would not do a Matter of that great Importance, without the Approbation of his Friends. This is all that I know of any thing, that was deſigned in *Cheſhire*.

Mr. *Att. Gen.* Pray, my Lord, what do you know of any Meſſages that Captain *Matthews* or *Jones* brought over from *Holland*, and to whom, and from whom?

L. Gray. Sir, I will give the beſt account I can, upon the ſudden, for I am not prepared to give a particular diſtinct account, in regard I did not know it would be expected from me, nor indeed that it would affect the Priſoner at the Bar.

L. H. Stew. Pray, my Lord, give my Lords the Peers as ſuccinct and particular an account as you can.

L. Gray. My Lord, ſoon after the late King's Death, the Duke of *Monmouth* was at *Amſterdam* with my Lord of *Argyle*, where there was an account given of the Deſign that was in hand, of an Inſurrection in *Scotland*, and the Preparations that had been made in order to it; and at that time there came over to *Holland* Mr. *Crag*, that came as I was inform'd from Major *Wildman*, and his Errand was to promote and recommend a Reconciliation between the Duke of *Monmouth*, and my Lord *Argyle*, who till that time had acted in ſeparate Intereſts; and *Crag* then gave an account that Means and Money were prepared; he had no particular Meſſage to the Duke, becauſe he did not know of meeting him there at that time: The Duke of *Monmouth* upon this Encouragement, did ſend Captain *Matthews* into *England*, with a Meſſage to Major *Wildman*, wherein he did deſire him that he would procure a Meeting with my Lord *Macclesfield*, my Lord *Brandon*, my Lord *Delamere*, and I think Mr. *Charleton*, and acquaint them that he had received a full account of my Lord *Argyle*'s Affairs, and the Preparations that had been made for it, and accordingly he had ordered his own Affairs to join with him; he likewiſe ſent *Crag* with a Meſſage to the ſame purpoſe to other Friends in *London*, and he diſpatch'd away one *Batteſcomb* into the *Weſt*, to prepare things there. When *Crag* return'd back again to the Duke, he gave him an account that Major *Wildman* had procur'd a Meeting with thoſe Lords and Gentlemen, that I mentioned before, who were all of Opinion, that the Duke of *Monmouth* ſhould go for *Scotland*, for they thought that his coming there, would be the beſt Service he could do the intereſt at preſent, and they ſhould know the ſtrength of the Enemy here, by their ſending Forces to ſuppreſs the Rebellion there. There was likewiſe a particular Meſſage from Major *Wildman* to the Duke of *Monmouth*, That he deſired he would bring over with him a Broad Seal to Seal Commiſſions with, and to take upon him the Title of King; the other particular branches of the Meſſage I do not ſo well remember, but only this, he was particularly ask'd, whether the Priſoner at the Bar was there, and he ſaid he was,——

Mr. *Att. Gen.* Pray, my Lord *Gray*, will you give an account what you know of *Jones*'s coming over, and what Errand he was ſent of?

L. Gray. *Jones* came ſome time after *Crag* return'd, and he gave an account of other things conformable to what *Crag* had ſaid, and was ſent back again to *England* by the Duke of *Monmouth* to give an account of his being ready to ſail; he gave him alſo a Letter, the Contents whereof I did not ſee. I had ſome ſhort account of it, but whether it were written to any particular Perſon, I cannot tell; the ſum of his Meſſage was, That he would land by that time he could get thither.

Mr. *Att. Gen.* My Lord *Gray*, you had frequent Diſcourſe with the Duke of *Monmouth*, and ſo I ſuppoſe you can give an account who he kept Correſpondence with, and upon whoſe Aſſiſtance he relyed.

L. Gray. I ſuppoſe few People will believe we were ſo weary of our Lives, as to come and throw them away with Threeſcore, or a very few more Men, (for it was but a very ſmall number we began with) except we had had expectation of good aſſiſtance. This I am ſure of, by all Diſcourſes with the Duke of *Monmouth*, he did depend very much upon *Cheſhire*, and was reſolv'd to have landed and begun there; but afterwards he conſidered of it, and thought better to ſend ſome ſort of excuſe for not landing in *Cheſhire*; that the Perſons that were to be apply'd to there, being Men of great Quality and Intereſt in their Country, and able to manage it without his Aſſiſtance; but in the *Weſt*, the Friends he relyed on, were not of that conſiderable Quality, and therefore he choſe to land there.

Mr. *Att. Gen.* What Lords did he name, that he depended upon? *L. Gray.*

L. Gray. I did name them; my Lord *Macclesfield*, my Lord *Brandon*, and my Lord *Delamere*; but I obſerved when the Duke of *Monmouth* ſpoke of his Friends in *Cheſhire*, he did name my Lord *Macclesfield*, and my Lord *Brandon* as Perſons.

Earl of *Nottingham.* My Lord Steward, I humbly pray this Witneſs may be asked to whom that Letter was written, that he ſaith the late Duke of *Monmouth* ſent by *Jones*?

L. H Steward. You hear my Lord's Queſtion, who did *Monmouth* ſend that Letter by *Jones* to?

L. Gray. My Lord, I never ſaw the Letter, nor do I know any Directions there were upon it; I always looked upon it as a paper of Inſtructions given to him about the time when, and the name of the place where the Duke was to land.

Mr. *Att. Gen.* We will give an account of that by *Jones* by and by, my Lord. Now ſwear *Nathaniel Wade.*

(Which was done.)

Lord *H. Stew.* Well, what do you ask this Witneſs?

Mr. *Attor. Gen. Wade*, That which I call you for, is this, to give an account what you know of any deſign of landing in *Cheſhire*, or elſewhere, and of *Jones*'s coming over, and what Errand he was ſent upon?

Mr. *Wade.* My Lord, I ſhall give an account as far as I know; after the death of the late King, Captain *Matthews* came to *Amſterdam* and gave an account there, that the Duke of *Monmouth* intended to be there ſhortly to meet and conſult with my Lord *Argyle*, who, we underſtood, then was preparing for an Expedition into *Scotland*; thereupon I was ſent into *Freezland* to deſire my Lord *Argyle* to come to *Amſterdam*, which he did; and there the Duke of *Monmouth* did conſult with him, and they did agree together, that at the ſame time that my Lord *Argyle* made an Inſurrection in *Scotland*, the Duke of *Monmouth* ſhould invade *England*, and to that end, that he ſhould ſend to thoſe Friends he had in *England*, to be ready to aſſiſt him when he came there; and in order to it, he did ſend Captain *Matthews*, who amongſt other things, was to go to the Dukes Friends in *Cheſhire*, and amongſt them, my Lord *Delamere* was named to be one, and the buſineſs was to deſire them to be ready to aſſiſt him when he ſhould land; accordingly Captain *Matthews* went; but a little after his going away, I think one *Crag* came over, and he came from Major *Wildman*, and his buſineſs was to endeavour a good underſtanding between the Duke of *Monmouth*, and my Lord *Argyle*, who were then at ſome Difference; and to endeavour to make them act jointly by united Councils; a little after he was ſent back again into *England* to Major *Wildman*, to deſire him to aſſiſt them with ſome Money; he went back again, and returned, but brought no Money; thereupon he was ſent again by the Duke of *Monmouth*, becauſe the firſt time he was not ſent by him; the Sum demanded was Six Thouſand Pounds, or Four Thouſand Pounds, and at laſt he ſent for a Thouſand Pounds; *Crag* returned with this Anſwer, That they could not aſſiſt them with Money, for they did not know to what end they ſhould have Money, but to buy Arms, and for that the People were well provided enough already, and there was no need of Money for that purpoſe. The Duke of *Monmouth* a while after ſent Mr *Crag*, and pawn'd all the Jewels he had, to raiſe Money, and fitted out Three Ships for this Service, laden with Ammunition, and becauſe he had promiſed my Lord *Argyle* to make a Diverſion in *England*, while he invaded *Scotland*, he reſolved to go with that Proviſion he had, and deſired by Mr. *Crag*, that ſince thoſe Lords and Gentlemen that were to aſſiſt them, had ſent no Money, as was deſired of them, and expected from them, they ſhould now trouble themſelves with no further needleſs Conſultations; but ſhould repair each Man into his own Country, where their Intereſt was greateſt, to be ready when he ſhould come; and in order to this, the Duke of *Monmouth* did ſet ſail from *Holland*, and came to *Lyme*, and landed there; and did afterwards order his March, ſo that he might moſt conveniently meet with his *Cheſhire* Friends; that is, towards *Glouceſter*, and ſo to get *Glouceſter* Bridge, that thereby gaining the command of the River of *Severn*, thoſe of *Cheſhire*, if they did, as was expected, make an Inſurrection at the ſame time, they might eaſily join together. In purſuance of this Deſign we came to *Keinſham* Bridge, and there a party of the King's Horſe ſet upon us, and we took ſome Priſoners, and thereupon thought it adviſable not to let the King's Army join together, but to go back and engage thoſe that were already come together, and that was the reaſon we did not go over the Bridge.

Mr. *Att. Gen.* Do you know any thing of *Jones*'s coming into *Holland*, and for what?

Mr. *Wade.* My Lord, I had forgot that; a little before *Crag*'s going laſt away, *Jones* came over, and his Buſineſs was to know why we ſtaid ſo long, for the Duke of *Monmouth*'s Friends in *England* had expected him long before, and he was diſpatch'd away quickly to acquaint them the Duke was coming.

Mr. *Att. Gen.* Who was it he ſent to, to acquaint with his coming?

Wade. To Major *Wildman*, he was directed to Major *Wildman.*

Mr. *Att. Gen.* Who elſe were to be acquainted with it?

Wade. Among the reſt, my Lord *Delamere*, my Lord *Macclesfield* and my Lord *Brandon* were to be acquainted that he was coming, and expected that they ſhould raiſe what Forces they could to aſſiſt him.

L. H. Steward. Will my Lord *Delamere* ask m any Queſtions?

L. Delamere. No my Lord, I never ſaw his Face before, that I know of.

L. H. Steward. Who do you go to next, Mr. Attorney?

Mr. *Att. Gen.* Next we call *Richard Goodenough*; Swear him, (which was done). That which I would know of you, Mr. *Goodenough*, is, Whether *Jones* was ſent of any Meſſage, and about what?

Goodenough. My Lord, I was beyond Sea with the Duke of *Monmouth*, and Mr. *Jones* was ſent (among other Perſons) to my Lord *Delamere* to give him notice that he ſhould be ready againſt the time that the Duke ſhould land, and take care to ſecure himſelf, that he might not be ſeized here in Town, for we were apprehenſive ſuch a thing would be attempted.

Mr. *Att. Gen.* What directions were given him, what Lords to go to?

Goodenough. My Lord, we were informed in *Holland*, that my Lord *Delamere* was one of thoſe Lords

Lords that had promiſed to draw his Sword in his behalf.

Mr. *Att. Gen.* Had you any diſcourſe with the Duke of *Monmouth* about it at any time?

Goodenough. Yes, I have diſcourſed with the Duke of *Monmouth* ſeveral times.

L. H. Steward. Ay, what did he ſay to you about it?

Goodenough. My Lord, he ſaid (among other things) that he hoped my Lord *Delamere* would not break his promiſe with him?

L. H. Steward. My Lord *Delamere*, will you ask him any Queſtions?

L. Delamere. No, my Lord. I never ſaw his Face before, that I know of, I will aſſure you.

L. H. Steward. That is pretty ſtrange, ſo famous an Under-Sheriff of *London* and *Middleſex*, as he was.

Mr. *Att. Gen.* Then ſwear *Jones*, (which was done): Pray will you give an account what Meſſage you received from the Duke of *Monmouth* upon your going over into *Holland*, and to whom you were to deliver it, and what became of it?

Jones. My Lord, I went to *Holland* about the latter end of *April* laſt; my going, as I have acquainted his Majeſty and the Council, was not only about this Affair, for I had other buſineſs that called me thither, which I ſhall not now take up your time, or trouble you with repeating of; but having ſome knowledge from Mr. *Diſney*, that there were ſome intentions of doing ſomething, tho it was communicated to me but very darkly, and therefore that little I did know, made me the willinger to go for *Holland* ſo ſoon as I did; but before I went, I had a mind to underſtand ſomething more of the deſign; and therefore the night before I went, I came to Mr. *Diſney*, and acquainted him with my intended Journey; Mr. *Diſney* did perſwade me againſt it, thinking that I had gone upon this account, but I told him the occaſion, which he partly knew, why I went; but withal I told him, I did intend to ſee the Duke of *Monmouth*, and if he had any Meſſage that he would have delivered to him, I would deliver it very ſafely; he told me all the Meſſage I ſhould deliver to the Duke of *Monmouth*, if I ſaw him, was to deſire him to keep to the laſt Concluſion which he would find in a Letter that had been ſent to him, and that if he had not yet received the Letter, it was to come by the Crop-hair'd Merchant, or the Crop ear'd Merchant, I cannot ſay which, but I think it was the Crop-hair'd; I asked him what that Meſſage was, leſt the Letter ſhould miſcarry, for I told him, if I ſhould go to the Duke of *Monmouth*, and refer him to a Letter wherein a Meſſage was to be brought him, which he was to keep to, and that Letter ſhould miſcarry, I ſhould in effect bring no meſſage at all to him; my Lord, thereupon he told me, that I ſhould acquaint the Duke of *Monmouth* that his Friends in *England* would not by any means have him come for *England*, but that he ſhould continue where he was, or if he thought good to go for *Scotland*, they approved of it; this is the ſum of what he ſaid to me, as near as I can remember. When I came to *Amſterdam*, there was one Mr. that was kill'd at *Philips Norton*, went with me to the Duke of *Monmouth*'s, and when I came to him, I acquainted him, as Mr. *Diſney* appointed me to do, that there was ſuch a Letter ſent by ſuch a perſon, and that ſuch a Meſſage was included in it; My Lord, he was in a great paſſion, I know not how to expreſs it, and ſeemed to be very much troubled, and did reflect very much upon Major *Wildman*, and ſaid, that was *Wildman*'s work; and he ſaid, (as I think that was the word he uſed) *Wildman* was a Villain, or to that purpoſe; but withal he ſaid it was too late to ſend ſuch a meſſage now, and that he was reſolved to come for *England*; and he would make *Wildman* hang with him, or fight for it, with him; that *Wildman* did think by tying his own purſe, he ſhould tye his hand, but he ſhould find it ſhould not be ſo, and ſome other words of the like nature, he uſed; but this is the ſubſtance of what he ſaid. He gave ſome account what preparations had been made, he ſaid Money was very ſhort, and he had been fain to pawn all he had to raiſe what Money was raiſed, upon his own charge. He asked me if I did think to return to *England* ſhortly; I told him if he had any ſervice to command me for *England*, I had ſome little buſineſs to do at *Rotterdam*, which I would diſpatch, and then I would perform his Commands; he told me, he would be glad I did return as ſoon as I could for *England*, and that this ſhould be the Meſſage I ſhould carry to *Wildman* in anſwer to the Meſſage he had ſent him, That he would come for *England*, and he ſhould either fight with him, or hang with him, and that was all he had to ſay to him. I was coming away from him, but he ſtopped me, and told me he would not have me go out of Town till he had ſpoke with me again; this was upon the *Sunday*; accordingly I did go in the Evening to him, and when I came, he told me, he would have me ſtay till *Tueſday* Morning, for he was going out of Town, and intended to be back again at that time, but if not, I ſhould receive from my Lord *Gray* what he had to ſay to me. He did not come upon the *Tueſday*, but my Lord *Gray* did come, and I think to the beſt of my remembrance Mr. *Crag* was with me; he told me all he had to ſay was, That the Duke intended to be in *England* within nine days, and that upon the Thurſday ſeven-night after I came away, the Duke would be in *England*; and he bid me to remember to tell *Brand*, that when he heard the Duke was landed, he ſhould acquaint Sir *Robert Payton* with it, but not till he was landed; for tho' they did think that he would join with them when the thing was begun, yet they ought to be careful who it was communicated to, for fear it ſhould be diſcovered and diſappointed; this was all that I had in command from my Lord *Gray*. I came to *Rotterdam*, and diſpatch'd my buſineſs there, and would have come away, but it happened there were no Ships coming for *England*, nor would there be any in a Fortnights time; thereupon I returned to *Amſterdam*; when I came back, I went to ſee the Duke to give him an account how it happened that I was not gone for *England*; the Duke told me he was glad I was not gone; for now he had a further Meſſage for me to carry, and he would have me ſtay two or three Days in Town for it; I ſtay'd three Days, and came again to him, but he told me he was not ready for me yet; then I ſtayed two or three Days longer till the 21ſt of *May*, to the beſt of my remembrance; it was upon a *Thurſday* that he gave me the Meſſage that I was to bring into *England*; I came to him in the Morning, and he told me I ſhould come to him upon the Evening of that Day, and when I came,

there was a Paper lay before him on the Table, and he took the Paper and seal'd it up, I cannot say he wrote all that was in that Paper, but the Paper that lay before him was not finished when I came in and that he did not write while I was there, I am sure; but he took it up and sealed it before me, and when he had sealed the Paper, he told me, I must assoon as I came to *London*, see for Captain *Matthews*, Sir *Thomas Armstrong*'s Son in Law, who lodged at Mr. *Blake*'s in *Covent Garden*, and desire him to acquaint my Lord *Macclesfield*, my Lord *Brandon*, and my Lord *Delamere* with his design of coming for *England*, and that he was resolved to set out upon the *Saturday* Morning after I came away, which was upon the *Friday*; he told me Captain *Matthews* was to send one Post to that place that was named in the Note to receive Intelligence of his landing, and that should be brought to his Friends here immediately (he designed should be twenty four Hours before the Court had notice of it in Town,) and those Lords were to be in readiness, that as soon as they knew he was landed, they might repair to their several Posts to assist him. I told him that I would deliver what Message he gave me, and asked him, what I was to do with the Paper he put into my hands; thereupon, as near as I remember, he used these Expressions to me, I do by you, as Princes do by their Admirals, when they send them out upon any considerable Expedition, which requires Secrecy in the Management of it, they have their Commission delivered to them sealed, which they are not to break open till they are at Sea. So here I deliver you your Instructions sealed up, which you are not to open till you are at Sea; and when you have opened them, and read what is contained in them, I would have you tear the Paper, and throw it into the Sea, or otherwise dispose of it, lest you be surprized and searched at your landing, and my Papers found about you. My Lord, I asked him, because I would be as punctual in my Message as I could what those Lords were to do when they came out of Town, whether they should come directly to him or no; he told me no, not that, but they should go into the Country, and secure their Interest for him there. I ask'd him then, if Captain *Matthews* be out of the way, and I be disappointed of meeting with him, shall I deliver this Message to the Lords my self; he told me no, by no means for those Lords were Persons of Quality, and that that was not a thing to be done by me; What shall I then do, my Lord, said I, if Captain *Matthews* be out of the way? You need not question that, saith he, but if you meet not with *Matthews*, speak to *Wildman*.

My Lord, with these Instructions (and this as near as I can remember is the Sum of all he said to me) I came away, and came to Sea; when I was out at Sea, I broke open the Letter that I had given me by the Duke, and I will tell you as near as I can, what were the Contents of it; there was written in it to this Effect:

TAUNTON *in* Somersetshire *is the place to which all are to resort; the Persons to be acquainted with the time of landing, are the Lord* Macclesfield, *the Lord* Brandon, *and the Lord* Delamere; *the place to send the Coach to is to* Taunton, *to Mr.* Savage's *House at the* Red-Lyon; *the place where the Post was appointed to return, was Captain* Matthews's *Lodging, at Mr.* Blake's, *and he was to receive the Message, or if he did not, he was to appoint one that should receive it; or if it were to return to any other place, that was left to him to do as he thought fit.*

And this was all, as near as I can remember; when I had seen this, I came to *London*, and being very weary and tired, when I came home, I went to Bed.

Mr. *Att. Gen.* Pray tell the Court as near as you can, what day it was you came?

Jones. I came out of *Holland* the 22d of *May*, I came home the 27th, and looking upon my Almanack, I find that it was the *Wednesday* Fortnight before the Duke landed that I came; when I was come home, I sent for Mr. *Disney*, and he came to me immediately; I told him I had seen the Duke, and desired that he would help me to the Speech of Captain *Matthews*; he told me he was out of Town; then I desired to speak with Major *Wildman*, he told me he was gone out of Town too; then I told him I must deliver my Message to him, and I told this Message as I have told your Lordships before, and therefore left it to him to convey it to the Knowledge of those Lords that were concerned; he did seem to be unwilling, and told me he did not know how to communicate it to those Lords, and asked me why I would not deliver the Message my self; I told him I did ask the Duke of *Monmouth* that very Question, whether I might, and he had forbid me, and ordered me to deliver it either to Captain *Matthews*, or to Major *Wildman*; and since they were absent, I knew not any to communicate it to but only to him, in order to their having notice of it. He told me he would do what he could.

Mr. *Att. Gen.* Pray who were present when you had this Discourse with *Disney*?

Jones. There was none present but himself then, for it was the first time that I spoke with him after I came from *Holland*; I told him there was a Post to go to receive Intelligence which should bring notice of his landing 24 Hours before it could be known at *Whitehall*, and therefore it were fit they should be in a readiness; he did scruple at it, and said he did not know where to get any one that could convey the Message to them, but he would do what he could; and concluded to meet at night in *Smithfield*, and he did so, and there were two Persons with him, Mr. *Crag*, and Mr. *Lisle*, and another, I think his name was *Brand*, and he took me and *Brand* aside, and did ask me where was the place that the Post was to go; I told him where, and then he did discourse of the Dukes coming over, but I mentioned not any thing of the Lords, but only to *Disney*; and after an Hours talk or thereabouts, we parted. I saw Mr *Disney* once afterwards, but what he did with the Message I cannot tell, he gave me no account of it; I did indeed before I went out of Town see him at the *Half Moon* Tavern in I went out of Town, and met the Duke of *Monmouth* at *Lyme* where he landed, and when I came to him, I told him what I had done with my Message, and how it happened that I could not deliver it to the Persons that he had ordered; the Duke told me he was satisfied that I had done what I could, but seemed to be troubled that *Matthews* was out of Town. And this is the Sum of what passed in my Knowledge as near as I can remember.

Mr.

Mr. *Att. Gen.* Had you no Diſcourſe with *Diſney* what he had done with the Meſſage, when you met at *Smithfield*?

Jones. No, becauſe thoſe Men were Strangers to me, and I had never ſeen them before.

Mr. *Att. Gen.* But afterwards had you no diſcourſe with *Brand* nor *Liſle* about it?

Jones. No, not at all: *Brand* I never ſpoke but once with, and *Liſle* would not own that he was the Man that was there.

L. H. Steward. Have you any more Queſtions to ask him, Mr. Attorney?

Mr. *Att. Gen.* No, my Lord.

L. H. Steward. My Lord *Delamere*, will your Lordſhip ask him any Queſtions?

L. Delamere. No, my Lord, I never ſaw his Face before this time, that I know of, in my Life.

L. H. Steward. Then who do you call next, Mr. Attorney?

Mr. *Att. Gen.* The next Witneſs that we call, my Lord, is *Story*.

(Who was ſworn).

L. H. Steward. Well, what do you ask him?

Mr. *Att. Gen.* Mr. *Story*, pray will you give an account what notice you had of *Jones*'s Meſſage, and what was done upon it, and what Diſcourſe you had with any body concerning my Lord *Delamere*, the Priſoner at the Bar, and with whom?

Story. My Lord, I had notice of it by one ——— that lived at *Biſhopſgate*, who told me the 28th of *May* laſt, that Mr. *Jones* was returned home from *Holland* upon a Meſſage from the Duke of *Monmouth*, and that he had agreed to go to *Taunton*, and there he expected Mr. *Dare* or Mr. *Williams* to bring an account that the Duke was landed; and he ſaid that Mr. *Jones*'s Meſſage was delivered to *Diſney*, in the abſence of Captain *Matthews*, who was out of Town; that after *Diſney* had receiv'd the Meſſage from *Jones*, he went and had ſome diſcourſe with my Lord *Delamere*, and that that night my Lord *Delamere* went out of Town with two Friends, and went a by-way through *Enfield* Chaſe, towards *Hatfield*.

Mr. *Att. Gen.* Pray when was it you went out of Town, *Story*?

Story. The 28th of *May*.

Mr. *Att. Gen.* Who went out of Town with you?

Story. No body, but I overtook Mr. *Brand* that Evening.

L. H. Steward. Pray repeat what it was he acquainted you with?

Story. He told me that the day before, *Jones* was returned home with a Meſſage from *Holland*, which Meſſage was to be delivered to Captain *Matthews*, but in his abſence *Diſney* received it, and that Evening after he had diſcourſed with my Lord *Delamere*, my Lord that night went out of Town, and two Friends of mine he ſaid went with him, and did convey him away by a by-way through *Enfield* Chaſe towards *Hatfield*.

L. H. Steward. Have you any more Queſtions to ask him, Mr. Attorney?

Mr. *Att. Gen.* Pray, Sir, had you any diſcourſe with the late Duke of *Monmouth* at *Shepton Mallet*? and about what?

L. H. Steward. By the way, Friend, where is that *Brand* that you ſpeak of?

Story. He is kill'd; I did not ſee him dye, but he is ſaid to be kill'd at *Keinſham* Bridge.

Mr. *Att. Gen.* Pray what diſcourſe had you with the late Duke of *Monmouth* about the Priſoner at the Bar?

Story. I heard the late Duke of *Monmouth* ſay at *Shepton Mallet*, that his great Dependance was upon my Lord *Delamere* and his Friends in *Cheſhire*, but he was afraid they had failed him, or betray'd him or ſome ſuch word he uſed, and he ſaid he could have been ſupply'd otherwiſe but that he had a dependance upon them.

Mr. *Att. Gen.* Pray what Office had you under the Duke of *Monmouth*?

Story. I was Commiſſary General.

Mr. *Att. Gen.* Well, we have done with you.

L. H. Steward. Will you ask him any Queſtions, my Lord *Delamere*?

L. Delamere. If your Grace pleaſe, I have a Queſtion to ask him.

L. H. Steward. Ay, with all my Heart; what Queſtion you will, my Lord.

L. Delamere. My Lord, I deſire to know whether he knows one *Saxon*.

L. H. Steward. What *Saxon* does your Lordſhip mean, one that was in the Army?

L. Delamere. Yes, one *Thomas Saxon*.

Story. Yes, my Lord, I knew him a Priſoner in *Dorcheſter* Priſon, where I was a Priſoner my ſelf.

L. H. Steward. Has your Lordſhip nothing more to ask him but that?

L. Delamere. No, my Lord.

Mr. *Att. Gen.* Now, my Lord, we call ſome Perſons to prove, that that very night when *Jones* came to Town, my Lord *Delamere* the Priſoner at the Bar goes out of Town without any Servant, changes his Name, and goes a by-way: Swear *Vaux* and *Edlin*.

Vaux was ſworn.

L. H. Steward. Well, what ſays this Man?

Mr. *Att. Gen.* Pray give my Lords an account whether you went out of Town with my Lord *Delamere*, and when?

Vaux. My Lord, perhaps I may not remember the very words that I gave my Evidence in before, but I will repeat the Subſtance.

Mr. *Att. Gen.* It is not ſo long ago, but you may eaſily recollect your ſelf; pray what day was it that my Lord *Delamere* ſent for you?

Vaux. The 26th day of *May*, and I went out of Town the 27th.

Mr. *Att. Gen.* You are upon your Oath, and you muſt remember you are ſworn to tell the Truth, the whole Truth, and nothing but the Truth.

Vaux. Sir, I ſhall take care to do it as far as I can remember.

Mr. *Att. Gen.* Whither was it that he ſent for you?

Vaux. To the *Rummer Tavern* in *Queenſtreet*, and the next day I went out of Town with him.

Mr. *Att. Gen.* What day of the Month did you go out of Town?

Vaux. It was the 27th day of *May*.

Mr. *Att. Gen.* What time of the night was it you went out of *London*?

Vaux. It was about nine or ten of the Clock.

Mr. *Att. Gen.* What name did my Lord *Delamere* then go by?

Vaux. He went by the name of *Brown*.

Mr. *Att. Gen.* My Lord, I would acquaint your

your Grace, that this is an unwilling Witneſs, and we are forc'd to pump all out of him by Queſtions?

Vaux. I do tell you the truth of all that I know.

Mr. *Att. Gen.* How far did you ride that night?

Vaux. To *Hoddeſden.*

Mr. *Att. Gen.* What time did you get thither?

Vaux. About twelve of the Clock.

Mr. *Att. Gen.* Whither did you go then?

Vaux. We went to *Hitchen*, and I return'd back again the next day.

Mr. *Att. Gen.* Whither was my Lord *Delamere* going then?

Vaux. To ſee his Son that was ſick in the Country.

L. H. Steward. What? he told you ſo, did he?

Vaux. Yes, my Lord.

Mr. *Att. Gen.* What other Company went with you?

Vaux. Two Gentlemen, the one I knew, th' other I did not.

Mr. *Att. Gen.* What was the name of him you did know?

Vaux. It was *Edlin.*

Mr. *Att. Gen.* Pray was that the direct Road to *Cheſhire* that you went?

Vaux. We made it our way.

Mr. *Att. Gen.* You made it your way; but I ask you whether it be the beſt way?

Vaux. It is the freeſt Road from duſt.

Mr. *Att. Gen.* But I ask you a plain Queſtion, upon your Oath is it the beſt way into *Cheſhire*?

Vaux. Truly, my Lord, I do not know that.

L. H. Steward. Pray who gave you Directions to call my Lord *Delamere* by the name of *Brown*?

Vaux. Himſelf, my Lord.

L. H. Steward. Was that the firſt time my Lord went by that name, as you know of?

Vaux. Yes, my Lord, I never heard that he was called by that name till that time.

L. Delamere. I was called by the name of *Brown* at that time, and I will give your Grace an account by and by of the reaſon of it.

L. H. Steward. Has your Lordſhip any Queſtion to ask him?

L. Delamere. No, my Lord.

L. H. Steward. Then go on to the next.

Mr. *Att. Gen.* Our next Witneſs is *Edlin*, pray ſwear him (which was done). Pray will you give my Lords and the Court an account whither you went with my Lord *Delamere* out of Town, and when?

Edlin. The 27*th* of *May* laſt, I was at the *Cuſtom*-Houſe, and there came Mr. *Vaux*, the Gentleman that was here laſt, who told me he was going out of Town as far as *Hitchen*, and asked me to go along with him; he ſaid he was to go that Evening; I asked him what time he intended to return? he told me he was reſolved to return the next day. I told him, then I would go along with him, and we appointed the place of meeting to be at the *Bell*-Inn in *Coleman-ſtreet*; when I came there, he ſaid there was a Friend that was going along with him, one Mr. *Brown*, we went as far as *Hoddeſden* that night.

Mr. *Att. Gen.* Pray Mr. *Edlin*, will you look upon that Gentleman that ſtands at the Bar; is that he that went by the name of *Brown*?

Edlin. Yes, my Lord, that is he.

Mr. *Att. Gen.* Well then, what time did you ſet out?

Edlin. It was very near nine of the Clock.

Mr. *Att. Gen.* Pray when was it that *Vaux* met you at the *Cuſtom*-Houſe?

Edlin. It was about ten of the Clock in the Morning.

L. H. Steward. Pray did you hear or know upon the Road, whither he was going?

Edlin. My Lord, I did never ſee my Lord *Delamere* before in my life.

L. H. Steward. But did not he tell you as he went along, whither he was going?

Edlin. He ſaid he was going for *Cheſhire* to ſee a ſick Child.

Mr. *Att. Gen.* You ſay, Sir, that you went firſt for *Hoddeſden*?

Edlin. We did ſo, my Lord.

Mr. *Att. Gen.* Pray, Sir, how long were you riding that, from the *Bell* in *Coleman-ſtreet* to *Hoddeſden*?

Edlin. It was three Hours I believe, or about three Hours and a half.

Mr. *Att. Gen.* Then you rid hard out of Town.

Edlin. My Lord, it was towards nine of the Clock when we got on Horſe-back, and it was about twelve or a little more, when we came to *Hoddeſden.*

L. H. Steward. Well, Mr. Attorney, is that all you have to ask him?

Mr. *Att. Gen.* Yes, my Lord.

L. H. Steward. Will you ask him any Queſtions, my Lord *Delamere*?

L. Delamere. No, my Lord.

Mr. *Att. Gen.* Then, my Lord, to confirm this Evidence, and to explain it, I ſhall call you a couple of Witneſſes to prove that this Gentleman went by the name of *Brown* in the Cant of thoſe that were engaged in this Buſineſs, that the name was known as his name by all the Party, and called ſo conſtantly in their Letters and Meſſages; ſwear *Tracey Paunceford*, and *Thomas Babington.* (which was done)

L. H. Steward. Which will you begin with firſt?

Mr. *Att. Gen.* We begin with *Paunceford*; Pray will you give his Grace and theſe Lords an account what diſcourſe you heard at *Diſney*'s concerning the Priſoner at the Bar, and what name was he uſually called by, in your Meetings?

Paunceford. My Lord, I ſhall give as juſt an account as I can; I was acquainted with Mr. *Diſney*, and the 14th of *June* I was at his Houſe--

L. H. Steward. What *June* do you mean?

Paunceford. Laſt *June*, my Lord, and there were three more beſides, one *Joſhua Lock*, and a Country Gentleman that I have underſtood ſince to be one *Hooper*, and there was one *Halſey*; and being there, *Lock* ſtaid for ſome Declarations.

L. H. Steward. What Declarations were thoſe you ſpeak of?

Paunceford. The Declarations of the late Duke of *Monmouth.*

L. H. Steward. Were they printed at that time?

Paunceford. They were not ready at four of the Clock in the Afternoon; but about nine of the Clock they were finiſhed, and three were printed off, and were delivered to *Joſhua Lock*, and when he had received them at that time,

there was a diſcourſe of having them ſent into *Cheſhire* to one Mr. *Brown*; after we had received them, we came over the Water together, and we landed at *Salisbury* Stairs, and *Lock* was very earneſt for going out of Town that night, with thoſe three Declarations, which, as he ſaid, were to be carried to one Mr. *Brown*: This was at nine of the Clock, and ſo we parted.

L. H. Steward. Pray into what Country was he to carry them?

Paunceford. A little way out of Town, he ſaid.

L. H. Steward. Juſt now you ſaid they were to go to *Cheſhire*.

Paunceford. My Lord, the diſcourſe at *Diſney*'s Houſe was, that they were to be ſent into *Cheſhire*, but when we came over the Water, *Lock* ſaid he was to go a little out of Town to one Mr. *Brown*.

Mr. *Att. Gen.* Pray who was that Mr. *Brown* as they meant, as you apprehended?

Paunceford. I underſtood Mr. *Brown* to be my Lord *Delamere* by ſome diſcourſe.

L. H. Steward. Whoſe diſcourſe did you underſtand it by?

Paunceford. The firſt time my Lord, that I heard of my Lord *Delamere*'s going by the name of *Brown*, was upon a diſcourſe with one *Edlin*.

L. H. Steward. Prithee tell us what that diſcourſe thou hadſt with *Edlin*, was.

Paunceford. Mr. *Edlin*, about the latter end of *May* laſt, went out of Town, as I heard, and when he came back again, I asked him whither he went? he ſaid he was invited by a Friend to go with him out of Town, and my Lord *Delamere* went along with them, and went by the name of *Brown*.

Mr. *Att. Gen.* What diſcourſe had you with *Diſney*, or any body elſe about my Lord *Delamere*'s going by the name of *Brown*?

Paunceford. Mr. *Diſney* did uſe to mention my Lord *Delamere* by the name of *Brown*.

Mr. *Attor. Gen.* Pray were you at any Meeting with any body, and whom, at any Tavern, and what Tavern where any ſuch diſcourſe was had?

Paunceford. My Lord, I was at a Meeting at the *Caſtle-Tavern* with Mr. *Vermuyden*, and my Brother *Babington*, and one *Manning*, but there was no mention then of any *Brown* that I remember, nor of my Lord *Delamere*, but only there was ſomething in relation to the landing of the Duke of *Monmouth*; the Queſtion was asked where he was to land, and Mr. *Vermuyden* made anſwer he did not know.

L. H. Steward. Will your Lordſhip pleaſe to ask this Witneſs any Queſtions, my Lord?

L. Delamere. Pray, Sir, did you ever know any body elſe that went by the name of *Brown* beſides me?

Paunceford. May I anſwer this Queſtion, my Lord?

L. H. Steward. Anſwer it, yes you muſt, you are ſworn to tell the Truth, and the whole Truth, Man.

Paunceford. My Lord, there was a diſcourſe of Mr. *Vermuyden*'s going by the name of *Brown*.

L. H. Steward. Will you ask him any more Queſtions, my Lord?

L. Delamere. No, my Lord.

L. H. Steward. Then go on, Mr. *Attorney*.

Mr. *Att. Gen.* Pray Mr. *Babington*, do you tell my Lords what you know of my Lord *Delamere*'s going by the name of *Brown*?

Babington. My Lord, I ſhall give an account. When I firſt knew any thing of the Tranſactions, I was with my Brother *Paunceford*, Mr. *Vermuyden*, and one *Chadwick* that went into the *Weſt*, and there was a diſcourſe of two Gentlemen that went by names I did not know; *Brown* was one, and I was deſirous to know who was meant by it; I was at that time but newly acquainted with the Concerns of theſe People; and ſo I found they were fearful to entruſt me; but afterwards I was at the *Caſtle-Tavern* where my Brother, and my Uncle *Vermuyden* was, and in diſcourſe of Mr. *Brown*, ſome body happened to name my Lord *Delamere*'s name, but he was preſently taken up, you mean Mr. *Brown*, ay, ſaith he, I do.

L. H. Steward. About what time was this, pray you?

Babington. About the middle or latter end of *May* laſt.

Mr. *Att. Gen.* Were you at *Diſney*'s when the Declarations were printed there?

Babington. Mr. Attorney, I will give an account of that afterwards, but I have ſomething elſe to ſay firſt; After this, I was diligent to know of my Uncle *Vermuyden* and my Brother, who this Mr. *Brown* was; my Uncle told me it was my Lord *Delamere*, and deſired me whenever I diſcourſed of him, to call him by that name, and I have very good reaſon to believe Mr. *Vermuyden* knew of the matter, becauſe he was acquainted with a great many of that ſort of People, and declared he had collected and knew of Moneys that were gathered for that Purpoſe; and he had a good account of *Monmouth*'s landing, and of the Force he had in the *Weſt*, and how long it was preſumed that he could maintain that Force without Aſſiſtance from any body elſe, and ſo I preſume he was very well acquainted with the whole Tranſaction: Afterwards I happened to be at *Diſney*'s over the Water, there was my Brother *Paunceford*, Mr. *Halſey*, and my ſelf.

Mr. *Att. Gen.* Tell what paſſed there at that time.

Babington. Diſney ſhew'd me a Declaration that was not perfected quite, but after that we fell into a diſcourſe about Mr. *Brown*, and afterwards my Lord *Delamere*'s name was named by ſome body, that ſome of the Declarations were to be ſent to him, and I remember Mr. *Diſney* ſaid he was afraid my Lord *Delamere* was not capable of doing that Service that was expected from him in *Cheſhire* for want of ſome of thoſe Declarations, which would be mighty uſeful to him to inform the People, they being *Monmouth*'s Declarations.

L. H. Steward. Had *Lock* any of thoſe Declarations away for that Mr. *Brown* you ſpeak of?

Babington. I never knew *Lock*, my Lord.

Mr. *Att. Gen.* What number of Declarations did *Diſney* print?

Babington. Diſney told us he hoped in twenty four Hours to have 500 printed, a good number of them were to be ſent to my Lord *Delamere*, and ſeveral of them were diſperſed.

L. H. Steward. Have you any more Queſtions to ask him, Mr. Attorney?

Mr. *Att. Gen.* No, my Lord.

L. H. Steward

L. H. Steward. Will you ask him any Queſtions, my Lord *Delamere*?

L. Delamere. No, my Lord.

Mr. *Att. Gen.* Then may it pleaſe your Grace, the next Witneſs we ſhall bring, ſhall be to prove that my Lord *Delamere* took frequent Journies backward and forward in a very little compaſs of time, and the ſame Witneſs will likewiſe tell you what Diſcourſe he had with my Lord during the very time of *Monmouth*'s Rebellion, to ſtir up the People to joyn with him. Swear *Hope*, (which was done). Pray tell my Lords what diſcourſe you had with my Lord *Delamere*, and when?

Hope. Upon the *Sunday* before the Coronation, my Lord *Delamere* came down Poſt to my Houſe, towards his own Houſe in *Cheſhire*——

L. H. Steward. Prithee where is thy Houſe? for theſe Noble Lords do not know thee, perhaps ſo well as I do, therefore tell us where it is.

Hope. My Lord, my Houſe is at the *Three Tuns* in *Coventry*.

L. H. Steward. Well, go on, tell what thou knoweſt.

Hope.——Some time after that he came down Poſt again, and a little after he went up again Poſt, and he told me he went down another way; and after that, the 21ſt of *June*, he came down Poſt again, this was upon a *Sunday*, the *Sunday* Seven-night after the Duke of *Monmouth* landed.

Mr. *Att. Gen.* Had he any Servant with him at that time?

Hope. Yes, he had.

L. H. Steward. Had he a Servant with him every time he came down Poſt?

Hope. No, he came over I remember, without any Servant, only with a Poſt-Boy.

L. H. Steward. Well, and what diſcourſe had you with him at that, or at any other time?

Hope. My Lord, that *Sunday* the 21ſt of *June*, my Houſe was very full of People to enquire News, it being in the time of the Rebellion, every one was deſirous to know how things went; and there was one *Ingram* in the Houſe, that came to me, and asked what News from *London*, for they ſay, ſaith he, that the Duke of *Albemarle* is killed, and his Hearſe brought to *Weſtminſter* Abby; thereupon I knowing my Lord *Delamere* was come from *London*, I went into the Room to my Lord, and deſired to know of his Lordſhip what was the News in *London*; he told me he was little at Court, and therefore could not tell much News; I then asked him what he heard concerning the Duke of *Albemarle*; ſaid I, they ſay here he is killed; ſaith my Lord, I am ſorry for it, if it be ſo, but I fear it is too true; but if he be killed, it is ſaid he is killed by his own Party; I asked him how? He told me a Party of the Duke of *Albemarle*'s Men were commanded to fire at the Duke of *Monmouth*'s Men, but inſtead of ſhooting at them, they ſhot into the Ground, upon which they were very ſeverely handled by their Officers, which ſo inraged them, that they fired upon them, and killed ſeveral of them, and amongſt others, the Duke of *Albemarle* was killed; and he told me the Duke of *Monmouth* had ſeveral Field Pieces, and Arms ſufficient for near 30000 Men.

Mr. *Att. Gen.* Pray, did he ſhew you any Places in any Maps?

Hope. There was in the Room *Adams*'s Map of *England*, and my Lord *Delamere* ſhewed me which way *Monmouth* went, and pointed out ſuch and ſuch Towns that he was poſſeſſed of, and withal ſaid, he did fear there would be many bloody Noſes before the Buſineſs was at an end.

Mr. Att. General. How many times do you think my Lord did ride poſt to and fro?

Hope. About five times I believe.

L. H. Steward. Within what ſpace of time?

Hope. From the Sunday Sev'night before the Coronation to the Twenty firſt of *June* following.

L. H. Steward. Have you done with him, *Mr. Attorney*?

Mr. Att. General. Yes, my Lord.

L. Delamere. My *Lord High Steward*, with your Grace's leave, may I ask this Witneſs any Queſtions?

L. H. Steward. Yes, my Lord, what you pleaſe.

L. Delamere. Pray, Did I go down poſt four or five times, do you ſay in that ſpace?

Hope. My Lord, I ſay you did go ſo often backward and forward.

L. Delamere. What time was that, you ſay, I came without any Servant, only with a Poſt-boy?

Hope. I cannot tell.

L. H. Steward. Will your Lordſhip ask him any more Queſtions?

L. Delamere. No, my Lord.

Mr. Att. General. Then, my Lord, we deſire *Thomas Saxon* may be ſworn (which was done) Pray, Mr. *Saxon*, will you give an account to his Grace, and my Lords, what you know of my Lord *Delamere*, the Priſoner at the Bar, concerning any Inſurrection or Rebellion deſigned by him in *Cheſhire*, and when?

Saxon. At the beginning of *June* laſt, I was ſent for to *Mere*, my Lord *Delamere's* Houſe in *Cheſhire*, where when I came I was conveyed into a lower Room, where were my Lord *Delamere*, Sir *Robert Cotton* and Mr. *Crew Offleys*, and they told me I was recommended to them by my Lord *Brandon*, who had ſaid, I was an honeſt uſeful man, and they hoped I would prove ſo: For they had ſent to the Duke of *Monmouth*, who was in *Holland*, and received an anſwer by one *Jones*, and aſſoon as they had an anſwer, my Lord *Delamere* came away poſt into the Country under another Name, and by being conveyed through *Moreſields*, came down to raiſe Ten thouſand men for the Duke of *Monmouth* in *Cheſhire*, by the firſt of *June*; but now they had conſidered of it, and found they could not raiſe them till *Midſummer*, for they muſt have time to raiſe a Sum of money, forty thouſand pounds in that Country to maintain the men: They asked me, whether I would not undertake to carry a Meſſage to the Duke of *Monmouth*, I told them I would, and I had there given me eleven Guineas, and five pounds in Silver for my Journy, and I did hire a Horſe afterwards, and did deliver my Meſſage to the Duke of *Monmouth*.

L. H. Steward. When was this do you ſay?

Saxon. This was the beginning of *June*.

L. H. Steward. What day of *June*?

Saxon. I cannot tell to a day, what day in *June* it was, for I did not ſet it down; but I believe it was the third or fourth of *June*.

L. H. Steward. How came you to be recommended by my Lord *Brandon* to theſe Gentlemen: Were you acquainted with my Lord *Brandon?*

Saxon. I was acquainted with him: The firſt time I was with him was at *Over*, the next time was at my Lord's own Houſe.

Mr. Att. Gen. Ay, pray tell my Lord, how you came acquainted with my Lord *Brandon?*

Saxon. Upon the Monday in Eaſter Week laſt, being at *Over*, I was ſent for by my Lord *Brandon* to drink a glaſs of Ale, and ſmoke a pipe of Tobacco with him, and when I came thither, my Lord told me he had a deſire to be acquainted with me; ſo we drank a conſiderable while; and he was attended at that time with one *Hollingſhead*, and one Mr. *Lee*; and after we had drank pretty ſmartly, and after ſome diſcourſe, *Lee* and *Hollingſhead* went forth, being called out to ſpeak with ſome body, about an Eſtate or a Tenement that they were concerned in: After they were gone out, my Lord *Brandon* began to diſcourſe about the Elections of Parliament-men, how unfairly they had been carried, he ſaid, he ſtood both for the Town and County of *Lancaſter*, but had loſt it by an unfair Election; for the other Party had made Sevenſcore Freemen in one night in the Town, and by that means had carried it againſt him; which had exaſperated the Country ſo much, that they were reſolved to make it an occaſion of raiſing up the Country in Arms, under pretence of maintaining the Chriſtian Engliſh Liberties; and that they had a deſign to ſend for the Duke of *Monmouth*, and make him King; and that they muſt make uſe of ſuch men as me, that were men of Intereſt in the Country, to ſtir up the People to riſe in Arms; and if I would come to *Goſworth*, his Houſe, upon the Monday after, he would tell me more of that Buſineſs: I went according to the time, and there he told me a great deal to the ſame purpoſe, and withal he ſhewed me a Letter that he had written to the Duke of *Monmouth*; which Letter I afterwards ſaw at *Bridgwater*.

L. H. Steward. Have you any more Queſtions to ask him?

Mr. Att. Gen. No, my Lord; But if my Lord *Delamere* pleaſe to ask him any Queſtions, he may.

L. Delamere. I humbly pray he may repeat the Evidence he hath given againſt me, for I have not heard what he has ſaid.

L. H. Steward. Turn toward my Lord *Delamere*, and repeat the Evidence that you gave againſt him, ſo as he may hear you: *Which he did to the ſame effect, as before,*

L. H. Steward. Pray, from whom did you receive that money?

Saxon. I received it from my Lord *Delamere*.

L. H. Steward. My Lord *Delamere*, will you ask him any Queſtions?

L. Delamere. Yes, may it pleaſe your Grace.

L. H. Steward. Then the Method you are to take, is this, you muſt propound your Queſtions to me, and then I will propound them to the Witneſs?

L. Delamere. I deſire to know, may it pleaſe your Grace, when was the firſt time that he declared this that he has now ſworn againſt me.

L. H. Steward. My Lord deſires to know of you, when it was that you firſt made known this againſt him?

L. Delamere. And to whom, my Lord?

Saxon. I ſuppoſe I told Mr. *Storey* of it firſt, my Lord, at *Dorcheſter* after I was taken Priſoner for the Rebellion.

L. Delamere. When did he tell it *Storey*, my Lord?

Saxon. I think it was a Fortnight after my acquaintance with him.

L. H. Steward. Were you then in the ſame Priſon with *Storey?*

Saxon. Yes, I lay with him in the ſame Bed.

L. Delamere. If your Grace pleaſe, I would ask him another Queſtion.

L. H. Steward. Ay, what you will.

L. Delamere. I deſire to know, when was the firſt time that he made Oath of this, and upon what occaſion it was?

L. H. Steward. What ſay you to that?

Saxon. The firſt time I made Oath of it, was when I lay ſick.

L. Delamere. Will your Grace pleaſe to ask him, where that was, and when?

Saxon. It was before His Majeſty's Counſellors, that were ſent to take my Examination in *Newgate*.

L. H. Steward. Prithee, I do not know when thou cameſt to *Newgate*, it may be thou haſt been there oftner than once.

Saxon. I gave my firſt Information immediately after I was brought to Town, when I was removed from *Dorcheſter* Goal to *Newgate*.

L. Delamere. My Lord, I deſire your Grace would ask him what time he came up?

Saxon. The beginning of the laſt Term.

L. Delamere. Then I deſire to know, my Lord, whether he did remain a Priſoner in the Country all the other time?

Saxon. Yes, I did ſo, from the Tenth of *July*, till the time that I was brought up to *Newgate*.

L. Delamere. My Lord, I deſire to know of him, whether I had ever imployed him about any of my Concerns, that ſhould give me an occaſion of truſting him with ſuch Secrets?

L. H. Steward. What Buſineſs of Importance had my Lord *Delamere* ever imploy'd you about before this time?

Saxon. I was never imployed about any Concerns of my Lord *Delamere*'s before that time, neither was I ever in his Company, but only then, and then as recommended by him to him; for they ſaid, they muſt make uſe of ſuch as me to make their Deſigns known to the Country, for the accompliſhing what they did intend.

L. Delamere. Recommended by him, who does he mean?

Saxon. By my Lord *Brandon*.

L. Delamere. If your Grace pleaſe, I deſire to know what the Buſineſs was that he was to do?

Saxon. I was to inform the Country concerning the time of the Riſing, my Acquaintance abounded that way, and by their Diſcourſe they had got Men in every Place to acquaint the Country when they ſhould riſe.

L. H. Steward. Were you acquainted with any great Number?

Saxon. My Lord, I was a publick Tradeſman in *Middlewich*, and much acquainted with the ordinary ſort of People.

L. Delamere. My Lord, he ſays he was ſent for to my Houſe, I deſire to know who was the Meſſenger that was ſent for him?

Saxon.

Saxon. My Lord, I did ask him his name, but he would not tell it me; he told me he was but a Tenant to my Lord *Delamere*, and had been imployed in ſuch Buſineſſes for my Lord *Delamere*'s Father, Sir *George Booth*, he was a lame Man in one Arm, for he had his Hand ſhot away at the Siege of *Nantwich*.

L. Delamere. It was *Tom Long* the Carrier, I ſuppoſe, or ſome ſuch Fellow or other, that I ſent for him; My Lord, I deſire to know what time of Day or Night was it when he came to my Houſe?

Saxon. It was juſt when it began to be Dark, the Meſſenger came to me in the Afternoon to fetch me thither, and I ſent for a Man's Horſe that lived near me, and when it was brought me, he asked me what made me go ſo late, I told him I had occaſion to go late, and I ſhould return late, and the Man ſtayed at my Houſe for his Horſe till it was late: but I not coming home, he left order for his Horſe to be brought to him.

L. Delamere. Next my Lord, I deſire to know when he came to my Houſe, whether he did alight from his Horſe at the Stables that belong to the Houſe or no?

Saxon. I did alight juſt at the Old Buildings, and the Man's Horſe that came with me and mine were taken into the Stables.

L. Delamere. Pray, my Lord, ask him who took his Horſe from him?

Saxon. The Man that came with me, and he went into the Houſe and brought out a Candle.

L. Delamere. My Lord, I would ask him whether the Door he was let in at was that which was neareſt the Stable, or which Door?

L. H. Steward. Do you know what Door of the Houſe you were let in at?

L. Delamere. My Lord, I ask him whether it were the next Door to the Stable?

Saxon. My Lord, I cannot very well give an account of that, for I never was at the Houſe before.

L. Delamere. Pray, my Lord, let him recollect himſelf, whether it were the Door next the Stable or not.

L. H. Steward. Ay, with all my Heart, if he can.

Saxon. I did not ſee any other Door but that I came in at, and therefore I cannot tell which Door it was.

L. Delamere. Theſe Queſtions, my Lord, I take to be proper for me to ask, and I believe I ſhall make it appear to your Grace to be ſo by and by.

L. H. Steward. Good my Lord, take your full Liberty, and ask what Queſtions you pleaſe; for I know my Lords here will be very well pleaſed that you have all the Scope allowed you that can be.

L. Delamere. I humbly thank your Grace, I deſire to know of him, who let him into the Houſe?

Saxon. The Man that came with me went with me juſt to the Door, and let me in within the Door, and I ſaw no other Man but that Man, till I came into the Room where my Lord and thoſe two Gentlemen were.

L. Delamere. Was there no body elſe but we there?

Saxon. No, you were ſo wiſe, you would let no body be by.

L. Delamere. My Lord, I ſhall trouble this Witneſs no farther at preſent.

L. H. Steward. Then Mr. *Attorney General*, will you proceed?

Mr. *Att. Gen.* My Lord, we ſhall give no more Evidence at preſent, but ſhall reſt here till we ſee what Defence this Noble Lord will make for himſelf.

L. H. Steward. Then, my Lord *Delamere*, your time is now come to make your Defence, you have heard what has been Evidenced againſt you, and my Lords now expect to hear what you have to ſay for your ſelf.

L. Delamere. May it pleaſe your Grace, a great part of the Day is ſpent, and I would beg the Favour of your Grace, that I may have the Favour till to morrow Morning to review the Notes I have taken, and then I ſhall make my Defence.

L. H. Steward. My Lord *Delamere*, I had this very thing in my Thoughts before I came hither this Day, becauſe I did foreſee that this was likely to be a long Cauſe, and the proceeding in it would take up much time: I have a little doubt, I muſt needs ſay, in my own Mind, whether it may be done by Law; I know very well, if this were a Tryal in full Parliament, there have been Precedents to warrant the Adjournment till another Day, though it be in the midſt of a Tryal; and in the middle of the Evidence: But this Court I take to be of the ſame nature, though of a degree higher, with the other ordinary Courts of Judicature; and whether it be not obliged and tied up to the ſame Method of Proceedings with thoſe other Courts, where all Capital Offences are Tryed, is a thing I am in ſome doubt about: In thoſe Courts it has not been uſual to Adjourn the Court after Evidence given; nay, it has been ſometimes a Queſtion, whether the Judges in thoſe Courts, after the Jury are gone from the Bar, to conſider of their Verdict, could Adjourn themſelves: I ſay, the Judges have ſometimes made a Doubt of it, though I know, the Point is now ſettled, and the Practice is, that they may, and do. But this is moſt certain, after the Evidence given, the Jury cannot be Adjourned, but muſt proceed in their Enquiry, and be kept together till they are agreed of their Verdict; this has cauſed ſome Heſitancy in me, what the Law may be in this Caſe; therefore I think it may be proper to conſult with my Lords the Judges; for I deſire the thing may be conſidered and ſettled.

L. Delamere. My Lord, I humbly beg this Favour of your Grace, but to Adjourn till to Morrow.

L. H. Steward. With all my Heart, my Lord, if it may be done by Law.

L. Delamere. I hope it may, my Lord, and I beg that Favour of your Grace.

L. H. Steward. My Lord, I ſhould be very glad to comply with your Lordſhip's Deſires, but truly I have conſidered it, and do doubt whether I can by Law do it: In full Parliament it is clear it may be done, but upon this Commiſſion, after my Lords the Peers are once charged, and the Evidence partly given, whether I can then Adjourn them till another Day, is with me a Doubt: My Lords, if your Lordſhips pleaſe, before ſuch time as my Lord, the Priſoner at the Bar, enters upon his Defence, I will with your leave propound the Queſtion to my

Lords

Lords the Judges, and hear their Opinion what the Law is.

L. Delamere. My Lord, I ſhall hardly be able to finiſh all I have to ſay in any convenient time this Day.

L. H. Steward. But, my Lord, if an Adjournment cannot be by Law, I cannot help it.

L. Delamere. There has a great deal been ſaid, and it will require a great deal of time to give it an Anſwer.

L. H. Steward. Ay, but if it cannot be done as you would have it, we muſt be contented to ſtay the longer together; for I would not abridge you of your Defence; therefore, my Lords the Judges, if you will pleaſe to go together and conſider of it, and report your Opinions, what the Law is in this Caſe, and we will ſtay till you come again.

Then the Judges withdrew into the Exchequer Chamber.

E. Nottingham. My *Lord High Steward*, I do humbly conceive this is a Matter that concerns the Privilege of the Peers, and becauſe it is a matter that doth ſo much concern the whole Peerage; I think my Lords here ought in ſome meaſure to concern themſelves about it: Therefore, my Lord, I have a ſhort Motion to make to your Grace, that, conſidering the Conſequence that the Precedent of this Caſe may draw with it, ſince my Lords the Judges are gone together to conſult of this Point, of which, I may ſay, they are not altogether the ſole Judges: We may alſo withdraw to conſider of this Matter with them, becauſe it may not be proper for my Lords in Publick here, to offer what they may have to ſay, to incline my Lords the Judges in their Judgments one way or other?

L. Falconberge. My Lord, I humbly offer this to your Grace, upon the Motion that this Noble Lord has made, that, with Submiſſion, I take this to be a thing that concerns the Priviledge of Peerage only, and I conceive the Judges are not concerned to make any Determination of that Matter. I think therefore, my Lords here ought to retire with them to conſider of it.

L. H. Steward. My Lords, I think, with Submiſſion to your Lordſhips, that this is a Queſtion naturally proper for my Lords the Judges to give their Opinions in, whether this Court, as a Court of Judicature for the Tryal of this Noble Lord, may, in the midſt of the Tryal adjourn till another Day: And the Priviledge of the Peerage cannot at all come in Queſtion here as I conceive.

L. Falconberg. My Lord, that we conceive is a Point of Priviledge which certainly the inferior Courts can have no power to determine.

L. H. Steward. If your Lordſhips have a Mind to withdraw, you may.

Lords. Ay, withdraw, withdraw.

Then the Peers withdrew, and after half an Hour the Judges returned and took their places as before, and after about an Hour the Peers returned to their former places.

L. H. Steward. My Lords, the Judges have you conſidered the Matter that has been propoſed to you, and what is your Opinion?

L. C. J. Herbert. May it pleaſe your Grace, the Judges in obedience to your Graces Commands have withdrawn, and conſidered of what your Grace propoſed to them, and with humble Submiſſion they take the Queſtion to be this.

Not, whether your Grace may Adjourn your Commiſſion from one day to another, for that is clear you may, and has been practiſed, for that is the Caſe of the Earl of *Somerſet* and his Wife.

But the Queſtion is, Whether, after the Priſoner is upon his Tryal, and the Evidence for the King is given, the Lords being, as we may term it, charged with the Priſoner, the Peers Tryers may ſeparate for a time, which is the conſequent of an Adjournment to another Day.

And my Lord, the Judges preſume to acquaint your Grace, that this is a matter wholly new to them, and that they know not upon recollection of all that they can remember to have read, that either this matter was done, or queſtioned, whether it might or might not be done in any Caſe.

My Lord, If the matter had been formerly done, or been brought into Queſtion in any Caſe, where it had received a determination, and reported in any of our Books of Law, then it would have been our duty to contribute all our Reading and Experience for the ſatisfaction of this great Court: But being, as it is, a new Queſtion, and a Queſtion that not only concerns the particular Caſe of this Noble Lord at the Bar, but is to be a Preſident in all Caſes of the like nature for the future: All we can do is, to acquaint your Grace and my Noble Lords, what the Law is in the inferiour Courts in Caſes of the like nature, and the Reaſon of the Law in thoſe Points, and then leave the Juriſdiction of this Court to its proper Judgment.

My Lord, in the firſt place, where the Tryal is by a Jury, there the Law is clear, the Jury once charged can never be diſcharged till they have given their Verdict, this is clear; and the reaſon of that is, for fear of Corruption, and tampering with the Jury: an Officer is ſworn to keep the Jury together without permitting them to ſeparate or any one to converſe with them; for no Man knows what may happen, for (though the Law requires honeſt Men ſhould be returned upon Juries, and without a known Objection they are preſumed to be *probi & legales homines*, yet) they are weak Men, and perhaps may be wrought upon by undue Applications.

This, My Lord, it is ſaid, fails in this Caſe, becauſe the Lords that are to try a Peer, are Perſons of that great Integrity and Honour, that there is not the leaſt Preſumption of their being to be prevailed upon in any ſuch way; and for that reaſon, becauſe of the Confidence which the Law repoſes (and juſtly) in Perſons of their Quality, they are not ſworn as common ordinary Jurors are, but are charged and deliver their Verdict upon Honour.

My Lord, in the Caſe of a Tryal of a Peer in Parliament, as your Grace was pleaſed to obſerve, and as is very well known by late Experience, there the matter has been Adjourned till another Day, and for divers Days; the Evidence being in ſeveral Parcels, and there the danger is as great (if any were to be ſuppoſed) of Tampering: But whether the Lords being Judges in that Caſe, and in this Caſe only in the nature of a Jury, makes the difference, though in both Caſes it is but like a Verdict, for they give their Opinions *Seriatim*, whether the

the Peer tryed be Guilty or not Guilty, that they ſubmit to your Graces conſideration.

Upon the whole matter, My Lord, whether their being Judges in the one, and not in the other inſtance, alters the Caſe, or whether the Reaſon of Law in inferiour Courts, why the Jury are not permitted to ſeparate till they have diſcharged themſelves by their Verdict, may have any influence upon this Caſe, where that reaſon ſeems to fail, the Priſoner being to be tryed by his Peers, that are Men of unqueſtionable unſuſpected Integrity and Honour, we can't preſume ſo far as to make any Determination in a Point that is both new to us, and of great Conſequence in it ſelf; but think it the propereſt way for us, having laid matters as we conceive them before your Grace and my Lords, to ſubmit the Juriſdiction of your own Court to your own Determination.

L. H. Steward. My Lords; I confeſs I would always be very tender of the Priviledge of the Peers, wherever I find them concerned; but truly I apprehend, according to the beſt of my underſtanding, that this Court is held before me. It is my Warrant that convenes the Priſoner to this Barr. It is my Summons that brings the Peers together to try him, and ſo I take my ſelf to be Judge of the Court.

My Lords 'tis true may withdraw, and they may call the Judges to them to aſſiſt them, which ſhews they have an extraordinary Priviledge in ſome Caſes more before the High-Steward, than Juries have in inferior Courts in Caſes of common Perſons: For, if it be in a common Caſe, no Jury can call either Council or Judges to aſſiſt them, in the abſence of the Priſoner, but if they will have advice, it muſt be asked in open Court in the preſence of the party accuſed.

But now, My Lords, if you have a mind to conſult with me in private, as I now ſit by Virtue of this Commiſſion, which is His Majeſties Warrant for me to hold this Court, I could not withdraw with you, but you muſt ask all your Queſtions of me, in the preſence of the Priſoner in open Court; whereas if it were in full Parliament, as were the Caſes of my Lord *Stafford*, and my Lord of *Pembroke*, then he that were the High Steward might go along with you when you withdrew, and conſult with you, and give his Opinion, which I cannot do in this Caſe; for I am bound to ſit in Court, while you withdraw to conſider of the Evidence, and am not to hear any thing ſaid to me, but what is ſaid in open Court in the preſence of the Priſoner, except it be when you deliver your Verdict.

This I confeſs my Lords has a great weight with me, and I know your Lordſhips will be very tender of proceeding in ſuch a Caſe any way but according to Law; For though you are Judges of your own Priviledges, yet, with Submiſſion, you are not Judges of the Law of this Court; for that I take to be my Province.

Why then, Suppoſe my Lords, I ſhould take upon me to do as my Lord *Delamere* deſires and adjourn the Court, and ſuppoſe the Law ſhould fall out to be that indeed I ought not ſo to have done, would it be any advantage to this Noble Peer, if he ſhould be acquitted by your Lordſhips after ſuch an Adjournment, might not the evil conſequence of that be, that he might be Indicted for the ſame Crime, and tryed again? For all the Proceedings after that would be Void, and lyable to be reverſed.

And if on the other ſide your Lordſhips ſhould think fit, upon the Evidence you have now heard, and what he ſhall ſay for himſelf, to convict him after I have adjourned as is deſired and I paſs Judgment upon him, as it will be a Duty incumbent upon me to paſs Sentence on him, if you convict him; what will become of the Caſe then? and how ſhall I be able to anſwer it, as having done my duty, when I pronounce a Judgment notoriouſly Erroneous and Illegal? for ſo it will be, if the Law prove to be againſt my adjourning: This, my Lords, is a matter of great Moment, and worth the Conſideration.

But in the other Caſe of a Trial in full Parliament, the Lord that Sits where I do, is only as the Chairman of the Court rather than Judge, he gives a Vote in ſuch Proceedings; and therefore my Lord the Priſoner did very well at the beginning to ask the Queſtion, whether I had any Vote in his Tryal, as a Peer jointly with your Lordſhips: If I ſat in full Parliament I ſhould without all queſtion give my Vote as well as any other Peer, but ſitting here by immediate Commiſſion from the King *pro hac vice*, High-Steward; I acquaint you as I did him, I have no authority to give any Vote: my Buſineſs is to ſee the Law obſerved and fulfilled as Judge.

Certainly, My Lords, your Lordſhips and I, and all Mankind ought to be tender of committing any Errors in Caſes of Life and Death, and I would be loath, I will aſſure you, to be recorded for giving an Erroneous Judgment in a Caſe of Blood, and as the firſt Man that ſhould bring in an illegal Precedent, the Conſequence of which may extend I know not how far.

Mr. *Att. Gen.* Will your Grace give direction for my Lord to proceed?

L. H. Steward. Yes, he muſt proceed I think.

L. Delamere. May it pleaſe your Grace, and you my Lords, it is an offence of a very high Nature for which I am this day to anſwer before your Lordſhips; yet I thank God I am not afraid to ſpeak in this place, becauſe I am not only certain and well aſſured of my own Innocency, no ſuch thought having as yet entred into my Heart; but I am alſo well aſſured of your Lordſhips Wiſdom and Juſtice, which cannot be impoſed upon or ſurprized by Inſinuations and florid Harangues, nor governed by any thing but the Juſtice of the Cauſe.

My Lords, I can with a great deal of Comfort and Satisfaction ſay, that theſe Crimes wherewith I am charged are not only Strangers to my Thoughts, but alſo to what has been my conſtant Principle and Practice; for I think that in matters relating to the Church and the things enjoyned therein, few have conformed more in Practice than I have done, and yet do I confeſs, and am not aſhamed to ſay it, that I have always had a Tenderneſs for all thoſe who could not keep pace with me, and Charity for thoſe that have outgone me, and differed from me, though never ſo far; nay though of a different Religion: For I always thought Religion lay more in Charity than Perſecution.

While I had the Honour to be a Magiſtrate in my Country, I did conſtantly duly and impartially execute the Laws, and in every publick truſt I was very faithful in the Diſcharge of it, for I never voted nor ſpoke in any manner but

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as my Conſcience and Judgment did dictate to me. I have always made the Laws the meaſure of my Loyalty, and have ſtill been as Zealous and Careful to give the King his Prerogative, as to preſerve to the People their Properties, and have endeavoured as far as in me lay to live peaceably with all Men.

This, My Lords, was not only the Dictates of my own Inclinations, but it was the Principle of my Father, and the Leſſon that he taught me: I ſay my Father, who was ſo greatly Inſtrumental in ſnatching this Nation out of its Confuſion, and reſtoring it to its ancient Government, by ſetling his late Majeſty upon his Throne, and conſequently was the means of his preſent Majeſty, that now is, his coming ſo peaceably to the Crown: And this I may the more boldly ſpeak, becauſe I ſpeak it by good Authority; becauſe in the Patent that created my Father a Peer, his late Majeſty is pleaſed to ſay, his Riſing was mainly inſtrumental in his Reſtauration. I beg the Favour of your Grace and my Lords, that I may read you that Clauſe in the Preamble of the Patent, which I have here ready to produce.

Which was read, and then my Lord proceeded as follows, viz.

My Lords, I ſuppoſe moſt of your Lordſhips did know him, and whoſoever did ſo, I dare ſay, did believe him to be a good Man: For my part I did not know a better Copy to write after than his Example, which I endeavoured always to imitate, and that I hope will go very far to vindicate me from the Imputation of being inclined to any ſuch Crime as I ſtand charged with.

My Lords, it is now late, and therefore I ſhall cut off a great deal of what I had intended to ſay to your Lordſhips, that I may not take up too much of your time, and come immediately to my Defence, as to what I ſtand accuſed of.

And firſt, my Lords, I ſhall obſerve that here have been a great many Witneſſes produced, and a great deal of Swearing, but little or nothing of Legal Evidence to affect me; for there is but one Man that ſaith any thing home and poſitively againſt me (and whom I ſhall anſwer by and by) all the reſt are but Hearſays, and ſuch remote Circumſtances, as may be tacked to any Evidence againſt any other Perſon, but are urged againſt me for want of greater matters to charge me with; and therefore I hope the producing and preſſing of theſe things againſt me, is rather a ſtrong Argument that I am Innocent, and that there have been miſchievous and ill deſigns of ſome againſt me, than that I am Guilty; for if they had had other and greater matters, your Lordſhips would have been ſure to have heard of them.

With your Lordſhips leave, I cannot but obſerve to your Lordſhips an excellent ſaying of that great Man my Lord of *Nottingham* (whoſe Name will ever be remembred with Honour in our Engliſh Nation,) when he ſat in the ſame place that your Grace does now, at the Tryal of my Lord *Cornwallis*, which I will read to your Lordſhips. Speaking to the Peers he has this paſſage.

I know your Lordſhips will weigh the Fact, with all its circumſtances, from which it is to receive its true and its proper Doom. Your Lordſhips are too juſt to let Pity make any abatement for the Crime, and too wiſe to ſuffer Rhetorick to make any Improvement of it: This only will be neceſſary to be obſerved by all your Lordſhips, that the fowler the Crime is, the clearer and plainer ought the Proof of it to be; there is no other good Reaſon can be given, why the Law refuſeth to allow the Priſoner at the Bar Council in matter of Fact, when Life is concerned, but only this, becauſe the Evidence by which he is condemned ought to be ſo very evident and ſo plain, that all the Council in the world ſhould not be able to anſwer it.

My Lords, I think the Evidence that has been given againſt me this day does not come up to this. And I hope your Lordſhips will regard this ſaying of my Lord *Nottingham*'s, as more worthy of your conſideration, than the fine Flouriſhings and Inſinuations of the Kings Council, which tend (if it be not ſo deſigned) rather to miſguide your Lordſhips, than to lead you to find out the Truth.

My Lords, I ſhall now tell you the method that I ſhall proceed in, in making my Defence; and I begin with *Saxon*, for he I perceive is the great *Goliah*, whoſe Evidence is to maintain this Accuſation, and if I cut him down, I ſuppoſe I ſhall be thought to have done my own buſineſs; therefore to that I ſhall apply my ſelf firſt, and do it if I can; and I will in the firſt place examine ſeveral perſons that are his Neighbours and have converſed with him, what they have heard and know of him; and firſt I deſire *Richard Hall* may be called.

L. H. Steward. My Lord *Delamere*, if you begin that way to call Witneſſes againſt *Saxon*, it is fit he ſhould be here to know what is ſaid againſt him.

L. Delamere. Ay, with all my heart, My Lord.

L. H. Steward. Then call *Saxon* agen.

Then Saxon *and* Hall *came both in.*

L. Delamere. Pray Mr. *Hall* tell my Lords here what you know of *Thomas Saxon.*

L. H. Steward. What is it you ask of this Witneſs?

L. Delamere. My Lord, I deſire him to give an account what he knows of a Letter, that was forged by *Saxon*, in the name of one *Hildage.*

Hall. About the nineteenth of *December* in the year 1683, I received a Letter by *Thomas Saxon* from *Richard Hildage*, wherein he deſired me to ſend him the ſum of ſix pounds odd money which I owed him: I received the Letter and paid the money, and to the beſt of my knowledge ſome little time after I met with the ſaid *Hildage* at *Newcaſtle*, who asked me to pay him the money I owed him: I replyed I had paid the money, according to his Note, but he ſaid he never gave any ſuch Note, and threatned to ſue me; thereupon I ſent one *Lord* to *Hildage*, that is here now in the Court, and deſired *Hildage* his forbearance for a while, till I could get the money from *Saxon* back again, and afterwards he ſent again for his money, and I ſent to *Saxon* for it, but ſtill the money did not come.

L. H. Steward. Did you ever ſpeak with *Saxon* himſelf?

Hall. No, but with his Wife, who came to me about it, but he acknowledged, he wrote the Letter before *John Lord.*

Saxon. Did not my Wife tell you that *Richard Hildage* lent me the money?

L. H. Steward. Nay, you muſt not Dialogue with one another, but if you have any queſtions, you muſt propound them to the Court: My Lord *Delamere*, have you any queſtions to ask him?

L. Delamere, No, my Lord.

Lord

L. H. Steward. Then what is it you would have him asked, *Saxon*?

Saxon. I desire you would please to ask him whether or no, he did not lend me the money?

L. H Steward. He, who do you mean?

Saxon. Richard Hildage did.

L. H. Steward. What say you, did *Richard Hildage* lend him the money?

Hall. No my Lord.

L. H. Steward. Look you, my Lord *Delamere*, the Objection carries a great deal of weight in it, to prove him a very ill man, if it be fully made out.

L. Delamere. My Lord, if your Grace please, I can prove that he owned the writing of the Letter to another man.

L. H. Steward. My Lord, he does own here, that he wrote the Letter and that he wrote it in *Hildage's* name, but he saith, the Letter, he so wrote in *Hildage*'s Name was by *Hildage*'s direction, and if so, that takes off the Objection made against him.

L. Delamere. I must submit that to your Grace, whether what he says in that matter be Evidence.

L. H. Steward. What *Hildage* did, or did not, is the main turn of the question in this Case; for he might lend him the money, and yet afterwards might say, when he thought he might lose it, that he did not send any such Letter, and all this be true, and *Saxon* in no fault: I must confess, if *Hildage* were here himself, and should deny the lending of the money, or the giving him Directions to receive it, you would have fixed a shrewd Objection upon him; but otherwise Hear-says and discourses at second hand are not to take off the Credit of any mans Testimony.

L. Delamere. But *Hall* says *Hildage* denyed the receipt of the money, or any Order for receiving of it.

L. H. Steward. That signifies nothing, being but by second hand.

Saxon. If it please your Grace, here is my Brother in Court will give you an account of it.

L. H. Steward. Well, well, hold your tongue; will your Lordship please to go on?

L. Delamere. The next Witness, my Lord, that I shall call, shall be *Francis Ling* (who came in.)

L H. Steward. What do you ask this Witness?

L. Delamere. Mr. *Ling*, pray will you tell his Grace, and my Lords, what you know concerning *Saxon*'s receiving any Money in the name of Mrs. *Wilbraham*, without her Order.

Ling. He called at this same *Hildage*'s at *Newcastle*, and received twenty five Shillings, and said it was for Mrs. *Wilbraham* in her name, but she never received a penny of the Money, nor knew of his having received it, till he came to pay another Quarter.

L. H. Steward. Where is that Mrs. *Wilbraham*, is she here?

Ling. No, my Lord, she is a Neighbour of ours, an Ancient Woman, fourscore years of Age, and cannot come so far.

L. H. Steward. This is the same Case with the other, you can never think to take off the Credibility of Witnesses by such Testimony; for this is only a Tale out of an Old Woman's Mouth: What if that Old Woman told him a false Story?

Ling. She said ——

L. H. Steward. I care not what she said, this is no Evidence at all.

L. Delamere. Then pray call *Richard Shaw* (who came in.)

L. H. Steward. Well, what says this Witness?

L. Delamere. Shaw, can you tell any thing of *Thomas Saxon*'s writing a Letter, and sending it in the Name of one *Pangston* a Bayliff?

Shaw. He writ a Letter, as I understand, concerning some Money that I owed him; for I owed him a little Money, and being I did not pay it, he does forge a Letter, and puts *William Pangston*'s name to it, so I got up the other Morning ——

L. H. Steward. Where is *Pangston*? Is he here?

Shaw. No, my Lord, he is not, but he told me he did not write the Letter.

L. H. Steward. Why, this is just the same again, and we all know how easie a thing it is to hear a Bayliff tell a Lye.

Shaw. I cannot tell, but I called ——

L. H. Steward. All that is nothing. It is a difficulter matter to hear such Fellows speak truth, than any thing else, I am sure.

L. Delamere. The next Witness that I shall call, is *Peter Hough* (who appeared.)

L H. Steward. There is your Witness. What say you to him?

L. Delamere. 'Pray acquaint his Grace, and my Lords, what you know of *Saxon*'s cheating you in the making of a Bond.

Hough. My Lord, he had six Pound ten Shillings in money, and ten Shillings in work done, for which he was to give me a Bond, and hereof he made the Bond himself. I thought it had been right, and took it; but about the time when the money was become due, I looked upon it, and it proved to be but for 6*l.*

L. H. Steward. What should it have been for?

Hough. It should have been for six Pounds ten Shillings in money, and ten Shillings in work.

L H. Steward. Did not he give thee a Bond for all thy money?

Hough. It should have been so, but I never had it.

L. H. Steward. Had you never the money?

Hough. No, I never had the money.

L. H. Steward. What did he say the Bond should be made for?

Hough. For seven Pounds.

L. H. Steward. What say you to it *Saxon*?

Saxon. My Lord, I had five Pounds ten Shillings of him, and Ten Shillings in work, for which I gave him Bond, there were the Witnesses names at it, the Bond was fairly read, and I sealed it, and he took it with him.

L. H. Steward. Ay, but he says it was to be for seven Pounds.

Saxon. I never had any more of him than six Pounds, and for that I gave him Bond.

L. H. Steward. Was the Bond read to you?

Hough. He read it himself, and he made it himself.

L. H. Steward. How did he read it? What did you apprehend by his reading it was made for?

Hough. I took it as he read it to be made for seven Pounds.

Saxon. He may say what he pleases, but I had no more of him but six Pounds; I was to give Bond for no more.

L. H. Steward. Now the Witnesses to this Bond would be very proper to be produced here: For, if he did make the Bond but for six Pounds, when the Debt that was to be secured was seven Pounds,

that is a ſign that he had an intention to cheat him of the Twenty Shillings.

L. Delamere. That ſhews what a kind of Man he is.

L. H. Steward. But this is but Witneſs againſt Witneſs, for he ſays he owed no more, and was to make the Bond for no more.

Hough. It was as I tell you, I aſſure you, my Lord.

Saxon. I had no more of him than ſix Pounds.

Hough. Did not I ask you afterwards one Queſtion more, and told you it was a Cheat, and you ſaid it ſhould be mended?

L. H. Steward. Well, my Lords have heard it, they will conſider what weight to lay upon it.

Lord Delamere. Pray call *Edward Wilkinſon* (who appeared.)

L. H. Steward. What do you ask him?

L. Delamere. Wilkinſon, pray tell my Lords, how *Saxon* dealt with you about your Horſe?

Wilkinſon. My Lord, he hired a Horſe of me for three days, and was to give me twelve pence a Day, but he never came again, nor had I any ſatisfaction for my Horſe, but I loſt my Horſe by the Bargain, and my Money too.

L. H. Steward. How long ago was it ſince he hired your Horſe?

Wilkinſon. My Lord, it was the Twenty third of *June*, to the beſt of my remembrance.

L. H. Steward. Did he not agree with you for 12 *d.* a day as long as he uſed your Horſe?

Wilkinſon. I expected to have my Horſe in 3 days time.

L. H. Steward. But mind my Queſtion, Did you agree that he ſhould have him but 3 days? or, was he to give you 12 *d.* a day for ſo long as he kept him out?

Wilkinſon. I was to have 12 *d.* a day for him.

L. H. Steward. What as long as he uſed him, or only for 3 days?

Wilkinſon He did agree with me to bring him again in 3 days.

L. H. Steward. I perceive by the time, he rid into the Rebellion with this Horſe, and he was a very Knave for ſo doing, upon my Conſcience.

L. Delamere. Call *William Wright.* (who came in) Pray will you give my Lords an account what Reputation this *Thomas Saxon* is of in his Country.

Wright. My Lord, this *Thomas Saxon* came to live at *Sambige*, and I had ſome dealings with him as well as other Men, and I never found him to perfect his word in any thing.

L. H. Steward. What didſt thou never find him?

Wright. To perfect his word in any thing, My Lord.

L. H. Steward. That is, make good his word I ſuppoſe, but that is your *Cheſhire* Phraſe.

Wright. Whereupon I met with him one Evening after Evening Prayer, and ſaid to him, *Thomas Saxon*, if I cared no more for keeping my word than thou do'ſt, it were no matter if I were hang'd; for to be ſure, if thy Mouth open, thy Tongue lyes; and he turn'd away from me, and would not anſwer me a word; and ſince that he owed me ſome Money, and when I asked him for it, he told me if I did trouble him for the Money it ſhould be the worſe for me; whereof all the Town knows as well as I that I cannot ſet him forth in words as bad as he is.

L. H. Steward. Can you inſtance in particular, Friend, of any Fraud, Cheat, or Cozenage that he has been Guilty of? for it is not what the Town ſays, but what can be proved, that we muſt take for Evidence; the Town that thou liveſt in may reckon thee but an idle Fellow, and yet thou may'ſt be a very honeſt Man for all that.

Wright. I truſt, my Lord, I am ſo, and ſhall always prove ſo.

L. H. Steward. Well, what doſt thou know ill of him?

Wright. He did not keep his word with me.

L. H. Steward. Wherein doſt thou mean?

Wright. As to Money he owed me.

L. H. Steward. How much Money did he owe thee?

Wright. He owed me a deal.

L. H. Steward. How much doſt thou call a deal?

Wright. I cannot tell how much exactly.

L. H. Steward. Does he owe thee any thing now?

Wright. Yes, but I cannot juſtly tell how much.

L. H. Steward. My Lord *Delamere*, I would be very unwilling to interrupt the method of your defence, or abridge you in your Evidence; but really this objection that you endeavour to prove by this Witneſs, is not at all, as I conceive, for your Lordſhips Service: For it is a very hard caſe, if any one that owes Money and does not pay it, ſhall for that very reaſon loſe the credit of his Teſtimony, this rather gives a countenance to what he ſays, that you know no other Objections but ſuch trivial ones to make againſt him.

L. Delamere. Then, if your Grace pleaſe, I will make ſhort work of it, and ſpare your time; I ſhall paſs over this part of my Evidence though I have more Witneſſes to this Point, and come to other matters, to matter of Fact to encounter this poſitive Proof that has been given againſt me. Your Grace and my Lords do obſerve, that this Man *Saxon* has teſtified, that about the third or fourth of *June* laſt (for there he fixed the time) this Man as an extraordinary Perſon that was fit to be truſted in an Affair of this Nature, being confided in, and recommended by my Lord *Brandon*, was ſent for by me to *Mere*, where he found me and Sir *Robert Cotton* and Mr. *Offley*, who did imploy him to tranſact the matter of ſtirring up the Country, in order to a riſing and joyning with the late Duke of *Monmouth*: Now I will firſt prove to your Lordſhip in general, that Sir *Robert Cotton* was not in *Cheſhire* for many Weeks, nay ſeveral Months, both before and after the time he ſpeaks of: And next in particular I ſhall prove, as to the time that he has pitched upon, by divers Perſons that ſaw Sir *Robert Cotton* here then in *London*, and give you particular reaſons for it: Firſt to prove that he was here in Town ſo long in general: I ſhall produce his Servants that ſaw him every day: Call —— *Billing* (who appear'd) Pray Sir, will you give an account what time Sir *Robert Cotton* came to *London*, when he went out of *London*, and whether you were frequently in his Company and ſaw him here?

Billing. My Lord, to the beſt of my remembrance, Sir *Robert Cotton* came to Town the 10*th* of *April* laſt, and I was with him here in Town, at his Houſe at the Horſe Ferry till the latter

end

end of *July*, and ſaw him conſtantly more than once or twice every day for that time, I uſed to come into his Chamber moſt Mornings before he was up, I uſed to buy in his Proviſion for his Houſe, I ſaw him a Bed, or heard he was in Bed every Night.

L. H. Steward. Did you belong to him?

Billing. I am his Servant.

L. Delamere. He lived with him in the Houſe all the while he ſays?

Billing. Then about the latter end of *July* he went out of Town for three Days to *Epſom*, and then he came to Town again, and continued here till the time he was committed to the Tower, and never was in *Cheſhire* ſince the *6th* of *April* laſt.

L. H. Steward. How came you to remember ſo punctually when he came to Town, and that he ſtaid here all the while?

Billing. I know it by my Accounts for the Journey up, and by the Tradeſmens Bills for the Proviſion of the Houſe ever ſince.

L. H. Steward. In what Capacity did you ſerve Sir *Robert Cotton*?

Billing. I bought in all the Proviſion for his Houſe, and paid the Tradeſmens Bills.

L. H. Steward. Have you any Papers in your Pocket that will point to any particular time?

Billing. I have not the Tradeſmens Bills here, my Lord, nor my own Accounts, but I have look'd upon them, and by that I am ſure what I have teſtified is true.

L. H. Steward. Who do you call next, my Lord?

L. Delamere. Call *Margaret Davis*, (who appeared,) Pray will you give an account to my Lord, what time Sir *Robert Cotton* came to Town, and to the beſt of your remembrance when he went out of Town again.

Davis. He came to Town upon the Tenth of *April* laſt, or thereabouts, and he has not been out of Town any Night ſince, except it were in *Auguſt*.

L. H. Steward. What day did he come to Town do you ſay?

Davis. About the *10th* of *April*.

L. H. Steward. And you ſay he did not go out of Town till *Auguſt*?

Davis. No, my Lord.

L. H. Steward. How do you know this?

Davis. I was conſtantly in the Houſe with him.

L. H. Steward. But how came you to be ſo exact as to the time?

Davis. I ſaw him continually every day.

L. H. Steward. How came you to ſee him?

Davis. I live with him in the Houſe.

L. H. Steward. Pray recollect your ſelf as to the time he went out of Town, for I perceive the other Man ſays it was the latter end of *July*.

Davis. It was in *Auguſt* certainly, my Lord.

L. Delamere. My Lord, the other Witneſs ſaith it was the latter end of *July*, and that may be very well conſiſtent, neither of them ſpeaking to a day.

L. H. Steward. Well, are you ſure he was in Town all the Month of *June*?

Davis. Yes, he was.

L. H. Steward. Well, who do you call next?

L. Delamere. Mrs. *Sidney Lane*, (who appeared.)

L. H. Steward. What do you ask this Gentlewoman?

L. Delamere. I examine her to the ſame Point: and I queſtion not but I ſhall make it out to your Grace, and my Lords, none of us all three that he has named were there at that time.

L. H. Steward. I ſhall be very glad of it, my Lord.

L. Delamere. Pray Mrs. *Lane* will you give an account when it was Sir *Robert Cotton* came to Town, and how long he ſtaid here?

Mrs. *Lane.* He came to Town the *April* before the Coronation, and never lay out of Town I am ſure all thoſe three Months of *April*, *May* and *June* after he came to Town.

L. Delamere. This Gentlewoman, my Lord, lived in the ſame Houſe with him.

Mrs. *Lane.* I did ſo, My Lord, and ſaw him every Night and Morning.

L. Delamere. If your Grace pleaſe, I have two or three more Witneſſes to the ſame purpoſe, but I would ſpare their Lordſhips time, if this point be fully cleared.

L. H. Steward. Pray, my Lord, do not abridge your ſelf, for I know my Lords will not grudge the time, but are very deſirous you ſhould have full Liberty in what is pertinent.

L. Delamere. Then I deſire *Charles Reeves* may be called, (who appeared) I pray, my Lord, that this Man may give an account what time it was Sir *Robert Cotton* came to Town, and how long he ſtay'd here.

Reeves. If it pleaſe your Lordſhip, he was in Town before the Coronation, and I ſaw him here every day from that time till after *July*, once or twice every Day.

L. H. Steward. Did you belong to him?

Reeves. Yes, and I do now.

L. H. Steward. In what Capacity, Friend?

Reeves. My Lord, I am his Footman.

L. Delamere. May it pleaſe your Grace, the next Witneſs I have to produce is Mr. *Aſhburnham*; being he cannot eaſily remove, I beg he may be heard in the place where he is.

L. H. Steward. Ay, let him ſpeak where he is, and let him ſpeak out.

L. Delamere. Pray Sir, will you pleaſe to recollect your ſelf what time you ſaw Sir *Robert Cotton*, and where the laſt Summer?

Aſhburnham. My Lord, I being at Sir *Robert Cotton*'s Houſe at *Weſtminſter*, he deſired me to preſent a Petition of his to the Houſe of Commons for him, and it was about the latter end of the time allotted for Petitions, I cannot exactly tell what day of the Week or Month it was, but I ſaw him that day I preſented his Petition, and I ſaw him at the Committee of Elections two or three days after.

L. Delamere. Sir *William Twiſden* I deſire may be alſo heard what he has to ſay to the ſame Point. *Who anſwered to the ſame effect.*

L. Delamere. Mr. *Heveningham* is my next Witneſs, My Lord; who I deſire that he would pleaſe to give your Grace and my Lords an account, when he remembers to have ſeen Sir *Robert Cotton* in Town.

Mr. *Heveningham.* My Lord, it was a more than ordinary occaſion that makes me remember the thing and the time ſo particularly. I was engaged in a diſpute in the Houſe of Commons about my own Election, and that was up-

on the 2*d* of *June*, then was a Caſe debated in the Houſe, whether a Mayor that was elected a Burgeſs for any Town could ſit upon his own Return it was then carried he ſhould not, and the next day which was the third of *June*, another queſtion came on, whether Sir *Joſeph Williamſon* was duly elected and returned, and I remember at that time I was walking with Sir *Robert Cotton* in the Court of Requeſts, and Mr. *Neal* came out of the Houſe and told me, that it was carried by five, that he was not, and then Sir *Robert Cotton* was with me.

L. H. Steward. So you ſpeak as to the 2*d* and 3*d* of *June*?

Mr. *Hevening ham.* My Lord, had it not been upon this particular occaſion, I could not have remember'd the time ſo exactly.

L. H. Steward. You give a very good token for your remembrance, and my Lords hear what you have ſaid.

L. Delamere. Will your Grace pleaſe that the Clerk of the Houſe of Commons may be called, and examined to the Journal of that Houſe, when it was Sir *Robert Cotton* preferred his Petition, and that will fix the time as to what Mr. *Aſhburnham* and Sir *William Twiſden* have ſaid?

L. H. Steward. Call whom you pleaſe, my Lord.

L. Delamere. It ſeems he is not ready, but I hope I have given your Grace and my Lords ſufficient ſatisfaction, that Sir *Robert Cotton* was not there at that time that this fellow ſpeaks of. I will now go on and prove Mr. *Offley* was not there neither, and the firſt Witneſs I call to that, ſhall be Sir *Willoughby Aſton*, whom I deſire your Grace will be pleaſed to hear ſpeak in his place.

L. H. Steward. Well, what do you ſay, Sir *Willoughby*?

Sir *W. Aſton.* My Lord, I deſire to be guided in what account I ſhall give by the Queſtions that ſhall be asked.

L. H. Steward. What is it you ask Sir *Willoughby Aſton*?

L. Delamere. Pray can you remember, Sir *Willoughby*, what time it was, and whether about the latter end of *May* laſt, or when, that you know of Mr. *Offley's* being at your Houſe, and how long he ſtayed there?

Sir *W. Aſton.* I can give an account of his Motion for ten days together, but that perhaps may be more than is neceſſary.

L. H. Steward. It will not be improper, Sir, for you to give as exact and particular account as you can of the times.

Sir *W. Aſton.* If your Grace pleaſe, I will do it.

L. H. Steward. Pray do, Sir.

Sir *W. Aſton.* Upon the 26*th* of *May*, which was *Tueſday*, at Night Mr. *Offley* and his Lady, and ſome of their Relations, came to my Houſe, upon *Wedneſday* the 27*th* of *May* Mr. *Offley* was ſo ſick that he kept his Chamber and his Bed all day, upon the 28*th* of *May* which was *Thurſday*, he was ſo ill that he kept his Chamber all day, and roſe about five at Night, and I then waited upon him, and ſat with him three Hours in his dreſſing Room, on *Friday* the 29*th* of *May* he went to Church, that Day was imployed a great part in Devotion, upon the 30*th* of *May* which was *Saturday*, Mr. *Offley* and his Lady went, and a great part of my Family went with them, to one Mr. *Pickerings* ſix Miles off my Houſe, there they dined, and returned at Night to my Houſe, upon *Sunday* the 31*ſt* of *May*, I have a particular remark whereby I remember that Mr. *Offley* went to viſit Mr. *Needham*; upon *Monday* the firſt of *June*, Mrs. *Offley* and the Women of my Family went to viſit my Lady *Brooks*, but Mr. *Offley* not being well ſtaid at home: On *Tueſday* the ſecond of *June* he was ſtill at my Houſe, there was a great deal of Company there, and he was in the Company all the day long: On *Wedneſday* the 3*d*. I fell ſick in the Morning about 4 of the Clock, but Mr. *Offley* was in the Houſe all the Morning, but in the Afternoon he went to make a Viſit two Miles from my Houſe, at a place called the *Ware-houſe*, where the Ships ride at Anchor; and upon *Thurſday* Morning which was the 4*th* of *June*, he went from my Houſe: Now if your Lordſhip deſire to know any thing about any particular time about this Compaſs, I'll give you the beſt account I can.

L. H. Steward. Can you tell where he went when he went from your Houſe?

Sir *W. Aſton.* He went directly home, as he ſaid.

L. H. Steward. Did you hear at any time that he ſtay'd by the way, between his going from you and coming to his own Houſe?

Sir *W. Aſton.* My Son went with him two or three Miles of his way, and I heard that at *Middle-wich* he ſtaid to ſpeak with ſome of the Militia Officers that he met with by the way there at a Muſter, and afterwards went directly home.

L. H. Steward. Pray is the uſual way from his Houſe to yours by my Lord *Delamere's*?

Sir *W. Aſton.* No, my Lord, directly another way.

L. H. Steward. Will you ask Sir *Willoughby Aſton* any more Queſtions?

L. Delamere. No, my Lord.

Mr. *Att. Gen.* If your Grace pleaſe, I would ask Sir *Willoughby Aſton* one Queſtion. Sir, I deſire to know how far it is from your Houſe to my Lord *Delamere's*?

Sir *W. Aſton.* Sir, it is about Eleven Miles.

L. H. Steward. Eleven Miles you ſay, Sir?

Sir *W. Aſton.* Yes, my Lord, Eleven of thoſe *Northern* Miles.

L. Delamere. My Lord, I have ſome more Witneſſes to examine to this Point.

L. H. Steward. Call whom you pleaſe, my Lord?

L. Delamere. I call Mr. *Gregory* next, my Lord. (who appeared) Pray give my Lord an account, when Mr. *Offley* went from Sir *Willoughby Aſton's* laſt Summer, and whither he went?

Gregory. My Lord, my Maſter went from Sir *Willoughby Aſton's* Houſe——

L. H. Steward. Who is your Maſter?

Gregory. Mr. *Offley*, my Lord. It was upon the 4*th* of *June*, at 9 of the Clock in the Morning, and went from thence to *Middle-wich*, and was at home at his own Houſe about five of the Clock in the Evening, as I was told, for I did not go directly home with him.

L. H. Steward. Was he at *Mere* that day at my Lord *Delamere's*?

Gregory. No, not that I know of, I was not with him.

L. Delamere. Then pray call *Thomas Kidd.* (who appeared) Pray were you that day with Mr. *Offley* when he went from Sir *Willoughby Aſton's*?

Kidd. Yes, my Lord, I was.

L. Delamere. What day was it?

Kidd. The 4*th* of *June*.

Lord

L. Delamere. Then whither went he?

Kidd. He went the direct Road to his own Houſe, I never parted from him, nor did he ſtop any where till he came to *Middle-wich*, where the Country *Militia* were exerciſing, and he juſt alighted off his Horſe, and ſpoke with Major *Minſhaw* and ſome of the Officers, but never ſo much as drunk by the way till he came to his own Houſe.

L. H. Steward. What to his Houſe in *Staffordſhire*?

Kidd. No, but to *Crew Hall* in *Cheſhire*.

L. H. Steward. Does *Mere* lye in the Road between Sir *Willoughby Aſton*'s and *Crew Hall*, ſo that your Maſter might be there within that time?

Kidd. No, that he could not do.

L. H. Steward. Were you with Mr. *Offley* the whole Journey home?

Kidd. Yes, my Lord, I was.

L. H. Steward. Were you no time from him?

Kidd. No, my Lord I was not.

L. H. Steward. What time did he come home?

Kidd. He came to his own Houſe about 4 or 5 a Clock at night.

L. H. Steward. And did not he go from thence that night?

Kidd. No, my Lord.

L. Delamere. Now my Lord, I will prove as to my ſelf that I was in *London* at the time as he ſpeaks of. And Firſt, I deſire Sir *James Langham* may be heard to that:

He appeared, but gaye no Evidence.

L. Delamere. Pray call——*Booth* (who appeared)

L. H. Steward. What is this Gentleman's name?

L. Delamere. He is my Brother, my Lord, his Name is —— *Booth*.

L. H. Steward. What do you ask him?

L. Delamere. Pray can you remember what time in *June* you ſaw me in Town here?

Mr. *Booth.* My Lord, I ſaw my Brother here in Town, the 3*d*, 4*th*, 5*th*, 6*th*, and ſo on to the 10*th* of *June*, and the 10*th* of *June* I went out of Town my ſelf, I ſaw him ſometimes twice or thrice a day in that time, for I did not lodge above half a ſcore doors from him.

L. H. Steward. Where was that?

Mr. *Booth.* In *Great Ruſſel-Street*.

L. H. Steward. How come you to remember the time ſo particularly?

Mr. *Booth.* It was that day Sennight before I went out of Town, which was *Wedneſday* the 10*th* of *June*, and had it not been for that particular Circumſtance, I had not remark'd it ſo much as to be able particularly to remember it.

Mr. *Att. Gen.* Pray, Mr. *Booth*, did you know of your Brother's going out of Town the 27th of *May*?

Mr. *Booth.* I heard he was gone out of Town about that time.

L. H. Steward. Why then, when came he hither to Town again?

Mr. *Booth.* I cannot tell, but I ſaw him upon the 3*d* of *June* in the Evening.

Mr. *Att. Gen.* My Lord, it is not poſſible for him ſo to do in that time, if he rode Poſt.

L. H. Steward. He did make a great deal of haſte backward, and forward, that is certain.

L. Delamere. My Brother does not know when I went, but as he heard, he ſays.

L. H. Steward. But pray my Lord, mind the Objection that has been made, for it carries a great deal of weight in it. It is plainly proved by two Witneſſes, that you went out of Town the 27*th* of *May* at 9 of the Clock at Night, and rode to *Hoddeſden*, and the next day came to *Hitchin* about Noon, then they left you and return'd back again to *London* that Night, and you told them you were going to ſee a ſick Child of yours in *Cheſhire*, how came you to make ſuch Poſt-haſte back again, that he ſhould ſee you here in *London* the 3*d* of *June*?

Mr. *Booth.* My Lord, I am certain I ſaw him that day in the Evening, and ſo on to the 10th.

L. H. Steward. Did my Lord then tell you how your Friends did in *Cheſhire*?

Mr. *Booth.* I cannot remember the particular diſcourſe we had.

Mr. *Att. Gen.* Pray, Sir, when did he tell you he came to Town?

L. H. Steward. You ſay you uſed to ſee him every day once or twice a day.

Mr. *Booth.* Yes, I did ſo.

L. H. Steward. Pray where was he the Second of *June*?

Mr. *Booth.* He was not come to Town.

L. H Steward. How long time was it before that, that you had not ſeen him?

Mr. *Booth.* I had not ſeen him of ſeveral days before.

L. Delamere. If it pleaſe your Grace, here is another Brother of mine that ſaw me at the ſame time, and tho' he be my Brother I hope he is a good Witneſs.

L. H. Steward. Ay, God forbid elſe; what is his name?

L. Delamere. George Booth.

L. H. Steward. Well, what ſay you, Sir;

Mr. *George Booth.* My Lord, I ſaw my Brother *Delamere* here in Town the 4th of *June*, by this particular Circumſtance which I cannot err in, that the next day, as I take it, I went down with him to the Houſe of Lords, to hear my Lord *Macclesfield*'s Cauſe, which was then there to be heard upon the Appeal of Mr. *Fitton*, and my Brother was in the Houſe of Lords at that time, which was the 5th of *June*.

L. H. Steward. My Lord *Delamere*, I think it not amiſs to put you in mind of one thing, which it is fit your Lordſhip ſhould give ſome anſwer to: Does your Lordſhip deny that you went out of Town the 27th of *May*?

L. Delamere. No, my Lord, I do not; I acknowledge I did ſo.

L. H. Steward. Then it will be fit for you to give an account where you were the 28th of *May*, and ſo all along till the 3d of *June*?

L. Delamere. If your Grace pleaſe, I hope I ſhall give you full Satisfaction in that by and by, but I have one Witneſs more to this point of my being in Town at ſuch a time, that I could not be in *Cheſhire*, when this Fellow ſays I was; and that is my Lord *Lovelace*.

L. H. Steward. There is my Lord *Lovelace*, what will you ask him?

L. Delamere. Whether he did not ſee me at the Tryal of my Lord *Macclesfield* in the Houſe of Lords?

L. Lovelace. I was in the Houſe of Lords that day that my Lord *Macclesfield*'s Tryal was, and I remember I did ſee my Lord *Delamere* there.

L. H. Steward. But we are as much at a loſs now as ever we were, for what day that Tryal

was

was does not appear: What day was my Lord *Macclesfield*'s Tryal?

L. Delamere. The Journal of the House of Lords proves that to be the 5th of *June*.

L. Lovelace. My Lord stood just by the Bar, and if I am not mistaken took Notes.

L. Delamere. My Lord, I hope now I have satisfied your Grace, and the rest of my Lords, that none of us three whom this Fellow has mentioned were there at that time at *Mere*, when he says we were: For my own part I do positively affirm, and I speak it as in the Presence of Almighty God, that I have not seen Sir *Robert Cotton* at my House that I know of these many Years, and I believe Mr. *Offley* was never in my House since I was Master of it: And I do likewise protest, that to my Knowledge, I never saw the face of this Man till now that he is produced as a Witness against me; I am sure I never spoke with him in all my Life, nor never sent for him to come to my House: And if your Lordship please to consider the Story that he tells, it will easily appear to be very improbable, for he neither tells you who the Messenger was that was sent for him, nor the way that he came into the House, which any body that has ever been at the House could not mistake. For when I asked him what door it was he came in at, it was for this reason, because he must needs have gone a great way about, if he had not come in at the usual Entry into the House, for I have but one door into my House except that by the Stables, which is a great way off the House? and it being about that time of the Year, if it were 8 or 9 of the Clock in the Evening, he must needs discern which way he came in: And, besides, My Lords, is it probable what he says, that he should see no body stirring about the House except it were this Man without a Hand, that he says was sent for him? I assure your Lordships, I have not, nor had my Father ever that I know of, any Servant or Tenant that was maimed in that manner that he speaks of; he saith, he was recommended to us by my Lord *Brandon*: But he cannot tell your Lordship any thing that ever he had done, to recommend him either to him or us: I did ask him what important Service he had ever done for me, that might give a credibility to my imploying him in such a business as this. My Lord, I cannot help it, if People will tell false Stories of me, but I hope your Lordships will consider the credibility of it; is it to be imagined that I would take a Man I knew nothing of, upon another Man's Word, into so great a Confidence, as to employ him about a business of this Nature? I am glad that he was called in here again for your Lordships to view him. I beseech your Lordships to look at him; Is this Fellow a likely Fellow to be used in such an Affair? Does he look as if he were fit to be employed for the raising of ten thousand Men? Does he seem to be a Man of such considerable Interest in his Country? A Fellow, that though it be not direct Evidence, yet by several Witnesses, I have shewn to be a Man of no Reputation in his Country, nay of a very ill one; and could we have none else to employ in a matter of this Moment but such a Fellow as his Neighbours would not take his Word for any thing? It is an improbable Story upon these accounts, if I should say no more. Your Lordships likewise see, that he is so well thought of, that he dare not be trusted out of *Newgate*, but is kept still a Prisoner, and as such gives Evidence here: And I know your Lordships will not forget that he swears to save himself, having been a Rebel by his own Confession, and he would fain exchange his Life for mine; till he has a Pardon, which as yet, as I am informed, he has not; the Objection will still lye upon him, that he swears to save himself, which will render his Testimony not credible, and the Law requires the Witnesses in Treason, to be credible ones: And yet forsooth! this Man, that no body that knows him will believe a Word he says, must be taken to be the Man of Integrity, Zeal and Industry; the Man of Management and Dispatch, the Man of Interest and Authority in his Country, that nothing can be done, but he must have a hand in it. My Lords, I think I need say no more of him; your Lordships time is precious, too precious indeed to be spent upon such a Subject, and so I set him aside.

My Lords, there is a thing that I perceive the King's Council lay a great weight upon, and that is my going down upon the 27th day of *May*, and my frequent riding Post to and fro. I shall now satisfie your Lordships of the Reasons of my Journeys. The first time which was betwixt the Coronation and the sitting of the Parliament was upon this reason; I went down to take Possession upon a Lease of a considerable value which was renewed to me by the Bishop. I did not think of going down at that time so soon; but I had Word wrote me out of the Country that the Bishop was ill, and that obliged me in point of interest to make haste down. And this I shall prove by one that was Attorny for me, and another that was a Witness of my taking Possession: and for this, I first call Mr. *John Edmonds* (who came in) Pray, Sir, will you tell his Grace and my Lords, what you know of my coming down into the Country in the beginning of *May*, and upon what account, and what time it was?

Mr. *Edmonds.* May it please your Lordship, upon the 5th of *May* my Lord *Delamere* did me the Honour to come to my House, and he stayed there a little while, and desired me to be a Witness of his taking Possession upon a Lease of my Lord Bishop of *Chester*'s, and we went into the House that was next to mine, which was and there did take Possession.

L. H. Steward. Where is your House?

Mr. *Edmonds.* At *Boden*, in *Cheshire*.

L. H. Steward. When was this, do you say?

Mr. *Edmonds.* The 5th of *May*.

L. Delamere. Pray Sir, will you satisfie my Lord, whether the Bishop was not ill at that time?

Mr. *Edmonds.* My Lord, I had been a little before at *Chester*, and hearing my Lord Bishop was not very well, I went to Mr. *Allen*, and told him I was desirous to see my Lord, and speak with him, if I might; he told me my Lord was so ill, that he would speak with no body.

L. H. Steward. Was it a Lease for Years, or a Lease for Lives?

Mr. *Edmonds.* It was a Lease for Lives.

L. H. Steward. Then that might require my Lord's taking Possession. Who do you call next, My Lord?

L. Delamere. Mr. *Henry*.

L. H. Steward

L. H. Steward. What do you ask this Man, my Lord?

L. Delamere. Pray will you give his Grace and my Lords an account, whether you were not Attorney, and delived me Poſſeſſion upon the Leaſe of my Lord Biſhop of *Cheſter*?

Mr. *Henry.* My Lord, I was Attorny by Appointment, and the 5th of *May* laſt I delivered Poſſeſſion to my Lord *Delamere* at one of the moſt remarkable places of the Land that belonged to that Leaſe of the Biſhop.

L. Delamere. My Lords, I hope this is a ſatisfactory reaſon for my going down at that time, the Biſhop being ill, and the Leaſe being worth 6 or 7000 *l.* The next time that I have to ſpeak to is, That of my going the 27th of *May*, and for that I give this anſwer; I did go out of Town the 27th of *May*, the occaſion of my going was, I had taken up a Reſolution before to go ſee my Child that was not well, but I had not taken my Journy ſo ſoon, nor with ſuch Privacy, but that I had notice, there was a Warrant out to apprehend me, and knowing the Inconveniences of lying in Priſon, I was very willing to keep as long out of Cuſtody as I could, and therefore I went out of the way, and under a borrowed Name. When I came to my Houſe in *Cheſhire*, there were not above five of my own Servants that ſaw me all the while I was there, and I ſaw no body but them, but while I was there, my Wife ſent me an Expreſs, that as to the Warrant ſhe hoped it was a Miſtake, and there was no ſuch thing; but my eldeſt Son was very ill, and if I intended to ſee him alive I muſt make haſte up, this was the occaſion of my quick return, and I ſhall ſatisfie your Lordſhips by Proof, that I came thither in that manner to avoid the Warrant, and for no other Reaſon.

L. H. Steward. You ſay you went to ſee a ſick Child in the Country.

L. Delamere. May it pleaſe your Grace, my Mother that is here, wrote me word that my Child was not well.

L. H. Steward. Pray what made you come back again ſo ſoon?

L. Delamere. Becauſe I had an Expreſs ſent me by my Wife that my other Son was like to dye.

L. H. Steward. Call your Witneſs, my Lord.

L. Delamere. Mrs. *Kelſey*, (who came in) Pray will you give an account what I ſaid, when I came down, was the occaſion of my coming ſo privately and changing my Name?

Mrs. *Kelſey.* My Lord heard he ſaid, there was a Warrant for taking of him up, and he gave me that for a Reaſon; beſides his little Son in the Country was ill.

L. H. Steward. What, ſhe lived in the Country, did ſhe?

Mrs. *Kelſey.* My Lord, I was in the Houſe with him.

L. Delamere. If your Lordſhips pleaſe my Mother may be examined?

L. H. Steward. Yes, with all my Heart.

She ſate by him at the Bar.

L. H. Steward. Pray Madam, will you lift up your Voice, that my Lords may hear what you ſay.

Lady Delamere. My Lords, This Child of his that was in the Country, was more than ordinarily precious to him, in regard it was born to him at that time, when he was an innocent honeſt Man, (as he is now a Priſoner in the *Tower* for High-Treaſon,) above two years ago, and I think it increaſed his Affection to the Child, that God had given it to him when he was in that Affliction. My Lord, I knowing the Affection that the Father and Mother both had to the Child, my Care in their abſence I thought ought to be more exerciſed about him: The Child ſucked, but I ſaw the Child decline, and therefore I was of Opinion that he ſhould be wean'd, and I ſent up word that if they did not take care quickly and look a little after him, I was afraid he would go into a Conſumption. Upon this my Son came down, I ſaw him not indeed, becauſe he was very private all the while he was in the Country, but while he was there, it pleaſed God to viſit his eldeſt Son with a dangerous Diſtemper, upon which my Daughter ſent for him Poſt, if he intended to ſee his Son alive. And thereupon I think he made what haſte back again he could.

L. H. Steward. Were you in the ſame Houſe with him, Madam?

Lady Delamere. My Lord, I ſay, I did not ſee him all the time he was there, I only tell you what I heard.

L. H. Steward. How long was he in the Country?

Lady Delamere. I cannot tell exactly that, I think he was not above two days.

L. H. Steward. He muſt be but one day by Computation of time?

L. Delamere. Pray, my Lord, I will ſatisfie you in that point preſently: Mrs. *Kelſey* will give an account what time it was that I came down, and when I went away.

Mrs. *Kelſey.* My Lord came down on the *Sabbath-day* night, and ſtayed there *Monday*, and went away the *Tueſday* Morning.

L. H. Steward. Look you, my Lord, the 27th of *May* was upon a *Wedneſday*, that night you went out of Town, and went to *Hoddeſden*. *Thurſday* which was the 28th you came to *Hitchen* at Noon. *Friday* was the 29th, *Saturday* the 30th, *Sunday* was the 31ſt, then you came to your Houſe, *Monday* the 1ſt of *June*, *Tueſday* the 2d, then you came away, and upon *Wedneſday* the 3d you were in Town, ſo ſays your Brother.

L. Delamere. It was ſo, my Lord.

L. H. Steward. Which way did you come back?

L. Delamere. I came Poſt through *Coventry*, my Lord, and that was the time that *Hope* ſpeaks of, that I told him I had come another way into *Cheſhire*, when I came down.

L. H. Steward. My Lord, you ſay you went down to ſecret your ſelf from a Warrant that you apprehended was out againſt you, and that made you go a by-way, how came you then to come ſo publickly back, the ordinary Poſt-Road?

L. Delamere. If your Grace pleaſe, I have told you I had an Expreſs came from my Wife, that told me it was a Miſtake as to the Warrant, but that my Child was very ill, and I muſt make haſte up.

L. H. Steward. Have you any more Witneſſes my Lord?

L. Delamere. Yes my Lord, I deſire Mr. *Kelſey* may be called, (He came in.)

L. H. Steward. Well, what ſay you?

Mr. *Kelſey.* My Lord came down upon the *Sunday* night at eleven of the Clock, and ſtayed at home all *Monday*, and on *Tueſday* Morning

at

at 3 of the Clock in the Morning, he took Horſe for *London*, and I have Letters by me that are dated the 4th of *June* which was *Tourſday*, that told me my Lord was come to Town the night before.

L. H. Steward. Whoſe are thoſe two Letters?

Mr. *Kelſey.* They were from my Lady and Mrs. *Vere Booth*, and both came by the ſame Poſt.

L. Delamere: I ſhall call one Witneſs more, my Lord, to prove that my Child was ſick here in Town, and the time, and that is Sir *Thomas Millington*, who was his Phyſitian.

Sir *Thomas* was called, and came in.

L. Delamere. Pray Sir *Thomas*, can you recollect your ſelf what time my Son was ill laſt Year?

Sir *Thomas Millington.* My Lord, I was ſent for to my Lord *Delamere*'s Son upon the 28th of *May*, and I found him then very ill, and he continued ſo for two days, inſomuch as I told my Lady *Delamere* his Mother that I thought the Child would not eſcape. I told it likewiſe to Sir *James Langham*, who is my Neighbour in *Lincolns-Inn-Fields*; what they did upon it, whether they ſent for my Lord *Delamere* to Town or no, I cannot tell, but I know punctually this was the time by reaſon the Bills I wrote are dated on that day, otherwiſe I could not have remembred the time, but the Bills being ſent me from the Apothecary, I find that date to them.

L. H. Steward. Pray, Mr. *Attorney* will you call *Edlin* again, or *Vaux*, either of them.

Mr. *Att. Gen.* Here is *Edlin*, my Lord

L. H. Steward. Where did you part with my Lord *Delamere*, and when?

Edlin. Upon *Thurſday* the 28th of *May* at *Hitchin*.

L. H. Steward. What time of the day was it when you parted?

Edlin. It was about ten of the Clock.

L. H. Steward. He went forward Poſt into *Cheſhire*, did he not?

Edlin. He did not go Poſt I ſuppoſe, for he went upon his own Horſe.

L. H. Steward. Did he go upon his own Horſe?

Edlin. It was the ſame Horſe he went to *Hitchin* upon.

L. H. Steward. Have you any more Witneſſes, my Lord?

L. Delamere. No, my Lord. I hope I have given their Lordſhips Satisfaction in all Points, and need to give no further Evidence.

L. H. Steward. Have you any thing more then to ſay, my Lord?

L. Delamere. My Lords, I acknowledge I did go at that time privately a By-Road, and by the name of *Brown*, and as for *Jones*, who it is ſaid came from *Holland* that day, I appeal to him himſelf, and I call God to Witneſs I never ſaw the Man before now in my Life; nay, till after I was made a Priſoner upon this account, I never ſo much as heard of his Name; and your Lordſhips ſee by the Proofs, that all that has been ſaid againſt me, except what this Fellow *Saxon* has teſtified, is but hearſay, nay indeed but hearſay upon hearſay at the third and fourth hand.

My Lords, if People will make uſe of my name, and ſay this, and that and the other, and among themſelves talk of Meſſages ſent to me; can I or any Man in the World help it? at this rate who can be innocent, if a Man muſt be guilty becauſe others intend to draw him into Treaſon? For there is no more in the utmoſt that this proof can amount unto. It is at the pleaſure of any two men in the world, to take away the Lives, Honours, and Eſtates of any of your Lordſhips, if it be a proof ſufficient to make you guilty of Treaſon, for them to ſwear you were intended to be drawn into Treaſon.

And, my Lords, as to the truth of the thing it ſelf, that there was any Meſſage or Correſpondence between the late *D.* of *Monmouth* and me, I call God to witneſs I have neither wrote nor ſent Letter or Meſſage to him, or received Letter or Meſſage from him, this 3 years: I cannot tell what expectation he might have concerning me or any body elſe. It is very probable he might have expectation of aſſiſtance from ſome body, and that without ſuch expectations he would not have made the attempt he did: But, my Lords, all that is nothing to me, I had no correſpondence either by Letters or Meſſages with him, ſo that all that has been ſaid upon that point of his expectations, and what he declared, I muſt give the ſame anſwer to that I gave to the Evidence about *Jones*'s Meſſage, That admitting it to be true, he did declare ſo, yet, no proof being made of an actual correſpondence, it is no more but only an intention in him to draw men into Commiſſion of Treaſon; and if that be allow'd for proof of guilt, I muſt repeat it again, there's no man can be innocent.

Upon the whole matter, my Lord, I muſt leave my Caſe to the conſideration of your Lordſhips: I am not Maſter of ſo much Law or Rhetorick as the Kings Council, to plead in my own Cauſe, and I have had but little time to recollect and apply my defence to my accuſation, but I hope what Evidence I have offered has given your Lordſhips full ſatisfaction that I am not guilty of what I ſtand charged with.

And after all that has been ſaid, my Lords, I would beg your Lordſhips to conſider this, that if in caſe I were guilty of theſe things, and were conſcious to my ſelf of having been ingaged in an Affair of this nature, can any man imagine I could have been ſo hardy as to have ſurrendred my ſelf upon the Kings Proclamation, nay, if I with thoſe other two Gentlemen that he has named, had had any tranſactions of this kind, with ſuch a Fellow as he has been made appear to be by his Neighbours (that muſt needs be thought a man of no Faith, becauſe of no Reputation, tho' he gives himſelf a great Character as a man of great Intereſt, of wonderful diſpatch and dexterity in the management of ſuch matters) ſo as at firſt ſight to put this large confidence in him; Can it be imagined I ſo little regarded my own Life and all that is dear to me, as to have ſurrendred my ſelf, were it not that I was certain of my own innocence and integrity: Life it ſelf, my Lords, is to be preferred above all things but Honour and Innocence; And *Job* ſaith, *Skin for skin and all that a man hath will he give for his life*, and why ſhould I be preſumed to have ſo little a value for it, as voluntarily to deliver up my ſelf to deſtruction, had I been conſcious that there was any one, who could really teſtifie any thing that could hurt me.

Beſides, My Lords, this very Fellow *Saxon* is but one Evidence, and how far you will believe him, I muſt ſubmit it to you, but ſurely one Witneſs will never be ſufficient to convict a man of Treaſon, tho' thouſands of hear ſays, and ſuch

trivial

trivial circumſtances be tacked to it, eſpecially when they are tacked to an Evidence, which I dare ſay your Lordſhips are far from thinking it deſerves any Credit.

My Lords, I deſire your leave to ask this one Queſtion; Would not any of your Lordſhips think himſelf in a bad condition as to his Fortune, if he could produce no better Evidence to prove his Title to his Eſtate than what has been produced againſt me this day to take away my Life? and if ſuch Evidence as this would not be ſufficient to ſupport a Title to an Eſtate, certainly it can never be thought ſufficient to deprive a man of Life, Honour, Eſtate, and all.

My Lords, I am not the only Man that has been or may be falſely accuſed; God knows how ſoon the misfortune of a Falſe Accuſation may fall to the Lot of any of your Lordſhips; I pray God it never may, but ſince that may happen, I queſtion not, but your Lordſhips will be very cautious, how by an eaſy Credulity you give incouragement to ſuch a wickedneſs: For Knights of the Poſt will not end in my Tryal if they proſper in their Villany, and perhaps it may come home to ſome of your Lordſhips, if ſuch practices be incouraged, as I cannot but firmly believe they will not.

My Lords, the Eyes of all the Nation are upon your Proceedings this day; Nay I may ſay, your Lordſhips are now Judging the cauſe of every man in *England*, that ſhall happen to come under like Circumſtances with my Self at any time hereafter: For accordingly as you judge of me now, juſt ſo will inferior Courts be directed to give their Judgments in like Caſes in time to come.

Your Lordſhips very well know, Blood once ſpilt can never be gathered up agen, and therefore unleſs the Caſe be very clear againſt me, you I am ſure will not hazard the ſhedding of my blood upon a doubtful Evidence: God Almighty is a God of Mercy and Equity: Our Law, the Law of *England*, is a Law of Equity and Mercy, and both God and the Law require from your Lordſhips Tenderneſs in all Caſes of Life and Death, and if it ſhould be indifferent, or but doubtful to your Lordſhips (which upon the Proofs that I have made, I cannot believe it can be) whether I am innocent or guilty, both God and the Law require you to acquit me.

My Lords, I leave my Self, my Cauſe and all the Conſequences of it with your Lordſhips; And I pray the All-Wiſe the Almighty God direct you in your Determination.

Lord High Steward. Have you any thing more to ſay, My Lord?

Lord Delamere. No, My Lord.

Lord High Steward. Then Mr. Attorney, and you that are of the Kings Council, What have you to ſay more?

Mr. Soll. General. May it pleaſe your Grace, and you my Noble Lords the Peers of my Lord *Delamere*, the Priſoner at the Bar.

The Evidence that hath been given againſt this Noble Lord is of two Natures, part of it is poſitive Proof, and part is circumſtantial, and though it be allowed that there muſt be two Witneſſes in Caſes of Treaſon, and that Circumſtances tho never ſo ſtrong, and ſufficient to fortify one poſitive Proof, do not nor can make a ſecond poſitive Witneſs; Yet I crave leave to ſay, that there may be Circumſtances ſo ſtrong and cogent, ſo violent and neceſſary to fortify a poſitive Teſtimony, that will in Law amount to make a ſecond Witneſs ſuch as the Law requires.

My Lords, I do not ſay every Circumſtance will do it, but ſuch as is neceſſarily and violently tending to the ſame thing that was poſitively proved. As for Example,

If a Man comes and Swears againſt another that he ſaid he will go immediately and kill the King, and another Man that did not hear thoſe words, comes and teſtifies his lying in wait, that circumſtance of lying in wait, that was an action indifferent in it ſelf, yet, when applyed to the poſitive Proof, will be a ſecond Witneſs to ſatisfie the Law, which requires two Witneſſes in Treaſon.

I muſt confeſs, my Lords, when we will make Circumſtances to be a ſecond Evidence they muſt be ſuch as are neceſſarily tending to fortifie the poſitive Evidence that was given by the ſingle Witneſs: Now whether that be ſo in this Caſe, I muſt, as becomes me, leave to your Lordſhips Conſideration: It is not my buſineſs to carry the Evidence further than it will go, and I am ſure it is not my duty to let it loſe any of its weight; and if it have not that force it ought to have, I ſhould be to blame, as not having done what belongs to me to do: I will therefore ſtate the Fact to your Lordſhips plainly as it ſtands upon the Proof, and ſubmit the whole to your Lordſhips Determination.

My Lords, Our poſitive Proof with which I crave leave to begin, is but by one ſingle Witneſs, and that is *Saxon*, and his Evidence is this, that being in *Cheſhire* where he lives, he was ſent for about the 3*d* or 4*th* of *June* laſt to my Lord *Delamere*'s Houſe at *Mere*, and there he was brought into a lower Room, where he ſaw my Lord *Delamere*, Sir *Robert Cotton*, and Mr. *Crew Offley*: That my Lord *Delamere* told him he had received a Meſſage lately by one *Jones*, that was ſent from the Duke of *Monmouth*, whereby he underſtood that the Duke would ſpeedily be in *England*, and that they muſt provide Men and Arms to aſſiſt him when he came; That he was a Man recommended to them by my Lord *Brandon*, and that upon his recommendation they had thought fit to intruſt him in the matter, and withal told him, they were to raiſe 40000 *l.* and 10000 Men in that County: He tells you likewiſe, theſe Gentlemen gave him 11 Guineas and 5 *l.* in Silver to go of an Errand for them to the Duke of *Monmouth*, which he undertook to do, and hired a Horſe to that purpoſe.

This, my Lords, is the poſitive Proof, and this, I muſt acknowledge, ſtanding ſingle and by it ſelf, will make but one Witneſs; but whether the Circumſtances that have been offered to your Lordſhips by the other Witneſſes, be ſuch violent Circumſtances as neceſſarily tend to fortifie and ſupport that poſitive Evidence, and ſo will ſupply the defect of a ſecond Witneſs, is the next queſtion that I come to conſider, and I ſhall take them into conſideration in the ſame order that the Evidence was delivered.

The firſt Step, my Lords, that was made as to any Evidence that toucheth this Noble Lord at the Bar, was what was teſtified by my Lord *Gray*, for as to the other part of the Evidence that related to the Conſpiracy in general, I need not trouble your Lordſhips with the repetition of it (that there was ſuch an one is notoriouſly

known) but I ſay that part of the Evidence in his Hiſtory of the Conſpiracy, which my Lord *Gray* brought home to my Lord *Delamere* was this,

That upon the firſt Meetings and Conſultations, it was reſolved upon, That the Duke of *Monmouth* ſhould go into *Cheſhire* to make an Intereſt there, and among the Perſons that he was directed to go to, and to apply to for advice there, as Perſons fit to be truſted, this Noble Lord was one.

That upon the Duke of *Monmouth*'s Return out of *Cheſhire*, he did give his Confederates here in Town an Account, how well he had been received, and that he liked all things very well there: This my Lords is the firſt Circumſtance that has been offered to you, to ſhew that he had a Confidence in my Lord *Delamere*, as a Principal Support of his Deſigns at that very time.

The next thing that we offer, is this Meſſage of *Jones*'s, and for that, our Evidence has fully and plainly made it out to your Lordſhips, that *Jones* did go over into *Holland*, and his Buſineſs there was an Errand from *Diſney* and Major *Wildman*, and the Confederates here. The effect of his Meſſage was, That it was their Opinion, That the Duke of *Monmouth* ſhould go for *Scotland* and joyn with my Lord *Argyle*; but upon the Receipt of the Meſſage, he being angry, ſaid, it was too late for ſuch a Meſſage now, and he would come into *England*, for he was ready to Sail, and thereupon he did ſend this ſame *Jones* back again into *England* upon a Meſſage, to inform the Lords and others of his Party, among whom my Lord *Delamere* was one, that he would have them betake themſelves into their ſeveral Countries, and not ſtay to be taken or clap'd up here, for that, he did underſtand, was the deſign; and this Meſſage was delivered in Writing (now that the Duke of *Monmouth* did write a Note and give it to *Jones*, is verified by my Lord *Gray*'s Teſtimony too) and this Sealed up, and he was not to open it till he came to Sea, and when he did open it, he found it containing a Signification of the Place where he was to Land and where he was to Rendezvouz which was *Taunton*, and who were the Perſons that were to have Notice of it, among whoſe Names we find my Lord *Delamere*'s to be one; but he likewiſe tells you, he was not the Man that was to carry the Meſſage to theſe Perſons, but he was to deliver it to *Matthews* or *Wildman*, and they were to tranſmit it to the other Perſons.

He tells you likewiſe, that when he came to Town, which was the 27*th* of *May*, he met neither with *Matthews* nor Major *Wildman*; whereupon being at a loſs what he ſhould do with his Meſſage, for want of thoſe other Perſons, he acquainted *Diſney*, that was Executed, with his Errand, who promiſed to take care that it ſhould be delivered.

This, my Lords, is all *Jones*'s Evidence, for *Jones* does not ſay that he himſelf acquainted, or that *Diſney* did acquaint my Lord *Delamere* with the Meſſage.

But here my Lords, is the main Circumſtance that renders the matter ſuſpicious, That very Night that *Jones* came to Town, and *Diſney* being acquainted with the Meſſage, had undertaken to get it delivered, does my Lord *Delamere* at Ten of the Clock at Night go out of Town, in the Company of two Friends under the Diſguiſe of the Name of *Brown*, and a Bye Road, and ſo goes down to his own Houſe in *Cheſhire*; This I ſay, is the Circumſtance that renders the thing ſuſpicious.

Now my Lords, if we do prove by ſuch ſufficient Evidence, as may make the matter manifeſt to you, that my Lord *Delamere* had Notice of *Jones*'s Meſſage (for upon that Point the Caſe will turn, whether he had Notice ſuch a Meſſage was brought, that ſuch things were in agitation, ſuch Preparations made, and that they were all to go into the Country) then I ſay, his going down is a violent Preſumption, he had an intent to comply with the Meſſage, and joyn in the Deſign.

But now, my Lords, comes the Queſtion, the main Queſtion, How is it made out that he had Notice, *Jones* brought ſuch a Meſſage?

Jones indeed, my Lords, does not ſay that he himſelf imparted it to him, or that *Diſney* told him he had Communicated it, but I think there is another Witneſs, and that is *Storey*, who ſaith, that *Brand*, one that knew of the Meſſage, did acquaint him, that my Lord had received it at the Coffee-Houſe, and that Night went out of Town.

It is true my Lords, this is but a Hear-ſay, but that which followed being matter of Fact, my Lord's going out of Town that Night, ſo late in the Night, and in ſuch an unuſual ſuſpicious manner, gives more Credit to the Relation, than a bare Hear-ſay could have of it ſelf.

For unleſs there be ſome good account given of my Lords thus going out of Town, it is a kind of neceſſary Preſumption, that he was acquainted with the Meſſage, part of which was, that he ſhould go out of Town; and if ſo, it can have no other Conſtruction, with Submiſſion, than to be in purſuance of, and complying with the Directions that that Meſſage brought him from the Duke of *Monmouth*.

My Lords, to carry this a little further, there were two Witneſſes produced that went out of Town with him; they ſeem indeed unwillingly to give their Evidence, but I ſhall faithfully repeat what Teſtimony they gave: Their Names were *Vaux* and *Edlin*.

Vaux he ſaith he met my Lord *Delamere* at the Rummer-Tavern in *Queen-ſtreet* the 26*th* day of *May*, which was the day before *Jones* came to Town, and that then he appointed to go out of Town the next day, which was the 27*th*, and accordingly he did go.

Edlin he ſaith, he met *Vaux* at the Cuſtom-Houſe upon the 27*th* of *May* in the Morning, and being deſired by him to go with him out of Town he did ſo, and there was with him a Gentleman whoſe Name was *Brown*, and who now appears to be my Lord *Delamere*; they went in Company with him as far as *Hitchin*, where they left him upon *Thurſday* the 28th at Noon.

This Evidence is produced to ſhew, that my Lord did go out of Town at that time, and in that manner as has been alledged, and that theſe Perſons went with him to conduct him a private way that he ſhould not go the common Road. Your Lordſhips will conſider what Anſwer hath been given to this, and what account my Lord *Delamere* has given of himſelf.

Another thing my Lords that renders this matter ſuſpicious, is the Name which my Lord was pleaſed to aſſume to diſguiſe himſelf by, it being a Name by which the Party uſe to call

call my Lord in their Diſcourſes of him; and to prove that, we have likewiſe produced two Witneſſes, *Babington* and *Paunceford*.

Babington, he ſays, That in their Conſultations there were Diſcourſes of my Lord *Delamere* under the Name of *Brown*, and once at a Tavern when my Lord *Delamere* was named by one in the Company, he was preſently catched up for it, and replied to, You mean Mr. *Brown*; and ſo it ſeems that was the Canting Name under which they diſcourſed of my Lord *Delamere*.

The other Witneſs *Paunceford*, he tells you, That being at *Diſney*'s Houſe, and concerned with him in the Printing the late Duke of *Monmouth*'s Declarations (for the printing of which, *Diſney* was Executed) one *Lock* came for ſome of thoſe Declarations for Mr. *Brown*, and they were to be ſent into *Cheſhire*: ſo that though your Lordſhips obſerve the Witneſs ſaith, ſome body elſe was called by the Name of *Brown*, yet you have had no account given you, that there was any other *Brown* in *Cheſhire*.

It is true indeed, my Lords, that theſe are only things that *Diſney* ſaid, and *Lock* ſaid; But I muſt take leave to ſay, it is very ſuſpicious, that if my Lord went out of Town into *Cheſhire* under the Name of *Brown*, and ſome Perſons ſhall on the behalf of *Brown* come for Declarations to be ſent into *Cheſhire*, and my Lord commonly in that Party go by the Name of *Brown*, that thoſe Declarations were for my Lord, and that will be a great Evidence of his Correſpondence with *Monmouth*.

But I confeſs, my Lords, all this while our Proof is Circumſtantial, and indeed there is no poſitive Proof but that of *Saxon*, and in him our Proof muſt center, for without him I muſt acknowledge nothing that has been offered will be Proof againſt my Lord upon this Indictment, for bare Circumſtances and bare Suſpicions will be no Proof againſt any Man, but ſuch as are violent and neceſſary, and thoſe joyned to a poſitive Proof, ſuch as the Law requires.

Now then, my Lords, I come to the Conſideration of what weight and ſtreſs is to be laid upon this poſitive Evidence of *Saxon*: And here I muſt confeſs there are objections made to this Teſtimony, to which I cannot readily give an Anſwer; for *Saxon* has Sworn, that he was there at ſuch a time, and that he was ſent for and entertain'd as a Perſon recommended by my Lord *Brandon*, as fit to be intruſted with the Secret, and capable of being imployed to ſtir up the Country, in order to the proſecution of a Deſign they had on foot to raiſe a Rebellion, and he does Charge Sir *Robert Cotton* and Mr. *Crew Offley* to have been there at the ſame time.

The Evidence, my Lord, that has been produced to falſifie this poſitive Witneſs, in the Point of Sir *Robert Cotton*'s being there, has been by or five or ſix Witneſſes, who teſtifie Sir *Robert Cotton*'s being in Town, and not not elſewhere from the 10th of *April* to the latter end of *July*; and I do not ſee what we have to ſay in anſwer to their Teſtimony; I muſt agree the Proof to be full in that Point, and if the Evidence they give be true, I cannot ſay that *Saxon*'s Evidence can be true in that Point.

Likewiſe as to Mr. *Offley*, Sir *Willoughby Aſton* and others have teſtified, that he was not at my Lord *Delamere*'s at the time *Saxon* ſpeaks of: For he gives you an account where he was every day from the 26th of *May* to the 4th of *June*, and his own Servants bring him to his own Houſe, upon the 4th of *June* in the Evening, which is quite another way than from Sir *Willoughby Aſton*'s to my Lord *Delamere*'s; If this likewiſe be true, what *Saxon* ſays cannot be true, I muſt agree to it.

There is another thing that is offered on my Lord *Delamere*'s part, that he was himſelf in Town at that time that *Saxon* ſays he was at *Mere*; But here indeed the matter ſeems to be a little more ſtrange and dubious, that my Lord ſhould make ſo much haſt down, as to go out late at Night, and ſo cautiouſly as to go by a wrong Name, and yet to ride to Town again the Poſt-way to be here juſt the 3d of *June*, when *Saxon* ſwears he was in *Cheſhire*.

I muſt confeſs there is the Proof of his two Brothers that ſay, they ſaw him in Town the 3d and 4th of *June*: There is likewiſe ſome account given of his going out of Town, that it was upon a Meſſage received from his Mother; that his Child in the Country was Sick, and indeed he did go a By-way and change his Name, for fear of a Warrant in a Meſſengers Hands that was out againſt him to apprehend him.

Now, my Lords, I do not hear any thing that has been offered, that there was any ſuch Warrant, or any diſcourſe to ground that apprehenſion upon; my Lord had the firſt and only apprehenſion of a Warrant; but upon what Reaſons he himſelf beſt knows: This apprehenſion made him go out of Town ſo privately, he ſays, becauſe he would not be prevented of ſeeing his ſick Child.

But how comes it to paſs that my Lord makes ſuch a ſpeedy Return? By the Proofs it appears he did not get there till *Sunday* Night, and upon the *Tueſday* Morning comes Poſt for *London*.

The account that he gives of that, is this, his haſt was to ſee another Child, that was here ſick in Town: For he had received an expreſs from his Wife upon the *Monday* to acquaint him, that the Coaſt was clear, and there was no Warrant out againſt him, but if he intended to ſee his Child alive, he muſt make haſt up to Town; and accordingly upon the *Tueſday* Morning early he ſets out, and upon the *Wedneſday* in the Evening is here in Town again.

But, with ſubmiſſion, my Lords, there is no good Account given by this noble Lord, what reaſon there was for ſo many Poſt-Journeys backward and forward, as, had been teſtified, he to have made within a very little compaſs of time; for beſides this of his return Poſt upon the 2d of *June*, there is only an Anſwer given to one of the reſt, which is, that of the 5th of *May*, when he ſaith he went to take poſſeſſion of the Land that he held by a Leaſe then renewed to him by the Biſhop, which being of ſome Value and Conſideration to his Lordſhip, and the Biſhop being ſick, he thought it neceſſary to go down Poſt himſelf, and would not be content to receive Livery by Attornment. This is the only anſwer that is given to all thoſe times of his riding Poſt that have been given in Evidence.

Theſe are matters of Suſpicion that are offered to your Lordſhips, but I confeſs matters of Suſpicion only, unleſs clear, poſitive, probable Proof be joyned with them, will not weigh with your Lordſhips to convict a Man of High-Treaſon where two Witneſſes are required. But whether theſe matters of Suſpicion be ſuch violent and neceſſary Preſumptions as tend to for-

tifie the positive Testimony, I must leave that to the Consideration of your Lordships.

L. H. Steward. You do not call any more Witnesses then I perceive.

Mr. *Sol. Gen.* No, my Lord.

L. H. Steward. My Lords, it has not been usual of late, for those who have sate in the place where I now am, upon those Occasions to give your Lordships any trouble in repeating or observing upon the Evidence: In this Case the Evidence that hath been given has been very long, and it would be too great a Presumption in me, should I have any manner of doubt in the least, that either your Lordships have not well observed it, or the learned Council for the King have been defective in collecting or remarking upon it, so as to need my Assistance.

But my Lords, I confess there is something I cannot omit taking notice of, not for your Lordships sakes, but for the sake of this numerous and great Auditory, that one Mistake in point of Law might not go unrectified, which seemed to be urged with some earnestness by the Noble Lord at the Bar, *that there is a necessity in point of Law, that there should be two positive Witnesses to convict a Man of Treason.*

He seemed to lay a great stress upon that, but certainly his Lordship is under a great mistake, as to the Law in that Point; for without all doubt, what was urged in answer to this Objection by that learned Gentleman that concluded for the King, is true, There may be such other substantial Circumstances joyned to one Positive Testimony, that, by the Opinion of all the Judges of *England*, several times has been adjudged and held to be a sufficient Proof.

As for the purpose, in this Case, suppose your Lordships, upon the Evidence that has been given here this day, should believe *Saxon* swears true, who is a positive Witness, and shall then likewise believe that there was that Circumstance of *Jones*'s coming over from *Holland* with such a Message upon the 27th of *May* (which is directly sworn in Evidence, you are the Judges of that Evidence) and what the other Witnesses have sworn likewise, and is not denied by my Lord, the Prisoner at the Bar, that he went out of Town that Night, changed his Name, and went an indirect By-Road, certainly these Circumstances if your Lordships be satisfied he went for that purpose do necessarily knit the positive Testimony of *Saxon*, and amount to a second Witness.

That is, if *Saxon*'s positive Testimony be true, then suppose all these Circumstances that gave the Jealousie do make up a strong Presumption to join with the positive Evidence of *Saxon*, then you have two Witnesses as the Law requires, especially if the answer given by the Prisoner to those Circumstances be not sufficient (as the slender account he gives of his so frequent Journeys in so short a compass of time) but that there still remains some Suspicion; I could have wished indeed, that matter might have been made somewhat more clear; that no shadow of Suspicion might remain.

Your Lordships are Judges: And if you do not believe the Testimony of *Saxon*, whose Testimony hath been so positively contradicted by divers Witnesses of Quality, the Prisoner ought to be acquitted of this Indictment: if your Lordships please, you may go together and consider of it.

Lords. Ay, withdraw, withdraw.

Then the Peers withdrew in their order according to their Precedency, with the Serjeant at Arms before them.

L. H. Steward. Lieutenant of the *Tower*, take your Prisoner from the Bar.

The Prisoner was taken into the little Room appointed for him at the Entrance into the Court.

The Peers staid out about half an hour, and then returned in the same Order that they went out in, and seated themselves in their places as before.

Cl. Crown. Serjeant at Arms, take the Appearance of the Peers. *Lawrence* Earl of *Rochester* Lord High Treasurer of *England.*

He stood up uncovered and answered.

Lord Treasurer. Here.

And so did all the rest.

L. H. Steward. My Lords, are you agreed of your Verdict?

Lords. Yes.

The Lord High Steward took their Verdict Seriatim, *beginning with the puisne Peer in this manner:*

L. H. Steward. How say you my Lord *Churchill*, is *Henry* Baron of *Delamere* guilty of the High-Treason whereof he stands indicted and hath been Arraigned, or not guilty?

The Lord Churchill *stood up uncovered, and laying his Hand on his Breast answered,*

Lord Churchill. Not guilty upon my Honour.

And so did all the rest of the Peers.

L. H. Steward. Lieutenant of the *Tower*, bring your Prisoner to the Bar.

The Prisoner was brought again to the Bar.

L. H. Steward. My Lord *Delamere*, I am to acquaint you that my Noble Lords your Peers, having considered of the Evidence that hath been given, both against you and for you, after they were withdrawn, have returned and agreed of their Verdict, and by that Verdict have unanimously declared, that you are not guilty of the High-Treason, whereof you have been indicted, and this day Arraigned, and therefore I must discharge you of it.

L. Delamere. May it please your Grace, I shall pray to Almighty God, that he will please to give me a Heart to be Thankful to him for his Mercy, and my Lords for their Justice; and I pray God deliver their Lordships, and all honest Men, from wicked and malitious, lying and false Testimony; I pray God bless His Majesty and long may he Reign.

L. H. Steward. And I pray God continue to him his Loyal Peers, and all other his Loyal Subjects.

Cl. Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. Oyes. My Lord High-Steward of *England*, his Grace straightly willeth and commandeth all manner of Persons here present to depart hence in God's Peace and the Kings, for his Grace my Lord High Steward of *England* now dissolves his Commission.

God save the King.

At which words his Grace taking the white Staff from the Usher of the Black Rod, held it over his own Head and broke it in two: Thereby dissolving the Court.

The

Proceedings againſt the Lord Biſhop of London, *in the Council Chamber at* White-hall, *by the Lords Commiſſioners appointed by His Majeſty to inſpect Eccleſiaſtical Affairs.* 2 Jac. 2. 1686.

The King's Eccleſiaſtical Commiſſion.

JAmes *the Second, by the Grace of God, King of* England, Scotland, France *and* Ireland, *Defender of the Faith,&c. To the moſt Reverend Father in God, Our Right Truſty and Wellbeloved Councellor,* William *Lord Archbiſhop of* Canterbury, *Primate of all* England, *and Metropolitan. And to Our Right Truſty and Right Well-beloved Councellor,* George *Lord* Jeffreyes, *Lord Chancellor of* England. *And to our Right Truſty, and Right Well-beloved Couſin and Councellor,* Lawrence *Earl of* Rocheſter, *Lord High Treaſurer of* England. *And to Our Right Truſty, and Right Well-beloved Couſin and Councellor* Robert *Earl of* Sunderland, *Preſident of Our Council, and Our Principal Secretary of State. And to the Right Reverend Father in God, Our Right Truſty and Well beloved Councellor* Nathanael *Lord Biſhop of* Durham. *And to the Right Reverend Father in God, Our Right Truſty and Well-beloved* Thomas *Lord Biſhop of* Rocheſter. *And to Our Right Truſty and Well-beloved Councellor, Sir* Edward Herbert, *Kt. Lord Chief Juſtice of the Pleas, before Us to be holden, Aſſigned,* Greeting. *We for divers good, weighty and neceſſary Cauſes and Conſiderations, Us hereunto eſpecially moving, of Our meer Motion and certain Knowledge, by force and virtue of our Supream Authority and Prerogative Royal, do Aſſign, Name, and Authorize by theſe Our Letters-Patent, under the Great Seal of* England, *You the ſaid Lord Archbiſhop of* Canterbury, *Lord Chancellor of* England, *Lord High Treaſurer of* England, *Lord Preſident of Our Council, Lord Biſhop of* Dureſme, *Lord Biſhop of* Rocheſter, *and Our Chief Juſtice aforeſaid, or any Three or more of you, whereof You the ſaid Lord Chancellour to be one, from time to time, and at all times during Our Pleaſure, to Exerciſe, Uſe, Occupy and Execute under Us all manner of Juriſdictions, Privileges, and Prehominencies in any wiſe touching or concerning any Spiritual or Eccleſiaſtical Juriſdictions, within this Our Realm of* England, *and Dominion of* Wales, *and to viſit, reform, redreſs, order, correct and amend all ſuch Abuſes, Offences, Contempts, and Enormities whatſoever, which by the Spiritual or Eccleſiaſtical Laws of this Our Realm can or may lawfully be reformed, redreſſed, corrected, reſtrained, or amended, to the Pleaſure of Almighty God, and increaſe of virtue and the Conſervation of the Peace and Unity of this Realm. And we do hereby give and grant unto you, or any Three or more of you, as is aforeſaid, whereof you the ſaid Lord Chancellour to be one, thus by us named, aſſigned, authorized and appointed, by force of our ſupream Authority and Prerogative Royal, full Power and Authority, from time to time, and at all times during our Pleaſure, under us to exerciſe, uſe and execute all the Premiſes, according to the tenor and effect of theſe our Letters-Patents, any matter or cauſe to the contrary, in any wiſe notwithſtanding. And we do by theſe Preſents give full Power and Authority unto you, or any Three or more of you, as is aforeſaid, whereof you the ſaid Lord Chancellor to be one, by all lawful ways or means from time to time hereafter during our Pleaſure, to enquire of all Offences, Contempts, Tranſgreſſions, and Miſdemeanours done and committed, and hereafter to be done and committed, contrary to the Eccleſiaſtical Laws of this our Realm, in any County, City, Borough, or other place or places exempt or not exempted, within this our Realm of* England, *and Dominion of* Wales; *and of all and every Offender or Offenders therein, and them and every of them to order, correct, reform, and puniſh, by cenſure of the Church. And alſo we do give and grant full power and authority unto you, or any Three or more of you, as is aforeſaid, whereof you the ſaid Lord Chancellor to be one, in like manner as aforeſaid, from time to time, and at all times during our Pleaſure, to enquire of, ſearch out, and call before you all and every Eccleſiaſtical Perſon or Perſons, of what degree or dignity ſoever, as ſhall offend in any of the particulars before-mentioned, and them, and every of them to correct, and puniſh for ſuch their misbehaviours and miſdemeanours, by ſuſpending or depriving them from all Promotions Eccleſiaſtical, and from all Functions in the Church, and to inflict ſuch other Puniſhments or Cenſures upon them, according to the Eccleſiaſtical Laws of this Realm. And further we do give full Power and Authority unto you, or any three or more of you as is aforeſaid, whereof you the ſaid Lord Chancellour to be one, by Virtue hereof, and in like Manner and Form as is aforeſaid, to enquire, hear, determine, and puniſh all Inceſt, Adulteries, Fornications, Outrages, Misbehaviours, and diſorders in Marriage, and all other Grievances, great Crimes or Offences which are puniſhable, or reformable by the Eccleſiaſtical Laws of this our Realm, committed or done or hereafter to be committed or done, in any place exempt or not exempt, within this our Realm, according to the Tenor of the Eccleſiaſtical Laws in that behalf: Granting you, or any three or more of you as is aforeſaid, whereof you the ſaid Lord Chancellour to be one, full Power and Authority to order and award ſuch Puniſhment to every ſuch Offender, by Cenſures of the Church, or other lawful Ways, as is aforeſaid; and further we do give full Power and Authority unto you, or any three or more of you, as is aforeſaid, whereof you the ſaid Lord Chancellour to be one, all and every Offender and Offenders in any of the Premiſes, and alſo all ſuch, as by you, or any three or more of you as is aforeſaid, whereof you the ſaid Lord Chancellour to be*

one,

one, ſhall ſeem to be ſuſpected Perſons in any of the Premiſes, and them to examine, touching every or any of the Premiſes which you ſhall object againſt them; and to proceed againſt them, and every of them, as the nature and quality of the Offence, or ſuſpicion in that behalf ſhall require. And alſo to call all ſuch Witneſſes, or any other Perſon or Perſons that can inform you concerning any of the Premiſes, as you, or any three or more of you as is aforeſaid, whereof you the ſaid Lord Chancellour to be one, and them, and every of them, to examine upon their corporal Oaths, for the better tryal and opening of the Truth of the Premiſes, or any part thereof. And if you, or any three or more of you as is aforeſaid, whereof you the ſaid Lord Chancellour to be one, ſhall find any Perſon or Perſons whatſoever obſtinate or diſobedient in their Appearance before you, or any three or more of you, as is aforeſaid, whereof you the ſaid Lord Chancellour to be one, at your Calling and Commandment, or elſe not in obeying, or in not accompliſhing your Orders, Decrees and Commandments, or any thing touching the Premiſes or any part thereof, or any other Branch or Clauſe contained in this Commiſſion, that then you, or any three or more of you, as is aforeſaid, whereof you the ſaid Lord Chancellour to be one, ſhall have full Power and Authority to puniſh the ſame Perſon and Perſons ſo offending, by Excommunication, Suſpenſion, Deprivation, or other Cenſures Eccleſiaſtical; and when any Perſons ſhall be convented or proſecuted before you as aforeſaid, for any of the Cauſes above expreſſed, at the inſtance and ſuit of any Perſon proſecuting the Offence in that behalf, that then you, or any three or more of you as is aforeſaid, whereof you the ſaid Lord Chancellour to be one, ſhall have full Power and Authority to award ſuch Coſts and Expences of the Suit, as well to and againſt the Party, as ſhall prefer or proſecute the ſaid Offence, as to and againſt any Party or Parties that ſhall be convented according as their Cauſes ſhall require, and to you in Juſtice ſhall be thought reaſonable. And further our Will and Pleaſure is, That you aſſume our Well beloved Subject William Bridgman *Eſquire, one of the Clerks of our Council, or his ſufficient Deputy or Deputies in that behalf to be your Regiſter, whom we do by theſe Preſents depute to that Effect, for the Regiſtring of all your Acts, Decrees and Proceedings, by virtue of this our Commiſſion; and that in like manner, you, or any three or more of you, whereof you the ſaid Lord Chancellour to be one, by your Diſcretions ſhall appoint one or more Meſſenger or Meſſengers, or other Officer or Officers neceſſary and convenient to attend upon you for any Service in this behalf. Our Will and expreſs Commandment alſo is, That there ſhall be two Paper Books indented and made, the one to remain with the ſaid Regiſter, or his ſufficient Deputy or Deputies, the other with ſuch Perſon, and in ſuch places as you the ſaid Commiſſioners, or any Three or more of you, whereof you the ſaid Lord Chancellour to be one, ſhall in your Diſcretions think moſt fit and meet; in both which Books ſhall be fairly entred all the Acts, Decrees and Proceedings made or to be made, by virtue of this our Commiſſion. And whereas our Univerſities of* Oxford *and* Cambridge, *and divers Cathedral and Collegiate Churches, Colledges, Grammar Schools, and other Eccleſiaſtical Incorporations, have been erected, founded, and endowed by ſeveral of our Progenitors, Kings and Queens of this Realm, and ſome other by the Charity and Bounty of ſome of their Subjects, as well within our Univerſities as other Parts and Places, the Ordinances, Rules and Statutes whereof be either imbeſled, loſt, corrupted, or altogether imperfect. We do therefore give full Power and Authority to you, or any Five or more of you, of whom we will you the forenamed the Lord Chancellour always to be one, to cauſe and command in our Name, all and ſingular the Ordinances, Rules and Statutes of our ſaid Univerſities, and all and every Cathedral and Collegiate Churches, Colleges, Grammar Schools, and other Eccleſiaſtical Incorporations, together with their ſeveral Letters Patents, and other Writings, touching or in any wiſe concerning their ſeveral Erections and Foundations, to be brought and exhibited before you, or any five or more of you, as is aforeſaid, whereof you the ſaid Lord Chancellour to be one, willing, commanding, and authorizing of you, or any five or more of you, as aforeſaid, whereof you the ſaid Lord Chancellour to be one, upon the exhibiting, and upon diligent and deliberate view, ſearch and Examination of the ſaid Statutes, Rules and Ordinances, Letters Patents and Writings as is aforeſaid, the ſame to correct, amend and alter; and alſo where no Statutes are extant, in all or any of the aforeſaid Caſes, to deviſe and ſet down ſuch good Orders and Statutes as you, or any five or more of you, whereof you the ſaid Lord Chancellour to be one, ſhall think meet and convenient, to be by us confirmed, ratified, allowed, and ſet forth, for the better order and rule of the ſaid Univerſities, Cathedral and Collegiate Churches, Colleges and Grammar Schools, Erections and Foundations, and the Poſſeſſions and Revenues of the ſame, and as may beſt tend to the Honour of Almighty God, increaſe of Virtue, Learning and Unity in the ſaid Places, and the publick Weal and Tranquillity of this our Realm. Moreover, our Will, Pleaſure and Commandment is, that you our ſaid Commiſſioners, and every of you, ſhall diligently and faithfully execute this our Commiſſion, and every part and branch thereof, in manner and form aforeſaid, and according to the true meaning thereof, notwithſtanding any Appellation, Provocation, Priviledge or Exemption in that behalf, to be had, made, pretended, or alledged by any Perſon or Perſons reſident or dwelling in any place or places exempt, or not exempt, within this our Realm; any Law, Statutes, Proclamations or Grants, Privileges or Ordinances, which be, or may ſeem contrary to the Premiſes notwithſtanding. And for the better Credit, and more manifeſt notice of your ſo doing, in the Execution of this our Commiſſion, our Pleaſure and Commandment is, That to your Letters miſſive, Proceſſes, Decrees, Orders and Judgments, for or by you, or any three or more of you, as is aforeſaid, to be awarded, ſent forth, had, made, decreed, given or pronounced, at ſuch certain publick places as ſhall be appointed by you, or by any three or more of you, as is aforeſaid, for the due Execution of this our Commiſſion, you or ſome three or more of you as is aforeſaid, whereof you the ſaid Lord Chancellour to be one, ſhall cauſe to be put and fixed a Seal, ingraven with a Roſe and Crown, and the Letter* J. *and figure* 2 *before, and the Letter* R. *after the ſame, with a Ring or Circumference about the ſame Seal, containing as followeth,* Sigillum Commiſſionariorum Regiæ Majeſtatis ad Cauſas Eccleſiaſticas. *Finally, We will and command all ſingular other our Miniſters and Subjects in all and every place and places, exempt and not exempt, within our Realm of* England, *and Dominion of* Wales, *upon any Knowledge or Requeſt from you, or any three or more of you, as is aforeſaid to them, or any of them, given or made, to be aiding, helping or aſſiſting unto your Commandments, in and for the due executing your Precepts, Letters and other Proceſſes, requiſite in and for the due Executing of this our Commiſſion, as they and every of them tender our Pleaſure, and will anſwer the contrary at their utmoſt Perils. In Witneſs, &c.*

The

The King's Letter.

Dated *Monday, July* the 14*th*.
Delivered at *Fulham* on *Thursday*, being the 17th of the same *June* in the Afternoon, by Mr. *Atterbury* the Messenger.

James R.

Right Reverend Father in God, We greet you well. Whereas We have been inform'd, and are fully satisfied, that Dr. John Sharp, *Rector of the Parish Church of St.* Giles in the Fields, *in the County of* Middlesex, *and in your Dioceſs, notwithstanding our late Letter to the most Reverend Fathers in God the Archbishops of* Canterbury *and* York, *and our Directions concerning Preachers, given at our Court at* Whitehall, *the* 15*th of* March, 1685. *in the second year of our Reign; yet he, the said Dr.* John Sharp, *in Contempt of the said Orders, hath in some of the Sermons he hath since preached, presumed to make unbecoming Reflections, and to utter such Expressions as were not fit or proper for him; endeavouring thereby to beget in the Minds of his Hearers an Evil Opinion of Us and Our Government, by insinuating Fears and Jealousies to dispose them to Discontent, and to lead them into Disobedience and Rebellion. These are therefore to require and command you immediately upon Receipt hereof, forthwith to Suspend him from further Preaching in any Parish-Church or Chappel in your Dioceſs, until he has given Us Satisfaction, and Our further Pleasure be known herein. And for so doing this shall be your Warrant: And so We bid you heartily Farewel.*

Given at our Court at Windsor, *the* 14th *Day of* June, 1686. *in the Second Year of Our Reign.*

By His Majesties Command.

Sunderland.

The Bishop of *London*'s Answer.

Sent by Dr. *Sharp* to the Earl of *Sunderland*, then at *Hampton-Court*, upon *Friday June* 18. who could have no Answer.

To the Right Honourable the Earl of *Sunderland*, Lord President, *&c.*

My Lord,

I Always have, and shall count it my Duty to obey the King in whatever Commands he lays upon me, that I can perform with a safe Conscience: But in this, I humbly conceive, I am obliged to proceed according to Law; and therefore it is impossible for me to comply; because, tho' His Majesty commands me only to execute his Pleasure, yet in the Capacity I am to do it, I must Act as a Judge; and your Lordship knows no Judge condemns any Man before he has Knowledge of the Cause, and has cited the Party. However, I sent to Mr. Dean, *and acquainted him with His Majesties Displeasure, whom I find so ready to give all Reasonable Satisfaction, that I have thought fit to make him the Bearer of this Answer, from him that will never be unfaithful to the King, nor otherwise than,*

My Lord, your Lordships
most humble Servant,
H. London.

On *Sunday* after Dr. *Sharp* carried a Petition to *Windsor*, which was not admitted to be Read. Which is as follows.

To the King's Most Excellent Majesty,

The Humble Petition of *John Sharp*, Clerk.

Sheweth,

That nothing is so afflictive to Your Petitioner, as his Unhappiness to have incurred your Majesties Displeasure, which he is so sensible of, that ever since your Majesty was pleased to give notice of it, he hath forborn all publick Exercise of his Function, and still continues so to do.

Your Petitioner can with great Sincerity affirm, that ever since he hath been a Preacher, he hath faithfully endeavoured to do the best Service he could in his Place and Station, as well to the late King, your Royal Brother, as your Majesty, both by preaching and otherwise.

And so far he hath always been from venting any thing in the Pulpit tending to Schism or Faction, or any way to the Disturbance of your Majesties Government, that he hath upon all Occasions in his Sermons, to the utmost of his Power, set himself against all sorts of Doctrines and Principles that look that way: And this he is so well assured of, that he cannot but apprehend that his Sermons have been very much misrepresented to Your Majesty.

But if in any Sermon of his, any Words or Expressions have unwarily slipt from him, that have been capable of such Constructions, as to give Your Majesty Cause of Offence, as he solemnly professes he had no ill Intention in those Words or Expressions, so he is very sorry for them, and resolves for the future to be so careful in the Discharge of his Duty, that Your Majesty shall have Reason to believe him to be Your most faithful Subject.

And therefore he earnestly Prayeth, that Your Majesty out of Your Royal Grace and Clemency, would be pleased to lay aside the Displeasure You have conceived against Your Humble Petitioner, and restore him to that Favour which the rest of the Clergy enjoy under Your Majesties Gracious Government.

So shall Your Petitioner ever Pray, &c.

In

In the Council-Chamber *at* White-Hall, *&c.*

Mercurii 4 die Auguſti, 1686.

Preſent in Council, *Lord Chancellour*, *Lord Biſhop of* Durham, *Lord Treaſurer*, *Lord Biſhop of* Rocheſter, *Lord Preſident*, *Lord Chief Juſtice* Herbert.

Upon my Lord Biſhops appearing before them, according to a Summons ſent unto him, the Lord Chancellour Jeffreyes *began*, viz.

Lord Chancellour. MY Lord Biſhop of *London*, the Lords here preſent have received Orders from the King to inſpect all Eccleſiaſtical Affairs and Perſons; and he hath commanded us to cite you before us; and I deſire you would give a poſitive and direct anſwer to it: What was the reaſon you did not ſuſpend Dr. *Sharp*, when the King commanded, and ſent you expreſs Order ſo to do, and told you what it was for, *viz.* for Preaching Seditiouſly, and againſt the Government.

Lord Biſhop. I have received ſuch an Order; and if what was done in that affair was done amiſs, and contrary to my Duty, it was my ignorance and inadvertency, and not a wilful fault: I have been always ready to expreſs my duty to his Majeſty, and if in this particular I have not complyed, it was becauſe, as I was told, I could not. I was not ſo ſhallow as to go on my own Head, but took the beſt advice I could get: I conſulted thoſe whoſe buſineſs it is more perfectly to underſtand theſe proceedings, all told me I could not legally do it, but by way of Citation and hearing him.

Lord Chanc. Ignorantia Juris non excuſat; you ought to have known the Law, and it was a wonder you did not: The King is to be obey'd, and if you have any reaſon to ſhew in this particular, we are ready to hear you.

Lord Biſhop. I knew not what would be laid to my Charge, and therefore was not provided to make ſuch a Defence as I might have done; but if your Lordſhips will give me a Copy of your Commiſſion, and a Copy of my Charge, and allow me ſome time, I will endeavour to give your Lordſhips ſatisfaction.

Lord Chanc. My Lord, I would not miſ-interpret your Words, but ſhall deſire you to explain their meaning: If by deſiring a Copy of our Commiſſion, you deſign to quarrel with the Juriſdiction and Legality of the Court, I have another anſwer for you; but till I know your meaning here my anſwer is, that no Copy of the Commiſſion can be granted, and it is unreaſonable to deſire it, it is upon Record, all the Coffee-houſes have it for a penny a piece, and I doubt not but your Lordſhip has ſeen it.

Lord Biſhop. I have never ſeen it; nor have I deſir'd it for ſuch ends to diſpute the legality of it: But your Lordſhip knows it is a thing altogether new to this Generation, and it may be ſomething may be found in it whereby I may be inſtructed and directed in my anſwer, and behaviour in the matter: But, my Lord, if I may not have a Copy of it, will your Lordſhips pleaſe I may either read, or hear it read.

Lord Chanc. That is a thing I cannot grant of my ſelf, I muſt ask my Lords Commiſſioners Judgment; and if you will be pleaſed to withdraw you ſhall hear it.

The Biſhop and all the Company withdrew for a quarter of an Hour, then returning, the Lord Chancellour ſaid,

My Lord, all the Commiſſioners are of opinion that your Requeſt is not to be granted, and that it is unreaſonable: Might every one that appears here challenge the ſight of our Commiſſion, and the Reading of it, all our time will be ſpent in the Reading, and we have ſomething elſe to do.

The Proceedings of Courts in this kind are never by Libel and Articles: *ſapientem ſuccinctim ore tenus*, by word of Mouth only; and it is a ſhort Queſtion I ask, Why you did not obey the King?

Lord Biſhop. It is a ſhort Queſtion, but requires more words to Anſwer it. I pray your Lordſhips to conſider I a am Peer, a Biſhop, and have a Publick Truſt, though unworthy, under a Publick Character; and I would behave my ſelf as becomes one in theſe Capacities.

Lord Chanc. We know very well your Lordſhips Quality and Character, and are willing to ſhew all due reſpect to your Lordſhip, but yet we muſt have a due regard for the King and Government too: His Majeſty muſt not be neglected.

Lord Biſhop. My Lord, I ſuppoſe there is no Appeal from the Court; and when a Man is to be Condemned at one Bar, and is in danger of being knockt down at one blow, you would think it unreaſonable he ſhould not have ſome time to make his Defence.

Lord Chanc. My Lord, I ſuppoſe their Lordſhips will be willing to grant ſome time: I pray what time does your Lordſhip deſire?

Lord Biſhop. My Lord, it is the Aſſize time, and moſt of the Council, upon ſome occaſion or other, (either buſineſs or diverſion) are in the Country: I pray you, my Lord, I may have till the beginning of the Term.

Lord Chanc. Hah! That's unreaſonable: His Majeſties buſineſs cannot admit of ſuch delays; methinks a Week ſhould be enough: What ſay your Lordſhips, Is not a Week enough?

The Commiſſioners being asked, ſignified by the Chancellour that a Week was enough.

Lord Biſhop. Since your Lordſhip will grant no more, I will ask no more.

Lord Chanc. Adjourn until *Monday* next, the Ninth of *Auguſt*, 1686.

Upon

Upon the Tenth day his Lordſhip came, attended with his Nephew, the Earl of Northampton, *his Brother in Law Sir* John Nicholas, *and his Brother Sir* Francis Compton, &c.

There being preſent in Council the ſame as before in the ſame Proceedings.

Lord Chanc. MY Lord, we are here to hear your Reaſons.

Lord Biſhop. My Lord, I have loſt no time for preparing my Anſwer, but am not ſo ready as I might have been, becauſe I could not light of the Commiſſion your Lordſhip told me was upon Record, and in every Coffee-houſe, but imployed a whole Week to ſearch for it, and could not have a ſight of it until laſt Night; if your Lordſhip doubts the truth of this, I have the perſon ready to make Oath here of it.

Lord Chanc. My Lord, you are a perſon of Honour, and we will not queſtion the truth of what you ſay, there needs no Oath: But my Lord I muſt tell you, that we will not admit of any quarrelling with our Commiſſion, we are well aſſured of the legality of it, otherwiſe we would not be ſuch Fools as to ſit here.

Lord Biſhop. My Lord, I have other Reaſons why I deſire a ſight of your Commiſſion; it may be it may not reach me, being a Peer and a Biſhop; and it may be it may not reach this particular Caſe, and therefore I deſire a ſight of it, in regard I could not ſee it until the laſt Night. I have not had time to take advice what to anſwer; if your Lordſhip will not be ſatisfied, I muſt give ſuch an anſwer as I have prepared, but it is my deſire to have longer time for it.

Lord Chanc. Is this all you have to ſay?

Lord Biſhop. This is the firſt thing: I do not deſire to prolong the time, the neceſſity of the Caſe requiring it, the Council being out of Town in whom I think to confide.

Lord Chanc. If your Lordſhip will withdraw, we will give you an Anſwer.

He withdrew for a quarter of an Hour.

L. C. My Lord, as I formerly told you, we will not endure any quarrelling at our Commiſſion; it will be an odd thing in us to give you time to pick holes in it, but we are willing to pay all due reſpect to your Lordſhip: What time do you require?

Lord Biſhop. I ſhall ſubmit to your Lordſhips; but I hope a fortnight will not be unreaſonable.

Lord Chanc. Agreed: You ſhall have it until to Morrow fortnight in the Morning.

To which my Lord Chancellour added,

L.C. My Lord, when I told you our Commiſſion was to be ſeen in every Coffee-houſe, I did not ſpeak with any deſign to reflect on your Lordſhip, as if you were a hunter of Coffee-houſes. I abhorr'd the thoughts of it, and intended no more by it but that it was common in the Town.

Note, When the Biſhop ſpake concerning the Commiſſion, Sir *Thomas Clarges* ſpake with a loud Voice, ſaying, Well put, well put; my Lord ſpeaks nothing but truth. There was alſo another Gentleman, Sir *John Lowther*, of *Lincolnſhire*, who as he was coming away in the Crowd, ſaid, There are ſome who have repreſented me as a Papiſt, but the contrary ſhall appear; I will not be afraid, nor aſhamed, to Vindicate my Lord Biſhops Cauſe, before the Commiſſioners themſelves.

Tueſday, Auguſt 1686.

There being preſent in Council the ſame as in the former proceedings: The Lord Biſhop attending, the proceedings were as follow.

Lord Chanc. MY Lord, we are now ready to hear your Lordſhips Anſwer.

Lord Biſhop. My Lord, notwithſtanding the time hath been very ſhort, conſidering the weightineſs of the matter, and the abſence of many of the Learned Council, I have taken what advice I could, and have conſulted thoſe that are very Learned in the Laws. I hope there will be no Miſ-interpretation of my Words, I do not intend any thing which is derogatory to the Kings Supremacy; that is undutiful to His Majeſty, or Diſreſpectful to your Lordſhips. My Council tells me, that your proceedings in this Court, are directly contrary to the Statute Law, and are here to plead it if your Lordſhips will admit them.

Lord Chanc. We will neither hear your Lordſhip nor your Council in the matter; we are ſufficiently ſatisfied of the legality of our Commiſſion, as we often told you.

Lord Biſhop. My Lord, I am a Biſhop of the Church of *England*, and by all the Law in the Chriſtian Church, in all Ages, and by the particular Law of this Land, I am, in caſe of offence, to be Tryed by my Metropolitan and Suffragans; I hope your Lordſhip will not deny the Right and Priviledge of Chriſtian Biſhops.

Lord Chanc. My Lord, you know our proceedings are according to what has been done formerly, and that we have an Original Juriſdiction; this is ſtill queſtioning our Court.

Lord Biſhop. It is partly.

Lord Chanc. Nay, it is abſolutely ſo.

Lord Biſhop. My Lord, I hope you will interpret every thing in your Commiſſion in favour of the Perſon that is brought before you: I humbly conceive that your Commiſſion doth not extend to the Crimes laid to my Charge, for you are to cenſure faults which are committed: This that I am accuſed of, was before the Date of your Commiſſion.

Lord Chanc. I confeſs there is ſuch a Clauſe, but thoſe are general Clauſes that take in things that are paſt, as well as thoſe that are to come; hath your Lordſhip any thing more?

Lord Biſhop. My Lords, proteſting in my own Right, to the Laws of the Realm, as a Subject, and the Rights and Priviledges of the Church, as a Biſhop, I ſhall, with your Lordſhips leave, give you my anſwer.

Which was accepted; and the Biſhop withdrew, and left Dr. Sharp's *Petition, which the King had refuſed to accept.*

Lord Chanc. My Lord, we have read the Paper.

Lord Biſhop. My Lords, it is Dr. *Sharp*'s Petition to the King.

Lord Chanc. My Lord, be pleas'd to take it again, we are not concerned in it; will you pleaſe that your Lordſhips anſwer be read?

Lord Biſhop. Yes, if your Lordſhip pleaſe. My Lord, I have this to ſay further, What I did in

in this matter was *Juriſperitorum Concilio.* I conſulted my Council, who is the Judge of my Courts, as well as others; and the Law ſays, That what is done by the advice of Council, ſhall not be interpreted to be done maliciouſly, or obſtinately. The Law, in this Caſe, requires, that if a Prince require a Judge to execute an order, which is not agreeable to the Law, he ſhall *Reſcribere & Reclamare Principi*: Now, my Lord, I conceived I acted in this according to my Duty, for I wrote back to my Lord Preſident, in as becoming words as I could; and acquainted him, that an Order to ſuſpend before Citation and hearing the Perſon, is againſt Law, and expected his Majeſties further pleaſure.

In the next place, my Lords, I did in effect what the King commanded to be done, for I adviſed Dr. *Sharp* to forbear Preaching till His Majeſty had received Satisfaction concerning him; and accordingly he hath forborn in my Dioceſs.

Lord Chanc. My Lord, will you have your Paper read?

Lord Biſhop. Yes, if your Lordſhip pleaſe.

Which contained the Kings Letter, and the Biſhops anſwer thereto.

Lord Chanc. Hath your Lordſhip any more to ſay?

Lord Biſhop. My Lord, I deſire your Lordſhip would hear my Council, by whom you may have more clear and full Satisfaction concerning what I have ſaid.

Whereupon the Biſhop was deſired to withdraw, and after half an Hour, he and his Council were called in; who were Drs. Oldiſh, Hodges, Price, *and* Newton. *A brief Account of what they pleaded.*

Dr. *Oldiſh.* My Lord, the queſtion before your Lordſhip, is, whether the Biſhop of *London* hath been Diſobedient to the Kings Command; concerning which it muſt be conſidered,

Firſt, What was commanded to be done.

Secondly, What he did in Obedience to it.

Thirdly, What Judgment ought to have been given by him.

It is apparent by the Letter, that the King did not take cognizance of the Cauſe, for the Words are (being inform'd) that Dr. *Sharp, &c.* ſo that it could not be an abſolute Suſpenſion, for that ſuppoſeth a Proof of the Crime charged upon him: Then let us conſider the Words themſelves:

That you Suſpend him from Preaching. Now, my Lords, we have no ſuch thing in our Laws, ſo that the meaning muſt be Silencing of him. Where there is an abſolute Suſpenſion, there ought to be Citation, form of Proceeding, Judgment and Decree; to act otherwiſe is contrary to the Law of God, of Nature, of all Nations in all Ages, and was never known in the World.

Lord Chanc. I am loth to Interrupt you, but I muſt tell you, this is an unneceſſary Harrangue; we know that it was not an abſolute Suſpenſion, but the Queſtion is, Whether the Biſhop could Suſpend him from Preaching?

Dr. *Oldiſh.* Then, my Lords, I have gained another Point; if it were only Silencing him, the Queſtion is, Whether the Biſhop did not execute the Kings Commands? I think he did, and in ſuch a Method as is obſerved in our Courts.

When any eminent Perſon is accuſed, the Judges ſend to him by a Letter, and if he appears and complys with the Judges order, the Law is ſatisfied.

Judicium redditur in invitum non involentem: The Biſhop did ſend for Dr. *Sharp*, ſhewed him the Kings Letter, adviſed him not to Preach till the King had received Satisfaction; in which he promiſed to obſerve his Lordſhips command, and hath not Preached to this day, ſo that His Majeſties command was in effect fulfilled. My Lord, there is the like proceeding in the Common Law, for if an Attorney takes a Mans Word for his appearance, there lyes no Action againſt the Attorney.

Lord Chanc. Cujus contrarium: There lyes an Action of Eſcape againſt the Attorney——

Dr. *Hodges.* My Lords, the matter of fact hath been ſtated, and the Queſtion is, Whether the Biſhop hath been diſobedient to the Kings Command? It appears that he has not: Becauſe upon the receipt of his Majeſties Letter, he requir'd the Doctor not to Preach, and he hath obeyed him in that which the King commanded. To ſuſpend him the Biſhop could not do, the Act of Suſpenſion is a Judicial Act: The King writes to him as to a Biſhop, to ſuſpend as a Biſhop and as a Judge, which could not be done without the hearing of the Cauſe. If the Prince ſends to a Perſon that is not a Judge, that is only in a Miniſterial Office, that Office is to execute his Commands: But when the King commands a Judge, he commands him to act as a Judge. This is no light matter the Doctor is accus'd of; it is for Preaching Sedition and Rebellion, which requires a ſevere Cenſure. And if the Biſhop, as a Judge, had Suſpended him, he had begun at the wrong end, for this had been Judgment before Proceſs: In this Cauſe there ought to have been a Citation, our Books giving many Inſtances which would be too tedious to your Lordſhips——I will give this one: The Emperours proceedings againſt the King of *Sicily*, upon Information which he had received; and giving him no Citation, the King appealed to the Pope, who declared the Proceedings to be void; and that it was againſt the Law of Nature, which is above all poſitive Laws, to paſs Sentence before Citation. This is the method of proceeding before all Courts, and I humbly conceive it is, and will be, the method of this Court; for otherwiſe, the Biſhop need not to have been cited before you. The Biſhop has done what was his Duty, he was bound to return his Reaſon to the King, why he did not do that which he commanded, and to expect his further anſwer; which was done. I affirm, that if a Prince, or a Pope, command a thing which is not lawful, it is the Duty of a Judge *Reſcribere*; which is all he can do, Quoting his Author.

Dr. *Price.* The Queſtion is *ut ſupra*: A Citation is *Jure Gentium*, and can never be taken away by any poſitive Command or Law whatſoever: The Biſhop hath obeyed the King ſo far, as that he could not Reſcribe, and expecting His Majeſties further pleaſure. If the Biſhop could have Suſpended him, it muſt have been done *in Agnes*; but in regard it was only ſilencing him, which was requir'd, it might be done in a private Room: The advice of a Biſhop is in ſome ſence an admonition, which is a Judicial

dicial Act, and this was given by a Biſhop, and obeyed by the Doctor.

Dr. *Newton.* My Lord, the Queſtion is not *ut ſupra*, the Biſhop hath not been diſobedient. As in Nature no Man can be deſired to do that which is impoſſible, ſo no Man can be obliged to do an unlawful Act. (*Id non fit quod non legitime fit.*) This Rule obliges all Men, at all places, and at all times. The charge againſt Dr. *Sharp* is of a very high Nature, and he deſired to be heard before he was condemned.

My Lords, the Biſhops are *Cuſtodes Canonum*, and therefore muſt not break them themſelves: I affirm, the Biſhop was ſo far from being Diſobedient, that he was Obedient to the King: For where he did *Reſcribere*, and heard not the further pleaſure of the King returned, he ought to conclude, the King was ſatisfied with what he had written, according to his Duty, and the King had altered his Commands. A Citation, as your Lordſhips have heard, is according to all Laws, in all Places, in all Judicial Acts; there is ſomething to be done according to Law, and ſomewhat according to the Diſcretion of the Judges, and for that Reaſon as well as theſe, the Offenders ought to be cited before him; that which was in the Biſhops power to do he hath done, and it was in effect what the King commanded to be done.

Lord Biſhop. If through miſtake I have erred in any circumſtance, I am ready to beg His Majeſties Pardon, and ſhall be ready to make any reparation I am capable.

The Biſhop withdrew for half an Hour, then was called in.

Lord Chanc. We will be here again on *Wedneſday* next, and I deſire your Lordſhip to be here again about 10 in the Forenoon.

Lord Biſhop. My Lord, I deſire that care may be taken concerning the Minutes which are taken by the Clerks of what hath paſſed, and that I may not be miſrepreſented to the King by the miſtake of the Pen-man.

Lord Chanc. My Lord, you need not fear it; I hope you have a better Opinion of us; there ſhall be no advantage taken by them or us.

Biſhop Rocb. There ſhall be no advantage taken, but all imaginable care taken concerning it.

Note, When the Councellors were Pleading, Dr. *Pinfold*, the Kings Advocate, ſtood at the Chancellors Elbow and took Notes; by which it was expected that he ſhould make a Reply, but he ſaid nothing; and 'tis ſuppoſed that he ſtaid with the Council, when the Biſhop withdrew, and gave them Reaſons for his ſilence.

Die Lunæ, 6. *Septemb.* 1686.

There being preſent in Council the ſame as in the former proceedings.

Lord MY Lord, pray ſit down: You were deſired to appear this day to hear your Sentence, which (to prevent miſtake) we have ordered to be put in writing.

Lord Biſhop. My Lord, may I have leave to ſpeak before Sentence is read?

Lord Chanc. My Lord, we have heard you and your Council already.

Then the following Inſtrument whereby the Biſhop of *London* was Suſpended, was, by the Commiſſioners order, read by Mr. *Bridgman*, their Lordſhips Regiſter.

By His Majeſties Commiſſioners for Eccleſiaſtical Affairs.

WHereas *Henry*, Lord Biſhop of *London*, hath been convened before us, for his Diſobedience, and other his Attempts, mentioned in the Proceedings of this Cauſe; and the ſaid Biſhop being fully heard thereupon, We have thought fit, upon mature conſideration of the matter, to proceed to this Our definitive Sentence, Declaring, Decreeing and Pronouncing, that the ſaid *Henry*, Lord Biſhop of *London*, ſhall for his ſaid Diſobedience and Contempt be Suſpended, during his Majeſties Pleaſure; and accordingly, we do by theſe preſents, Suſpend him the ſaid Lord Biſhop of *London*, Peremptorily Admoniſhing and Requiring him hereby, to abſtain from the Function and Execution of his Epiſcopal Office; and from all Epiſcopal and other Eccleſiaſtical Juriſdiction, during the ſaid Suſpenſion, upon pain of Deprivation and Removal from his Biſhoprick.

Given under our Hand and Seal the 6th day of *September*, 1686. Sealed with the Seal of the Court, C. *J.* 2. Roſe and Crown with this Inſcription round it, *viz. Sigillum Commiſſionariorum Regiæ Majeſtatis ad Cauſas Eccleſiaſticas.*

Signed by no body at all.

Some days ſince one of the Meſſengers attending the Court, deliver'd to the Dean of St. *Pauls*, a Warrant, the Tenour whereof followeth:

By His Majeſties Commiſſioners for Eccleſiaſtical Affairs.

WHereas We have given Sentence of Suſpenſion againſt *Henry* Lord Biſhop of *London*, a Copy of which Sentence, under our Seal, is hereunto affixed. We have thought fit, and do hereby enjoyn and require you, to cauſe the ſaid Sentence to be affixt on the Door of that Chapter Houſe, and on the place now called the *South* Door of the ſaid Church; to the end that publick Notice may be taken of the ſaid Suſpenſion. And you are to certifie us, under your Common Seal, of the due Execution of what is hereby required.

At our Council Chamber at *White Hall*, on *Tueſday* the 28. of this Inſtant *September*, at 11 of the Clock in the Morning. Given under our Seal this Day of *September*, 1686. Sealed with the ſame Seal as the Sentence, but no Perſons Names: Subſcribed to the Dean and Chapter of *London*.

The Proceedings againſt the Vice-Chancellour *and Univerſity of* Cambridge. 3 Jac. 2.

ON the 9*th*. day of *February*, being *Aſhwedneſday*, came a Letter under His Majeſties Signet Manual, dated the 7*th* of the ſame Month; the ſubſtance whereof, was, That hearing much in Commendation of one *Alban Francis* a Benedictine, the King was pleaſed to command the Univerſity, that they ſhould admit him to the degree of Maſter of Arts, without adminiſtring to him any Oath or Oaths whatſoever, any Law or Statute to the contrary in any wiſe notwithſtanding, with which His Majeſty was graciouſly pleas'd to diſpence in the behalf of the ſaid *Alban Francis*. On *Monday* the 21*ſt* the *Vice Chancellour* having ſummon'd a Congregation, read His Majeſties Letter, purporting as before, and ſuperſcrib'd to our Truſty and well beloved *Vice Chancellour* of our Univerſity of *Cambridge*, to be communicated to the Senate there; on the Reading whereof the Senate, who made the beſt advantage they could of the *Vice Chancellours* delay in order to get advice, reſolved to teſtifie their common and almoſt unanimous ſence of the thing, and in a matter of ſuch conſequence and novel matter to interpoſe; accordingly there was a Paper, it is commonly call'd a Grace, the original Paper whereof I have ſeen drawn up in order to be put to the Vote of the Houſe after the ordinary and uſual way; but the conſtitution of that Body being ſuch, that this muſt then of neceſſity have been firſt propoſed to what we call the Head, which conſiſts of ſix Perſons, each of which has an Arbitary Voice and Power, upon diſlike to ſtop any proceedings finally, and hinder it being put to the Houſe at all; this method was laid aſide as impracticable upon that occaſion, becauſe Mr. *Baſſet* a declar'd *Roman* Catholick, and one that had openly aſſerted Mr. *Francis*'s Cauſe, hapned to be one of the ſix who compoſe the Head for this Year; it was therefore preſum'd, with great appearance of Reaſon, that he would put a bar to the proceedings, ſo the Grace not being ſuffered to be offered to the Houſe, the Senates ſence could never have been fully and particularly known thereupon.

This conſideration conſtrain'd them to the uſe of another courſe, which was, without the formality of a Suffrage, voluntarily to teſtifie their concurrence with the *Vice Chancellour*, and adviſe him to forbear the admitting Mr. *Francis* till the King had been Petitioned to revoke his Mandate; as ſoon as the Letter came to Town, the *Vice Chancellour* wrote a Letter to the Duke of *Albemarle* our Chancellour, to beg his Interceſſion with the King, which he returned word was tryed with none effect, but poſſibly ſuch a body as the Univerſity concurring and ſigning a Petition, if that could be admitted, might prove better and more Succeſsful. Now perhaps if every ſingle Man preſent to the number perhaps of 150 or 200 ſhould Addreſs in Perſon to the *Vice Chancellour*, this might look tumultuary, and it was thought the more quiet, decent, and reſpectful way to ſend up their ſenſe by Meſſengers from each Houſe; to this purpoſe, Dr. *Smoult* Profeſſour of Caſuiſtical Divinity, was made choice of by the *Non Regents*, and Mr. *Norris* Fellow of *Trinity* Colledge by the *Regents*. The ſubſtance of what they delivered, was, That the Houſe thought the admiſſion of Mr. *Francis* without the uſual Oaths, illegal and unſafe, and for that reaſon advis'd the King might be petition'd, in the doing which they were ready to joyn and make it their act. The Opinions were given freely to the two Meſſengers of each Houſe, and the thing was ſo unanimouſly approved of, that the only Perſons taking notice of it, were three Papiſts, and one or two beſides; afterwards there was a Gentleman admitted Doctor of Phyſick, having firſt taken the Oaths; and the Eſquire Beadles and Regiſters were ſent to let Mr. *Francis* know, that the Senate were ready to admit him alſo, provided that he would Swear as the Laws appointed; but he refuſed, inſiſting on the Kings diſpenſation: and this was the buſineſs of the firſt Meeting about this matter.

Immediately upon the Congregations breaking up, Mr. *Francis* took Horſe for *London*, to repreſent at *White-Hall* what had been done, and the ſame Afternoon the Heads met in the Conſiſtory, to conſult what Letters ſhould be ſent, and to whom; they agreed upon one to the Duke of *Albemarle*, and another to the Earl of *Sunderland*, being the Secretary of State, through whoſe hands the Mandate paſſed: An Eſquire Beadle was diſpatched preſently to *London*, who after having waited on the Duke of *Albemarle*, endeavoured ſeveral times to get acceſs to the Lord *Sunderland*, but could not; at laſt having ſent in his Letter, the main whereof was a moſt humble Submiſſion to His Majeſty, with very Solemn and unfeigned Proteſtations, that what was now done, proceeded from no Principle of Diſobedience and Stubbornneſs, but a Conſcientious ſence of our Obligation to Laws and Oaths, and a reſpectful intimation that we were ready to Petition the King that it might be admitted, but not daring to approach Him without ſome ſignifications, that it would be acceptable, we applyed our ſelves to his Lordſhip, deſiring him to do the Univerſity the favour to mediate for them, *&c.* He was diſmiſſed without any particular anſwer; within a few days came a ſecond Letter, dated *February* 24*th*, which by reaſon of the Aſſizes and ſome other publick buſineſs intervening, was not read in the Senate till *Thurſday March* the 11*th*; the Univerſity and the *Vice Chancellour* in the mean time received a Letter, wherein they found great Satisfaction by the Opinions of ſome Eminent Lawyers, who concurr'd in the approbation of what was already done, and for the future, could adviſe no better courſe than humbly to repreſent the Caſe to His Majeſty, and entreat him not to think amiſs of ſo Loyal a Body, as always the Univerſity has ſhewed her

ſelf

ſelf to be. The ſecond Letter being read the day aforeſaid, which was exactly the ſame as the former, excepting only the addition of a Clauſe, to do it at our own Peril: The Senate proceeded as before, to adviſe the *Vice Chancellour* to ſome expedient Form repreſenting the Caſe fully and clearly to the King, as well with reſpect to the illegality of ſuch admiſſion, as the many ill conſequences that were likely to enſue from it; this the *Non Regent* Houſe did by Mr. *Billers*, Fellow of St. *John*'s Colledge (the Publick Orator) and Mr. *Newton* Fellow of *Trinity* Colledge (the Mathematical Profeſſor) the Regent Houſe by Mr. *Henry Finch*, Son to the late Lord Chancellour, Mr. *Burton* of St. *John*'s Colledge, and Mr. *William Bowles* of Kings Colledge; all which was done without the leaſt hurry, or irregularity, without ſo much as asking an Opinion, but every Man went and gave it quietly and of his own accord, ſo that no manner of inducement was put upon any one to declare himſelf in the buſineſs, but what proceeded meerly from his own Conſcience, and a due ſenſe of things. Another large Letter being prepared for the Duke of *Albemarle*, wherein was every thing that could be thought of to prevail with His Majeſty, and one likewiſe ſhorter and leſs particular to the Earl of *Sunderland*; that very Afternoon Mr. *Braddock* Fellow of *Catherine Hall*, and Mr. *Stanhope* of *Kings* Colledge, were deſired by the *Vice Chancellour* to go to *London* with theſe Letters, and other Inſtructions to apply themſelves to ſeveral Perſons of Quality and Character, that they would joyn forces, and think it a common cauſe, for ſo addreſſing to the King, the ſucceſs would be more probable, and the honour done to the Univerſity the greater. *Sunday*, *March* the 13*th*, the two Gentlemen waited on the Duke of *Albemarle* their Chancellour, who received them with all the goodneſs in the World, with aſſurance, that notwithſtanding he had waited on the King before, and knew his Inclinations; nay, though he had been received with ſomething of diſpleaſure, yet conſidering the relation he bore us, he would make another attempt, and thought himſelf oblig'd to omit no endeavours for the Univerſities Safety and Advantage. *Monday* the 14*th* in the Evening the Duke of *Albemarle* waited on the King, and in the paſſage towards the Bedchamber, took the two *Cambridge* Gentlemen into the Anti-chamber, that they might be introduc'd if occaſion were; the King, on the Duke of *Albemarle*'s acquainting him with the affair, told him he had not then leiſure to talk, but he commanded the Letter, which the *Vice Chancellour* ſent to the Duke of *Albemarle*, with which in his hands he paſſed through the Rooms; and making that Evening a viſit to the Queen *Dowager*, gave the Duke no further opportunity of knowing his pleaſure at that time. At the Dukes Return from the Inner Room, the Gentlemen deſired him to give leave that they might uſe his Name to procure an eaſie admittance to the Earl of *Sunderland*; for they reſolved to deliver their Letter to no hands but his own, if that might be: The Duke immediately ſent one of his Gentlemen of the Horſe to one of the Lord *Sunderland*'s Secretaries, making it his deſire that Mr. *Braddock* and his Companion might ſee the Earl, who accordingly appointed them to attend next Morning, and then conducted them to the Earl of *Sunderland*'s Bed-ſide, who took the Letter, and after ſome further Application to him by Word of Mouth, he promiſed to acquaint His Majeſty, and tell them his Pleaſure. On *Thurſday*, at that time when Mr. *Braddock*, and Mr. *Stanhope* came, the account they received was only this, That the King had ſeen the *Vice-Chancellours* Letter, and was offended at the proceedings of the Univerſity, and would take care very ſhortly to give a further anſwer.

Saturday the 9*th*. of *April*, Mr. *Atterbury* came down with a Summons from the Eccleſiaſtical Commiſſioners to this effect; That whereas complaint to them was made againſt the *Vice Chancellour* and Senate of *Cambridge*, for having refuſed to comply with His Majeſties Royal Letters in behalf of Mr. *Francis*; they were therefore commanded to appear, the *Vice Chancellour* in Perſon, the Senate by themſelves, and their Deputies before the Lords Commiſſioners, in the Council Chamber the 21*ſt*. of *April*, to anſwer to ſuch things as ſhall be objected againſt them in His Majeſties behalf upon the premiſes, *&c. Monday April* the 11*th*. a Senate was called, and perſons nominated to repreſent the Univerſity; together with the *Vice Chancellour*, all which being unanimouſly approved by the Senate, they impowered them by an Inſtrument under the Common Seal, to anſwer in their behalf; and be their full Actors, Attorneys and Proctors, as to what ſhould ariſe from the Commiſſion upon the late Summons; and Mr. *Atterbury* having received private Inſtructions to ſtay, and cite every Man that was choſen perſonally: He came accordingly into the Senate Houſe, and Summon'd as many as were preſent, waiting on the reſt on a convenient time: The perſons deputed by the Senate to Repreſent and Act were theſe.

Dr. *John Peachell*, Vice Chancellour.
Dr. *John Eacherd*, Maſter of *Catherine Hall*.
Dr. *Humphry Babington*, Fellow of *Trinity College*.
Dr. *Tho. Smoult*, Fellow of St. *John*'s *College*, and Profeſſour of Caſuiſtical Divinity.
Dr. *Will. Cooke*, Dr. of Civil Law, and Fellow of *Jeſus College*.
Mr. *John Billers*, Fellow of St. *John*'s *College*, and the Publick Orator.
Mr. *Iſaac Newton*, Fellow of *Trinity College*, and Mathematical Profeſſor.
Mr. *James Smith*, Fellow of *Queens College*.
Mr. *George Stanhope*, Fellow of *Kings College*.

Thurſday, *April* the 21ſt, Council-Chamber. Commiſſioners preſent,

L. Chancellour *Jeffreys*, L. Biſhop of *Durham*.
L. Preſident *Sunderland*, L. Biſhop of *Rocheſter*.
L. *Mulgrave*, L. Ch. Juſtice *Herbert*.
Earl of *Huntington*.

L. Chancellour. IS Mr. Vice Chancellour here?—Which is he? *He ſtanding over againſt the Lord* Chancellour, *bowed and ſhewed himſelf.*

L. Chancellour. Is there any one come from the Senate to attend him?

Mr. *Stanhope.* Yes, my Lord, we are Eight of us here deputed by the Senate to anſwer what ſhall be objected againſt them, according to your Lordſhips Summons. (*The noiſe and croud being*

being great, Mr. Bridgman *the Regiſter, was forced to repeat that again to the Lord Chancellour.*

L. Chancellour. Read the Summons.——*Which was done.*

L. Chancellour. Now Mr. Vice Chancellor what have you to ſay why you did not obey His Majeſties Command, in behalf of the Gentleman mention'd there?

Mr. *Vice Chancellour.* My Lord, you enquire of me why I did not admit Mr. *Francis*, according to the King's Letters?

L. Chancellour. Yes, that's the Queſtion I ask you.

Mr. *Vice Chancellour.* Is this the only Queſtion your Lordſhip is pleaſed to ask me?

L. Chancellour. Nay, Mr. Vice Chancellor, we will not Capitulate in the very beginning; pray anſwer the firſt, and then you ſhall know what we have to ſay more.

Mr. *Vice Chancellour.* It is but a little while ſince we met in Town, and this is a Queſtion of great Concern; I am not prepared to anſwer it on a ſudden.

L. Chancellor. Why, Mr. Vice Chancellour, my Lords ſpecified it in their Summons what would be queſtion'd, on purpoſe you ſhould not come unprepared; but it may be Mr. Vice-Chancellour did not attend ſufficiently to that part of the Summons, therefore let it be read to him once more —— *which was done.*

Lord Chanc. Now, Sir, you hear it is for refuſing to comply with the King's Commands.

Mr. *Vice-Chanc.* My Lords, I beg time to anſwer you; my Lords, I am a plain Man, not uſed to appear before ſuch an Honourable Aſſembly, and if I ſhould anſwer haſtily, it may be I might ſpeak ſomething indecent or unſafe, which I ſhould be afterwards ſorry for, therefore I beg leave, my Lords, to have time allowed us, for giving in ſuch anſwer, as may be both for our Safety and your Lordſhips Honour.

Lord Chanc. (Smiling) Why, Mr. Vice-Chancellour, as for your own Safety, my Lords are willing you ſhould take all the care you can, but for what concerns our Honour, do not you trouble your ſelf, we are able to conſult that without any Interpoſition of yours.

Mr. *Vice-Chanc.* My Lords, I beg your Pardon if I have ſaid any thing unbecoming, I mean only the Honour that is due to your Lordſhips Quality my Lord; and therefore being to anſwer before Perſons of Quality, I beg leave to do it with Council and in writing.

Lord Chanc. Well, withdraw a little, and my Lords will conſider of your Requeſt.

Then all the Company withdrew, and about three quarters of an hour after the Vice-Chancellour was ſent for into the *Anti-Chamber*, where Mr. *Bridgeman* told him the Lords Commiſſioners had given him time till *Wedneſday* next, till four in the Afternoon, and leave to put his Anſwer in writing and with Council; and by what Council he would.

When the Council had heard the Commiſſioners had granted it, they were ſomething ſurprized, and loath to move in the thing without a Rule of Court, therefore on *Friday* Morning Dr. *Eacherd* and Mr. *Stanhope* went to Mr. *Bridgman*'s Office, to deſire ſuch an Order, or at leaſt a Copy of what had been ſaid to the Vice-Chancellour; but he told them he had no Power to give either: only he repeated the Words over again, for the Satisfaction of them and the Council, which was the ſame the Vice-Chancellour had related from his Mouth before.

Wedneſday, April 27. In the Council Chamber, Commiſſioners preſent as before.

ABout a quarter of an hour before the Lords met, Mr. *Bridgman* came to the Vice-Chancellour, and deſired to know of him whether he gave his anſwer in writing only, or whether any Council would appear to argue it; to which the Vice-Chancellour anſwered, that his Anſwer was drawing out in writing, and that he did not expect any Council there that day; Mr. *Bridgman* replyed, the Lords had commanded him to ask theſe Queſtions, and would expect to know ſo much before they began to proceed. When the Delegates were call'd in, the Lord Chancellour ſaid,

Lord Chanc. Mr. Vice-Chancellour, the laſt time you were here you deſired time to put in your anſwer in writing, my Lords have indulged you ſo far, now where is your Anſwer?

Mr. *Vice Chanc.* My Lord, here it is——*and gave it to Mr.* Bridgman; *who after a Whiſper put it round the Table.*

Lord Chanc. Read it —— *to Mr.* Bridgman.

The Anſwer of the Univerſity and Senate of *Cambridge*, to the Queſtion: Why they did not admit *Alban Francis* to the Degree of Maſter of Arts in the ſame Univerſity, according to His Majeſties Mandatory Letters under His Signet Manual. The *Vice Chancellour* and Senate of *Cambridge*, for, and in behalf of themſelves, and the ſaid Univerſity, Say,

'THat by the Statute made *Primo Eliz.* and Entituled, *An Act to reſtore to the Crown the Ancient Juriſdictions over the State Eccleſiaſtical and Spiritual, and aboliſhing Foreign Power repugnant to the ſame*; It is enacted amongſt other things, That every Perſon that ſhall be promoted to any Degree of Learning in any Univerſity within this Kingdom, before he ſhall receive or take any ſuch Degree, ſhall before the *Chancellour* or *Vice Chancellour* of the Univerſity, take the Oath in the Statute mention'd and appointed; purporting, that he doth thereby teſtifie and declare in his Conſcience, that His Majeſty is the only ſupream Governour of this Realm, as well in all Spiritual and Eccleſiaſtical Things and Cauſes, as Temporal; That no Foreign State or Potentate, hath or ought to have any Juriſdiction, Superiority or Authority, Eccleſiaſtical or Spiritual within this Realm; and that therefore he doth renounce and forſake all Foreign Juriſdiction and Authority, and promiſe to bear Faith and true Allegiance to the King, his Heirs and Succeſſors, and to his Power aſſiſt and defend all Juriſdictions and Authorities granted, united or annexed, to His Majeſties Imperial Crown of *England*. That by the Statute made 5th *Elizabeth*, Entituled, *An Act for the Aſſurance of the Queen's Royal Prerogative, over all Eſtates and Subjects within Her Dominions*, it is likewiſe Enacted, That every Perſon that ſhall be admitted to any Degree of Learning in any of the Univerſities, before he ſhall be allowed or ſuffered to take upon him ſuch Degree, ſhall take the aforemention'd Oath before ſuch Perſon or Perſons, as ſhall have

Authority

'Authority by common uſe to admit him to ſuch 'Degrees.

'That by the Statute made by His Majeſties 'Royal Grandfather King *James* the Iſt, in the '3d Year of His Reign, Entituled, *An Act 'for the better Diſcovering and Repreſenting of Popiſh 'Recuſants*, another Oath is commonly pre'ſcribed, the Oath of Obedience; by which 'Oath, is the Perſon that takes it among other 'things enjoyned to Swear, that His Majeſty 'is Lawful and Rightful King of this Realm, 'and all other His Dominions and Countries; 'and that the *Pope* neither of himſelf, or by 'any other means, hath Power or Authority to 'depoſe His Majeſty, or diſpoſe of Him, His 'Kingdoms or Dominions; or to authorize any 'Foreign Prince to invade him or them, or to 'diſcharge His Subjects from their Obedience or 'Allegiance to His Majeſty, or to give leave to 'bear Arms againſt Him; and that he with true 'Faith and Allegiance to His Majeſty, will de'fend Him to the utmoſt of his Power. And af'terwards, in the Statute made in the 9th Year 'of His Majeſties ſaid Royal Grandfather, Enti'tuled, *An Act for Adminiſtring the Oath of Allegi'ance*; in it is enacted, That the ſaid laſt menti'on'd Oath, ſhall be taken by the Vice Chancel'lour and Principal of Houſes in the Univerſity, 'in the *Convocation* before the Senior Maſters, and 'by every other Perſon that ſhall be permitted 'or promoted to any Degree in Schools, before 'the Vice Chancellour for the time being in the 'Congregation Houſe.

'That the Vice Chancellour, and every 'Member of the Senate have taken the ſaid 'Oath, and the Vice Chancellour and Senate 'are intruſted to put them in Execution in the 'ſaid Univerſity.

'That the Vice Chancellour by his Oath of 'Office has alſo ſworn duly to execute his Office 'according to the Laws, and cannot admit to 'any Degree without the Senate.

'That the ſaid Statutes were made for the Pre'ſervation of Doctrine and Religion, profeſſed 'by the Church of *England*, and eſtabliſhed by 'the Laws of this Realm, and of the Preroga'tive and rightful Power of His Majeſty; that 'upon the Receipt of His Majeſties Royal Let'ters Mandatory, the ſame were by the Vice 'Chancellour communicated to the Senate; 'and in order to the admitting the ſaid *Alban 'Francis* to the Degree of Maſter of Arts, 'the ſaid Oaths were offered to be Admini'ſtred to the ſaid *Alban Francis*, if he would 'take the ſame, but he refuſed.

'That the admitting him without the ſaid 'Oaths had been contrary to the ſaid Statutes, 'and a Breach of the Truſt in the Vice Chancel'lour and Senate repoſed, and a Violation of 'their Oaths, and therefore they could not ad'mit him to the ſaid Degree of Maſter of Arts; 'and by humble Application to His Sacred 'Majeſty, did, and now again do humbly deſire 'your Lordſhips to repreſent this their Caſe to 'His Majeſty, that they may not lye under His 'Majeſties Diſpleaſure upon any Miſapprehen'ſion thereof; But, whether your Lordſhips 'will as a Court take Cognizance of this Mat'ter, they humbly pray your Lordſhips Conſi'deration, ſince that the taking a Degree of 'Maſter of Arts in the Univerſity, or the ad'mitting and refuſing to ſuch a Degree, is not 'any cauſe or matter Eccleſiaſtical or Spiritual, 'but of Lay and Temporal Cognizance.

'And they further offer to your Lordſhips, 'that in the Statute made in the 16th of the 'Reign of His Majeſties moſt Royal Father 'King *Charles* the Firſt, Entituled, *An Act for 'repealing of the Branch of a Statute Primo* Eliza'bethæ, *concerning Commiſſioners for Cauſes Eccleſia'ſtical*; and whereby the ſaid Branch is Repea'led; it is enacted, That no New Court 'ſhall be erected, ordained or appointed with'in this Realm, which ſhall or may have like 'Power, Juriſdiction or Authority, as the High 'Commiſſion Court then had or pretended to 'have; but that all and every ſuch Commiſſi'oners and Grants, and all Powers and Autho'rity granted or pretended to be granted there'by, ſhall be void and of none Effect, as in and 'by the ſaid Statutes more fully appears.

Which being read, my Lord *Chancellour* ſaid, Is it ſign'd?

Mr. *Bridgman*. Yes my Lord.

Lord Chancellour. Read their Names——— *Which was done.*

L. Chancellour. Well, have you any more to ſay?

Mr. *Vice Chancellour*. No my Lord, not at this time.

L. Chancellour. Then withdraw.

All the Company withdrew, and about an hour and a half after the Court roſe; and afterward Mr. *Bridgman* deſired to ſpeak with the *Vice Chancellour* and Delegates in the Council Chamber, to whom he ſaid, That their Lordſhips had commanded him to tell them, they put off all further Conſideration of this matter till *Saturday* come Sevennight, and then they expected their Attendance: Again Mr. *Vice Chancellour* asked him, if Council would be expected to plead on their Anſwer; he replyed their Lordſhips had given him no Commiſſion to ſay any thing to that. So they all withdrew.

Saturday May the 7th.

THis day it was publickly diſcourſed through the Town, that the Lords had received a new Commiſſion; and immediately Lawyers were conſulted whether it were proper to urge that at this Appearance: What could be gathered thereupon, was to this Effect: That it were a good Plea, if it could be well proved, for in receiving a new Commiſſion in the midſt of Proceſs, eſpecially, if there be any Alteration in it as to the extent of their Power, would at leaſt be a good Pretence to begin the whole Cauſe again and gain time; but that it was by no means ſafe to alledge the thing, for a flying Report is no Evidence: And if that Report were falſe, it might be a great Prejudice to them and their Cauſe.

Council-Chamber——Commiſſioners preſent as before.

L. Chanc. MR. Vice-Chancellour, the laſt time you were here, you gave in a Paper to my Lords, ſigned by your ſelf and ſeveral others coming from the Univerſity, which conſiſts of ſeveral parts; but there is one thing I muſt crave leave of my Lords to Diſcourſe you on, which concerns your ſelf: The Lords took notice that you alledge an Oath, that Oath it ſeems hindred you from obeying the King's Mandate——Pray what was the Oath?

Mr.

Mr. *Vice-Chanc.* My Lord, this is a new Queſtion which you were pleas'd not to put before, and I beg leave and time to anſwer it.

Lord-Chanc. Why, Mr. Vice-Chancellour, this requires no time; my Lords, I tell you, took notice of an Oath you pleaded for your ſelf, and now they deſire to know what the Oath is.

Mr. *Vice-Chancellour.* I beg I may not anſwer haſtily, but that your Lordſhips would let me know what Queſtions you would ask me, and let me anſwer them in writing and by Council.

Lord Chancellour. Why did you not conſult Council when you took your Oath? I am really concerned for the Univerſity of *Cambridge*, whereof I my ſelf was once a Member, that the Vice-Chancellour, who is the Head, and the Repreſentative of ſo learned a Body, ſhould come here before the King's Commiſſioners, and not be able to give an account of the Oath he acted by all this time, but deſires Council and time to tell him what the Oath is.

Dr. *Cooke.* My Lord, if your Lordſhip pleaſes, I think I remember the Words of the Oath.

L. Chancellour. Nay, good Doctor, how came you, who never were Vice Chancellour, and ſo never took this Oath, to know it better than one that is Vice-Chancellour, and hath taken it?

Vice-Chancellour. I cannot call to mind the very Words of the Oath, but the ſubſtance of it is this, *That I ſhould well and faithfully præſtare* or *adminiſtrare munus* or *Officium procancellarium.*

L. Chancellour. Ay, *Munus* or *Officium*: Well, what then?

Vice-Chancellour. And my Lord, this Office I take to be ſtated by the Statutes of the Univerſity, and the Laws of the Land.

Lord Chanc. Well, and how long has this been the *Vice Chancellours* Oath?

Vice Ch. Indeed, my Lord, I am not able to tell you exactly.

Lord Ch. How long do you think? I will not tye you to any time.

Vice Ch. Ever ſince I knew what belonged to it; ever ſince I was Head of a Colledge.

Lord Ch. How long have you been Head of a Colledge?

Vice Chanc. Six or Seven Years, my Lord.

L. Ch. Have not other Vice Chancellours admitted to Degrees without Oaths, who have taken the Obligatory Oath as you have done?

Vice Ch. Indeed my Lord I cannot tell; I cannot remember every particular thing that has been done.

L. Ch. Well, becauſe we will keep cloſe the Queſtion, don't you remember any Maſter of Arts made without Oaths?

Dr. *Cook.* Not under the Quality of an Univerſity Noble Man, my Lord.

L. Ch. Nay, good Doctor, you never were Vice Chancellour yet. When you are, we may conſider you.

Vice Ch. The Anſwer to your Queſtion will depend upon our Univerſity Book and Records, and if you'll allow us time to conſult them, we can give your Lordſhip an Account.

L. Ch. Nay, look you Mr. Vice Chancellour, you have given in Anſwer in Writing already, and becauſe there is ſomething in that, my Lords would be further ſatisfied in, they have left it to me to ask you ſome Queſtions. I ask you therefore if you remember any Maſter of Arts, who hath been admitted heretofore without theſe Oaths?

Vice Ch. I cannot ſay I remember any, my Lord.

L. Ch. Did you never hear of one Dr. *Lightfoot*?

Vice Ch. I think, my Lord, I have heard of ſuch an one.

Dr. *Cook.* My Lord, I beg leave to ſpeak a few Words.

L. Ch. Well, Doctor, What is it you have to ſay?

Dr *Cook.* My Lord, Dr. *Lightfoot* did Subſcribe.

L. Ch. What Superſcription do you mean?

Dr. *Cook:* To the 39 Articles; and the firſt of them is the Kings Supremacy.

L. Ch. Superſcribing is Swearing, Doctor. But Mr. *Vice Chancellour*, how many have you admitted by Mandate?

Vice Ch. Never but one, my Lord, and he took the Oaths.

L. Ch. Do you never admit without Oaths them who have not ſuch particular Letters Patent from the King?

Mr. *Stanhope.* Never, my Lord: And as for Dr. *Lightfoot*, they were aware before of this particular Perſons being objected, and therefore provided an Anſwer to it.

Mr. Stanhope *undertook it, becauſe the Books and Univerſity Papers had been committed to his Inſpection and Care: In Anſwer, had he been permitted to ſpeak, he had this to offer,* That the Regiſter of Subſcribers was then in Court, and had a Paper ready in his Hands to be produced, where Dr. *Lightfoot* Subſcribed with his own Hands to the 39 Articles: The firſt whereof is the Kings Supremacy, and that he could not refuſe the Oath upon a Principle, becauſe the ſame muſt have hindred his Subſcription: *And as a farther Proof he did Swear, they were ready to offer this,* That two Gentlemen, *Roman* Catholicks, Servants to the Queen *Dowager*, did by Virtue of the ſame Letters from the King, at the time of his coming to *Cambridge*, deſire their Maſter of Arts Degree; *their Names were* Perara *and* Stevens. *Theſe Gentlemen were Propoſed and Granted, but upon refuſal to Swear, not admitted: Of this, they could have produced, Firſt,* A Teſtimony upon Oath of a Gentleman then in Court; *and beſides* that, the Univerſity Papers and Graces, which ſhew theſe Gentlemens Names, among the Perſons paſt in the Houſe, but wanting in the Liſt of Subſcribers and Commencers. *After which they would have referred it to the Court, whether it was probable that the Univerſity ſhould admit one of the Queens Servants without Oaths, and yet refuſe two more, who had the ſame Title every way, becauſe they would not take the Oaths; but the Lord Chancellour would not hear him.*

L. Ch. Nay, look you now, that young Gentleman expects to be Vice Chancellour too; when you are Sir, you may ſpeak, but till then it will become you to forbear. Mr. Vice Chancellour, When was it pray that you received the Kings Letters? the firſt I mean.

Vice Ch. I do not perfectly remember, my Lord, I can't call to mind the day of the Month.

L. Ch. When were they dated, do you know? (to Mr. *Bridgman*) *My Lord pauſing.*

Vice

Vice Ch. My Lord, I remember it was *Aſh-Wedneſday*.

L. Ch. And when was it theſe Letters were Publiſhed in the Senate?

Vice Ch. It was the Seven night after, my Lord.

L. Ch. What's the meaning of the delay, Mr. *Vice Chancellour*? the Kings buſineſs uſed to have a quicker diſpatch.

Vice Ch. It was a Novel thing, and I was willing to give my ſelf and others time to conſider on it.

L. Ch. But when you had read the Letters, why was not the Gentleman admitted?

Vice Ch. My Lord, the Senate ſent to me, to deſire me, that I would forbear admitting Mr. *Francis*, till I had Petitioned the King to revoke the Mandate.

L. Ch. Why does the King's Mandate uſed to be diſputed? Did you ever ſee a Mandate voted in the Houſe, whether it ſhould be obeyed or not?

Vice Ch. No, my Lord, uſually they are not; but the Houſe ſent to me to forbear, for they have not had any of this nature before.

L. Ch. Did you ever know any Mandates of the Kings refuſed by the Univerſity before?

Vice Ch. After ſome pauſe—— Yes, my Lord, ſeveral.

L. Ch. Pray, give us one inſtance.

Vice Ch. My Lord, one *Tatnell*.

L. Ch. When pray? How long was that ago?

Vice Ch. I cannot recollect juſt the time, but it was in His late Majeſties Reign; I believe, about fourteen or ſixteen Years ago.

L. Ch. How was that?

Vice Ch. My Lord, the Mandate was given to one *Tatnell*, a Non-conformiſt Miniſter, and he refuſed to Subſcribe and take the Oaths; whereupon my Lord, the Univerſity Petitioned the King, and repreſented the matter to him, and the King was pleaſed to recal his Mandate.

L. Ch. Mr. *Vice Chancellour*, had not you a Mandate for another Gentleman at the ſame time with this, which you refuſed?

Vice Ch. Yes, my Lord, it was to make a Gentleman Doctor of Phyſick.

L. Ch. And he was admitted upon it, was he not?

Vice Ch. Yes, my Lord.

L. Ch. Did the Senate Vote his Mandate?

Vice Ch. No, my Lord, they did not.

L. Ch. Why ſhould they interpoſe in the one and not in the other?

Vice Ch. They had no Diſpenſation, my Lord, for the Oath in it.

L. Ch. But however, if they did not Vote it, nor do any others of the Kings Letters, how do you know their Conſent?

Vice Ch. My Lord, it is preſumed upon their being ſilent, and offering nothing to the contrary.

L. Ch. Ay, we have a Proverb, Mr. *Vice-Chancellour*, *Silence gives Conſent*, but it ſeems he was admitted immediately, was he not, before you could know whether they conſented to both or no?

Vice Ch. No, my Lord, he was not admitted till the Houſe deſired me to forbear in Mr. *Francis*'s Caſe.

L. Ch. But, as to this buſineſs of the Senate, deſiring you (my Lords) I hope you will Indulge me to ſpeak a little of that, for having been formerly a Member of that Univerſity my ſelf, I think I have ſome ſmall Remembrance of the manner of the Proceedings there: Pray, Mr. *Vice-Chancellour*, how was it that you knew their Minds in this Buſineſs?

Vice Chancellour. My Lord, the Houſe ſent up their Opinions.

L. Chancellour. How, pray? By whom?

Vice Chancellour. The Non-Regents by Dr. *Smoult* the firſt Day; and Mr. *Billers* the Orator, and Mr. *Newton* the Mathematical Profeſſour, my Lord, the ſecond Day.

L. Chancellour. By whom do you ſay the firſt Day?

Vice Chancellour. By Dr. *Smoult*, my Lord, from the Non-Regent Houſe, and Mr. *Norris* from the Regent Houſe.

L. Chancellour. Well: What ſaid theſe two to you?

Vice Chancellour. My Lord, I don't know the very Words, but it was to this Effect, That I ſhould forbear admitting Mr. *Francis* till the King was petitioned.

L. Chancellour. Is that Dr. *Smoult* in Court?

Vice Chancellour. Yes, my Lord, he is here—— *then he ſhewed himſelf.*

L. Chancellour. Come, Sir, What was it, I pray you, that you told the *Vice Chancellour*?

Dr. *Smoult.* I have forgot, my Lord, the Words, but it was to the ſame purpoſe the *Vice Chancellour* told you juſt now, That the Houſe deſired me to acquaint him they were petitioning, that the Mandate might be recalled.

L. Chancellour. And pray, Sir, who are you, that you ſhould be thought fit to repreſent a whole Houſe? Why ſhould they chooſe you rather than any Body elſe?

Dr. *Smoult.* My Lord, I ſuppoſe becauſe I was one of the Seniors.

L. Chancellour. One of the Seniors! If you come to that, why was not the very Senior choſen?

Dr. *Smoult.* I cannot tell, my Lord, they came to me.

Vice Chancellour. My Lord, he is one of our Profeſſors.

L Chancellour. Nay, when I ask you Queſtions they prompt you, and now you prompt them; but I muſt tell you Mr. *Vice Chancellour*, you ought to take an account of what is done in the Houſe your ſelf, and not from others.

Vice Chancellour. My place is at a great diſtance from the Non-Regent Houſe, and I could not ſee what was done there.

L. Chancellour. But ſhould you take the Senſe of a whole Houſe from one Man?

Vice Chancellour. He came and told me, my Lord, the Houſe was of that Opinion, and I thought I had no reaſon to queſtion what he ſaid.

L. Chancellour. How loud did he ſpeak when he told you this?

Vice Chancellour. Pretty loud my Lord.

L. Chancellour. Was it ſo loud that all the Houſe might hear it?

Vice Chancellour. No my Lord.

L. Chancellour. Did you ſend afterwards to enquire whether he had told you their Opinions true or not?

Vice Chancellour. No, my Lords, I confeſs I did not.

L. Chancellour. But how came this new way of giving Opinions, are not the Proctors uſually

the Men that bring the Senſe of the Houſe to the *Vice Chancellour*?

Vice Chancellour. Not the Non-Regent, my Lord, they are not admitted into that Houſe, nor have at all to do there.

L. Chancellour. Have you any thing elſe to offer to my Lords?

Dr. *Cook.* My Lord, if the anſwer that we gave in the laſt day be not ſatisfactory, we deſire to have time allowed us to make a farther Defence, and to do it with Council.

L. Chancellour. Have you nothing to ſay beſides?

Dr. *Cook.* No my Lord.

L. Chancellour. Nor you Gentlemen?——then withdraw.

After the Vice Chancellour, *and three or four of the Delegates were gone off, and the Croud was retiring, Mr.* Billers, *being a Perſon ingaged in carrying up the Senſe of the Houſe, would have informed the Court (who ſeemed under a Miſtake) more particularly of the Senates Proceedings; and how it came to paſs that the uſual way of Suffrages was impracticable at that time.*

Mr. *Billers.* My Lords, I beg leave to ſpeak one Word.

L. Chancellour. Who are you?

Mr. *Billers.* My Name is *Billers*, my Lord.

Mr. *Bridgman.* My Lord, he is one of the Gentlemen that ſign'd the Paper in which was the Anſwer.

Mr *Billers.* I am one of the Perſons, my Lord, that Sign'd the Paper in which was the Anſwer.

L. Chancellour. Nay, hold Mr. *Billers*, give me leave to compare your Memory with Mr. *Vice Chancellour*'s a little; Mr. *Vice Chancellour* tells me, Mr. *Billers* and Dr. *Smoult* went up both of a Day; then comes Mr. *Billers* and ſays that Dr. *Smoult* and he went up two ſeveral Days.

Mr. *Billers.* My Lord, I could not poſſibly go up from the Houſe; I do not belong to the Regent Houſe.

L. Chancellour. Indeed he ſaid ſo, Sir; indeed he did, my Lords——did he not? [*To* Mr. *Bridgman.*

Mr. *Bridgman.* Yes, my Lord.

Mr. *Stanhope. behind the Biſhop of* Rocheſter. My Lord, under favour, my *Lord Chancellour* is miſtaken; the Perſon Mr. *Vice Chancellour* told your Lordſhip, went up from the Regent Houſe the ſame Day, with Dr. *Smoult*, was Mr. *Norris.*

Biſhop of *Rocheſter.* My Lord, I think your Lordſhip forgets; it was Mr *Norris* that went up from the Houſe the ſame day with Doctor *Smoult.*

L. Chancellour. Well, Sir, was this that you would ſay?

Mr. *Billers.* I was only juſt acquainting your Lordſhip what was done, and that there was no other way——

The thing Mr. Billers *intended to urge, was, That the uſual way of Suffrage could not be practiſed at that time; ſo the other was taken.*

Earl of *Sunderland.* We heard that before.

L. Chancellour. Ay, Sir, we took both what was done, and what was not done; therefore withdraw.

Then all the Company retired, and after an Hour and a halfs Attendance, they were call'd in again, and the Lord Chancellour *pronounced the Sentence upon Mr.* Vice Chancellour, *in the following manner:*

Lord Chanc. Mr. *Vice-Chancellour*, the Lords have commanded me to tell you, that they have taken ſome time to conſider your Anſwer, and are at laſt come to a Reſolution upon it; my Buſineſs is to tell you what the Reſolution is, Mr. *Vice Chancellour.* My Lords conſider you have been guilty of an Act of great Diſobedience to the King's Commands, and other Crimes and Contempts, and ſuch that now you appear before us, you have little to ſay in excuſe of it; therefore as a mark of His Majeſties and their Lordſhips Diſpleaſure, they have thought fit to appoint, that you be henceforth deprived of the Office of *Vice Chancellour* of *Cambridge.* They likewiſe order, that you don't preſume, at any time hereafter, to meddle with any of the publick Buſineſs of the Univerſity. Likewiſe, Mr. *Vice Chancellour*, their Lordſhips conſider you have a Headſhip of a College, and becauſe the Example of ſo ill a Man may be a pernicious Conſequence to all under your Government, they have likewiſe thought fit that you be deprived of it, during His Majeſties Pleaſure; but becauſe they have a Tenderneſs for the Colledge, for which all along you have ſhewed little regard, my Lords are pleaſed to appoint, that the Revenues of your Headſhip ſhall go to the benefit of the Society: This is their Lordſhips Pleaſure, and to this they require your Obedience. There are likewiſe ſome other Gentlemen that have ſigned a Paper here, but my Lords expect their Attendance when they ſit next, which will be on *Thurſday* next; then we ſhall take them into Conſideration.

On *Monday*, Dr. *Peachell* wrote by an Eſquire Beadle, who attended him, to deſire a Copy of the Sentence, but anſwer was return'd. The Sentence as yet was not committed to writing, but Verbal only, and ſo he could not have a Copy; but he repeated the Heads only with this Alteration, That he was ſuſpended his Maſterſhip and not deprived; which was an Errour in the Lord Chancellours delivering it.

The beginning of the next Week was employed in making Inquiries after the new Commiſſion, the Hannaper Six Clerks, and the Riding Six Clerks Office knew nothing of it, nor any Court of Record could be directed to: Mr. *Bridgman* did own there was ſuch a thing, but did not inſtruct them how to come to the ſight of it: thoſe that ſpoke beſt of the Commiſſioners, urged the removal of the Lord Chief Juſtice of the King's Bench to the *Common Pleas*, as a thing that made a new Commiſſion neceſſary for rectifying his Title, but a Gentleman, who pretended to have read it, gave them private Intimations that there were very large Additions, and very conſiderable Alterations in it; at my Lord Chancellours own Houſe, the Servants brought Word, that my Lord would ſpeak with the Perſon himſelf that deſired to ſee it, and appointed him a time; the Sollicitor went at the Hour, but did not gain acceſs to my Lord, and ſo they could not ſee it at all, for it was *Wedneſday* Night, or *Thurſday* Morning.

Thurſday May the 12th.

Council-Chamber, Commiſſioners preſent as before, the Delegates appear with Dr. Peachell.

Lord Chanc. THE laſt time you appeared here before us, my Lords thought fit to ſet a mark of their Juſt Diſpleaſure upon the

the *Vice Chancellour*. Gentlemen, you cannot but be ſenſible, and ſo muſt all the World, how pernicious and obſtinate the Univerſity has ſhown themſelves in refuſing the King's Commands, and ſuch Commands, I muſt tell you, that ought to be obeyed.

There was a time, you may remember Inſtances, if you do not, I'll turn you to one in the Year 1667. when the Letters were ſo far from being diſputed, that they paſſed for a Law among you, and do this day ſtand Recorded among the ſolemn Acts, and Publick Statutes of the *Univerſity*. Gentlemen, my Lords conſider there is a Difference between the *Vice Chancellour*'s Caſe and yours, and therefore did not conclude you, who repreſent the Senate with him, but have required your Attendance at this time; they impute the miſcarriage of the Body to the Head Diſeaſe chiefly, though neither are you without Fault, for ſhewing ſo much as uneaſie under the King's Commands. Gentlemen, I muſt tell you, my Lords underſtand very well, the ſly Inſinuations in your Paper, and have commanded me to tell you, That they know upon what Grounds they go, though they do not think fit to deſcend to particulars; they know too how far that Authority extends, not only to you of the *Univerſity*, but to the Societies within this Kingdom. Gentlemen, your beſt Courſe will be by a ready Obedience to His Majeſties Command for the future, and by giving a good Example to others, to make amends for the ill Example that has been given you; therefore I ſhall ſay to you what the Scripture ſays, and rather becauſe moſt of you are Divines; *Go your way, and ſin no more, leſt a worſe thing come unto you.*

The late King's Letters, mentioned by my *Lord Chancellour*, *Anno* 1667. concern the Regulating ſome of the publick Exerciſes in the *Univerſity*; the meaning whereof is this, The King is their Viſitor, and whenever there is any thing belonging to the local Statutes and Cuſtoms which they think ought to be altered, or any uſe which ſhould be rectified and redreſs'd, their way is to beg the King's Royal Conjunction in the Caſe, which they keep upon Record, and obey as a Statute; how good an Argument is this againſt them, for not obeying a private Mandate contrary to four known Laws of the Land, and how parallel, the Caſe is eaſie diſcern'd.

As they were drawing off, he call'd them again, and ſaid.

Lord Chanc. Hold, Gentlemen, I know ſomething more to ſay to you. My Lords require, as a Teſtimony of your Obedience, that you, who repreſent the Senate, ſhould take care they have the Univerſity Statutes brought to lye before them here.

Dr. *Cook.* My Lord, we do no longer repreſent the Senate, our Delegation is determined with the *Vice Chancellour*'s Deprivation, my Lord.

Lord Chanc. Well, if your Commiſſion be expired, we will give you a new one, we are able to give you a Commiſſion; we ſuppoſe you had ſufficient Authority for appearing here.

Dr. *Cook.* Does your Lordſhip expect that we ſhould attend with the Statutes our ſelves?

Lord Chanc. No, no, ſend them up by a proper Officer; you are only to carry a Meſſage from us to the Senate, and tell them what we expect.

Dr. *Eachard.* In what time does your Lordſhip expect them?

Lord Chanc. In a convenient time, we will not tye you up, but if you be tardy, my Lords will take care to quicken you by an Intimation; I mean only a Copy, not original Statutes: You are now diſcharged from any farther Attendance here.

The Delegates, upon the *Vice Chancellour*'s Deprivation, being no longer capable of acting as publick Perſons, and conſequently of deriving any ill Conſequence upon the Body they have repreſented, thought they might venture their own Perſons more boldly; therefore, in order to ſatisfie the World, they were mighty deſirous to bring about a Second hearing of the ſame Points, which before the *Vice Chancellour*'s Sentence, they were not ſuffered to ſpeak to, and which, when the *Vice Chancellour* was asking, they had not an Opportunity of anſwering ſo very particular as they could have wiſh'd, confining themſelves to ſuch Queſtions, all the while, as did not concern the *Vice Chancellour* ſolely and perſonally, but affected the whole Senate jointly with him; which Order they had likewiſe obſerved in interpoſing at the Tryal. This Anſwer they had ready to offer in Writing, if that could be admitted, but if not, reſolved to argue it by Word of Mouth; the ſubſtance of it may be reduced to two Heads:

Firſt, the Buſineſs of admitting others, and particularly Dr. *Lightfoot*, without Oaths: As to *Lightfoot*'s Caſe, what they intended to have urged in Court, you have ſeen already; but as to others:

I. *That Peers are by the very Act of Parliament* 5to. Eliz. *Exempted from the Oath.*

II. *That all ſuch as the Univerſity calls Noblemen, have time out of mind, enjoyed the Privilege of Peers.*

III. *That under that Quality they never admit any without Oaths.*

IV. *That if at any time, upon the entertaining of a Prince, or any ſuch Solemnity, any one has ſlipt out in the Croud, which they are not conſcious of; this is to be imputed to hurry and inadvertency, and cannot be parallel to this Caſe, where the Senate acted with Leiſure and Deliberation.*

V. *That even theſe Degrees, given to Noblemen and Strangers, are Honorary and Complemental, and ſo different from what the Statute calls Degrees of Learning, and Men uſe, exerciſe and make a Gain of their Profeſſion.*

VI. *That ſuppoſing never ſo many to be admitted without Oaths, this they acknowledged to be irregular, and the Breach of a Law in one can be no Precedent for another to follow.*

VII. *That however they are very fully and particularly aſſured, no Man was ever admitted who poſitively refuſed the Oaths, which this Mr.* Francis *did.*

I. *That every Man who is a Member of that, or any other Senate, hath ſuch a Right to propoſe, debate and adviſe, as occaſion ſhall require, and proteſt againſt any irregular Proceedings in it.*

II. *That in a matter contrary to the Laws, and ſo highly concerning their Univerſity and Religion, as the opening ſuch a Gap for the Men of any Perſwaſion to become Members of their Body and Senate (which every Reſident Maſter of Arts is) it had been the greateſt Infidelity and Negligence to have ſate ſtill.*

III. *That their Suffrage not being ask'd by the common way, ought not to have been a Bar, becauſe every Man in his Matriculation Oath, obligeth himſelf to be aſſiſting to the Chancellour and Vice Chancellour, and to defend the State, Honour and Dignity of the Univerſity, according to his Power and Capacity; and this to do* Suffragio & Concilio, rogatus & non rogatus.

IV. *That repreſenting the whole Houſes Opinions by a few, is a Practice common to all numerous Congregations, and uſual in this, for any ſingle Man, voluntarily to go and Addreſs the* Vice Chancellour *in behalf of this whole College, or otherwiſe.*

V. *That the late King commanded, by His Royal Letters, that all Addreſs to the* Vice Chancellour *ſhould be made in the moſt quiet, decent, and reſpectful manner: and this way was thought more conformable to that Command, than the hurry of every Man applying himſelf perſonally.*

VI. *To give the better Reputation to the thing, and make it unexceptionable, the Perſons ſent from the Senate to the* Vice Chancellour, *were all Men either of publick Character in the Body, or the Seniors of their Houſes, or ſome way eminently known in the Univerſity; but they being admitted, as you have ſeen, on* Thurſday, *there was no Opportunity at all of offering a Diſpute.*

Animadverſions on Wedneſday, April the 27th.

THIS Day the Plea was given in, and the only thing needful to be remark'd, is, The uſual way of demurring to the Courts Juriſdiction, which is commonly either the only, or firſt Plea, in ſuch Caſes; but the Delegates look'd upon themſelves as obliged not only to defend their Cauſe, but to ſatisfie the World, therefore they were deſirous that all People ſhould be ſatisfied upon what Reaſons they acted, and to this Purpoſe they firſt inſiſted upon them, which they did not at all doubt, but it would be patiently heard; whereas, if the Courts Juriſdiction had come firſt, that would, in all Probability have occaſion'd the whole Plea to be ſtifled and over-ruled.

Saturday, May the 14th.

Mr. *Atterbury* came to *Cambridge*, with two Orders under the Commiſſioners Seal, one to the Proctors to proceed in the Choice of a new *Vice Chancellour*, and the other to *Magdalen* College Fellows; to each of which was annexed a Copy of the Sentence to be fixed upon the School Doors, and *Magdalen* College Gates; and on *Thurſday, May* the 17th Doctor *Balderſon*, Maſter of *Emmanuel* College ſucceeded in the Office of *Vice Chancellour.*

A Copy of Dr. Peachell's *Sentence, as it was fixt on the publick School Doors, and* Magdalen College Gates.

By His Majeſties Commiſſioners for Eccleſiaſtical Cauſes, and the Viſitation of the Univerſity, and of every Collegiate and Cathedral Churches, Colledges, Grammar Schools, Hoſpitals, and other the like Incorporations, or Foundations or Societies.

WHereas John Peachell, *Dr. of Divinity,* Vice Chancellour *of* Cambridge, *Maſter of* Magdalen *Colledge, in the ſaid Univerſity, has been Conven'd before us for his Diſobedience to His Majeſties Royal Letters Mandatory, and other his Contempts; and the ſaid Dr.* John Peachell *having been fully heard thereupon, we have thought fit after mature Conſideration of the Matter, to Declare, Decree and Pronounce, that the ſaid Dr.* John Peachell, *ſhall for the ſaid Diſobedience and Contempts, be deprived from being Vice Chancellour of the ſaid Univerſity, and from all Power of acting in the ſame: And alſo, that he be Suſpended* ab Officio & beneficio *of his Maſterſhip of the ſaid Colledge, during His Majeſties Pleaſure; and accordingly we do by theſe Preſents deprive him, the ſaid Dr.* John Peachell, *from being Vice Chancellor of the ſaid Univerſity, and from all Power of acting in the ſame. And we alſo Suſpend him* ab Officio & Beneficio *of his Maſterſhip of the ſaid Colledge, peremptorily admoniſhing and requiring him hereby, to abſtain from the Function of Maſter of the ſaid College, during the ſaid Suſpenſion, under pain of Deprivation from his Maſterſhip. And we alſo farther Order and Decree, that the Profits and Perquiſites belonging to his ſaid Maſterſhip, ſhall during the ſame Suſpenſion, be applyed to the Uſe and Benefit of the ſaid College.*

Given under Our Seal, the 7th of *May*, 1687.

An impartial Relation of the whole Proceedings againſt St. Mary Magdalen *College in* Oxon, *in the Year of our Lord* 1687. *containing only Matters of Fact as they occurred.*

A Narrative of the Election of Dr. Hough, *Preſident to S.* Mary Magdalen *Colledge,* Oxon, 1687.

THE Preſidentſhip of St. *Mary Magdalen* College, in the Univerſity of *Oxon*, being void by the death of Dr. *Henry Clerk*, late Preſident of the ſame, the Vice Preſident gave notice to all the Fellows preſent in the Chappel, on *Thurſday* the 31ſt of *March*, 1687. where it was unanimouſly agreed to proceed to the Election of a Preſident, on *Wedneſday* the 13th of *April* following, at Nine of the Clock in the Morning, in the Chappel: And in order thereto, the Vice Preſident cauſed a Citation to be fix'd on the Chappel

pel Door of the ſaid College, ſignifying the Vacancy, Time and Place of the Election; according to the Direction of the Statutes. But before the Day of Election, being credibly informed, that His Majeſty had been pleaſed to grant his Letters Mandatory in behalf of Mr. *Anthony Farmer*, they moſt humbly repreſented to His Sacred Majeſty, in their Petition bearing Date *April* the 9th, That the ſaid Mr. *Farmer* was uncapable by their Statutes, of being Preſident; and therefore did moſt humbly pray His Majeſty to leave them to a free Election, or recommend ſuch a Perſon to them, as was capable by their Statutes. *Monday, April* the 11th, His Majeſties Letters Mandatory were delivered by the Hands of Mr. *Robert Chernock*, Maſter of Arts, and Fellow of the ſaid College, directed to the Vice Preſident and Fellows of *Magdalen* College in *Oxon*, requiring them forthwith to Elect the ſaid Mr. *Farmer*, and admit him Preſident: Which Letter the Vice Preſident read in the Chappel of the ſaid Colledge, between the Hours of four and five of the Clock in the ſame day, after Evening-Service, before the Fellows of the College, there preſent, and asked them, Whether they in Obedience to His Majeſty's Letters, would forthwith Elect and Admit Mr. *Farmer* Preſident? Who all agreed, in conſideration to Mr. *Farmer*'s not being qualified, and the danger of Expulſion to any of the Fellows that ſhould be abſent from the Election, and that the time of Election, according to the Citation, was ſo near, to defer their Anſwer till *Wedneſday* following; whereupon the Vice Preſident required all the Fellows to be preſent in the Chappel the ſaid *Wedneſday* Morning at nine of the Clock. All the Fellows being then met, the Vice Preſident read the Statute *De Electione Preſidentis*; and the Statute, 5 *Eliz.* againſt corrupt Elections was read alſo; after which the Vice Preſident read the King's Letter in behalf of Mr. *Farmer*, and the ſecond time demanded an Anſwer of the Fellows thereto. Their Anſwer was to this Effect: That having a Petition now lying before His Majeſty, they ought not to proceed to Election, till they had received His Majeſty's Anſwer to the ſame: And thereupon they all agreed, (except Mr. *Charnock*) that the Election ſhould be deferred: which was accordingly done, until the next Morning nine of the Clock.

Thurſday April the 14th, at nine a Clock in the Morning, all the Fellows being met, the Vice-Preſident told them, That the Election of a Preſident had been deferred upon account of their Petition to His Majeſty, in anſwer to which, they had not then received His Majeſty's Pleaſure; that the next day was the utmoſt time they could defer the Election by the Statutes, and therefore it was neceſſary they ſhould come to ſome Reſolution: he told them farther, That the King had commanded them to Elect Mr. *Farmer*, and asked their Senſe therein: Which was unanimous (except Mr. *Chernock*) that the Election ſhould be deferred till the next Morning eight of the Clock; and in order thereunto, the Sacrament to be adminiſtred firſt; and accordingly it was adjourned.

Friday April the 15th, at eight a Clock in the Morning the Vice Preſident and Fellows being met, Dr. *Tho. Smith* and Captain *Bagſhaw*, two of the Fellows, acquainted the reſt, from my Lord Preſident of the Council, That in anſwer to their Petition, His Majeſty having ſent his Letter to the Colledge, expected to be obeyed. After which, the Vice Preſident read again the King's Letter to them, and ask'd, whether in Obedience thereunto, they would elect and admit Mr. *Farmer* Preſident? They anſwered, That they deſired they might proceed to an Election. Then the Vice Preſident having propoſed, whether having received His Majeſties Pleaſure in anſwer to their Petition, they would make any further Addreſs? The Vice Preſident, Dr. *Fairfax*, Dr. *Pudſey*, and Dr. *Tho. Smith*, were for a ſecond Addreſs; but all the reſt declared immediately for proceeding to the Election.

Then the Vice Preſident propoſed, whether they would go to an Election *Viva voce*, or by Scrutiny? The Vice Preſident, Mr. *Thompſon*, and Mr. *Charnock* were for proceeding to an Election *Viva voce*; all the reſt were for going to an Election by Scrutiny, except Dr. *Tho. Smith*, who was not for going to Election, until the King ſhould again be petitioned.

This therefore being their Senſe, That they ought to proceed to the Election of a Preſident according to the Statutes, and this the laſt day limited for Election: In order thereunto, the Holy Sacrament was ſolemnly taken by all except Mr. *Charnock*. Then the Statute *De Electione Præſidentis*, and 5 *Eliz.* againſt corrupt Elections was read by the Vice Preſident. Every one took the Oath preſcribed in the Statutes to be taken, in order to the Nomination of a Preſident, (except Mr. *Thompſon* and Mr. *Charnock* who refuſed it): And the two Senior Fellows were ſworn Scrutators in the Scrutiny of the whole Society: For the Nomination of a Preſident, Mr. *Hough* and Mr. *Maynard* had each of them the major part of all the Voices; and were accordingly pronounced by the Senior Scrutator, *Nominati in Ordine ad Electionem Præſidentis*: Then the Thirteen Senior Fellows being met to elect one of theſe two Preſident; and every one of them ſworn according to the Statute; eleven of them elected Mr. *Hough*, who was accordingly pronounc'd Preſident of St. *Mary Magdalen* College in *Oxon*, by the Senior Scrutator, in the preſence of all the Fellows: and Mr. *Maynard* was appointed by the thirteen Senior Fellows to preſent the ſaid Preſident Elect to the Viſitor, in order to his Admiſſion. After this, Mr. *Thompſon* and Mr. *Charnock* declared *Viva voce* for Mr. *Farmer*; according to His Majeſty's Letter.

Saturday April the 16th, Mr. *Hough*, Preſident Elect, was preſented to the Viſitor by Mr. *Maynard*, who at the ſame time delivered to his Lordſhip an Inſtrument under the College Seal, containing the Proceedings of the Election; after a ſight whereof, Mr. *Hough* was ſworn and admitted Preſident by his Lordſhip, according to the Statutes.

Sunday April the 17th, Mr. *Hough* at his return to the College, took the ſame Oath again before the Society, and afterwards as Preſident took his Seat in the Chappel, at four a Clock Prayers in the Afternoon.

A Copy of the King's Mandate to the Fellows of *Magdalen* College.

James Rex.

TRuſty and Well-beloved, We greet you well. Whereas we are well ſatisfied, of the Piety, Loyalty and Learning of our Truſty and

and Well-beloved *Anthony Farmer*, Maſter of Arts, of that your Colledge of St. *Mary Magdalen*, We have thought fit hereby effectually to recommend him to you for the place of Preſident of our ſaid Colledge, now void by the Death of Doctor *Clark*, late Preſident thereof; willing and requiring you forthwith, upon Receipt hereof, to elect and admit him the ſaid *Anthony Farmer*, into the ſaid place of Preſident, with all and ſingular the Rights and Privileges, Emoluments and Advantages thereunto belonging, any Statute, Cuſtom or Conſtitution to the contrary notwithſtanding, wherewith We are Graciouſly pleaſed to diſpence with in this behalf. And ſo, not doubting of your Compliance herein, We bid you Farewel.

Given at our Court at *White-hall*, the Fifth Day of *April*, 1687. in the Third Year of Our Reign.

A Copy of *Magdalen* Colledge's Petition.

To the King's moſt Excellent Majeſty.

The Humble Petition of the Vice Preſident and Fellows of St. Mary Magdalen *Colledge, in* Oxon.

Moſt humbly ſheweth,

WE have been credibly informed, That Mr. *Anthony Farmer*, who was not of our Foundation, has obtained Your moſt Excellent Majeſty's Recommendation to be Preſident of Your Majeſty's College, in the room of Doctor *Henry Clark*, deceaſed.

We therefore, with all Submiſſion, as becomes Your moſt Dutiful and Loyal Subjects, moſt humbly Repreſent to Your Sacred Majeſty, That the ſaid Mr. *Farmer* is a Perſon in ſeveral reſpects uncapable of that Character, according to our Founder's Statutes: And do moſt earneſtly beſeech Your Majeſty, as Your Majeſty ſhall judge fitteſt in Your moſt Princely Wiſdom, either to leave us to the diſcharge of our Duty and Conſciences, according to Your Majeſty's late moſt gracious Toleration, and our Founder's Statutes; or to recommend ſuch a Perſon who may be more ſerviceable to Your Majeſty, and to this Your Majeſty's Colledge:

And Your Petitioners ſhall ever pray, &c.

A Copy of the Lord Sunderland's *Letter to the Fellows.*

Gentlemen,

THE King being given to underſtand, That notwithſtanding his late *Mandate*, ſent to you for Electing Mr. *Farmer* to be Preſident of your Colledge, you have made choice of another Perſon; His Majeſty commands me to tell you, He is much ſurprized at theſe Proceedings, and expects you ſhould ſend me an account of what paſſed on that Occaſion, and whether you did receive His Majeſty's ſaid *Letters Mandate*, before you choſe Dr. *Hough*. I am,

Gentlemen,

Your Affectionate and Humble Servant,

Sunderland.

The Caſe *of the Vice Preſident and Fellows of St.* Mary Magdalen *Colledge in* Oxon, *in their late Election of a Preſident.*

UPon the Notice of the Death of Dr. *Henry Clark*, late Preſident of St. *Mary Magdalen* Colledge in *Oxon*; the Vice Preſident called a Meeting of the Fellows, in order to appoint a day for the Election of a new Preſident. The 13th of *April* was the day prefix'd with Power to prorogue the Election to the 15th, as they ſhould ſee Cauſe, beyond which time it was not in their Power to defer the ſame. This being agreed, a Citation, or Præmonition was fix'd upon the Chappel-Door of the College, ſignifying the ſame; and ſummoning all the abſent Fellows to repair home to the enſuing Election, as the Statute in that Caſe directs. After this, upon the 11th of *April*, they receiv'd His Majeſty's Letter in behalf of Mr. *Farmer*, requiring them to elect and admit him Preſident: But he having never been Fellow of that Colledge, nor *New* College, in which are the only Perſons capable of being choſen by the Statutes; and wanting likewiſe ſuch perſonal Qualifications as are required in the Character of a Preſident, they did not imagine it was, or could be His Majeſty's Pleaſure, that they ſhould act ſo directly contrary to the expreſs Words of their Statutes, to which they are ſtrictly and poſitively ſworn: But did humbly conceive they were bound in Duty to believe, that His Majeſty had been mis-informed in the Character and Capacity of Mr. *Farmer*. And therefore on the 15th of *April*, the laſt of thoſe days within which they were confin'd to finiſh the Election, they proceeded to a Choice, and having firſt received the Bleſſed Euchariſt, and taken an Oath as the Founder enjoyns, to chooſe a Perſon ſo qualified, as is there ſpecified; they did elect the Reverend Mr. *John Hough*, Batchelor in Divinity, who is a Perſon every way qualified by the Statutes of the ſaid College: And if it ſhall be objected that His Majeſty did in His Letter for Mr. *Farmer* graciouſly diſpenſe with all the Statutes that rendered him uncapable of being elected; and that therefore they might have obeyed without breach of their Oaths: They humbly beg leave to repreſent, that there is an expreſs Clauſe in that Oath, which every Man takes when he is admitted Fellow of the College; wherein he ſwears not to procure, accept, or make uſe of any Diſpenſation from his Oath, or any part thereof, by whomſoever procured, or by what Authority ſoever granted. As to their former Practice when they have elected in Obedience to the King's Letter heretofore; it has been always in ſuch Caſes where the Perſons recommended have been every way qualified for the Office by their Statutes; in which Caſes they always have been, and ever will be, ready to comply with His Majeſty's Pleaſure; it not being without unſpeakable regret, that they diſobey the leaſt of His Commands. They know how entirely their Welfare depends upon the Countenance of their Prince; nor doth any thing more deeply affect and grieve their Souls, than when they find themſelves reduc'd to this unfortunate Neceſſity, of either diſobeying his Will, or violating their Conſciences by notorious Perjuries.

A Copy of a Letter to the Duke of Ormond, April the 18th, 1687.

May it pleaſe your Grace,

WE the Preſident, and Fellows of *Magdalen* College in *Oxon*, ſenſible of the Benefits and Honour we enjoy under Your Grace's Patronage, and how much it imports us

to

to have your Advice in all the Difficulties where-with we are preſs'd; having as we fear, diſpleaſed His Majeſty, in our Election of a Preſident; do humbly beg leave to repreſent to your Grace, a true ſtate of our Caſe, and hope you will pleaſe to inform the King how uncapable we were to perform His Commands.

His Majeſty was pleaſed on the Death of Dr. *Henry Clark*, Preſident of St. *Mary Magdalen* Colledge, to Command us by His Letter, to Elect and admit Mr. *Anthony Farmer* in that Office, a Perſon utterly uncapable of it by our Statutes, as we are ready to make appear in many Particulars; and ſince we have taken a poſitive Oath of Obedience to them, and that excluſive to all Diſpenſations whatſoever; we humbly conceive we could not obey that Command in favour of Mr. *Farmer*; unleſs he had brought thoſe Qualifications with him, which our Founder requires in the Perſon of the Preſident; and being confined as to the time of Election, we have been forced to proceed to the choice of one, who has approved his Loyalty in the whole courſe of his Life, and whom we think ſuitably qualified for the place.——

May it therefore pleaſe your Grace to interpoſe with His Moſt Sacred Majeſty for us, that we may not lye under the Weight of His Diſpleaſure, for not being in a capacity for obeying his Commands. We know him to be a Prince of eminent Juſtice and Integrity, and cannot think he will value any inſtance of Duty to himſelf, which manifeſtly breaks in upon the Obligation of our Conſciences. And your Grace's extraordinary unblemiſh'd Loyalty to the Crown; and that Regard which, we aſſure our ſelves, our Moſt Honoured Lord and Chancellor has to the Peace and Welfare of this Place, induceth us to preſume your Grace will omit no Endeavours to ſet before His Majeſty the true Reaſon and Neceſſity of our Proceedings. That God Almighty protect your Grace, ſhall be the daily Prayers of,

May it pleaſe your Grace, &c.

The Biſhop of *Winton*'s Letter to the Lord Preſident of the Council.

My Honoured Lord,

THE Obligation I have upon me as Viſitor of St. *Mary Magdalen* College in *Oxon*, occaſions this Addreſs: For I am inform'd that great Endeavours are uſed with His Majeſty to recommend one Mr. *Farmer*, who is not at preſent, nor ever was Fellow of the College, to be Preſident of it; which is directly contrary to the Statutes of the Founder, (as I am confident ſome who promote Mr. *Farmer*'s intereſt, cannot be ignorant of:) And were there not many Perſons now actually Fellows, and ſeveral who have been (in particular the Biſhop of *Man*, and Dr. *Jeſſop*) very eminent for Learning and Loyalty, and every way qualified according to the Statutes, I ſhould not preſs your Lordſhip to lay the Concern of the College (which hath upon all occaſions expreſt its Zeal and Forwardneſs in Defence of the Crown, and (as I particularly know) in the great Affairs of the Succeſſion) before His Majeſty; who, I hope, will leave them to their Rules as the Statutes, which have hitherto (excepting in the times of Rebellion) been conſcientiouſly obſerved, and which will be the higheſt Satisfaction to the truly Loyal Univerſity, and promote His Majeſty's Service, which has always been the Endeavour of,

Your Lordſhips Moſt Humble Servant.

A Copy of the Citation to the Vice-Preſident and Fellows, for to appear at *White-Hall*, *June* the 6th, 1687.

By His Majeſties Commiſſioners for Eccleſiaſtical Cauſes, and for the Viſitation of the Univerſities, and of all, and every Cathedral and Collegiate Churches, Colleges, *&c.*

COmplaint having been made unto Us, that the Vice-Preſident, and Fellows of St. *Mary Magdalen* College in *Oxon*, have refuſed to comply with His Majeſties Letters Mandatory, for electing and admitting Mr. *Anthony Farmer* Preſident of the ſame College, in the room of Dr. *Clark* deceaſed, and that notwithſtanding His Majeſties Letters they have elected Mr. *John Hough* Preſident of the ſaid College: You and either of you are hereby requir'd to Cite and Summon the ſaid Vice-Preſident and Fellows, requiring 'em, or ſuch of the ſaid Fellows as they ſhall depute in their behalf, to appear before Us in the Council-Chamber at *White-Hall*, upon *Monday* the 6th of the next Month of *June*, at four in the Afternoon, to anſwer to ſuch Matters as ſhall be objected againſt them, concerning the Premiſes; and of the due Execution thereof, You are to certifie Us then and there.

Given under our Seal the 28th of May, 1687.

To Thomas Atterbury,
and
Robert Eldows.
Or to either of them.

The Anſwer of the Vice-Preſident, and other Fellows, of *Magdalen* College in *Oxon*, who were deputed by the ſaid College, to the Queſtion propounded by the Right Honourable, and Right Reverend the Lords Commiſſioners for Eccleſiaſtical Affairs, *viz.*

Why they did not obey His Majeſties Letter, requiring them to Elect, and Admit Mr. *Anthony Farmer* Preſident of the ſaid College?

THE ſaid Vice Preſident, and other deputed Fellows anſwered and ſaid, That the ſaid College of St. *Mary Magdalen* in *Oxon* is a Body Corporate, governed by Local Statutes, granted and confirmed to them by His Majeſty's Royal Predeceſſor, King *Henry* the 6th, for Him and His Heirs and Succeſſors, under the Great Seal of *England*, which are alſo ſince confirmed by ſeveral other Patents of others of His Majeſties Royal Predeceſſors, under the Great Seal of *England*. That by the ſaid Statutes of the College (to the Obſervation of which, each Fellow is ſworn) it is ordered that the Perſon elected Preſident thereof, ſhall be a Man of good Life and Reputation, of approved Underſtanding and good Temper, Diſcreet, Provident, and Circumſpect, both in Spiritual and Temporal Affairs. And at the time of Election of a Preſident, the ſaid Fellows are bound by the ſaid Statutes, to take an Oath that they ſhall nominate none to that Office, but ſuch as are, or

have

have been Fellows of the ſaid College, or of *New College* in *Oxon*: or if they are not actually Fellows at that time of Election; that they be ſuch as have left their Fellowſhips in their reſpective Colleges upon credible accounts. And when two qualified Perſons ſhall be nominated at the time of Election, by the greater number of all the Fellows, to the ſaid Office of Preſident; the thirteen Seniors alſo ſwear that they will Elect one of them, whom in their Conſciences they think moſt proper and ſufficient, moſt diſcreet, moſt uſeful, and beſt qualified for the Place; without any regard to love, hatred, favour or fear. And every Fellow when he is firſt admitted into his Fellowſhip in the ſaid College, ſwears that he will inviolably keep and obſerve all the Statutes and Ordinances of the College, and every thing therein contained, ſo far as does or may concern him, according to the plain, literal, and grammatical ſenſe and meaning thereof, and as much as in him lies will cauſe the ſame to be kept and obſerved by others; and that he will not procure any Diſpenſation contrary to his aforeſaid Oath, or any part thereof, nor contrary to the Statutes and Ordinances to which it relates, or any of them; nor will he endeavour that ſuch Diſpenſation ſhall be procured by any other, or others, publickly or privately, directly or indirectly. And if it ſhall happen that any Diſpenſation of this ſort, of whatſoever Authority it ſhall be, whether in general or particular, or under what form of Words ſoever it be granted, that he will neither make uſe of it, nor in any ſort conſent thereunto. That upon Notice of the Death of Dr. *Clark*, late Preſident of the ſaid College, the Vice-Preſident called a Meeting of the ſaid Fellows, in order to the appointing a day for the Election of a new Preſident, and the 13th of *April* was the time prefix'd, with power to prorogue the ſame as they ſhould ſee Cauſe, till the 15th, beyond which time they could not ſtatutably defer their Election, and in purſuance thereof a Citation or Premonition was fix'd upon the Chappel-door of the ſaid College, ſignifying the ſame, and by which the abſent Fellows were Summoned to repair home, as the Statute in the Caſe requires. And the ſaid Vice Preſident, and other deputed Fellows farther ſay, that on the 11th of *April* aforeſaid, they received His Majeſties Letters Mandatory, to Elect and Admit the ſaid Mr. *Anthony Farmer* Preſident of the ſaid College: But foraſmuch as the ſaid Vice Preſident and Fellows, apprehended the right of Election to be in them, and believed His Majeſty never intended to diſpoſſeſs them of their Rights: And foraſmuch as the ſaid Mr. *Farmer* had never been Fellow either of *Magdalen* or *New College* in *Oxon*, and had not thoſe Qualifications which in, and by, the ſaid Statutes of the College are required in the Character of a Preſident, as they in their Conſciences did, or do verily believe; and in regard that they could not comply with His Majeſties Letter, without the Violation of their Oaths, and hazard of their legal Intereſt and Property, wherewith they are by their Statutes poſſeſſed, and which by their Oaths they are bound to maintain, they repreſented the ſame by their humble Petition to His Majeſty. And having deferred their Election of a Preſident to the laſt day limited by their Statutes, then they proceeded to Election, and having firſt received the Euchariſt, and taken the ſaid Oaths, as the Statutes enjoyn, to chooſe a Perſon ſo qualified as before expreſſed, they did Elect the Reverend Mr. *John Hough*, B.D. and one of the Fellows of their College, a Perſon every way qualified to be Preſident, who has been ſince confirmed by the Biſhop of *Winton* their Viſitor, as the Statutes of the ſaid College direct.

And that they might not lye under His Majeſties Diſpleaſure by their Proceedings, they did on the 18th of *April* make an humble repreſentation thereof to His Majeſty, by his Grace the Duke of *Ormond*, Chancellor of the Univerſity of *Oxon*, ſetting forth their indiſpenſable Obligations to obſerve their Founder's Statutes.

All which Matters the Vice Preſident, and other deputed Fellows, do humbly offer to your Lordſhips, and pray to be diſmiſſed with your Lordſhips favour.

The Fellows Reaſons why they Elected not Mr. *Farmer*, &c.

WHereas the Vice Preſident, and other deputed Fellows of St. *Mary Magdalen* College in *Oxon*, have in their Anſwer to your Lordſhips, ſet forth, that by the Statutes of the ſaid College it is ordered, That the Perſon to be elected Preſident thereof, ſhould be a Man of good Life and Reputation, and of good Manners and Temper; and likewiſe, that Mr. *Anthony Farmer* hath not thoſe Qualifications which in and by the ſaid Statutes are requir'd in the Character of a Preſident, as they in their Conſciences did and do verily believe. They humbly crave leave to repreſent to your Lordſhips ſome of thoſe Reaſons which induced them to ſuch belief, *viz.*

That Mr. *Farmer* did miſ-behave himſelf in *Trinity* College in *Cambridge*: That he received Admonition from the Maſter of the College, in order to his Expulſion; which remains in the Regiſter of the ſaid College, under his own Hand.

That having left *Cambridge*, he taught School at *Chippenham* in *Wiltſhire*, under a Nonconformiſt Miniſter, without Licenſe.

That in *September* 1683. the ſaid Mr. *Farmer* was entred into St. *Mary Magdalen* Hall in *Oxon*, where ſuch frequent Complaints were brought againſt him to the Principal, for his troubleſome Humour and unquiet Temper, that to preſerve the Peace of the Society, he was deſired to leave the ſaid Hall.

That after his leaving *Magdalen* Hall, he was admitted into *Magdalen* College, where diſcourſing about Religion, he declared, That there was no Proteſtant but would cut the King's Throat: notwithſtanding which, at other times he declared to ſome of the Fellows of the ſaid College, That whatſoever he pretended, he was really a Member of the Church of *England*; and that he made an Intereſt with ſome Roman Catholicks, only to get Preferment by their Means, and for that reaſon was willing to be thought of their Religion.

That at the very time when His Majeſty's Letter came to the College in his behalf, the ſaid Mr. *Farmer* was at [illegible]*bington* in very ill Company, where he continued drinking to exceſs two or three days and Nights together; and amongſt other Diſorders, was one of thoſe that then in the night time threw the Town-Stocks into the River:

River: and that in general the ſaid Mr. *Farmer* hath had the Unhappineſs to lie under an ill Fame, as to his Life and Converſation, as by ſeveral Letters and Certificates, ready to be produced, will more largely appear.

Copies of Letters and Certificates delivered to the Lords Commiſſioners for Eccleſiaſtical Affairs, June 27. 1687.

I. I *Anthony Farmer,* Batchelour of Arts, and Scholar of this College, do confeſs, That I have behav'd my ſelf very unlike a Member of this College, and even a Chriſtian, at the Dancing-School: for which I humbly ask Pardon, and do acknowledge before the Seniority, that I have deſervedly received of the Maſter my firſt Admonition in order to Expulſion.

Trinity Coll. Camb.
June 11. 1678. *Anthony Farmer.*

This is a true Copy of *Anthony Farmer*'s Admonition, atteſted by us whoſe Names are hereunto under-written.

Humph. Babington,
John Hawkins,
Benj. Pulleyn,
John Laughton, } Vice Magiſt. Deput.

II. THeſe are to certifie, That Mr. *Anthony Farmer* was Uſher to Mr. *Benj. Flower,* a Nonconformiſt Preacher in the Town of *Chippenham* in the County of *Wilts,* for the ſpace of half a Year or upwards, the ſaid Mr. *Flower* keeping School without Licenſe from the Biſhop, and the ſaid Mr. *Farmer* continuing his Uſher for the time mentioned, without any Licenſe alſo. Witneſs our Hands,

Will. Lake,
Will. Loude, } Vicar.
Will. Gale.

III. MR. *Anthony Farmer* was entred of St. *Mary Magdalen* Hall in *Oxford, Septemb.* 1683. Where, after he had been ſome time, frequent Complaints were brought to me by ſome of the Maſters, that he raiſed Quarrels and Differences amongſt them; that he often occaſioned Diſturbances, and was of a troubleſome and unpeaceable Humour. Whereupon, that Love and Friendſhip might be preſerv'd and continu'd in the Society, as it uſed to be, I adviſed the ſaid Mr. *Farmer* to make tryal if he could live more eaſily and quietly in ſome other Houſe. Accordingly he did voluntarily leave the Hall, *July* the 13th, 1685. and got himſelf admitted into *Magdalen* College.

William Levet, Principal.

IV. I Do certifie, That Mr. *William Bambrigg,* Gentleman Commoner of *Magdalen* Hall, *Oxon,* did ſay, That Mr. *Anthony Farmer,* Maſter of Arts, did intice him from his Studies in the Univerſity to go to *London,* where he the ſaid Mr. *Farmer* did attempt to draw the ſaid Mr. *Bambrigg* into ſeveral Debaucheries both at Taverns and Bawdy-houſes. Witneſs my Hand,

John Ryland, Mr. of Arts of *Magd.* Hall.

V. I Do certifie, That Mr. *William Bambrigg,* Gentleman Commoner of *Magdalen* Hall, did ſay, That Mr. *Anthony Farmer,* Maſter of Arts of the ſaid Hall, did receive Money of him and other Gentlemen, publickly to expoſe unto him a naked Woman; which he acccordingly did. Witneſs my Hand,

Richard Clerk, Mr. of Arts of *Magd.* Hall

June 9. 1687.

VI. I Am very willing to juſtifie any thing I have formerly ſaid, relating to ſo ſerious a matter as this is you enquire after.

Mr. *Farmer,* one Night in the Cloyſter, asked me why I did not get a Commiſſion: I told him truly, I had not Friends to do it for me. He then asked me, what I would do for one: I told him, I would fight for my King, and whatſoever he ſhould command me. He then ask'd me, if I would fight for the King's Religion: I told him, there would be no occaſion for that, nor would it ever be required of me. He ask'd me of what Religion I was: I told him a Proteſtant. And then he ſaid, There was no Proteſtant but would cut the King's Throat; and that he ſhould loſe Three Thouſand Pounds, for being of that Religion he intended to be of; which he ſaid was a *Papiſt.* This, to the beſt of my Remembrance, is the full of what he ſaid. If I have omitted any thing, it is my care not to write more than I would honeſtly and juſtly ſwear to. I am, SIR,

Your moſt Obliged and moſt Humble Servant,
John Brabourn.

VII. IN or about *January* laſt, 1687. Mr. *Anthony Farmer* declared before us, That the Report of his being a Papiſt was falſe; but that he was willing to be thought ſo, becauſe it might do him a Kindneſs: That the reaſon of his Acquaintance with Mr. *Brent* and Mr. *Walker,* was to get Preferment by their Intereſt: That he had not forſaken the Proteſtant Religion; adding, we ſhould call him Rogue, if ever he did: That he would not make any publick Declaration of this, but would declare it amongſt Friends, when and where he pleaſed.

Henry Dobſon.
Ja. Fayrer.
Tho. Goodwin.

VIII. I Do hereby certifie, That *Robert Gardiner,* Porter of St. *Mary Magdalen* College, did tell me, that Mr. *Farmer* did very often come into the College late at Night, ſo much in drink, that he could ſcarce go or ſpeak. Witneſs my Hand, this 9th day of *June* 1687.

George Fulham.

IX. UPon *Monday April* the third, Mr. *Farmer* came to the *Lobſter* in *Abington* with Mr. *Clerk,* Mr. *Gravener,* and Mr. *Jennyfar,* about eight in the Morning, and ſtaid ſome time in the Houſe, and went from thence to the Tavern; return'd again about eleven at Night, and ſat up till one in the Morning: The next day they went to the *Buſh* Tavern and ſent for a quarter of *Lamb* for their Supper, and there Mr. *Farmer,* Mr. *Clerk,* Mr. *Gravener,* and two Troopers and others, continued till paſt eleven at Night, and ſo return'd to the aforeſaid place, and ſat up till paſt three in the Morning.

This I do aſſert, was the Company that the ſaid Mr. *Anthony Farmer* kept, and theſe were the unſeaſonable Hours. In witneſs whereof, I am ready to ſwear, whenever a Subpœna ſhall be ſent to me.

George Mortimer.

X. MRs. *Mortimer* is ready to aſſert, That when Mr. *Anthony Farmer* return'd to the *Lobſter* about eleven at Night, he came much concern'd in Drink, and was for kiſſing the ſaid Mrs. *Mortimer*, which, he being a Stranger, ſhe permitted him to do; but in doing of it, he the ſaid Mr. *Anthony Farmer* put his Tongue in her Mouth, which was ſuch a Rudeneſs, that ſhe immediately went out of his Company and would not come nigh him any more.

Martha Mortimer.

XI. BEing in Company with *William Hopkins* of *Abington*, the 12th of *June* laſt 1687. I heard him declare, That himſelf, with one Mr. *Farmer* of the Univerſity of *Oxon*, and ſome others, did in a Frolick, at an unſeaſonable time of Night, take away the Town-Stocks from the place where they conſtantly ſtood, and carried them in a Cart a conſiderable way, and threw them into a Pool commonly call'd Mad *Hall*'s Pool. Witneſs my Hand, the Day and Year above written.

Charles Peacock.

Some Clauſes of particular Statutes to which the Caſe relates.

IN their Statutes concerning their Election of a Preſident, his Character is thus deſcribed: That he muſt be a Man of good Reputation, and good Life, and circumſpect both in Spiritual and Temporal Affairs.

In the ſame Statutes the Oath which every Fellow is obliged to take, before he can give his Vote in the Nomination of a Preſident, is this: *viz.*

That he will name one or two of St. *Mary Magdalen* College, or of thoſe who have been Fellows there, or have left their places upon a legal and credible account: Or that he will name one or two of the Fellows of St. *Mary Wincheſter* College, commonly called *New College* in *Oxon*, or of thoſe who have been formerly Fellows there, and have left their places upon a credible account. After this, the thirteen Seniour Fellows ſwear, That out of the two thus nominated, they will with all ſpeed, Elect one to exerciſe the Office of a Preſident, whom in their Conſciences they think moſt proper and ſufficient, moſt diſcreet, moſt uſeful, and beſt qualified for it, either without any regard to Love, Hatred, Favour, Fear, *&c.* as in the forementioned Statute is more largely expreſſed.——

Part of the OATH *which every Fellow takes when Admitted.*

Item. I Do Swear that I will not procure any Diſpenſation contrary to my aforeſaid Oath, or to any part thereof, nor contrary to the Statutes and Ordinances to which they relate, or any one of them; nor will I endeavour that ſuch Diſpenſations be procured by any other or others, publickly or privately, directly or indirectly: And if it ſhall happen that any Diſpenſation of this ſort ſhall be procured, or freely granted or obtain'd, of what Authority ſo ever it be, whether in general or particular, under what form of Words ſoever it be granted, I will neither make uſe of it, nor in any ſort conſent thereunto.

So help me God.

A Copy of Dr. Hough's *Deprivation, by His Majeſty's Commiſſioners for Eccleſiaſtical Affairs,* &c.

WHereas it appears to us, that Mr. *John Hough*, B D. hath been unduly Elected Preſident of Saint *Mary Magdalen* College, in the Univerſity of *Oxon*, we have thought fit, upon mature Conſideration thereof, That the ſaid Election be declared void, and the ſaid Mr. *John Hough* be amoved from the ſaid Preſidentſhip; and accordingly we do hereby declare and decree, That the ſaid Election is void; and do amove the ſaid Mr. *John Hough* from the place of Preſident of the ſaid College.

Given under Our Seal this 22d Day of June, 1687.

A Copy of Dr. Aldworth's *and* Dr. Fairfax's *Suſpenſion.*

WHereas *Charles Aldworth*, Doctor of Laws, Vice Preſident of St. *Mary Magdalen* College *Oxon*, and the Deputies, Fellows of the ſame Houſe, have been conven'd before Us for their Contempt in not obeying His Majeſty's Letters Mandatory, for Electing and Admitting Mr. *Anthony Farmer* Preſident of the ſaid College; and the ſaid Dr. *Aldworth* and Deputies having been heard thereupon, We have thought fit to declare, pronounce and decree, That the ſaid Dr. *Aldworth* ſhall for the ſaid Contempt be ſuſpended from being Vice Preſident of the ſaid College: And that *Henry Fairfax*, Doctor of Divinity, one of the Fellows of the ſaid College, ſhall for the ſaid Contempt be Suſpended from his Fellowſhip; and accordingly We do hereby Suſpend Dr. *Charles Aldworth* from being Vice Preſident of the ſaid College, and the ſaid Dr. *Henry Fairfax* from his Fellowſhip in the ſaid College.

Given under Our Seal the 22d Day of June, 1687.

A Copy of the King's Inhibition to Magdalen *College.*

James Rex.

TRuſty and Well-beloved, We Greet you well: Whereas We are informed, That a Sentence or Decree lately made by Our Commiſſioners for Eccleſiaſtical Affairs, touching an Election in that our College, hath not been obeyed, Our Will and Pleaſure is, No Election or Admiſſion be made of any Perſon or Perſons whatſoever, into any Fellowſhip, Demyſhip, or other Place or Office in Our ſaid College, till We ſhall ſignifie Our further Pleaſure, any Statute, Cuſtom, or Conſtitution to the contrary notwithſtanding. And ſo, expecting Obedience herein, We bid you farewel.

Given at Our Court at Windſor, *the Eighteenth of* July, 1687. *in the Third Year of Our Reign.*

By His Majeſty's Command.
Sunderland.

A Copy of his Majeſty's Mandate for the Biſhop of *Oxon* to be Preſident.

James Rex.

TRuſty and Well beloved, We Greet you well: Whereas the place of Preſident of Our Colledge of St. *Mary Magdalen*, is now void, Our Will and Pleaſure is, That We do hereby Authorize and Require you forthwith, upon receipt hereof, to Admit the Right Reverend Father in God *Samuel* Lord Biſhop of *Oxon*, into the ſaid place of Preſident, to hold and enjoy the ſame, with all the Rights, Priviledges and Profits, Emoluments and Advantages thereunto belonging, any Statute or Statutes, Cuſtom or Conſtitution to the contrary, in any wiſe, notwithſtanding, wherewith We are Graciouſly pleaſed, and do accordingly hereby Diſpenſe in his behalf: And ſo, expecting your ready Obedience herein, We bid you Farewel.

Given at Our Court at *Windſor*, *Aug.* 14th 1687. in the Third Year of Our Reign.

By His Majeſty's Command.

Sunderland.

A Copy of the Lord Sunderland's *Letter to the Seniour Fellow of St.* Mary Magdalen *Colledge, in the Univerſity of* Oxon, *or in his abſence, to the Seniour Fellow reſiding there.*

THe King having been pleaſed by His Letters Mandatory, to require the Fellows of St. *Mary Magdalen* Colledge, to Admit the Lord Biſhop of *Oxon*, Preſident of that Colledge; His Majeſty Commands me to let you know, That immediately upon the receipt hereof, he would have you Aſſemble the Fellows, and Communicate to them His Majeſty's ſaid Letters: And I am further Commanded to tell you, That His Majeſty expects a ready Obedience to be paid to His Pleaſure herein. I deſire you would ſend me an Account of your Proceedings, as ſoon as you can, that I may acquaint His Majeſty with it. I am

Yours Sunderland.

A Copy of the Biſhop of Oxon's *Letter to the Seniour Fellow of St.* Mary Magdalen *Colledge, in* Oxon, *or in his abſence, to the Seniour Fellow reſiding there.*

SIR,

YOU will receive herewith His Majeſty's Mandate to Admit me Preſident of your Colledge of St. *Mary Magdalen*, in *Oxon*, together with a Letter of my Lord *Sunderland*, purſuant to His Majeſty's Commands. I am indiſpoſed, as I have been for ſome time, and not in a condition as yet to Travel; and therefore my requeſt to you is, That upon receipt of the King's Pleaſure, you would do me the Favour to Admit me by Proxy, (*i. e.*) Either the next Seniour Fellow under your ſelf, reſident, or either of my Chaplains, Mr. *William Wickins*, or Mr. *Thomas Collins*, whom I depute in my ſtead, which is as valid in Law, as if I were preſent my ſelf; and is the moſt uſual and cuſtomary Practice. And by ſo doing, you will oblige

Your very Loving Friend and Brother,

Samuel Oxon:

OXON, *September* 4*th*, 1687.

The Lord Sunderland *ſent an Order to the Fellows of St.* Mary Magdalen *Colledge, to attend the King at* Chriſt-Church, *at three in the Afternoon. They attended accordingly.*

King WHat's your name, are you Dr. *Pudſey*?

Dr. *P.* Yes, may it pleaſe your Majeſty.

K. Did you receive my Letter?

Dr. P. Yes, Sir, we did.

K. Then you have not dealt with me like Gentlemen, you have done very uncivilly by me and undutifully——Here they all kneeled, and Dr. *Pudſey* offered a Petition, which His Majeſty refuſed to receive: And ſaid

K. Ye have been a ſtubborn turbulent Colledge, I have known you to be ſo theſe 26 years: You have affronted me in this. Is this your Church of *England* Loyalty? One would wonder to find ſo many Church of *England* men in ſuch a buſineſs. Go home and ſhew your ſelves good Members of the Church of *England*. Get you gone; know I am your King, I will be obey'd; and I command you to be gone: Go and admit the Biſhop of *Oxon* Head, Principle; What d'ye call it of the Colledge——? (*One ſtood by ſaid* Preſident) I mean Preſident of the Colledge. Let them that refuſe it look to it; they ſhall feel the weight of their Sovereign's Diſpleaſure.

The Fellows going out of the Lodgings were call'd back.

K. I hear you have admitted a Fellow of the Colledge, ſince you receiv'd my Inhibition; Is this true? Have you not admitted Mr. *Holden* Fellow?

Dr. *P.* I think he was admitted Fellow: But we conceive——

Mr. *Cra.* May it pleaſe Your Majeſty, there was no new Election or Admiſſion, ſince Your Majeſty's Inhibition; but only the Conſummation of a former Election. (They always Elect to one years Probation) then the Perſon Elected is received, or rejected for ever.

K. The Conſummation of a former Election, 'twas downright Diſobedience, and 'tis a freſh aggravation. Get you gone home, I ſay again; go, get you gone, and immediately repair to your Chappel, and Elect the Biſhop of *Oxon*, or elſe you muſt expect to feel the weight of my hand——

The Fellows offered again their Petition, on their Knees.

K. Get you gone, I will receive nothing from you till you have obey'd me, and admitted the Biſhop of *Oxon*.

Upon which they went immediately to their Chappel, Dr. *Pudſey* propoſing whether they would obey the King, and elect the Biſhop of *Oxon*? They anſwered in their turns, They were as ready to obey His Majeſty in all things that lay in their power, as any of the reſt of His Subjects: But the Electing the Biſhop of *Oxon*, being directly contrary to their Statutes, and the poſitive Oaths they had taken, they could not apprehend it in their power to obey Him in this Matter.

A Copy of the Petition offer'd at *Oxford*, *September* 4. 1687.

To the King's Moſt Excellent Majeſty, &c.

Humbly ſheweth,

THat upon the 27th of *Auguſt* we receiv'd Your Majeſty's Letters Mandatory, Dated *Auguſt* 14th, requiring us to admit the Right Reverend Father in God *Samuel* Lord Biſhop of *Oxon*, to be our Preſident; and diſpenſing with all Statutes and Conſtitutions to the contrary. It is an unexpreſſible Affliction to us, to find our ſelves reduced to ſuch an extremity, that either we muſt diſobey Your Majeſty's Royal Command, contrary to our own Inclinations, and that conſtant courſe of Loyalty which we have ſhew'd in all inſtances hitherto upon all occaſions whatſoever; or elſe break our Founder's Statutes, and deliberately perjure our ſelves.

For our Founder hath obliged us under Oath, when we came in Fellows, inviolably to obſerve his Statutes, and one Clauſe therein injoyns us never to admit, or make uſe of a Diſpenſation granted by any Authority whatſoever, whereby we may be abſolved from the ſame. In this Statute for the Election of a Preſident, he commands us upon Oath to Elect ſuch a Perſon into the place of Preſident, within 15 days after the vacancy, who either is, or has been Fellow of our own, or *New*-Colledge: Which we repreſented to Your Majeſty in our humble Petition, ſign'd *April* 9th, wherein we offered our ſelves ready to Elect any Perſon capable of the ſame, who Your Majeſty ſhould be pleaſed to recommend, and having waited the utmoſt time limited by our Statutes, and receiv'd no Anſwer to that effect, we did then according to the exigence of our Statutes (having firſt taken the Holy Eucharift, and our ſeveral Oaths to that purpoſe) nominate and Elect ſuch a Perſon, as we in our Conſciences did believe to be every way qualified for the Place: By which Act of ours we have conveyed all that right to him, which our Founder hath intruſted us with, and it does not lie in our power to admit any other. Our Founder in another Statute obligeth us under the pain of Perjury, a dreadful Anathema, and eternal Damnation, not to ſuffer any of his Statutes to be altered, infringed, or diſpenſed with, and commands us under the ſame Sacred Obligations, not to execute any Orders or Decree whatſoever, contrary or repugnant to the ſaid Statutes; by which ſaid Statutes, and Oaths, we are utterly incapacitated to admit the ſaid Reverend Father in God to be our Preſident.

May it pleaſe Your Sacred Majeſty, to give us leave to lay this our Caſe, and our ſelves, with all ſubmiſſion, at Your Royal Feet, moſt earneſtly beſeeching Your Sacred Majeſty, to extend to us Your humble Petitioners, that Grace and Tenderneſs which Your Majeſty hath vouchſafed to all Your other Subjects; and not to believe us guilty of any obſtinacy or undutifulneſs, Crimes which our Souls abhor; but to receive us into Your Majeſty's Grace and Favour, the greateſt temporal Bleſſing which our Hearts can wiſh.

And your humble Petitioners ſhall always (as in Duty bound) pray to Almighty God, to bleſs Your Majeſty with a long and happy Reign over us, and afterwards to receive you to an immortal Crown of Glory.

A Copy of the Addreſs which the Fellows of St. Mary Magdalen *gave to the Lord Preſident of the Council*, Sept. 6. 1687; *and which was delivered his Majeſty at* Bath.

WE Your Majeſty's moſt humble, and moſt dutiful Subjects, the Fellows of St. *Mary Magdalen* Colledge in *Oxon*, being deeply afflicted with the late ſence of Your Majeſty's heavy Diſpleaſure; grounded, as we in all reaſon humbly preſume, upon a moſt unkind miſrepreſentation of our Actions, in relation to an Election of a Preſident, into Your Majeſty's ſaid Colledge: Do humbly beg leave to proſtrate our ſelves at Your Royal Feet, offering all real Teſtimonies of Duty and Loyalty. And as we have never fail'd to evidence both our Principles and Practices to be truly Loyal, in obedience to the Commands of Your Royal Brother, and Your Sacred Self, in matters of the like Nature: So whatſoever way Your Majeſty ſhall be pleaſed to try our readineſs to obey Your Royal Pleaſure, in any inſtance that does not interfere with and violate our Conſciences, which Your Majeſty is ſtudious to preſerve, we ſhall moſt gladly and effectually comply therewith: A ſtubborn and a groundleſs reſiſtance of Your Royal Will and Pleaſure, in the preſent, and all other Caſes, being that which our Souls eternally abhor, as becomes,

Your Majeſty's moſt Loyal and moſt Obedient Subjects, &c.

A Copy of a Letter directed to Dr. Bayly *Fellow of* Magdalen *Colledge*, Oxon; *ſuppoſed to be Writ by Mr.* W—— P——.

Sir,

UPon an inquiry made of your preſent Fellows of *Magdalen* Colledge, I am inform'd that you are a perſon eminent in that Learned Body, for your Temper, Prudence, and good Conduct in Affairs; and therefore very fit to be addreſs'd to by me, who do not ſend you this to trapan you, and your Brethren; but out of a paſſionate concern for your intereſt, to perſwade you, either to a compliance with his Majeſty's Letters Mandatory; or to think among your ſelves of ſome Expedient to prevent the ruin of your Colledge, and your ſelves: And to offer it to His Majeſty's Royal Conſideration, that the Order for the *Quo Warranto* againſt the Colledge may be recall'd, before it be too late; for you cannot be ſenſible how highly His Majeſty is incens'd againſt you, neither can you give one inſtance whether ever that ſort of proceeding was judged againſt the Crown. Your Cauſe muſt think it very hard; but you are not in Prudence to relye on the goodneſs of your Cauſe; but to do what the preſent inſtant of Affairs will permit, and in patience to expect a Seaſon that will be more auſpicious to Perſons of your Character. Every Mechanick knows the temper of His preſent Majeſty, who never will receive a baffle in any thing that he heartily eſpouſeth, and that he doth this, your ſelves have had too late and manifeſt an inſtance, to doubt of his zeal in the Affair.

Where there are ſo many Statutes to be obſerved, 'tis impoſſible but ſome muſt be broken at one time or another; and I am informed by the Learned of the Law, that a failure in any one point,

point, forfeits your Grant, and lays your Colledge open to the Royal diſpoſal.

I could give many other prudent Arguments, that might poſſibly incline you to a ſpeedy endeavour of putting an end to your Troubles, almoſt, at any rate; but I ſhall ſuggeſt this one thing to you, that your fatal overthrow would be a fair beginning of ſo much aimed at Reformation, firſt of the Univerſity, then of the Church, and adminiſter ſuch an opportunity to the Enemy, as may not perhaps occur in His Majeſty's Reign. I am

Your affectionate Servant, &c.

The Anſwer to the aforementioned written Letter, Dated Oct. 3*d.* 1687.

THE incloſed Paper is a Copy of a Letter, which by the charitable purpoſe of it, ſeems to be writ by you, who have been already ſo kind as to appear on our behalf, and are reported by all that know you to imploy much of your time in doing good to Mankind, and uſing your Credit with His Majeſty, to undeceive him in any wrong impreſſions given him of his conſcientious Subjects, and where his Juſtice and Goodneſs have been thereby abuſed, to reconcile the Perſons injur'd to His Majeſty's Favour, and ſecure them by it from Oppreſſion and Prejudice. In this confidence, I preſume to make this application to you, deſiring your excuſe for not ſubſcribing it: For if you did write the Letter, you know to whom it was directed; and if you did not, I hope your Charity will induce you to make ſuch uſe of your light you have by it, into the Affairs of our Colledge, as to mediate for us with His Majeſty, to be reſtored to his good opinion, as the only thing which is deſired by us, who are zealous, above all earthly things, for his Felicity and Glory.

We are not conſcious of ever giving His Majeſty any juſt offence, as it will appear with you, when you ſhall have peruſed the encloſed Papers; and have therefore no reaſon to fear the iſſuing out of a *Quo Warranto* againſt us. And though you are pleaſed to apprehend it, no inſtance can be given of a Judgment againſt the Crown, upon the proceſs of that Writ: The Learned in the Law tell me, there is nothing more common, and whereof many Caſes are reported by *Kellaway*, from Page 128, to Page 152, of his Book of Reports: And I think I have heard of a Caſe in *Coke*'s ninth Report of the Abbeſs of *Prata Marcella*, which evinces the ſame; wherein alſo there is a recital of Judgment given againſt *Roger Mortimer* for the King, upon a *Quo Warranto* in Court of *Eyre*, revers'd for Errour in the King's Bench. We hope though we have many Statutes, it will be found that we have not wilfully tranſgreſs'd any of them, for all our preſent Troubles are derived to us from our adherence to them, and our fear to offend God, and blemiſh our Conſciences, by departing from them.

His Majeſty is intentionally righteous and juſt in all his Proceedings, He will never knowingly invade any Man's Property, as He was ſolemnly pleaſed to declare in his Excellent Speech made in Council, on the 6th of *February*, 1684, at his Acceſſion to the Government; which is again repeated in His gracious Declaration for Liberty of Conſcience, of the 4th of *April* laſt paſt. It is upon His ſacred, inviolable, and Royal Word and Promiſe, we muſt depend; not doubting but when His Majeſty ſhall be rightly inform'd of our Caſe, in reference to both His Mandatory Letters to our Colledge, His Anger towards us will be totally extinguiſhed. Our compliance to the firſt (which was Mr. *Farmer*'s Election) would have involv'd us in the guilt of manifeſt Perjury; and the wilful violation of our Statutes: And we are confident his Majeſty would never have granted the ſecond on the behalf of my Lord Biſhop of *Oxon*, if he had known we were then poſſeſs'd of a Preſident duly Elected according to our Statutes, and confirmed by the Biſhop of *Winton*, our Viſitor (as the Statutes require); and if he is thereby inveſted with a Lay Freehold under the protection of his Majeſties Laws, which we cannot undo or attempt to invade, without ſubjecting our ſelves to Suits at Law, and doing an apparent injury to the Preſident, who doth not conceive himſelf to be affected with the Sentence of the Lords Commiſſioners, (to which he was no Party) whereby his Place is declared void, without any Citations, Summons, or hearing of him

I believe no inſtance can be given of a *Quo Warranto* brought againſt a Colledge or Hall in the Univerſities, from the firſt foundation of them to this day, or any other Eccleſiaſtical Corporation: for the Abuſes of ſome Conſtitutions or Franchiſes in them, and the Miſdemeanours of particular Perſons will not deſtroy a Colledge: And if the Corporation of a Colledge ſhould be diſſolv'd, the Revenues therefore will return to the Founders Heirs, and not devolve to the Crown. And if our Colledge muſt be the firſt Example of that kind, we ſhall be better juſtified by the ſtrict Obſervation of our Statutes, (at leaſt to God and our own Conſciences) than we could have been by a voluntary and deliberate Breach of them.

It was Loyalty and Conſcience, that in the Reign of King *Charles* the Firſt, made thirty four of our forty Fellows, and moſt of the Scholars of our Foundation, rather quit their Places, and embrace Miſery and Ruine, than to ſubmit to the Government of the Uſurpers of the Crown. And in *Monmouth*'s Rebellion, the ſame Inducements prevailed on us to raiſe a Company at our own charges, under the command of one of our Fellows, to engage againſt him. And we hope that theſe and many other the like inſtances, which may be given of the Loyalty and Zeal of our Society to the Royal Family, will be received as Evidences thereof, and that our good and gracious Soveraign will not exclude us from that Liberty of Conſcience, which he was pleas'd to extend to all his Subjects.

SIR, *I am your moſt Affectionate Servant.*

Some QUERIES *ſent to the Fellows of* Magdalen *Colledge from* Windſor, September 15. 1687.

Firſt, WHether, waving your Election *of the Biſhop of Oxon*, you cannot, without violence to your Conſcience, ſignifie to his Majeſty, or the above Reverend Biſhop, your willingneſs to admit the Lord Biſhop Preſident of your Colledge?

Secondly, Whether it be not more Intereſt to the Proteſtant Religion, to have a ſuſpected Popiſh Preſident, than to have all the places of the Colledge refilled by the Kings ſole Authority with Popiſh Novices and Prieſts?

Thirdly,

Thirdly, Whether you are not under a miſtake, in thinking you ſhould render your ſelves more acceptable to the Proteſtant Nobility and Gentry, by your being turned out of your Fellowſhips by Injuſtice and Violence, as you conceive; or rather will not they be very cautious how they receive you into their Families, for fear of giving of Offence?

Fourthly, Whether his Majeſty, as Supream Viſitor of the Univerſity, cannot place or diſplace there *ad libitum*; or whether you have a right notion of the Proceedings which have been practiſed againſt you? Whether you ſuppoſe that the Lords Commiſſioners proceeded againſt you as Lords Commiſſioners, or Viſitors? Which Notion, I am ſure, will overthrow ſome bodies Plea and exception againſt their Authority.

Fifthly, Whether you acted like men skilled in buſineſs, when you refuſed Mr. *Pen*'s Mediation, who you may be ſure had good Authority for what he did? You could not but know that man, and therefore muſt needs be forearmed againſt any Wiles that could be offered to you. Whether an unanimous Subſcription for an Expedient, (which indeed I think you ought not to refuſe in good manners, ſince the King was pleaſed to propoſe it) preſented to his Majeſty by Mr. *Pen*, or another Favourite, would prevent the deſtruction of the beſt Foundation in *Europe*?

Laſtly, Whether you be not drawn beyond your Knowledge, by ſome hotheaded Adviſers, which never conſider the preſent ſtate of his Majeſty's Court of Juſtice?

An Anſwer to ſeveral Queries to the Vice-Preſident and Fellows of Magdalen *Colledge in* Oxon, *ſent from* Windſor, *dated the 25th of* September, 1687.

To the Firſt. WE cannot, without violence to our Conſciences, and deliberate Perjury, admit any perſon to be Preſident of our Colledge, that is not elected thereunto, and qualified according to our Statutes; whereby the Biſhop of *Oxon* is in no ſort capable; nor is there any Memorial in all our Regiſter of any admiſſion of a Preſident without Election, but of one Dr. *Nicholas Bond*, whoſe caſe was as followeth, (*viz*) Upon the death of Dr. *Lawrence Humphreys*, about the 30th or 32th of Queen *Elizabeth*'s Reign, the Queen recommended Dr. *Bond* (being a Fellow of our Colledge) to be Elected Preſident. Many of the Fellows inclin'd in their judgment to Elect one *Smith* (another of the Fellows) and at their meeting for Election, the Contention was ſo great, that they roſe without Electing, and the Obſtinacy continued till the place became laps'd: And there being no proviſion in our Statutes to direct us what to do in ſuch a Caſe, the Queen, by her Letters Patents, Conſtituted the ſaid Dr. *Bond* to be Preſident; and therein declared, That her Majeſty being inform'd that the Fellows had neglected to make Election of a Preſident in due time, (as their Statutes required) and thoſe Statutes having made no proviſion for ſuch an Omiſſion, She, out of her Princely care for the place, and indulgence for thoſe perſons who had been guilty of that neglect, did by advice of the Biſhop of *Winton*, their Viſitor, Conſtitute Dr. *Bond* their Preſident; with proteſtation nevertheleſs, that She did not thereby pretend to ſuperſede their Statutes, or invade their Right of Election, which was thereby inveſted in them, but took this courſe as the only means left to ſupply their Defect of Election.

To the Second. We muſt not make our ſelves guilty of deliberate Perjury, for any conſiderations whatſoever, both in reſpect to our Conſciences, and that we may not by ſuch a Breach upon our Statutes, expoſe our Conſtitution to a Forfeiture, nor do Evil that Good may come on it.

To the Third. We conceive we ſhall be more acceptable to all good men, for acting honeſtly according to our Conſciences, than for voluntarily and unjuſtly departing from our Right.

To the Fourth. We pretend not to make it a Queſtion, whether his Majeſty, by his Authority Royal as Supream Viſitor, can grant a Commiſſion for Viſitation of any Colledge that has a Local Viſitor by their Statutes, and are not Royal Foundations: But we are adviſed, that no Commiſſion can be granted under the Great Seal to Viſitors, to place and diſ-place Members of Colledges (whoſe places are Freeholds) *ad libitum*, or *diſcretum*; but they muſt proceed according to legal diſcretion, that is, by the Laws and Statutes of the Land, and the Local Statutes of the Colledge. And places concern'd for the Headſhips and Fellowſhips of Colledges, are Temporal Poſſeſſions, and cannot be impeach'd by Summary Proceedings. One Dr. *Thomas Loveney* Preſident of our Colledge, was deprived in Queen *Elizabeth*'s time, by the Biſhop of *Winton* the Legal Viſitor thereof Eſtabliſh'd by Royal Authority, and he appeal'd to the Queen; but by the advice of all the Judges, it was held, that that the Queen by her Authority, as Supream Viſitor, could not meddle in it, but he muſt bring *Weſtminſter-Hall*, becauſe Deprivation was a Cauſe meerly temporal. The King has a great Authority Spiritual as well as Temporal; but no Commiſſioners can be authorized by the Crown to proceed in any Commiſſion under the Great Seal or otherwiſe, but according to Law; in Spiritual Cauſes by the Canon Law, in Temporal by the other Laws, and Statutes of the Land. And wherein the proceedings in ſome Commiſſions are directed to be *ſummarie & de plano, &c.* thoſe words are to be applied to ſhorten the Forms of Proceſs, and not for matter of Judgment: for *Magna Charta* provides for our Spiritual Liberties, as well as our Temporal.

An Account of the Viſitation of St. *Mary Magdalen Colledge* in *Oxon.*

ON *October* 19*th*, Mr. *Atterbury* the King's Meſſenger fix'd a Citation on the Colledge and Chappel-Doors, requiring the Pretended Preſident and Fellows, and other Members of the Colledge to appear before the Lords Commiſſioners, Biſhop of *Cheſter*, Lord Chief Juſtice *Wright*, and Mr. Baron *Jenner*, in the Chappel, at Nine of the Clock on *Friday* Morning, *November* 21.

On *Thurſday* the Lords Commiſſioners came to *Oxon*, attended with three Troops of Horſe which Quarter there.

On *Friday*-Morning at Nine they went into the Chappel; the Preſident and Fellows thinking they had deſign'd to ſit in the Quire, made no preparation of Seats in the outward Chappel; upon which their Lordſhips adjourned to the Hall, where their Commiſſion was then read, which

which in general was the ſame with the former: Theſe three being added to the other Lords Commiſſioners, and particularly impower'd to viſit *Magdalen* Colledge only.

This done, the Names of the Preſident and Fellows were called over, Dr. *Hough* being firſt called. All in Town appeared, (except Dr. *Fairfax*) and excuſes were made for the abſent.

Then a Speech was made by the Biſhop of *Cheſter*, and in it his Lordſhip was Severe againſt Diſloyalty and Diſobedience. He urg'd that the Church of *England* taught an unconditionate and unlimited Obedience; He ſpake of the Kings Gracious Promiſes to Arch-Biſhops and Biſhops, *&c.* which had deſerved thanks on bended Knees, notwithſtanding the *Oxon* Reaſons to the contrary, which they knew beſt who was the Author thereof. He told them that it could not be expected, but that the King would give all incouragement to thoſe of his own Religion, which could be done without ſeverity and cruelty which His Majeſty abhorr'd, and without injuring the Church of *England*, which was at preſent eſtabliſh'd by Law: He told them that this Corporation as well as others were the Creatures of the Crown; and that it was inſolence in their Local Statutes to ſpurn againſt their Maker.

That their Diſtempers had brought this Viſitation upon them, the Conſequences of which might be ill to the Church and Univerſities: That however they might eſcape in this World, theſe Sins were to be accounted for above their other Sins in the next. He Exhorted them by the Bowels of Chriſt to conſider theſe things: He told them, that the Eyes of the World were upon them, and they ought to take care that their Practices might not influence their deluded admirers. In ſhort, the whole deſign of the Speech ſeem'd to be promiſes and threats, to aim at the inducing them to a compliance.

The Court was then Adjourned till Two in the Afternoon.

In the Afternoon were called over the Names of the Demys, Chaplains, Clerks, Choriſters, and Colledge Servants. The Preſident then interpos'd, deſiring leave to ſpeak before they proceeded any further, which being granted, he told their Lordſhips: That

Preſident. THE time betwixt your Citation and Appearance was ſo ſhort; that the Society had not time to adviſe with the Council how to behave themſelves on this Occaſion: Therefore deſired of your Lordſhips a Copy of the Commiſſion, and time to conſider of it.

Biſhop *Ch.* 'Tis upon Record, you may have it above.

Pr. Is it the ſame the other Lords Commiſſioners had?

Biſh. *Ch.* Yes for the moſt part it is.

Pr. Then my Lord, I do aſſure you (and will make Oath if you pleaſe) that I have often endeavoured to get a Copy of it, and could not procure it.

L. C. J. Have you not heard it Read, or will you hear it again?

Pr. I am not capable of making a Judgment of it my ſelf, but it is poſſible there may be Errours and Defects in't, ſuch as the Society may make uſe of to their own advantage, and I am confident it is neither his Majeſties intention nor your Lordſhips we ſhould be debar'd from it.

A Copy was then denyed.

Biſh. *Ch.* Dr. *Hough*, will you ſubmit to this Viſitation?

Pr. My Lords, I do declare here in the name of my ſelf, and the greater part of the Fellows; that we ſubmit to the Viſitation, as far as it is conſiſtent with the Laws of the Land, and the Statutes of the Colledge, and no further. I deſire your Lordſhips that it may be Recorded.

This was twice Repeated.

L. C. J. You cannot imagine that we Act contrary to the Laws of the Land, and as to the Statutes the King has diſpenſed with them: Do you think we come here to act againſt Laws?

Pr. It does not become me (my Lords) to ſay ſo, but I'll be plain with your Lordſhips; I find that your Commiſſion gives you Authority to change and alter the Statutes, and make new ones as you think fit: Now my Lords we have an Oath, not only to obſerve theſe Statutes (laying his hand on the Book) but to admit of no new ones, or alterations in theſe; This muſt be my behaviour here, I muſt admit of no alteration from it, and by the Grace of God never will.

Biſh. *Ch.* Do you obſerve all theſe Statutes?

Pr. Yes, my Lord, I hope we do.

Biſh. *Ch.* You have a Statute there for Maſs, why don't you read Maſs?

Pr. My Lord, the matter of this Oath is unlawful; and in ſuch a Caſe, no Man is oblig'd to obſerve an Oath: Beſides, the Statute is taken away by the Laws of the Land.

Biſh. *Ch.* By what Law?

Dr. *Stafford.* By that which obliges to ſay Common-Prayer.

Biſh. *Cheſter.* What, the Act of Uniformity? I have often conſidered it, and don't remember one word of Maſs in it.

Dr. *Staff.* But that obliges us to uſe the Liturgy of the Church of *England*, in all Collegiate Churches and Chappels. And, I hope, my Lords, you do not imagine that we can ſay Common-Prayer and Maſs together.

Biſh. *Ch.* Do you allow that Act of Parliament can free you from the obligation of a Statute?

Pr. I do not ſay, but that his Majeſty may alter our Statutes, nor do I know but a Parliament may do the ſame; I diſpute not their Power: only this, my Lord, I ſay, that I who already have taken an Oath to obſerve theſe Statutes as they now ſtand, and am ſworn not to admit of any change or alteration by any Authority whatſoever, [*And then turning to the Oath where they were to obſerve thoſe Statutes and no other, according to the Literal and Grammatical ſence, &c. and reading it to their Lordſhips.*] can obey none: But then thoſe who come after ſuch Limitations and Reſtrictions are made, are not oblig'd to obſerve 'em; and that, my Lords is our Caſe as to the Statutes of the Maſs.

Then the Decree of the 22*d* of *June* was read, declaring the Preſident's Election Null and Void.

Biſh. *Ch.* Did you know of this Commiſſion, *&c.*?

Pr. Yes, my Lord, I have heard of it.

Biſh. *Ch.* Why then did you not obey it?

Pr. I was never Cited before their Lordſhips, nor was either heard by them in Perſon or Proxy;

xy; and I think I am the only inſtance that is extant, of any Man that was ever depriv'd of a Freehold, wherein he was legally inveſted, and of which he was quietly poſſeſs'd, without being Summon'd or Heard.

Here mention was made of Dr. *Fairfax*'s Suſpenſion.

Pr. My Lord, he is abſent, and if your Lordſhips give me leave, I have ſomewhat to ſay on his account; your Lordſhips may pleaſe to obſerve in that Decree, that the reaſon given, why Dr. *Fairfax* was Suſpended from his Fellowſhip, was, becauſe had not obeyed his Majeſty's Command, in not Electing Mr. *Anthony Farmer* Preſident of the Colledge: Now the Charge of Immorality given in againſt Mr. *Farmer* by the Colledge-Delegates was made out, and their Lordſhips fully ſatisfied in it, on the 29*th* of *July*, notwithſtanding which, this Decree for Suſpenſion of Dr. *Fairfax*, was fix'd on the Colledge Gates, *Auguſt* 2*d*.

Biſh. *Ch.* The King hath for the moſt part recommended to the Preſidentſhip of this Colledge.

Pr. I am the Twentieth Preſident, and only four of that number have been recommended by the Kings and Queens of *England*, whereof three were every were qualified for that Office.

Biſh. *Ch.* Who were thoſe?

Pr. My Lord, there was one in the time of *Edward* the Sixth, one in Queen *Elizabeth*'s, and two in the late King's Reign.

Biſh. *Ch.* Was there never a one in King *Charles* the Firſt's Reign?

Pr. Not that we know of.

Biſh. *Ch.* What think you of Dr. *Oliver*?

Pr. It doth not appear to us, my Lord, that he ever had a Mandate.

Biſh. *Ch.* But it appears to us, and that I will bring you one to ſwear, that he had a Mandate.

Pr. The truth is, we have loſt the Regiſter of Dr. *Oliver*'s Election and Admiſſion; the Regiſter betwixt the Year 1640, or thereabouts, and 60 being taken away by thoſe who were turn'd out of the Colledge at that time; but I believe, my Lord, we are able to prove that he was Elected and Admitted according to the Statute.

Biſh. *Ch* Was Dr. *Clarke* a Statutable Perſon?

Pr. Yes, my Lord.

Biſh. *Ch.* Do not the Statutes require that he ſhould be in Orders? was he in Orders?

Pr. My Lord, the Statutes only require that he ſhould be Doctor of Divinity, Phyſick, Law, or Maſter of Arts: There is indeed one Statute which ſays, The Preſident or Seniour Fellow ſhould Read Prayers upon ſuch certain Days; from whence we conclude, that the Founder ſuppos'd we might have a Preſident that might not be in Orders; and in ſuch a Caſe he takes care that the Seniour Fellow ſhould do his Duty.

Mr. *Char.* My Lord, will you be pleaſed to ask Dr. *Hough*, whether Dr. *Clark* was Married or not?

Pr. No, Sir, he was a Widower.

Then a Petition was read from the Society to his Majeſty, ſigned the 9th of *April*, and preſented the 10th to the Earl of *Sunderland*, by the hands of Dr. *Thomas Smith* and Captain *Bagſhaw*, wherein 'twas ſet forth, that having heard that his Majeſty would recommend Mr. *Farmer* to them, a Perſon uncapable; they did humbly beſeech him, either to leave them to a free Election, or to recommend a qualified Perſon.

Biſh. *Ch.* Was this the Petition?

Anſwer. Yes.

Biſh. *Ch.* Why then did you not ſtay for his Majeſty's Anſwer?

Pr. My Lord, We did till the very laſt Day wherein we are limited to finiſh the Election; and my Lord *Sunderland* returned in the King's Name, this Anſwer, that His Majeſty expected to be obeyed. Now, my Lord, we did no longer defer the Election, becauſe our Statutes enjoyn us within ſuch a time, and we ſtaid to the utmoſt. Nor could we chuſe the Perſon his Majeſty did recommend, knowing him to be ſo unfit, as we afterwards made him appear to be. The Society was therefore to proceed to the Election of another Perſon, and did agree on ſuch as you ſee.

Biſh. *Ch.* A Mandate always implies an Inhibition.

Pr. My Lord, I cannot conceive that.

Biſh. *Ch.* But I can; and if you queſtion it, here's the King's Council ready to argue it.

Pr. My Lord, Whilſt the Perſon his Majeſty recommends appears duly qualified for the place, it ſeems indeed to imply that we ſhould not proceed to the Election of another; but when he is known to be utterly uncapable, it ſeems to be the ſame as if there were no Letter at all.

Some other things and queſtions leſs material were put, and then the Court was Adjourned to *Saturday* the 22*d*. at Nine in the Morning, to the common Room, the Hall being (as they ſaid) too publick and incommodious.

Saturday, October 22d. 1687.

As ſoon as their Lordſhips met in the common Room, and the Society before them, the firſt Word was Withdraw; and after a little time, the Preſident was called in alone.

Biſh. *Ch.* DO you ſubmit to the Decree of the Commiſſioners, whereby the Election is declared Null?

Pr. As to that Decree of the Lords above, it is a Nullity in its ſelf from the beginning to the end, as it relates to me, I never having been Cited, nor having ever appeared before them, either in Perſon or Proxy: Beſides, my Cauſe it ſelf was never before them; their Lordſhips never inquiring or asking one queſtion concerning the Legality or Statutableneſs of my Election: for which reaſons (as I am informed) that Decree was of no Validity againſt me, according to methods in the Civil Law: But if it were, I am poſſeſſed of a Free hold, according to the Laws of *England*, and the Statutes of the Society, having been Elected as Unanimouſly, and with as much Formality as any one of my Predeceſſors Preſidents of this Colledge, and afterwards Admitted by the Lord Biſhop of *Winton*, our Viſitor, as the Statutes of the Colledge require; and therefore I can't ſubmit to that Sentence, becauſe I think I cannot be depriv'd of my Free-hold, but by courſe of Law in *Weſtminſter Hall*, or by being ſome ways incapacitated by the Founder's Statutes.

Biſh. *Ch.* Will you deliver up the Keys of the Preſident's Office and Lodgings, to the uſe of that Perſon whom the King has appointed your Preſident, as the Statutes require?

Pr.

Pr. I will immediately do it, if that appear.

Biſh. *Ch.* Turn to that part of the Preſident's Oath where he promiſeth to ſubmit quietly if he ſhall be Expelled, either for his own Fault *vel ob aliam Cauſam.*

Pr. My Lord, that Statute only concerns me, if I am Expelled for any fault committed by me.

Biſh. *Ch. Vel ob aliam cauſam?*

Pr. Then, my Lord, to be ſhort, here is no cauſe at all.

Biſh. *Ch.* I ask you again, Will you deliver up the Keys to the Preſident whom His Majeſty hath appointed?

Pr. There neither is nor can be a Preſident ſo long as I live, and obey the Statutes of the Colledge; and therefore I do not think fit to give up my Right, the Keys and Lodgings.

Biſh. *Ch.* We may demand them of you as Viſitors.

Pr. My Lords, we never deliver up the Keys to the Biſhop of *Winton*; and we own no greater Viſitatorial than his, he hath the King's Authority. 'Tis by Vertue of a Royal Charter that we live together, and enjoy the benefit of this Place, that impower'd our Founder to give us a Rule, and obliged us by Oath to act ſuitable unto it: and the Biſhop of *Winton* is hereby conſtituted to be our Viſitor; and all this we own from the King's Authority. The Biſhop of *Winton* is our ordinary Viſitor; the King (I preſume) our extraordinary. But your Lordſhips know it hath been controverted, whether the King can viſit a private Colledge or not? The Authority of the Preſident is made by delivering up the Statute-Book, and Keys; and therefore I look upon them as an eſſential Badge of my Office.

But I humbly beg that I may ask your Lordſhips one Queſtion.

Your Lordſhip is pleaſed to demand of me to give up theſe things: Does your Lordſhip own my Right? For if not, what is it your Lordſhips would have me give up?

Biſh. *Ch.* No, we look upon you as an Intruder.

Pr. If I am an Intruder, the Biſhop of *Winton* made me one, and I thank God for it. My Lords, the time we have been allowed for this appearance, has been very ſhort, but one day betwixt it and the Citation: We are Men ignorant in the Laws, and I muſt confeſs it of my ſelf in particular, that I have endeavoured to give your Lordſhips a plain ſatisfactory Reply to ſuch Queſtions as your Lordſhips have been pleaſed to put to me. It is very probable that through ignorance and inadvertency I may expreſs my ſelf unwarily: If ſo I beſeech your Lordſhip let no advantage be taken of it, my intention has been always to expreſs my ſelf with all imaginable Duty to the King, and Reſpects to your Lordſhips. If I have done otherwiſe, I beſeech your Lordſhips Candour in a favourable Interpretation of what I ſaid, that nothing may be taken amiſs, where all was dutifully intended. And now my Lords, thus far have I appear'd before you as Judges; I now addreſs to you as Men of Honour, and Gentlemen, I beſeech you to repreſent me as dutiful to His Majeſty to the laſt Degree, as I always will be, ſo far as my Conſcience permits me, to the laſt Moment of my Life; and when I am diſpoſſeſt here, I hope your Lordſhips will interceed, that I may no longer lie under His Majeſty's Diſpleaſure, or be frown'd upon by my Prince, which is the greateſt Affliction can befal me.

Upon this the Preſident was ordered to withdraw, and after a little time, he and the Fellows were called in again. Then the Biſhop repeated this Queſtion.

Biſh. *Ch.* Dr. *Hough*, Will you deliver up the Keys, and quiet Poſſeſſion of the Lodgings, to the Perſon whom His Majeſty has appointed Preſident? To which no Anſwer was return'd. The Biſhop repeated a ſecond time.

Pr. My Lords, I have neither ſeen nor heard any thing to induce me to it.

Biſh. *Ch.* Dr. *Hough*, Will you deliver up the Keys and quiet Poſſeſſion of the Lodgings, to the Perſon whom His Majeſty has appointed Preſident?

Whereupon the King's Proctor ſtood up and accuſed Dr. *Hough* of Contumacy; then the Biſhop of *Cheſter* admoniſh'd him in theſe Words, three times.

Biſh. *Ch.* Dr. *Hough*, I admoniſh you to depart peaceably out of the Lodgings, and to act no longer as Preſident, or pretended Preſident of this College.

Which being ſo done, they ſtruck his Name out of the Book, and admoniſh'd the Fellows, and others of the Society, that they ſhould no longer ſubmit to his Authority.

Saturday, October the 22d, 1687. *Oxon.*

Dr. Fairfax's *Caſe before the Commiſſioners.*

AT the firſt Seſſions Doctor *Fairfax* purpoſely abſented himſelf; but Mr. *Atterbury* making Affidavit he was in Town, and that he adviſed him to appear, the Doctor accordingly did ſo the next day. The Doctor being called in alone, and the Doors immediately ſhut, he beg'd of their Lordſhips ſome Company might be let in; becauſe, as all had obſerved, the Biſhop in his Speech, at the opening their Commiſſion, promiſed to tranſact every thing in the Face of the World. The Biſhop complained of the Crowd. The Doctor then deſired to fetch in but Two or Three, at length but One, and him at the Door, *viz.* The College Steward, a Publick Notary.

Bar. *Jen.* You muſt not think to preſcribe to the Court.

Biſh. *Ch.* What's the Cauſe of your Contempt, in not appearing at either Seſſions Yeſterday?

Dr. *Fair.* No Contempt, my Lord, but for theſe enſuing Reaſons.

Firſt, I thought my Suſpenſion above had eaſed me of that trouble. The Doctor tendring a Copy of it, which was read by the Commiſſioners. The Doctor inſiſted very much on the Reaſons their Lordſhips at *White-Hall* gave for his Suſpenſion, (*viz.*) For not obeying His Majeſty, in Electing Mr. *Farmer*, he tendring a Copy of Articles made good againſt him; and yet their Lordſhips ordered his Suſpenſion to be fix'd on the College-Gates five Days after that famous Hearing. Second Reaſon for his Non-appearance, that upon the firſt day of the enſuing Term, he intended to meet the Lord Chief Juſtice, at his Court of King's Bench, for relief againſt the Sentence, his Fellowſhip being a Freehold, witneſs *Coveny*'s Caſe.

Biſh. *Ch.* You will find but little Favour there.

Dr. *Fair.* My Lord, in Courts of Judicature, I only expect Juſtice, *and turning to the Lord Chief Juſtice.* I have my ſelf ſaid he, been above four Years in all the Courts of *Weſtminſter-Hall*, and found excellent Juſtice, and I will ſee how it is now.

L. Ch. Juſt. You ſhall have Juſtice.

Dr. *Fair.* But your Lordſhip may ſave me the labour of two Journies and my Charges, by improving your Lordſhips deſerved Intereſt with my Lords Commiſſioners there, and get them now to take off my Suſpenſion: It is ill travelling at this time of Year; and beſides I am not rich.

Bar. *Jen.* To ſue in *Weſtminſter-Hall* requires a Purſe.

Dr. *Fair.* My Lord, I did not ſay I was poor.

L. Ch. Juſt. You muſt make your Supplication and Submiſſion to the King.

Dr. *Fair.* My Lord, they tell me that this buſineſs lyes in your Lordſhip's Court, and only there, (beſides the trouble I am otherwiſe to give your Lordſhip) What a noiſe will the cauſe make that Dr. *Fairfax* is ſuſpended for this very reaſon, *(viz.)* not obeying the King in Electing *Anthony Farmer*, ſuch a Virtuoſo, and under Correction, your Lordſhips are obliged to take off my Suſpenſion, to take off the ſhame from that Body, whoſe number by a common Adjunct you your ſelves have lately increas'd.

Bar. *Jen.* We muſt not endure theſe Reflections on the Court.

Biſh. But will you ſubmit to this Viſitation?

Then Dr. *Fairfax* read a Paper ſubſcribed by him, Dated *October* the 22d, in theſe Words: 'My Lords, I have been Summon'd, and ap-'peared in this Cauſe before the Lords Eccle-'ſiaſtical at *White Hall*, with whom your Lord-'ſhips are now joyn'd in Commiſſion; and 'then gave in my Anſwer: I have nothing to 'add to it, and find no reaſon to retract it'.

Henry Fairfax.

Biſh. Will you admit of the Biſhop of *Oxford?*

Dr. *Fairfax.* I am ſuſpended.

Biſh. Have you done no Collegiate Act ſince your Suſpenſion?

Dr. *Fair.* My Lord, I have gone into the Hall, and laid in my Chamber: I did not think their Lordſhips, when they ſuſpended me, ever intended that I ſhould not eat, drink or ſleep.

Biſh. If your Suſpenſion was off, would you ſubmit to the Biſhop of *Oxford*:

Dr. *Fair.* Truly my Lord, I cannot do it.

Then all the Fellows were called into Court.

The Preſident being withdrawn, the Biſhop put the Queſtion to all the Fellows, *(viz.)* Whether they would aſſiſt at the Admiſſion of the Biſhop of *Oxford* to be inſtalled Preſident by vertue of the King's Mandate? To which was anſwered by all the Fellows, to this Effect: (except Dr. *Pudſey*, and Dr. *Tho. Smith*, who anſwered doubtfully, and *Chernock* that he would aſſiſt) That they were under Oaths to the contrary, and therefore could not do it.

Then all were ordered to withdraw; and Dr. *Pudſey* being called in alone, they asked him concerning the Manner and Form of Inſtalling a Preſident; which he inſtructed them in.

The Court Adjourn'd till Two in the Afternoon.

AS ſoon as they met, a Letter from the Earl of *Sunderland* to Dr. *Pudſey*, was read, dated the 2d of *Auguſt*, ſignifying, That the Society in anſwer to His Majeſty's Letter commanding them to admit the Biſhop of *Oxford*, agreed unanimouſly in this Anſwer, That the place was full. Their Lordſhips were pleaſed to ask the Fellows ſingly, Whether that was their Anſwer? And as many as were there, owned that it was.

During this Examination, the Preſident came into Court, and having waited until it was ended, and their Lordſhips at a Pauſe, he made his Application to them: 'My Lords, if your 'Lordſhips pleaſe to give me leave, I would 'gladly ſpeak a few Words'. They were all pleaſed to put off their Hats, and ſay he might. Whereupon he ſaid, 'My Lords, you were 'pleaſed this Morning, in purſuance to a De-'cree of the Lords Commiſſioners at *London*, 'to deprive me of my place of Preſident of 'this College, and to ſtrike my Name out of 'the *Buttery Book*: I do hereby proteſt againſt 'all your Proceedings, and againſt all that you 'have done, or hereafter ſhall do in Prejudice 'of me and my Right, as illegal, unjuſt and 'null: and therefore I appeal to my Sovereign 'Lord the King in his Courts of Juſtice'. Upon which the Strangers and young Scholars in the Room gave a *Hum*; which ſo much incenſed their Lordſhips, that notwithſtanding all the Proteſtations the Preſident and Fellows could make, the Preſident in particular offering to purge himſelf by Oath, that he was no way acceſſary to or abetting of it, and declared that he was heartily aſhamed and troubled at it; yet the Lord Chief Juſtice was not to be pacified, but charging it upon the Preſident, bound him in a Bond of 1000 *l.* and Security to the like value, to make his Appearance at the *King's-Bench-Bar*, the 12th of *November*.

After this, was read the Anſwer the Fellows returned to His Majeſty upon his Command to them upon the 4th of *September*, to elect the Biſhop of *Oxford*: the Anſwer was under the hand of a publick Notary, ſubſcribed by all the Fellows then preſent, except Mr. *Chernock*. The Biſhop of *Cheſter* was pleaſed to charge the Fellows of Unmannerlineſs, for ſending ſuch an Anſwer to their Prince after ſuch a manner.

So they Adjourned till Tueſday *the* 25th, *at Eight in the Morning.*

Tueſday the 25th of *October.*

WHen the Court met, Dr. *Stafford* offered a Paper in anſwer to what was objected on *Friday*, that a Mandate implied an Inhibition; which their Lordſhips having peruſed, would not ſuffer to be read publickly, but askt the Fellows whether they would ſign it, bidding them to do it at their Peril.

Then the Fellows had leave to withdraw into the Hall, and not being ſatisfied that it was neceſſary to ſign a Plea, which their Lordſhips refuſed to have argued, they returned the Paper into the Court, ſubſcribed only by Dr. *Fairfax* and Dr. *Stafford*. The latter after ſome debate, deſired to withdraw, but Dr. *Fairfax* ſtood to it.

A Copy of Dr. *Stafford*'s and Dr. *Fairfax*'s Plea.

To the Right Reverend and Right Honourable His Majeſty's Commiſſioners for the viſiting of S. Mary Magdalen *College in* Oxford.

May it pleaſe your Lordſhips,

ON *Friday* laſt in the Afternoon, you ſeem'd to inſiſt very much on this, (*viz.*) That His Majeſty in commanding the Fellows of the ſaid College to Elect Mr. *Farmer* Preſident, did thereby inhibit them to Elect any other Perſon whatſoever; which has not yet been made appear to be Law, either out of the Books of Civil, Canon or Common Law. Neither is it agreeable to Reaſon, that a Command to Elect a Perſon uncapable, ſhould include in it an Obligation not to Elect a Perſon capable, that being a kind of Contradiction *in terminis*. Yet this being granted, it cannot in the leaſt affect the ſaid Fellows, or invalidate their Election of Dr. *Hough*, notwithſtanding His Majeſty's Mandate in behalf of Mr. *Farmer*, who being incapable of the place, the Fellows cannot be ſaid to be guilty of any Diſobedience or Diſloyalty, in proceeding to the Election of another Perſon who was qualified according to Statute, being forced to make an Election. For they are obliged by the Statutes of their College, (when call'd together) to Elect a Preſident, or any Officer under pain of perpetual Expulſion from the College, to meet and make an Election; which Puniſhment they incur *ipſo facto*, who either refuſe to meet when ſo call'd, or being met, to nominate or elect a Perſon into the Office void, as appears by the Statutes of the ſaid College: *Titulo de numero Scholarium & electione Præſidentis*. Now according to the Founders direction in the ſaid Statute, on the 15th of *April* laſt, the Fellows were call'd together by the Vice Preſident to Elect a Preſident in the place of Dr. *Clark* deceas'd, and the Oath deſired to be taken before the Election was adminiſtred by the Vice Preſident to them, whereby they are oblig'd to nominate and Elect a Perſon that either is or has been Fellow of *Magdalen* College or *New* College in *Oxon*; which Oath when the Fellows had taken, it was not in their Power to Elect Mr. *Farmer*; and yet they were then oblig'd to make an Election, under pain of perpetual Amotion from the College, as appears by the forecited Statute. And it cannot be imagin'd that his moſt Sacred Majeſty did expect that the Fellows ſhould be either perjur'd, or forfeit their Right to their Fellowſhips, rather than diſobey his Command; His Majeſty having moſt graciouſly declar'd, that Conſcience ought not to be forced, and that none of his Subjects ſhould be moleſted in the Enjoyment of their Rights and Privileges, *&c.* Now that our Proceedings at the Election cannot lay any Imputation of our Diſobedience or Diſloyalty upon us, will thus be made appear: Either we had the Power to Elect a Preſident, or we had not; if we had not, to what end or purpoſe did His Majeſty command us to elect one? if we had, our Power was either reſtrain'd to Perſons ſo and ſo qualified, or we were at liberty to chuſe whom we pleas'd; but we could not do the latter, as appears by our Statutes: and therefore we could not Elect Mr. *Farmer*, being not inveſted with any Power to Elect a Perſon unqualified. And if we had ſo done, our Election would have been null and void in it ſelf, and the Perſon elected liable to be turn'd out by our Viſitor.

As for the Decree of His Majeſty's Commiſſioners (in purſuance of which your Lordſhips have admoniſh'd Doctor *Hough* to receed from the place of Preſident, and quietly to reſign the Keys of his Office, and have ſtruck his Name out of the College Book) we humbly conceive it to be null and void in it ſelf, to all intents and purpoſes, Dr. *Hough* being thereby depriv'd of Freehold for Life, (of which he was duly and legally poſſeſt) without ever being call'd to defend his Right, or any Miſdemeanour objected againſt him. Wherefore we humbly beg leave of your Lordſhips, that Dr. *Hough* may be permitted to defend his Right and Title to the Preſidentſhip at Common-Law, before any other Perſon is put in Poſſeſſion of the place.

Thomas Stafford.
Hen. Fairfax.

After this Mr. *Wiggins*, Chaplain to the Biſhop of *Oxford* was called in, who delivered a Paper impowering him as Proxy, to be Inſtalled Preſident for his Lord; which being read, together with the King's Mandate for the Biſhop of *Oxon*. The Queſtion was put to two or three of the Seniours, Whether they would aſſiſt at this Inſtalment? which they refuſing, the Court Adjourned to the Chappel, where the Biſhop of *Cheſter* put Mr. *Wiggins* into the Preſident's Stall, where he took the Oath which the Statutes enjoyn the Preſident at his Admiſſion, and the Oaths of Allegiance and Supremacy; the latter of which he was ordered to take upon his Knees, which he accordingly did. Then their Lordſhips conducted him to the Door of the Preſident's Lodgings, where knocking three times, and the Door not being opened, they returned to the Common Room, and Commiſſion'd *Atterbury* and a Tipſtaff, to fetch a Smith to force it open, which was done, their Lordſhips being preſent all this while. None of the Fellows except Mr. *Chernock* aſſiſting, or being ſo much as preſent at either of theſe Performances. Then the Commiſſioners being returned to the Common Room, Dr. *Fairfax* deſired leave at their leiſures to ſpeak; which was granted.

Dr. *Fair.* My Lords, your Lordſhips have been doing of what I can by no means conſent to.

Biſh. *Ch.* You are big to be delivered of your own Deſtruction. Will you ſubmit to the Biſhop of *Oxon*, as now inſtalled Preſident, by vertue of the King's Mandate?

Dr. *Fair.* I will not; I cannot; becauſe we have a Statutable and legal Preſident already.

Then the ſame Queſtion was put to the Society, which being a buſineſs of Moment, they deſired time till the Afternon to conſider it.

Then the Court Adjourned till Three a Clock; at which time the Anſwer was given in by the Society, (except Dr. *Fairfax*, who had given his in the Morning) 'That whereas His 'Majeſty hath been pleaſed by his Royal Au-'thority to cauſe the Right Reverend Father in 'God, *Samuel* Biſhop of *Oxon*, to be Inſtalled 'Preſident; we whoſe Names are hereunto 'Subſcribed do ſubmit, as far as is lawful and 'agreeable to the Statutes of the College, and 'no

'no way prejudicial to the Right and Title of 'Dr. *Hough*'.

This Anſwer was accepted, except the laſt Clauſe; which the Lord Chief Juſtice, and Baron *Jenner* declared, as Judges, to be inſignificant, ſince nothing they could do, could any way invalidate Dr. *Hough*'s Title, but left them ſtill at liberty to be Witneſſes for him, or any other way be ſerviceable to him in the recovery of his Right. Upon this Aſſurance, the Society was prevailed with to leave out the laſt Clauſe.

Then all were commanded to withdraw: And Dr. *Fairfax* being called in, the Biſhop asked him what he meant by his Paper abovementioned, dated *October* the 22d; and whether he did ſubmit to the Authority of the Court?

Dr. *Fair.* As I have denied it above, ſo I do here.

Then the Court was opened; and the Doctor complained before them all, that he was twice cloſeted, and being asked Whether he would obey the Court and Biſhop of *Oxon*? he plainly denied both. Upon which the *Buttery-Book* was called for, and the Biſhop of *Cheſter* commanded his Name to be ſtruck out: And this Sentence paſſed, *viz.*

Foraſmuch as you have denied the Authority of the Court, and refuſed to obey the Biſhop of Oxon, *whom the King hath made your Preſident; and taken Commons after your Suſpenſion: We declare your place void, and command you quietly to depart the College within Fourteen Days.*

Dr. *Fair.* My Lords, all the huge Calamities that have befallen me, are on the ſole account of a religious and conſciencious Obſervation of our pious Founder's Statutes; whoſe Bread I have eaten almoſt this Thirty Years.

L. C. J. No Speeches: beſides, if you have any Papers, inſtead of reading them, leave them in the Court.

Then with much ado, the Doctor prevailed with them to let him read his Proteſtation, which he left in the Court.——

'I *Henry Fairfax*, Fellow of St. *Mary Magdalen* 'College, do under my former Anſwer 'heretofore made, and to the intent it may ap- 'pear that I have not conſented, nor agreed to 'any thing done againſt me, and to my Pre- 'judice, I proteſt that your Sentence given 'here againſt me, is *Lex nulla*, and ſo far as it 'ſhall appear to be *aliqua*; I do ſay it is *iniqua* '*& injuſta*, and that therefore I do from it, as '*iniqua & injuſta*, appeal to our Sovereign Lord 'the King, in his Courts of Juſtice, as the 'Laws, Statutes, and Ordinances of the Land 'will permit in that behalf. Subſcribed

October 25. 1687. *Henry Fairfax.*

This Proteſtation was over ruled, and a Copy of the Sentence denyed, though moſt earneſtly deſired at the inſtance of Dr. *Hedges*, and Mr. Vice Chancellor, two days after.

At the cloſe of the Seſſions, their Lordſhips declared, that they were very well ſatisfied with the Anſwer the Society had given them; and though before they had laid a Libel to their charge, yet that Night they declared, they had met with nothing from them but Civility, and that they ſhould receive the ſame from them; that they had ſhewn themſelves Men of excellent Tempers this day and before; and that they would repreſent it faithfully above to their advantage, and that if it any way lay in their power to ſerve them, they ſhould be very ready to do it.

Then they Adjourned till *Wedneſday* Morning, ordering them to bring in their Anſwer to the following Queſtions:

I. *What Gifts and Proviſions have you for Entertainment of Strangers?*

II. *What is the Value of it?*

III. *How is it applied?*

IV. *And where is the Place of Entertainment?*

Wedneſday, October the 26th, 1687.

IN the Morning they made it appear to their Lordſhips very ſatisfactorily, that they were obliged to give in Charity-Money, 2 *l.* 3 *s.* 4 *d.* and that beſides that, they gave *communibus annis*, almoſt 100 *l.* as appeared by a Paper they then delivered in. Upon this their Lordſhips were pleaſed to expatiate upon their generous Bounty and Liberality, ſaying the Complement of this account was groundleſs, and that it would induce the King to a better belief of them in all other matters.

Then a Petition of Dr. *Rogers*, late Organiſt, was given in, deſiring to be reſtored, which was read; but ſeveral Miſdemeanours being proved againſt him, it was thrown out; and he adviſed to reſt ſatisfied with 30 *l. per annum*, which the College had beſtowed on him when they turn'd him out of his Place.

Thurſday, October the 27th, 1687.

THis Morning they received a Liſt of Leaſes, *&c.* which had been renew'd two Years laſt paſt: Mr. *Chernock*, the new Convert, asked their Lordſhips, whether thoſe Leaſes ſtood good, which had been ſealed ſince Dr. *Hough*'s Election? The Lord Chief Juſtice anſwer'd, Yes; for Corporations always ſtick by their Seals. Then their Lordſhips peruſed the College Regiſters, and finding nothing in them to object againſt, they were returned, and the Court Adjourned till the Afternoon: At which time their Lordſhips told them, That having received no Expreſs from above, as they expected, they would Adjourn till *Friday* at Eight in the Morning.

Friday, October the 28th, 1687.

THE Commiſſioners being ſeated, all were commanded to withdraw: then only the Fellows were called in, and the Biſhop of *Cheſter* ſaid they had repreſented them fairly to the King, but His Majeſty expected ſome farther Submiſſion, which they adviſed them to make, by acknowledging their Contempt to His Sacred Majeſty in Perſon, and to His Letters; and that they ſhould promiſe to behave themſelves Loyal for the future; and that they ſhould ſome ways own the Proceedings and Legality of the Court, and implore His Majeſty's Pardon, and lay themſelves at His Feet.

The Fellows making a little Pauſe, the Biſhop of *Cheſter* told them, they might word it themſelves; or if they thought fit Mr. *Tucker* ſhould aſſiſt them in a Form. Then all the Fellows withdrew into the Hall, and drew up the following Anſwer.

May

May it pleaſe your Lordſhips,

WE have endeavoured in all our Actions, to expreſs our duty in all humility to His Majeſty, and being conſcious to our ſelves, that in the whole Conduct of the Buſineſs before your Lordſhips, we have done nothing, but what our Oaths and Statutes indiſpenſably oblige us to, we cannot make any Declaration, whereby we acknowledge that we have done any thing amiſs, having acted according to the Principles of Loyalty and Obedience, ſo far as we could, without doing Violence to our Conſciences, or Prejudice to our Rights, (one of which we humbly conceive the Electing a Preſident to be) from which we are ſworn upon no account whatſoever to depart. We therefore humbly beg your Lordſhips to repreſent this favourably, with our utmoſt Duty to His Majeſty, whom God grant long and happily to Reign.

Upon their Lordſhips peruſing of the Anſwer, they expreſſed their diſlike of it, ſaying, It did not come up to the Addreſs ſent to His Majeſty at *Bath* which was read; to this it was replyed, That they hoped their Behaviour ſince, had been every way anſwerable to what they had therein promiſed. Then their Lordſhips ſaid, that it did not come up to what they delivered in on *Tueſday*.

Dr. *Bayly*. My Lords, we have acted conformable to our ſelves, and truly my Lords, I cannot poſſibly confeſs any Crime.

Biſh. We do not expect of you to confeſs any Capital Crime, only to make ſome Acknowledgement.

Mr. *Fulham*. My Lord, We were ordered to addreſs our ſelves, as having acted in Contempt of His Majeſties Authority, which my Lord, I look upon as ſo great a Crime; that on no account I would be guilty of it. My Lord, We have endeavoured to obey His Majeſty to the utmoſt of our Power, and ſeeing your Lordſhips were pleaſed to accept our Anſwer on *Tueſday*, I humbly conceive your Lordſhips Honour is engaged, that nothing further be required of us.

Biſh. You are a very forward Speaker, and abound in your own Senſe.

Mr. *Fulham*. My Lord, I hope your Lordſhip will give me leave to ſpeak, when our Fortunes are ſo conſiderably at Stake.——

Then Dr. *Bayly* deſired of their Lordſhips, to give him leave to explain what he meant by the word *ſubmit* in his Anſwer on *Tueſday*; becauſe (ſaith he) I hear your Lordſhips underſtood more than was meant, and leaſt your Lordſhips ſhould go away under a Miſtake, by the word *ſubmit* in the former Anſwer, I did not intend any future Obedience to the Biſhop of *Oxford*; but meant it in reference to the King's Authority, inaſmuch as I did not oppoſe or reſiſt the Biſhop of *Oxford*'s Inſtalment.

Upon this, a freſh Queſtion was put to the Fellows, whether they would obey the Biſhop of *Oxford* as their Preſident *in licitis & honeſtis*; to which all except one or two anſwered, They could not obey the Biſhop of *Oxford* as their Preſident.

Then Mr. *Fulham* was particularly asked the Queſtion.

Mr. *Fulham*. Dr. *Hough* being duly Elected and admitted Preſident, doth thereby obtain a right, which I am not ſatisfied he hath any way forfeited, and therefore can obey no Perſon as Preſident.

Biſh. *Ch.* Will you obey the Biſhop of *Oxford* as in Poſſeſſion?

Mr. *Fulham*. I cannot, becauſe the Biſhop hath not lawful Poſſeſſion.

Then he was ask'd wherein?

Mr. *Fulham*. He hath not Poſſeſſion in due form of Law, nor by proper Officers: I am informed that the proper Officers to give Poſſeſſion of a Freehold, is the Sheriff with a *Poſſe Comitatus*.

L. C. J. Pray, who's the beſt Lawyer, you or I? Your *Oxford* Law is no better than your *Oxford* Divinity: If you have a mind to a *Poſſe Comitatus*, you may have one ſoon enough.——

Mr. *Fulham*. My Lords, I intended nothing but reſpect to your Lordſhips, and have endeavoured to ſpeak and behave my ſelf with due Reverence, and I hope your Lordſhips will put a favourable Conſtruction on what I ſaid.——

Then all were commanded to withdraw, and the *Buttery-Book* was called for, and after that, Mr. *Fulham* was ſent for in; and by the Biſhop of *Cheſter* ſuſpended as followeth.——

Biſh. of *Ch.* *Mr.* George Fulham, *We have thought fit to ſuſpend you from the Profits of your Fellowſhip during His Majeſties Pleaſure, for your Contempt and opprobrious Language.*——

Then they Adjourned till *Wedneſday* the 16th of *November*, ordering the abſent Fellows to be ſent for home againſt that time. So they immediately went for *London*.

Wedneſday November *the* 16*th*, 1687. *at Nine in the Morning.*

THE Lords Commiſſioners being ſate, the firſt thing they did, ſent for the *Buttery-Book*; then called for Mr. *Joyner* and Mr. *Allibone*, and entered them actual Fellows. The former in the room of Dr. *Fairfax* whom they had Expelled; the latter in place of Mr. *Ludford* lately deceaſed: All Oaths being diſpenſed with, beſides that of a Fellow. That done, the Fellows being called, and Reaſons given in for thoſe that were abſent. The Biſhop of *Cheſter* ſpoke a Speech to this Effect.

Gentlemen, your many Contempts and wilful Diſobedience, have occaſioned this Viſitation, which will end at laſt in your Ruin. This Society of yours has been long exerciſed in the Methods of quarrelling; has always been troubled with factious Spirits, and teſty Mutineers, ever ſince the Reſtoration of the late King: You have encourag'd Quarrels among your ſelves; Quarrels between your ſelves and Preſident; Quarrels, at length between your ſelves and Viſitor. For I have often heard your late Viſitor complain, that this Society was ever ſtocked with an unquiet and turbulent Generation. By theſe Steps from quarrelling with the Preſident and Viſitor, you have at laſt advanced to the higheſt pitch of Inſolence, to quarrel with your Prince, and affront His Sacred Majeſty. I endeavour'd before, at the opening our Commiſſion, to make you ſenſible of the Scandal that your Diſobedience will bring upon your Religion; how much you ſtain and diſhonour your liberal and ingenious Education, in this Society.

You cannot but know His Majeſty is your Supream Ordinary. You cannot but have read in Bracton, *who was twenty Years Lord Chief Juſtice under King* Henry *the Third:* Nemo preſumat de factis ejus diſquirere, ne dum contra factum ejus venire: *All Diſobedience imploys Pride: For no Man can diſobey his Governor, but he who thinks himſelf wiſer. The Reputation and Honour of a Prince at home, and his*

his Reſpect abroad, are chief Standards of a Government. But theſe Pillars as much as in you lies, you have endeavour'd to ſhake. And unleſs His Majeſty's Honour and Right be vindicated by us, He can neither be feared at home, nor obſerved abroad. Your Puniſhment muſt be as publick as your Crime. It cannot be conceived but His Majeſty in Juſtice, in Honour, in Clemency, and in His Royal Tenderneſs, could have proceeded otherways than he has done. On the firſt of April *it was publiſhed that Dr.* Clark *was dead: On the Eleventh a* Mandamus *was directed to you, for chuſing Mr.* Farmer. *On the Ninth you preſented a Petition to the Lord Preſident: wherein you laid your ſelves proſtrate at His Majeſties Feet, repreſenting to him the Incapacity of Mr.* Farmer, *deſiring the Benefits of His Gracious Declaration for preſerving your Rights and Properties, and beſeeching him to Nominate another Perſon qualified according to your Statutes, in the Election of whom you would ſhew your ready Obedience. So ſaid and ſo done, Gentlemen, had been very well.*

But immediately after the delivery of the Petition, you not waiting His Majeſties Anſwer, proceeded on April *the 15th to an Election of Dr.* Hough; *ſo that by this Act, which was plainly contrary to His Majeſty's Authority, whoſe Mandate did certainly imply an Inhibition; you directly confronted your former Promiſes of ready Obedience, and were reſolved to give the King nothing but good Words; when you had done this, as Men of ill Deſigns are always in haſt, for a Confirmation of it, you immediately went and ſurprized your Viſitor, and by that means perſwaded him to confirm Dr.* Hough, *that very day he received an Order from the Lord Preſident to the contrary.*

Upon this News the King was much amazed, and required an account of your Proceedings; therefore the Lords Commiſſioners iſſued out a Citation; and after hearing the Plea, upon mature Conſultation with the Learned of both Laws, judged the pretended Election of Dr. Hough *to be void and null, and him to be removed, by an Inſtrument dated the which was affixed on the Gate. After this a Mandate was ſent on the to you to Elect the Biſhop of* Oxon; *upon which terms His Majeſty was graciouſly pleaſed to diſpence with your Diſobedienee hitherto. But this being diſobeyed, His Majeſty in Perſon on the 4th of* September *ſent for you to* Chriſt-Church, *and required you immediately to Elect the Biſhop of* Oxon *Preſident. You went ſtrait to the Chappel, a place one would think ſhould have inſpired more Devotion and Awe of His Sacred Majeſty in you; and there contemptuouſly ſubſcribed and ſigned a Paper, directly thwarting His Majeſties Command. The ground of your Diſobedience you pretend that you could not Elect him, whereas you could not but know by a written Mandate that lay by you, that Admiſſion would have ſatisfied His Majeſty. Conſcience the ſtale Topick of Rebellion was here brought to vindicate your petulant and contumacious behaviour. You pretended that you were obliged by Oaths, and I am ſorry that at the ſame time you forgot that of Allegiance. And indeed there is not a greater ſign of Hypocriſie, than partial Obedience. Had you any reſpect to the Father of your Country, and your Mother the Church, you would have ſacrificed your pretended Scruples, as a Peace-Offering to the King. The beſt of us, I am ſure, have reaſon to beg God and the King's Pardon. But you, as if His Majeſty reigned by Courteſie, would have a King under you, but none over you. You urged the Obſervance of your Statutes, of which as it hath appeared, you have not been ſo conſtant Obſervers, when your own Humour prompts you to a Diſpenſation, then you can readily embrace it; witneſs but that of being ſerved* per Maſculos, *by which great Scandals have come to this Society by reaſon of Baſtards.*

But when the King interpoſed, in whoſe Power alone it is to diſpence with them, then you preſently act according to ſuch Methods as theſe. None of theſe Pretences will eaſe you with wiſe and ſober Men.

This was the only Oppoſition His Majeſty in his Progreſs received: Where-ever His Sacred Majeſty came, he worked a miraculous Converſion, except in Oxford; *and ſo far ſatisfied every one with the Equity of His Proceedings, that none went away diſcontented from His Preſence, unleſs it was for this Reaſon, that they could not enjoy it any longer.*

October *the 20th. We came down, and upon opening our Commiſſion, I took care to repreſent to you the Heinouſneſs of your Offence, and to perſwade you to a ſerious Repentance; but all in vain.*

For on Saturday *Morning we required you to Admit and Inſtal the Biſhop of* Oxford; *which all, except three, refuſed: In the Afternoon Dr.* Hough *having been deprived, and by us commanded to depart the College, came unto us without any leave, but not without great Attendance; Circumſtances I think, much unbefitting a Man pronounc'd Expelled; and there entered a Proteſtation againſt all that we had done, or hereafter ſhould do, as illegal, unjuſt and Null; which he delivered not in Writing, but by Word of Mouth: a thing repugnant to the nature of all Appeals: and which was worſe, without the uſual Salvo to His Majeſty's Supream Power. When he had ſpoken it, there followed ſuch a Tumultuous, Seditious and Inſolent* HUM, *which if you your ſelves had not applauded, or at leaſt conſented to, it was impoſſible but that you would have diſcovered ſome of thoſe Mutineers. However, ſince his Carriage and Language gave occaſion to it, 'twas thought fit that he only ſhould be obnoxious; and accordingly he was bound over.*

On Tueſday *we our ſelves cauſed the Biſhop of* Oxon *to be Inſtalled by his Proxy; after which we propoſed to you, whether being now Inſtalled, you would ſubmit to him* in licitis & honeſtis? *To which you gave an Anſwer under your Hands in the Affirmative. You then alſo deſired of us to repreſent your Caſe favourably to His Majeſty, giving all aſſurance of your Loyalty and Obedience. But this aſſurance of Submiſſion laſted not long; for on* Thurſday, *being required of us to ſubſcribe ſuch a Submiſſion to His Majeſty as we thought agreeable to your Duty, you required time to conſult of it; and after Deliberation, ſign'd ſuch a Paper, which ſeem'd rather to be a Proteſtation againſt your former Submiſſion, than an Acknowledgment of your Crime. Upon this we might juſtly then have proceeded to an Expulſion: but we thought fit, in Compaſſion to you, to take a Journey to* London, *and acquaint His Majeſty with your diſobedience and ungrateful Behaviour. His Majeſty was extreamly amaz'd that His Clemency ſhould be deſpiſed; but yet, to your Comforts be it ſpoken, His Patience and Goodneſs extends as far as your Provocations can: But if you ſtill perſiſt in your Obſtinacy, thoſe that are too Tall to Stand, and too Stubborn to Bend, deſerve to be Broken. And now I think, I have ſaid enough to let you know, that the Figg-leaves you have ſo artificially ſtitched together, are not ſufficient to cover your Nakedneſs. I wiſh to God you had the ſame Tenderneſs for your Concern, as His Majeſty's Commiſſioners have for you. But if you ſtill perſiſt to oppoſe the Royal Power of the King, we who are come to vindicate the Right and Honour of His Majeſty, reſolve to diſcharge our Conſciences and Duties to God and the King, without any reſpect of Popularity; that's but the Paradiſe of Fools, and Scorn of Wiſe Men: and therefore as for us, we have no more*

regard

regard to Peoples diſlike, than what they dream: By reaſon therefore of your late Hypocritical Submiſſion, the Commiſſioners have thought fit, upon mature Conſideration, to draw up an Inſtrument which ſhall be read to you, to which, if you ſhall immediately ſubſcribe, before you leave the Room, we ſhall leave you to His Majeſty's Pardon, And this we expect from you all, except Dr. Tho. Smith *and Mr.* Charnock, *with whoſe Behaviour the King is ſo well ſatisfied, that he expects no more from them.*

Then all the Fellows being called in, their Lordſhips tendred a Form of Submiſſion to them to be ſign'd. Which take as followeth:

To the King's Moſt Excellent Majeſty.

The Humble Petition and Submiſſion of the Fellows of St. *Mary Magdalen* College in the Univerſity of *Oxon*, whoſe Names are ſubſcribed.

WE Your Majeſties moſt humble Petitioners, have a deep ſenſe of being juſtly fallen under Your Majeſties Diſpleaſure, for our Diſobedience and Contempt to Your Majeſty; and to the Authority of Your Majeſties Commiſſioners and Viſitors; We do in all Humility proſtrate our ſelves at Your Majeſties Feet, humbly begging Your Pardon for our ſaid Offences, and promiſing that we will for the future behave our ſelves more dutifully, and as a Teſtimony thereof, we do acknowledge the Authority of Your Majeſties ſaid Viſitors, and the Juſtice of their Proceedings; and we do declare our entire Submiſſion to the Lord Biſhop of Oxon *as our Preſident.*

To which Paper all (except Dr. *Thomas Smith*, and Mr. *Chernock*) refuſed to ſubſcribe.

Dr. *Aldworth* as Vice Preſident was firſt call'd in to ſign the Paper which had been read to all the Fellows.

Vice Preſident. My Lords, we deſire time to conſider of it, and to give our Anſwer in Writing.

Biſh. *Ch.* No, you muſt every one ſign, or refuſe as you are called.

Bar. *Jenner.* There is no anſwer to be given, but ay or no.

They all moved again for time, but 'twas refuſed.

Vice Preſident. My Lords, this is the firſt time of my Appearance before your Lordſhips ſince your ſitting here, and therefore I pray to be heard.

My Lords, I am as ready to comply with the King's Pleaſure, as any Man living; neither do I know, that we have ever in this place been diſobedient to the King, where it was in our Power to obey His Commands: Our Founder in the firſt Clauſe of the Oath we take at this Election, has provided, that no one ſhall be Preſident of his College, but who was bred in it, or in the College where he himſelf was bred. Now for us who have Elected Dr. *Hough*, a Perſon qualified according to our Statutes, who has been Inſtalled, Sworn, Confirm'd and Approv'd of in all the ways and manner preſcribed in the Statutes for us. My Lords, to accept and admit of a Stranger, and a Forreigner in his place, is to the beſt of my Underſtanding, a giving up the Rights of the College to other Uſes then the Founder deſigned it. *Here he was interrupted.*

Biſh. *Ch.* Your Statutes are over-rul'd by the King's Authority.

Vice Preſident. My Lords, Your Lordſhips ſit here as the Viſitors; which implies, there are certain Laws and Statutes we are bid to obſerve, and by which we are to be govern'd; and if it ſhall appear to your Lordſhips, that we have acted conformably to theſe Statutes, I hope we ſhall neither incur the King's Diſpleaſure nor your Lordſhips. The whole Tenour of our Statutes run, That we ſhould inviolably maintain our Rights, and obſerve the Rules of our Founder; he has laid his Curſe upon us if we vary from them. (Here he repeated the Words of the Founder) *Ordinamus ſub pœnâ Anathematis, & indignationis Omnipotentis Dei,* &c. *Item ſub interminatione Divini Judicii interdicimus.*

Biſh. *Ch.* Are you not to obey the King as well as the Founders Statutes?

Vice Preſident. My Lord, I ever did obey the King, and ever will: Our Statutes which we are ſworn to obſerve, are confirm'd by ſeveral Kings and Queens before and ſince the Reformation, and as we keep them, are agreeable to the King's Laws both Eccleſiaſtical and Civil, and ſo long as we live up to them, we obey the King.

Biſh. *Ch.* Your Statutes were never confirm'd by His Preſent Majeſty.

Dr. *John Smyth.* My Lord, Neither have they been repealed by His Majeſty, and what is not repeal'd is confirm'd.

Then their Lordſhips preſſing to ſign or refuſe; the *Vice Preſident* ſaid,

Vice Preſident. My Lords, I'll then deal plainly, in regard to my Oath and the Statutes, to the right of all our Succeſſors and of Dr. *Hough*, whom I believe to have been as fairly Elected, and as legally poſſeſſed as ever any ſince the Foundation of the College: I cannot ſubmit to the Biſhop of *Oxon* as Preſident. *So he was ordered to withdraw.*

Then the ſame Queſtion was put to all the other Fellows ſingly, who all refuſed to ſign the Submiſſion, (except Dr. *Thomas Smyth* and Mr. *Chernock*, who were not preſt for the Reaſons above.)

Mr. *Thompſon* being called in to ſign the Paper ſaid,

Mr. *Thompſon.* My Lords, I have been always obedient to His Majeſties Commands, I was not concerned in the Election of Dr. *Hough*; I voted for Mr. *Farmer*, and am ready to ſubmit to the Biſhop of *Oxon.*

Biſh. *Ch.* Did you not put your Hand to this Petition? Is not this your Hand——Read the Petition---It was Read——In which the Fellows deſired His Majeſty, to nominate any qualified Perſon, and to retract His Mandate granted for Mr. *Farmer.*

Mr. *Thompſon.* My Lord, I conceive the Petition not to be diſobedient. We had not yet receiv'd the Mandate, as ſoon as it came, I humbled my ſelf.

Bar. *Jen.* Then why can't you humble your ſelf again; is there any hurt in it?

Mr. *Thompſon.* This Paper requires me to own my Diſobedience to His Majeſty; I am not conſcious of any, and therefore I cannot ſubſcribe.

After a ſhort time, all who refuſed to ſign the Submiſſion were called in, and by Sentence of their Lordſhips, expell'd the College for Contempt, *&c.* (except as before)——After Sentence, all that were expell'd ſpoke to this Effect:--'My 'Lords, we profeſs all Duty to the King, and 'Reſpect to your Lordſhips, but muſt beg leave 'to declare; That we think our ſelves injur'd in

'your

'your Lordſhips Proceedings, and therefore 'proteſt againſt them, and ſhall uſe all juſt and 'legal ways of being Relieved——

After a ſhort time, an Inſtrument was fix't on the College-Gates, in theſe Words.

By His Majeſties Commiſſioners for Eccleſiaſtical Cauſes, *&c. particularly authorized and impowered to viſit St.* Mary Magdalen *College in the Univerſity of* Oxon.

WHereas in our Viſitation of the ſaid College, it appeareth unto us, that Doctor *Charles Aldworth*, Dr. *Alexander Pudſey*, Dr. *John Smith*, Dr. *Tho. Bailey*, Dr. *Tho. Stafford*, Maſter *Robert Almond*, Mr. *Manwaring Hamond*, Mr. *John Rogers*, Mr. *Richard Strickland*, Mr. *Henry Dobſon*, Mr. *James Bailey*, Mr. *John Davies*, Mr. *Francis Bagſhaw*, Mr. *James Fayrer*, Mr. *Joſeph Harwar*, Mr. *Tho. Bateman*, Mr. *George Hunt*, Mr. *William Cradock*, Mr. *John Gillman*, Mr. *George Fulham*, Mr. *Charles Pennyſton*, Mr. *Robert Hyde*, Mr. *John Yerbury*, Mr. *Robert Holden*, and Mr. *Stephen Wilks*, Fellows of the ſame College, have been ſeverally guilty of Diſobedience to His Majeſty's Commands, and obſtinately contemn'd His Royal Authority, and do ſtill perſiſt in the ſame: We have thought fit, upon mature Conſideration thereof, to Declare, Pronounce and Decree, That the ſaid Dr. *Charles Aldworth*, &c. and every of them, be Deprived and Expelled from their reſpective Fellowſhips: And we do by this our Sentence and Decree, Deprive and Expel them and their ſaid ſeveral and reſpective Fellowſhips.

Given under our Seal, this 16th day of November, 1687.

WHITE-HALL *December* 10.

HIS Majeſty's Commiſſioners for Eccleſiaſtical Cauſes, and for viſiting all Cathedral and Collegiate Churches and Colleges, *&c.* met this Day; and taking into their Conſideration all that had paſſed in the buſineſs of S. *Mary Magdalen* College in *Oxford*, and the contemptuous and diſobedient Behaviour of Dr. *John Hough*, and ſeveral of the Fellows of that College, throughout the whole Proceeding, their Lordſhips Declared, Decreed and Pronounced, That Dr. *Hough*, Dr. *Charles Aldworth*, Dr. *Henry Fairfax*, Dr. *Alexander Pudſey*, Dr. *John Smith*, Dr. *Thomas Bailey*, Dr. *Thomas Stafford*, Mr. *Robert Almond*, Mr. *Manwaring Hamond*, Mr. *John Rogers*, Mr. *Richard Strickland*, Mr. *Henry Dobſon*, Mr. *James Bailey*, Mr. *John Davies*, Mr. *Francis Bagſhaw*, Mr. *James Fayrer*, Mr. *Joſeph Harwar*, Mr. *Thomas Bateman*, Mr. *George Hunt*, Mr. *William Cradock*, Mr. *John Gillman*, Mr. *George Fulham*, Mr. *Charles Pennyſton*, Mr. *Robert Hyde*, Mr. *Edward Yerbury*, Mr. *Henry Holden*, and Mr. *Stephen Wilks*, ſhould be uncapable of receiving, or being admitted to any Eccleſiaſtical Dignity, Benefice or Promotion: And ſuch of them who are not yet in holy Orders, were adjudged uncapable of receiving or being admitted into the ſame. All Archbiſhops, Biſhops, and other Eccleſiaſtical Officers and Miniſters within the Kingdom of *England*, being required to take notice of the ſaid Sentence and Decree, and to yield Obedience thereunto.

THE 17th of *January*, 1687. being the day that the Thirty Demies of *Magdalen* College were, by Summons from the Biſhop of *Oxon*, the new Preſident, commanded to appear before him; and none appearing, Mr. *Chernock*, the new Vice Preſident, called for the Buttery-Book, and ſtruck out the Names of Mr. *Holt*, Mr. *Adams* Senior, Mr. *Veſey*, and Mr. *Brabourn* Maſters of Art; Mr. *Hyde*, Mr. *Woodward*, Mr. *Fulham*, Mr. *Watkins*, Mr. *Stacy*, Mr. *Sherwin*, and Mr. *Kenton*, Batchelors of Art; Mr. *Croſs*, Mr. *Buſh*, and Mr. *Wells*, Under Graduates: Which Fourteen were then Reſident in the Univerſity, and three more, who eſcaped Expulſion at that time.

The

The Tryal of the Moſt Reverend Father in God, Dr. William Sancroft, *Lord Archbiſhop of* Canterbury, *and of the Right Reverend Fathers in God,* Dr. William Lloyd, *Lord Biſhop of St.* Aſaph, Dr. Francis Turner, *Lord Biſhop of* Ely, Dr. John Lake, *Lord Biſhop of* Chicheſter, Dr. Thomas Kenn, *Lord Biſhop of* Bath *and* Wells, Dr. Thomas White, *Lord Biſhop of* Peterborough, *and Sir* Jonathan Trelawny, *Lord Biſhop of* Briſtol. 1688.

De Termino Sanctæ Trinitatis Anno Regni Jacobi *Secundi Regis, Quarto,* In Banco Regis. *Die Veneris Decimo Quinto Die* Junii, 1688. *Dominus Rex verſus Archiep. Cantuar. & al.*

Sir *Robert Wright,* Lord Chief Juſtice
Mr. Juſtice *Holloway*
Mr. Juſtice *Powell*
Mr. Juſtice *Allybone*
} Judges.

THIS being the firſt day of the Term, His Majeſties Attorney General, (as ſoon as the Court of *Kings Bench* was ſat) moved on the behalf of the King for a *Habeas Corpus*, returnable immediate, directed to the Lieutenant of the *Tower*, to bring up his Grace the Lord Archbiſhop of *Canterbury*, and the Biſhops of St. *Aſaph*, *Ely*, *Chicheſter*, *Bath* and *Wells*, *Peterborough* and *Briſtol*; which was granted.

And with great diſpatch, about Eleven a Clock the ſame Day, the Lieutenant returned his Writ, and brought the ſaid Lord Archbiſhop and Biſhops into Court, where being ſet down in Chairs ſet for that purpoſe, Mr. Attorney General moved the Court, *viz.*

Mr. *Att. Gen.* My Lord, I pray
Sir *Tho. Powis.* that the Writ and Retorn may be read, by which my Lords the Biſhops are brought hither.

L. C. J. Read the Retorn.

Clerk reads the Retorn, *which in Engliſh is as follows,* viz.

I Sir Edward Hales, *Baronet, Lieutenant of the* Tower *of* London, *named in the Writ to this Schedule annext, To our* Moſt Serene Lord the King *do moſt humbly certifie, That before the coming of the ſaid Writ, to wit, the Eighth day of* June, *in the Fourth Year of the Reign of our Lord* James the Second, *King of* England, &c. William *Lord Archbiſhop of* Canterbury, William *Lord Biſhop of St.* Aſaph, Francis *Lord Biſhop of* Ely, John *Lord Biſhop of* Chicheſter, Thomas *Lord Biſhop of* Bath *and* Wells, Thomas *Lord Biſhop of* Peterborough, *and* Jonathan *Lord Biſhop of* Briſtol, *mentioned in the aforeſaid Writ, were committed and delivered to, and are retained in my Cuſtody; by Vertue of a certain Warrant under the Hands and Seals of* George *Lord* Jefferies, *Baron of* Wem, *Lord High Chancellor of* England, Robert *Earl of* Sunderland, *Lord Preſident of the Privy Council of our Lord the King,* Henry *Lord* Arundel *of* Warder, *Keeper of the Privy Seal of our ſaid Lord the King*; William *Marqueſs of* Powis, John *Earl of* Mulgrave, *Lord Great Chamberlain of* England; Theophilus *Earl of* Huntington, Henry *Earl of* Peterborough, William *Earl of* Craven, Alexander *Earl of* Moray, Charles *Earl of* Middleton, John *Earl of* Melfort, Roger *Earl of* Caſtlemain, Richard *Viſcount* Preſton, George *Lord* Dartmouth, Sidney *Lord* Godolphin, Henry *Lord* Dover, *Sir* John Earnly, *Knight, Chancellor of the* Exchequer *of our ſaid Lord the King*; *Sir* Edward Herbert, *Knight, Chief Juſtice of the Common Bench of our Lord the King, and Sir* Nicholas Butler, *Knight, Lords of His Majeſties moſt Honourable Privy Council, to me directed, the Tenor of which Warrant follows in theſe Words*; viz.

" THESE are in His Majeſties Name, and " by His Command to require you to " take into your Cuſtody the Perſons of *William* " Lord Archbiſhop of *Canterbury*, *William* Lord " Biſhop of St. *Aſaph*, *Francis* Lord Biſhop of " *Ely*, *John* Lord Biſhop of *Chicheſter*, *Thomas* " Lord Biſhop of *Bath* and *Wells*, *Thomas* Lord " Biſhop of *Peterborough*, and *Jonathan* Lord " Biſhop of *Briſtol*, *For Contriving, Making and* " *Publiſhing a Seditious Libel in Writing againſt His* " *Majeſty and His Government*, and them ſafely to " keep in your Cuſtody untill they ſhall be de- " livered by due Courſe of Law; for which " this ſhall be your ſufficient Warrant. At the " Council Chamber in *White Hall*, this Eighth " day of *June*, 1688. And this is the Cauſe of " the taking and detaining, *&c.*

L. Ch. Juſt. Well, what do you deſire, Mr. Attorney?

Mr. *Att. Gen.* We pray for the King, that the Return may be filed.

L. C. J. Let it be filed.

Mr. *Att. Gen.* By this Retorn your Lordſhip obſerves, what it is my Lords the Biſhops were committed to the *Tower* for; it is by Warrant from the Council Board, where, when their

Lordſhips appeared, they were not pleaſed to give their Recognizances to appear here, as they were required by the King to do; and thereupon they were committed to the *Tower*, and now come before the Court upon this Retorn of the King's Writ of *Habeas Corpus*, and by the Retorn it does appear, it was for *Contriving*, *Writing*, *Framing*, and *Publiſhing* a *Seditious Libell* againſt His Majeſty and the Government; my Lord, it is our Duty, who are the King's Council, purſuant to our Orders, to proſecute ſuch kind of Offences, and when the proper time ſhall come for us to open the nature of the Offence, your Lordſhips will then judge, what reaſon there is for this Proſecution; but in the mean time, what we are now to offer to your Lordſhip is, The Officer of this Court has an Information againſt his Grace the Archbiſhop of *Canterbury*, and the reſt of my Lords the Biſhops, which we deſire may be read to them, and pray that they may plead to it, according to the Courſe of the Court.

Sir *Rob. Sawyer.* If it pleaſe your Lordſhip, to ſpare us a Word for my Lords the Biſhops.

Mr. *Att. Gen.* My Lord, We pray for the King the Information may be read.

Sir *Rob. Sawyer.* We deſire to be heard a word firſt.

* Sir *Will. Williams.*

* Mr. *Soll. Gen.* We oppoſe your ſpeaking any thing, till the Information hath been read.

Sir *Rob. Sawyer.* But what we have to offer is proper before it be read.

Mr. *Att. Gen.* Your time is not yet come, Sir *Robert*.

Sir *Rob. Sawyer.* Yes, this is our proper time, for what we have to ſay, and therefore we move it now, before there be any other Proceedings in this matter.

Mr. *Soll. Gen.* It is irregular to move any thing yet, pray let the Information be read firſt.

Mr. *S. Pemberton.* If your Lordſhip pleaſe to ſpare us, we will offer nothing but what is fit for us to do.

Sir *Rob. Sawyer.* And now is our proper time for it.

Mr. *Soll. Gen.* Gentlemen, You do know the way of Proceeding in ſuch Caſes better than ſo, I am ſure, as for you, Sir *Robert Sawyer*, you have often oppos'd any ſuch Motion as irregular, and I hope the Caſe is not alter'd, however you may be; the courſe of the Court is the ſame.

Sir *Rob. Sawyer.* With Submiſſion, if your Lordſhip pleaſe to ſpare me a Word, that which I would move, is, to diſcharge my Lords the Biſhops upon this Return, and from their Commitment upon this Warrant.

Mr. *Att. Gen.* Surely theſe Gentlemen think to have a Liberty above all other People; here is an Information, which we pray my Lords the Biſhops may hear read, and plead to.

Mr. *Soll. Gen.* Certainly, Sir *Robert Sawyer*, you would not have done thus half a Year ago.

Sir *Rob. Sawyer.* What would not I have done? I move regularly (with Submiſſion) to diſcharge my Lords the Biſhops from their Commitment; if they are not here legally impriſoned, now they are before your Lordſhips upon this Writ, then you will give us leave to move for their Diſcharge, before any thing elſe be ſaid to them; and that is it we have to ſay, to demand the Judgment of the Court upon this Retorn, whether we are legally impriſoned?

Mr. Att. Gen. Under Favour, my Lord, neither the Court, nor they, are ripe for any Motion of this Nature yet.

Mr. S. Pemberton. If we do not move it now, it will afterwards (I fear) be too late.

Mr. Soll. Gen. Theſe Gentlemen are very forward, but certainly they miſtake their time; this is a *Habeas Corpus* that's brought by the King, and not by the Priſoners; and therefore they are too ſoon, till they ſee what the King has to ſay to them.

Mr. Att. Gen. Your Lordſhip cannot as yet be moved for your Judgment about the Legality of this Commitment, becauſe this Writ was granted upon our Motion, who are of Council for the King, and upon this Writ they are brought here; and what is it we deſire for the King? Certainly nothing but what is Regular; we have here an Information for the King againſt my Lords, and we deſire they may plead to it.

Mr. S. Pemberton. Good my Lord, will you pleaſe to hear us a little to this Matter.

L. C. Juſt. Brother *Pemberton*, we will not refuſe to hear you by no means, when you ſpeak in your proper time, but it is not ſo now; for the King is pleaſed, by his *Attorney* and *Sollicitor*, to Charge theſe Noble Perſons, my Lords the Biſhops, with an Information, and the Kings Council call to have that Information read, but you will not permit it to be read.

Mr. S. Pemberton. Pray my Lord ſpare us a word: if we are not here as Priſoners regularly before your Lordſhip, and are not brought in by the due Proceſs of the Court, then certainly the Kings Council, or the Court have no Power to charge us with an Information; therefore we beg that you will hear us to that, in the firſt place, whether we are Legally here before you?

Mr. Soll. Gen. Theſe Gentlemen will have their proper time for ſuch a Motion hereafter.

Mr. Pollexfen. No, *Mr. Sollicitor*, this is, without all Queſtion, our only time for it, we ſhall have no time afterwards.

Mr. Att. Gen. Yes, you will, for what do we who are of Council for the King now ask of the Court, but that this Information may be read? when that is done, if we move to have my Lords the Biſhops plead, then they may move what they will; but before we make that Motion, they cannot break in upon us with their Motion; and with Submiſſion to your Lordſhip, whether my Lords the Biſhops were duly Committed, is not yet a Queſtion.

Mr. Finch. But it is, and this the fitteſt time for it.

Mr. Soll. Gen. Pray will you hear us quietly what we have to ſay, and then anſwer us with Reaſon, if you can; I think we are in a proper way, but they are not my Lord; for (as I ſaid,) my Lords the Biſhops are brought by the Kings Writ upon our Motion for the King, not upon theirs, and now we have them here before the Court, We for the King would charge them with an Information; which Information, that they and the Court may know what it is they are charged with, we pray it may be read to them by the Clerk; and when it is read, let theſe Gentlemen ſay what they will for them, they ſhall have their time to ſpeak; but certainly they ought not to obſtruct the Kings Proceedings, nor oppoſe the Reading of the Information to

theſe

theſe noble Lords, who are brought here in Cuſtody into Court, to this very purpoſe, that they may be charged with this Information.

Mr. S. Pemberton. But we have ſomewhat to ſay, before you can come to that, Mr. Sollicitor.

Mr. Soll. Gen. You ought not to be heard as yet.

Mr. *S. Pemberton.* Under favour we ought to be heard.

Sir *Rob. Sawyer.* My Lord, Mr. Sollicitor has oppoſed our being heard, but we now deſire he would hear our anſwer to it, and that which we have to ſay, is this, That my Lords the Biſhops are not here Regularly in the Court to be charged with an Information; and if the Law be not with us in this point, as we doubt not to make appear it is, no queſtion but when your Lordſhip has heard what we have to ſay, you will give a right Rule in it: My Lord, we ſay, that by the Rules of Law, no man ought to be Charged with an Information or Indictment, by the Expreſs Statute of *Edward* the Third, unleſs he come into the Court by Legal proceſs; that is a ſtanding Rule, and the practice of this and all other Courts is purſuant to it; Now in this Court you have ſeveral proceſſes that go out of this Court, and he that comes as taken by vertue of a *Capias*, or an Attachment after a Summons, or by *Venire* in the nature of a *Subpœna*; I ſay, he that comes in upon theſe proceſſes, may be charged with an Information; but where a perſon is in Priſon, committed by another Juriſdiction, and another Authority, than that of this Court; when the Priſoner is brought here by *Habeas Corpus*, the firſt thing the Court has to do, is to enquire whether he be Legally Committed; to that end the Return is filed, and the party has leave to make his Exceptions to it, as we do in this Caſe. My Lords are brought here upon a *Habeas Corpus*, the Return of which has been read, and now the Return is filed, we are proper to move, that my Lords may be diſcharged; for you now ſee what they are Committed for, it is for a Miſdemeanour in making and publiſhing a Libel, that's the matter for which they are committed; and it appears by the Return likewiſe, that they who are thus committed are Peers of the Realm, for ſo my Lords the Biſhops all are, and for a Miſdemeanour they ought not by Law to have been committed.

L. C. J. You go too far now, Sir *Robert Sawyer*, I would willingly hear you whatſoever you have to ſay; but then it muſt be in its due time.

Mr. Att. Gen. This very diſcourſe (indeed I have heard) has paſs'd up and down the Town for Law; We may ſee now whence they had it.

Mr. Soll. Gen. I know it has heretofore been urged by me, but denied by them who now urge it, and I am glad that they now learn of me to tack about.

L. C. J. Look you Gentlemen, do not fall upon one another, but keep to the matter before you.

Mr. S. Pemberton. So we would, my Lord, if the Kings Council would let us; Firſt, we ſay, we being brought here upon a Return of a *Habeas Corpus*, there was neither at the time of the Commitment Cauſe to Impriſon us, nor was there by the Warrant any Cauſe to detain us in Priſon; and for that, beſides what has been hinted at, we ſay further, that here it is returned, that we were Committed by ſuch and ſuch Perſons, Lords of the Privy Council; but the Return doth not ſay, that it was done by them, as Lords of the Privy Council, which muſt be in Council; for if it be not in Council, they have not power to make ſuch a Warrant for the Commitment of any Perſon, and that we ſtand upon; here is a Return that is not a good Return of a Legal Commitment, and therefore we pray my Lords may be diſcharged.

Mr Pollexfen. Pray, my Lord, ſpare me a word, that is the thing we humbly offer to your Lordſhips Conſideration; and under Favour, I think we are proper both as to the Matter, and as to the Time; the Return is now filed before you: if by this Return there appears to have been ſuch a Cauſe to commit theſe Lords to Priſon, as is Legal, then we acknowledge they may in a Legal courſe be brought to anſwer for their Offence; but with Submiſſion, it appears not by any thing that is in this Return, that my Lords the Biſhops were committed by the Order of the Privy Council. All that is ſaid, is, That they were Committed by my Lord Chancellor, and thoſe other Perſons, named Lords of the Privy Council; which we conceive is not a good Return, for they can do nothing as Lords of the Privy Council, except only as they are in Council, and by order made in Council; except that do appear, they have no Power to commit; then take the Caſe to be ſo; here is a man committed by one that has no Authority to commit him, and he is brought by *Habeas Corpus* into this Court, what ſhall the Court do with him? Shall they charge him with an Information? No, it does appear that he was never in Cuſtody, but under a Commitment, by thoſe who had no Legal Power to commit him; and therefore he muſt be diſcharged; and that we pray for my Lords the Biſhops. What the Kings Council may have to ſay to them afterwards, by way of Information or otherwiſe, they muſt take the Regular Methods of the Law to bring my Lords the Biſhops to anſwer; but as the Caſe ſtands here before you, upon this Return, it does appear, they had no Authority to commit them, by whoſe Warrant they were committed; and therefore this Court has nothing to do but to diſcharge them.

Mr. Finch. I beg your Lordſhips leave to ſay one word farther on the ſame ſide, I think with humble Submiſſion, this is the moſt proper time for us to make this Motion, for here is a *Habeas Corpus* Returned, this Return is filed, and then the Kings Council move to charge my Lords the Biſhops with an Information, that Motion of theirs (we ſay) is too ſoon, unleſs my Lords are here in Court, I mean Legally in Court; for no man is in Court ſo as to be a liable to be charged with an Indictment, or Information, that is not brought into Court by Legal proceſs, or as a priſoner upon a Legal Commitment; then, my Lord, with humble ſubmiſſion we ſay, that it doth appear by this Return, that my Lords the Biſhops are not here Legally in Court, becauſe this Commitment of theirs was not a Legal Commitment; and two Objections we have to it, The one is, that the Perſons committing had no Authority to commit, for the Return ſays, that it was by Vertue of a Warrant under the Hands of ſuch and ſuch, being Lords of the Council, and they (we ſay) have no Authority to do this; The other Objection is, that the Fact for which they were committed, they ought not to have been Impriſoned for: the Fact charged upon them is in the nature of a bare Miſdemea-

nour, and for ſuch a Fact it is the Right of my Lords the Biſhops (as Peers of the Realm) that they ought to be ſerved with the uſual Proceſs of *Subpœna*, and not to be committed to Priſon. Theſe are the two Objections that we have to this Return, and this is (under favour) the proper time for us to make this Objection, before the Kings Council can charge my Lords the Biſhops with an Information.

L. C. J. What ſay you to it, Mr. *Attorney*?

Mr. *Att. Gen.* With ſubmiſſion, my Lord, theſe Gentlemen have out of courſe, and preposterouſly let themſelves into this Diſcourſe, and when all is done, we muſt recur to that which we moved to your Lordſhip before, to deſire that your Lordſhip would order the Information to be read, and when we call my Lords to plead to the Information, then will be their proper time to make this Objection; for 'tis a ſtrange thing certainly for Men to make Objections before they know what it is they are charged with; They ſay, the ground of their Motion is, becauſe my Lords the Biſhops are here in Court upon the Return of an *Habeas Corpus*, and therefore they come in upon a Commitment (as they ſay) for that which they ought not to be committed for at all, and we cannot charge them unleſs they be properly in Court. Now for that, it is true if that Commitment of theirs were the only thing that was here before the Court, then the Court would, if that Commitment were Illegal, diſcharge them of that; but when a Man is preſent here in Court, brought into Court, let him come how he will, he is not to have any longer time than that Inſtant to appear to, and be charged with the Information; 'Tis true, upon a *Subpœna*, which is in the Nature of a Summons, there a Man hath (as it were) an Eſſoyn, and may make his Excuſe, and he ſhall have time; but when he is preſent in Court, either as a Perſon priviledged, as an Officer, or as a Priſoner, he ſhall be charged preſently; and theſe Gentlemen are not to let themſelves into Invectives againſt the Commitment, thereby to keep off their being charged with the Information. Beſides that, it is ſtrange theſe Gentlemen ſhould know the Priviledge of my Lords the Biſhops as Peers, better than all the Lords of the Council, who are moſt of them themſelves Peers, and they that make the Objection ſhould have conſidered, whether theſe Lords that made the Commitment, did not think themſelves concerned in all the Priviledges of Peerage, as well as theſe ſeven Noble Lords?

Sir *Rob. Sawyer.* Is this an Anſwer to our Objection, Mr. *Attorney*?

Mr. *Att. Gen.* I ſay, it is a ſtrange Objection, and I anſwer, 'tis out of due time; for this we ſay, that my Lords the Biſhops being now here in Court as Priſoners upon a Commitment, and we deſiring to charge them with an Information, you are not to examine the matter of their Commitment, and therefore I do inſiſt upon it, that the Information ſhould be read, and then you will conſider, whether they are not bound to plead to it.

Mr. *Finch.* My Lord, I hope Mr. *Attorney General* will not think *Legal* Objections to be Invectives.

Mr. *Att. Gen.* Truly I know not what you call *Legal* Objections, I do not think yours are ſo, nor do I think Legal Objections are Invectives, but I uſed that Expreſſion, as very proper for what you urged againſt the Commitment.

L. C. J. Nay, Gentlemen, don't quarrel about words.

Mr. *Finch.* My Lord, we would not willingly have Words given us to quarrel at.

Mr. *Sol. Gen.* My Lord, the Queſtion is, whether we are in the right Method of Practice, as to the courſe of the Court, or they? It may be theſe Gentlemen think to make us angry, and take Advantage of our being in a Paſſion.

Mr. *Finch.* Mr. *Sollicitor*, we deſire to have our Objections anſwered.

Mr. *Sol. Gen.* Nay, if you begin to be angry, Gentlemen, we can be angry too.

L. C. J. I would have neither of you be angry.

Mr. *Sol. Gen.* It ſeems they would have an Anſwer to their Objections, but will not ſuffer us to give it; they would firſt examine whether my Lords the Biſhops have been duly committed, that (we ſay) is not to be done by the Court as yet; your Lordſhip ſees they are actually in Cuſtody, by a Commitment of the Lords of the Council, that appears by the Return before your Lordſhip, and for what they were Committed; what do we now pray for the King? Firſt, we move for a *Habeas Corpus*, then that this Information may be read, and all is in Order to bring this Fact, (for which they were Committed) to a Trial; 'tis ſaid upon the Return, they were ſent to the Tower, for Contriving, Writing, and Publiſhing a Seditious Libel againſt the Kings Perſon and Government, which (I think) is Crime enough for a Man to deſerve to be committed for; they would have you to diſcharge theſe Lords from this Commitment, (the Return as they ſay, being not *Legal*) before the Information be read: But we think their Motion is Irregular, for here is a Crime charged in the Commitment, and upon that Commitment they are here now as Criminals before your Lordſhip; and Mr. *Attorney* has exhibited an Information for the King, which is in the Nature of a Declaration at the Kings Suit; and that in this Court, which is the Supreme Court now in being for the Trial of Matters of this Nature. We will come to that Queſtion, whether they were legally committed, when there is a proper time for it; but now we find my Lords the Biſhops in Court, upon a Commitment for a great Crime; I repeat it again, it is for Contriving, Writing, and Publiſhing a Seditious Libel againſt the Kings Perſon, and againſt the Kings Government; and whether the Kings Council ſhall not have leave to make out this Charge by an Information, ſure can be no Queſtion at all in this Court; I hear them mention the Statute of *Edward* the Third. But that is not at all to the purpoſe, that is but what was offered in another Caſe that may be remembred, and offered by way of Plea, and preſſed with a great deal of Earneſtneſs, but Rejected by the Court; and now what could not be receiv'd then by way of *Plea*, theſe Gentlemen would by their Importunity, have you receive by way of *Parole* at the Bar; I ſuppoſe the Deſign is to entertain this great Auditory with an Harrangue, and to perſwade the weak Men of the World, (for the Wiſe are not to be impoſed upon) that they are in the Right, and we in the wrong; under Favour my Lord, we

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are in the Right for the King, we desire this Information may be read, and let them plead what by Law they can to it, according to the course of the Court; but that which they now urge, is untimely, and out of Course.

Sir *Rob. Sawyer.* My Lord, we offer this to your Lordship ——

Mr. *Att. Gen.* Why, Gentlemen, you have been heard before your time already.

Mr. *S. Pemberton.* Pray, my Lord, give us leave to answer what the Kings Council have objected.

L. C. J. The Kings Council have answered your Objections, and we must not permit Vying and Re-vying upon one another; if you have no more to say, but only as to the Matters that have been urged, you have been heard to it on both sides already.

Mr. *S. Pemberton.* I would, if you please, answer what has been objected by the Kings Council, and state the Case aright.

Mr. *Just. Allybone.* Brother *Pemberton*, I do not apprehend that the Objection you make against this Commitment has any weight in it. The Objection (as I take it) is this, that these Lords were not legally committed, because they were committed (says the Return) by such and such Lords of the Council particularly named, and it does not specifie them to be united in the Privy Council; now truly, with me that seems to have no weight at all; and I will tell you why. If my *Lord Chief Justice* do commit any Person and set his Name to the Warrant, he does not use to add to his Name, *Lord Chief Justice*, but he is known to be so, without that Addition; and would you have a different Return from the Lieutenant of the Tower to a *Habeas Corpus*, than the Warrant it self will justifie? the Lords do not use to write themselves Privy Counsellors, they are known to be so; as well as a Judge, who only writes his Name, and does not use to make the addition of his Office.

Sir *Rob. Sawyer.* Pray, my Lord, give me leave to be heard to this, I think truly it is a weighty Objection, for, under Favour, we say, it must upon the Return here appear, that they were legally committed, before you can charge them with an Information; I do not take Exceptions to the Warrant, because it is subscribed by such Lords, and they do not write themselves Lords of the Council, they need not do that; and the Return has averred that they are so; but the Return ought to have been, that it was by the Order of the Privy Council, and so it must be, if they would shew my Lords to be legally committed, that they were committed by Order of the Privy Council, and not by such and such particular Persons, Lords of the Privy Council; so in the Case put by Mr. *Justice Allybone*, of a Commitment by your Lordship, or any of the Judges; it must be returned to be by such a Warrant, by such a One *Chief Justice*, for that shews the Authority of the Person committing, and then your Lordships Name to it indeed is enough, without the Addition; But if it does not appear by the Return that there was sufficient Authority in the Person to commit, your Lordship cannot take it to be a Legal Commitment; but now in this Case, they could have no Authority to commit but in Council; and this Return seems to make it done by them as particular Persons, and that's not a good Return (with your Lordships Favour) upon which these Reverend and Noble Lords can be detained in Prison; But what do they on the other side say to this? Why, we shall be heard to it anon: but, my Lord, they very well know, it would be too late for that Effect which we desire of our Motion, and therefore we lay the Objections before you now in its proper time (say we) you ought not to read any Information against us, because we are not legally here before the Court; and sure, that which was said by the Kings Council, that your Lordship may charge any One that you find here in Court, which way soever he comes in, cannot be legal.

Mr. *Att. Gen.* Who ever said so?

Sir *Robert Sawyer.* I apprehend you said so, Mr. *Attorney*, or else you said nothing.

Mr. *Att. Gen.* Sir *Robert Sawyer*, You of that side have a way of letting your selves in to say the same things over again, and of making us to say what you please.

Sir *Rob. Sawyer.* Truly I did apprehend you laid down that for Doctrine, which I thought a very strange One; for we say, with your Lordships favour, he that is in Court without a Legal Process, is not in Court so as to be charged with an Information.

Mr. *S. Pemberton.* My Lord, It is not the Body being found here that intitles the Court to proceed upon it, but the Person accused is to be brought in by Legal Process: Then if we be not here by legal Process, the Information cannot be charged upon us; and if we suffer it to be read, it will be too late for us to make this Objection.

L. C. J. That you have all said over and over, and they have given it an Answer.

Mr. *Att. Gen.* Pray, Mr *Serjeant*, will you make an end; you have repeated your Objection over and over, I know not how often, and will never be contented with our Answer.

Mr. *J. Allybone.* Sir *Robert Sawyer*, that which you said in answer to the Case I put, methinks does not answer it: For if the Return be as good, that it was by a Warrant from such an one, Lord *Chief Justice*; as if my *Lord Chief Justice* had added the Title of his Office to his own Name, when he subscribed the Warrant: Then this Return, That this was done by such and such Lords of the Council, must be as good, as if they had added that to their own Names.

Sir *Rob. Sawyer.* That is not our Objection.

Mr. *Att. Gen.* Your Objection has been heard, and answered; we pray the Information may be read.

Mr. *Serjeant Pemberton.* No, we are not come to that yet.

Mr. *J. Allybone.* Pray, would you have an *Averment* by the Lieutenant of the *Tower*, in his Return to an *Habeas Corpus*, that it was done by them in the Council Chamber?

Mr. *Finch.* My Lord, The Difference is this, with Submission; a Commitment by Sir *Robert Wright*, Ch. Justice, is a good Commitment, and a Return of that Nature, were a good Return, because he is Chief Justice all over *England*, and hath Authority to commit wherever he is; but a Commitment by such an one, or such and such Lords of the Privy Council, cannot be a good Return of a Commitment; because, though they be Lords of the Council, yet neither single, or apart, nor all together, have Authority to do such an Act, unless they be assembled in the Privy Council; there their Authority is circumscribed;

ſcribed; ſo that that muſt needs be a great difference between a Commitment made by a Judge, who is always ſo, and a Commitment by a Lord, or ſo many Lords, by the Name of Lords of the Privy Council, who carry not their Authority about with them, but are limited to their Aſſembly in Council.

Mr. *J. Allybone.* Mr. *Finch,* Indeed your Objection is worth ſomething, if my Lord Chief Juſtice could not act but as under the character of Chief Juſtice; for you are now arguing, that theſe Lords could not do this Act, but as Lords of the Council, in Council; the ſame (ſay I) may be ſaid of a Commitment by the Lord Chief Juſtice; he cannot do it but under the formality of his Authority, as he is Chief Juſtice, unleſs you will make it impoſſible for him to do any thing, but as Chief Juſtice, or unleſs you make it impoſſible to ſeparate his Perſon from his Authority.

Mr. *Finch.* Sir, the difference lies here; the Authority of the one is general and univerſal, and goeth with him wherever he goes; the other's Authority is limited to a particular ſphere.

Mr. *J. Allyb.* Why, would you have it averred, That they did it being aſſembled in Council?

Mr. *Finch.* Under favour, they cannot juſtifie any thing that was done by them as Lords of the Council, but in the Privy Council.

Mr. *J. Powel.* Truly, my Lord, for my part, I think there is no ſuch great neceſſity of haſt in this matter; Here are Exceptions taken to this Return; and the matter tranſacted now before us, appears to me to be of very great weight, peradventure a greater, or a weightier, has not been agitated in this place in any Age; it concerns theſe Noble and Reverend Lords, in point of Liberty: it comes ſuddenly upon us, and therefore, my Lord, I think it very fit we ſhould conſider a little of this matter, and conſult the Precedents of Returns, how they are; for there are multitudes of Returns of Writs of *Habeas Corpus* in this Court; therefore it were requiſite, that we did conſult the Forms of other Returns, and how the Precedents, as to this matter, have always been: if they are according as this is, then all is well, but if they be otherwiſe, it is fit we ſhould keep to the uſual Forms.

L. C. J. What's your Opinion of it, Brother *Allybone?*

Mr. *J. Allybone.* I am ſtill of the ſame mind I was, my Lord, That he could make no Return, but this Return he has made; and if his Warrant was inſufficient upon this Account, that theſe particular perſons, Lords of the Privy-Council, did this Act without ſaying, that they did it in Privy Council, then 'tis not his Return that could mend it; and truly I do not know that there does need any Precedent for this; for every one knows where the Lords of the Council are; and 'tis a ſufficient Averment, this, that is in the Return.

Mr. *Pollexfen.* They are Lords of the Council every where, but they do not act as Lords of the Council any where but in Council.

Mr. *J. Allybone.* So my Lord Chief Juſtice is Chief Juſtice every where.

Mr. *Finch.* And he can do Judicial Acts, as ſuch, every where; but the Lords of the Council, cannot act but in the Council.

Mr. *J. Allyb.* Nor is it to be preſumed that they did do it.

Mr. *Finch.* It is not a preſumption that is to make any thing in this caſe, but the Queſtion is, whether here be a legal Return of a legal Commitment?

Mr. *J. Allyb.* Such publick Perſons, in ſuch publick Acts, can never be preſumed to act in their ſeparate private capacities.

Mr. *Finch.* But, with ſubmiſſion, your Lordſhips can judge only what is before you in this Return, whether it be a good Return, and whether here be a good Authority aſſerted in the Perſons that did commit my Lords the Biſhops.

L. C. J. Truly, as to this Objection and Exception that has been made by them, I have conſidered of it, and what has been ſaid on all ſides, and I think 'tis the uſual way of Commitment; I never ſaw any other; all the Warrants that ever I ſaw, are of this Form; if there were any Precedents, they ſhould be ſhewn of that ſide.

Sir *Robert Sawyer.* There are multitudes of Precedents otherwiſe, and none of this Form.

L. C. J. I confeſs, 'tis a *Caſe* of great Weight, and the Perſons concerned are of great Honour and Value; and I would be as willing as any body to teſtifie my Reſpects and Regards to my Lords the Biſhops, if I could ſee any thing in it worth conſidering of.

Mr. *Sol. Gen.* There's no colour for it, if they do but look upon the Statute of the 16*th* and 17*th* of the late King, which arraigns the Proceedings of his Privy Council; that tells you what things belong to the cognizance of the Privy Council, and what not; and there you have all the Diſtinctions about Commitments by the King and Council, and by the Lords of the Council: And that Act will ſhew, that this is a Commitment according to the uſual Form: they know very well what the common Style of the Orders and Commitments of Council is, as in other places, and other Commitments; By ſuch an one, *Chief Juſtice,* that is the Style that is very well known for ſuch Warrants: So a *Commitment* by ſuch and ſuch, naming them particularly, *Lords of the Council,* that's an Order made by the *Lords in Council*; and that Statute diſtinguiſhes between *Commitments* of one ſort and the other; and it does it, becauſe ſometimes Warrants run in one Form, and ſometimes in another; but they all come within the Direction of that Statute. My Lord, we are in a plain *Caſe,* my Lords the Biſhops come Regularly before you, upon a *Commitment* by the Council; and therefore we pray they may be charged with this Information.

Sir *Robert Sawyer.* Pray, will your Lordſhip give us leave to have that Statute lookt into, which Mr. *Sollicitor* ſpeaks of; and then we ſhall ſee whether it be to his purpoſe.

L. C. J. Let the Statute be read.

Mr. *Sol. Gen.* If it be *Keeble*'s Book, it is the 16*th* of *Charles* the Firſt; if it be the Old Book, it is the 16*th* and 17*th* of *Car.* towards the end.

Clerk reads. **Provided always, and be it enacted, that this Act, and the ſeveral Clauſes therein contained, ſhall be taken and expounded, to extend only to the Court of** Star-Chamber; **and to the ſaid Court holden before the Preſident and Council in the Marches of** Wales, **and before the Preſident and Council in the Northern parts.**

Mr. *Sol. Gen.* It is the Paragraph before that.

Clerk reads. **And be it alſo provided and enacted, That if any perſon ſhall hereafter be** Committed,

Committed, Reſtrained of his Liberty, or ſuffer Impriſonment, by the Order and Decree of any ſuch Court of Star-Chamber, **or other Court aforeſaid, now, or at any time hereafter, having, or pretending to have the ſame, or like Juriſdiction, Power, or Authority to commit, or impriſon, as aforeſaid; or by the Command or Warrant of the King's Majeſty, His Heirs or Succeſſors, in their own Perſons, or by the Command or Warrant of the Council-Board, or of any of the Lords, or others of his Majeſties Privy-Council, that in every ſuch Caſe, every perſon ſo Committed, Reſtrained of his Liberty, or ſuffering Impriſonment, upon demand ——**

Mr. *Sol. Gen.* That is all: Your Lordſhip ſees theſe ſeveral Diſtinctions of the Style of Commitment.

Mr. *Att. Gen.* Now, pray favour us a little: My Lord, I think theſe Gentlemen will not deny, but that the Lords of the Council can commit; I muſt confeſs, they ask that which was pretty reaſonable, if the Caſe was as they would make it; They would have my Lords the Biſhops diſcharged, becauſe there is not a Return of a good *Commitment*, and that ſtands upon this preſumption, that what is here ſaid to be done by all theſe Lords, at the end of whoſe Names this is added, *Lords of the Privy Council*, was done by them out of Council, which, I ſuppoſe, your Lordſhip will not preſume, but will take it, that they did this as Lords of the Council in Council; And no Man can ſay, but the Lords in Council can Commit.

Mr. *Sol. Gen.* You may as well preſume upon a Warrant made by my Lord *Chief Juſtice*, becauſe it is not ſaid where he did it, and therefore he did it in *Scotland*.

Mr *Att. Gen.* I ſay again, unleſs your Lordſhip will preſume that which is not to be preſumed, this muſt needs be a very good Return.

Mr. *J. Allyb.* Truly (as Mr. *Sollicitor* ſays) you may as well deſire us to preſume, that my Lord *Chief Juſtice* would commit a Man in *Ireland* or *Scotland*; I can ſee no imaginable difference.

Mr. *Finch.* My Lord, that which we pray, is, not that your Lordſhip would preſume, but that you would not preſume, but take the Return as 'tis before you; and then ſee whether it can be thought to be a Commitment by the Lords in Council?

Mr. *S. Pemberton.* Pray, my Lord, ſpare us a little in this matter: Here has been the Clauſe of a Statute read to you, from whence Mr. *Sollicitor* would conclude, that all Commitments by ſeveral ſorts of Perſons there named, are legal; or elſe the Enumeration of the ſeveral ſorts of Commitments, ſignifies nothing to this purpoſe. But I pray your Lordſhip would conſider this, that the very ſcope and end of that Act of Parliament is, to relieve againſt illegal Commitments and Oppreſſions; then the ſeveral Commitments therein named, can never all be called legal; ſo that this ſignifies nothing to our purpoſe; My Lord, they tell us we ſtand upon Preſumption, no, we do not ſo; we ſay your Lordſhip ought not to preſume the One or the other, but to judge upon what is before you, but here is nothing before you but this Return of a Commitment of theſe Noble Perſons, my Lord the Arch-Biſhop of *Canterbury*, and the reſt of the Biſhops which is ſaid to be by theſe particular Lords. Now if your Lordſhip will pleaſe to give us time to look into it, (for this is an Exception we take at the Bar upon hearing the Return read) we would ſhew the conſtant way has been quite otherwiſe than this Return makes it; therefore we deſire leave to ſatisfie your Lordſhip concerning the uſual Form of Precedents, and thereby it will appear, that it ought to have been, that they were committed by Order of the Privy Council, and then he ſhould have ſet forth the Warrant it ſelf, which would have ſhewn the Names of the Privy-Councellors, and he needed not to have put their Names in the Return as the particular Perſons that committed them; but now, my Lord, this does not appear to be an Order made in Council, as it ought to be, and the Return is that which is before you, and you are to judge only upon what is before you.

L. C. J. So we do.

Mr. *Juſtice Allybone.* Pray Sir *Robert Sawyer*, would the ſaying of a Governour of the Tower in his Return to a Writ of *Habeas Corpus* alter the Nature of the Commitment?

Mr. *Att Gen.* My Lord, we are in your Lordſhips Judgment.

Mr. *Juſt. Allybone.* I ſay, Brother *Pemberton*, would any collateral Saying of the Lieutenant of the Tower alter the Nature of the thing, his Return in this Caſe is only an inducement to the Warrant of Commitment, and his Saying one way or t'other would neither vitiate nor mend the Commitment.

Mr. *Sol. Gen.* Your Lordſhip cannot take notice of the Commitment but from the Warrant.

Mr. *Pollexfen.* The Return is the Fact upon which you are to judge.

Mr. *Juſt. Powel.* Certainly we muſt judge of the Record, and nothing elſe, and the Return is the Record now, being filed.

L. C. J. The Return is as certain, I think, as can be.

Mr. *Soll. Gen.* By the Return it appears, the Biſhops were Committed by the Warrant of ſuch and ſuch Lords of the Council, and that which is before you now is, whether you will not intend it to be done by them in Council.

Mr. *Juſt. Powel.* We can intend nothing, but muſt take the Return as 'tis.

L. C. J. The Warrant is good enough, I think truly, and ſo is the Return.

Mr. *Pollexfen.* I think in all the *Habeas Corpus*'s that have been ſince the King's Return, of Perſons committed by the Council, the Returns have been quite otherwiſe than this Return is; We do all pretty well agree (for ought I can perceive) in theſe two things; We do not deny but the Council Board has Power to commit, they on the other ſide do not affirm, that the Lords of the Council can commit out of Council.

Mr. *Att. Gen.* Yes, they may, as Juſtices of the Peace.

Mr. *Pollexfen.* This is not pretended to be ſo here.

L. Ch. Juſt. No, no, that is not the Caſe.

Mr. *Pollexfen.* Then, my Lord, with ſubmiſſion, I will compare it to any thing elſe of this nature. I deny not but that the Council may commit, but the Queſtion is, whether this Return of their Commitment be right; Suppoſe there ſhould be a Return to a *Habeas Corpus*, that ſuch a one was committed by Sir *Robert Wright*, and three others by Name, Juſtices of this Court,

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for a *Contempt*, without ſaying, that it was done in Court, this would be an ill Return; although they had Power in Court to commit for a *Contempt*, yet it muſt appear, that it was done in Court, or it cannot be a good Return: If I had thought or foreſeen that ſuch a Return would have been made, I could eaſily have made out our Objection, but we could not foretel what they would return, and therefore we can only make this Objection now upon the hearing of it read. In all the Debates that have been heretofore in the great Caſe of the *Habeas Corpus* concerning my Lord *Hollis*, and thoſe other Gentlemen who were in Priſon upon Commitments by the Privy Council, the Returns are, that they were committed by Order of the Privy Council, as near as I can remember; I will not take it upon me to be poſitive in it, but I believe, if your Lordſhips thought fit to give us a ſhort time to look into it, we ſhould be plainly able to ſhew you, that all the Returns of Commitments of this nature, are ſaid to be by Order of the Council Board, and never any of them naming the Lords, for that may be true, and yet not a legal Commitment.

L. C. J. I have ſeen ſeveral Precedents of Commitments in this Form, and if you make no Exception to the Warrant, you can make no Exception to the Return, becauſe that only ſets forth the Warrant.

Mr. *Pollexfen.* The Commitment you are to judge of, is upon the Return, with Submiſſion, and ſuppoſing the Warrant to be right and good, yet the Return is not Legal.

Mr. *Att. Gen.* We ſay, in common Underſtanding, it cannot be but a Commitment in Council.

Mr. *S Pemberton.* But *common Underſtanding* and *legal Underſtanding* are two things, and we pray the Judgment of the Court.

Mr. *Sol. Gen.* And ſo do we, my Lord, and pray your Rule in it.

Mr. *Juſt. Allybone.* You may by the ſame reaſon ſay, That upon all Commitments by Warrant from Juſtices of the Peace, that the Commitment was out of the County, if the Party does not alledge in the Warrant or Return, that the Commitment was in the County. 'Tis an Objection that would put us upon preſuming, what we have no reaſon to preſume.

L. Ch. J. If you would have our Opinions, let my Brothers declare theirs, I will ſoon tell you my mind.

Mr. *J. Holloway.* Pray let the Return be read again. *(which was done.)*

Mr. *Att. Gen.* So that the Return ſays, they were committed by vertue of a Warrant of ſuch and ſuch by Name, *Lords* of the Council, and whether this be a Warrant of the Council is the Queſtion, and we think it is plain enough, that 'tis a good Return.

Mr. *J. Powell.* I have given you my Thoughts already, I think we ought to conſult Precedents in a Caſe of this Weight and Nature; and truly I will not take upon me to ſay, whether it be a good Return or not a good Return, without looking into Precedents.

Mr. *J. Allybone.* For my own part, it does not ſtick at all with me, for the Reaſons I gave before; when any Man that has an Authority to *commit*, does commit a Perſon to an inferior Officer, and that Officer has an *Habeas Corpus* brought to him, it is enough for him to return his Warrant, by which the Party was committed, and whatſoever he ſays by the Bye, cannot have any Influence one way or other, to alter the nature of the thing; now unleſs you would make every Man that is a Juſtice of the Peace write his Name and ſtile himſelf Juſtice of the Peace, this muſt be a good Commitment. Every Commitment ſhall be preſumed to be purſuant to the Power of the Perſon *committing*, and I am ſure, take theſe Lords ſeparately, and they had no Power to *commit*, and conſequently ſuch a Warrant would be no Authority to the Lieutenant of the *Tower* to receive them; But when they ſend ſuch a Warrant as this, we ſhall preſume it to be according to the Power they have, and not according to the Power they have not; this Warrant is returned by the Officer, and I cannot but preſume that it is all very well.

Mr. *J. Holloway.* My Lords, I am very deſirous and willing your Lordſhips ſhould have all the Right and Juſtice done you that can be, and by the Grace of God, I will endeavour it all I can: I ſee in this *Caſe* it is agreed on both ſides, that the Council have a Power to *commit*, and the Commitment is here certified in the words of the Warrant, and the Lieutenant has made his Return, that they were committed by vertue of this Warrant; if the Lieutenant of the *Tower* had returned any other Commitment, you would have blamed him for a falſe Return; but now you find fault with his Return, becauſe he does not ſay, the Warrant was made by the Lords of the Council, and in Council; That is a thing ſo notoriouſly known to all the Kingdom, that my Lords were ſent to the *Tower* by the Council, that no body doubts it; and being thus ſent by this Warrant, I do not ſee but that this is a very good Return, and my Judgment is, that the Information ought to be read.

L C. J. I told you in the beginning, after you had made your Objections, that I thought it was as all other Returns are, and I am of the ſame Opinion ſtill, I find no fault with the Warrant, nor with the Return.

Mr. *S. Pemberton.* There is no Objection to the Warrant at preſent upon this Queſtion.

L. C. J. Neither do I take upon me to ſay any thing, nor is there any thing now to be ſpoken of touching the Fact for which theſe Noble Lords were committed.

Mr. *Att. Gen.* We pray, my Lord, the Information may be read.

Mr. *J. Holloway.* There is no queſtion about the Fact, but whether this be a good Return which is here made, that they were committed by ſuch and ſuch Lords of the Council.

L. C. J. I would do as much to give my Lords the Biſhops eaſe, and ſet them at liberty, as I could poſſibly by Law, but we muſt not break the Rules of Law for any one.

Mr. *Sol. Gen.* Pray read the Information.

Mr. *Finch.* No my Lord, we oppoſe the reading of it.

Mr. *Sol. Gen.* Why! Will not you be ſatisfied with the Opinion of the Court?

Mr. *Finch.* We have another thing to offer, which we muſt have the Opinion of the Court in, before this Information can be read.

Mr. *Att. Gen.* Pray let us hear it what it is?

Mr. *Finch.* My Lord, we did humbly offer one Objection more to your Lordſhip againſt the reading of the Information, the former Objection was concerning the Perſons committing, in

in that it does not ſufficiently appear upon the Return, that they were committed by the Lords in Council; the Court have given their Opinion in that. But the other Objection ſtill remains, whether they ought to have been committed at all, and therefore when they now appear upon this *Habeas Corpus*, we ſay they were not legally committed to Priſon, becauſe a Peer ought not to be committed to Priſon in the firſt inſtance for Miſdemeanour.

Mr. *Sol. Gen.* If you pleaſe you may ſpeak to that by and by, but that is not proper now for you to offer, or for the Court to determine, whether a Peer may be committed upon an Accuſation for a Miſdemeanour?

Mr. *Finch.* With Submiſſion, that is ſuch a difficulty that lyes in the way againſt the reading of the Information, that you muſt get over it, before you can come at the reading of it.

Mr. *Att. Gen.* You will have your time for all this matter by and by, but certainly you cannot be admitted to it yet.

L. C. J. Truly I think you are too early with that Exception.

Mr. *Finch.* With Submiſſion, we think this is the proper time, and I will tell your Lordſhip the reaſon why.

L. C. J. Mr. *Finch*, certainly every thing in the World that can be ſaid, you will ſay for your Client, and you ſhall be heard; for we are very willing to deliver theſe Noble Lords, if we can by Law, and if the Exceptions you make be legal.

Mr. *Finch.* My Lord, we do not doubt your Juſtice, and therefore we deſire to offer what we have to ſay in this Point; the only Queſtion (now it ſeems) is about our time of making our Exception. Mr. Attorney, (we apprehend) did ſay one thing which was certainly a little too large; that however any Man comes into Court, if the Court find him here, they may charge him with an Information.

Mr. *Att. Gen.* Who ſays ſo? I ſaid no ſuch thing.

Mr. *Finch.* Then I acquit Mr. Attorney of it, he did not ſay ſo: Then both he and I agree the Law to be, That a Man that does come into Court, if he does not come in by legal Proceſs, he is not to be charg'd with an Information; then ſince we do agree in that Propoſition, certainly we muſt be heard to this Point, whether we are here upon legal Proceſs, before you can charge us with this Information?

Mr. *Att. Gen.* You think you have ſaid a fine thing now, and take upon you an Authority to make me agree to what you pleaſe.

Mr. *Finch.* Certainly the Conſequence is plain upon your own Premiſes.

Mr. *Att. Gen.* Do you undertake to ſpeak for me?

Mr. *Finch.* I am in the Judgment of the Court, and to them I leave it.

Mr. *Att. Gen.* I know you thought you had got an extraordinary Advantage, by making me ſay what you pleaſe; but there has been very little ſaid, but what has been grounded upon Miſtakes all along: This is that I do ſay, if a Man comes in voluntarily upon any Recognizance, though he be not in Cuſtody; or if he comes in upon any Proceſs, if the Court find him here, though that Proceſs be not for the thing charged in the Information, yet the Court is ſo much in Poſſeſſion of the Perſon, that he ſhall plead to any Information, and that I do ſay, and will ſtand by.

Mr. *Sol. Gen.* My Lord, we are here in a very great Auditory, and this Court is always a very great Court, (but here is a greater and nobler Aſſembly, than uſually we have here) and theſe Gentlemen to ſhew their Eloquence and Oratory, would, by converting Propoſitions otherwiſe than they are delivered, put another meaning upon them, and ſo draw ſtrange Inferences from them; but theſe Arts we are ſure will not prevail here; we ſay plainly, and we are ſure the Law is ſo, (let them apprehend what they will) that your Lordſhip cannot exhibit an Information to any Man that you find accidentally here in Court; then ſays Mr. *Finch*, we are agreed; but withal (ſay I) take my other Propoſition, If a Perſon be brought into Court by legal Proceſs, or upon any Contempt whatſoever, by an Attachment or Warrant, or upon a *Habeas Corpus* after a Commitment, being thus found in Court, your Lordſhip may certainly charge him with an Information; when theſe Gentlemen who are ſo eager on the other ſide, did preſide here, and ſtood in the places where Mr. Attorney and I now are; I can name them abundance of Caſes of the like nature with this, when men have been compelled to appear to Informations, and plead preſently; they are the Perſons that made the Precedents; they made the Law for ought I know: I'm ſure I find the Court in Poſſeſſion of this as Law, and we pray the uſual Courſe may be followed.

Mr. *Finch.* Pray my Lord ſpare us a word in this matter: I do agree with Mr. Attorney in this matter, but I do not agree with Mr. Sollicitor.

Mr. *Sol. Gen.* You do not agree with your ſelf.

Mr. *Finch.* I hope I do, and always ſhall agree with my ſelf, but I do not agree with you, Mr. Sollicitor.

Mr. *Sol. Gen.* You do not in 1688. agree with what you were in 1680.

Mr. *Finch.* Says Mr. Attorney, a Man that comes voluntarily in, cannot be charged with an Information; with him I agree. Says Mr. Sollicitor, a Man that comes in, and is found in Court by any Proceſs, may be charg'd with an Information: I ſay no, if the Proceſs be wholly illegal, for he cannot be ſaid to be legally in Court: Suppoſe a Peer of the Realm be taken upon a *Capias*, and is committed to the *Marſhalſea*, and is brought up upon a *Habeas Corpus*, I would fain know whether you could declare againſt him.

Mr. *Att. Gen.* No, we cannot.

Mr. *Finch.* And why is that, but becauſe the Proceſs is illegal, and he is not truly in Court: Then is it a proper time now to make this a Queſtion, Whether my Lords here were legally committed, before you can lay any thing to their charge by way of Information; for if the Commitment be illegal, it is a void Commitment, and if the Commitment be void, the Proceſs is void, and then my Lords are not legally in Court.

L. C. J. That ſure is but returning again to the ſame Queſtion that has been determined already.

Mr. *Sol. Gen.* If your Lordſhip will permit them to go over and over the ſame things, we ſhall never have an end.

Mr. *Finch.* My Lord, we pray theſe Gentlemen of the King's Council may be a little cool

with us, and then they will find, we do not talk the ſame things over and over again, nor meddle with that which the Court have given their Judgment in.

L. C. J. Well, go on Sir.

Mr. *Finch.* My Lord, we ſay it is the Privilege of the Peers of *England*, that none of them ſhall be committed to Priſon for a Miſdemeanour, eſpecially in the firſt Inſtance, and before Judgment; this (we ſay) is the right of my Lords the *Biſhops*, and that which they claim as Lords of *Parliament*. Now it appears upon this Return and the Warrant, that the Council-Table hath committed them, (for your Lordſhip and the Court hath rul'd it, that this Commitment muſt be taken to be by Order of the Privy Council, and we meddle not with that further) but we ſay that the Council Table may commit a Man unjuſtly, that is certain: There has been relief often given in this Court againſt Commitments by the Council Table: And that they were unjuſtly committed, depends upon that point of their Privilege as Peers.

Mr. *S. Pemberton.* My Lord, we ſay, that the Lords of the Council have illegally committed theſe Noble Perſons, who are Peers of the Realm, and ought to have the privilege of their Peerage, which is not to be committed for a Miſdemeanour; that the Council ought not to have done: For the Peers of *England* ought no more to be committed for a Miſdemeanour, and to be impriſoned, eſpecially upon the firſt Proceſs, than they may be in a Caſe of Debt. It is true, in the Caſe of Treaſon, Felony or the Breach of the Peace, the Peers have not ſuch a Privilege; they may be committed; but for a Miſdemeanour (as this does appear to be in the Warrant of Commitment) they ought not to be committed; but they were committed by the Lords of the Council, and we now complain of this to your Lordſhip as illegal, and therefore pray my Lords may be diſcharged.

Sir *Robert Sawyer.* Will your Lordſhip be pleaſed to favour me a Word on the ſame ſide for my Lords the *Biſhops*. It muſt be agreed to me, that if a Peer be brought into Court, as taken by a *Capias*, he cannot be charged with a *Declaration*; and the reaſon is, becauſe the *Proceſs* is Illegal: Then, my Lord, with ſubmiſſion, When a Peer comes upon a Foreign Commitment, and is brought in Cuſtody upon a *Habeas Corpus*, this is either in the nature of a *Proceſs*, or a final Commitment, as a Judgment; they will not ſay, that this is a good Commitment ſo as to amount to a Judgment; for the Council-Board could not give a Judgment in the caſe; beſides, the Commitment is Illegal becauſe it is not a Commitment till they find ſecurity to anſwer an Information here, but 'tis a Warrant to keep them for a Miſdemeanour; beſides, there is another thing we have to ſay to this Warrant, (for I am making Objections againſt the Validity of this Commitmitment) it does not appear that there was any Oath made, and therefore the Court muſt adjudge that there was no Oath made, and then no man ought without an Oath to be Committed, much leſs a Peer; but that which we chiefly rely upon, is, That my Lords ought not to have been Committed for this, which is but a Miſdemeanour at moſt: And if they uſe it, as *Proceſs* to bring my Lords the *Biſhops* to anſwer an Information, we ſay, By Law no ſuch *Proceſs* can be taken out againſt the Perſons of Peers for bare miſdemeanours. I do agree, that for Felony, Treaſon, or Surety of the Peace, the Perſons of Peers may be Committed; and that which is called Surety of the Peace in our Books, Mr. *Sollicitor* knows very well, in ſome of the Rolls of Parliament, is called Breach of the Peace, but it is all one; and the meaning, in ſhort, is, That it is ſuch a Breach of the Peace, as for which a Man by Law may be obliged to find Sureties for the Peace. If it ſhould mean a Breach of the Peace by implication, as all Treſpaſſes and Miſdemeanours are ſaid to be *Contra Pacem* in the Indict. ment or Information, then it were a ſimple thing to enumerate the Caſes wherein Priviledges did not lie; for there could be no Information whatſoever, but muſt be *Contra Pacem*, and ſo there could be no ſuch thing as Priviledge at all: And beſides, we ſay, the very Courſe of this Court is contrary to what they would have; for in the Caſe of a Peer, for a Miſdeameanour, you go firſt by Summons, and then you do not take out a *Capias* as againſt a common Perſon, but the next Proceſs is a *Diſtringas*, and ſo *ad Infinitum*; And I do appeal to them on the other ſide, and Challenge them to ſhew any one Preſident, when a Peer was brought thus into Court, to be charged with an Information, without it were in the Caſe of an apparent Breach of the Peace, for he muſt be Charged in Cuſtody, and there muſt be a *Committitur* to the Marſhal, to intitle the Court to proceed; your Lordſhip will find very few Preſidents of Caſes of this Nature about common Perſons, for till within theſe 14 or 15 years there was no ſuch thing ever done againſt a common Perſon; But this was the Rule; firſt there went out a *Subpœna*, and then an Attachment, and when the Party was taken upon the Attachment, he is taken to come in upon Proceſs, and then the Court would Charge him preſently, but if he did appear upon the Summons, they would not Charge him, but he had time to take a Copy of the Information, and an Imparlance of Courſe, till the next Term, before he could be compelled to Plead. But in the Caſe of a Peer, there never was any ſuch Preſident, as the Attaching his Perſon, but only a Summons and Diſtreſs; and I would be glad the KING's Council would ſhew that ever there was any ſuch proceſs taken out againſt the Perſon of a Peer, for a meer Miſdemeanour. My Lord, 'tis plain, what Breach of the Peace means in every Information, and I only ſpeak this to acquaint the Court how the conſtant Proceedings in all theſe caſes have been. Theſe Informations were anciently more frequent in the Star-Chamber; and what was the Proceſs there? Not the common Proceſs of a *Subpœna*, that was not the courſe there; but the Proceſs was a Letter from the Chancellor, that if the Party upon that Letter did not appear, in a Common Caſe, there went out an Attachment; but in a Peers Caſe, never; and ſo it appears by *Cromptons Juriſdiction of Courts. Tit. Star-Chamber* 33. This appears likewiſe by the Proceedings in Chancery againſt the Peers, till the Queens time, they did not ſo much as take out an Attachment after default upon a *Subpœna*, but they would then in the Queens time, be ſo bold as to take out an Attachment againſt a Lord for not appearing; but that Courſe was condemned as illegal; ſo we find in my Lord *Dyer*.

Mr. *Attor. Gen.* That was at a common Perſons Suit.

Sir *Robert Sawyer.* But the proceedings in the Star-

Star-Chamber were at the King's Suit, and I am sure Mr. *Sollicitor* knows that the Peers Priviledges reach to Informations, but as I was saying, it was so adjudged as to the Chancery in my Lord *Cromwel's* Case. *xiiii Eliz. Dyer*, 315.

Ld. *Ch. Just.* You take a great compass, Sir *Robert Sawyer*, but pray remember what you laid down at first, for the Ground of your discourse, That there was never any Commitment of a Peer for a bare Misdemeanour, you must keep to that, that is the Point you are to look after.

Sir *Robert Sawyer.* My Lord, I will so, I do not Cite these Cases but for this purpose, to shew, that in all Courts the Peers have particular Priviledges, and I am sure they can produce you no Precedents for any such proceedings against a Peer; in my experience of these matters, I never knew any such; nay, I knew it always to be otherwise, That in Informations for Misdemeanours, there did never issue out a *Capias* against a Peer; and Mr. *Attorney* knows very well, it was so in the late Case of my Lord *Lovelace*; for that Case of my Lord *Devonshire*, that was an express Breach of the Peace, tho' it was debated and disputed then; so that I take it, these Noble Lords cannot be charged with this Information, because they do not come in by Legal Process; and unless they can shew me any Cases, where a Peer did ever come in upon such a Commitment, and answered to an Information upon that Commitment, it must certainly be allowed not to be the Legal Course; though if such a Precedent could be shewn, that past *Sub Silentio*, without debate or solemn determination, that would not do, nor could bind the rest of the Peers; If one man would lose a particular Benefit he has, all the whole Body must not lose it; and the benefit is not small, of Time to make his Defence; of Imparling; of taking a Copy of the Indictment, and preparing himself to plead as his Case will bear; and indeed a common person has used to have these priviledges, tho in some Cases of late, they have taken the other Course; and if a *Capias* went out (which We say, cannot go against a Lord) and the Party were brought in, he was to answer immediately: Now, my Lord, I take it, That the Priviledges of Peers is in all times the same with the Parliamentary Priviledge in Parliament time, which reacheth to Informations, as well as other Actions. (My Lord *Coke* is express in this point) in the 4 *Instit.* 25. If that Objection should hold good, that every Information being *Contra Pacem*, that should be a Breach of the Peace, then (as I said before) Priviledge will hold in no Information, which is contrary to that and all our other Books; 'tis only such a Breach of the Peace, as for which Security of the Peace may be required. But further, that this a Priviledge enjoyed by the Peers Spiritual as well as Temporal, I suppose will not be denied, for I think they will not question, but that the Bishops, and Abbots that were Lords of Parliament were Peers, and we find in our Books when the Court has been moved for a *Capias* against an Abbot, if he were a Mitred Abbot, and sat in the Lords House, it was always said, that no such *Process* ought to go, and so it is in the case of *Bishops*; but indeed for other Noblemen, the difference is this, Where it does not appear upon Record, that they are Lords in Parliament, there the Courts have put them to bring their Writs of Privilege, but where it does appear upon Record, that they are Peers the Court is to allow and take notice of their priviledge, and there needs no such Writ. Now that the Parliament priviledge, and the priviledge of Peers (as to their persons) is the same, appears by the form of the Writ in the *Register fol.* 287. *Fitz. Herb. Nat. Brev.* 247. The Words of the Writ are these, That if such a one be Sued at the Suit of another, the Writ commands, that a Peer out of Parliament time should have the same priviledge with those summoned by the King to the Parliament; and I know not any difference that can be put between them, and it cannot be denied, that all Informations whatsoever, unless such as are for Breaches of the Peace, for which Surety of the Peace may be required, are under the Controul of the Parliament priviledge; so that upon these grounds, I do press that my Lords the Bishops may be discharged: If there be any Information against us, we are ready to enter our Appearance to answer it according to the course of the Court; but if the Information be for no other thing than what is contained in the Warrant of Commitment, then their Persons ought to be priviledged from Commitment.

Mr. *Pollexfen.* If your Lordship please to take it altogether, you will find it a case very well worth your consideration, it being the case of all the Peerage of *England.*

Mr. *Att. Gen.* My Lord, these Gentlemen have taken a great deal of Liberty, and spent much of your time in making long Arguments, and after all, truly I do not know where to have them, nor can understand what they would be at; it seems they agree that for Treason, Felony, and Breach of the Peace, a Peer may be Committed.

L. C. J. That is (say they) such a Breach of the Peace, as for which Surety of the Peace may be required.

Mr. *Att Gen.* Then all the Learning they have been pleased to favour us with, is at an end, for if here be any thing charged upon the Bishops, for which Sureties of the Peace may be required, then this is a good Commitment.

L. C. J. That they must agree upon their own Arguments.

Mr. *Att. Gen.* Can then any Man in the World say, that a Libel does not require Sureties of the Peace? for we must now take it as it is here upon this Return. How my Lords the Bishops will clear themselves of it, is a Question for another time; but the Warrant says they were committed for Contriving, Framing, and Publishing a Seditious Libel against His Majesty, and his Government; is there a greater Misdemeanour? Or is there any thing on this side a capital Crime that is a greater Offence? Is there any thing that does so tread upon the Heels of a capital Offence, and comes so near the greatest of Crimes that can be committed against the Government? Not to enlarge at this time upon what the consequences of such things may be, is there a greater Breach of the Peace than such Seditious Practices? No doubt, any Man may be committed for it, and may be bound to find Sureties for his good Behaviour.

Sir *Robert Sawyer.* I say Sureties of the Peace, not of the good Behaviour.

Mr. *Soll. Gen.* Pray my Lord, would you consider where we are, we are going towards *France*, I think, or some farther Country; they have set us out to Sea, and I do not see after this rate, when we shall come to Land; certainly, these Gentlemen are mightily out of the way, and would fain have us so too; we are here upon a single

ſingle Queſtion, as this Caſe ſtands before your Lordſhip, upon the Return; here is a Libel, a Seditious Libel, ſaid to be contrived, made and publiſhed againſt the King and his Government, by theſe Noble Lords the Priſoners; this is the Accuſation; ſuppoſe this be true, (that is to be proved hereafter) (I hope they are innocent, and will prove themſelves ſo) but ſuppoſe it to be true, that they have made a Seditious Libel againſt the King and His Government, will any Man ſay, that this is not done *Vi & Armis*? This is a Libel with a Witneſs; nay, two or three degrees more will carry it to High Treaſon, and all the Informations that were exhibited by Sir *Robert Sawyer*, when he was *Attorney General*, (and he exhibited a great many for Libels) conſtantly theſe Words were in, *Vi & Armis & contra Pacem.*

Biſhop of *Peterborough.* Was it ſo in your own Caſe, Mr. *Sollicitor*?

Mr. *Sol. Gen.* Yes, it was ſo in my Caſe, and you were one of them that Proſecuted me, for ought I know; or if you did not proſecute me you Preached againſt me; or if you did not, ſome of your Tribe did: But ſo, my Lord, it was in many other Caſes, within time of Memory. Sir *Robert Sawyer* has paſt a Complement upon me, of my great Skill in Parliament matters; but truly there needs no great Skill in matters where the Law is ſo plain; a Peer they agree may be in Priſon for Treaſon, Felony, or Breach of the Peace; but that Breach of the Peace (ſay they) is where the Law requires Sureties of the Peace; but is there any certainty where Sureties of the Peace ſhall be required, and where not? Then I would put this Caſe, Theſe Lords have contrived and publiſhed a Seditious Libel againſt the King and His Government; and whether this be not ſuch a Breach of the Peace, as will require Sureties of the Peace, is the Queſtion before you: And it plainly appears to be ſo, in Sir *Baptiſt Hick*'s Caſe, in *Hobbart*. If a Man write a private Letter, provoking another to Fight, although there be no Fighting, this is a Breach of the Peace; now a Letter can do no Wrong in that kind, but as it incites and ſtirs up to Fighting, which may occaſion Blood-ſhed, and I think there cannot be a greater Breach of the Peace, than for a Man to come to the King's Face, and publiſh a Libel againſt Him, and yet according to their Doctrine, this Man ſhall go away, and you ſhall not take him up, but take a *Subpœna* againſt him, and wait for the delay of all the ordinary Proceſs; and they tell you another thing, that a *Capias* does not lie upon an Information againſt the Perſon of a Peer, and that there is no precedent of any ſuch thing, but I would pray them to remember the Caſe of my Lord *Lovelace*, about ſome three Years ago for breaking a Foot-man's Head. It ſeems, if a Man libels the King in his own preſence, that is not ſo great a matter, as a little Correction to an inſolent Foot-man; but there he was bound in a Recognizance to appear here in this Court, and accordingly he did appear, and was charged with an Information, and as to that precedent I do believe Sir *Robert Sawyer* and Mr. *Finch* won't contradict me; this was in the firſt Year of this King: There was likewiſe my Lord of *Pembrooke*'s Caſe, who went to a diſorderly Houſe, and there frighted ſome People, we moved the Court, and had an Attachment againſt him, for a Miſdemeanour, and he was glad to Compound the thing, or it had not ended ſo ſoon as it did; and yet if a Lord comes to the King's Perſon, and affronts Him to his very Face, will not an Attachment lie againſt him for it? Certainly it will. My Lord, we have gone out of the way too much already, and theſe Gentlemen will lead us farther, but we hope your Lordſhips will reduce us to the methods of the Law: Here is an Information which we deſire may be read, if they have any thing to plead to it, their time for that will come after it is read; if they think they have been illegally impriſon'd, it appears plainly upon this Return, who they were that did Commit them; here are a great many Noble Lords to Anſwer an Action of falſe Impriſonment, if theſe Lords think fit, and may have theſe Learned Gentlemen, that are very well able to adviſe them what they ſhould do in it.

Sir *Robert Sawyer.* We pray your Lordſhips Judgment, whether the Caſes put by Mr. *Sollicitor* are like our Caſe.

Mr. *Sol. Gen.* They are as like, as Sir *Robert Sawyer* is to Mr. *Attorney* that was.

Sir *Robert Sawyer.* Thoſe Caſes are of apparent Breaches of the Peace, ſo likewiſe was my Lord of *Devonſhire*'s Caſe, but certainly that was not at all like this.

Mr. *Finch.* With your Lordſhips Favour I would add but one Word, and I would repeat nothing of what has been ſaid; all that I ſhall ſay is this, There is a great deal of difference between an Actual Breach of the Peace, and that which in the bare Form of an Information is a Breach of the Peace, by Conſtruction of Law, it being *contra pacem*: Suppoſe it be laid that a Man did *Vi & Armis* ſpeak Words, will that make the Words a Breach of the Peace?

Mr. *Sol. Gen.* It muſt be *Vi & Armis*, and certainly is a Breach of the Peace.

Mr. *Finch.* If a Man write a Petition, are the Pen and Ink that he uſes, the Arms?

Mr. *Soll. Gen.* My Lord, I hope Mr. *Finch* remembers what I heard him ſay in *Algernoon Sidney*'s Caſe *ſcribere eſt agere.*

Mr. *Finch.* I think it is ſo, Mr. *Sollicitor*, but every Action is not a Breach of the Peace.

L. C. J. Well, let my Brothers deliver their Opinions, I will give you mine.

Mr. *Juſt. Allyb.* The ſingle Queſtion now is, Whether or no that which Mr. *Sollicitor* was pleaſed to name as the Crime, and lay it to the charge of my Lords the Biſhops, that is a Seditious Libel, be a Breach of the Peace: I do confeſs that there is little of Argument to be drawn from Forms of Indictments; and I ſhall put no great ſtreſs upon the Words *vi & armis*, where the Fact will not come near it, but if a Commitment may enſue, (as they ſeem to agree) whereever Surety of the Peace may be required, nothing ſeems more important to me, than that Surety of the Peace ſhould be required, where there is any thing of Sedition in the Caſe; and wherever there is a Seditious Act, I cannot tell how to make any other Conſtruction of it, but that it is an Actual Breach of the Peace, that is my Opinion.

Mr. *Juſt. Powel.* I am of the ſame opinion in this point too, as I was in the other point before, it was a matter of great conſequence (I thought) upon the former point, but now it appears to me, to be of far greater conſequence than it did at firſt; for here, all the Great, High, and Noble

ble Peers of *England* are concerned in it, as to their Priviledge. Our Predeceſſours in this Court heretofore would not determine the Priviledges of the Peers, but left them to themſelves to make what Judgment they pleaſed of them: I think truly 'tis a thing of that weight, that it may be very fit for the Court to take time to conſider of it, and I declare for my own part, I will not take upon me to deliver any Opinion in a matter of this Conſequence, before I have conſulted all the Books, that can give me any Light in the Caſe.

Mr. *Juſt. Allybone.* Brother *Powell*, I am not determining, limiting, or cramping the Priviledge of Peers, but I am only conſidering whether or no a Seditious Libel be a Breach of the Peace; 'tis agreed to be on all hands a Breach of the Peace. Is there any thing that will require Sureties of the Peace to be given upon the doing of it? For there Sir *Robert Sawyer* has laid the Foundation of his diſtinction, and if that ſhall draw any Perſon under a Commitment, then, ſay I, in my Judgment, wherever there is a Seditious Libel, there is that which is an actual breach of the Peace; for I am ſure, there is that, which is ſufficient to require Sureties of the Peace; I controvert not the right of the Peers one way or other, but only declare my opinion, That this is a fact that comes within the Rule laid down by them, that what will require Sureties of the Peace, is a breach of the Peace.

Mr. *Juſt. Holloway.* God forbid that in a Caſe of this Nature, any one ſhould take upon him here to ſay, that every Miſdemeanour were a breach of the Peace, I ſay not ſo; but certainly there are ſome ſuch Miſdemeanours as are breaches of the Peace; and if here be ſuch a Miſdemeanour before us, then it is acknowledged that even in Parliament time, a priviledged Perſon might be Committed for it: For in Treaſon, Felony, and breach of the Peace, Priviledge does not hold. I will not take upon me (as my Brother ſaid) to determine concerning the Priviledge of the Peers; it is not of our Cognizance, nor have we any thing to do, either to enlarge or confine priviledge, nor do we determine whether this be ſuch a Libel as is charged in the Information, that will come in queſtion another time, but certainly as this Caſe is, the Information ought to be read, and my Lords ought to appear and plead to it.

L. C. J. Certainly we are all of us here as tender of the priviledges of the Peers, as any in the World can be, and as tender as we would be, and ought to be in trying any Man's right; it becomes us to do it with great reſpect and regard to my Lords the Biſhops; and therefore I would be as careful (if that were the queſtion before me) to conſider very well, before I give my Opinion, as ever I was in my Life. But when I ſee there can come no miſchief at all to the Priviledges of the Peers, by what is agreed on all hands; I think I may very juſtly give my Opinion; for here is the Queſtion, Whether the fact charged in the Warrant, be ſuch a Miſdemeanour as is a breach of the Peace, and the Words of the Warrant (which is now upon the Record) being ſuch as have been recited, I cannot but think it is ſuch a Miſdemeanour as would have required Sureties of the Peace, and if Sureties were not given, a Commitment might follow, and therefore I think the Information muſt be read.

Mr. *Att. Gen.* We pray the Clerk may read it.

Clerk reads. **Middleſex, ſs. Memorand.** That Sir *Thomas Powys*, Knight, Attorney General of our Lord the King, who for our ſaid Lord the King in this behalf Sues, comes in his own perſon here into the Court of our ſaid Lord the King, before the King himſelf at *Weſtminſter*, on *Friday* next, after the Morrow of the Holy Trinity in this Term, and for our ſaid Lord the King, gives the Court here to underſtand, and be informed, that our ſaid Sovereign Lord the King out of His ſignal Clemency ——

Mr. *Soll. Gen.* Read it as it is in *Latin.*

Biſhop of Peterborough. My Lord, we deſire it may be read in *Engliſh*, for we don't underſtand *Law-Latin.*

Mr. *Sol. Gen.* No, my Lords the Biſhops are very learned Men (we all know) pray read it in *Latin.*

Clerk reads. **Memorandum**, *Quod* Thomas Powys, *Miles, Attornatus Domini Regis nunc Generalis, qui pro eodem Domino Rege in hac parte ſequitur, in propria Perſona ſua venit hic in Curia dict' Domini Regis coram ipſo Rege apud* Weſtmonaſterium, *Die* Veneris *proxime poſt cruſtinum* Sanctæ Trinitatis, *iſto eodem Termino, & pro eodem Domino Rege, Dat Curiæ hic intelligi & informari, quod dictus Dominus Rex, nunc ex inſigni Clementia & benigna Intentione ſuis erga Subditos ſuos Regni ſui* Angliæ *per Regiam ſuam Prærogativam, quarto Die* Aprilis *Anno Regni Dict' Domini Regis nunc Tertio, apud* Weſtmonaſterium *in Comitatu* Middleſexiæ, *Declarationem ſuam Intitulatam,* **His Majeſtics Gracious Declaration to all his Loving Subjects for Liberty of Conſcience**, *gerentem Datum eiſdem Die & Anno, Magno Sigillo ſuo Angliæ Sigillatam publicavit; in qua quidem Declaratione continetur.*

JAMES R.

IT having pleaſed Almighty God, not only to bring Us to the Imperial Crowns of theſe Kingdoms through the greateſt difficulties, but to preſerve Us by a more than ordinary Providence upon the Throne of our Royal Anceſtors, There is nothing now that We ſo earneſtly deſire as to Eſtabliſh Our Government on ſuch a Foundation as may make Our Subjects happy, and Unite them to Us, by Inclination as well as Duty, which We think can be done by no means ſo effectually, as by Granting to them the Free Exerciſe of their Religion for the time to come, and add that to the perfect enjoyment of their Property; which has never been in any caſe invaded by Us ſince our coming to the Crown, which being the two things Men value moſt, ſhall ever be preſerved in theſe Kingdoms during Our Reign over them, as the trueſt methods of Our Peace, and Our Glory. We cannot but heartily wiſh, as it will eaſily be believed, that the People of Our Dominions were Members of the Catholick Church, yet We humbly thank Almighty God, it is, and hath long time been Our conſtant Senſe and Opinion (which upon diverſe occaſions We have declared) that Conſcience ought not to be conſtrained, nor People forced in matters of meer Religion. It has ever been directly contrary to Our Inclination, as We think it is to the Intereſt of Government which it deſtroys by ſpoiling Trade, depopulating Countries, and diſcouraging Strangers, and finally, that it never obtained the end

for

for which it was imployed. And in this we are the more Confirmed by the Reflections We have made upon the Conduct of the four last Reigns. For after all the frequent and pressing endeavours that were used in each of them, to reduce these Kingdoms to an exact Conformity in Religion, it is visible, the Success has not answered the design: And that the difficulty is invincible. We therefore, out of our Princely Care and Affection unto all our Loving Subjects, that they may live at ease and quiet, and for the increase of Trade, and encouragement to Strangers, have thought fit by Virtue of Our Royal Prerogative, to issue forth this Our Declaration of Indulgence, making no doubt of the Concurrence of Our two Houses of Parliament, when we shall think it convenient for them to meet. In the first place we do Declare, that we will Protect and Maintain Our Arch-bishops, Bishops, and Clergy, and all other Our Subjects of the Church of *England*, in the Free Exercise of their Religion as by Law Established, and in the quiet and full enjoyment of all their Possessions without any molestation or disturbance whatsoever. We do likewise Declare, that it is Our Royal Will and Pleasure, that from henceforth the execution of all and all manner of *Penal Laws* in matters Ecclesiastical, for not coming to Church, or not receiving the Sacrament, or for any other Non-conformity to the Religion Established, or for or by reason of the Exercise of Religion in any manner whatsoever, be immediately Suspended, and the further Execution of the said *Penal Laws* and every of them is hereby Suspended. And to the end, that by the Liberty hereby granted the Peace and Security of Our Government in the practice thereof, may not be endangered, We have thought fit, and do hereby streightly Charge and Command all Our Loving Subjects, that as We do freely give them leave to meet and serve God after their own way and manner, be it in Private Houses, or places purposely hired or built for that use, so that they take special care that nothing be preach'd or taught amongst them which may any ways tend to alienate the Hearts of Our People from Us or Our Government, and that their Meetings and Assemblies be Peaceably, Openly and Publickly held, and all Persons freely admitted to them; and that they do signifie and make known to some one or more of the next Justices of the Peace, what place or places they set apart for those uses: And that all Our Subjects may enjoy such their Religious Assemblies with greater Assurance and Protection, We have thought it requisite, and do hereby Command, that no Disturbance of any kind be made or given unto them, under pain of Our Displeasure, and to be further proceeded against with the uttermost Severity. And forasmuch as We are desirous to have the benefit of the Service of all our loving Subjects, which by the Law of Nature is inseparably annexed to, and inherent in Our Royal Person, and that none of Our Subjects may for the future be under any Discouragement or Disability (who are otherwise well inclined and fit to serve Us) by reason of some Oaths or Tests that have been usually administred on such Occasions, We do hereby further declare, That it is Our Royal Will and Pleasure, that the Oaths commonly called the Oaths of Supremacy and Allegiance, and also the several Tests and Declarations mentioned in the Acts of Parliament made in the 25*th* and 30*th* Years of the Reign of Our late Royal Brother King *Charles* the Second, shall not at any time hereafter be required to be taken, declared, or subscribed by any Person or Persons whatsoever, who is or shall be employed in any Office or Place of Trust, either Civil or Military, under Us, or in Our Government. And We do further declare it to be Our Pleasure and Intention from time to time hereafter to grant Our Royal Dispensations under Our Great Seal to all Our loving Subjects so to be employed, who shall not take the said Oaths, or subscribe or declare the said Tests or Declarations in the above mentioned Acts, and every of them. And to the end that all our Loving Subjects may receive and enjoy the full benefit and advantage of Our Gracious Indulgence hereby intended, and may be acquitted and discharged from all Pains, Penalties, Forfeitures, and Disabilities by them or any of them incurred or forfeited, or which they shall or may at any time hereafter be liable to, for or by reason of their Nonconformity, or the Exercise of their Religion, and from all Suits, Troubles or Disturbances for the same, We do hereby give Our free and ample Pardon unto all Nonconformists, Recusants, and other Our Loving Subjects for all Crimes and Things by them committed or done contrary to the Penal Laws formerly made relating to Religion, and the Profession or Exercise thereof, hereby declaring that this Our Royal Pardon and Indemnity shall be as good and effectual to all Intents and Purposes, as if every individual Person had been therein particularly named, or had particular Pardons under Our Great Seal, which We do likewise declare shall from time to time be granted unto any Person or Persons desiring the same, willing and requiring Our Judges, Justices, and other Officers, to take notice of and obey Our Royal Will and Pleasure herein before declared. And although the Freedom and Assurance We have hereby given in relation to Religion and Property, might be sufficient to remove from the Minds of Our Loving Subjects all Fears and Jealousies in relation to either; Yet We have thought fit further to declare, That we will maintain them in all their Properties and Possessions, as well of Church and Abby-Lands, as in any other their Lands and Property whatsoever.

Et idem Attornatus dicti Domini Regis nunc Generalis pro eodem Domino Rege ulterius dat Curiæ hic intelligi & informari, quod postea scilicet vicesimo septimo die Aprilis Anno Regni dicti Domini Regis nunc, &c. quarto, apud Westmonasterium prædictum in Comitatu Middlesexiæ prædicto, idem Dominus Rex nunc ex eadem Clementia & benigna intentione suis erga subditos suos Regni sui Angliæ, per Regiam suam Prærogativam, aliam Regalem suam Declarationem Intitulatam, His Majesties Gracious Declaration, *gerentem datum eisdem die & anno ultimo mentionatis, magno sigillo suo Angliæ similiter sigillatam, publicavit; in quâ quidem Declaratione continetur,*

James Rex.

'OUR Conduct has been such in all times, 'as ought to have perswaded the World, 'that we are firm and constant to our Resolutions; yet that easie People may not be abused 'by the Malice of crafty wicked Men, we think 'fit to declare, that Our Intentions are not 'changed since the 4th of *April* 168 . when we 'issued out or Our Declaration for Liberty of 'Conscience, in the following Terms——

his

His Majeſties Gracious Declaration to all his loving Subjects for Liberty of Conſcience.

James Rex.

IT having pleaſed Almighty God, not only to bring Us to the Imperial Crowns of theſe Kingdoms through the greateſt difficulties, but to preſerve Us by a more than ordinary Providence upon the Throne of our Royal Anceſtors, There is nothing now that We ſo earneſtly deſire as to Eſtabliſh Our Government on ſuch a Foundation as may make Our Subjects happy, and Unite them to Us, by Inclination as well as Duty, which We think can be done by no means ſo effectually, as by Granting to them the Free Exerciſe of their Religion for the time to come, and add that to the perfect enjoyment of their Property; which has never been in any caſe invaded by Us ſince our coming to the Crown, which being the two things Men value moſt, ſhall ever be preſerved in theſe Kingdoms during Our Reign over them, as the trueſt methods of their Peace, and Our Glory. We cannot but heartily wiſh, as it will eaſily be believed, that the People of Our Dominions were Members of the Catholick Church, yet We humbly thank Almighty God, it is, and hath long time been Our conſtant Senſe and Opinion (which upon diverſe occaſions We have declared) that Conſcience ought not to be conſtrained, nor People forced in matters of meer Religion. It has ever been directly contrary to Our Inclination, as We think it is to the Intereſt of Government which it deſtroys by ſpoiling Trade, depopulating Countries, and diſcouraging Strangers, and finally, that it never obtained the end for which it was imployed. And in this we are the more Confirmed by the Reflections We have made upon the Conduct of the four laſt Reigns. For after all the frequent and preſſing endeavours that were uſed in each of them, to reduce theſe Kingdoms to an exact Conformity in Religion, it is viſible, the Succeſs has not anſwered the deſign: And that the difficulty is invincible. We therefore, out of our Princely Care and Affection unto all our Loving Subjects, that they may live at eaſe and quiet, and for the increaſe of Trade, and encouragement to Strangers, have thought fit by Virtue of Our Royal Prerogative, to iſſue forth this Our Declaration of Indulgence, making no doubt of the Concurrence of Our two Houſes of Parliament, when we ſhall think it convenient for them to meet. In the firſt place we do Declare, that we will Protect and Maintain Our Arch-biſhops, Biſhops, and Clergy, and all other Our Subjects of the Church of *England*, in the Free Exerciſe of their Religion as by Law Eſtabliſhed, and in the quiet and full enjoyment of all their Poſſeſſions without any moleſtation or diſturbance whatſoever. We do likewiſe Declare, that it is Our Royal Will and Pleaſure, that from henceforth the execution of all and all manner of *Penal Laws* in matters Eccleſiaſtical, for not coming to Church, or not receiving the Sacrament, or for any other Non-conformity to the Religion Eſtabliſhed, or for or by reaſon of the Exerciſe of Religion in any manner whatſoever, be immediately Suſpended, and the further Execution of the ſaid *Penal Laws* and every of them is hereby Suſpended. And to the end, that by the Liberty hereby granted the Peace and Security of Our Government in the practice thereof, may not be endangered, We have thought fit, and do hereby ſtreightly Charge and Command all Our Loving Subjects, that as We do freely give them leave to meet and ſerve God after their own way and manner, be it in Private Houſes, or places purpoſely hired or built for that uſe, ſo that they take ſpecial care that nothing be preach'd or taught amongſt them which may any ways tend to alienate the Hearts of Our People from Us or Our Government, and that their Meetings and Aſſemblies be Peaceably, Openly and Publickly held, and all Perſons freely admitted to them; and that they do ſignifie and make known to ſome one or more of the next Juſtices of the Peace, what place or places they ſet apart for thoſe uſes: And that all Our Subjects may enjoy ſuch their Religious Aſſemblies with greater Aſſurance and Protection, We have thought it requiſite, and do hereby Command, that no Diſturbance of any kind be made or given unto them, under pain of Our Diſpleaſure, and to be further proceeded againſt with the uttermoſt Severity. And foraſmuch as We are deſirous to have the benefit of the Service of all our loving Subjects, which by the Law of Nature is inſeparably annexed to, and inherent in Our Royal Perſon, and that none of Our Subjects may for the future be under any Diſcouragement or Diſability (who are otherwiſe well inclined and fit to ſerve Us) by reaſon of ſome Oaths or Teſts that have been uſually adminiſtred on ſuch Occaſions, We do hereby further declare, That it is Our Royal Will and Pleaſure, that the Oaths commonly called the Oaths of Supremacy and Allegiance, and alſo the ſeveral Teſts and Declarations mentioned in the Acts of Parliament made in the 25*th* and 30*th* Years of the Reign of Our late Royal Brother King *Charles* the Second, ſhall not at any time hereafter be required to be taken, declared, or ſubſcribed by any Perſon or Perſons whatſoever, who is or ſhall be employed in any Office or Place of Truſt, either Civil or Military, under Us, or in Our Government. And We do further declare it to be Our Pleaſure and Intention from time to time hereafter to grant Our Royal Diſpenſations under Our Great Seal to all Our loving Subjects ſo to be employed, who ſhall not take the ſaid Oaths, or ſubſcribe or declare the ſaid Teſts or Declarations in the above mentioned Acts, and every of them. And to the end that all our Loving Subjects may receive and enjoy the full benefit and advantage of Our Gracious Indulgence hereby intended, and may be acquitted and diſcharged from all Pains, Penalties, Forfeitures, and Diſabilities by them or any of them incurred or forfeited, or which they ſhall or may at any time hereafter be liable to, for or by reaſon of their Nonconformity, or the Exerciſe of their Religion, and from all Suits, Troubles or Diſturbances for the ſame, We do hereby give Our free and ample Pardon unto all Nonconformiſts, Recuſants, and other Our Loving Subjects for all Crimes and Things by them committed or done contrary to the Penal Laws formerly made relating to Religion, and the Profeſſion or Exerciſe thereof, hereby declaring that this Our Royal Pardon and Indemnity ſhall be as good and effectual to all Intents and Purpoſes, as if every individual Perſon had been therein particularly named, or had particular Pardons under Our Great Seal, which We do likewiſe declare ſhall from time to time be granted unto any Perſon or Perſons deſiring the ſame, willing and requiring

requiring Our Judges, Juſtices, and other Officers, to take notice of and obey Our Royal Will and Pleaſure herein before declared. And although the Freedom and Aſſurance We have hereby given in relation to Religion and Property, might be ſufficient to remove from the Minds of Our Loving Subjects all Fears and Jealouſies in relation to either; Yet We have thought fit further to declare, That We will maintain them in all their Properties and Poſſeſſions, as well of Church and Abby Lands, as in any other their Lands and Properties whatſoever.

Given at Our Court at Whitehall *the 4th day of* April, 1687. *in the Third Year of Our Reign.*

Ever ſince We granted this Indulgence, We have made it Our Principal Care to ſee it preſerved without Diſtinction, as We are encouraged to do daily by Multitudes of Addreſſes, and many other Aſſurances We received from Our Subjects of all Perſwaſions, as Teſtimonies of their Satisfaction and Duty, the Effects of which We doubt not but the next Parliament will plainly ſhew, and that it will not be in vain that We have reſolved to uſe Our uttermoſt Endeavours to eſtabliſh Liberty of Conſcience on ſuch juſt and equal Foundations, as will render it unalterable, and ſecure to all People the free Exerciſe of their Religion for ever, by which future Ages may reap the benefit of what is ſo undoubtedly for the general good of the whole Kingdom. It is ſuch a Security We deſire, without the burden and conſtraint of Oaths and Teſts, which have been unhappily made by ſome Governments, but could never ſupport any; nor ſhould Men be advanced by ſuch means to Offices and Employments, which ought to be the Reward of Services, Fidelity and Merit. We muſt conclude, that not only good Chriſtians will join in this, but whoever is concerned for the increaſe of the Wealth and Power of the Nation. It would perhaps prejudice ſome of our Neighbours, who might loſe part of thoſe vaſt Advantages they now enjoy, if Liberty of Conſcience were ſettled in theſe Kingdoms, which are above all others moſt capable of Improvements, and of commanding the Trade of the World. In Purſuance of this great Work we have been forced to make many Changes both of Civil and Military Officers throughout Our Dominions, not thinking any ought to be employed in Our Service, who will not contribute towards the eſtabliſhing the Peace and Greatneſs of their Country, which We moſt earneſtly deſire, as unbiaſſed Men may ſee by the whole Conduct of Our Government, and by the Condition of Our Fleet, and of Our Armies, which with good Management ſhall be conſtantly the ſame, and greater, if the Safety or Honour of the Nation require it. We recommend theſe Conſiderations to all Our Subjects, and that they will reflect on their preſent Eaſe and Happineſs, how for above three Years, that it hath pleaſed God to permit Us to Reign over theſe Kingdoms, We have not appear'd to be that Prince Our Enemies would have made the World afraid of, Our chief Aim having been not to be the Oppreſſor, but the Father of Our People, of which We can give no better Evidence than by conjuring them to lay aſide all private Animoſities as well as groundleſs Jealouſies, and to chooſe ſuch Members of Parliament, as may do their part to finiſh what We have begun for the Advantage of the Monarchy over which Almighty God hath placed Us, being reſolved to call a Parliament, that ſhall meet in *November* next at fartheſt.

Quam quidem Regalem Declarationem dicti Domini Regis nunc ultimo mentionatam idem Dominus Rex nunc poſtea ſcilicet tricesimo die Aprilis Anno Regni ſui quarto ſupra dicto, apud Weſtmonaſterium prædictum in Comitatu Middleſexiæ prædicto, imprimi & per totam Angliam publicari cauſavit, & pro magis ſolemni demonſtratione, notificatione, & manifeſtatione gratiæ ſuæ Regiæ benignitatis & benevolentiæ ſuæ ad omnes ligeos ſuos in eadem Declaratione ultimò mentionata ſpecificatos, poſtea ſcilicet quarto die Maii Anno Regni ſui quarto, apud Weſtmonaſterium prædictum in Comitatu Middleſexiæ prædicto idem Dominus Rex debito modo ordinavit prout ſequitur.

At the Court at *Whitehall*, the 4th of *May*, 1688. It is this Day ordered by His Majeſty in Council, That His Majeſty's late Gracious Declaration, bearing date the 27th of *April* laſt, be read at the uſual time of Divine Service, upon the 20th and 27th of this Month in all Churches and Chappels within the Cities of *London* and *Weſtminſter*, and Ten Miles thereabout; and upon the 3*d* and 10th of *June* next in all other Churches and Chappels throughout this Kingdom. And it is hereby further ordered, That the Right Reverend the Biſhops cauſe the ſaid Declaration to be ſent and diſtributed throughout their ſeveral and reſpective Dioceſſes, to be read accordingly.

Et ulterius idem Attornatus dicti Domini Regis nunc Generalis pro eodem Domino Rege dat Curiæ hic intelligi & informari, quod poſt Confectionem prædicti ordinis ſcilicet, decimo octavo die Maii, Anno Regni dicti Domini Regis nunc quarto ſupradicto, apud Weſtmonaſterium prædictum in Comitatu Middleſexiæ prædicto, Willielmus Archiepiſcopus Cantuarienſis de Lambeth in Comitatu Surriæ, Willielmus Epiſcopus Aſaphenſis de St. Aſaph in Comitatu Flintiæ, Franciſcus Epiſcopus Elienſis de Parochia Sancti Andreæ Holborn in Comitatu Middleſexiæ, Johannes Epiſcopus Ciceſtrenſis de Ciceſtria in Comitatu Suſſexiæ, Thomas Epiſcopus Bathonenſis & Wellenſis de Civitate Wells in Comitatu Somerſetiæ, Thomas Epiſcopus Petriburgenſis de Parochiâ ſancti Andreæ Holborne in Comitatu Middleſexiæ, & Jonathan Epiſcopus Briſtolenſis de Civitate Briſtol, inter ſe conſuluerunt & conſpiraverunt, ad diminuendam Regiam Authoritatem, Regalem Prærogativam & Poteſtatem, & Regimen ejuſdem Domini Regis nunc *in præmiſſis, ac ad eundem Ordinem infringendum & eludendum*; ac in proſecutione & executione conſpirationis prædictæ, *ipſi iidem Willielmus Archiepiſcopus Cantuarienſis, Willielmus Epiſcopus Aſaphenſis, Franciſcus Epiſcopus Elienſis, Johannes Epiſcopus Ciceſtrenſis, Thomas Epiſcopus Bathonenſis & Wellenſis, Thomas Epiſcopus Petriburgenſis, & Jonathan Epiſcopus Briſtollenſis dicto decimo octavo die Maii Anno regni dicti Domini Regis nunc quarto ſupradicto,* vi & armis, &c. *apud Weſtmonaſterium prædictum in Comitatu Middleſexiæ prædicto,* illicitè, malitiosè, ſeditiosè, & ſcandalosè, quoddam falſum, fictum, pernitioſum, & ſeditioſum libellum in ſcriptis, de eodem Domino Rege & Regali Declaratione & Ordine prædictis (prætenſu Petitionis) fabricaverunt, compoſuerunt & ſcripſerunt, & fabricari componi & ſcribi cauſaverunt, *& eundem falſum, fictum, malitioſum, pernitioſum, & ſeditioſum libellum per ipſos prædictum Willielmum Archiepiſcopum Cantuarienſem, Willielmum Epiſcopum Aſaphenſem, Franciſcum Epiſcopum Elienſem, Johannem Epiſcopum Ciceſtrenſem, Thomam Epiſcopum Bathonenſem & Wellenſem, Thomam Epiſcopum Petriburgenſem, & Jonathanum*

Jonathanum Epiſcopum Briſtollenſem manibus ſuis propriis reſpectivè ſubſcriptum die, & anno, & loco ultimo menconatis in præſentiâ dicti Domini Regis nunc vi & armis, &c. publicaverunt, & publicari cauſaverunt; *in quo quidem falſo, ficto, malitioſo, pernitioſo & ſeditioſo libello continetur*——

The Humble Petition of *William* Archbiſhop of *Canterbury*, and of divers of the Suffragan Biſhops of that Province (now preſent with him) in behalf of themſelves and others of their abſent Brethren, and of the Clergy of their reſpective Dioceſſes,

Humbly ſheweth,

THAT the great Averſeneſs they find in themſelves to the diſtributing and publiſhing in all their Churches, Your Majeſties late Declaration for Liberty of Conſcience, proceedeth neither from any want of Duty and Obedience to Your Majeſty; our Holy Mother the Church of *England* being both in her Principles and in her conſtant Practice unqueſtionably Loyal, and having, to her great Honour, been more than once publickly acknowledged to be ſo by Your Gracious Majeſty; nor yet from any want of due Tenderneſs to Diſſenters, in relation to whom they are willing to come to ſuch a Temper as ſhall be thought fit when that matter ſhall be conſidered and ſettled in Parliament and Convocation. But among many other Conſiderations, from this eſpecially, becauſe that Declaration is founded upon ſuch a diſpenſing Power, as hath been often declared illegal in Parliament, and particularly in the Years 1662. and 1672. and the beginning of Your Majeſties Reign; and is a matter of ſo great Moment and Conſequence to the whole Nation, both in Church and State, that your Petitioners cannot in Prudence, Honour or Conſcience, ſo far make themſelves Parties to it, as the Diſtribution of it all over the Nation, and the ſolemn Publication of it once and again, even in God's Houſe, and in the time of his Divine Service, muſt amount to, in common and reaſonable Conſtruction.

——In contemptum *dicti Domini Regis nunc*, & Legum hujus regni Angliæ, *manifeſtum, in malum exemplum omnium aliorum in tali caſu delinquentium, ac contra pacem dicti Domini Regis nunc, Coronam & Dignitatem ſuas*, &c. *Unde idem Attornatus dicti Domini Regis nunc generalis pro eodem Domino Rege petit adviſamentum Curiæ hic in præmiſſis*, & debitum legis proceſſum verſus præfatos *Willielmum Archiepiſcopum Cantuarienſem, Willielmum Epiſcopum Aſaphenſem, Franciſcum Epiſcopum Elienſem, Johannem Epiſcopum Ciceſtrenſem, Thomam Epiſcopum Bathonenſem & Wellenſem, Thomam Epiſcopum Petriburgenſem, & Jonathanum Epiſcopum Briſtollenſem fieri; ad reſpondendum dicto Domino Regi de & in præmiſſis*, &c.

T. Powys.
W. Williams.

Mr. Att. Gen. My Lord, we humbly pray, that according to the Rules of the Court in ſuch Caſes, my Lord Archbiſhop of *Canterbury*, and my Lords the Biſhops may plead to the Information.

Mr. Soll. Gen. My Lords the Biſhops are here in Cuſtody in the Court, upon the higheſt Commitment that can be in this Kingdom, to wit, That of the King in Council; and we pray, that according to the courſe of the Court they may plead to the Information preſently.

L. C. J. What does his Grace and my Lords the Biſhops ſay to it?

Mr. S. Pemberton. Will your Lordſhip give us leave who are of Council for his Grace my Lord of *Canterbury*, and the reſt of my Lords the Biſhops, to ſpeak a word in this Matter?

L. C. J. Ay Brother, go on.

Mr. Serj. Pemb. That which we have to deſire of your Lordſhip and the Court is this, We have now heard this Information read, and 'tis plain we could know nothing of this before, the Warrant of Commitment being only in general for a Libel; and this being a Caſe of the greateſt Conſequence, peradventure, that ever was in *Weſtminſter*-Hall, (that I think I may boldly ſay, it is a Caſe of the greateſt Conſequence that ever was in this Court) and it being a matter of this Nature, that theſe Great and Noble Perſons my Lords the Biſhops are here taxed with, that is, For making a Seditious Libel, contained in ſuch a Petition (as though it was a Libel to Petition the King) we do beg this of your Lordſhip, that (it being of this great Importance) to the end we may come prepared to ſay what we have againſt it, we may have an Imparlanec till the next Term.

Mr. *Finch.* Pray my Lord favour me with a Word on the ſame ſide, for my Lords the Biſhops. Your Lordſhip ſees now, how neceſſary the trouble we gave you before, in making our Objections againſt the reading of the Information was, and what the drift and aim of the King's Council was, in the deſiring the Information to be read firſt; for now it is read, What is it that they deſire of your Lordſhips? They deſire that my Lord Archbiſhop, and my Lords the Biſhops being in Cuſtody, and brought here in Cuſtody, they may be now ſo charged with this Information, as to plead preſently: This my Lord we oppoſe, and with humble Submiſſion we ought to have time to Imparle, and a Copy of the Information, that we may conſider what we have to plead to it; for however we come here into Court, whether legally or not legally, yet ought we in the one and in the other Caſe, to have time to conſider of our Defence. And, my Lord, till of later time this Practice which the King's Council now calls the Courſe of the Court, was never uſed, nor was any Man required to plead immediately; and my Lord, if the Practice of the Court has not been anciently ſo (as I do believe they will ſcarce ſhew it to be ancienter than a few Years laſt paſt) then with humble Submiſſion, though the Courſe of the Court have been ſo for ſome little time paſt, yet it is not in the power of the Court (as we humbly conceive) to make a Courſe in prejudice of all the Privileges that the King's Subjects are by the ancient Rules of Law intituled to; they cannot make a new Law in prejudice of any Right or Privilege which the Subject hath, and call it the Courſe of the Court: Now that this which we deſire for my Lords the Biſhops, is the Right and Privilege of the Subject, is moſt manifeſt; for there might be many Defences that a Man may have to make to an Accuſation of this Nature, which it is impoſſible for him to know at the firſt hearing of an Information read, and yet which would be neceſſary for him to make uſe of, or at leaſt it would be impoſſible for him to make uſe of in ſuch a manner as the Law doth allow of and require. It may be the Pleas which he has to plead may be ſuch as that he has not time to put

into form; there may be Matters upon the hearing the Information read, that it would be neceſſary for him to give anſwer to, which he knew not of before, and therefore may neither have Materials ready, nor be capable of putting them (if he had them ready) into ſuch Form as the Law requires. They tell you on the other ſide, that if a Man be brought into Court by legal Proceſs, he may be charged with any Information whatſoever, that they are not tied to the Fact alledged in the Commitment, but finding the Party under a legal Impriſonment, they can exhibit an Information againſt him for any other Offence. Then, my Lord, would I fain know, which way any Man alive can be prepared to make his juſt and legal Defence, for he knows not his Accuſation; for tho' he think it may be for that for which he was committed, yet it may prove otherwiſe, and then he can be no way provided with Materials for his Defence, but he muſt loſe all Advantages which the Law gives him for his Defence. My Lord, if this be the courſe of latter times, yet you will not take that to be ſuch a Law, as is binding to all future times; and we are ſure the King's Council cannot ſhew, that this was the ancient Practice, for that was quite otherwiſe.

L. C. J. Mr. *Finch*, you were not here, I ſuppoſe when this Queſtion came in debate in this Court lately, in the Caſe of a very great Perſon; 'twas urged very earneſtly and very learnedly by one that ſtands by you; we upon that Debate asked Sir *Samuel Aſtrey*, what the Courſe of the Court was, and he told us, that the Courſe of the Court (of his own Knowlege for all the time that he had ſat as Clerk of the Crown in this Court) was, that when any one was brought in Cuſtody, or upon a Recognizance, they were to plead preſently.

Mr. *Finch.* Sir *Samuel Aſtry* has not been here ſo very long, as to make the Practice of his time the courſe of the Court.

L. C. J. But I will tell you what he ſaid further, if you will hear me; he ſaid, he had enquired of Mr. *Waterhouſe*, whom we all know to have been an old Clerk in the Crown Office, and he told him, that that had been the practice all his time.

Mr. *S. Pemb.* My Lord, I hope the courſe of the Courts of *Weſtminſter-Hall* ſhall not depend upon the Certificate of ſuch a one as Mr. *Waterhouſe*, who is a Man (we all know) is ſuperannuated, and very defective in his Memory.

Mr. Juſt. Powel. Certainly what they deſire for the Defendant is very reaſonable, for I take the Point to be only this; whether a Man may be compelled, being in Cuſtody, to plead to an Information preſently.

Mr. *Juſt. Allybone.* Pray Brother *Powell* ſpare me a word in this Matter; Mr. *Finch*, I ſuppoſe you labour that, the Court will not deny you, that you may have time to plead according to the courſe of the Court: We are not making Courſes for particular Facts, that by my conſent we will never do; but if you ſay ſuch a thing is not the courſe of the Court, and the King's Council affirm it is, how ſhall this be determined? and from whom can we take our Information to determine what is the courſe? I am ſure there is none of us that are here now, can pretend to tell what the ancient courſe was, for my part I declare it I cannot; and I know no reaſon there ſhould be any Novelty introduced into the Court upon any ground or reaſon whatſoever, nor will I conſent to any while I ſit here. Therefore I deſire to know what is the Ancient Courſe, and how we ſhall come to the knowledge of that Courſe, if not by the Certificate of thoſe who have been Ancient Officers of the Court?

L. C. J. Nay, that is certain, the Court will bring in nothing new in any ſuch Caſe as this.

Mr. Juſt. Allibone. If that hath not been the Antient Courſe without exception, I am againſt it; I know no Reaſon my Lords the Biſhops ſhould have any thing new put upon them; on the other ſide, they muſt not expect to have the Ancient Courſe of the Court declined in their Caſe.

Mr. Pollixf. Pray, my Lord, hear me a little in this matter; 'tis not my deſire that any Law ſhould be alter'd for any particular Caſe, and the Courſe of the Court I know is the Law of the Court; but I humbly crave leave to ſay, That I take the Ancient Courſe of the Court to be quite otherwiſe, than what the King's Council would have it; there may be particular things done now and then, perhaps in particular Caſes, and upon particular Occaſions, which will not make what is ſo done to be the Courſe of the Court, nor be a binding Rule to you. Now as to this matter, of time or no time, to plead to an Information, I remember the time very well, when I and ſome others that ſtood at the Bar, and wondred when we ſaw this practice coming in, and thought it a very hard and miſchievous thing, for (in truth) the ſeveral Plots that have been, and the heats of men about thoſe things, have brought in this Courſe; for certain I am, and I dare affirm there never was any ſuch Courſe here before, neither upon Warrant from the Chief Juſtice, nor upon Recognizance, or any other Proceſs, was a Man compelled to plead inſtantly, without having a *Capias* in the regular form after a Contempt for not appearing upon Summons: Truly, my Lord, we had no Intereſt in the matter one way or other, to make us ſcruple it any otherwiſe than as we were concerned that the Law and Juſtice of the Nation ſhould have its true and ancient Current. And this I can aſſure your Lordſhips, that here was both my Lord Chief Juſtice *Saunders*, and Mr. *Serj. Holt* and my ſelf, who taking notice when this was firſt offered at, to make a man plead immediately without giving him time to conſider what he ſhould plead, could not but ſay among our ſelves, that it was an unreaſonable thing; and we were inclined to ſpeak to the Court to inform them of the Conſequence of it, which needs muſt be very miſchievous. Sir *Samuel Aſtry*, we know, came to be Clerk of the Crown in my Ld *Scroggs's* time; we know 'tis uſual and cuſtomary for the Court to ask what is the Courſe of the Court in doubtful Caſes, and to receive the Information from the Officers of the Court on both ſides. If it be on the Plea ſide, from Mr. *Aſton*, if on the Crown ſide, from Sir *Samuel Aſtry*, concerning things of Practice, but I did never think that what they reported was final and concluſive to the Court: But to make this matter clear, I humbly pray, that you would pleaſe to give order for the ſearch of old Precedents, how the old Practice really hath been; every thing that has been done in hot times, is not to be made a ſtanding Rule: If there do any ſuch thing appear to have been done and practiſed antiently, truly, my Lord, I will ſubmit, and ſay I am under a mighty miſtake;

ſtake; but if this which is now urged for the Courſe of the Court, is nothing but what the Zeal of the Times, and Heat of Perſecutions hath introduced; ſurely that is not fit to be a conſtant Rule for the Court to go by; for every one knows, that the Zeal of one time may bring in that by ſurprize upon one Man, which when things are cooll, or at another time will appear to be plain Injuſtice. We have indeed ſeen ſtrange things of this kind done before, but I hope to God they are now at an end, and we ſhall never ſee any ſuch thing done hereafter; and as for this particular Point, I think it is a wonderful thing in the Conſequence of it, if the Law ſhould be as they would have it: Here is a long Information juſt read over to a Man (but whether long or ſhort, as to the main Point, 'tis the ſame) and you ſay the Courſe of the Court is, he muſt plead to it immediately; ſurely matters of Crime that require Puniſhment to be inflicted on men, are of as much conſequence and concern, as any Civil matter whatſoever; and Men are to have their Rights in thoſe matters preſerved, as well as in other matters, which is all I preſs; for ſuppoſe a man has a ſpecial matter to plead, as particularly ſuppoſe it be the King's Pardon, I cannot give this in Evidence upon a Tryal after not guilty pleaded, then I ought to plead it; but what if I have it not ready? 'tis not telling the Court of it, without ſhewing of it, that will do; and it may be a man that is taken up, and brought hither in Cuſtody, cannot have it ready to ſhew; but yet then by this Rule a man ſhall loſe the benefit of his Plea, by being compelled to anſwer immediately: But they ſay, the Court will do right, I ſuppoſe they will; and my Lords the Biſhops in this caſe I believe do not diſtruſt, but that the Court will do right; but I never thought the Law was brought to that paſs, that ſuch things as theſe were left wholly in the diſcretion of the Court; certainly Imparlances, time to plead, and juſt Preparations for a man's defence are things that the Law has ſetled, and not left in the diſcretion of the Court; and truly to me it ſeems all one utterly to take away a man's Defence, as to hinder him of the means to prepare for it. My Lord, here is an Information before you againſt theſe Noble Lords, it is a matter of great moment, and tho', I hope in God, there is no great cauſe for it, yet however ſince ſuch Perſons are concerned, and 'tis a matter of ſuch great weight, I hope you will give us ſuch an Imparlance, as if we had this day appeared upon the ordinary Proceſs, which is an Imparlance until the next Term.

L. Ch. Juſt. There is a difference between this and that other Caſe, if my Lords the Biſhops had appeared upon the Summons, they would have had an Imparlance of Courſe; but when they are brought up hither in Cuſtody, that mightily alters the Caſe, but that we may not be too haſty in a thing of this nature, let the Clerk of the Court be conſulted with, that we may know what the true Courſe is.

Mr. Att. Gen. My Lord, we pray Sir *Samuel Aſtry* may be examined a little about it.

Mr. Juſt. Allybone. Mr. *Pollixfen*, I believe the Court is unanimous in their Reſolutions of making nothing new in this Caſe; but pray give me leave to tell you, this is not the firſt time that this Queſtion has come to be agitated in this Court ſince I came hither. Now from whence can the Court take their meaſures to be rightly informed what the Practice of the Court is, but from the Information of the Officers of the Court? who by their conſtant Imployment, are moſt capable of knowing what the Courſe is. Now if you come to offer any thing that may be matter of doubt to the Court, concerning the Practice of the Court, you having known that this thing was controverted before (for ſo it has been) ſhould have provided your ſelf with ſomething that muſt be a reaſonable motive for us to doubt; for this has not been only once, but often moved, and our Officers have been conſulted with concerning this Queſtion, which took its riſe from ſuch Objections as you have made now: Now for you to tell us, That you deſire that we would look into Preſidents, is, methinks, pretty odd; if you had brought us any Precedents, it had been ſomething: And withall I muſt tell you, that you muſt not reckon the favour of the Court in any particular Caſe, to be the ſtanding Rules for the Practice and Courſe of the Court; but inſtead of bringing Precedents, you only offer your own Thoughts, and thoſe would create no doubt in us, but what has been before ſatisfied upon Examination of the Officers of the Court.

Mr. *Pollexfen.* Pray Sir, will you give me leave to anſwer one Word.

Mr. *Juſt. Powell.* Truly I have not obſerved that ever this Point was ſtarted ſo, as to beget a Queſtion ſince I came hither, but only in the Caſes of the *Quo Warranto's*; and truly in that Caſe I thought it hard they ſhould be denied time to plead, eſpecially the Conſequence being ſo fatal.

L. C. J. Yes, yes, Brother, it has been ſeveral times.

Mr. *Juſt. Powell.* Truly, my Lord, I have not obſerved it, nor do I remember it.

Sir *Robert Sawyer.* My Lord, I have always taken the diſtinction, as to theſe Matters, to be this——

Mr. *Juſt. Powel.* But, my Lord, if the ancient Courſe of the Court hath been to grant an Imparlance, and a Copy of the Information before they plead, I ſee no reaſon why my Lords the Biſhops ſhould not have the benefit of that ancient Courſe; for if a Man that is Sued at Law for a Two-penny Treſpaſs, ſhall have that advantage as to receive a Declaration, and have time to plead what he can to it, why ſhould not my Lords the Biſhops in a matter of ſo great weight, have the ſame advantage too? But indeed, if the Courſe of the Court had been anciently otherwiſe, I can ſay nothing to it; for the Courſe of the Court is certainly the Law of the Court.

Mr. *Juſt. Allybone.* Brother *Powell*, you ſay well, if they did produce any one Precedent to give us occaſion to doubt in the matter.

Sir *Robert Sawyer.* Pray, good my Lord, will you give me leave——

Mr. *Att. Gen.* Why, Sir *Robert Sawyer*, will you never have done?

Mr. *Sol. Gen.* No, they are ſo zealous, and eager in this Caſe, that they wont permit either the Court, or any body elſe to ſpeak a word but themſelves.

Mr. *Serj. Pemberton.* Good Mr. *Sollicitor*, give us leave to anſwer the Objection that the Court hath made to us; we would ſatisfie your Lordſhip where the Diſtinction really lieth, where there has been an Opportunity for the party to come in, as by Summons or Subpœna, or the like,

like, and he has ſlipped that opportunity, and ſo the King is delayed, in that Caſe they always uſed to put the Party upon Pleading preſently, when he was taken up upon a *Capias*, and brought in Cuſtody; but when there was never any *Subpœna* taken out (as the Caſe is here,) ſo that the Party never had an opportunity to come in and render himſelf, and appear to Anſwer it according to the due Courſe of Law, an Imparlance was never yet denyed, nor time to Plead; and that is the Caſe here.

Sir *Robert Sawyer.* My Lord, Mr. *Serjeant* has given you the true diſtinction, where Proceſs has gone out to ſummon any one to appear to an Information, and he hath failed to appear according to the Summons, and the Proſecutor for the King takes out a *Capias*, if he be brought in upon that *Capias*, the ancient Courſe has been ſo as they ſay: But for that other matter, where a Man comes in upon a Commitment at the firſt Inſtance, and an Information is put in juſt as this is, the ſame Morning and not before; if they can ſhew any one Precedent of this kind Fifteen Years ago, I would be contented to yield that they are in the right, but I am ſure they are not able to do it: In Sir *Mathew Hales*'s time when this was moved, it was refuſed; and he was clear of another Opinion.

Mr. *Att. Gen.* I hope now my Lord we ſhall be heard a little for the King, and I cannot forbear obſerving in the firſt Place ſomewhat that theſe Gentlemen have offered at, who are now inveighing againſt the heat of the Times, when a great part of that heat, we know who were the Inflamers of; but what is all this to the purpoſe? The Queſtion is barely this, Whether when a Man is brought in Cuſtody into this Court, and charged with an Information, he ſhall not by the courſe of the Court be compelled to plead preſently.

Sir *Robert Sawyer.* To Indictments for Treaſon and Felony, he ſhall be compelled to Plead preſently, but not to an Information for Miſdemeanours.

Mr. *Juſt. Powell.* It ſeems to me very hard he ſhould.

Mr. *Att. Gen.* Sir, there are many things that ſeem hard in Law, but yet when all is done, the Judges cannot alter the Law; 'tis a hard Caſe that that a Man is tryed for his Life for Treaſon or Felony cannot have a Copy of his Indictment, cannot have Council, cannot have his Witneſſes ſworn, but this has been long practiced, and the uſage is grown to a Law, and from time to time it hath been ſo taken for Law, it cannot be altered without a new Law made, as it hath been heretofore, ſo it muſt be now, till a greater Authority alter it; and ſo, as to the Caſe here at preſent, if it were a new Caſe, and it was the firſt Inſtance, I muſt confeſs I think I ſhould not preſs it, but if this be the conſtant practice of the Court, and if theſe Gentlemen that now oppoſe it, ſome of them Miniſterially, ſome of them Judicially, have themſelves Eſtabliſhed this Practice, they have no reaſon to wonder, that we follow them in it; we do not blame them for what they do now, for Men when they are of Council may be permitted to argue for their Client contrary to their former Opinions, but if theſe things by their procurement have been done thus before, ſurely without Offence we may pray the like may be done now. 'Tis our duty on behalf of the King to deſire that he may have Right done him, as well as they on behalf of my Lords the Biſhops, and for the uſage to cite Precedents were endleſs, eſpecially of late times, and theſe Gentlemen know them all very well, for they were ſome of them Parties to them themſelves, and we can do no more, nor need, than to put them in mind of their own doings, whether it was ſo before their time or not, it concerns them to make out and retract their own Errors; but in our Obſervation, if ever this was preſſed or inſiſted upon on the Kings behalf, this courſe has always been purſued.

Sir *Robert Sawyer.* For a Precedent my Lord there is the Caſe of my Lord *Hollis*, where there was given time after time.

Mr. *Sol. Gen.* That was only time to argue the Plea to the Juriſdiction of the Court.

Mr. *Juſt. Powell.* Mr. *Sollicitor*, have you ever known it conteſted, and upon Debate ſo Ruled, in an Information for a Miſdemeanour, as this Caſe is?

Mr. *Sol. Gen.* If you pleaſe to ask Sir *Samuel Aſtry*, he will inform you how the Courſe has been.

L. C. J. What ſay you, Sir *Samuel Aſtry?*

Sir *Samuel Aſtry* My Lord, when I came into this Place, there was an Ancient Gentleman that had been long a Clerk in the Office.

L. C. J. How many Years is it ſince you came into this Office?

Sir *Samuel Aſtry* About a dozen Years, I think, my Lord; and he ſat in this place where Mr. *Harcourt* does now, he was always accounted a Loyal, Honeſt, and Intelligent Man, that is Mr. *Waterhouſe*, who is now alive; and when I came into my Office, I took my Inſtructions in a great meaſure from him, and asked him, what the courſe of the Court was, in ſuch Caſes which I my ſelf did not underſtand; for tho' I had been an Attorney Twenty Years, yet it was on the other ſide, the Civil ſide; and tho' I knew ſome things of my own knowledge, yet I did not ſo well know the whole practice of the Court, and particularly I asked him, what was the courſe of the Court in this Caſe that is now in Queſtion, and he told me, that in all his time and Experience, if a Man appears upon a Recognizance, or was a Perſon in Cuſtody, or appeared in *propria perſona*, as a perſon Priviledged, he ought to plead at the firſt inſtance, and according to that practice, when Sir *Robert Sawyer* was Attorney General it was the conſtant practice, and I am ſure he knows it is no new thing.

Sir *Robert Sawyer.* But upon what Informations, Sir *Samuel Aſtry*, were they Informations upon Miſdemeanours?

Sir *Sam. Aſtry.* Yes, ſeveral.

Sir *Rob. Sawyer.* But was there no Proceſs taken out firſt to call the Party in?

Sir *Sam. Aſtry.* Yes, where Proceſs was never taken out.

Mr. *Att. Gen.* For how long time is that you ſpeak of your own knowledge, Sir *Samuel?*

Sir *Sam. Aſtry.* About a dozen Years.

Mr. *Serj. Pemberton.* It was never done till very lately, but after the Party was in Contempt for not appearing.

Mr. *Sol. Gen.* I would ask you, Sir *Samuel Aſtry*, one Queſtion: Was the uſual Proceſs of *Subpœna* firſt taken out? for Mr. Serjeant *Pemberton* ſays it was, do you find any Warrant for ſuch a difference as that?

Mr. *Serj.*

Mr. *Serj. Pemberton.* Do you find any ſuch Caſe as this is?

Mr. *Sol. Gen.* Nay, pray Mr. *Serjeant*, give us your favour, and let us ask our Queſtions according to your own Doctrine. How do you find the Practice to have been as to that diſtinction they have made?

Sir *Sam. Aſtry.* Sir, I would be very loath to inlarge the Precedents of the Crown Office further than the truth is; I tell you whence I took my Inſtructions, from Mr. *Waterhouſe*, who was an Ancient Clerk in the Office, he has been in that Office Sixty Years, and the Inſtructions I took from him, were, that this was the Practice all his time, and it has been aſſerted all my time; it has been often conteſted, I confeſs, and Mr. *Pollexfen* has always oppoſed it, and moved againſt it, but it has been always ruled againſt him: I know it was againſt his Judgment, but the Court always over-ruled it.

Sir *Rob. Sawyer.* Sir *Samuel Aſtry*, can you give any one Precedent before you came into this Office?

Sir *Sam. Aſtry.* Sir, I can go no farther than this that I have told you, what Information I received from him.

Sir *Robert Sawyer.* What is all this but a Certificate from Mr. *Waterhouſe*?

L. C. J. We can be informed no otherways than by Certificate from the old Clerks of the Office.

Mr. *Serj. Pemberton.* Alas, he is a Child, and not fit to do any thing.

Mr. *Pollexfen.* We all know Mr. *Waterhouſe* very well, he is a very weak Man, and always was ſo, and there is no depending upon any thing that he ſays.

Mr. *Sol. Gen.* Pray, my Lord, will you hear us a little for the King.

The Biſhop of Peterborough *whiſpering with Sir* Robert Sawyer, *Mr.* Sollicitor *ſaid to him, My Lord, you had better look another way, and look towards the Court, for there your buſineſs lies.*

L. C. J. Well Mr. *Sollicitor*, What ſay you?

Mr. *Sol. Gen.* My Lord, it appears plainly, that the King is in poſſeſſion of this Priviledge, and has been ſo for theſe dozen Years, for ſo long the Juſtice of the Kingdom towards all the Subjects, hath run in all the inſtances of it in this Channel; and tho' it hath been conteſted as often as Mr. *Pollexfen* has been of Council for the Defendant, in ſuch Caſes it has always been ruled againſt him; he indeed has made his continual Claims (Sir *Samuel Aſtry* ſays) he has raiſed the Duſt, and made a Hue and Cry, but it has always gone againſt him. And I would ask the reſt of you Gentlemen that are of Council for my Lords the Biſhops, (for ſome, or one of you I am ſure, has been concerned in every Information that has been exhibited in this Court for this nine or ten Years laſt paſt, I would ask you) whether in any Information that you have been concerned in, if the Party being brought in by Proceſs, inſiſted to have time and an Imparlance, it was ever granted him. I know you will not ſay, it ever was; why then ſhould there be more done in this Caſe, than has been done in all other Caſes this ten Years? Tis not ſufficient to make Declarations againſt the unreaſonableneſs of the Practice, for it is but what you have done your ſelves, and inſiſted upon for Law; and all thoſe Men that upon Informations have been compelled to plead, have had Injury done them; or elſe theſe Lords will have no Injury by the Court's taking the ſame Courſe. It is true, my Lords, the Biſhops are Peers, and here are Seven of them, and Seven Lords go a great way; they make a Committee, I think, in the Houſe of Peers, and a mighty matter is made of it, that this is the Caſe of ſo many Lords: But will you alter the courſe of the Court, becauſe Seven of my Lords the Biſhops are concerned in it, and they make a mighty ſtir about the Reaſonableneſs of the thing? How can it be believed that the Law will not give a Man time to make his Defence? They agree themſelves, that if it were in the Caſe of Life and Death, they muſt plead preſently; and doth not the ſame Reaſon hold? and may not an Argument be drawn *à fortiori*, in the Caſe of a Miſdemeanour? If I am not to have time when I plead for my Life, there is leſs Reaſon I ſhould have time to anſwer a Treſpaſs: But, my Lord, 'tis not Reaſon that weighs in the Caſe, 'tis the courſe of the Court, which is the Law of the Court that we are contending for: and what is there in the Caſe that ſhould require ſo much time for my Lords the Biſhops to plead to it? It is charged in the Information, that theſe Noble Prelates did make a Libel which was produced by them, and publiſhed in the Kings preſence, they can eaſily tell whether they have done this, or not done it: what can they plead, but the general Iſſue? They talk of ſpecial matter to be pleaded, but can they ſhew any more that they can ſay, than what any poor ordinary Country-man, if he were here to plead to an Information, could ſay? that is, whether he was Guilty or not Guilty. Theſe Lords can tell whether it be true, that they did publiſh the Paper laid in the Information, and then your Lordſhip will tell them what will be the Conſequences of that Publication in point of Law. We ſay all this was done at *Weſtminſter*, there the Scene is laid, and it is not an Information for an old ſtale thing done a great while ago, but a thing that was done Yeſterday, and a thing notorious enough, their conteſting with the King about his Declaration of Indulgence. And as to what Mr. *Finch* has ſaid, That this is a Novel Invention, and a Trick to rob a Man of his juſt Defence; ſure he forgets who it is that taught us the Trick, if it be a Trick, we have learnt it from thoſe that trick'd before us; and what is it that theſe Lords do deſire? they would have an Imparlance till *Michaelmas* Term: does or can your Lordſhip think they ask that which is reaſonable? to have ſix Months time to plead not Guilty to an Information for a Libel; and when ſo many Men have been denied it formerly upon the inſtigation of thoſe very Gentlemen, that now preſs ſo very hard to have it granted; ſure they muſt expect to be denyed it too; and all this while theſe Lords lye under this Accuſation, which is not ſo trivial a matter as ſome would make it, I believe my Lords the Biſhops have a deſire to be cleared, I ſuppoſe it is only their Council that deſire to delay it, upon what ground I know not, I believe they themſelves would be glad to remove the Imputation, which would be beſt done by a Tryal, and the ſooner the better: If they have a mind to juſtifie themſelves, that is the readieſt courſe for it, and they may do it preſently, by Pleading Not Guilty; My Lord, I know I am in a great Auditory, and abundance of your

Lord-

Lordſhips time has been taken up already, I preſs it therefore for the ſake of the King, and for the ſake of my Lords the Biſhops, we ſhall elſe have all hang in ſuſpence, and hang in the Air for ſix Months longer, therefore let the matter be put upon a fair Iſſue, ſo as it may come to a ſpeedy Determination; I am ſure if theſe Lords be Innocent to Day, they will be Innocent to Morrow, and if it were my own Caſe, I would deſire to have it Tryed as ſpeedily as I could, and therefore I pray they may plead immediately.

Mr. *J. Powel.* Mr. *Sollicitor*, what do you ſay to the Difference that was taken between a Perſon that was brought in Cuſtody at the firſt inſtance where there is no contempt to the Proceſs of the Court, and one that comes here by *Capias*, upon default of appearing at the Summons?

Mr. *Finch.* My Lord, If I apprehend them aright, they give us more than we did ask, for Mr. *Sollicitor* has laid it down as a Rule, that if a Man is taken upon a *Capias* in a Mean Proceſs, he ſhall have no Imparlance.

Mr. *Sol. Gen.* No, you are greatly miſtaken, Sir, and I pray don't lay down Rules for me.

Mr. *Finch.* If I am Sir, I beg your pardon, but this I am ſure of, if a *Venire Fac* goes out, which is in the nature of a *Subpœna*, and the party appear to it, that being the firſt time he could come into Court, you cannot force him to plead to an Information, but he has an Imparlance of Courſe.

Mr. *J. Powell.* Methinks it ſeems very reaſonable, that this forcing a Man to plead preſently ſhould be only a puniſhment for a Contempt of the Court, and pray, were my Lords the Biſhops in contempt to the Court when they came here to Day? Certainly they were not, for no Man is in contempt, but he that being ſerved with Proceſs, diſobeys that Proceſs, and if my Lords the Biſhops had been ſerved with a *Subpœna* and had not appeared, then there would have gone out a *Capias* to bring them in, and then they would have come in upon a Contempt, and then they would have come within the Rule.

Mr. *Sol. Gen.* If you have a mind to it, you may ask Sir *Samuel Aſtry* again.

Mr. *Att. Gen.* If they come in upon Bail, they ought to plead preſently.

Mr. *J. Allybone.* Mr. *Finch*, I'll tell you what ſticks with me, truly you could not but be aware that this would be required of you; for this very thing was in debate laſt Term, and you know what Rules the Officer ſaid was the Courſe of the Court, why did you not therefore come prepared with ſome Preſidents, to ſhew us what the courſe of the Court is?

Mr. *Att. Gen.* Truly my Lord, at this rate, we ſhall keep your Lordſhip here all this Afternoon, if theſe Gentlemen will not be ſatisfied with the Rule of the Court; and for an Anſwer to what Mr. Juſtice *Powel* ſays, if any Riot be committed in the Countrey, and the Parties are bound by Recognizance to appear here, that is no proceſs of this Court, and ſo conſequently there can be no contempt, and yet they muſt plead preſently.

Mr. *J. Powell.* There is a particular reaſon for that, becauſe they are bound by Recognizance, Sir *Samuel Aſtry* and others ſay, that if they come in by Recognizance they muſt plead preſently.

Mr. *Sol. Gen.* But for the thing it ſelf, (that the people that hear us may not imagine that this Court puts a hardſhip upon my Lords the Biſhops, more than is done in other Caſes) it is beſt to keep the ſame Rule as in all other Caſes; for when all is done, when Juſtice goes with an equal Current, without any regard to one Perſon or other, then every body is ſafe, and all perſons concerned do their Duty; ſo in this caſe, here be no Preſidents produced, wherein it has been otherwiſe, then can no perſon complain but that things go in this Caſe, as they do in all other Caſes; perhaps ſuch a Caſe (as to the Fact of it) never hapned before, but for the Law of it, that is plain, and the ſame is in all other Caſes; for that there may be an Information againſt my Lords the Biſhops, as well as other People, if they make Libels, ſure it is no doubt at all; and if an Information lies againſt them for it, they are under the ſame Rules as others are: but theſe Gentlemen talk of being ſurprized, and that this is the firſt time they have heard of this Information, but have we told any News in this Information? Was not all that is contained in it, notoriouſly enough known before? Was not the Kings firſt Declaration very well known? Was not his ſecond Declaration very well known? Was not his Order of Council for Reading of the Declaration very well known? Is not your own Petition a thing very well known to your ſelves and all the World? Then theſe being the particular Facts, of which this Information is made up, and we only ſay you did this Fact, and we ask you, did you do it, or did you not? Can there be any great ſurprize in this? My Lord, I cannot ſee any thing that alters this from the common Caſe, but only their being Peers, and ſince this queſtion has been heretofore under conteſt, theſe Gentlemen have had time enough to have prepared Precedents, to differ this from the common Rule, if they could; but ſince they cannot, we deſire they may have the ſame Rule, that is in all other Caſes, and then to be ſure, all will go right.

L. C. J. Sir *Samuel Aſtry*, pray will you tell us, whether ever the Court uſed to grant an Imparlance where a Perſon comes in in Cuſtody; or did you ever know, when a Perſon comes in upon a Commitment, time was given him to Plead?

Mr. *Serj. Pemberton.* Have you ever known it diſputed, and denyed?

Sir *Sam. Aſtry.* My Lord, I have known that 'tis in the diſcretion of the Court to grant what time they pleaſe.

L. C. J. Is it the courſe of the Court to give an Imparlance?

Sir *Sam. Aſtry.* No, 'tis the favour of the Court, and if the Defendants have at any time ſhewed a reaſonable Cauſe, that they have a ſpecial Matter to plead, or any other cauſe allowed by the Court, the Court has ſometimes Indulged them ſo far, as to give them time.

L. C. J. But how is the ordinary courſe, Sir *Samuel Aſtry*?

Mr. *Juſt. Allybone.* Ay, for as I ſaid before, things done in particular Caſes in favour, are not Precedents.

Sir *Sam. Aſtry.* I have told your Lordſhip the Courſe is this, that any Perſon that appears upon a Recognizance, or is taken up by your Lordſhips Warrant, or by a Warrant from a Juſtice

Juſtice of Peace, or any other way in Cuſtody, or any Officer of the Court that is a privileged Perſon, and that muſt appear *in propria perſonâ*, muſt plead preſently; if the Court upon particular Reaſons do not give him time; and this I received Information of, as the practice of the Court, from Mr. *Waterhouſe*, who had been a Clerk in the Office ſixty Years.

Mr. *Soll. Gen.* He ſaid ſo before, but theſe Gentlemen will never be contented, unleſs they have a new Law made for them.

Mr. *Pollixfen.* My Lord, I would not unneceſſarily trouble your Lordſhip; but truly this is a Caſe of great Concern. And firſt of all, I think we ſhall all agree, that what has been uſed for ten or twelve Years paſt will not make the courſe of the Court, and next I perceive they do not bring any one inſtance for any proceeding of this ſort above ten or twelve Years old, but then (ſay they) on the other ſide, Why do not you bring Preſidents, that it has gone otherwiſe heretofore? My Lord, that cannot be done, for it is a Negative on our ſide, that this which they deſire is not the Courſe of the Court; but then (as it is impoſſible) to prove a Negative, ſo the Proofs ſhould come on the other ſide, that this has been done: they ought to ſhew it, if there has been any ſuch thing as a ſtanding Rule, or elſe it ſhall be preſumed an Innovation, as being contrary to all Reaſon; But my Lord, becauſe they put it upon us, there is this Proof on our ſide, as much as a Negative can afford: In thoſe Proceedings, that were in the great Caſe of the *Habeas Corpus*, there was an Information againſt *Elliot* and others, they had time given them to plead over and over, ſo that there is one Precedent: And as many of theſe Caſes in former times as can be found, will ſhew that this was always the courſe; but pray (ſay they) produce us one inſtance, that ever there was a Man that came in upon a Recognizance, that had time to plead; truly my Lord, I cannot juſt now tell whether any ſuch inſtance can be produced, but I verily believe there may be a great many, but I turn it upon them, and that with great Reaſon, with Submiſſion to your Lordſhip, Shew me any Man (if you can) above a dozen Years ago, that had not time allowed him to plead; Ay but (ſay they) Mr. *Waterhouſe* an ancient Clerk of the Crown Office, that has been there theſe ſixty Years, hath certified that this hath been the practice of all his time: My Lord, we that have been Converſant in the buſineſs of this Court, did all very well know Mr. *Waterhouſe* when he was here, and ſat in Court in the place of Sir *Samuel Aſtry*.

Sir *S. Aſtry.* No, Sir, it was in Mr. *Harcourt*'s place.

Mr. *Pollixfen.* Well, he executed a place here, and 'tis no matter whether he were Maſter of the Office or no; but I think we all knew him very well, he was a Man as lame in his Buſineſs as could be, for there are ſome Men that will never do buſineſs well, let them be never ſo long at it; and he was as weak in the practice of the Court, and every thing elſe, as 'tis poſſible for one that has been bred in an Office can be; and at this time he is grown ſo decrepit and ſuperannuated, that you may as well depend upon the Certificate of an old Woman, as any thing that he ſhall ſay in ſuch a Matter as this; he is now almoſt fourſcore years of Age, and has loſt that little Memory and Underſtanding he had, but if his Certificate muſt be depended upon, becauſe of his ſtanding in the Office; pray my Lord, let him come hither, and do you ask him what he has to ſay in this Matter.

Mr. *Soll. Gen.* Aye, that is very well indeed.

Mr. *Pollixfen.* Good *Mr. Sollicitor* ſpare us, certainly there needs not ſuch great haſt in this Matter, we are upon a buſineſs of very great Weight and Concernment, for you are now making a Law for the whole Kingdom in point of Practice, in Caſes of this Nature. We do ſay indeed, that by the Reaſon of the Heat and Zeal of theſe laſt ten years, ſuch a Uſage has been introduced, but Sir *Samuel Aſtry* tells you, it was oppoſed, and I hope that neither I, nor the thing will be the worſe thought of, becauſe I oppoſed what I thought an unreaſonable and new Invention; my Lord, I know in the Caſe of the City of *London*, we had time to plead a whole Vacation after an Imparlance, and were not at all hurried on, as the King's Council would do in this Caſe; my Lord, if they can produce any ancient Precedent for it, I will ſay no more, but there is no Caſe in Print in any of our Books that ever I read or can remember, that countenances ſuch an Opinion; a Man by this means may loſe his juſt Defence, and he has no Remedy, nor will it ever be in his Power to retrieve it, for he may be brought on a ſudden into Court upon a Warrant, and when he is here he ſhall be charged with an Information, and preſently he muſt plead not Guilty, becauſe he has not time to prepare a Plea of any other Nature, let him have never ſo much other ſpecial Matter, or occaſion for it; if you pleaſe to let this Matter be examined what the Precedents are, and what Age thoſe Precedents are, then perhaps your Lordſhip will get ſome Satisfaction; but otherwiſe, if the bare Certificate of the Maſter of the Office is to be a Guide to the Court what is Law, and what is not, we ſhall be in a very uncertain Condition, eſpecially when the Matter carries in the very face of it, a great deal of Unreaſonableneſs and Injuſtice. They on the other ſide will argue that is not more unreaſonable than the practice in the Caſe of Treaſon and Felony, where Perſons are compelled to plead inſtantly. But under favour my Lord, there is no Compariſon between this Caſe and that, though I know it was always thought a hardſhip and defect in our Law, that a perſon ſhould be denied time to plead in Caſe of Life and Death, except he can ſhew ſome ſpecial Matter of Law that he has to plead, and then he has always time allowed him to put it into Form; and I could never think there was any Reaſon to be given for it, but becauſe the common Defences of Felons would be little Shifts and Arts, which would deſtroy Proceedings, and make them tedious, and that would be an Encouragement to People to commit Felony; and beſide there is a Truſt which the Law repoſes in the Court in Capital Caſes, to take care that theſe Men ſhould not ſuffer upon any little Tricks in Law; but if you come below Treaſon and Felony, the Law puts no ſuch hardſhip upon the Defendant, nor repoſes ſuch a ſpecial Truſt in the Court; but a Man may plead any thing he has to plead; and can any Man plead before he ſees what he is to plead to? and ſhall the Law allow him Council to prepare his Plea, and not allow him time to conſult with that Council about it? Theſe are things

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my Lord, that truly to me ſeem unreaſonable: But as to the Practice and courſe of the Court, I pray your Lordſhip to give Order, that the Precedents may be ſearched, that you may know what the ancient Practice was.

Mr. *Finch.* Whether you will grant an Imparlance now or no, yet I hope however, you will think fit to give my Lords the Biſhops time to plead.

L. C. J. But Mr. *Finch*, we have had a Certificate from Sir *Samuel Aſtry*, which truly weighs a great deal with me, he tells you the Practice has been ſo ever ſince he came here, and that Mr. *Waterhouſe* told him, that it had been ſo all his time, which is ſixty Years.

Mr. *Pollixfen.* My Lord, there are Perſons here that will upon their Oaths declare, That Mr. *Waterhouſe* has often told them the Practice was otherwiſe; even in his time, and afterwards a long time before this new way of Proceeding came in.

Mr. *Ince.* My Lord, if I might have liberty to ſpeak, I can ſay Mr. *Waterhouſe* has told me.

L. C. J. Pray be quiet Mr. *Ince.*

Mr. *Juſt. Allybone.* But pray Mr. *Pollixfen* give me leave to mind you, how the Evidence ſtands againſt you, the Objections are, that this has been a Practice but for twelve years laſt paſt: if that be true, I think it goes a great way, for the Practice of twelve years is Precedent enough, *Primâ Facie*, that ſuch is the practice, for how ſhall we come to the Knowledge of the practice, but from our Officer Sir *Samuel Aſtry*, who has been here examined? and he tells you, that upon his coming into the Office, when it could not be ſo doubtful as now (it ſeems) it is, he took Inſtructions from Mr. *Waterhouſe*; I allow you 'tis but his Certificate, but that muſt go a great way with the Court.

Sir *Robert Sawyer.* Such a practice as this has been always very rare in Informations for Miſdemeanours; and they bring you nothing of any Precedent older than Sir *Samuel Aſtry*'s time.

Mr. *Finch.* Pray my Lord, give me leave to vary the Queſtion, I do not now make it a Queſtion, whether your Lordſhips ſhould grant my Lords the Biſhops an Imparlance, but whether you would think fit to look into the courſe of the Court before that time, that Sir *Samuel Aſtry* ſpeaks of, and take time to conſider, and ſearch into Precedents.

Mr. *Juſt. Allybone.* Do you Mr. *Finch* give us any one Reaſon or Precedent, that may make us doubt, whether this be the courſe of the Court or no? And you could not but be aware of this before, and therefore ſhould have come prepared to make out your Objection.

Mr. *Finch.* Mr. *Pollixfen* and the reſt of the Practicers in my Lord *Hales*'s time will tell you, that the courſe was otherwiſe in his time; Sir *Samuel Aſtry* indeed tells you, it has been ſo ſince his time; but this was one of the Points (it ſeems) that he was ignorant of, which made him inquire of Mr. *Waterhouſe*, ſo doubtful was this Practice.

Sir *Samuel Aſtry.* I was an Attender upon this Court before I came into this Office, but it was in another place on the other ſide of the Court; and therefore was not concerned ſo much to know what was the courſe on this ſide, till I came into this Office.

Mr. *Soll. Gen.* Theſe Gentlemen differ among themſelves, one would have an Imparlance, the other only time to plead, I believe truly they cannot tell well what they would have, I pray the Rules of the Court may be kept to.

Sir *Sam. Aſtry.* Here are two Clerks that ſit by me, that have been a long time in the Office, Mr. *Harcourt* my Secondary, and the Clerk of the Rules; I pray they may be asked their Knowledge of this matter.

Mr. *Att. Gen.* Certainly theſe Gentlemen think they have a Privilege above all other People, that they muſt not be ſubject to the ſame Rules as others are, we on our parts have taken all the Methods that we could to make this matter manifeſt, and what is it that theſe Gentlemen now propoſe? They pray you to take time to conſider, but have they uſed the right means of creating a jealouſie or ſuſpicion in the Court, that the courſe is otherwiſe, they can give no inſtance of it, and all they ſay is, 'tis a Negative, that this is not the courſe of the Court, but the Imparlance that they beg is in the Affirmative, ſurely that they can find proof of, if it be ſo: As for my Lord *Hollis*'s Caſe, that is with us, and not againſt us; let Mr. *Pollixfen* ſhew that ever any one of the Men that were brought into Court in Cuſtody either had time to plead, or an Imparlance.

L. C. J. Sir *Samuel Aſtry* ſays he has given you his Opinion, and here are two other Clerks of the Office that he refers himſelf to, are you willing that they ſhould be asked?

Mr. *S. Pemberton.* Yes my Lord, with all our hearts.

L. C. J. Mr. *Harcourt*, How long have you been a Clerk in the Crown-Office?

Mr. *Harcourt.* About ſeventeen or eighteen Years, my Lord.

L. C. J. How long have you known the practice of the Court in this matter, and what is it?

Mr. *Harcourt.* I cannot charge my ſelf ſo with Particulars from the time of my coming into the Office, but for theſe ten or twelve Years paſt (I remember) it has been as the King's Council preſſed, and as Sir *Samuel Aſtry* has declared.

L. C. J. What ſay you, Mr. *Sillyard*, how long have you known the Crown Office?

Mr. *Sillyard.* I have been a Clerk here about thirty Years.

L. C. J. Well, and how has the practice been all your time?

Mr. *Sillyard.* I have not ſat here as Clerk of the Rules but a little while, but ſince I have ſat here, I have always obſerved it to be the Practice, that one that comes in Cuſtody ſhould plead immediately, it was a thing heretofore that did not ſo often happen, as it hath done here of late, therefore I cannot ſo well ſpeak to it; but it hath fallen out frequently within ſome Years laſt paſt, and that hath been the conſtant courſe.

Sir *Samuel Aſtry.* When you firſt came to be Attorney General, Sir *Robert Sawyer*, I am ſure it was ſo.

Mr. *Att. Gen.* Pray let me ask you Mr. *Sillyard*, you ſay, you have known the Office thirty Years, when you firſt came to the Office, were Informations as frequent as they are now, and have been of late?

Mr. *Sol. Gen.* It was ſo in the Caſe of Mr. *Hampden*, when you were Attorney General, Sir *Robert Sawyer*, he was forced to plead immediately to an Indictment, for a Crime that perhaps you will ſay was near upon Treaſon.

Sir *Rob.*

Sir *Rob. Sawyer.* Yes truly, it wanted but one Witneſs, that was all.

Mr. *Sol. Gen.* But yet the Indictment was only for a Miſdemeanour, and there we ſtrugled and debated the Matter, but were forced to give it over, becauſe the courſe of the Court was againſt us, ſo it has been by the unqueſtionable Teſtimony of Sir *Samuel Aſtry* for theſe twelve Years laſt paſt, and in thoſe twelve Years we have had many changes, perhaps there may have been twelve Chief Juſtices, and they have all affirmed it, and if I then make it out, that in all theſe Judges times that are within our Remembrance it has gone thus, then there are enough Precedents in the Matter.

Sir *Rob. Sawyer.* But my Lord, I deſire to know, whether that were the ancient Courſe, Mr. Sollicitor?

Mr. *Sol. Gen.* They that make the Objection ought to prove it; but I will name Sir *Rob. Sawyer* another Caſe, and that is the Caſe of Sir *Samuel Barnardiſton*, which was the Caſe of a Libel too, he was forced to plead immediately, and it coſt him 10000 *l.* Fine.

L. C. J. Well, Gentlemen, have you done on either ſide?

Mr. *Serj. Pemberton.* If your Lordſhip will pleaſe to give us time till to morrow Morning, we will come hither by Rule of Court, and bring you ſome Certificates and Affidavits, or elſe ſome Precedents that we hope will ſatisfie your Lordſhip in this Matter.

L. C. J. No Brother, we cannot do that, the Queſtion is what the Courſe of the Court is, we have an account of that from Sir *Samuel Aſtry*, for twelve Years of his own Knowledge, and from Mr. *Waterhouſe* by him for ſixty Years; but for Mr. *Waterhouſe* they except againſt him, and ſay he was a Perſon that was always lazy and did not ſo well underſtand his Buſineſs, and now is ſuperannuated, that is ſaid, but is but *gratis dictum*, perhaps it may be ſo, perhaps not; and they have offered to Examine Mr. *Ince* about ſome Opinion that he has had from this Mr. *Waterhouſe*; it may be he may have asked him ſome Queſtion that may lead to it, and he may have given ſome ſlight Anſwer, but then here are theſe two Perſons Mr. *Harcourt*, and Mr. *Sillyard*, and the one has been a Clerk theſe ſixteen or ſeventeen Years, and the other has known the Office thirty Years; though there were not heretofore ſo many Informations of this nature and kind as now of late, but ſtill they ſay, that a Perſon that comes in upon a Commitment, or a Recognizance, ſhall never have any Imparlance.

Mr. *Sol. Gen.* Can they give any one Inſtance that has any the leaſt ſhadow to the contrary?

Mr. *Pollixfen.* My Lord, if we had time, we hope we ſhould be able to ſatisfie you in this Matter.

Mr. *Sol. Gen.* You have had time enough to prepare your ſelves for this Queſtion, if you had thought you could do any good in it.

L. C. J. Would the courſe of the Court be otherwiſe to Morrow than it is to Day, we have taken all the Care we can to be ſatisfied in this Matter, and we will take care that the Lords the Biſhops ſhall have all Juſtice done them, nay, they ſhall have all the Favour by my conſent that can be ſhewn them, without doing wrong to my Maſter the *King*, but truly I cannot depart from the courſe of the Court in this Matter, if the King's Council preſs it.

Mr. *Att. Gen.* My Lord, we muſt pray your Judgment in it, and your Direction, that they may plead.

L. C. J. Truly I think they muſt Plead to the Information.

Mr. *Att. Gen.* Sir *Samuel Aſtry*, pray ask my Lords whether they be Guilty or Not Guilty.

Then his Grace the Lord Archbiſhop of Canterbury *ſtood up, and offered a Paper to the Court.*

Archbiſh. of Cant. My Lord, I tender here a ſhort Plea, (a very ſhort one,) on behalf of my ſelf and my Brethren the other Defendants; and I humbly deſire the Court will admit of this Plea.

L. C. J. If it pleaſe your Grace, it ſhould have been in Parchment.

Mr. *Sol. Gen.* What is that my Lord offers to the Court?

L. C. J. We will ſee what it is preſently, Mr. Sollicitor.

Biſh. of Peter. I pray, my Lord, that the Plea may be read.

Mr. *Sol. Gen.* But not received.

Mr. *Att. Gen.* No, we deſire to know what it is firſt.

Sir *Rob. Sawyer.* Mr. Attorney, if they will plead, the Court ſure is obliged to receive it.

L. C. J. If it is a Plea, your Grace will ſtand by it.

L. Archbiſh. of Cant. We will all ſtand by it, my Lord, it is ſubſcribed by our Council, and we pray it may be admitted by the Court.

Mr. *Serj. Pemberton.* I hope the Court will not deny to receive a ſpecial Plea, if we offer one.

L. C. J. Brother, let us hear what it is?

Mr. *Sol. Gen.* Read it if you pleaſe, but not receive it.

Clerk Reads the Plea; which in Engliſh is thus:

The Biſhops PLEA.

AND the aforeſaid William *Archbiſhop of* Canterbury, William *Biſhop of St.* Aſaph, Francis *Biſhop of* Ely, John *Biſhop of* Chicheſter, Thomas *Biſhop of* Bath *and* Wells, Thomas *Biſhop of* Peterburgh, *and* Jonathan *Biſhop of* Briſtol, *being preſent here in Court in their own Perſons, pray Oyer of the Information aforeſaid; and it is Read to them, which being Read and heard by them the ſaid Archbiſhop, and Biſhops: The ſaid Archbiſhop and Biſhops ſay, that they are Peers of this Kingdom of* England, *and Lords of Parliament, and each of them is one of the Peers of this Kingdom of* England, *and a Lord of the Parliament, and that they being (as before is manifeſt) Peers of this Kingdom of* England, *and Lords of Parliament, ought not to be compelled to anſwer inſtantly for the Miſdemeanour aforeſaid, mentioned in the ſaid Information exhibited here againſt them in this Court; but they ought to be required to appear by due Proceſs in Law iſſuing out of this Court here upon the Information aforeſaid, and upon their Appearance to have a Copy of the ſaid Information exhibited againſt them, and reaſonable time to imparl thereupon, and to adviſe with Council Learned in the Law, concerning their Defence in that behalf, before they be compelled to anſwer the ſaid Information;* Whereupon, *for that the ſaid Archbiſhop, and Biſhops were Impriſoned, and by Writ of our Lord the King, of* Habeas Corpus, *directed to the Lieutenant of the Tower of* London, *are now brought here*

in Cuſtody, without any Proceſs upon the Information aforeſaid iſſued againſt them, and without having any Copy of the ſaid Information, or any time given them to imparl, or be adviſed; They pray Judgment, *and the Priviledge of Peers of this Kingdom, in this Caſe to be allowed them; and that They the ſaid Archbiſhop, and Biſhops, may not be compelled inſtantly to anſwer the Information aforeſaid,* &c.

Rob. Sawyer.
Hen. Finch.
Hen. Pollixfen.

Mr. Att. Gen. My Lord, with your Lordſhip's favour, this, in an ordinary Perſon's Caſe, would perhaps be thought not fair dealing, or that which (it being in the Caſe of theſe Reverend Prelates) I ſhall not now name; to make all this Debate and Stir in a Point of this nature, to take the Judgement of the Court after three or four hours arguing, and when the Opinion of the Court has been delivered, then to put in a Plea to the Juriſdiction of the Court,——

Sir Rob. Sawyer, It is no ſuch Plea.

Mr. Att. Gen. It is ſo in effect, but certainly it is ſuch an Irregularity, and ſuch an unfair way of Proceeding, as would not be endured in an ordinary Caſe, and I hope you will give ſo little countenance to it, as to reject it, and make them plead according to the uſual courſe and way of proceedings; certainly a Plea of this nature, after ſo long an Argument, would be reckoned nothing but a trick.

Mr. Serj. Pemb. We hope the Court and you are not of one mind Mr. *Attorney* in this matter, we deſire the Court to receive the Plea.

Mr. Att. Gen. With ſubmiſſion, the Court is not bound to receive Pleas, that are put in purely for delay, as this is; for the Judgment of the Court has been already given in the very matter of this Plea; and for rejecting a Plea, it is done every day, if a Man puts in a mere trifling dilatory Plea, the Court may reject it; Does this Plea contain any thing in it, but what has been argued and debated *pro & con* and ſetled by the Court already? If they will put in any Plea in chief they may, but ſuch a Plea as this, I hope ſhall not have ſo much countenance, as to be receiv'd by the Court.

Mr. Pollixfen. Do you Demur to it, if you pleaſe *Mr. Attorney,* we will joyn in Demurrer with you.

Mr. Att. Gen. No, there will be no need of that.

Mr. Sol. Gen. Surely the Court will never give ſo much Countenance to it, as to receive it.

Mr. Finch. If you will pleaſe either to Reply or Demur, *Mr. Sollicitor,* we are here to maintain the Plea.

Mr. Soll. Gen. If you were here you would ſay the ſame thing that we do; My Lord, this Plea is, That my Lords the Biſhops are not bound to Plead inſtantly; ſo that 'tis not a Queſtion, Whether they ought to Anſwer, or not to Anſwer, but whether they ought to Anſwer immediately, and what do they ſay more? They would have an Imparlance, and time to conſult with their Council what they ſhall Plead, which is all but one and the ſame thing; and what is the reaſon they give for this? They induce it thus, Theſe Noble Perſons are Peers of the Realm, and ſo ought not to be compelled to Plead immediately; this, if I miſtake not, is the ſum of their Plea. Now pray my Lord, what ſort of Plea is this? It is not a Plea to the Juriſdiction of the Court, tho it do in a ſort decline the Juſtice of the Court? Is it a Plea in Abatement? No, it is not, for it is only to gain time, and do they now offer any thing more for themſelves, than what was ſaid by their Council before? Only, That we are Peers of the Realm, and that ſuch is the Priviledge of Peers, that they ought to have an Imparlance, and time to Plead, and that they ought not to anſwer preſently: My Lord, this Matter hath been long agitated in the Court already, your Lordſhip, and the Court have given your Judgments, and we know your Lordſhip, and the Court will not admit of Tricks to delay the Kings Cauſes, we all know the Term is a ſhort Term, and what I ſaid in the beginning upon this matter, I ſay again, it is the Intereſt, and for the Honour of my Lords the Biſhops (if they underſtand their own Intereſt, and value their Honour) to have this Cauſe tryed as ſoon as may be; but this trifling and tricking is only for delay: For what iſſue can be taken upon this Plea? Certainly none; And if we ſhould Demurr, what will be the end of that? But only to get time to ſlip over the Term. If there were any thing worth the conſidering in this Plea, and that had not been already debated and ſetled, then it might concern us to give ſome Anſwer to it; but we have ſpent three hours (by my Watch) in the Diſpute, and the Matter having been over-ruled alreay, it is time to have an end of it; ſure the Court will never be ſo treated by theſe Perſons, that are of Council for my Lords the Biſhops, for it cannot be thought that my Lords the Biſhops do it of themſelves; and whether the Court will be ſo ſerved, we ſubmit to your Lordſhip. Certainly you will not receive ſuch a Plea as this, eſpecially it being in Paper, you will never countenance ſuch a Practice ſo far as to give theſe Lords time to trifle with the Court; if any ſuch thing as a Plea be tender'd to the Court, it ought to be in Parchment, and if they would have an Imparlance, there ought to have been an entry of a *Petit Licentiam interloquendi* upon the Roll, but not ſuch a Plea as this, for this in effect is no more than deſiring an Imparlance, which if it be granted of courſe, upon ſuch a Prayer entred upon the Roll, you take it of courſe; but if it be not of courſe, you cannot come in by way of Plea, it muſt be by ſuggeſtion upon the Roll, and a *Conceditur* entred, if this be admitted as a Precedent, every Man hereafter that comes in upon any Information, will take advantage of it, and plead ſuch a Plea as this, and if you grant an Imparlance in this Caſe upon this Plea, you muſt grant an Imparlance in every Caſe; certainly the Law is not to be altered, the Methods of Proceedings ought to be the ſame in every Caſe: And I hope you will not make a particular Rule in the Caſe of my Lords the Biſhops, without a ſpecial Reaſon for it.

Mr. Serj. Pemb We put in this Plea, my Lord, and are ready to abide by it, and we ſay, that according to the courſe of the Court, it ought to be received.

Mr. Att. Gen. No, but good Mr. *Serjeant,* 'tis in the diſcretion of the Court, whether they will receive it or not, for the matter has been in debate already, and has receiv'd a determination, the Court has over-ruled them in this very Point already, and there is no more in this Plea, than was in the Argument before, and therefore it ought to be rejected as a frivolous Plea.

Mr. Soll. Gen. Here is a Plea offered in Writing, and

and in Paper, the Court ſees what it is, and I hope you will give no countenance to it.

Mr. Pollexfen. I do hope my Lord, you will not judge this as a frivolous Plea, I think our Caſe is ſuch, that you will not do that, if you think fit you may over-rule it, but I hope you will not refuſe it.

Mr. Sol. Gen. The Court will certainly reject a frivolous Plea, and they may do it.

Mr. Pollexfen. But Mr. *Sollicitor*, I hope the Court will conſider of it, whether it be a frivolous Plea or not. It is true, there has been a Debate about the courſe of the Court, and there has been an Examination of the Clerk of the Office, and the Court has gone upon his Certificate, but yet ſtill perhaps it may remain in doubt, and it being a Queſtion of ſuch a conſequence as this, it may very well deſerve the Court's Conſideration; there never was a Judicial Settlement of it (that I know of yet) nor do I know any way of having it ſatisfactorily ſetled, but by the Judgment of the Court entred upon Record; here we offer a Plea that contains the matter in debate, and this Plea will appear upon Record, and if upon conſideration of the Plea your Lordſhip ſhall think fit to over-rule it, and be of Opinion againſt the Plea, then will you by your Reſolution in a Judicial way, ſettle the Queſtion that has hitherto been in Controverſy.

L. C. J. Mr. *Pollexfen*, I would ask you whether the Council have dealt ingenuouſly with the Court or no in this matter; after four Hours debate, and the Opinion of the Court delivered, to come and ſum up all the Arguments in ſuch a Plea as this, and ſo put us upon debating it over again.

Mr. *Pollexfen.* My Lord, certainly this has been done before, without Offence; after we had moved for a thing which was denied upon Motion, it is no ſuch great diſreſpect to the Court (with ſubmiſſion) to put the ſame Matter into a Plea, for the Judicial Opinion of the Court.

Sir *Robert Sawyer.* That without all Queſtion has been done a great many times.

Mr. *Sol. Gen.* How many times have you been accuſed of playing Tricks, Sir *Robert Sawyer*?

Sir *Robert Sawyer.* Not ſo many as you, Mr. *Sollicitor*.

Mr. *Sol. Gen.* I don't ask it as if I queſtioned it, for I aſſure you I don't doubt it of your part at all.

L. C. J. Pray Gentlemen don't fall out with one another at the Bar, we have had time enough ſpent already.

Mr. *Pollexfen.* Truly, My Lord, I would not trick with the Court in any Caſe, nor on the other ſide would I be wanting to Adviſe and do for my Client, what I am able and lawfully may; we have laboured all we could to get time for my Lords the Biſhops to Imparle to this Information, and we have been the more earneſt in it, becauſe it concerns us, who attend this Bar, to take what Care we can, that the Courſe of the Court may be obſerved; but as for this matter, we ſuppoſe this Practice of the Court is not in Law a good Practice; Now what way in the World has any Man to bring this ſo in queſtion, as to have a Judicial Reſolution of the Court about it, but by ſuch a Plea? We take it, that it is uſual and legal for us to have an Imparlance, and a Man would Imparle, but the Court upon Motion refuſed to give him an Imparlance; Is it not (think you) very fit for the Party to have this Judicially entered upon Record? where all this Matter will appear, and the Party may be relieved by Writ of Error, if the Judgment of the Court ſhould be wrong; but truly I cannot ſee how the Court can refuſe the Plea, for if ſo be a Plea be pleaded, they have their liberty to Anſwer it on the other ſide by a Replication, or elſe to Demur, and the Judgment of the Court may be had upon it one way or other, but the Court will never go about to hinder any Man from pleading where he may plead by Law; here is a Plea put in, and the Court ſure will take no notice what is the Matter of the Plea, till the other party have either replied or demurred; the ſame thing may happen in any other Plea that is pleaded, and the Party will be without Remedy upon a Writ of Error, becauſe the Plea being rejected, there does nothing appear upon Record; truly for the Court to reject and refuſe the Plea, would be as hard as the refuſing of the Imparlance, and we know no way we have to help our ſelves.

Mr. *Sol. Gen.* You might have entered your Suggeſtion for an Imparlance upon the Roll, and then it would have appeared upon Record, and if the Court had unjuſtly denied it you, you would have had the benefit of that Suggeſtion elſewhere: Truly, My Lord, I think if any thing be tricking, this is, for it is plainly ill pleading.

Mr. *Finch.* Then pray demur to it.

Mr. *Sol. Gen.* No Sir, 'tis Fencing with the Court, and that the Court won't ſuffer, it is only to delay, and if we ſhould demur, then there muſt be time for Arguing; and what is the Queſtion after all, but whether you would be of the ſame Opinion to Morrow, that you are to Day?

Sir *Rob. Sawyer.* I would put Mr. *Sollicitor* in mind of *Fitz Harris's* Caſe, which he knows very well, he put it in a Plea, and we for the King deſired it might not be received, but the Court gave him time to put it into Form, and I was fain to joyn in Demurrer preſently, and ſo may theſe Gentlemen do if they pleaſe.

Mr. *Sol. Gen.* Yes, Sir *Robert Sawyer*, I do know the Caſe of *Fitz Harris* very well, I was aſſigned of Council by the Court for him, we were four of us, and there was a Plea put in, but no ſuch Plea as this, there was an Indictment of High Treaſon againſt him, in which Caſe it is agreed on all hands, that the party muſt anſwer preſently, but becauſe he ſuggeſted here at the Bar, (ſays he) I have Matter to plead to the Juriſdiction of the Court, and ſhewed what it was, I was Impeached before the Lords in Parliament for Treaſon, for the ſame Matter of which I am here Accuſed: The Court did give him time to put this into Form, and we were aſſigned his Council to draw it up for him, and accordingly we did put that Matter into a Plea, that we were here Indicted for one and the ſame Treaſon, for which we were Impeached in Parliament, and that that Impeachment was ſtill depending, and ſo we reſted in the Judgment of the Court, whether we ſhould be put to Anſwer it here; this was a Plea that carried ſomething of weight in it, and not ſuch a trifling one as this. It is true, Sir *Robert Sawyer* who was then *Attorney General* did preſs the Court to over-rule it immediately, but it being a mat-

ter of ſome Importance, the Court would not do that, but had it argued ſolemnly by Council on both ſides, and at laſt there was the Opinion of three Judges againſt one that the Plea was no good Plea. But what is that to ſuch a trifling Plea as this?

Mr. *Att. Gen.* Pray my Lord favour me a few words about that Caſe of Mr. *Fitz Harris*, it is true, there was a Plea put in, and it is true alſo, that that which brought that Plea to be argued, was the Demurrer that was put in by Sir *Robert Sawyer*, who was ſo zealous and haſty in the matter, that becauſe the Court did not preſently over-rule the Plea, as he deſired, he immediately Demurred, before the reſt of the King's Council could offer at any thing about it; and thereupon it was put to the Judgment of the Court, and no doubt muſt be argued, and ſpoke to on both ſides; but where Pleas are really in abuſe of the Court, the Court never gives any Countenance to them: Nay, truly I have known another Courſe taken, I am unwilling to mention a Caſe that hapned much about that time too in this Court, becauſe of that regard I have to my Lords the Biſhops, but Sir *Robert Sawyer* remembers it very well, I am ſure: it was the Caſe of one *Whitaker*, who for a thing like this, putting in a trifling Plea, not only had his Plea rejected, but ſomething elſe was ordered, I could ſhew the Precedent, but that I am more tender than to preſs it in this Caſe, becauſe there the Court order'd an Attachment to go againſt him, but I will put theſe Gentlemen in mind of another Caſe, and that is the Caſe of a Peer too, it is the Caſe of my Lord *Delamere*, which they cannot but remember, it being in the higheſt Caſe, a Caſe of Treaſon, when my Lord *Delamere* was Arraigned and to be Tryed for High Treaſon, he put in a Plea before my Lord *Chancellour*, who was then *High Steward*, and Sir *Robert Sawyer* who was then *Attorney General*, prayed the Lord *Steward* and the Peers to reject it, and the Court did reject it, (as we hope the Court will do this) and would never ſo far delay Juſtice as to admit of a Plea that carried no Colour in it, and there was no Demurrer put into the Plea, but it was abſolutely refuſed: My Lord, in this Caſe we have had the Judgment of the Court already, and therefore we muſt now deſire that this Plea may be rejected.

Mr. *Sol. Gen.* My Lord, we have now gone out of the way far enough already; it is time for us to return, and bring the Caſe into its due methods. We pray your Lordſhip to reject this Plea.

Sir *Robert Sawyer.* My Lord, we are in your Judgment, whether you will receive this Plea or not.

L. C. J. You ſhall have my Judgment preſently; but my Brothers are to ſpeak firſt.

Mr. *Juſt. Allybone.* Mr. *Pollexfen* makes it a Queſtion, whether this Plea may be rejected or not, or whether it ought to be received, and the Court give their Judgment upon it.

Mr. *Juſt. Powell.* Truly I do not know whether the Court can reject this, as a frivolous Plea.

L. C. J. Surely we may and frequently do.

Mr. *Att. Gen.* You do it every day, 'tis a frequent Motion; if a frivolous Plea be put in, before it be entred upon Record as a Plea, the Court may refuſe it, if they ſee cauſe.

Mr. *J. Allybone.* Truly if it may be, this appears to me a frivolous Plea.

Mr. *J. Powell.* I do not know how the Court can reject any Plea that the Party will put in, if he will ſtand by it, as they ſay they will here; and I cannot think this a frivolous Plea, it concerning the priviledge of Peers, and Lords of Parliament.

Mr. *J. Allybone.* Brother *Powell*, I would be as tender of the Priviledges of Parliament, and ſpeak with as much reſpect of the Priviledges of the Peerage, as any body elſe; but for the matter of the Plea, truly it appears to me, that the Peers are named in it only for faſhion ſake, and it is frivolous.

Mr. *J. Powell.* The matter of the Plea, except only their being ſaid to be Peers and Lords of Parliament, was ſpoke to before, but it was only *obiter*, and by way of motion; but now it may come before us for our Judicial Determination.

Mr. J. Allybone. Pray let the Plea be read again.

(*Which was done.*)

Mr. Juſt. Allybone. This Plea is no more but that which has been denied already upon ſolemn debate, and if it be in the power of the Court to reject any Plea, ſurely we ought to reject this. Indeed I know not what power we have to reject a Plea; but if we have power, this ought to be rejected.

Mr. *J. Powell.* I declare my Opinion, I am for receiving the Plea, and conſidering of it.

Mr. *J. Holloway.* I think as this caſe is, this Plea ought not to be received, but rejected, becauſe 'tis no more than what has been denied already. I am not aſhamed to ſay, That I ſhould be very glad and ready to do all things that are conſiſtent with my Duty, to ſhew reſpects to my Lords the Biſhops, ſome of whom are my particular Friends; but I am upon my Oath, and muſt go according to the courſe of Law.

L. C. J. We have asked and informed our ſelves from the Bar, whether we may or can reject a Plea, and truly what they have ſaid, hath ſatisfied me that we may, if the Plea be frivolous; and this being a Plea that contains no more than what has been over-ruled already, after hearing what could be ſaid on both ſides, I think the Court is not bound to receive the Plea, but may reject it, and my Lords the Biſhops muſt plead over.

Mr. *Att. Gen.* We pray they may plead in chief.

Clerk. My Lord Archbiſhop of *Canterbury*, is your Grace guilty of the matter charged upon you in this Information, or not guilty?

A. B. C. Not Guilty.

Clerk. My Lord Biſhop of St. *Aſaph*, is your Lordſhip guilty of the matter charged upon you in this Information, or not guilty?

Biſh. of St. *Aſaph.* Not Guilty.

Clerk. My Lord Biſhop of *Ely*, is your Lordſhip guilty of the matter charged upon you in this Information, or not guilty?

Biſh. of *Ely.* Not Guilty.

Clerk. My Lord Biſhop of *Chicheſter*, is your Lordſhip guilty of the matter charged upon you in this Information or not guilty?

Biſh. of *Chicheſter.* Not Guilty.

Clerk. My Lord Biſhop of *Bath* and *Wells*, is your Lordſhip guilty of the matter charged upon you in this Information, or not guilty?

Biſh.

Biſh. of *Bath* and *Wells.* Not guilty.

Clerk. My Lord Biſhop of *Peterborough,* is your Lordſhip guilty of the matter charged upon you in this Information, or not guilty?

Biſh. of *Peterborough.* Not guilty.

Clerk. My Lord Biſhop of *Briſtol,* is your Lordſhip guilty of the matter charged upon you in this Information, or not guilty?

Biſh. of *Briſtol.* Not Guilty.

Mr. *Att. Gen.* My Lord, I pray the Clerk may join Iſſue on the behalf of the King, that ſo we may come to Tryal; and we would have theſe Gentlemen take notice, that we intend to try this Cauſe on this day fortnight, and we pray liberty of the Court, that we may try it at Bar.

L. C. J. Are you not too haſty in that Motion, Mr. Attorney?

Mr. *Att. Gen.* My Lord, we ſhould indeed make it the Motion of another day; but we do now tell them this *ex abundanti,* becauſe my Lords the Biſhops are now here, and will I ſuppoſe take notice that we do intend to move it another Day.

Mr. *Sol. Gen.* We now give them notice, that we intend to move.

Sir *Rob. Sawyer.* For that you need not trouble your ſelves; we are very deſirous it ſhould be tryed at Bar, and that as ſoon as you pleaſe.

Mr. *Att. Gen.* Well then you take notice it will be tryed this day fortnight.

L. C. J. Well, what ſhall we do with my Lords the Biſhops?

Mr. *Att. Gen.* They are baylable, no queſtion of it, my Lord, if they pleaſe.

L. C. J. Then, my Lords, we are ready to bail you, if you pleaſe.

Sir *Robert Sawyer.* We deſire your Lordſhip would be pleaſed to take their own Recognizance.

L. C. J. What ſay you Mr. Attorney? I think that may do well enough.

Mr. *Att. Gen.* My Lord, with all my heart, we will do it.

L. C. J. In what Penalty ſhall we take it?

Mr. *Att. Gen.* A 1000 *l.* I think my Lord his Grace, and 500 *l.* apiece the reſt.

Sir *Rob. Sawyer.* What neceſſity is there for ſo much?

Mr. *Att. Gen.* Look you, Sir *Robert Sawyer,* to ſhew you that we do inſiſt upon nothing that ſhall look like hardſhip, what my Lords have been pleaſed to offer, concerning taking their own Recognizance, we agree to, and what Sums the Court pleaſes.

Mr. *Sol. Gen.* It is all one to us, we leave it wholly to the Court.

Sir *Robert Sawyer.* Only I have one thing more to beg of your Lordſhip on the behalf of my Lords the Biſhops, that you will pleaſe to order, that in the Return of the Jury there may be forty eight returned.

Mr. *Att. Gen.* I tell you what we will do, Sir *Samuel Aſtry* ſhall have the Freeholders Book, if you pleaſe, and ſhall return twenty four.

Sir *Robert Sawyer.* Eight and forty has been always the courſe, when the Jury is returned by Sir *Samuel Aſtry.*

Mr. *Sol. Gen.* My Lord, I pray the Officer may return the Jury, according as is uſual in Caſes of this nature.

Mr. *Att. Gen.* You do admit of a Tryal at Bar, Gentlemen?

Sir *Rob. Sawyer.* Yes, and try it when you will.

L. C. J. They ſay it ſhall be this day fortnight, and let there be a Jury according to the uſual courſe.

Sir *Robert Sawyer.* We pray it may be in the preſence of the Attorneys or Sollicitors on both ſides.

L. C. J. What is the uſual courſe, Sir *Samuel Aſtry?* Do you uſe to return twenty four, or forty eight, and then ſtrike out twelve a piece, which I perceive they deſire for the Defendants?

Sir *Samuel Aſtry.* My Lord, the courſe is both ways, and then it may be, as your Lordſhip and the Court will pleaſe to order it.

L. C. J. Then take forty eight, that is the faireſt.

Mr. *Att. Gen.* We agree to it; we deſire nothing but a fair Jury.

Sir *Robert Sawyer.* Nor we neither, try it when you will.

L. C. J. Take a Recognizance of his Grace my Lord of *Canterbury* in 200 *l.* and the reſt of my Lords in 100 *l.* a piece.

Mr. *Att. Gen.* What your Lordſhip pleaſes for that, we ſubmit to it.

Clerk. My Lord of *Canterbury,* your Grace acknowledges to owe unto our Soveraign Lord the King, the Sum of 200 *l.* upon condition that your Grace ſhall appear in this Court on this day fortnight, and ſo from day to day, till you ſhall be diſcharged by the Court, and not to depart without leave of the Court. Is your Grace contented?

A. B. C. I do acknowledge it.

Clerk. My Lord Biſhop of St. *Aſaph,* you acknowledge to owe unto our Soveraign Lord the King, the Sum of 100 *l.* upon condition that your Lordſhip ſhall appear in this Court on this day fortnight, and ſo from day to day, untill you ſhall be diſcharged by the Court, and not to depart without leave of the Court. Is your Lordſhip contented?

Biſhop of *Aſaph.* I do acknowledge it.

The like Recognizances were taken of all the reſt of the Biſhops, and then the Court aroſe.

Die

De Termino Sanctæ Trinitatis, Anno Regni Jacobi *Secundi Regis, Quarto,* In Banco Regis. *Die Veneris, viceſimo nono die* Junii, 1688. *in eod' Term'.*

(Being the Feaſt of St. PETER and St. PAUL.)

Dominus Rex verſus Archiep. Cantuar. & al.

Clerk CRyer, make Proclamation thrice.

Cryer, Oyez! Oyez! Oyez! Our Sovereign Lord the King ſtreightly charges and commands every one to keep ſilence, upon pain of Impriſonment.

Cl. of the Cr. Call the Defendents.

Cryer. William Lord Archbiſhop of *Canterbury.*

Archbiſh. Here.

Cryer. William Lord Biſhop of St. *Aſaph.*

Biſh. of *Aſaph.* Here.

(And ſo the reſt of the Biſhops were called, and anſwered ſeverally).

Clerk. Gardez votres Challenges.

Swear Sir *Roger Langly.*

Cryer. Take the Book Sir *Roger.* You ſhall well and truly try this Iſſue between our Sovereign Lord the King, and *William* Lord Archbiſhop of *Canterbury*, and others, according to your Evidence. So help you God.

The ſame Oath was adminiſtred to all the Jury, whoſe Names follow, *viz.*

Sir *Roger Langley*, Bar.	*William Avery*, Eſq;
Sir *William Hill*, Knt.	*Thomas Auſtin*, Eſq;
Roger Jennings, Eſq;	*Nicholas Grice*, Eſq;
Thomas Harriot, Eſq;	*Michael Arnold*, Eſq;
Jeoffery Nightingale, Eſq;	*Thomas Done*, Eſq;
William Withers, Eſq;	*Richard Shoreditch*, Eſq;

Clerk. You Gentlemen of the Jury who are ſworn, hearken to the Record; Sir *Thomas Powys*, Knight, His Majeſty's Attorney-General, has exhibited an Information, which does ſet forth as followeth.

MEmorandum, That Sir *Thomas Powys*, Knt. Attorney-General of our Lord the King, who for our ſaid Lord the King in this behalf proſecutes, came here in his own Perſon into the Court of our ſaid Lord the King, before the King himſelf at *Weſtminſter*, on *Friday* next after the morrow of the *Holy Trinity* in this Term; and on the behalf of our ſaid Lord the King, giveth the Court here to underſtand and be informed, That our ſaid Lord the King, out of his ſignal Clemency, and gracious intention towards his Subjects of his Kingdom of *England*, by his Royal Prerogative, on the fourth day of *April*, in the third Year of the Reign of our ſaid Lord the King, at *Weſtminſter* in the County of *Middleſex*, did publiſh his Royal Declaration, entituled, *His Majeſty's Gracious Declaration to all his Loving Subjects for Liberty of Conſcience*, bearing date the ſame Day and Year, ſealed with the Great Seal of *England*; in which Declaration is contained, *James R. prout in the firſt Declaration before recited.*

And the ſaid Attorney-General of our ſaid Lord the King, on behalf of our ſaid Lord the King, further giveth the Court here to underſtand and be informed, That afterwards, to wit, on the twenty ſeventh day of *April*, in the fourth Year of the Reign of our ſaid Lord the King, at *Weſtminſter* aforeſaid, in the County of *Middleſex* aforeſaid, our ſaid Lord the King, out of his like Clemency, and gracious intention towards his Subjects of his Kingdom of *England*, by his Royal Prerogative, did publiſh his other Royal Declaration, entituled, *His Majeſty's Gracious Declaration*, bearing date the ſame day and year laſt mentioned, ſealed with his Great Seal of *England*; in which Declaration is contained, *James R. Our Conduct has been ſuch*, &c. *prout in the ſecond Declaration before recited.*

Which ſaid Royal Declaration of our ſaid Lord the King laſt mentioned, our ſaid Lord the King afterwards, to wit, on the thirtieth day of *April*, in the fourth Year of his Reign aforeſaid, at *Weſtminſter* aforeſaid, in the County of *Middleſex* aforeſaid, did cauſe to be printed and publiſhed throughout all *England*; and for the more ſolemn Declaring, Notification, and Manifeſtation of his Royal Grace, Favour, and Bounty towards all his Liege-people, ſpecified in the Declaration laſt mentioned, afterwards, to wit, on the fourth day of *May*, in the fourth year of his Reign, at *Weſtminſter* aforeſaid, in the County of *Middleſex* aforeſaid, our ſaid Lord the King in due manner did order as followeth:

At the Court at *Whitehall* the Fourth of *May*, 1688.

By the King's moſt Excellent Majeſty, and the Lords of his Majeſty's moſt Honourable Privy-Council.

IT is this day Ordered by His Majeſty in Council, That His Majeſties Gracious Declaration bearing date the Twenty Seventh of April *laſt, be read at the uſual time of Divine Service upon the Twentieth and Twenty Seventh of this Month, in all Churches and Chappels within the Cities of* London *and* Weſtminſter, *and Ten Miles thereabout: And upon the Third and Tenth of* June *next in all other Churches and Chappels throughout this Kingdom. And it is hereby further Ordered, That the Right Reverend the Biſhops cauſe the ſaid Declaration to be ſent and diſtributed throughout their ſeveral reſpective Dioceſſes, to be read accordingly.*

Wm. Bridgman.

And further, the ſaid Attorney General of our ſaid Lord the King, on behalf of our ſaid Lord the King, giveth the Court here to underſtand

ſtand and be informed; That after the making of the ſaid Order, to wit, on the eighteenth day of *May*, in the fourth year of the Reign of our ſaid Lord the King, at *Weſtminſter* aforeſaid, in the County of *Middleſex* aforeſaid, *William* Archbiſhop of *Canterbury*, of *Lambeth* in the County of *Surry*; *William* Biſhop of St. *Aſaph*, of St. *Aſaph* in the County of *Flynt*; *Francis* Biſhop of *Ely*, of the Pariſh of St. *Andrew Holbourn* in the County of *Middleſex*; *John* Biſhop of *Chicheſter*, of *Chicheſter* in the County of *Suſſex*; *Thomas* Biſhop of *Bath* and *Wells*, of the City of *Wells* in the County of *Somerſet*; *Thomas* Biſhop of *Peterburgh*, of the Pariſh of St. *Andrew Holbourn* in the County of *Middleſex*; and *Jonathan* Biſhop of *Briſtol*, of the City of *Briſtol*, *did conſult and conſpire among themſelves to diminiſh the Regal Authority and Royal Prerogative, Power and Government of our ſaid Lord the King* in the premiſes, and to infringe and elude the ſaid Order; *and in proſecution and execution of the Conſpiracy aforeſaid*, They the ſaid *William* Archbiſhop of *Canterbury*, *William* Biſhop of St. *Aſaph*, *Francis* Biſhop of *Ely*, *John* Biſhop of *Chicheſter*, *Thomas* Biſhop of *Bath* and *Wells*, *Thomas* Biſhop of *Peterburgh*, and *Jonathan* Biſhop of *Briſtol*, on the ſaid eighteenth day of *May*, in the fourth Year of the Reign of our ſaid Lord the King aforeſaid, *with Force and Arms, &c.* at *Weſtminſter* aforeſaid, in the County of *Middleſex* aforeſaid, *falſly, unlawfully, maliciouſly, ſeditiouſly, and ſcandalouſly, did frame, compoſe, and write, and cauſed to be framed, compoſed, and written, a certain falſe, feigned, malicious, pernicious, and ſeditious Libel in writing, concerning our ſaid Lord the King, and his Royal Declaration and Order aforeſaid, (under pretence of a Petition)* and the ſame falſe, feigned, malicious, pernicious, and ſeditious Libel, by them the aforeſaid *William* Archbiſhop of *Canterbury*, *William* Biſhop of St. *Aſaph*, *Francis* Biſhop of *Ely*, *John* Biſhop of *Chicheſter*, *Thomas* Biſhop of *Bath* and *Wells*, *Thomas* Biſhop of *Peterburgh*, and *Jonathan* Biſhop of *Briſtol*, with their own Hands reſpectively being ſubſcribed, on the day and year and in the place laſt mentioned, *in the preſence of our ſaid Lord the King, with Force and Arms*, &c. *did publiſh, and cauſe to be publiſhed*; in which ſaid falſe, feigned, malicious, pernicious and ſeditious Libel is contained, *The humble Petition*, &c. *prout before in the Petition, to theſe words* [*reaſonable conſtruction,*] in manifeſt contempt of our ſaid Lord the King, and of the Laws of this Kingdom, to the evil example of all others in the like caſe offending, and againſt the Peace of our ſaid Lord the King, his Crown and Dignity, *&c.* Whereupon the ſaid Attorney General of our ſaid Lord the King, on behalf of our ſaid Lord the King, prays the Advice of the Court here in the premiſes, and due Proceſs of Law to be made out againſt the aforeſaid *William* Archbiſhop of *Canterbury*, *William* Biſhop of St. *Aſaph*, *Francis* Biſhop of *Ely*, *John* Biſhop of *Chicheſter*, *Thomas* Biſhop of *Bath* and *Wells*, *Thomas* Biſhop of *Peterburgh*, and *Jonathan* Biſhop of *Briſtol*, in this behalf, to anſwer our ſaid Lord the King in and concerning the premiſes, *&c.*

T. Powys.
W. Williams.

To this Information the Defendents have pleaded *Not Guilty*, and for their Tryal have put themſelves upon their Country, and His Majeſty's Attorney General likewiſe, which Country you are: Your Charge is to enquire whether the Defendents, or any of them, are guilty of the matter contained in this Information that hath been read unto you, or Not Guilty: If you find them, or any of them Guilty, you are to ſay ſo; and if you find them, or any of them not Guilty, you are to ſay ſo; and hear your Evidence. Cryer, make Proclamation.

Cryer. O yes! If any one will give Evidence on behalf of our Sovereign Lord the King againſt the Defendents of the matters whereof they are impeached, let them come forth, and they ſhall be heard.

Mr. *Wright.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, this is an Information exhibited by His Majeſty's Attorney-General againſt the moſt Reverend my Lord Archbiſhop of *Canterbury*, and ſix other Honourable and Noble Biſhops in the Information mentioned. And the Information ſets forth, That the King, out of his Clemency and benign intention towards his Subjects of this Kingdom, did put forth his Royal Declaration, bearing date the fourth day of *April* in the third year of his Reign, entituled, *His Majeſty's Gracious Declaration to all his Loving Subjects for Liberty of Conſcience*; and that afterwards, the twenty ſeventh of *April*, in the fourth year of his Reign, he publiſhed another Declaration, both which have been read to you; and for the further Manifeſtation and Notification of his Grace in the ſaid Declaration, bearing date the twenty ſeventh of *April* laſt, His Majeſty did order, That the ſaid Declaration ſhould be read on the twentieth and twenty ſeventh of the ſame Month in the Cities of *London* and *Weſtminſter*, and ten miles about, and on the third and tenth of *June* throughout the whole Kingdom; and that the Right Reverend the Biſhops ſhould ſend the ſaid Declaration to be diſtributed throughout their reſpective Dioceſſes, to be read accordingly. But that the ſaid Archbiſhop and Biſhops the eighteenth of *May*, in the ſaid fourth Year of His ſaid Majeſty's Reign, having conſpired and conſulted among themſelves to diminiſh the King's Power and Prerogative, did falſly, unlawfully, maliciouſly, and ſcandalouſly, make, compoſe and write, a falſe, ſcandalous, malicious and ſeditious Libel, under pretence of a Petition; which Libel they did publiſh in the preſence of the ſaid King; the Contents of which Libel you have likewiſe heard read. To this they have pleaded not Guilty: You, Gentlemen, are Judges of the Fact; if we prove this Fact, you are to find them Guilty.

Mr. *Att. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, you have heard this Information read by the Clerk, and it has been likewiſe opened to you at the Bar, but before we go to our Evidence, perhaps it may not be amiſs for us, that are of Council for the King, now in the beginning of this Cauſe, to ſettle the Queſtion right before you, as well to tell you what my Lords the Biſhops are not proſecuted for, as what they are; Firſt, I am to tell you, and I believe you cannot your ſelves but obſerve, that my Lords are not proſecuted as Biſhops, nor much leſs are they proſecuted for any point or matter of Religion, but they are proſecuted as Subjects of this Kingdom, and only for a temporal Crime, as thoſe that have injured and affronted the King to his very Face; for it is ſaid to be done in his own Preſence: In the next place, they are not proſecuted for any Nonfeaſance, or not doing or omitting to do

do any thing, but as they are Actors, for cenſuring of His Majeſty and his Government, and for giving their Opinion in Matters wholly relating to Law and Government; and I cannot omit here to take notice, that there is not any one thing which the Law is more jealous of, or does more carefully provide for the Prevention and Puniſhment of, than all Accuſations and Arraignments of the Government; no Man is allowed to accuſe even the moſt inferior Magiſtrate of any misbehaviour in his Office, unleſs it be in a legal courſe, though the Fact is true; no Man may ſay of a Juſtice of Peace to his Face, that he is unjuſt in his Office; no Man may come to a Judge, either by Word or Petition, you have given an unjuſt, or an ill Judgment, and I will not obey it, it is againſt the Rules and Law of the Kingdom, or the like; no Man may ſay of the great Men of the Nation, much leſs of the great Officers of the Kingdom, that they do act unreaſonably or unjuſtly, or the like; leaſt of all may any Man ſay any ſuch thing of the King, for theſe matters tend to poſſeſs the People, that the Government is ill adminiſtred, and the Conſequence of that is, to ſet them upon deſiring a Reformation, and what that tends to, and will end in, we have all had a ſad and too dear bought Experience; the laſt Age will abundantly ſatisfie us, whither ſuch a thing does tend: Men are to take their proper Remedies for redreſs of any Grievances they lye under, and the Law has provided ſufficiently for that:-Theſe things are ſo very well known to all Men of the Law, and indeed to all the People of *England* of any Underſtanding, that I need not, nor will not, ſtand any longer upon it, but come to the matter that is now before you Gentlemen, to be Tryed. The Fact that we have laid, we muſt prove, rather to keep to the formality of a Tryal, than to pretend to inform you, or tell you what you do not know, it is publickly notorious to the whole World; but becauſe we muſt go on in the regular methods of Law, we ſhall prove the Facts in the order they are laid in the Information. Firſt, we take notice, that His Majeſty, of his great Clemency and Goodneſs to his People, and out of his deſire that all his Subjects might live eaſily under him (of which I think never Prince gave greater or more plain Evidence of his Intentions that way) the fourth of *April*, 1687. He did iſſue forth his Royal Declaration for Liberty of Conſcience; this matter, without all queſtion, was welcome to all his People that ſtood in need of it, and thoſe that did not, could not but ſay, the thing in the nature of it was very Juſt, and Gracious; but preſently it muſt be ſurmiſed, that the King was not in Earneſt, and would not, nor could not make good his Promiſe; but to take away all Surmiſes, his Majeſty was pleaſed by his Declaration of the twenty ſeventh of *April* laſt, not only to repeat his former Declaration, but likewiſe to renew his former Promiſes to his People, and to aſſure them that he ſtill was, and yet is, of the ſame Opinion, that he had at firſt declared himſelf to be of; nay, we further ſhew you, that to the end that this thing might be known to all his People, even to the meaneſt Men, who it may be were not willing or able to buy the Declaration, and that the King himſelf might be under higher Obligations, if it were poſſible, than his own Word, he was deſirous it ſhould be repeated in the Churches, and read in that Sacred Place, that all his People might hear what he had promiſed, and given his own Sacred Word for; and he himſelf might be under that Solemn Tye and Obligation to keep his Word, by remembring that his Promiſes had, by his own Command, been Publiſhed in the time of Divine Service, in the Houſe of God; and thereupon was the Order of Council made, that has been likewiſe read to you, which does direct, that it ſhould be read in all the Churches and Chappels in the Kingdom; and you have heard, and we ſhall prove, what a return His Majeſty has had for this Grace and Kindneſs of his; you'l find when we come to read that which they call a Petition, all their Thanks his Majeſty had for his Favour and Goodneſs to his People, 'tis only hard Words, and a heavy Accuſation, ſuch as a private Perſon would be little able to bear, I will not aggravate the matter, but only ſay thus much, that his Majeſty, who was always a Prince of as great Clemency as ever this Kingdom had, and who was repreſented for all that, as a Prince of the greateſt Cruelty before his Acceſſion to the Crown, by his Enemies, is now accuſed by his Friends for this Effect of his Mercy; My Lord, and Gentlemen of the Jury, His Majeſty reſented this ill uſage ſo far, that he has ordered and thought fit to have a publick Vindication of his Honour in this matter, by this Tryal; and we ſhall go on to our Proofs, and we do not doubt but you will do his Majeſty (as you do all other Perſons) Right.

Mr. *Sol. Gen.* My Lord, we will go on to prove the Parts of this Information, and we will proceed according to the Method which Mr. Attorney has opened, and which is purſuant to the order of the Facts laid in the Information. Give us the firſt Declaration under the Great Seal, the Declaration of the 4th of *April*, 1687.

The Declaration was delivered into the Court.

Mr. *Soll. Gen.* Read the Date of it firſt.

Clerk Reads. *Given at our Court at* Whitehall, *the 4th day of* April, 1687, *and in the third Year of our Reign.*

Mr. *Soll. Gen.* Read the Title of it, Sir.

Clerk. It is Entituled, *His Majeſties Gracious Declaration to all his Loving Subjects for Liberty of Conſcience.*

Sir *Robert Sawyer.* Is it under Seal? Is the Great Seal to it?

Mr. *Sol. Gen.* Give it down to Sir *Robert Sawyer*, that he may ſee it, for I would have every thing as clear as poſſible. —— Sir *Robert Sawyer*, will you have it Read?

Sir *Rob. Sawyer.* No, we would ſave as much of the time of the Court, as may be.

Mr. *Sol. Gen* Then pray put in the Second Declaration of the 27th of *April* laſt.

Clerk Reads. *Given at our Court at* Whitehall, *the 27th day of* April, 1688. *in the fourth Year of our Reign, and it is Entituled,* His Majeſties Gracious Declaration.

Sir *Robert Sawyer.* Is that under the Great Seal too?

Clerk. Yes it is.

Mr. *Sol. Gen.* Deliver that down likewiſe, that they may ſee it.

Sir *Robert Sawyer.* We are ſatisfied, you need not read it.

Mr. *Sol. Gen.* Then where is the Order of Council for the Reading of it?

Mr.

Mr. *Att. Gen.* Swear Sir *John Nicholas.*—There he is.

Sir *John Nicholas* Sworn.

L. C. J. Come Mr. Attorney, what do you ask Sir *John Nicholas?*

Mr. *Sol. Gen.* Hand the Order to Sir *John Nicholas.* ——— Is that the Order of Council, Sir *John?*

Sir *John Nicholas.* The Book, Sir, is not in my Cuſtody ——— there is the Regiſter that keeps it, he has it here to produce.

Mr. *Sol. Gen.* Swear Mr. *Gantlett.*

Mr. *Gantlett* Sworn.

Mr. *Sol. Gen.* Is that the Council Book?

Mr. *Gantlett.* Yes, this is the Council Book.

Mr. *Sol. Gen.* Then turn to the Order of the fourth of *May*, the King's Order of Council, for the Reading the Declaration.

Mr. *Gantlett.* There it is, Sir.

The Book delivered into Court.

Mr. *Sol. Gen.* Read it I pray.

Clerk Reads. *At the Court at* Whitehall, *the fourth of* May, 1688. —— and ſo reads the Order of Council.

Mr. *Sol. Gen.* My Lord, we have one thing that is mentioned in the Information, that this Declaration was Printed; if that be denied, we will call *Henry Hills*, His Majeſties Printer, becauſe we would prove all our Information as it is laid.

L. C. J. You muſt do ſo, Mr Sollicitor, you muſt prove the whole Declaration.

Mr. *Sol. Gen.* Cryer, call *Henry Hills.*

He was called, but did not preſently appear.

Mr. *Sol. Gen.* Call Mr. *Bridgeman* —— though theſe Declarations prove themſelves, we have them here Printed —— but Swear Mr. *Bridgeman.*

Mr. *Bridgeman* Sworn.

Mr. *Sol. Gen.* Shew Mr. *Bridgeman* the two Declarations.

L. C. J. What do you ask him?

Mr. *Sol. Gen.* We ask you, Sir, if the two Declarations were Printed.

Mr. *Bridgman.* What Declarations do you mean, Mr. Sollicitor?

Mr. *Sol. Gen.* You know what Declarations I mean well enough, but we'l ask you particularly; you know the Declaration that was made the 4th of *April*, in the third year of the King. —— was it Printed?

Mr. *Bridgeman.* Yes, it was Printed by the King's Order.

Mr. *Sol. Gen.* Was that of the 27th of *April*, in the 4th Year of the King Printed?

Mr. *Bridgman.* Yes, they were both Printed by the King's Order.

Mr. *Att. Gen.* Then the next thing in courſe, is the Biſhops Paper.

Sir *Rob. Sawyer.* Mr. *Bridgeman*, pray let me ask you one Queſtion; Did you ever compare the Print with that under Seal?

Mr. *Bridgman.* I did not compare them Sir *Robert Sawyer.*

Mr. *Sol. Gen.* He does Swear they were Printed by the King's Order.

Sir *Robert Sawyer.* Good Mr. Sollicitor give me leave to ask him a Queſtion —— Can you Swear then that they are the ſame?

Mr. *Bridgeman.* I was not asked that Queſtion, Sir.

Mr. *Sol. Gen.* Come then Mr. *Bridgeman*, I'll ask you —— Do you believe they are the ſame?

Sir *Robert Sawyer.* Is that an Anſwer to my Queſtion?

Mr. *Sol. Gen.* We muſt ask him Queſtions as well as you, Sir *Robert* —— what ſay you? Do you believe it to be the ſame?

L. C. J. You hear Mr. Sollicitor's Queſtion, anſwer it Mr. *Bridgman.*

Mr. *Bridgeman.* Yes my Lord, I do believe it.

L. C. J. Well, that's enough.

Mr. *Att. Gen.* If there were occaſion, we have them here compared, and they are the ſame.

Sir *Robert Sawyer.* With Submiſſion, my Lord, in all theſe Caſes, if they will prove any Fact that is laid in an Information, they muſt prove it by thoſe that know it of their own Knowledge. ——— Do you know it to be the ſame?

Mr. *Sol. Gen.* That's very well, Sir.

Sir *Robert Sawyer.* Ay, ſo it is, Mr. Sollicitor, It is a wonderful thing, my Lord, that we cannot be permitted to ask a Queſtion. — Do you know it to be the ſame, Mr. *Bridgeman*, I ask you again?

Mr. *Bridgman.* I have not compared them I tell you, Sir *Robert Sawyer.*

Sir *Rob. Sawyer.* Then that is no Proof.

L. C. J. Would you have a Man Swear above his Belief, he tells you he believes it is the ſame.

Sir *Robert Sawyer.* Is that Proof of an Information?

L. C. J. Well, you'l have your time to make your Objections by and by.

Mr. *Att. Gen.* Then Swear Sir *John Nicholas.*

Sir *John Nicholas.* I am Sworn already.

Mr. *Att. Gen.* I ſee you have a Paper in your Hand, Sir *John Nicholas*, pray who had you that Paper from?

Sir *John Nicholas.* I will give you an Account of it, as well as I can.

Mr. *Pollexfen.* Before they go to another thing, my Lord, we think they have failed in their Proof of their Information, about the Printing this Declaration.

Mr. *Att. Gen.* Where is Mr. *Hills.*

Mr. *Juſt. Allyb.* They have laid, That it was printed by the King's Order; and it is ſuch a matter, Mr. Sollicitor, as you may clear, if you will, ſure.

Mr. *Sol. Gen.* There is Mr. *Hills*, now I ſee him.

L. C. J. I was going to give Order that you ſhould ſend to the Printing-houſe for him.

Mr. *Juſt. Allyb.* They may put this matter out of doubt too, if they will, on the other ſide; for I ſee they have a Copy in Print, and there's the Original, they may compare them if they pleaſe.

Mr. *Sol. Gen.* I am very glad to hear ſuch a ſtrong Objection.

Sir *Robert Sawyer.* We would clear the way for you, Mr. Sollicitor.

Mr. *Sol. Gen.* No, you put Straws in our way; we ſhall be able enough to clear it without your help. Swear Mr. *Hills* and young Mr. *Graham* here.

Hills and *Graham* ſworn.

Mr. *Sol. Gen.* Mr. *Graham*, did you compare any of theſe Printed Declarations with the Original?

Graham. Yes, I did compare ſome of them, and did make Amendments as I went along.

Mr. Sol. Gen. Shew one that you have compar'd with the Original.

Mr. Att. Gen. *Hills* is here himſelf, we'll ask him. Are you ſworn, Sir?

Cryer. He is ſworn.

Mr. Att. Gen. Pray were the King's Declarations for Liberty of Conſcience printed both of them?

Hills. Ay, an't pleaſe you, Sir.

Mr. Att. Gen. You printed them, I think.

Hills. Yes, I did print them.

Sir *Robert Sawyer.* *Mr. Hills*, you ſay they were printed: Upon your Oath, after they were printed, did you examine them with the Original under Seal?

Hills. They were examined before they were printed.

Sir *Robert Sawyer.* Did you examine them?

Hills. I did not, here's one that did.

Mr. Sol. Gen. Who is that?

Hills. It is *Mr. Williams* here.

Mr. Sol. Gen. Swear him.

Williams ſworn.

Mr. Sol. Gen. Do you hear, *Williams*? Do you know that the King's Declaration for Liberty of Conſcience, two of them, one of the 4th of *April*, and the other of the 27th of *April*, were printed?

Williams. Yes, my Lord.

Mr. Sol. Gen. Did you examine them after they were printed, by the Copy they were printed by?

Williams. Yes, I did.

Mr. Sol. Gen. Where had you the Copy; who had you it from?

Williams. I had it from *Mr. Hills.*

Sir *Robert Sawyer.* *Mr. Williams*, did you examine them with the Original under the Great Seal?

Williams. The Firſt Declaration I did.

Sir *Robert Sawyer.* The Second Declaration is the main.

Williams. The Second was Compos'd by the Firſt.

Sir *Robert Sawyer.* Why, is there no more in Second Declaration than there was in the Firſt?

Williams. Yes, there is, Sir.

Sir *Robert Sawyer.* Did you examine That with the Original under the Great Seal?

Williams. No, I did not.

Mr. Sol. Gen. Can any one tell who did examine it under the Great Seal?

Mr. Finch. Pray what did you examine it by, *Mr. Williams*?

Williams. By a Copy that I receiv'd from *Mr. Hills.*

Mr. Att. Gen. Then we will go on; and we deſire Sir *John Nicholas* to give an account where he had that Paper that he has in his hand.

Mr. Finch. My Lord, it does not appear that the Copy that was printed is the true Copy of the Declaration.

Mr. Att. Gen. He ſays he had it from *Mr. Hills.*

Mr. Finch. Pray, *Mr Hills*, what did you examine that Copy by, which you gave to *Mr. Williams*?

Hills. I had the Copy from *Mr. Bridgeman.*

Mr. Finch. Did you examine it with the Original under the Great Seal?

Hills. I did not examine it, I had it from Mr. *Bridgman.*

Mr. Finch. What, was it under Seal?

Mr. Bridgeman. It was the Original ſigned by the King.

Mr. Finch. But I ask you, was it under Seal?

Mr. *Bridgeman.* Not under the Great Seal it was not, it was the very Declaration the King ſigned.

Sir *Robert Sawyer.* But it ought to be compared with the Original, or it is no good proof that it is the ſame.

Mr. Sol. Gen. Sir *Robert Sawyer*, you underſtand Collation better ſure, you ſhould be aſham'd of ſuch a weak Objection as this.

Williams. We never bring our Proof to the Great Seal.

Sir *Robert Sawyer.* But if you will have it Proof at Law, you muſt have it compared with the Original.

Mr. Sol. Gen. Do you think there is any great ſtreſs to be laid upon that? we only ſay it was printed.

Sir *Robert Sawyer.* But you have made it part of your Information, and therefore you muſt prove it.

L. C. J. I think there's proof enough of that; there need no ſuch nicety.

Mr. Pollixfen. Well, my Lord, we muſt ſubmit, let them go on, we won't ſtand upon this.

Mr. Att. Gen. Then pray let me go on. Where had you that Paper, Sir *John Nicholas*?

Sir *John Nicholas.* I had this Paper from the King's Hand.

L. C. J. Put it in.

Mr. Sol. Gen. Who had you it from, do you ſay?

Sir *J. Nich.* From the King.

Mr. Sol. Gen. About what time had you it from the King, Sir?

Sir *J. Nich.* I had it twice from the King.

Mr. Sol. Gen. When was the firſt time, Sir?

Sir *J. Nich.* The firſt time was in Council the 8th of this Month.

Mr. Sol. Gen. What became of it afterwards?

Sir *J. Nich.* The King had it from me the 12th, and the 13th I had it from the King again.

Mr. Sol. Gen. Pray deliver it this way into the Court: We will now go on, and prove the Biſhops hands to it. This is the Paper upon which we bring this Information; Gentlemen, it is all the Hand-writing of my Lord Archbiſhop, and ſigned by Him and the reſt of the Biſhops.

Mr. Att. Gen. I ſuppoſe my Lords the Biſhops will not put us to prove it, they will own their Hands.

L. C. J. Yes, Mr. Attorney, their Council will put you to prove it; I perceive your beſt way is to ask nothing of them.

Mr. Att. Gen. My Lord, we will deſire nothing of them, we will go on to our Proofs. Call Sir *Thomas Exton*, Sir *Richard Raynes*, *Mr. Brooks*, *Mr. Recorder*, and *Mr. William Middleton.*

Sir *Thomas Exton* appeared, and was ſworn.

L. C. J. What do you ask Sir *Thomas Exton*?

Mr. Att. Gen. Pray convey that Paper to Sir *Thomas Exton.*

Mr. Sol. Gen. Shew that Paper to Sir *Thomas Exton.* —— Sir *Thomas*, I would ask you one Queſtion: Do you know the Hand-writing of my Lord Archbiſhop of *Canterbury*?

Sir *Thomas Exton.* I'll give your Lordſhip what account I can.

Mr. Sol. Gen. Pray, Sir, anſwer my Queſtion; Do you know his Hand-writing?

Sir

Sir *Tho. Exton.* never ſaw him write five times in my life.

Mr. *Sol. Gen.* But I ask you, upon your Oath, do you believe that to be his Hand-writing?

Sir *Tho. Exton.* I do believe this may be of his Hand-writing.

Mr. *Sol. Gen.* Do you believe all the Body of it to be of his Hand-writing, or only part of it?

Sir *Tho. Exton.* I muſt believe it to be ſo, for I have ſeen ſome of his Hand-writing, and this is very like it.

Mr. *Sol. Gen.* What ſay you to the Name? do you believe it to be his Hand-writing?

Sir *Tho. Exton.* Yes, I do.

Mr. *Sol. Gen.* Do you know any of the reſt of the Names that are upon that Paper?

Sir *Tho. Exton.* No, I do not.

L. C. Juſt. Do you for the Defendants ask Sir *Tho. Exton* any Queſtion?

Sir *Rob. Sawyer.* No, my Lord.

Mr. *Att. Gen.* Then call Sir *Richard Raynes.*

Sir *Tho. Exton.* My Lord, Sir *Richard Raynes* has been ſick this month, and has not been at the Commons.

Mr. *Sol. Gen.* We have no need of him. Call Mr. *Brooks.*

Mr. *Brooks* ſworn.

Mr. *Att. Gen.* Pray ſhew Mr. *Brooks* that Paper.

Mr. *Sol. Gen.* Mr. *Brooks,* I ask you this Queſtion, Do you know my Lord Archbiſhop's Hand-writing?

Mr. *Brooks.* Yes, my Lord.

Mr. *Att. Gen.* Pray look upon that Paper; do you take that to be my Lord Archbiſhop's Hand?

Mr. *Brooks.* Yes, my Lord, I do believe it to be my Lord Archbiſhop's Hand.

Mr. *Att. Gen.* What ſay you to the whole Body of the Paper?

Mr. *Brooks.* I do believe it to be his Hand.

Mr. *Att. Gen.* What do you ſay to his Name there?

Mr. *Brooks.* I do believe this Name is his Hand-writing.

Mr. *Sol. Gen.* Call Mr. *William Middleton.*

Mr. *Att. Gen.* Pray Mr. *Brooks* don't go away, but look upon the Names of the Biſhop of St. *Aſaph,* and my Lord of *Ely.*

Mr. *Sol. Gen.* Do you know my Lord Biſhop of St. *Aſaph*'s Hand-writing?

Mr. *Brooks.* I have ſeen my Lord Archbiſhop of *Canterbury* and the Biſhop of St. *Aſaph*'s Hand-writing, and I do believe this is his hand.

Mr. *Sol. Gen.* Look you upon the Name of my Lord of *Ely*; do you know his Hand-writing?

Mr. *Brooks.* My Lord, I am not ſo well acquainted with my Lord of *Ely*'s Writing.

Mr. *Sol. Gen.* But have you ſeen his Writing?

Mr. *Brooks.* Yes, I have.

Mr. *Sol. Gen.* Is that his Writing do you think?

Mr. *Brooks.* It is like it.

Mr. *Sol. Gen.* Do you believe it to be his Hand?

Mr. *Brooks.* Truly I do believe it.

Sir *Geo. Treby.* Did you ever ſee him write?

Mr. *Brooks.* No, Sir.

Mr. *Sol. Gen.* But he has ſeen his Writing.

Sir *Geo. Treby.* How do you know that it was his Hand-writing that you ſaw?

Mr. *Brooks.* Becauſe he own'd it.

L. C. Juſt. How do you know it, do you ſay?

Mr. *Brooks.* I know it, I ſay, becauſe I have ſeen a Letter that he writ to another perſon, which he afterwards own'd.

L. C. Juſt. What did he own, Mr. *Brooks?*

Mr. *Brooks.* That he wrote a Letter to another perſon, which I ſaw.

Sir *Geo. Treby.* To whom, Sir?

Sir *Rob. Sawyer.* Have you the Letter here Sir?

Mr. *Brooks.* No, Sir, the Letter was writ to my Lord Biſhop of *Oxford.*

Sir *Geo. Treby.* Can you tell what was in that Letter?

Mr. *Att. Gen.* What is that to this Queſtion? You ask him, how he knows his Hand-writing: and, ſays he, I did not ſee him write, but I have ſeen a Letter of his to the Lord Biſhop of *Oxford.*

L. C. Juſt. And he does ſay, my Lord of *Ely* own'd it to be his Hand that is there.

Mr. *Sol. Gen.* No, my Lord, that's a miſtake, he own'd a Letter that he had writ to the Biſhop of *Oxford* to be his Hand-writing, and by compariſon of this with that (ſays he) I take this to be his Hand-writing.

Mr. *Brooks.* That is my meaning, my Lord.

Mr. *Sol. Gen.* Pray ſpeak out, and tell us what are the reaſons that makes you ſay you believe this to be the Biſhop of *Ely*'s Writing?

Mr. *Brooks.* Becauſe it reſembles a Letter that I have by me of his writing to the Biſhop of *Oxford.*

Mr. *Sol. Gen.* And you ſay he own'd that Letter to be his?

Mr. *Brooks.* My Lord Biſhop of *Oxford* did anſwer it, and I waited upon the Biſhop of *Ely* with the Anſwer, and he did own it.

Sir *Geo. Treby.* How did he own it, Sir?

Mr. *Brooks.* I had ſome Communication with my Lord of *Ely* about the ſubſtance of that Letter, and therefore I apprehended he own'd it.

Mr. *Juſt. Powell.* That's a ſtrange Inference, Mr. Sollicitor, to prove a man's Hand.

Mr. *Att. Gen.* We have more Evidence; but let this go as far as it can.

Mr. *Serj. Pemberton.* Certainly, my Lord, you will never ſuffer ſuch a Witneſs as this.

L. C. Juſt. Brother *Pemberton,* I ſuppoſe they can prove it otherwiſe, or elſe this is not Evidence.

Mr. *Juſt. Powell.* So they had need, for it is a ſtrange Inference of Mr. Sollicitor, that this is a Proof of my Lord of *Ely*'s Hand-writing.

Mr. *Juſt. Holloway.* The Biſhop of *Oxon* was dead before any of this matter came in agitation.

Mr. *Sol. Gen.* My Lord, we will bring other Proofs.--Call Mr. *Chetwood* and Mr. *Smith.*

Mr. *Chetwood* and Mr. *Smith* ſworn.

Mr *Sol. Gen.* Mr. *Chetwood,* we would know of you if you know my Lord Biſhop of *Ely*'s Hand-writing?

Mr. *Chetwood.* I never ſaw him write.

Mr. *Sol. Gen.* That's not an Anſwer to my Queſtion: Do you know his Hand-writing?

Mr. *Chetwood.* I do not certainly know it.

Mr. *Sol. Gen.* Have you ſeen any of it?

Mr. *Chetwood.* I have ſeen my Lord of *Ely*'s Writing, that has been ſaid to be his.

L. C. Juſt. But ſurely you had better take a Witneſs that has ſeen him write.

Mr. *Juſt. Powell.* I think 'tis hardly poſſible for a man to prove his Hand, that has not ſeen him write.

L. C. J. I think 'tis better proof indeed, to bring ſome that has ſeen him write.

Mr. *Chetwood.* My Lord, 'tis a long time ſince I ſaw my Lord of *Ely*'s Writing.

L. C. J. Pray bring ſome other Proof, if you have it.

Bp. of *Peterburgh.* My Lord, we are here as Criminals before your Lordſhip, and we are proſecuted with great Zeal: I beg your Lordſhip that you will not be of Council againſt us, to direct 'em what Evidence they ſhall give.

L. C. Juſt. My Lord of *Peterburgh*, I hope I have not behaved my ſelf any otherwiſe hitherto than as becomes me: I was ſaying this (and I think I ſaid it for your Lordſhips advantage) That this was not ſufficient Proof; and I think, if your Lordſhip obſerved what I ſaid, it was for you, and not againſt you.

Bp. of *Peterb.* It was to direct them againſt us, how they ſhould give Evidence.

Mr. Serj Pemberton. Pray, my Lord of *Peterburgh*, ſit down, you'll have no wrong done you.

Sir *Rob. Sawyer.* We that are of Council will take care of that; and pray, my Lord, will you pleaſe to paſs it by.

L. C. Juſt. We are not uſed to be ſo ſerv'd, and I will not be uſed ſo.

Mr. Sol. Gen. If your Lordſhip pleaſes to paſs that by, for what your Lordſhip ſaid was in favour of my Lords the Biſhops, but I ſee they do not take it ſo.

Mr. Att. Gen. Pray, Mr. *Chetwood*, do you look upon the Name of my Lord of *Ely*; do you believe that to be his Hand-writing?

Mr. Chetwood. I do believe it is.

Sir *Rob. Sawyer.* That's very well, when he ſays he never ſaw him write.

Mr. Juſt. Powell. What is the reaſon of that belief of his, I would feign know?

Mr. Chetwood. I have formerly ſeen his Hand, I think it was his; but I never ſaw my Lord of *Ely* write his Hand.

Sir *Rob. Sawyer.* Then the Queſtion is, Whether this be Evidence?

Mr. Finch. How do you know that that which you ſaw formerly was my Lord of *Ely*'s Hand?

Mr. Chetwood. I have no ſuch Certainty, as poſitively to ſwear that that was his Hand.

Mr. Sol. Gen. We will go on to other Proofs; and if we want better Evidence at the end, we will argue with them.

Mr. Chetwood. I am not certain that what I ſaw was my Lord of *Ely*'s Hand-writing, becauſe I never ſaw him write.

Mr. Sol. Gen. You do very well to ſhew your good affection.

Mr. Att. Gen. Mr. *Smith*, I would ask you this Queſtion, Do you know my Lord of *Ely*'s Hand-writing?

Mr. Smith. I have ſeen it often.

Mr. Att. Gen. Look upon the Name of my Lord of *Ely* in that Paper; Do you believe it to be my Lord's Hand-writing, or no?

Mr. Smith. I did not ſee him write it, Sir; I cannot tell whether it is or no.

L. C. Juſt. Did you ever ſee his Name?

Mr. Smith. Yes, but it was a great while ago, and here are but ſeven Letters, and I cannot judge by that: I was better acquainted with his Hand writing heretofore.

Mr. Sol. Gen. Pray, Sir, anſwer me; Do you believe it to be his writing, or do you not?

Mr. Smith. I believe it may, for I did not ſee him write it.

Mr. Sol. Gen. But my Queſtion is, Do you believe it, or do you not?

Mr. Smith. I ſay, I was better acquainted with it heretofore than I am now.

Mr. Sol. Gen. But pray anſwer my Queſtion: Do you believe that to be my Lord of *Ely*'s Hand-writing, or do you not?

Mr. Smith. I believe it may, Sir.

Sir *Rob. Sawyer.* Why do you believe it?

Mr. Smith. I have no other reaſon to believe it, but becauſe I have ſeen ſomething like it.

Mr. Juſt. Powell. How long ago is it ſince you ſaw him write?

Mr. Smith. I have not ſeen him write, ſo as to take notice of it, for ſome years: I could better judge of it when he writ his Name *Turner*, than now it is *Ely*, becauſe there was more Letters to judge by.

Mr. *Middleton* ſworn.

L. C. Juſt. Here's Mr. *Middleton*; what do you call him for?

Mr. Sol. Gen. To prove many of their Hands.

Mr. Att. Gen. Pray ſhew him that Paper.

Mr. Sol. Gen. Firſt, Mr. *Middleton*, do you know my Lord Archbiſhop's Hand-writing?

Mr. Middleton. I have ſeen his Grace's Hand-writing.

Mr. Sol. Gen. Do you believe it to be his?

Mr. Middleton. It is very like it.

Mr. Sol. Gen. But do you believe it, or do you not?

Mr. Middleton. I do believe it.

Mr. Sol. Gen. Do you know my Lord Biſhop of St. *Aſaph*'s Hand-writing?

Mr. Middleton. I never ſaw it as I know of.

Mr. Sol. Gen. What do you ſay to my Lord of *Ely*? his Name is next.

Mr. Middleton. It is like his Lordſhip's hand.

Mr. Sol. Gen. Do you believe it, or do you not?

Mr. Middleton. It is like it, that's all I can ſay.

Mr. Sol. Gen. Cannot you tell whether you believe it, or not believe it?

Mr. Middleton. I do believe it is his hand.

Mr. Sol. Gen. Did you ever ſee him write? for I would clear this matter beyond exception.

Mr. Middleton. I have ſeen his Lordſhip write, but I never ſtood by him ſo near as to ſee him make his Letters.

Mr. Sol. Gen. Is that his Hand-writing?

Mr. Middleton. It is like it, I believe it is his.

Mr. Sol. Gen. You did not guide his Hand I believe---Do you know my Lord of *Chicheſter*'s Hand writing?

Mr. Middleton. Sir, I am acquainted with none of their Hands but with my Lord of *Canterbury*'s and my Lord of *Ely*'s.

Mr. Sol. Gen. Do you know my Lord of *Peterburgh*'s Hand-writing?

Mr. Middleton. I had my Lord of *Peterburgh*'s Writing two years ago for ſome money, but I cannot ſay this is his.

Mr. Sol. Gen. Do you believe it to be his?

Mr. Middleton. I never took notice of it ſo much, as to ſay, I believe it to be like it, I never ſaw it but once.

Mr. Sol. Gen. Do you know any other of the Names there? What ſay you to the Biſhop of *Briſtol*'s Name?

Mr. Middleton. I ſaw once my Lord of *Briſtol*'s Hand writing.

Mr. Sol. Gen. What ſay you to that Writing there?

Mr. Middleton. It is like it.

Mr. Sol. Gen. Do you believe it to be his or no?

Mr.

Mr. Middleton. Truly, that I cannot ſay, for I never ſaw it but once.

L. C. J. You never ſaw him write, did you?

Mr. Middleton. No, my Lord, I never did.

Mr. Sol. Gen. Then we will call Sir *Thomas Pinfold*, and *Mr. Clavel*——Sir *Thomas Pinfold* is there, ſwear him.

Sir *Thomas Pinfold* ſworn.

Mr. Sol. Gen. Sir *Thomas Pinfold*, do you know my Lord Biſhop of *Peterburgh*'s hand-writing?

Sir *Thomas Pinfold.* Truly, not very well, I never ſaw but one Letter from him in my Life; ſhew me his Hand, and I will tell you——*Which was done.*

Mr. Sol. Gen. Well Sir, what ſay you to it?

Sir *Tho. Pinfold.* Then upon my Oath I ſay, I cannot well tell upon my own Knowledge that it is his Hand.

Mr. Sol. Gen. I ask you, do you believe it to be his Hand?

Sir *Tho. Pinfold.* Sir, upon the Oath that I have taken I will anſwer you, that upon this account, that I have heard there was a Paper delivered by my Lords the Biſhops to the King, and this Paper that you offer me, I ſuppoſe to be the ſame, upon that Score I do believe it, but upon any other Score I cannot tell what to ſay.

Mr. Sol. Gen. I ask you upon your Oath, Sir, do you believe it is his Hand writing or no?

Sir *Tho. Pinfold.* Sir, I have anſwered you already, that upon my own Knowledge I cannot ſay it is his Hand writing; but becauſe I have heard of ſuch a Paper, I do believe it may be his.

L. C. J. Did you ever ſee my Lord Biſhop write?

Sir *Tho. Pinfold.* I have been in his Chamber ſeveral times when he has been writing, but I had more Manners than to look upon what he writ.

L. C. J. Did you never ſee him write his Name?

Sir *Tho. Pinfold.* I do not know that I ever ſaw him write his Name, but I have ſeen him writing I ſay, and ſo my Lord Biſhop may have ſeen me writing, but I believe he does not know my Hand.

Mr. Sol. Gen. You have ſeen him write you ſay.

Sir *Tho. Pinfold.* I tell you, Mr. Sollicitor, I have been in his Chamber when he has been writing, but I had more Manners than to look over him.

Mr. *J. Powell.* Then you did never ſee any of that writing?

Sir *Tho. Pinfold.* I cannot ſay I did, my Lord.

Mr. Att. Gen. Pray did you never ſee any of his writing but that Letter you ſpeak of?

Sir *Tho. Pinfold.* No, not that I remember.

Mr. J. Powel. Mr. Sollicitor, you muſt call other Witneſſes, for this does not prove any thing.

Mr. Att. Gen. We will go on——Swear *Mr. Clavel.*

Mr. Clavel ſworn.

Mr. Sol. Gen. Do you know my Lord Biſhop of *Peterburgh*'s Hand writing or no?

Mr. Clavel. I have ſeen it many times.

Mr. Att. Gen. Do you know it when you ſee it?

Mr. Clavel. I believe I do, Sir.

Mr. Sol. Gen. Pray look upon that Paper, and upon your Oath tell us, do you believe that Name to be his writing or no?

Mr. Clavel. I do believe it is, my Lord.

Mr. Att. Gen. Pray look upon the reſt of the Hands there, do you know any of the other Names?

Mr. Clavel. No, I do not.

Mr. Att. Gen. Have you ever ſeen any of their Writing?

Mr. Sol. Gen. It is probable I may have ſeen ſome, but do not now remember it.

Mr. Sol. Gen. I think you are a Bookſeller, Mr. *Clavel?*

Mr. Clavel. Yes, I am ſo, Sir.

Mr. Sol. Gen. I ſuppoſe you have had ſome Dealings with them in the way of your Trade. Did you never ſee any of their Writing?

Mr. Clavel. I have ſeen the Names of ſome of them, but it is ſo long ſince that I cannot remember.

L. C. J. Did you ever ſee my Lord of *Peterborough* Write?

Mr. Clavel I cannot tell whether I ever ſaw him Write his Name or no; but I have had ſeveral Letters from my Lord of *Peterborough.*

Mr. Sol. Gen. Is that his Hand-writing?

Mr. Clavel. I cannot ſay it is, I believe it is.

Mr. Sol. Gen. You have had Letters from him you ſay?

Mr. Clavel. Yes, and it ſeems to be like his Hand.

Mr. Pollixfen. But you never ſaw him Write his Hand you ſay?

Mr. Clavel. I cannot ſay I ever did.

Mr. Sol. Gen. Theſe Letters that you have received from my Lord of *Peterborough*, did he own them? Do you think they were Counterfeit, or of his own Hand-writing?

Mr. Clavel. I ſuppoſe he has owned them, Sir.

Mr. J. Powel. But you muſt anſwer directly, Sir, did he own them?

Mr. Sol. Gen. What did thoſe Letters concern? were they about Books, or what?

Mr. Clavel. They were ſometimes about one buſineſs, ſometimes about another.

Mr. Sol. Gen. Was the ſubject matter of any of theſe Letters about Money; and was it paid you? Did you receive, or did you give any account of it?

Mr. Clavel. They were about ſeveral Buſineſſes.

L. C. J. Look you, Mr. *Clavel*, you muſt give us as particular account as you can.

Mr. Sol. Gen. Pray, Sir, upon thoſe Letters were the things done that thoſe Letters required?

Mr. Clavel. Yes, they were.

Mr. Sol. Gen. Did you do your part?

Mr. Clavel. Yes, I did.

Mr. Sol. Gen. Now I would ask you, Do you believe that Name of my Lord Biſhop of *Peterborough* to be the Hand-writing of my Lord Biſhop?

Mr. Clavel. I believe it is.

Mr. J. Powel. Do you know that thoſe Letters that you ſay you received from my Lord, were of my Lords own Hand-writing, Do you Swear that?

Mr. Clavel. My Lord, I cannot Swear that.

Mr. Finch. Do you know whether the Letters that you received, as you ſay, were written by my Lord himſelf, or by his Secretary?

Mr.

Mr. *Clavel.* I have received Letters from him, and his Secretary too.

Sir *G. Treby.* But were you preſent with him when he writ any Letters with his own Hand?

Mr. *Sol. Gen.* You do not mean a Letter to your ſelf ſure, Sir *George?*

Sir *G. Treby.* No, Sir, I ſay any Letters.

Mr. *Clavel.* I have been preſent with my Lord often, but I cannot ſay I have ſeen my Lord write.

L. C. J. He has here told you, he has had ſeveral Letters of my Lords own Hand, and from his Secretary too.

Mr. *J. Powel.* He has ſaid it, but you ſee he ſays he never ſaw him write.

Mr. *Sol. Gen.* We have given Evidence againſt my Lord Arch-biſhop, Lord Biſhop of *Ely*, St. *Aſaph*, *Peterborough*, and *Briſtol.*

Mr. *J. Powel.* Certainly Mr. Sollicitor you miſtake —— But go on ——

Mr. *Sol. Gen.* We have given Evidence I ſay againſt them, Sir, but whether it be ſufficient Evidence, we ſhall Argue by and by.——Call Mr. *Hooper* and Mr. *Chetwood* again.

Mr. *Chetwood* appeared.

Mr. *Sol. Gen.* Do you know the Hand-writing of my Lord Biſhop of *Bath* and *Wells?*

Mr. *Chetwood.* I have ſeen it Twice or Thrice, but it is a conſiderable time ſince I did ſee it.

Mr. *Sol. Gen.* Do you believe that is his Hand-writing?

Mr. *Chetwood.* I never ſaw him write his Name in my Life.

Mr. *Sol. Gen.* Pray look upon the Name, and tell us what you believe of it?

Mr. *Chetwood.* I believe it may, but I do not certainly know it to be his Hand, I rather believe it is my Lord Biſhop of *Bath* and *Wells* his Hand, than I believe that other to be my Lord of *Peterboroughs.*

Sir *G. Treby.* Do you believe that to be my Lord of *Peterborough*'s Hand or no?

Mr. *Chetwood.* I ſay, I rather believe that this is the Biſhop of *Bath* and *Wells* his Writing, than that which is above it or below it, to be their Writing; but truly I do not diſtinctly know my Lord Biſhop of *Bath* and *Wells* his Hand.

Mr. *Sol. Gen.* Call Mr. *Hooper.*

L. C. J. You are very lame in this matter.

Mr. *Sol. Gen.* The Witneſſes are unwilling, and we muſt find out the Truth as well as we can.

Mr. *Hooper* did not appear.

Mr. *Sol. Gen.* Call Mr. *James* and Mr. *Powell.*

Mr. *James* appeared and was Sworn.

Mr. *Sol. Gen.* Do you know my Lord Biſhop of *Briſtol*'s Writing, Mr. *James?*

Mr. *James.* Yes, I believe I do, but I am not ſo certain, becauſe my Lord writes ſeveral times ſeveral Hands.

Mr. *Sol. Gen.* Shew him the Paper: Is that my Lord of *Briſtol*'s Hand?

Mr. *James.* I cannot ſay it is or no.

Mr. *Sol. Gen.* What do you believe?

Mr. *James.* It looks like his Hand, and that's all I can ſay.

Mr. *Sol. Gen.* But pray hearken, and Anſwer to what I ask you; you are prepared for one Queſtion it may be, and I ſhall ask you another: Upon your Oath, do you believe it to be the Hand-writing of my Lord of *Briſtol?*

Mr. *James.* Upon my Oath, I can only ſay it looks like it, that's all.

L. C. J. Did you ever ſee him write?

Mr. *James.* Yes, my Lord, I have ſeen his Hand-writing ſeveral times, and it is like his Hand-writing, that is all I can ſay.

Mr. *Sol. Gen.* Sir, remember you are upon your Oath, and anſwer my Queſtion.

Mr. *James.* Upon my Oath, I know no more than that, Sir *William Williams.*

Mr. *Sol. Gen.* I ask you Sir, whether you believe it to be his Hand or not?

Mr. *James.* My Lord, it looks like his Hand, and it may be his Hand.

Mr. *Att. Gen.* But you do think and believe one way or other: What do you believe?

Mr. *James.* It may be his Hand, for what I know, and it may not.

Mr. *Sol. Gen.* It may be your Hand.

Mr. *James.* No, Sir, it cannot be mine, I am ſure.

Mr. *Sol. Gen.* What do you believe?

Mr. *James.* I believe it may be his Hand, or it may not be his Hand, that is all I can ſay.

L. C. J. Come, Sir, you muſt Anſwer fairly, Do you believe it to be his Hand, or do you not?

Mr. *James.* Yes, I do believe it.

Mr. *Att. Gen.* You are very hard to believe methinks.

Mr. *James.* No, I am not.

Mr. *Sol. Gen.* You do very well now, Mr. *James*; when you do well, we'll commend you.

Mr. *Att. Gen.* Call Mr. *Nathaniel Powell.*

Mr. *Powell* was Sworn.

Mr. *Sol. Gen.* Pray, Sir, let's know what's your Name?

Mr. *Powell.* My Name is *Nathaniel Powell.*

Mr. *Sol. Gen.* Pray do you know the Hand-writing of my Lord Biſhop of *Chicheſter?*

Mr. *Powell.* I have not ſeen the Paper, Sir.

Mr. *Sol. Gen.* Do you know his Hand writing?

Mr. *Powell.* Yes, I believe I do.

Mr. *Sol. Gen.* Look upon that Name of his.

Mr. *Powell.* I did not ſee my Lord write that.

Mr. *Sol. Gen.* Who ſays you did: no Body asks that of you; how you Anſwer! Pray Sir, remember your Oath, and Anſwer ſeriouſly, Do you believe it to be his Writing or no?

Mr. *Powell.* I believe it is like my Lords Hand-writing, but I never did ſee him write it.

Mr. *Sol. Gen.* No Body ſays you did.

Mr. *Powell.* Therefore I cannot Swear poſitively it is his Hand.

Mr. *Sol. Gen.* We do not ask that neither.

Mr. *Powell.* I cannot tell whether it be his Hand or no.

L. C. J. Sir, you muſt Anſwer the Queſtion directly, and ſeriouſly: Do you believe it, or do you not believe it?

Mr. *Powell.* I cannot tell what to believe in the Caſe.

Mr. *Sol. Gen.* Then I ask you another Queſtion, upon your Oath, Do you believe it is not his Hand?

Mr. *Powell.* I cannot ſay that neither.

Mr. *Sol. Gen.* Once again, I ask you, upon your Oath, Do you believe it to be his Hand? I ask you plainly, and let Mankind Judge of you.

Mr. *Powell.* I tell you, Sir, I cannot tell what to believe.

Mr.

Mr. Sol. Gen. My Lord, if theſe things be endured, there will be an end of all Teſtimony, if Witneſſes do not anſwer fairly to the Queſtions that are asked them.

Mr. J. Powell. Truly to me, for a Man to Swear his Belief in ſuch a matter, is an extraordinary thing.

Mr. Sol. Gen. He is obliged to anſwer Queſtions, when they are fairly put to him.

Mr. Pollixfen. I think that is a hard Queſtion, not to be Anſwered.

Mr. Sol. Gen. Make your Exceptions to the Evidence if you pleaſe.

L. C. J. Firſt, he ſays, He knows his Hand; then he ſays, He has ſeen him write; and then he ſays, He did not ſee him write this; but he ſhuffles, he won't anſwer whether he believes it or not.

Mr. Pollixfen. The Queſtion is, Whether belief in any caſe be Evidence?

Mr. Sol. Gen. If they have a mind to a Bill of Exceptions upon that point, let them Seal their Bill, and we'll Argue it with them when they will; in the mean time, we'll go on, and that which we now pray, my Lord, is, That this Paper may be read.

Mr. Att. Gen. We have given ſufficient Evidence ſure to have it Read, therefore we deſire it may be Read.

Mr. *Serj. Levinz.* My Lord, before this Paper be Read, we hope you will let us be heard to it: we think that what they deſire (to have this Paper Read) ought not to be: for what is all the proof that they have given of this Paper? they have a proof by Compariſon of Hands, which in a Criminal Caſe ought not to be received: and beſides, my Lord, what is that Compariſon of Hands, that they have offered? Some perſons come here and ſay, they cannot tell whether it be their Hands, they believe it may or may not, for ought they know; How ſhall we Convict any Man upon ſuch a Teſtimony as this? can we have our Remedy againſt him for Perjury, for ſaying, He believes it to be our Hand? therefore here is not any Evidence to Charge us. For firſt, It is only a Compariſon of Hands; And ſecondly, That Compariſon is proved in ſuch an uncertain manner: Some of them tell you, They do not know what to believe; another tells you, I believe 'tis rather ſuch a Lord's Hand, than the others are ſuch a Lord's Hands, I believe 'tis rather his Hand than that above it, or that below it; what ſort of proof is all this? Therefore we pray it may not be read, till they prove it better.

Mr. *Serj. Pemberton.* Pray, my Lord, ſpare me a word or two in this matter for Evidence ſake, there is a great deal of reaſon we ſhould take Exceptions to the Evidence that has been given: for truly I think I never heard ſuch a ſort of Evidence given before; It is a Caſe of as great Concernment as ever was in *Weſtminſter-Hall*; and for them to come to prove Hands only by thoſe that ſaw Letters, but never ſaw the perſons Write; this I hope will not amount to ſo much as a Compariſon of Hands. Your Lordſhip knows, that in every petty Cauſe, where it depends upon the Compariſon of Hands, they uſe to bring ſome of the Parties Hand-writing, which may be Sworn to, to be the Parties own Hand, and then it is to be compared in Court with what is endeavoured to be proved, and upon comparing them together in Court, the Jury may look upon it, and ſee if it be right; and never was there any ſuch a thing as this admitted in any poor petty Cauſe, that is but of the value of Forty Shillings. And therefore as to this Evidence, Firſt, We ſay Compariſon of Hands ought not to be given at all in the Caſes of Criminals; And I believe it was never heard of that it ſhould. In the next place, if it be admitted to be Evidence, yet it is not ſuch an Evidence, as that by Compariſon of Hands the Jury can take notice of it; for in ſuch manner of proofs by Compariſon of Hands, the uſage is, That the Witneſs is firſt asked, concerning the Writing he produces, Did you ſee this Writ by the Defendant, whoſe Hand they would prove? If he anſwers yes, I did, then ſhould the Jury upon Compariſon of what the Witneſs Swears to, with the Paper that is to be proved, judge whether thoſe Hands be ſo like as to induce them to believe, that the ſame perſon Writ both; and not that the Witneſs ſhould ſay, I had a Letter from ſuch a perſon, and that is like the Hand of that Letter, therefore I believe it to be his Hand: My Lord, I hope this ſhall never be admitted for Evidence in this Court.

L. C. J. I do take it, that the Witneſs himſelf is Judge of the Compariſon; for if he does know the Parties Hand, and a Paper be offered him to prove the Parties Hand, he is to compare it in his own mind.

Mr. *Serj. Pemberton.* It never was admitted to be ſo, that I know of, my Lord, or ever Read of.

Mr. *Sol. Gen.* You may remember ſeveral Caſes about that, particularly *Sidney*'s Caſe.

Mr. *Pollixfen.* Pray, my Lord hear me a little as to that: it is a Point of very great moment, whether in the Caſe of a Miſdemeanour either in an Indictment or Information, it be good Evidence to offer Compariſon of Hands; and that this Court did adjudge quite contrary upon an Indictment of Forgery againſt my Lady *Carr*, appears in *Syderfin*'s *Reports*; they went to prove her Letters Written by her to *Cox*, the Court rejected it, and gave their judgement here, That it was no Evidence; and that for this Reaſon, Becauſe of the evil conſequences of it. For ſaid they, It is an eaſie matter for any Man's Hand to be Counterfeited; that they ſure will agree, for frequent daily experience ſhews how eaſily that may be done: is it not eaſie then to cut any Man down in the World, by proving it like his Hand? and proving that likeneſs by comparing it with ſomething that he hath formerly ſeen? this ſtrikes mighty deep; the honeſteſt Man in the World and the moſt Innocent may be deſtroyed, and yet no fault to be found in the Jury or in the Judges; if the Law were ſo, it would be an unreaſonable Law. Next, my Lord, for the Caſe of *Sidney*, that was a Caſe of Treaſon. Now in the Caſe of Treaſon there is always other Evidence brought; and this Evidence comes in but as a Collateral Evidence, to ſtrengthen the other; but in this Caſe it is the ſingle Evidence, for ought that appears, for there is nothing more (for ought I can ſee) in the Caſe, but whether this were their Hands, and proved only by what another believes: Now ſhall any be condemned by anothers belief without proof? ſurely, my Lord, that was never Evidence yet to Convict any one; ſo that their proof fails in both Points; For firſt, it ought to be conſidered whether Compariſon of Hands be Evidence in a Caſe of

of Miſdemeanour; And next if it be Evidence, whether you will take it, that the belief of a Man that brings nothing to compare with it, or never ſaw the Party Write, but has received Letters, and ſays, This is like it, and therefore he believes it to be his Hand, be good Evidence as a Compariſon of Hands.

Mr. *Serj. Pemberton.* My Lord, they are pleaſed to mention —

Mr. *Sol. Gen.* Mr. Serj. you have been heard already, and you are not to reply upon us; or if you would, we muſt be heard firſt.

Mr. *Serj. Pemberton.* I would only ſpeak to that Caſe of *Sidney:* my Lord, that Caſe differs from this *toto Cœlo,* the Writing was found in his poſſeſſion, in his Study; there was the proof that nailed him.

Mr *Sol. Gen.* You ſhall ſee how we'll apply it by and by.

Mr. *Att. Gen.* Pray, my Lord, favour me a word in this matter: that there is ſtronger and weaker Evidence no Man doubts; but that which theſe Gentlemen ſay, that in this Caſe there is no Evidence, muſt needs be a miſtake: if they mean, that it is not ſo ſtrong an Evidence as is poſſible to be given, I agree with them, it is not: For if we had brought three or four Men that had ſeen them Write this very Paper, and put their Names to it, that had been a ſtronger Evidence than this, that we have given; but whether we do not give ſuch a ſort of Evidence as may induce the Jury to believe, that this is their Paper, and their Hands to it, we ſubmit: they ſay, This is ſuch a method as never was taken; but I admire that that ſhould be ſaid by Men of their Experience and Knowledge in the Law; for is there any thing more uſual, or any other courſe taken for the proof of Hands, than for a Witneſs to ſay, He knows the Hand of the Party very well, for he has often ſeen his Hand-writing, or received Letters from him? and if you ſhew him the thing that you would prove to be his Hand, and he ſays, I do believe this to be his Hand, for this reaſon, becauſe I have had other things of his Writing: Certainly in the Experience of any Man that has practiſed, this is an Evidence that is given every day, and allowed for Evidence. For the Caſe of Mr. *Sidney,* which your Lordſhip has heard mentioned, it is certainly very appoſite to this purpoſe; it is inſiſted upon and pretended, That that was Evidence, becauſe it was found in his Study: but without all doubt, that would not be the reaſon: for may not a Book of another Man's Writing be found in my Study? and he inſiſted upon it in his own Defence: but the Anſwer was, That it ſhould be left as the Queſtion, Whether the Jury would believe it upon the Evidence that was given, of its being his own Hand-writing: And ſo in this Caſe, though it be not ſo ſtrong Evidence, as if we had brought thoſe that had ſeen them Write it; yet Evidence it is, and whether it be ſufficient to ſatisfie the Jury, may be a Queſtion; but no Queſtion, it is good Evidence in Law.

Mr. *Sol. Gen.* It is a wonderful thing, they ſay, That ſuch Evidence ſhould be offered: but truly, my Lord, it is a much ſtranger thing to hear Mr. *Serj. Pemberton* ſay, It was never done before; and then to make that Remark to your Lordſhip upon the Caſe of *Sidney,* which I'll put to your Lordſhip and the Court as a Caſe, and let him contradict me if he can; and then we ſhall ſee how far it goes. *Sidney* was Indicted for High Treaſon; and the Treaſon inſiſted upon was, A Writing ſuppoſed to be his, it being found in his Study; the Queſtion was, Whether it was his Hand-writing or no? there was no poſitive Evidence that it was his Hand-writing; there was no Evidence produc'd, that prov'd it to be his Hand-writing; for there was no one that Swore, that they ſaw him Write it; there was nothing proved, but the ſimilitude of Hands. Ay, but ſays Mr. *Serj. Pemberton,* It was found in his Study: will Mr. *Serj. Pemberton* be content, that all the Libels that are found in his Study, ſhall for that reaſon, be adjudged to be Libels, to be his Hand-writing, and he to be a Libeller for them? I think he will make a ſevere Declamation againſt that, and he would have very good reaſon for it: Certainly that which was Evidence in one Man's Caſe, will be Evidence in another. God forbid there ſhould be any ſuch diſtinction in Law; and therefore I conclude that this is good Evidence.

Mr. *Serj. Pemberton.* The Court went upon this, That it was found in his Study, and compared with Letters and Bills of Exchange produced in Court; which were Sworn to be of his Hand-writing.

Mr. *Sol. Gen.* My Lord, I was by all the time; for I was ordered to attend him in the *Tower*; and therefore I can tell what paſſed as well as any Body. My Lord, they proved no more as to that Libel, but only by Compariſon of Hands; they had no other proof in that Caſe, but by comparing the Hand-writing; and that was inſiſted upon to be a mighty fallible thing: That which they would have for us to compare, Paper with Paper, it is true, would make the proof ſomewhat ſtronger, if we could, in ſuch a Caſe as this, be able to produce ſuch Evidence: but I appeal to your Lordſhip, and ſhall leave it to the Jury, to conſider which is better Evidence; theſe Men, that have been produced, that have been Converſant with theſe Lords, and acquainted with their Hand-writing, and who (as your Lordſhip ſees) are not willing Men to give Evidence, they avoid it as much as they can; and they Swear it all to be the Hand writing of the Archbiſhop of *Canterbury,* as they believe; which is as far as any Man can Swear. One ſays the whole Body of the Paper is my Lord of *Canterbury*'s Hand, and he knows it very well; ſo that we are not upon a ſingle Name, but a whole Paper that contains many Lines; and this is as much as can be proved by any one, that did not ſee the thing Written. Then, my Lord, for the reſt of the Company, the Evidence is not ſo ſtrong againſt every one of them, as it is againſt my Lord Archbiſhop; but is ſtrong enough certainly to Convict them of what we accuſe them of: and pray, my Lord, what was the Objection in *Sidney*'s Caſe, but what has been mentioned here? That any Man's Hand might be Counterfeited. I remember in that Caſe, there was one Mr. *Wharton,* a young Gentleman, then in the Court, that undertook to the Court, That he would Counterfeit that Hand preſently; and he that was to Swear the Compariſon, ſhould not know, which was the one, and which was the other; which certainly was a ſtronger Caſe than this. And I ſee ſome of the Gentlemen that are now ſtanding at the Bar, who preſſed this matter very hard againſt Mr. *Sidney,* and Mr. *Sidney* loſt his Life upon that Compariſon of Hands; though Mr. *Wharton* did Teſtifie how eaſie a matter it was to have a Man's Hand Counterfeited; and we all know was a Man of Value and Quality;

ſo

ſo there is a Preſident for Mr. *Serj. Pemberton*, that never heard of this Law before. They ſay the proving of Similitude of Hands is no Evidence, unleſs you prove the actual Writing; what a Condition then will *England* be in, when Witneſſes are dead? Is it not the moſt common Practice that can be, to produce Witneſſes to prove ſuch Men are dead, whoſe Names are ſet as Witneſſes to Deeds; and they ſwear, They believe it to be the Hand writing of thoſe Witneſſes? Can there be any greater Evidence of ſuch a Caſe, unleſs it be the Confeſſion of the Party himſelf? My Lord, we are now only upon reading this Paper. We have been heard, and they have been heard; now we pray the Paper may be read.

Mr. Recorder. We pray it may be read.

Mr. Serj. Levinz. If your Lordſhip pleaſe——

Mr. Sol. Gen. We are not to be replied upon, Mr. *Serjeant.*

L. C. J. You have ſpoke Brother *Levinz*, and you have ſpoke Brother *Pemberton*, and I would willingly hear you what you have to ſay; but we muſt not have vying and revying, for then we ſhall have no end.

Mr. Serj. Levinz. I would offer your Lordſhip ſome new matter which has not been touched upon yet; why it is not to be read.

L. C. J. What's that Brother?

Mr. Serj. Levinz. All the proof that has been given whatſoever it amounts to, has been only of its being Written, but no proof has been given of its being Written in the County of *Middleſex*, where the Information is laid, and the matter is local.

Mr. Sol. Gen. Firſt read it, and then make your Objection.

Mr. Recorder. My Lord, as to the Evidence that has been given, I would only put your Lordſhip in mind of one Caſe; and that was the Caſe of Sir *Samuel Barnardiſton*: and the great Evidence there, was the proof of its being his Hand writing; and that being proved, was ſufficient to convict him of a Libel: for they could not believe Sir *Samuel Barnardiſton* was guilty of making Libels, unleſs they were proved to be his Hand writing.

Sir *Rob. Sawyer.* He owned them to be his Hand writing.

L. C. J. If you do expect my Opinion in it, whether this be good Evidence, and whether this Paper be proved or no; I am ready to give it.

Mr. Finch. My Lord, I deſire to be heard before the Opinion of the Court be given.

Mr. Sol. Gen. If there be not proof enough to induce the Jury to believe this is their Paper; yet ſure there is enough to read it.

Sir *Rob. Sawyer.* My Lord, we have not been heard to this yet.

Mr. Sol. Gen. Why, is this fit to be ſuffered?

L. C. J. Mr. Sollicitor I am always willing to hear Mr. *Finch.*

Mr. Sol. Gen. But I hope your Lordſhip, and the Court, are not to be Complemented into an unuſual thing.

Mr. Serj. Pemberton. It is not a Complement, but Right and Juſtice.

Mr. Sol. Gen. Certainly it is Right and Juſtice, that there ſhould be ſome Limits put to Men's ſpeaking, that we may know when to have an end.

Sir *Rob. Sawyer.* Mr. Sollicitor does miſtake the Right my Lord, for we deſire to be heard to this Point; as not having ſpoke to it yet.

Mr. Sol. Gen. Pray, Sir, let me make my Objection to your being heard: for I believe you and I have been chid ſeveral times, for ſpeaking over and over the ſame thing.

Sir *Rob. Sawyer.* This that we now offer, is not to the ſame Point, that we have ſpoken to already.

Mr. Sol. Gen. We are now ſpeaking to the reading of the Paper, and you have ſpoken to it already.

Sir *Rob. Sawyer.* If the Court will pleaſe to hear us, we have that to offer againſt the reading of the Paper, which has not been offered yet.

L. C. J. Sir *Rob. Sawyer*, I take it, it is in the Breaſt of the Court to hear when they will, and as much as they will, and whom they will; for if three or four have been heard of a ſide to ſpeak what they will, the Court may very well depend upon the Learning of thoſe three or four, that they ſay what can be ſaid upon the Point, and that's enough; but if ſix or ſeven deſire to be heard over and over to the ſame thing, certainly the Court may ſtop at three or four, if they will.

Sir *Rob. Sawyer.* This is a new Objection that none of us have been heard to yet.

Mr. Finch. My Lord, that which I offer is not contrary to the Rules of Law, nor contrary to the Practice of the Court; nor was I going any way to invade that Privilege which Mr. Sollicitor claims of making Objections, and not receiving an Anſwer.

Mr. Sol. Gen. What a fine Declamation you have now made! I never claimed any ſuch right; but I oppoſe your being heard over and over to the ſame thing.

Mr. Att. Gen. Pray, my Lord, let's come to ſome iſſue in this matter.

L. C. J. I will hear you; but I would not have you introduce it with a Reflection upon the King's Council.

Mr. Sol. Gen. My Lord, if you impoſe that upon him, you ſtop his Mouth; for ſome Men cannot ſpeak without Reflection.

L. C. J. On the other ſide, pray Mr. Sollicitor, give us leave to hear fairly what they have to ſay; for I perceive he cannot offer to ſpeak, but you preſently ſtop his Mouth.

Mr. Finch. My Lord, that which I was going to ſay, is another matter than any thing that has been yet offered: We ſay, that this Paper ought not to be read; for that they are obliged by Law to prove their Information; and conſequently, having laid a particular place where the thing was done, in the Information, they ought to prove that this was done in that place. The Evidence that they have given, is of my Lords the Biſhops writing this Paper; and they have laid it to be done in *Middleſex*: and this, with Submiſſion to your Lordſhip, is local; and they muſt prove it to be written in *Middleſex*, where they have laid it, or elſe they fail in their Proof. This is another Objection, which as yet hath not been ſpoken to: That if there be a Proof of their Hand writing, yet there is no Proof where that Hand was written; and therefore they are not yet got ſo far, as to have it read againſt my Lords.

Mr. Att. Gen. For that Point, my Lord, we ſay, This would have been as properly ſaid after the Paper had been read, when they come to

make Objections againſt our Proof, by way of Defence: and with Submiſſion, it had been more proper then, than it is now: For what are we now doing? My Lord, we are proving that ſuch a Paper was ſubſcribed by my Lords the Biſhops; and Sir *John Nicholas* gives you an account, that he had it from His Majeſty at the Council: and that certainly is in the County of *Middleſex*; and it will concern you to prove that it was written elſewhere.

Mr. Serj. Pemberton. That's very well Mr. Attorney; ſure you do not think as you ſpeak.

Mr. Att. Gen. Here is a Paper compoſed and written by you, that Sir *John Nicholas* ſays he had from His Majeſty: how he came by it, I ſuppoſe you will tell us by and by: this is your Hand writing, that I think we have proved ſufficiently; this is found in the County of *Middleſex*: and you come and tell us, that we muſt prove that it was written in the County of *Middleſex*; and it is taken to be written where it was found, unleſs you prove the contrary.

Mr. Serj. Pemberton. That's pretty Doctrine indeed, and very new.

Mr. Sol. Gen. My Lord, here's an Objection made too timely: we are now upon reading of this Paper: and the Queſtion is, Whether it ſhall be read or not be read. Surely we have given Evidence enough to induce the Court to read it: and it is another Queſtion, that will come time enough afterwards; where it was writen?

L. C. J. Truly, I do not think it was proper for you to ſtand upon the Place where it was written as yet.

Mr. Serj. Levinz. When we are upon an Information of a Fact in *Middleſex*, will you hear them give Evidence of a Fact in *Yorkſhire*?

Mr. Sol. Gen. We are not to be driven by theſe Gentlemen; we are to be directed by the Court.

L. C. J. I think truly it is yet too early to make this Objection.

Mr. Serj. Pemberton. Surely, my Lord, this is our time to oppoſe the reading of it, as not proved.

Mr. J. Powell. Mr. Sollicitor, I think you have not ſufficiently proved this Paper to be ſubſcribed by my Lords the Biſhops.

Mr. Sol. Gen. Not to read it, Sir?

Mr. J. Powell. No, not to read it, it is too ſlender a Proof for ſuch a Caſe: I grant you, in Civil Actions a ſlender proof is ſufficient, to make out a Man's Hand, by a Letter to a Tradeſman, or a Correſpondent, or the like; but in criminal Cauſes (ſuch as this) if ſuch a Proof be allowed, where is the ſafety of your Life or any Man's Life here.

Mr. Sol. Gen. We tell you a Caſe where it was allowed; and that is Mr. *Sidney*'s Caſe; a Caſe of Treaſon, and printed by Authority: We tell you nothing, but what was done t'other day.

L. C. J. I tell you what I ſay to it; I think truly there is proof enough to have it read: and I am not aſhamed nor afraid to ſay it; for I know I ſpeak with the Law: ſay what you will of criminal Caſes, and the danger of Peoples Lives; there were more danger to the Government, if ſuch proof were not allowed to be good.

Mr. J. Powel. I think there is no danger to the Government at all, in requiring good proof againſt Offenders.

L. C. J. Here's my Lord Archbiſhop and the Biſhop of St. *Aſaph* and my Lord of *Ely*, their Hands are proved; it is proved to be my Lord Archbiſhop's writing by Mr. *Brookes*, and he proves my Lord of *Ely*'s Hand by Compariſon, and ſo my Lord of St. *Aſaph*'s. Now Brother *Pemberton*, there's an anſwer to your Objection; it being proved that it is all my Lord Archbiſhop's Hand: then they come and ſay, we'll prove the Hands of the others by Compariſon: and for that they bring you Witneſſes that ſay, They have received Letters from them, and ſeen their Hand writing ſeveral times: and comparing what they have ſeen with this very Paper; ſays the Witneſs, I do believe it to be his Hand. Can there be a greater Evidence or a fuller?

Mr. Serj. Pemberton. Admit it be a full Evidence again my Lord Archbiſhop: What's that to the reſt? There's no Evidence againſt thm.

Mr. J. Allybone. Brother *Pemberton*, as to the Objection you make of comparing of Hands; it is an Objection indeed, I do agree: but then conſider the inconvenience which you and Mr. *Pollixfen* do ſo much inſiſt upon: If a Man ſhould be accuſed by Compariſon of Hands, Where is he? He is in a lamentable Caſe; for his Hand may be ſo Counterfeited, that he himſelf may not be able to diſtinguiſh it. But then you do not conſider where you are on the other ſide: that may be an Objection in matters of Fact, that will have very little weight, if compared and ſet altogether. For on the other ſide, where ſhall the Government be, if I will make Libels, and traduce the Government with Prudence and Diſcretion, and all the ſecrecy imaginable? I'll write my Libel by my ſelf, prove it as you can; that's a fatal blot to the Government; and therefore the Caſe is not the ſame; nor is your Doctrine to paſs for current here; becauſe every Caſe depends upon its own Fact. If I take upon me to ſwear I know your Hand, the Inducements are to my ſelf, how I came to know it, ſo as to ſwear it: Knowledge depends on Circumſtances; I ſwear that I know you, but yet I may be under a miſtake, for I can have my knowledge of you no other way but from the viſibility of you, and another Man may be ſo like you, that there is a poſſibility of my being miſtaken; but certainly, that is Evidence, good Evidence: Now here are ſeveral Gentlemen that ſwear as to my Lord Archbiſhop's Handwriting; I do agree, as to ſome of the others, that the Evidence is not ſo ſtrong; for what that Man ſaid, that he did believe it was rather ſuch a Lord's Hand, than that which went before, or that which came after, it is of no weight at all, and ſo ſome of the others; but it is poſitively proved againſt my Lord Archbiſhop and one or two more; ſo that that's enough to induce the reading of this writing.

Mr. *Juſt. Holloway.* Good my Lord, let me give my opinion.

L. C. Juſt. Ay, with all my heart, Brother.

Mr. *Juſt. Holloway.* My Lord, I think as this Caſe is, there ought to be a more ſtrong proof, for certainly the proof ought to be ſtronger and more certain in Criminal matters than in Civil matters; in Civil matters, we do go upon ſlight proof, ſuch as the compariſon of Hands, for proving a Deed, or a Witneſſes Name, and a very ſmall proof will induce us to read it; but in Criminal matters we ought to be more ſtrict, and require poſitive and ſubſtantial proof, that is fitting for us to have in ſuch a Caſe, and without better proof, I think it ought not to be read.

L. C. J.

L. C. Juſt. You muſt go on to ſome other proof, Mr. *Sollicitour*, for the Court is divided in their Opinions about this proof.

Mr. Sol. Gen. Then, my Lord, we will come to the Confeſſions of my Lords the Biſhops, and I hope that will be believed by all Mankind.

Mr. Att. Gen. Truly, my Lord, we did forbear that Evidence, and would not have proceeded this way, if we had had fair play on the other ſide.

Sir Rob. Sawyer. Mr. Attorney, give us leave to defend our Clients all the ways we can; I think we do nothing but what is fair; the Court you ſee is divided, therefore we did not without reaſon inſiſt upon it.

L. C. Juſt. You muſt go on as you can, for they will put you upon it.

Mr. Att. Gen. Swear Mr. *Blathwayt.*

Mr. Blathwayt *Sworn.*

Mr. *Sol. Gen.* Pray hand the writing to him.

The writing ſhown to him.

Mr. *Soll. Gen.* Have you ſeen that Writing formerly Sir?

Mr. *Blathwayt.* Yes, Sir.

Mr. *Soll. Gen.* What did you hear my Lord Arch-Biſhop ſay about that Paper?

Mr. *Att. Gen.* And the reſt of my Lords the Biſhops.

Mr. *Sol. Gen.* Firſt we'll ask as to my Lord Arch-Biſhop; did he own it to be his Hand writing?

Mr. *Blathwayt.* My Lord, I believe this to be the Paper that my Lord Arch-biſhop did own to be ſubſcribed by him.

Mr. *Soll. Gen.* When was it owned by him?

Mr. *Blathwayt.* On the Council day, the Eighth of this Month.

Mr. *Soll. Gen.* Where was it owned, becauſe we would obviate that Objection of the County?

Mr. *Blathwayt.* It was at the Council Table at *Whitehall.*

Mr. *Soll. Gen.* What ſay you to the Biſhop of St. *Aſaph*? Did he own it?

Mr. *Blathwayt.* Yes; All my Lords the Biſhops did own it?

Mr. *Soll. Gen.* Name them particularly; what ſay you of the Biſhop of *Ely*?

Mr. *Blathwayt.* In the ſame manner, my Lord.

Mr. *Soll. Gen.* The Biſhop of *Chicheſter*?

Mr. *Blathwayt.* In the ſame manner.

Mr. *Soll. Gen.* The Biſhop of *Bath* and *Wells*?

Mr. *Blathwayt.* Yes, my Lord.

Mr. *Sol. Gen.* The Biſhop of *Peterborough*?

Mr. *Blathwayt.* Yes, my Lord.

Mr. *Soll. Gen* And the Biſhop of *Briſtol*?

Mr. *Blathwayt.* Yes, my Lord.

Mr. *Soll. Gen.* So; We have proved they all owned it.

Mr. *Juſt. Holloway.* Could not this have been done at firſt, and ſaved all this trouble?

Sir *Robert Sawyer.* Have you done with Mr. *Blathwayt*, Mr. Attorney, that we may ask him ſome queſtions?

Mr. *Att. Gen.* Ask him what you will.

Mr. Ser. Pemb. Pray, Mr. *Blathwayt*, upon what occaſion did they own it, you are ſworn to tell the whole truth; pray tell all your Knowlege, and the whole Confeſſion that they made.

Mr. Blathwayt. My Lord, I am called here by a *Subpœna* to anſwer on behalf of the King; my Lord, I am ready to do my duty, and I beg of your Lordſhip that you would pleaſe to tell me what is my duty; for whatſoever I ſhall anſwer, I ſhall ſpeak the truth in.

Mr. Ser. Pemb. There is nothing deſired, but that you would ſpeak the truth.

Mr. Blathwayt. My Lord I am eaſily guided by your Lordſhip what I ought to anſwer to.

L. C. Juſt. What is it you ask him, Brother *Pemberton*?

Mr. S. Pemb. We deſire Mr. *Blathwayt* to tell the whole diſcourſe that paſſed at the Council, when he ſays my Lords the Biſhops owned this Paper.

Mr. Soll. Gen. That's a very pretty thing indeed.

L. C. Juſt. Look you, Mr. *Blathwayt*, you muſt anſwer them what they ask you, unleſs it be an inſnaring Queſtion, and that the Court will take care of.

Mr. Blathwayt. If your Lordſhip pleaſe to ask me any Queſtion, I ſhall readily anſwer it.

L. C. Juſt. You muſt anſwer them.

Mr. S. Pemb. We ask you upon what occaſion they came to own their Hands? What diſcourſe was made to them, and what they anſwered?

Mr. Blathwayt. My Lord, I beg your Lordſhip's directions.

L. C. Juſt. Come, tell it, Sir.

Mr. Blathwayt. My Lord, the occaſion was this: This Paper was read in Council, and I had the honour to read it before the King, and it having been read before his Grace the Arch-Biſhop, and my Lords the Biſhops, they were asked whether they did own that Paper, and my Lord, they did own it.

Sir Rob. Sawyer. Mr. *Blathwayt*, was that the firſt time that my Lords the Biſhops came in?

Mr. Blathwayt. Sir, I was not asked that Queſtion.

L. C. Juſt. What would you have, Sir *Robert Sawyer*?

Sir Rob. Sawyer. We would have an account what paſſed at the Council.

L. C. Juſt. Would you have all the Diſcourſe betwixt the Council and my Lords the Biſhops?

Mr. Ser. Pemb. All that relates to their Accuſation, my Lord, their whole Confeſſion, and what was ſaid to them.

Mr. Att. Gen. Do you think, Mr. Serjeant, that when we call a Witneſs, you are at liberty to examine him to every impertinent thing?

Mr. *Sol. Gen.* My Lord, we deſire they may only ask reaſonable and proper Queſtions.

Mr. S. Pemb. Mr. Sollicitor he is ſworn to anſwer and tell the whole truth, and that's all we ask of him.

Sir Rob. Sawyer. Sir, I will ask you a plain Queſtion upon your Oath, did not my Lord Arch Biſhop, and the reſt of my Lords the Biſhops, at firſt refuſe to own it, or to anſwer whether it were their Hands or not?

Mr. Soll. Gen. That is not a fair Queſtion Sir *Robert Sawyer*; 'tis a leading Queſtion.

Mr. Ser. Pemb. Then I ask you in ſhort, what did they refuſe? I am ſure that is a fair Queſtion, for God forbid that any ſhould hinder the King's Evidence from telling truth.

Sir Rob. Sawyer. And God forbid that half Evidence ſhould condemn any man.

L. C. Juſt. God forbid the Truth ſhould be concealed any way.

Mr. Ser. Pemb. Pray, Sir, when they were firſt asked, whether that was their Hands or not, what anſwer did they give?

Mr. Blathwayt. Sir, I have beg'd the favour

of my Lords the Judges to tell me what I am to anſwer, and what Queſtions are proper for me to anſwer to.

L. C. J. You muſt anſwer any Queſtions that are not enſnaring Queſtions.

Sir Rob. Sawyer. Mr. *Blathwayt*, you are upon your Oath to teſtifie the Truth.

Mr. Blathwayt. Sir, I am not acquainted with the Methods of Law, I deſire my Lords the Judges would inſtruct me.

Mr. Juſt. Allybone. Anſwer to the Queſtion that they ask you.

L. C. J. We obſerve what they ask you; we'll take care that they ask you nothing but what they ſhould.

Mr. Blathwayt. I deſire the Queſtion may be repeated.

Mr. Serj. Pemb. When they were firſt asked if it were their Hands, what anſwer did they give the King?

Mr. Blathwayt. His Grace the Archbiſhop, and my Lords the Biſhops, at firſt did not immediately anſwer whether the Paper were theirs or no.

Mr. Serj. Pemb. What did they ſay?

Mr. Blathwayt. They ſaid they did humbly hope, if they were put to anſwer, no advantage ſhould be taken againſt them.

Mr. Serj. Pemb. What did they ſay farther at that time concerning His Majeſties Pleaſure?

Mr. Soll. Gen. That's a leading Queſtion, Mr. *Serj. Pemberton*; you cannot leave your way of leading Witneſſes.

Mr. Serj. Pemb. It is a very ſtrange thing; if we ask a Queſtion that's general, that's excepted to; if we ask any Queſtion in particular, then they find fault with us, that it is a leading Queſtion; ſo that we can never ask a Queſtion that will pleaſe them. Pray Mr. *Blathwayt*, what did they ſay concerning the King's Pleaſure, whether they would anſwer if the King commanded them?

Mr. S. Trinder. How can it be material what they ſaid?

L. C. J. It is material that it ſhould be asked, and that it ſhould be anſwered.

Mr. S. Levinz. You are to tell the whole Truth, Sir. Pray tell us what did my Lords the Biſhops ſay about ſubmitting to the King's Pleaſure?

Mr. Sol. Gen. What is that to the purpoſe?

Mr. Pollixfen. Mr. Sollicitor, his Oath is to tell the Truth, and the whole Truth, and therefore he muſt anſwer my Queſtion.

Mr. S. Pemb. You are mighty loth Mr. Sollicitor, to let us hear the Truth; I would not willingly lead him in any thing, and I cannot ſee that this is any leading Queſtion, unleſs his Oath be againſt Law, which ſays he is to tell the whole Truth.

Mr. Att. Gen. My Lord, I do beg your Lordſhip's favour of a Word in this thing: It is certain, if they ask any thing that ſhall take off the Evidence that was firſt given, that it is not true, I cannot oppoſe it; but if they ask Queſtions only to enflame, and to poſſeſs people with fooliſh Notions, and ſtrange Conceits, that is not to the Fact that we are now trying——

Sir *Rob. Sawyer.* 'Tis only to have the Truth out that we do it.

Mr. Serj. Pemb. There is no body here that will be enflamed, Mr. Attorney; I have asked a fair Queſtion, the Court has ruled it ſo.

Mr. Blathwayt. I ſhall readily anſwer any Queſtion that the Court thinks fit.

Mr. Serj. Pemberton. Sir, by the Oath you have taken you are to tell the whole Truth.

L. C. J. Is he to tell you all that was done at the Council Board that Day?

Mr. Serj. Pemb. No, my Lord; only what paſſed there about my Lords the Biſhops Confeſſion, the whole of that matter.

Mr. Blathwayt. There has been ſo much ſaid between the asking of the Queſtion and this time, that I deſire it may be repeated, that I may know what to anſwer to.

Mr. Serj. Pemberton. I ask you in ſhort, Sir, What did my Lords the Biſhops ſay at the time of their appearing in Council concerning the King's Pleaſure, whether they ſhould anſwer or not?

Mr. Blathwayt. The firſt time my Lords the Biſhops came into the Council, they were asked the Queſtion whether they did own that Paper; they did immediately anſwer, They humbly hoped, as they ſtood there Criminals, His Majeſty would not take advantage againſt them, but however they would obey His Majeſties Command.

Sir *Rob. Sawyer.* Were they commanded to withdraw?

Mr. Blathwayt. Yes, thereupon they were commanded to withdraw, which they did.

Mr. Serj. Pemb. When they came in again what Queſtions were asked them?

Mr. Blathwayt. They came in ſeveral times, more than twice, I have reaſon to remark this, that they did ſo; do you mean the ſecond time, Sir?

Mr. Serj. Pemb. Yes, Sir.

Mr. Blathwayt. The ſecond time they ſeemed unwilling to own the Paper.

Sir *Robert Sawyer.* And what did they do the third time?

Mr. Serj. Pemb. But firſt let us know what more was done the ſecond time.

Sir *George Treby.* How was that unwillingneſs of theirs overcome?

Mr. Serj. Pemb. When they expreſt their unwillingneſs what did they ſay farther?

Mr. Blathwayt. If I remember right, they ſaid as they did the firſt time, they humbly hoped His Majeſty would not take advantage againſt them.

Mr. Serj. Pemb. Then what did they ſay the third time?

Sir *Robert Sawyer.* Pray, were they asked whether they publiſhed it?

Mr. Blathwayt. As to the publiſhing it, it was laid before them, and I think they were asked the Queſtion whether they publiſhed it?

Sir *Robert Sawyer.* And what anſwer did they make?

Mr. Blathwayt. I remember his Grace, and my Lords the Biſhops, did not own they had publiſhed it, but they denied it.

Sir *George Treby.* After they diſcovered their unwillingneſs the ſecond time, what followed next?

Mr. Blathwayt. They did withdraw after the ſecond Attendance.

Mr. S. Levins. But what was ſaid to them? Was that all that was ſaid to them the ſecond time?

Mr. Blathwayt. I have ſaid two things already, that they were unwilling to anſwer, and that they denied the publiſhing.

L. C. J.

L. C. J. This is a ſtrange uſage of a Witneſs, to put him to tell every thing that was ſaid.

Mr. Serj. Pemberton. I would ask you this Queſtion, Sir. When they came in the ſecond time, whether they did deſire to know if it were His Majeſties Command that they ſhould own it?

L. C. J. That I muſt not permit you to ask, Brother, that is to lead the Witneſs.

Mr. Serj. Pemb. My Lord, he will not anſwer general Queſtions; I have asked him all along general Queſtions, and I cannot yet get an anſwer from him to them.

Mr. Blathwayt. I am ready to anſwer any Queſtions that the Court thinks I ſhould anſwer; I am not backward to anſwer acccording to my duty.

L. C. J. Let one of you ask a Queſtion at a time, and not chop in one upon another.

Mr. Sol. Gen. In all the Tryals that ever I have been in, in all the Caſes of Criminals, the King's Witneſſes uſed to be treated with reſpect, and not to be fallen upon in this manner.

L. C. J. He ſhall be ſure to have all reſpect paid him.

Mr. Sol. Gen. He is in Office under the King.

Mr. Serj. Pemb. I do not think Mr. *Blathwayt* does believe I would ſhew him any diſreſpect, more than he would ſhew me.

Mr. Att. Gen. I beg one word, my Lord.

L. C. J. Mr. Attorney, What do you ſay?

Mr. Att. Gen. My Lord, I ſay I do oppoſe the asking of this Queſtion, not but that every Man has a right to croſs-examine a Witneſs, but if they ask ſuch a Queſtion, let them tell us what uſe they would make of it.

L. C. J. Mr. Attorney General, for that matter——

Mr. Serj. Pemb. My Lord, if you pleaſe I'll give Mr. Attorney an anſwer.

L. C. J. Brother *Pemberton*, I was ſpeaking to Mr. Attorney, and pray hear me, I will not ask you what uſe you'll make of the Queſtion you ask, but do you ask fair and regular Queſtions, and I'll take care you ſhall have an anſwer to them.

Mr. Serj. Pemb. I will deal plainly with the Court, and tell you what Uſe we intend to make of our Queſtion; if they anſwered under a Promiſe from His Majeſty, that it ſhould not be given in Evidence againſt them, I hope they ſhall not take advantage of it.

Mr. Sol. Gen. I ſay that is a very unmannerly Queſtion, but however it ſhall be anſwered.

Mr. Serj. Pemb. Why ſo, Mr. Sollicitor?

Mr. Soll. Gen. My Lord, it is to put ſomething upon the King which I dare hardly name.

L. C. J. We do not know what Anſwer will be made to it yet, but it does look like an odd kind of Queſtion.

Mr. Sol. Gen. If men will be ſo preſſing, I, for the King, deſire the Queſtion may be entred.

Sir *Robert Sawyer.* What do you mean, Mr. Sollicitor?

Mr. Sol. Gen. I know very well what I mean, Sir; I deſire the Queſtion may be recorded in Court.

Mr. Serj. Pemb. Record what you will, I am not afraid of you, Mr. Sollicitor.

Mr. Sol. Gen. Are you afraid of the Law?

Mr. Serj. Pemb. No, nor of you neither.

L. C. J. Pray be quiet, Gentlemen.

Mr. Att. Gen. Pray, Mr. *Blathwayt*, anſwer whether there was any promiſe made to my Lords the Biſhops from the King.

Mr. Blathwayt. My Lord, I take the Queſtion to be, whether the King was pleaſed to make my Lords the Biſhops any promiſe of not taking advantage of what anſwer they made.

Mr. Att. Gen. That is the Queſtion.

Mr. Blathwayt. As that Queſtion is ſtated there was no ſuch made.

L. C. J. Look you, he tells you there was no ſuch promiſe made; there is an Anſwer to your Queſtion, Brother.

Mr. Serj. Levinz. We made no ſuch Queſtion; but the Queſtion I would ask is this, ——

Mr. Sol. Gen. For the Satisfaction of the Court repeat what you ſaid juſt now, Mr. *Blathwayt.*

Mr. Blathwayt. I take the Queſtion to be, whether the King made any promiſe to my Lords the Biſhops, that no advantage ſhould be taken of what they ſaid, and I ſay the King made no ſuch promiſe.

Mr Serj. Pemb. We did not ask you the Queſtion, but we only told you what uſe we would have made of another Queſtion.

Mr. Pollixfen. Mr. *Blathwayt*, I ſee you can very well diſtinguiſh what Queſtions are to be anſwered; I ask you in ſhort upon your Oath, when they were firſt called in, what was ſaid to them, and what was anſwered by them?

L. C. J. Here has been a great deal of wrangling, but this is a fair Queſtion, and may reduce us to order again; tell us over again from the beginning what paſſed when my Noble Lords the Biſhops came in the firſt, ſecond and third time, when they were examined about this Paper?

Mr. Blathwayt. My Lord, I ſhall comply with your Lordſhip's Directions, I apprehend I am to anſwer together concerning the firſt, ſecond, and third comings in of my Lords the Biſhops into the Council. The firſt time, (as I ſaid before,) my Lords the Biſhops were unwilling to own the Paper, and did ſay they humbly hoped His Majeſty would not take advantage againſt them, but that they were ready to obey his Command. The ſecond time they were called in they did repeat it again, that they hoped His Majeſty would not take advantage againſt them; after that there was mention made of the Paper being publiſhed, I remember my Lords the Biſhops ſaid they had not publiſhed it.——

Sir *Rob. Sawyer.* Is that all?

Mr. Sol. Gen. You have no mind to hear all, I think.

L. C. J. How do you expect to be anſwered your Queſtions, if you interrupt them? Go on, Mr. *Blathwayt.*

Mr. Blathwayt. Sir, I ſaid laſt, that they having prayed the King that no advantage might be taken againſt them for what they ſhould ſay, there was mention made of the Paper its being publiſhed, and my Lords the Biſhops did ſay they had not publiſhed it; and his Grace my Lord Archbiſhop ſaid it was written with his own Hand, and that he had not made uſe of his Clerk.

Sir *Rob. Sawyer.* Is that all you can remember that paſſed at that time?

Mr. Blathwayt. This is the ſubſtance of what I remember.

L. C. J. Was this the third time?

Mr. Blathwayt. No; that was the ſecond time, my Lord.

Mr. Pollixfen.

Mr. *Pollixfen.* If there be not ſome order in this Evidence, my Lord, we ſhall not be able to obſerve any thing upon it.—Pray what was done afterwards?

Mr. *Blathwayt.* My Lord Chancellour, upon their coming in, did require them to anſwer whether they did own that Paper or not; my Lords the Biſhops did own the Paper.

Mr. *Pollixfen.* Do you remember in what words or expreſſions (as near as you can) they did own it?

Mr. *Sol. Gen.* Is this a practice to be endured?

Mr. *Finch.* Why, he may apprehend and take that to be an owning of it which was not.

Mr. *Sol. Gen.* Has not he ſworn the manner of it, and almoſt the very words?

Mr. Serj. *Levinz.* We deſire nothing of him but that he will tell us what words they ſaid when they owned it.

Mr. *Blathwayt.* It was the third time that they came in, that they owned it.

Mr. Serj. *Pemberton.* Why, what did they ſay?

Mr. *Blathwayt.* My Lord Chancellour required them to anſwer, whether they owned the Paper or no.

Mr. Serj. *Pemberton.* What did they ſay then?

Mr. *Blathwayt.* As near as I can remember, His Grace and my Lords the Biſhops did own the Paper.

Mr. Serj. *Pemberton.* What words did they own it in? tell the manner of it.

Mr. *Sol. Gen.* What's this to the purpoſe?

Mr. *Finch.* Mr. *Blathwayt*, Did you take notes of what paſſed there?

Mr. *Blathwayt.* I anſwer, Sir, I did not take notes, for I attended the King at his Elbow, and did not take notes; Mr. *Finch*, you know the manner of the Council in ſuch caſes very well.

Mr. Att Gen. Then we ask you for the King, becauſe they ſhall not enflame People by ſuch an expreſſion, In what words did they own it, if you can remember?

Mr. *Blathwayt.* Sir, I have declared my memory as well as I can; when the other Clerks come to be examined, if they can tell any more, let them.

Mr. *Sol. Gen.* But we will have no Diſcourſe to enflame the World; Did the King promiſe or declare that no advantage ſhould be taken of their confeſſion?

L. C. Juſt. I would ask him that queſtion, What was the manner that my Lord Chancellour expreſt himſelf in to them, when they came in the third time?

Mr. *Blathwayt.* Aſſoon as my Lord Chancellor had required them to declare whether they owned that Paper, as well as I remember, His Grace took the Paper in his hand, and it was handed over, or ſhewed, to my Lords the Biſhops, and they owned and declared ſo, juſt as if they ſhould lay it before the Court, juſt ſo: I do not recollect my ſelf of all the circumſtances that paſſed, I only can tell you the ſubſtance.

Holding it forth to the Court.

Mr. *Sol. Gen.* He does not remember what they ſaid particularly.

Mr. *Att. Gen.* Mr. Sollicitour, I know well enough what they mean by the queſtion; I know they would fain poſſeſs the World with a belief that there was ſuch a promiſe made them, and yet they are proſecuted notwithſtanding that promiſe; therefore I do ask you, Mr. *Blathwayt*, and for the King's Honour I muſt ask it. Did the King make any Promiſe or Declaration, that no advantage ſhould be taken, or uſe made of it?

Mr. *Blathwayt.* The King did not make any Promiſe or Declaration that no advantage ſhould be taken, or uſe made of it.

Mr. *Sol. Gen.* He only put them upon it, whether they did own it or not.

Mr. *Att. Gen.* I ask you upon your Oath Did my Lord Archbiſhop own it to be his Hand-writing?

Mr. *Blathwayt.* Yes he did, and ſaid he writ it with his own Hand, and would not let his Clerk write it.

Mr. *Att. Gen.* Did he own the whole to be his Hand-writing, or not?

Mr. *Blathwayt.* Yes, he did.

Mr. *Att. Gen.* Did every one of the Biſhops own their names ſubſcribed to it?

Mr. *Blathwayt.* Yes.

Mr. *Sol. Gen.* Then, my Lord, we pray now that it may be read.

L. C. Juſt. I ſuppoſe now they will be content it ſhould be read.

Mr. *Finch.* If your Lordſhip pleaſe to favour me one word, I think it cannot yet be read, and my Objection is this:—

L. C. Juſt. I thought you had made all your Objections before, as to the reading of it.

Mr. *Finch.* Pray, my Lord, ſpare us: Here are two parts of this Information; the one is for conſulting and conſpiring to diminiſh the King's Royal Prerogative, and for that end they did make and write a ſeditious Libel; the other part is, that they did publiſh this ſeditious Libel; We are hitherto upon the firſt part, the making and writing of it; both parts are local; until they have proved the making and writing of it to have been in *Middleſex*, it is not Evidence upon this Information.

Mr. *Sol. Gen.* We have proved it written and publiſhed in *Middleſex*.

Mr. Serj. *Pemb.* The contrivance and writing of a Libel is in itſelf penal, and they may be puniſhed for it, if they be found guilty. Now if they could give an undeniable Evidence concerning the publiſhing of it, that is nothing to this point; but if they ſhould not give ſuch Evidence, or any Evidence at all of the publication, yet if it be proved that it was written and contrived by them, they would be guilty for ſo much, if it be a Libel, and this we ſay is local as well as all the reſt: and therefore we inſiſt upon it, that the writing and contriving muſt as well be proved to be in *Middleſex*, as the publication, for all is local.

L. C. Juſt. There is no publiſhing yet proved.

Mr. Serj. *Levinz.* It is true, my Lord, here is nothing of a Publication yet, (with your Lordſhip's favour,) for their Anſwer to His Majeſty in Council was, that they did not publiſh it; all that is ſaid yet, is, that they owned the Paper to be their hands: My Lord, does the owning of that own that it was written in the County of *Middleſex*? or that it was contrived or made there? No ſurely, upon this Evidence the place is clearly at large: My Lord, this might have been done in the County of *Surrey*, or *Somerſet*, or any other County: Their Information is, that they did conſult and contrive to diminiſh the King's Prerogative at *Weſtminſter* in the County of *Middleſex*, and there they did write,

write; and cauſe to be written, this Libel, and there they did publiſh it; ſuppoſe it ſhould be granted that it is proved that this is the Archbiſhop's Hand-writing, and theſe are their Names to it, is there any one Evidence that any thing of this was done in *Middleſex*? and, my Lord, that is the thing they are to prove.

Mr. *Sommers*. If your Lordſhip pleaſe, all matters of Crime are ſo local, that if it be not proved to be done in the County where it is laid, the Party accuſed is as innocent, as if he never had done the thing; and, with ſubmiſſion, it is the very point of the Information; that it be proved they are guilty of the Fact in the place where it is laid to be done.

L. C. Juſt. This is the ſame thing over and over again; but I am content to hear you, Mr. *Sommers*, at any time; I have told you my opinion about reading of the Paper already, if you'll have it again you may.

Mr. *Pollixfen*. Pray good my Lord, ſpare us before it be read.

Mr. *Juſt. Holloway*. Mr. *Pollixfen*, you have not yet had the Directions of the Court for the reading of it.

Mr. *Att. Gen*. My Lord when this Paper is read, which we pray it may be, we will anſwer their Objections, but at preſent we ſay, they are out of time.

Mr. *Pollixfen*. Good Lord, what a ſtrange thing is this! We object againſt the reading of it, and you'll anſwer us after it is read.

Mr. *Sol. Gen*. Certainly, my Lord, we have done enough to prove that this is a Paper owned by them in the County of *Middleſex*, and we pray it may be read.

L. Ch. Juſt. Truly I am of the ſame mind I was before, that it is too ſoon to make the Objection, and that the Paper ought to be read.

Mr. *Sol. Gen*. We ſubmit to your Rule.

Mr. *Pollixfen*. If it be the Will of the Court, I have nothing to ſay.

Mr. *Juſt. Powell*. My Lord, The Contrivance and Publication are both matters of Fact, and upon Iſſue joined the Jurors are Judges of the Fact, as it is laid in the Information; but how can they be Judges of a matter of Fact done in another County? and it muſt be preſumed, in favour of Innocence, not to be done in this County, but in another, except they prove it.

Mr. *Att. Gen*. We are not yet ripe for arguing that point.

Mr. *Soll. Gen*. We are ſpeaking only to the Court now for the reading of this Paper, and the Jury are not Judges of that, whether the Paper ought to be read or no; that is merely a matter of Law, and under the direction of the Court; and therefore I pray, ſince it is now in your Lordſhip's Judgment, whether that Paper ſhould be read, that you would pleaſe to order it to be read.

L.C. Juſt. I can only give you my own opinion, let my Brothers give theirs.

Mr. *Juſt. Holloway*. There is no body againſt the reading of it, my Lord; I ſuppoſe my Brother *Powell* is not againſt its being read.

Mr. *Juſt. Powell*. But they ſay the King's Council muſt make it out firſt, that the writing of it, and the conſpiring about it was in the County of *Middleſex* or there can be no Judgment, ſo much as to read it.

Mr. *Pollixfen*. My Lord, If the Objection be ſaved to us, we ſhall not ſo much oppoſe the reading it, only we would not be ſurprized in point of time.

Mr. *Juſt. Powell*. Nay, if they conſent to the reading, we have no reaſon to hinder it.

L. C. J. Brother, I believe they know well enough what they have to ſay for their Clients; let the Paper be read.

Clerk reads. *The Humble Petition of* William *Archbiſhop of* Canterbury ——

Sir *Robert Sawyer*. Read the whole Petition; Pray, my Lord, that the whole may be read. Read the Top firſt, Sir; to whom it was directed.

L. C. J. Read the whole.

Clerk reads.

To the King's Moſt Excellent Majeſty.

The Humble Petition of William *Archbiſhop of* Canterbury, *and of divers of the Suffragan Biſhops of that Province, now preſent with him, in behalf of themſelves and others of their abſent Brethren, and of the Clergy of their reſpective Dioceſes.*

Humbly ſheweth:

THat the great averſeneſs they find in themſelves to the diſtributing and publiſhing in all their Churches your Majeſties late Declaration for Liberty of Conſcience, proceedeth neither from any want of Duty and Obedience to your Majeſty, (our holy Mother, the Church of *England*, being both in her Principles and in her conſtant practice unqueſtionably loyal; and having (to her great Honour) been more than once publickly acknowledged to be ſo by your Gracious Majeſty,) nor yet from any want of due tenderneſs to Diſſenters, in relation to whom they are willing to come to ſuch a Temper as ſhall be thought fit, when that matter ſhall be conſidered and ſettled in Parliament and Convocation; but amongſt many other conſiderations, from this eſpecially, becauſe that Declaration is founded upon ſuch a Diſpencing Power, as hath been often declared illegal in Parliament, and particularly in the Years 1662, and 1672, and in the beginning of your Majeſties Reign; and is a matter of ſo great moment and conſequence to the whole Nation, both in Church and State, that your Petitioners cannot in Prudence, Honour, or Conſcience, ſo far make themſelves parties to it, as the Diſtribution of it all over the Nation, and the ſolemn Publication of it once and again, even in God's Houſe, and in the time of his Divine Service, muſt amount to, in common and reaſonable Conſtruction:

Your Petitioners therefore moſt humbly and earneſtly beſeech your Majeſty, that You will be graciouſly pleaſed not to inſiſt upon their Diſtributing and Reading your Majeſties ſaid Declaration:

And Your Petitioners (as in duty bound) ſhall ever pray, *&c.*

Mr. *Att. Gen*. My Lord, we ſhall leave our Evidence here, and hear what they can object to it.

Mr. *Finch*. Have you no farther Evidence, Mr. *Attorney*?

Mr. *Att. Gen*. We leave it here for the preſent.

Mr. *Sol. Gen*. The Gentlemen of the Jury deſire to ſee the Petition.

L. C. J. Shew it them.

(*The Petition was ſhewn to the Jury.*)

Mr.

Mr. *Finch.* But will you give no farther Evidence, Mr. *Attorney?*

Mr. *Att. Gen.* I tell you we'll leave it here, till we ſee what you ſay to it.

Mr. *Finch.* There is nothing that we ſhould ſay any thing to.

Mr. *Att. Gen.* Make your Advantage of it; if it be nothing, we can have nothing.

L. C. J. What ſay you for the Defendents, Gentlemen?

Mr. *Finch.* My Lord, in ſhort, we ſay that hitherto they have totally failed, for they have not proved any Fact done by us in *Middleſex*, nor have they proved any Publication at all.

Sir *Robert Sawyer.* They have given no Evidence of any thing.

L. C. J. Pray Gentlemen ſpeak One at once, and then we ſhall underſtand the better what we hear.

Sir *Robert Sawyer.* My Lord, We ſay, they have given no Evidence of the Conſpiring, Writing, or publiſhing in *Middleſex*; Nay, as to the Publication, there is none at all proved.

Mr *Finch.* Here is no proof of any Publication, nor of the writing or making in *Middleſex*; ſo that there is no proof at all againſt my Lords, the Biſhops.

L. C. J. You heard what Mr. *Blathwayt* ſaid, they owned it in *Middleſex.*

Mr. *Finch.* That is not a Publication ſure, or any Evidence where it was done.

Mr. *Serj Levinz.* Suppoſe, my Lord, that I own in *Middleſex*, that I robb'd a man in *Yorkſhire*, will that make me guilty in *Middleſex?*

Mr. *Att. Gen.* But if you had ſtole a Horſe in *Yorkſhire*, and had that Horſe in *Middleſex*, and owned it, I doubt it would go hard with you in *Middleſex?*

Mr *Sol. Gen.* Mr. Serjeant thinks he has put a very home Compariſon, but we ſhall ſhew how little ſignificant it is by and by.

Mr. *Serj Levinz.* My Lord, in the firſt place we inſiſt upon it; here is no proof in this Caſe at all, as to the doing of any Fact at all in the County of *Middleſex*; in the next place, this Information and Petition do not agree; for they have brought an Information, and ſet forth, That my Lords the Biſhops under pretence of a Petition did make a Libel, and they have ſet forth no Petition at all, all the Petitionary part is omitted: If I will take part of a Man's Words, and not the whole, and make a Libel of that part, certainly that is very diſingenuous and injurious; For that part that I omit may alter the Sence of the whole. They here ought to ſet forth the Petition, with the Direction to the King, and the Prayer at the end, whereby it will appear what the whole is, and what was deſired by their Petition. But, my Lord, to make this matter a little more clear, whatſoever they ſay of its being my Lord Archbiſhop's Hand, we ſhall prove that if it were ſo, it could not be done in *Middleſex*; for we ſhall prove that my Lord of *Canterbury* hath not been in *Middleſex* for three or four Months before.

Sir *Robert Sawyer.* Pray let the Information be read, then you will ſee the variance.

Mr. Att. Gen. There is not the latter part (we acknowledge) in the Information.

Mr. Sol. Gen. There may be, and is, a *ſic Continetur*, and there is no Objection in that at all.

L. C. J. It is *ſic Continetur*, and that's——

Sir *Rob. Sawyer.* The truth of it is, this Information has made a very deformed thing of it, has left it neither Head nor Tail; they ſtyle it a Petition, but it is without any Direction to any body, and without any Prayer for any thing; and without thoſe two it cannot be told what it is.

Mr. J. Allybone. Sir *Rob. Sawyer*, if I miſtake not, it is ſaid only under pretence of a Petition.

Sir *Robert Sawyer.* There may be more in the Paper, than in the Information, and if all were in, one part might explain another.

Mr. Sol. Gen. So there may be more; and I wonder to hear that Objection from Sir *Rob Sawyer*, who has exhibited ſo many Informations for Libels in pieces taken out of Books.

Mr. Recorder. All that we alledge in the Information is contained in the Paper, and that's enough for our purpoſe; we are not bound to recite the whole.

L. Ch. J. Indeed I think it is no material Objection at all.

Mr. Serj. Pemberton. Truly I think it is very material in this Caſe; here's a Petition that is preferred to his Majeſty; take the whole Petition together, and, ſay they, it is a reaſonable Petition; chop off the Direction and the Prayer, and then here's nothing but the body of a Petition, without beginning or ending; or if a Man will ſay any thing concerning the King, and do it by way of Petition to himſelf, that will alter the Caſe mightily, from a Paper ſpread about, that ſhould contain only the body of a Petition, and nothing elſe.

Sir *Robert Sawyer.* Pray read that part of the Information.

Mr. Pollixfen. If ſo be there be an Information, and that Information charges a man with a pretended Petition, and the Evidence comes and proves a Petition both top and bottom, that is not the Petition in the Information; for that lacking the proper parts of a Petition, is called a pretended Petition, but that which is proved, is proved is a real one.

Mr. Serj. Baldock. My Lord, there is nothing in this Objection, as this Record hath it.

Mr. Att. Gen. Pray, my Lord, give us leave to ſtate it on our ſide, as they have done on theirs, and it will be the better underſtood upon the reading: I hope it is not come to that paſs that they would have it, ſure theſe Gentlemen have not forgot altogether the practice that has been ſo frequent in this Court; if there be an Information for a Libel, is there any thing more frequent, than only to recite the material part? Sure they may ſay in ſuch a Libel is contained ſo and ſo, without ſetting forth the whole Book.

Mr. Sol. Gen. How many Tryals have we had here, wherein there has been only a Clauſe taken out of a Book? as particularly, *Baxter's* Bible, and *Johnſon's* Book, and all by vertue of a *ſic continetur.*

Mr. Finch. That comes not up to our Objection here.

Mr. J. Powell. Let us hear the Record read, and then we can judge of it.

Sir *Rob. Sawyer.* We pray, Sir, the Information may be read.

Mr. Att. Gen. We are here upon all Occaſions chopp'd in upon, and I do not know how they come to take this Liberty; I am ſure other people had it not in former times, when theſe Gentlemen ſtood where we do; as ſoon as ever we offer to ſpeak, preſently there are two or three upon us.

L. C. J.

L. C. J. Let me hear them, Mr. Attorney, make their Objection, and let the Record be read, and that will anſwer that Objection.

Mr. Att. Gen. My Lord, as for that other thing, they come and tell us, we have ſet forth a Petition, we ſay no ſuch thing; in the Information we ſay, you compoſed a certain Libel *pretenſu Petitionis*, in which are contained ſuch and ſuch things; and now I pray let it be read.

Mr. Sol. Gen. Pray, my Lord, hear me a little firſt; Take the Information as we have laid it, and I believe there are twenty Preſidents that I could give you in an inſtant of late days practice; ſo was the Information againſt Mr. *Baxter*, ſo was the Information againſt Mr. *Johnſon*, ſo was the Information againſt Doctor *Eades*, and ſo was the Information againſt Sir *Samuel Barnardiſton*. They are all in this form, *ſic continetur*; ſo that as for that matter, we are well enough. But here's another thing (ſay they,) You do not ſet out the Petition; we ſay, it is a Libel, and it is not the Name we rely on, but there is ſuch a Libel, ſo we in our Information call it; if it be not a Libel, then are they very innocent; and whether it be or no, is now in Judgment before your Lordſhip; but if it be as we ſay, then it is not the ſpeaking ill things in the body of a Petition, and then giving it a good Title, and concluding it with a good Prayer at the end of it; 'tis not, I ſay, any of theſe that will ſweeten this Crime, nor alter, nor alleviate it at all; if there be that which is Seditious and Libellous in the Body of it, call the Paper what you will, and ſmooth it with a Preamble, or a Concluſion, that will not make it any thing leſs a Libel; theſe things are plain and manifeſt: We ſay there is ſuch a thing done, a Libel made, *pretenſu Petitionis*, do you call it what you will; but we ſay, theſe and theſe things are a Libel upon the King and the Government: We have proved our Caſe, we have proved there was ſuch a Paper under their Hands, we have proved it was owned in *Middleſex*, and then we are in your Judgment, whether this be not Evidence ſufficient to convict the Defendents.

L. C. J. But they do make an Objection about the Writing and Contriving of it, that it is not proved to be in *Middleſex*.

Mr. Serj. Trinder. My Lord, our Information does not go with a continued Clauſe, that they framed a Libel, *ut ſequitur in hæc verba*, but we only ſay, they made a Libel *pretenſu Petitionis*, and then we ſay, *In quo quidem Libello continetur*, ſo and ſo; we do not tie our ſelves up to a particular Recital of all that's in the Paper.

L. C. J. Read the Record.

Clerk Reads.

Ipſi iidem Willielmus Archiepiſcopus Cantuarienſis, (and the reſt) *dicto decimo octavo die* Maii, *Anno Regni dicti Domini Regis nunc quarto ſupradicto vi & armis, &c. apud* Weſtmonaſterium *prædictum in Comitatu* Middleſexiæ *prædicto* illicite malitioſe ſeditioſe & ſcandaloſe quoddam falſum fictum pernitioſum & ſeditioſum Libellum in ſcriptis de eodem Domino Rege & Regali Declaratione & Ordine predictis pretenſu Petitionis fabricaverunt compoſuerunt & ſcripſerunt & fabricari componi & ſcribi cauſaverunt, *& eundem falſum fictum malitioſum pernitioſum & ſeditioſum Libellum per ipſos prædictos* Willielmum Archiepiſcopum Cantuarienſem, (and the reſt) *manibus ſuis propriis reſpectivè ſubſcriptum die anno & loco ultimo mentionatis* in præſentia dicti Domini Regis nunc vi & armis, &c. publicaverunt & publicari cauſaverunt; *In quo quidem falſo fictо malitioſo pernitioſo & ſeditioſo Libello continetur* The humble Petition of, *&c.*——

Mr. Serj. Levinz. It is quite another thing; that which is produced from that which is in the Information, by this leaving out a part; for here is the Prayer omitted, and the Direction.

Mr. Sol. Gen. Then, my Lord, I think there is nothing in the Caſe, but this mighty Objection of the County; and, ſays Mr. *Serj. Levinz*, if my Country-man Confeſſes in this County, that he ſtole a Horſe in *Yorkſhire*, you ſhall not try him in *London*, but in *Yorkſhire*, becauſe by his own Confeſſion the Fact is in another County.

Mr. Serj Levinz. I did not put the Caſe ſo.

Mr. Sol. Gen. But take the Fact of the Caſe as it is here; my Lord, the Biſhops come in *Middleſex* and own this Paper, my Lord Archbiſhop owns it to be his Writing, and the reſt of the Biſhops own their Hands; if they had done as *Mr. Serjeant's Yorkſhire*-man did, and ſaid, we own we did this, but it was in the County of *York*, then it would have been like the Caſe that theſe Gentlemen put; but here we are in a plain Caſe of another nature; my Lord Archbiſhop comes here in *Middleſex*, and owns that he writ the Paper, the other Biſhops they ſigned it; now it does lie certainly in their knowledge where this was done, and they ſhould have declared then; but they have owned it as their Paper, and the ſigning and writing of it, which is enough for us.

Mr. Finch. I own this to be my Paper, therefore I writ it in the County of *Middleſex*; Is that a Conſequence? I am very glad they are no better at their Inferences.

Mr. Sol. Gen. They have owned the thing in *Middleſex*, that we inſiſt upon, and they have not owned it with any qualifications; if they had ſaid, it was done in another County, then you muſt have taken it to be as they ſaid it; then if they do not diſtinguiſh the place of the Fact, your Lordſhip can only take it to be where they owned it, it would be ſuppoſed to be done in that place, for when they owned the Fact, it will be ſuppoſed, if they do not ſay where it was done, that it was done where they own'd it, becauſe the King can't tell where it was done; but the Evidence comes out of their own mouths, they may give ſatisfaction where it was done, for they know it; and till that be done, the Suppoſition is againſt them, that it was done in the place where they owned it; and that is a plain Caſe, whereſoever a man is to ſpeak of his own Fact. Indeed if I publiſh the Writing of another perſon which is Libellous, then there muſt be a particular proof of the place, becauſe it is not my own Fact; but if thoſe Lords publiſh a Libel that they make themſelves, it is their own knowledge, and in their own power to tell where it was done, becauſe it is their own Act and Deed: it is true, if my Lords had publiſhed a Paper that was contrived by ſome of their Council, it had been ſome Excuſe, and they muſt have only ſuffered for that Publication in the place where it was done; but they are here for Writing this they have owned in this County, and therefore it lies upon them to prove it done elſewhere. There is another Objection, my Lord, made, That here is no Evidence of a Publication; my Lord, I take it to be a Publication in it ſelf; Is it poſſible for a man to write a Libel? to ſet his Name? and part with it? and it coming to the hands of the King, that this is not a Publication? It is not

their ſaying, we did not publiſh it, that will excuſe them; for can there be a greater Publication in it ſelf than this, when men have ſet their Hands to it, and owned their Names? what makes the Fact in this Caſe? If a Deed be denied to be *factum* of ſuch a one, what is the proof of it, but ſetting the Hand and Seal, and the Delivery? There is owning the Paper, and ſetting their Hands is a Publication in it ſelf, and therefore they cannot make any ſuch Objection. My Lord, if there were occaſion, we have Authorities enough to this purpoſe, and we will give them ſcope enough if they will argue this matter; and if they have any Evidence, we deſire to hear what they can ſay to it.

Mr. *Att. Gen.* As for this matter of Fact, my Lord, if I take it right, they do not Controvert the Publiſhing, but (ſay they) pray make it out, where it was written or compoſed; I confeſs this would be a buſineſs worth the while, for all perſons that act in this manner, and are concerned in making of Libels, to underſtand for their advantage. No man doubts in the matter of Treaſon, but it is local; then put the Caſe a man is found in *Middleſex* with a treaſonable Paper in his Pocket, I do not make a Compariſon, as if this was ſuch a Paper, I hope I am not ſo underſtood, but I only put it as a Caſe, and that the Law is ſo, is beyond all Controverſie; then the man is indicted here in *Middleſex*, for framing and compoſing ſuch a Treaſonable Libel, and he comes to be tryed, and (ſays he) Pray prove where I made and compoſed it, for though you found it in my Pocket, in the County of *Middleſex*, yet I might do it in the County of *York*; and upon my word, this had been a very good Defence for Mr. *Sidney*, who was indicted, convicted, and attainted, for making a Treaſonable Paper which was found in his Study; might not he have put the ſame Objection? might not Mr. *Sidney* have ſaid (it was great pity he did not underſtand it) pray prove where I did it, for I did it elſewhere than in this County. —

Mr. *Sol. Gen.* He did ſay it, I remember.

Mr. *Att. Gen.* Truly, my Lord, I would not hear any Anſwer given to this, for it would make the King in a very woful Caſe: Here is a Paper that is found in the County of *Middleſex*, and this is there owned by you to be written and ſubſcribed by you; pray do you prove it, that it was written elſewhere.

Mr. *Serj. Pemberton.* My Lord, we will do it, we will be governed by Mr. *Attorney* for once.

Mr. *Serj. Levinz.* We will prove that my Lord Archbiſhop was not in *Middleſex*, in ſeven Months before; and truly I think Mr. *Attorney's* Caſe of a Paper found about a Man, or in his Cuſtody, will not come up to our Caſe; for was this Paper found about us, ſurely that is not pretended.

Mr. *Serj. Pemb.* Your Lordſhip ſees by the very frame of the Petition, that this Petition which they call a Libel, was made after the King's Order concerning reading this Declaration: Now we ſhall prove that my Lord Archbiſhop, whoſe Hand-writing they prove this to be, was not out from *Lambeth*-Houſe in two Months before, nor till he was before the Council.

Sir *Robert Sawyer.* Which was long after that time when it was made.

Mr. *Serj. Pemb.* So that this cannot be written in the County of *Middleſex*.

Call *Francis Nichols.*

Mr. *Nicholls* was ſworn.

Sir *Rob. Sawyer.* Do you remember the 18th of *May* laſt?

Mr. *Nicholls.* Yes, Sir.

Sir *Rob. Sawyer.* Pray how was it with my Lord Archbiſhop of *Canterbury* at that time, and before that, did he go abroad?

Mr. *Nicholls.* My Lord, I am very ſure that my Lord his Grace of *Canterbury*, whom I have ſerved in his Bed-Chamber this ſeven Years, never ſtirred out of the Gate of *Lambeth*-Houſe ſince *Michaelmas* laſt.

Sir *Rob. Sawyer.* Till when, Mr. *Nicholls*?

Mr. *Nicholls.* Not till the time he was ſummoned before the Council.

Mr. *Serj. Pemb.* Now I hope we have given them a full proof that it could not be in *Middleſex*.

Call *Thomas Smith.*

Mr. *Smith* was not examined.

Mr. *Finch.* Truly, my Lord, I think that what we have proved or what Proof we further offer of my Lord of *Canterbury's* not being in *Middleſex* for ſo long a time, is *ex abundanti*, and we need it not; for with humble ſubmiſſion, in point of Law, it is incumbent upon them that are to prove the Charge in the Information, to prove where it was done; becauſe, the Locality of it is part of the thing, they ought to prove it; in it's nature it is local, there is a Place aſſigned in the Information, and unleſs they prove it was done in the Place that they have laid, they have not proved the Charge in the Information. Now, my Lord, they have not made Proof of that, and for proof of Publication, I think they have offered none to your Lordſhip, they never did call it ſo yet, and truly I never did hear or know that the owning of their Hands at the Council-Table was a Publication of a Libel; it is owning the Writing, but it is not an owning where the Writing was made; but where it was written, and where it was made, is of neceſſity to be proved; before the Charge upon a Record, in a Court of Juſtice, can be ſaid to be made out, it is a Local Charge, and in Juſtice, the locality muſt be proved, or the Information fails; my Lord, they have offered no Proof to it, and they have not yet gone to the ſecond part of the Information, for as to the Publication of it, there is not a tittle of Proof offered, but only the owning of their Hands upon their Examination at the Council, and no Man did ever yet think that the anſwering a Queſtion, and owning a Paper at the Council-Table, upon a Queſtion put by the King himſelf, was a Publication of a Libel.

Mr. *Serj. Baldock.* Pray, my Lord, hear me a Word to that; Though the thing be never ſo local, yet there muſt be ſome place where a thing that was done, was done: Then if nothing elſe appears, but what was done in *Weſtminſter*, in the County of *Middleſex*, unleſs they ſhew the contrary, that muſt be the very place where it was done.

Mr. Sollicitor General. Here is a great deal of Prevarication in this matter, and I would obſerve to your Lordſhip how they do uſe the Court ill in it; pray, my Lord, What is it we are upon? we are proving that theſe ſeven Lords, the Biſhops ſigned this Paper; and I think we have proved it ſufficiently out of their own Mouths: But (ſay they) it was not ſigned in the County of *Middleſex*, but in the County of *Surry*. All this is but Imagination, and they would have the

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Court to imagine it too; For how do they prove it? They would have your Lordſhip and the Jury believe, That it was ſigned elſewhere, becauſe my Lord Archbiſhop has not been out of his Houſe in ſome Months before; it is all but Inference, and Argument, and Imagination. But ſtill Gentlemen, do you anſwer what I objected to you? Does it not lie in their Power to ſhew where it was ſigned? Here are ſix more, beſides the Archbiſhop, where was it ſigned by them? Here are ſix of the Biſhops, that it does not appear where they ſigned it; but they confeſs at *White-Hall*, in *Middleſex*, that they did ſet their Hands——

Mr. Serj. *Levinz*. Ay, they did ſo, and what then?

Mr. *Sol. Gen.* Ay, and ay too; if they did ſo, the Preſumption and Common Intendment upon ſuch Evidence is, That it was done in the Place where it was owned; and the rather, for that Reaſon that I ſaid before, That it lies in their Knowledge, and therefore it is incumbent upon them to prove, That it was not in the County of *Middleſex*: So that this Objection I take rather to be an Invention of the Council than the Truth of the Fact, becauſe they that can make this out, do not. And as to what they ſay of my Lord Archbiſhop, That he has not been out of Doors for ſo long, who can prove ſuch a thing? Certainly my Lord was able to come, for any thing that appears; he has been here twice, and he was able to come to the Council-Board: But when all is done, my Lord Archbiſhop is certainly able to put this matter out of doubt, for he may eaſily prove it, if the Fact be ſo, and that will ſatisfie the Court and every Body, That it was ſigned by him at *Lambeth*; if he deſigns to deal ſincerely with your Lordſhip and the Court, and the Jury; but certainly it is not to be proved by a Circumſtance, ſuch a one as this is, but he ought to give your Lordſhip and the Jury Satisfaction about this Fact: He ought to ſay, 'Tis true, I did ſign it, but it was at *Lambeth-Houſe*; that indeed would be a downright Stroke to us: But to go upon a Suppoſition, That becauſe my Lord Archbiſhop was not out of his Houſe for ſo long together, therefore they are all not Guilty, is a very hard and foreign Inference. My Lord, there's another Matter that they inſiſt upon; and that is about the Publication, that is as plain as any thing can be, that here is a full Proof of a Publication, for if the Paper be Libellous, where-ever that Paper is, that is a Publiſhing, where-ever the Paper travels, how far ſoever it goes, it is a Publication of it by theſe Perſons that ſigned it: I believe no body thinks that this ſhould fly into the King's hand, but ſome body brought it to him; and certainly, my Lord, if your Opinion ſhould be, that this Paper is Libellous, then where-ever it is, it is a Publiſhing, which is our offence; where-ever it is found, it is a Publication; for there is the miſtake of theſe Gentlemen, they fancy, that unleſs there was a Publick Delivery of this Paper abroad, nothing can be a Publication; but I rely upon it, they ſetting their Names to it, made it their Paper; and where-ever it was afterwards found, that did follow the Paper where-ever it went, and was a Publication of it; it was in their Power, being their own Contrivance; it was made and formed by themſelves, and no body will believe, when it was their own Hands that they put to it, that any body elſe could have any power over it; for ought appears, no body elſe was at work about it, and when there were ſo many Learned Prelates that had ſigned ſuch a Paper, no one can believe they would let it go out of their Hands, but by their Conſent and Direction: Is not this a Proof of the Publiſhing? Do they give your Lordſhips any Evidence that they had ſtifled this Paper? If they had ſo done, they had ſaid ſomething, but will any body believe that this thing was done in vain? Can any body aſſign a Reaſon why ſo ſolemn a thing as this ſhould be done to no end and purpoſe? Why a Paper ſhould be framed that rails at the King's two Declarations? Why a Paper that gives Reaſons why they could not read it in their Churches, and ſigned with ſuch Solemnity by all theſe Noble Lords, we ſubmit this to you in point of Law, and the Law is plain in it, that if this Paper be Libellous, and it is found in the County of *Middleſex*, there is a Publication of that Libel. I ſhall mention to your Lordſhip that Caſe of *Williams*, which is reported in the ſecond Part of *Roll*'s Reports, Mr. *Finch* made uſe of it in the Caſe of *Sidney*; it was the great Caſe relied upon, and that guided and governed that Caſe (as I apprehend) from the Verdict and Judgment that was given in it. This Caſe was 15 *Jacobi*. It ſeems *Williams* was a Barriſter of the *Inner Temple*, and it ſeems being an high Catholick for Opinion and Judgment, he was expelled the Houſe, and he being ſo expelled (being a ſort of a *Vertuoſo*) wrote a Book called *Baalam*'s Aſs, and therein he makes uſe of the Prophet *Daniel*, and he makes Application of it according to his own particular fancy. He writes there, That this World was near at an end; and he ſaid, Thoſe ill days were come that that Prophecy ſpoke of, and becauſe of the Impurity of Prince, and Prieſt, and People, and other things that hapned, thoſe were the worſt of days, and therefore the laſt; and that certainly we had the worſt Prince that ever was in the World, when he wrote this Book, what does he do? He was a little more cloſe than my Lords the Biſhops, and pins it up, or ſeals it up, and it was brought to the King; and what is this more than the Caſe before your Lordſhip? They indeed ſay, I do this by way of Advice to the King; ſo, ſaid he, I do this by way of Advice to the King, for God forbid that any of this ſhould happen to the King, and ſo what he does was by way of Advice, and he prayed God to avert it from him; here was as good a Prayer as there is in this Paper; and there was a good deſign, he made uſe of the Prophet *Daniel*, and applied his words. Well, what was done upon it? This was never publiſhed; for the Queſtion was before the Court, whether this Sealing of it up, and not delivering it to any other body were a Publication, the Court was of Opinion, that the very Writing of it was a Publication; they did not value the delivery of it to the Prince, but it was proved he Writ it, and that made it Treaſon. My Lord, we have Caſes enough in my Lord *Hobart* for this Matter, Sir *Baptiſt Hick*'s Caſe, and my Lady *Hatton*'s Caſe, there was only a Letter ſealed up and delivered to the Party.

L. C. J. You need not trouble your ſelf about that Mr. Sollicitor.

Mr. *Sol. Gen.* If the Caſe then be thus, I take it, it will turn upon this Fact; they have given your Lordſhip no Proof where this Paper was Signed by them; here are ſeven Perſons that had

had a hand in it, and here is only one Perſon whom they have inſiſted upon to be infirm, and kept his Houſe for a great while together. We ſay the Publiſhing follows the Libel wherever it goes; the Libel is in the County of *Middleſex*, they have confeſſed it in the County of *Middleſex*, and they did not diſtinguiſh when it was done. Then if they will not diſtinguiſh upon the Evidence, no Man ought to diſtinguiſh, but ought to preſume it was done in that place where they owned it.

Mr. *Att. Gen.* I did not apprehend we were got ſo far, that they oppoſed us in the Publication.

Sir *Robert Sawyer.* Yes we did, for you have given no Evidence of it.

Mr. *Att Gen.* Surely, my Lord, for that we have given a ſufficient Evidence, and they have given ſome Proof of it, as to my Lord Archbiſhop; that becauſe he had not been from *Lambeth*, therefore he did not publiſh, nor could cauſe it to be publiſhed; for your Lordſhip ſees by this Information, they are not only to anſwer the *Publicavit*, but alſo the *Publicari cauſavit*; for do you doubt, Gentlemen, of the Law in this Caſe, that if I compoſe a Libel in *Surrey*, for Example, and ſend a Perſon over into *Middleſex*, I am not Guilty of the Publiſhing?

Sir *Rob. Sawyer.* That is not your Caſe, Mr. Attorney.

Mr. *Finch.* That were clear if it were ſo, but it is not ſo.

Mr. *Att. Gen.* My Lord Archbiſhop's Caſe ſignifies nothing, if we ſhew it was publiſhed in *Middleſex*, and you give no Evidence to the contrary but it might be there; and I am ſure as to the reſt of my Lords the Biſhops, there is no Evidence at all given. Here is a Petition that we ſay is a Libel, they it may be will make that a Queſtion; this is delivered to the King's own Hand in the County of *Middleſex*, and there are as many Caſes as any one Man can name, that this amounts to a Publication by the Party; for if I ſend a Letter by the Poſt ſealed, that no body can ſee but the Party himſelf, and he that writ it, it is adjudged over and over again, it is a Libel.

Mr. *Juſt. Powel.* That you need not labour, Mr. Attorney, for that's the Caſe of *Williams* of *Eſſex*; but how do you apply it to the Caſe now before us?

Mr. *Att. Gen.* That's an Anſwer to their Objection as to the Publication.

Mr. *Juſt. Powel.* But what ſay you to the firſt part, you have not proved that it was written in *Middleſex*.

Mr. *Att. Gen.* There is the Caſe of *Barrow* and *Lewellin* in *Hobart*, and likewiſe the Caſe of Sir *Baptiſt Hicks*, which is reported both in *Hobart* and in *Popham*; and in *Popham*, towards the end of the Caſe, there is a remarkable Paſſage. Says that *Caſe*, If it ſhould not be puniſhable at the Suit of the King, there would be no Remedy; for the Party cannot bring an Action, becauſe he can be no Witneſs for himſelf, and it is only known betwixt them two; but a Witneſs for the King he may be, to prove his own Receipt of the Letter, and the Party's Hand.

Mr. *Juſt. Powel.* You need not labour that Point, I'll tell you, Mr. Attorney; for the Law is very clear in that Point, I think, if you bring it home to your Caſe.

Mr. *Att. Gen.* Then here's the Caſe in ſhort, my Lord; That my Lords the Biſhops have cauſed to be made and written this Petition, they are made Parties to it by ſetting their Names, and this is a continued Act; whatſoever is written there is my Lord Archbiſhop's Writing, wherever it goes, as I'll put a Caſe that's very well known. If I take away Goods from a Man in the County of *Cumberland*, and I am found with them in the County of *Middleſex*, it is a continued Act, and makes all but one Felony, and I ſhall be tried here in *Middleſex* for it; If a Man write a thing in one County, and it is ſent and diſperſed in another County, that ſtill continues to be his Fact, though it may be the firſt part was not in the ſame County with the other; but ſuppoſe all this while that part ſhould not affect my Lord of *Canterbury*, the cauſing it to be publiſhed does.

Mr. *J. Powel.* Do you think, Mr. Attorney, that writing in one County is ſuch a continued Act, that he may be ſaid to write it in another County?

Mr. *Att. Gen.* Sir I take it, where there is a complicated Crime of Writing and Publiſhing a Libel, and the beginning of it is in one County, and the carrying it on is in another, that is a continued Act, and may be tried in either County.

L. C. J. It is all one Act of Libelling (as they ſay.)

Mr. *J. Holloway.* In Caſes of Felony 'tis ſo, taking in one County, and being found with the Goods in another, it is Felony in either County.

Mr. *Juſt. Powel.* But in that Caſe they are two Felonies; for it is Robbery in the one County, and but bare Felony in the other.

Mr. *Sol. Gen.* Suppoſe that my Lords the Biſhops ſigned this Paper in another County, and my Lord Archbiſhop conſents to have it ſent into *Middleſex*, is not this a cauſing it to be publiſhed in another County?

Mr. *J. Powel.* Yes, it may be, if you prove his Conſent.

Mr. *Sol. Gen.* Then ſuppoſe further, which may very well conſiſt with my Lord Archbiſhop's Evidence of his not being out of *Lambeth* in ſo long time, the reſt of the Biſhops might ſign it in *Middleſex*, or it may be in that Place; and then they carry it by my Lords conſent over hither, into this County, is not this a cauſing it to be publiſhed? the Delivery with his Conſent certainly is a Proof of that, for our Information goes two ways, for Making, Contriving, Writing and Publiſhing, that's one: And then, for cauſing it to be Made, Contrived and Publiſhed, that's the other: And if I prove that he cauſed it to be publiſhed, he may be found Guilty as to that part, and not Guilty as to the other; for the Information is not ſo entire, but that the King has his choice, if the Archbiſhop had not ſigned it, or written it, but had cauſed it to be publiſhed, he may be found guilty of ſo much: But if he be Guilty of any one of theſe things, it is enough; and if he be Guilty of none of the other things laid in the Information; yet if he be Guilty of cauſing it to be publiſhed, by his conſenting that the reſt of the Biſhops ſhould do it, that will be enough to maintain this Information. Then, my Lord, is there any Evidence brought againſt what we have proved, That he did not conſent?

Mr. *Juſt. Powel.* But where was this Conſent of his given, Mr. Sollicitor?

Mr.

Mr. *Sol. Gen.* Pray, good Sir, give me your Favour, I think I am in a plain Caſe.

Mr. *Serj. Pemb.* So you are truly.

Mr. *Sol. Gen.* Why, good Sir, you ought to make out the Locality, if you'l take advantage of it.

Mr. *Serj. Pemb.* That's very well indeed, this is the firſt time I ever heard that Doctrine.

Mr. *Sol. Gen.* I cannot help that, but certainly the Law is plain, we have proved there was ſuch a Fact as this was done; and they do not go about to prove that it was done elſewhere than where we have laid it; for if they did, their Witneſſes wonld be croſs-examined by us; and then we know what would become of them, then the Truth of the matter would come out: Therefore I would make all this *conſtare*. The Archbiſhop might be at *Lambeth*, and yet Guilty in *Middleſex*, by his Concurrence with what was done in *Middleſex*: And I ſay, my Lord, this is natural, upon the Evidence that has been given, becauſe when they were interrogated at the Council, and confeſſed the Paper to be theirs, they made no ſuch Explanation of their Confeſſion, of which they can make any Advantage in their Defence. Here has been no Body produced that proves any thing to be done out of *Middleſex*; ſo that ſtill if he's Guilty of the Fact proved, he muſt be Guilty in *Middleſex*.

Mr. *Serj. Baldock.* And it does not appear, in this Caſe, but that my Lord Archbiſhop might write the ſame thing in *Middleſex*, tho' he was at *Lambeth* ſo long as the Witneſs ſpeaks of.

Mr. *Juſt. Powell.* How do you make out that, Brother?

Mr. *Serj. Baldock.* He might do it when he came over to the Council.

Sir *Rob. Sawyer.* He muſt do it after it was preſented.

Mr. *S. Baldock.* Might he not be ſo long here on this ſide the Water, as to make ſuch a ſhort thing as this, before it was delivered? half a quarter of an Hour would have done it.

L. C. J. That's a thing not to be preſumed, Brother, eſpecially ſince he is proved not to have been in *Middleſex* for ſo long together.

Sir *Rob. Sawyer.* Mr. Serjeant is mightily miſtaken, for it is not pretended, That it was delivered at the time when the Archbiſhop, and my Lords the Biſhops, were before the Council.

Mr. *Recorder.* Either the Making and Contriving, or the Publiſhing of this Libel will do upon this Information, for they ſhall be taken to be one continued complicated Act; and then the Party may be tryed in either of the Counties, as the King will; as in the Caſe of Treaſon, it has been over and over again adjudged: That if a Man does one Act of Treaſon in one County, and afterwards goes into another County, and does another Act of Treaſon, the Jury of either of the Counties may enquire of the Fact done in the other. If they then ſhould take thoſe two as ſeveral Acts, they were ſeveral Offences, and they may be found Guilty of the one and acquitted of the other; but if they are taken as one continued Act, they are but one Offence, and the Jury of either County may try it. If then, in this Caſe, the Jury of this County may take notice of the Publication, which was here, as certainly they may, if they will agree, as the Law certainly is; That the Writing of a Letter will be a ſufficient Publication, if the matter be Libellous. And there are multitudes of Precedents for that; and that the bare ſetting of a Man's Hand has been adjudged to be a Publication: Then give me leave, my Lord, to bring it to a ſimilar Caſe; Suppoſe a Man write a ſcandalous Letter from *London*, to a Judge or Magiſtrate in *Exeter*; and ſends it by the Poſt, and the Letter is received from the Poſt at *Exeter*, and there opened; would any Man make a Queſtion whether the Gentleman that ſent the Letter may not be indicted and proſecuted for a Libel at *Exeter*, where the Libel was received?

Mr. *J. Powell.* There's no queſtion of that, Mr. Recorder; that comes not home to the Fact in our Caſe, undoubtedly in the Caſe that you put, the Law is as you ſaid, but it is far different from this Caſe.

L. C. J. There's no Body oppoſes the Publication, but the framing of it where it was made.

Mr. *Recorder.* Suppoſing then the Party were at *Exeter*; and he were interrogated before the Magiſtrate, Whether that were his Hand or no? and he ſhould own it to be his Hand; can any body doubt whether his owning that to be his Hand, would be a ſufficient Evidence to prove a Publication?

Mr. *Juſt. Powell.* But is that any Evidence where it was written? Or if it be not proved that it was received at *Exeter*, would that be a Proof of a Publication at *Exeter*?

L. C. J. They do not deny the Publication.

Sir *Rob. Sawyer.* We do deny that there was any Publication; and they have proved no place where it was made.

Mr. *Sol. Gen.* My Lord, we are not for turning my Lords the Biſhops out of the way of Proof, that is uſual in ſuch Caſes; let them take it if they will, That this was contrived and made in *Surrey*. But can they publiſh it in *Middleſex*, without committing an Offence? and that is it we ſtand upon: We are not for laying a greater Load upon my Lords the Biſhops than our Proof will anſwer.

Sir *Rob. Sawyer.* We thank you for your Complement, Mr. Sollicitor.

Mr. *Sol. Gen.* Is this a fair way, of interrupting us when we are ſpeaking? Durſt any one have ſerved you ſo when you were in the King's Service? We would make our Duty as eaſie as we can to my Lords the Biſhops; and it may be eaſier than other Men would have made it. But my Lord, let it be a doubtful Caſe, that we cannot tell which County it was made and contrived in, if it were made and contrived in another County; yet when they brought it into *Middleſex*, there was a Publication in *Middleſex*; and if my Lord of *Canterbury* conſented to it, and if he cauſed it to be publiſhed, how can any Body ever get him off from that cauſing of it to be publiſhed? Here is a Paper that muſt be ſuppoſed to be my Lord Archbiſhops Paper: Now either the World muſt look upon it to be an Impoſture put upon my Lords the Biſhops, or a real Paper made by them. If it were an Impoſture and an Affront put upon the Biſhops, they ought to make it out for their own Vindication, and to prove themſelves Innocent: If they do that, they do well, and they ought to have Satisfaction made them by thoſe that have ſo highly injured them; and the King cannot be better pleaſed, I am ſure, than to find them ſo: But if Men will look one way and act another, they muſt expect to be dealt with accordingly. Will any Man that has heard this Evidence, and ſees that theſe Gentlemen will not

go

go the right way to work to prove their own Innocence, believe them to be not Guilty? 'Tis plain they contrived it and ſigned it; for can any one imagine that they ſet their Hands to a Paper that was not formed and contrived by themſelves? then let it go, That this was done in another County, and we cannot puniſh the Writing of it in this County; yet ſtill they are Guilty of cauſing it to be publiſhed in this County, and for that we may puniſh them here: We will be content with having that found that we have proved, which certainly is an Offence.

Sir *Rob. Sawyer.* We oppoſe that, Sir.

Mr. *Sol. Gen.* You oppoſe it, I know you'l oppoſe common Senſe, we don't ſpeak to you, we ſpeak to the Court; we are content with what is plain, and do not deſire to inſiſt upon any ſtrained Conſtruction; we ſay this is Natural Evidence for us; If this thing be a Libel, as we ſay it is, then the cauſing it to be publiſhed, is an Offence: The Publication we ſay was here in *Middleſex*, and of that there is a clear Evidence, becauſe it was found there, and came from the King's Hand, to whom it was directed, and it could not come to the King's Hand out of their Cuſtody, without their Conſent: This (we ſay) is a clear Evidence of cauſing it to be publiſhed let the reſt go as it will, becauſe we will take the eaſieſt part of the Caſe, and not go upon Strains.

Mr. *Serj. Trinder.* The greateſt Queſtion is, I think, now come to the Publiſhing——

L. C. J. The Court is of Opinion, that its coming to the King is a publiſhing.

Mr. *J. Powel.* Ay, my Lord, if it be proved to be done by them.

Mr. *Serj. Pemb.* Before the Court deliver their Opinion, we deſire to be heard.

L. C. J. Brother, you ſhall be heard in good time, but let them make an end on the other ſide, and when the King's Council have done, we'l hear you.

Mr. *Serj. Trinder.* My Lord, upon the Queſtion of Publiſhing, it has been inſiſted upon, and the Court ſeems to be very much of the ſame Opinion; That the Writing of it is a Publiſhing: That it is without Controverſie, if the Writing of it fell out to be in *Middleſex*, where the Information is laid; but that they would not have to be ſo by Argument, becauſe the Archbiſhop had kept in at *Lambeth* ſo long. But ſuppoſe, that it were ſo as they would have it; that is only as to the Archbiſhop, he being the Writer of it, but yet notwithſtanding that, the other ſix might ſubſcribe it in *Middleſex*, taking it, that there is ſuch a Face in their Argument as they would have it.

Mr. *Sol. Gen.* We will lay no greater load on the other ſix than we do upon my Lord Archbiſhop, and we ſay they are all Guilty of the Publication in *Middleſex*.

Mr. *Serj. Trinder.* Pray, Sir, ſpare me; this Paper was in the Archbiſhops Cuſtody and Power, he taking of it himſelf; and regularly it could not have come out of his Cuſtody, in common Suppoſition, but it muſt come with his Conſent. It was afterwards in the Power of the other ſix, they had it to ſubſcribe; where the Subſcription was *non conſtat*, they it may be can prove it themſelves, but I will only deduce this Argument; That if it after comes into *Middleſex*, it muſt be taken by preſumption to be ſubſcribed by them there and publiſhed, it muſt taken by Preſumption ſo to be.

L. C. J. No Brother, we ought not to do any thing by Preſumption here.

Mr. *J. Powel.* No, no, by no means, we muſt not go upon Preſumptions but Proofs.

L. C. J. I will not preſume it to be made in *Middleſex*.

Mr. *Serj. Trinder.* But it is proved to be publiſhed in *Middleſex*.

Sir *Rob. Sawyer.* My Lord, with Submiſſion, there is no Evidence of the Publication.

Mr. *Att. Gen.* That the Court is to judge of.

Sir *Rob. Sawyer.* Pray, good my Lord, what Inſtance of a Publication have they given?

Mr. *Sol. Gen.* The Court has heard the Evidence, we leave it there.

Sir *Rob. Sawyer.* Was it their owning and acknowledging it was their Hands, when the King asked them the Queſtion at the Council-Table? Surely the King's Council won't pretend that was a Publication, when it was done at the King's Command; it was certainly the King that publiſhed it then, and not my Lords the Biſhops.

Mr. *Att. Gen.* Well ſaid.

Sir *Rob. Sawyer.* Don't you remember that, when Mr. *Blathwayt* ſaid the King gave it to be read, and it was ſhewed to the Biſhops?

L. C. J. I remember what Evidence Mr. *Blathwayt* gave of the Paſſages at the Council-Board very well; and I know what Mr. Attorney did preſs about the King's promiſing to take no advantage.

Mr. *Att. Gen.* My Lord, Mr. Attorney is on the other ſide, he did not preſs it.

L. C. J. Sir *Robert Sawyer* (I mean), I beg both your Pardons, Gentlemen, I think I have done Injury to you both.

Sir *Rob. Sawyer.* My Lord, we ſay there is no Evidence at all, that ever this was ſent to the King by the Archbiſhop, or any of my Lords the Biſhops: And as for the Caſes that they have put, they might have put five hundred Caſes, and all nothing to the purpoſe.

Mr. *Sol. Gen.* So they might, and done juſt as others had done before them.

Sir *Rob. Sawyer.* And ſo are theſe; for here is the Queſtion, We are in a Caſe, where the Publication is that which makes it a Crime: Now I would have them (if they can) put me any ſuch Caſe, and then apply it to this; in *Williams*'s Caſe, the Queſtion is quite otherwiſe, and ſo in any Caſe of Treaſon it muſt be; where-ever there is an Overt Act proved, it is the Treaſonable Intention, and the ill Mind of the Traytor that is the Crime, and the Treaſon (the Overt Act) is only to be the Evidence of it: In that Caſe of *Williams*, with Submiſſion, my Lord, the Publication was not at all neceſſary, but the very ſecreteſt Act that could be done by him (if it were an Act) is an evidence of the Mind, and ſo the ſending of the Book to the King himſelf, though no body elſe did ſee it, was an Evidence of the Crime of Treaſon, yet it could not be called a Publication. But in the other Caſe of Sir *Baptiſt Hicks*, which was in the *Star-Chamber*, about ſending a Letter of Challenge, it was plainly reſolved that it was no Publication of the Letter, and that was not the ground of the Judgment given againſt him there, that it was the Publication of a Libel, but the very Fact was a particular Offence; for (ſaid the Court there) if you will ſend a Letter to a private Man, and that is a Letter that will provoke him to break the

the Peace, that is an Offence puniſhable in the *Star-Chamber*; but that is not the Reaſon which was alledged, becauſe no Action will lie for want of Proof, but quite the contrary; becauſe they may produce the Porter or Party that brought it, and prove it that it came from this Man's Hands; and I do not queſtion but that in the King's Bench at this Day, if a Man will write a Letter privately to provoke another Man to fight, there will lie an Information, but not for a Libel; for there it will be neceſſary for to make an Offence, that there may be a Publication; for that is the very form of the Crime, and upon that ground were all thoſe Judgments againſt Libels in the *Star-Chamber*. My Lord, I agree to write a Letter to the King of another Perſon, or to make a Petition to the King concerning another Perſon, as of my Lord Chancellor, or the Judges, or the like, to complain to the King of them ſcandalouſly, with provoking and reviling Language, that is a Publication; and ſo if I write a Letter to one Man of another; if there be Scandal in a Letter, that is a Publication of a Libel; and that is the difference that has been always taken; where it is eſſential to make it a Libel, that there be a Publication, ſuch a Publication muſt be proved, and the delivery of a Letter to a Man that concerns himſelf, is no Publication, but in this caſe they have not ſo much as proved that it was delivered to the King.

Mr. *Serj. Pemb.* My Lord, with your Lordſhip's leave, I take it, that they have given no manner of Evidence of a Publication; to ſay, the writing and ſubſcribing of their Names to a Paper, is a Publication of that Paper, is ſuch a Doctrine truly as I never heard before; ſuppoſing this Paper had lain in my Study, ſubſcribed by me, but never went further; would this have been a Publication? They never ſaid any ſuch thing. As to *Algernoon Sidney's* Caſe, there was no colour for it, that it ſhould a Publication; but it was an Overt Act of Treaſon to compoſe ſuch a Book; They have proved by our Confeſſion here, that we have ſubſcribed this Paper, they would take it now, that therefore it muſt be preſumed we ſent this to the King, and ſo ſurmiſe us into an Information for making and publiſhing a Libel, which we ſent to the King; but they do not prove it at all: My Lord, there are a thouſand ways that it might come into *Middleſex*, and perhaps come to the King's Hands too, without our Knowledge of Delivery; and ſure you will not preſume theſe Noble Perſons without Evidence to be guilty of ſuch an Offence as this is ſuggeſted to be; ſo that, my Lord, and Gentlemen of the Jury, 'tis impoſſible for you to find this a Publication in *Middleſex*; and for the other thing, (the writing this Paper) they that would make it an Offence, muſt prove where it was done.

Mr. *Serj. Levinz.* My Lord, The Anſwer that I ſhall give to what has been ſaid on the other ſide, is very ſhort; the Caſes that have been cited are all Law, but not one tittle to this purpoſe: In Sir *Baptiſt Hicks's* Caſe, and *Williams's* Caſe, it was proved they all ſent them to the Places whither they were directed; but is there a tittle of Proof that theſe Biſhops ſent it here? In all thoſe Caſes, they muſt ſend it either by a Porter or a Carrier, and they ſend it as their own Act, and when it comes there, by their ſending, that is ſufficient Proof of their Act in the place whither it is ſent: And for *Sidney's* Caſe, there was Treaſon in the very Libel and Book that he made; and he was not indicted for publiſhing, but for Treaſon in the place where it was found, becauſe it was found in his Poſſeſſion: But was this ever in my Lord Archbiſhop's Poſſeſſion in *Middleſex*, or the reſt of the Biſhops, and were they publiſhing of it? if it had, then it had been their Act clearly: But that is the thing wherein they are defective, that they do not prove that my Lords the Biſhops ſent or brought it here; but upon the Queſtion asked them by the King, they acknowledged it to be their Hands: So that my Lord there is no proof of any Fact done here, but an Acknowledgement of a Fact done, no Body knows where, upon the King's Queſtion here in *Middleſex*; Is that any Proof of this Information?

Mr. *Finch.* Pray, my Lord, ſpare me a Word on the ſame ſide, let us ſee what the Evidence is. The Evidence is this, That the King brought the Paper to the Council-Table, and the Biſhops owned their Hands to it: This is the Effect of the Evidence, and all that is to prove the Forming and Making a Libel in *Middleſex*, and the Publication of that Libel. And what is therefore inferred from thence? Why, having proved that the King brought the Paper to the Council-Table, and the Biſhops owned their Hands: Therefore, Firſt the Biſhops made this Libel in *Middleſex*. Secondly, they brought it to the Council-Table, and publiſhed it at the Council-Table, or elſe there is no proof at all: For here is nothing of Evidence given of any Fact, but becauſe they acknowledged it, therefore they made it, therefore they gave it to the King in *Middleſex*: This were good Evidence if they had had the Help of a Suppoſition to make it good; but they want that, nor muſt any ſuch thing be admitted; but I think they are ſuch groſs falſe Conſequences, that I doubt not you'll be of Opinion, Here's no proof of a Publication in *Middleſex*, and then there is no proof at all againſt my Lords the Biſhops.

Mr. *Pollixfen.* I muſt confeſs I hear them ſay two Acts prove a Publication in this Caſe; the one is, the Writing of the Libel, and the Subſcribing. If ſo, then I think upon the Evidence that has been given, the Court muſt needs be ſatisfied, that the Writing of it was in *Surrey*: The next is, their owning their Hands; for there is no Act done that appears, or any Evidence againſt them of any Act done, from the time of the Writing, to the time that they were asked, is this your Hand? Surely no Man would ever think this to be a Publication, where one is asked by Authority, whether ſuch a Paper be his Hand, and he acknowledges it in Anſwer to that Queſtion; to turn this to be a Crime, I think it can never be done, nor never was before. Then there is nothing in the Caſe, that they can hold to for Evidence, and Proof againſt my Lords the Biſhops, but the Writing; and that is apparent to have been in *Surrey*, or otherwiſe they muſt hold that the Anſwer to the King's Queſtion, this is my Hand, is a Publication. But truly, my Lord, I think neither of theſe will do: But my Lord, to me this is a great Evidence in it ſelf againſt the Proof of a Publication, the Care and Warineſs that has been uſed, that there ſhould be nothing at all of this Matter known, from the time that it was written, to the time that they came to be examined and ſummoned to appear as Offenders. My Lord, the Nature of Libels is to

publiſh

publiſh and proclaim Scandal and Defamation, or elſe it loſes its End, and conſequently its Name: This, as it ſtands upon their Evidence, is a monſtrous Proof for my Lords the Biſhops, againſt the King's Council; for it ſeems, 'tis a very private Matter, ſo cautiouſly and warily carried, that there is not any Evidence of the Fact, but only the Names of the Perſons that writ it, till they come to be examined by the greateſt Authority, Is this your Hand? and then they own it ſo to be; how can this be taken to be a Publication? and it will be a thing of wonderful Conſequence, if an Anſwer to a Queſtion put by Authority, ſhould amount to a Crime, as it would in this Caſe; that would be as if Authority that ſhould be employed to do Right, would be turned to do the greateſt Wrong; for it is the Duty of all Men to anſwer when examined by a lawful Authority, and it would never be offered at ſure in any other Caſe: If a Man comes before a Magiſtrate, and confeſſes any thing, that indeed is Evidence, but is not a Crime; for there is a great deal of difference between Evidence and the Crime; but that this ſhould be both an Evidence and a Crime too, is, I think, a very ſtrange Conſtruction; and for the other part (the writing of it) I ſuppoſe the Court is ſatisfied that it was in another County.

Sir *Geo. Treby.* I deſire your Lordſhip to ſpare me a Word, which I think has not been obſerved by the Council that have ſpoke before. The Queſtion that remains, is, Whether my Lords the Biſhops did *Publiſh* this Paper? This is a matter of Fact that lies upon the Proſecutors to prove. Now I think they are ſo far from having proved that the Biſhops *did* publiſh it, that on the contrary, they have proved that their Lordſhips did *not* Publiſh it. The Evidence they have offered for this matter is a Confeſſion. This Confeſſion is teſtified by Mr. *Blathwayt*, and he ſays the Biſhops were ask'd at the Council whether they did ſubſcribe and publiſh this paper, and that their anſwer was that they did *ſubſcribe* but not *publiſh* it.

Now a Confeſſion muſt be taken together, and muſt be admitted to be *intirely* true by them that produce it; they ſhall never be allowed to take out and uſe one *piece*, and wave the reſt.

Why then by this Evidence of Confeſſion, taken as it ought, it appears that the Biſhops (though they did ſubſcribe) did not *publiſh* the paper. So that, I ſay, the King's Council have hereby plainly proved that the Biſhops did *not* publiſh this paper, and yet this is the only Evidence upon which they would infer that they *did* publiſh it.

Mr. *Att. Gen.* Look you, it does lie upon you Gentlemen to prove it was done elſewhere than in *Middleſex.*

Mr. *Finch.* Sure Mr. Attorney is in jeſt.

Mr. *Att. Gen.* No, I am in good earneſt, all the proof that we have given has been in *Middleſex*, and you can beſt tell whether you did it in *Middleſex* or no.

Mr. *Finch.* My Lord, we have done as to this Objection; for we ſay they have not proved their Caſe.

L. C. J. Mr. *Finch* you may obſerve (and I am ſure you do obſerve as well as any body in all Caſes,) but I ſay you may obſerve that they are off of every thing but cauſing it to be publiſhed; now that does lie upon the King's Council to prove, that my Lords the Biſhops did cauſe it to be publiſhed, for their owning their Hands does not amount to a Publication.

Mr. *Serj. Pemb.* My Lord, We are upon this point with them, whether here be any Evidence of a Publication at all.

Mr. *J. Powell.* Pray let us clear this firſt; for if there be no Publication, there can be no cauſing of it to be publiſhed.

Mr. *Att. Gen.* My Lord, if you think fit, we ſhall go on and reſerve this point till afterwards.

Mr. *Sol. Gen.* They may make Objections, if they think fit.

L. C. J. So they may, and they ſay if theſe Objections are with us, we need go no farther.

Mr. *Serj. Pemb.* But, my Lord, if they be not with us, we have a reſerve to give a farther Anſwer to it, and to offer Evidence againſt the Evidence they have offered.

Mr. *Sol. Gen.* With all our Hearts, give in Evidence what you can.

Mr. *Att. Gen.* Then pray my Lord let us go on to anſwer this Objection.

L. C. J. Pray do Mr. Attorney.

Mr. *Att. Gen.* My Lord and Gentlemen of the Jury, I would firſt obſerve how far we have gone. That there was ſuch a paper written is clear beyond all Queſtion, and written by my Lord Archbiſhop of *Canterbury*, and that it was ſigned by the reſt of the Biſhops, but not in the County of *Middleſex*, and that this paper was publiſhed is agreed on all hands.

Mr. *Juſt. Holloway.* No, they do not agree that.

Mr. *Att. Gen.* Do I ſay it was publiſhed by them? but there was ſuch a Paper publiſhed.

Mr. *Serj. Pemb.* No, we ſay it was never publiſhed at all.

L. C. J. Pray Brother *Pemberton* be quiet, if Mr. Attorney in opening does ſay any thing that he ought not to ſay, I will correct him, as I would do any body that does not open things right as they are proved, but pray don't you that are at the Bar interrupt one another, it is unbecoming Men of your Profeſſion to be chopping in and ſnapping at one another———Go on Mr. Attorney.

Mr. *Att. Gen.* I ſay, that the Paper is proved to be written and ſigned by my Lords the Biſhops, that I take for granted, and that the Paper ſo ſigned and written is now publiſhed to the World, is alſo evident; but the Queſtion is who it was done by, or who cauſed it to be done, we are reduced to that Queſtion: Now, firſt, it is agreed on all hands, that if I ſend a Letter to a private Man containing Scandalous things in it, though there is no proof more, but that it was ſent ſealed, and received by the party, in that Caſe it was a fault puniſhable in the Star-Chamber, as a Crime; but now that this was received by the King, and written by them, there is no room for doubt; for you hear it was produced by the King at the Council-Board, and they asked upon it, if it were their Hands? that the King did receive it, there is no room for queſtion, or that they did write it; but the queſtion is, from whom the King had it? I am ſure they muſt ſhew that ſome body elſe did it; and unleſs they do ſhow that, I hope there is no manner of queſtion, but it came from them, and they did it; though no Man Living knew any thing of this matter, but whom they thought fit to communicate it to; yet ſtill they putting the King upon the

the neceſſity of ſhewing this Power in order to his obtaining ſatisfaction for it, or elſe he muſt remain under the indignity without reparation, it ought to be put upon them to clear the Fact; for if he does not produce it, then muſt the King put up the higheſt injury and affront, that perhaps a Man can give the King to his face, by delivering a Libel into his own hands; and if he does produce it, then ſay they, that is not our publication, we prove it to be your writing and ſigning, and we prove it to come from the hand of the King againſt whom it was compoſed, for we ſay it is a Libel againſt his Majeſty, his Government and Prerogative; if then, all thoſe caſes that have been cited be Law, then ſure there never was a ſtronger caſe in the World than this; and I hope the Law goes a little farther in the caſe of the King, than it does in the caſe of a private Man; no Man muſt think by policy to give private wounds to the Government, and diſparage the Adminiſtration of it, and then when he is called in queſtion about it, ſays he, pray prove that I publiſhed it, or elſe you ſhall not puniſh me for it, we prove you framed it and writ it and ſigned it, and we prove it came to the King's hand, of whom it was compoſed, muſt we produce two Witneſſes of the delivery of it to the King? Surely there will be no need of any thing of that.

Mr. *Sol. Gen.* My Lord, we have reduced it now to a very narrow queſtion, for (as Mr. *Attorney* has ſaid) my Lord, there is no doubt but that my Lords the Biſhops are the Authors of this Paper, there is no doubt but they ſigned it, and there is no doubt but that their ſigning of it, though it were at *Lambeth* (as they ſay) is a publiſhing of it, but however this is plain and manifeſt, that this Paper was publiſhed, and that this was publiſhed in *Middleſex*, this is as plain too; now then there is nothing left but this queſtion, whether my Lords the Biſhops who framed the thing, who wrote the thing, who ſigned the thing, were not the occaſion or cauſe of its publication, or privy or conſenting to it; my Lord, I will reduce it to a very plain point; for we are upon a rational queſtion, before a rational Court, and a rational Jury, whether theſe Lords did all of them in the County of *Surry*, conſent to the publiſhing of this Paper in *Middleſex*; for it is publiſhed in *Middleſex*, (that we ſee,) and if they are guilty of that part of the Information, of cauſing it to be publiſhed, now what do they ſay to it, ſay they, it is agreed that it is publiſhed in *Middleſex*, but it is not proved to be publiſhed by us.

L. C. J. No, they do not ſay ſo, they agree it was in *Middleſex*, but not publiſhed.

Mr. *J. Powel.* Mr. Sollicitor, they do agree it was in *Middleſex*, but not publiſhed to be ſure, nor by them.

L. C. J. Mr. Sollicitor, I'll tell you what they ſtand upon, they ſay you ought to prove it to be delivered to the King by the Biſhops, or ſome body employed by them; for upon that went the Reſolution that was in *Williams*'s caſe, that he ſent it to the King; but here is no body that proves that it was delivered to the King in this caſe, ſo that how it came to the King *Non conſtat.*

Mr. *Sol. Gen.* There will be the queſtion between us, whether this be not a publication.

Sir *Robert Sawyer.* Pray Mr. Sollicitor prove your Caſe before you argue it.

L. C. J. Firſt ſettle what the caſe is, before you argue it.

Mr. *Sol Gen.* My Lord, I'll put you the caſe, here does appear in *Middleſex* a Paper that is a Libel in it ſelf, and this Libel is proved to be written and formed by theſe perſons, this Libel coming into *Middleſex*, the queſtion is, whether they are privy to it, I ſay in point of preſumption, it muſt come from them.

L. C. J. I cannot ſuppoſe it, I cannot preſume any thing.

Mr. *Sol Gen.* My Lord, I ſpeak of that which is a common preſumption, a natural preſumption, what we commonly call a violent preſumption, which is a legal preſumption, and has always been allowed for Evidence; now whether there be not ſuch a preſumption in our Caſe, as to induce your Lordſhip and the Jury to believe that it cannot be otherwiſe, or at leaſt to put the labour upon them, to ſhew how it came out of their Studies, and how it came to the King's hands, for it is in their power to ſhew the truth of this matter, how it was, if they do not, the preſumption will lie upon them; that the Paper came to the King, that is plain enough, and its coming to the King's hands, is a plain proof of a publication in *Middleſex*, and who ſhould bring it to the King, but theſe Gentlemen in whoſe power it was? there is no Man undertakes to ſay, he loſt it, then what elſe is to be believed, but that it came from them, I ſpeak of common ſuppoſition and belief, they may very well ſhew it if it were not ſo; all that we can ſay in it, is, here is a Paper in *Middleſex*, this you agreed was was once your Paper, and in your power, pray ſhew what became of it, it lies upon you to clear this doubt.

Mr. *Recorder.* My Lord, there is but this queſtion in the caſe, the queſtion is not, whether the owning it be a publication, but whether here be any Evidence that they did deliver it to the King; now if they did deliver it to the King, that will be agreed to me to be a publication.

Mr. *Juſt. Holloway.* No doubt of it, if you can prove it.

Mr. *Recorder.* Pray Sir ſpare me, that they did it you have this Evidence; firſt, that they were the Authours of this Paper by their own Confeſſion, that this was in the County of *Middleſex*, and that when they were asked concerning it, they owned it to be their hand Writing; now whether you can in the leaſt queſtion after all this, their delivering of it to the King, or that it came to the King's hands without their knowledge or conſent, is that which lies before your Lordſhip for your Judgment.

L. C. Juſt. I will ask my Brothers their Opinion, but I muſt deal truly with you, I think it is not Evidence againſt my Lords the Biſhops.

Mr. *Juſt. Holloway.* Truly I think you have failed in your Information, you have not proved any thing againſt my Lords the Biſhops in the County of *Middleſex*, and therefore the Jury muſt find them not guilty.

Mr. *Att. Gen.* I'll put you but one caſe my Lord, a Man has an opportunity ſecretly to deliver a Libel into the King's hands, when no Body is by, and ſo there can be no proof of the delivery.

Mr. *Juſt. Powel.* 'Tis a dangerous thing Mr. *Attorney* on the other ſide, to convict People of Crimes without proof.

Mr. *Att Gen.* But ſhall a Man be permitted thus to affront the King, and there be no way to puniſh it?

L. C. Juſt. Yes, there will ſure, but it will be a very ſtrange thing if we ſhould go and preſume that theſe Lords did it, when there is no ſort of Evidence of it; 'tis that which I do aſſure you I cannot do, we muſt proceed according to Evidence and forms and methods of Law, they may think what they will of me, but I always declare my mind according to my Conſcience.

Mr. *S. Trinder.* But as to that other point whether their owning of it be a publication, has not been particularly ſpoke to.

L. C. Juſt. Mr. Attorney, and Mr. Sollicitor, if there were enough to raiſe doubt in the Court, ſo as to leave it to the Jury, I would ſumm up the Evidence.

Mr. *Sol. Gen.* My Lord, we know it is with the Court, theſe Lords inſiſted upon it, that it was a great while in their hands, but it ſeems as far as our Evidence has gone hitherto, their Confeſſion went no farther than that it was their Paper, and we muſt not extend their Confeſſion further than it was; but I think we ſhall offer a fair Evidence that they did deliver it in the County of *Middleſex.*

L. C. Juſt. Indeed, indeed, you ought to have gone to this, Mr. Sollicitor, before the Court gave their Opinions.

Mr. *Sol. Gen.* Pray call Mr. *Blathwayt* again.

Mr. *Blathwayt* called.

L. C. Juſt. Mr. Sollicitor, unleſs you are ſure that Mr. *Blathwayt* is a Witneſs to the publication, 'tis but ſpending the Courts time to no purpoſe to call him.

Mr. *Sol. Gen.* We are ſure of nothing, my Lord, but we muſt make uſe of our Witneſſes, according to our Inſtructions in our Briefs.

Then Mr. *Blathwayt* appeared.

Mr. *Att. Gen.* Mr. *Blathwayt* you were ſworn before.

Mr. *Blathwayt.* Yes, Sir.

Mr. *Att. Gen.* You were preſent when this Paper or Petition was delivered by the King, at the Council-Board.

Mr. *Blathwayt.* Yes, I was ſo Sir.

Mr. *Att. Gen.* Do you remember any thing of the Biſhops acknowledging their delivery of it to the King?

Mr. *Sol. Gen.* Mr. *Blathwayt* I would ask you, was there any mention of diſcourſe with my Lords the Biſhops, how that Paper came into the King's hands, was there any mention of what it was done for, upon the account of Religion or how?

Mr. *Blathwayt.* I don't remember any thing of that Mr. Sollicitor, *at which there was a great Laughter.*

L. C. Juſt. Pray let us have no laughing, it is not decent, can't all this be done quietly without noiſe? pray Mr. *Blathwayt* let me ask you, do you remember there was any diſcourſe how that writing came into the King's hands?

Mr. *Blathwayt.* I received it from the King's hands, and I know it was preſented to him by my Lords the Biſhops.

L. C. Juſt. How do you know it was preſented to the King?

Mr. *Blathwayt.* I heard the King ſay ſo ſeveral times.

Mr. *Sol. Gen.* Pray mind my queſtion Sir, firſt I ask you who produced the Paper at the Council-Table?

Mr. *Blathwayt.* The King.

Mr. *Sol. Gen.* What ſaid the Biſhops when that Paper was ſhewed them?

Mr *Blathwayt.* Then (as I remember) they were asked, whether that was the Paper that they delivered to the King?

Mr. *Sol. Gen.* Then what ſaid the Biſhops?

Mr. *Blathwayt.* They at firſt ſcrupled to anſwer, and they ſaid it might be made uſe of to their prejudice if they owned it.

Mr. *Att. Gen.* Pray Mr. *Blathwayt* conſider again, was that the queſtion put to my Lords the Biſhops, whether that was the Paper that was preſented by them to the King?

Mr. *Blathwayt.* I do think, to the beſt of my remembrance, that my Lord Chancellor did ask them to that purpoſe, I cannot ſpeak to the very words.

Mr. *Sol. Gen.* And upon this, what anſwer did they make?

Mr. *Blathwayt.* My Lords the Biſhops ſcrupled to anſwer the firſt and ſecond time (as I told you before) but they did own it was the Petition that they preſented to the King, to the beſt of my remembrance.

Mr. *Sol. Gen.* Did the Archbiſhop do any thing to own it?

Mr. *Blathwayt.* Yes, both my Lord Archbiſhop of *Canterbury* and the reſt of the Biſhops did own all the ſame thing.

Mr. *Sol. Gen.* Was this done at *Whitehall?*

Mr. *Blathwayt.* Yes, at the Council-Table.

L C. Juſt. Pray recollect your ſelf, and conſider what you ſay, did they own that that was the Paper they delivered to the King?

Mr. *Serj. Pemb.* Pray my Lord give us leave to ask a queſtion to clear this matter, was the queſtion put to them, Whether it was the Paper that they delivered, or whether it were their hands that were to it?

Mr. *Blathwayt.* My Lord, I do not exactly recollect the words.

L. C. Juſt. But pray tell us, if you can, what the queſtion was?

Mr. *Blathwayt.* My Lord, I do not remember the very words, but I think if Mr. Serjeant *Pemberton* be pleaſed to repeat his queſtion, I ſhall give him a ſatisfactory anſwer, as well as I can.

Mr. *Serj. Pemb.* Sir, that which I ask you is this, Whether the queſtion that was put to my Lords the Biſhops at that time was, Whether this was the Paper that they deliver'd to the King, or whether thoſe were their Hands that were to it?

Mr. *Blathwait.* My Lord, I did always think that it was a plain Caſe, that that was the Paper that they deliver'd to the King; and my Lords the Biſhops did never deny but that they gave it to the King, and I had it from the King's hands.

L. C. Juſt. But we muſt know from you (if you can tell us) what the queſtion was that was put to my Lords the Biſhops, were they asked, Whether thoſe were their hands that were to that paper, or was it Whether they delivered that paper to the King?

Mr. *Blathwayt.* As to the firſt part, that they owned 'twas their hands, that I am ſure of; but as to the other, I do not remember what the words were.

At which there was a great Shout.

Mr. *Att. Gen.* Pray Mr. *Blathwayt* recollect your ſelf, you ſay the King produced it.

Mr. *Blathwayt.* Yes Sir:

Mr. *Att. Gen.* Do you remember that the King

King asked them any queſtion upon the producing of it?

Mr. *Blathwait.* My Lord Chancellour asked them, if thoſe were not their Hands to the Petition.

Mr. *Sol. Gen.* Was there any other matter in diſcourſe, whether that was the paper that was delivered by them to the King?

Mr. *Blathwait.* I cannot ſo poſitively ſay, what were the words that my Lord Chancellor uſed.

Mr. *S. Levinz.* Pray do not twiſt a man ſo, Mr. Sollicitor.

Mr. *Sol. Gen.* And you are not to untwiſt a man neither, Mr. Serjeant.

Mr. *Att. Gen.* Do you remember that the King ſaid any thing of the paper being delivered to him?

Mr. *Blathwait.* The King has ſaid it ſeveral times, I believe I have heard him ſay it ten times at leaſt.

Mr. *Att. Gen.* Did he ſay it at that time?

Mr. *Blathwait.* I cannot poſitively ſay that he did, Sir.

Mr. *S. Pemberton.* He cannot anſwer it, why will you preſs it?

Mr. *Blathwait.* My Lord, here is the Clerk of the Council that was then in waiting, he took minutes, and perhaps can remember more than I.

Mr. *Sol. Gen.* Here they cry he cannot anſwer it, as if they could tell what he can anſwer better than himſelf; pray Mr. *Bridgman*, was there any queſtion to this purpoſe either from my Lord Chancellor, or from the King, whether that was the Paper that was preſented by my Lords the Biſhops, or delivered to the King, for I ſee you are very nice as to words, and you do very well; but was there not a queſtion to that purpoſe?

Mr. *Bridgman.* Sir, I do not remember, for I ſpeak to the beſt of my remembrance in all this matter; I ſay, I do not remember that that queſtion was asked in thoſe very words, but I do remember ſomething was ſaid to that purpoſe, but by whom I cannot particularly ſay.

Sir *Robert Sawyer.* To what purpoſe?

Mr. *Sol. Gen.* It is very ſtrange that they won't let the Witneſs ſpeak, but are continually interrupting him.

Sir *Robert Sawyer.* Mr. Sollicitor, no body interrupts him.

L. C. J. Why do not I behave my ſelf between you all as I ought to do? pray, Sir *Robert Sawyer*, ſit down, you cannot be contented when the man does you no harm.

Mr. *Sol. Gen.* Pray conſider, did my Lords the Biſhops ſay any thing, or was there any diſcourſe concerning the Paper, whether it was delivered to the King or no?

Mr. *Bridgman.* Mr. Sollicitor, I have told you as near as I can what I do remember; I know not by whom it was ſaid, but that queſtion or to that purpoſe was asked, whether that was the Petition they delivered, but I do not remember whether the queſtion was directly asked or anſwered, there was ſomething about it, and ſeveral paſſages there were; but whether ſpoken by my Lord Chancellor or who, I cannot remember.

Mr. *Sol Gen.* You ſay there was that which ſufficiently denoted a queſtion to that purpoſe, and they ſaid nothing againſt it.

Mr. *Bridgman.* No, there was no denial of it.

Mr. *Sol. Gen.* I ſee you do not remember the particular, nor do we deſire it of you.

Mr. *Bridgman.* They did not deny it nor confeſs it.

Mr. *Sol. Gen.* Then in your apprehenſion did they own that they delivered that Paper to the King?

L. C. J. You muſt not ask that Mr. Sollicitor, it is not a fair queſtion to ask him what he apprehended.

Mr. *Sol. Gen.* He ſaid it before himſelf.

L. C. J. But his apprehenſions are no Evidence, and it is a ſort of a leading queſtion which we muſt not allow of.

Mr. *Sol. Gen.* Then if your Lordſhip do not it like, I will not ask it, but I will ask him another queſtion.

L. C. J. Ay, ten if you will, ſo they be fair ones.

Mr. *Sol. Gen.* Was it upon the firſt or ſecond time of their being examined?

Mr. *Bridgman.* I cannot tell, it was not the firſt time, all of it, I believe; for at the firſt time my Lords the Biſhops made ſome ſcruple of anſwering or owning any thing, and whatſoever they owned, they ſaid, they hoped it ſhould not be made uſe of to their prejudice; I remember no reply that was made, nor any thing farther, only my Lord Chancellor ſaid, they were not to capitulate with their Prince; but they were required to anſwer the queſtions that were asked them.

Mr. *Sol. Gen.* What were thoſe queſtions?

Mr. *Bridgman.* I have told you already as well as I can remember.

Mr. *Sol. Gen.* But did you take it upon the main that they owned the delivery of that paper to the King?

Mr. *Juſt. Powel.* Mr. Sollicitor, you have been told you are to ask no ſuch queſtions.

Sir *Robert Sawyer.* Nor never was there ſuch wire-drawing of a Witneſs in this World before.

L. C. J. Pray ſit ſtill, Sir *Robert Sawyer*, you are not to teach us what we are to do, Mr. Sollicitor muſt ask queſtions that are proper for him and not ſuch as theſe; but the Court muſt correct him and not you.

Mr. *Sol. Gen.* Mr. *Bridgman* is very cautious, and he is to be commended for it, but we would get the truth out of him, if we could; pray Sir, if you can remember, recollect your ſelf, whether by any queſtion to that purpoſe, it was believed that they did own the delivery of the Paper to the King.

Mr. *Bridgman.* I told you, Mr. Sollicitor, as to that at firſt, that I do not remember the very words of the queſtion, but I believe there was no body doubted that that was not the Paper.

Mr. *Sol. Gen.* You ſpeak well in your way, but theſe Gentlemen are very unwilling you ſhould tell your opinion.

L. C. J. His opinion is no Evidence, therefore you muſt not ask any ſuch queſtions, Mr. Sollicitor.

Mr. *Bridgman.* Aſſoon as the Petition was delivered, within a few hours after, I ſaw it, the King ſhewed it to ſeveral people, and he ſaid, it was the Petition the Biſhops had delivered, he took it into his own cuſtody, and afterwards commanded me to write a Copy of it, and there was no Copy made of it but that one, but notwithſtanding that, I do remember I did ſee a Copy of the Petition, within a

day or two after it was preſented, about the Town.

Mr. *Sol. Gen.* Pray how many days was this before the diſcourſe in Council upon their Examination?

Mr. *Bridgman.* How many days was what, Sir?

Mr. *Sol. Gen.* When the King gave the Paper to be copied.

Mr. *Bridgman.* It was upon the *Sunday*.

Mr. *Sol. Gen.* But you ſay (as you believe) it was in a few hours after the Paper was delivered to the King, that you did ſee it?

Mr. *J. Powel.* But what makes him ſay that this was delivered to the King, but only hear-ſay?

L. C. J. Pray Mr. Sollicitor, will you produce that which is Evidence, and not ſpend our time in that which is not.

Mr. *Sol. Gen.* My Lord, I would make no more of it than it is.

Mr. *Serj. Levinz.* 'Tis a ſhameful thing to offer ſuch things in a Court of Juſtice.

Mr. *Serj. Pemberton.* 'Tis a practice that ought not to be endured.

L. C. J. Pray Brothers be quiet, or i'll turn him looſe upon you again, if you'l not be quiet; what is the matter? cannot you let us alone? we ſhall do every body right: come, to ſhorten this matter, I ask you but this one queſtion, and that may ſatisfie any one that has common honeſty about him; do you remember whether or no they were asked, if that was the Petition that they delivered to the King?

Mr. *Bridgman.* My Lord, I have anſwered that queſtion as directly as I can, I do not poſitively remember that that was the queſtion.

L. C. J. Mr. Sollicitor General, you muſt be ſatisfied, when proper queſtions are fairly anſwered, and therefore pray be quiet.

Mr. *Att. Gen.* However we pray we may ask the Clerks of the Council, it may be they may remember more —— Sir *John Nicholas* you were at the Council-Table that day my Lords the Biſhops were examined about this Paper.

Sir *John Nicholas.* Yes, Sir, I was.

Mr. *Att. Gen.* Pray did you obſerve that the King produced the Petition?

Sir *John Nicholas.* No indeed, I did not ſee it.

Mr. *Att. Gen.* Did you obſerve any thing that paſſed there in diſcourſe?

Mr. *Sol. Gen.* Did you obſerve any queſtions that were asked the Biſhops, either by the King or by my Lord Chancellor?

Sir *John Nicholas.* I think my Lord Chancellor did ask them, if that was their hands to the Petition, and they owned it.

Mr. *Sol. Gen.* Do you remember whether they owned, that they delivered that Paper to the King?

L. C. J. I'll ask you, Sir *John Nicholas*, did my Lord Chancellor ask them this queſtion, is this the Petition you delivered to the King?

Sir *John Nicholas.* I do not remember that.

Then there was a great ſhout.

Mr. *Sol. Gen.* Here's wonderful great rejoycing that truth cannot prevail.

Mr. *S. Pemberton.* No, Mr. Sollicitor, Truth does prevail.

Mr. *Sol. Gen.* You are all very glad that Truth is ſtifled, Mr. Serjeant.

Mr. *S. Trinder.* Pray Sir *John Nicholas*, let me ask you one queſtion, was there any diſcourſe about delivering that Petition to the King?

Sir *John Nicholas.* Indeed I do not remember it.

Mr. *Sol. Gen.* There is Mr. *Pepy's*, we'll examine him.

Mr. *Pepy's* ſworn.

L. C. J. Come i'll ask the queſtions, were you bye at the Council-Board when my Lords the Biſhops were committed?

Mr. *Pepy's.* Yes, I was.

L. C. J. What were the queſtions that were asked either by the King or by my Lord Chancellor?

Mr. *Pepy's.* My Lord, I would remember as well as I could, the very words, and the very words of the queſtion were (I think) my Lords, do you own this Paper? I do not remember any thing was ſpoken about the delivering, but I believe it was underſtood by every body at the Table, that that was the Paper that they had delivered.

L. C. J. Well, have you done now? But to ſatisfie you i'll ask this queſtion, was this queſtion asked, my Lords was this the Paper you delivered to the King?

Mr. Pepy's. No, my Lord.

Mr. Att. Gen. Pray Sir, do you remember whether the King himſelf asked the queſtion?

Mr. Pepy's. You mean I ſuppoſe Mr. Attorney that theſe were the words, or ſomething that imported their delivering it to the King.

Mr. Att. Gen. Yes, Sir.

Mr. Pepy's. Truly I remember nothing of that.

Mr. Sol. Gen. Did you obſerve any diſcourſe concerning their delivery of it to the King.

Mr. Pepy's. Indeed Mr. Sollicitor I do not.

Mr. Att. Gen. Swear Mr. *Muſgrave.*

Mr. *Muſgrave* Sworn.

L. C. J. You hear the queſtion Sir, what ſay you to it?

Mr. Muſgrave. My Lord, I will give as ſhort an account of it as I can, the firſt time after his Majeſty had produced the Petition and it was read at the Board, his Grace my Lord Archbiſhop of *Canterbury* and the other ſix Reverend Lords the Biſhops were called in, and it was asked of them, if they owned that, or if it was their hands, my Lord Archbiſhop in the name of the reſt, did decline anſwering, upon the account that they were there as Criminals, and were not obliged to ſay any thing to their own prejudice, or that might hurt them hereafter; but if his Majeſty would command them, and if he would promiſe that no advantage ſhould be made of whatſoever they confeſſed, then they would anſwer the queſtion; his Majeſty made no anſwer to that, but only ſaid he would do nothing but what was according to Law, whereupon the Biſhops were ordered to withdraw, and being called in a ſecond time the Petition was ſhewn to them, and they were asked if they did own it, or if it was their hands, and I think my Lord Archbiſhop did ſay then, we will rely upon your Majeſty, or ſome ſuch general thing was ſaid, and then they did all own it that it was their hands, I cannot ſay the Petition was read to them.

Mr. *Juſt. Powel.* Mr. *Blathwait* (as I remember) ſaid it was the third time.

Mr. Muſgrave. It was the ſecond time (to the beſt of my remembrance)

L. C. J.

L. C. J. Pray Sir, was there any queſtion to this purpoſe? is this the Paper you delivered to the King?

Mr. Muſgrave. I do not remember that ever any ſuch direct queſtion was asked.

Mr. J. Allybone. But (as my Brother *Pemberton* did very well before diſtinguiſh) there is a great deal of difference between the owning the ſubſcription of a Paper, and between the owning of that Paper, Mr. *Pepy's* did ſay that they did own the Paper, and upon my Word that will look very much like a Publication.

Mr. Muſgrave. I remember, my Lord, there was at the ſame time a queſtion asked, becauſe ſeveral Copies had gone about the Town, whether they had publiſhed it, and my Lord Archbiſhop did ſay, he had been ſo cautious that he had not admitted his own Secretary, but writ it all himſelf, and the reſt of the Biſhops did ſay, they did not publiſh it, nor never gave any Copies of it.

Mr. *Att. Gen.* My Lord (I confeſs) now it is to be left to the Jury upon this point, whether there not being a poſitive Witneſs that was by when the thing was done, yet upon this Evidence the Jury can't find any otherwiſe, than that the thing was done; truly I think we muſt leave it as a ſtrong caſe for the King, I could have wiſhed indeed for the ſatisfaction of every body, that the proof would have come up to that, but we muſt make it as ſtrong for the King upon the Evidence given as it will bear; now my Lord, take all this whole matter together, here is a Paper compoſed, framed, and written by ſeven learned Men, and this muſt be written by ſuch Perſons, ſure for ſome purpoſe; it is directed as a Petition to the King, and this Petition did come to the hands of the King, (for the King produces it in Council,) and my Lord Archbiſhop and the reſt of the Biſhops owned their hands to it, then the queſtion is, my Lord, whether or no there be any room for any body living to doubt in this caſe that this was not delivered by my Lords the Biſhops to the King, though it be not a concluſive Evidence of a poſitive Fact, yet unleſs they ſhew ſomething on the other ſide, that may give way for a ſuppoſition to the contrary, that it came out of their hands by ſurprize, or that any body elſe delivered it to the King without their knowledge or conſent; here muſt needs be a very violent preſumption, that they did do it; and when nothing of that is ſaid on their ſide, can any Jury upon their Conſciences ſay that it was not publiſhed by them? and it being found in *Middleſex*, though it might be written and compoſed in *Surrey*, yet ſurely we have given a convincing Evidence that either they publiſhed it or cauſed it to be publiſhed in *Middleſex*.

Pray call Mr. *Graham*.

Cryer. He is gone out of the Hall.

Mr. Sol. Gen. My Lord, there is in Law a preſumption that is Evidence, though there be no poſitive proof.

Sir *Robert Sawyer.* But not in an Information for a Libel.

Mr. Sol. Gen. This is a meer queſtion of Fact, there is no difficulty in the Law of it at all, for it is plain, if theſe Lords or any of them did conſent and agree to the publiſhing of this Paper in *Middleſex*, they are guilty of this Information, and whether they are guilty or not guilty, we do rely upon the Circumſtances proved, which are violent; Firſt, that they were the Men that contrived and ſet their hands to it, and ſo were the Authors of it is undeniable; for they have owned it. Men of their learning and parts never did any ſuch thing in vain; and then that they were concerned in the publiſhing of it in *Middleſex*, we offer for proof that which was ſaid by Mr. *Pepy's* and Mr. *Blathwait*, who though they do not come directly and expreſly to the formal words of ſuch a queſtion, yet they tell you, eſpecially Mr. *Blathwait*, that they did apprehend it, and it was the Collection of all their thoughts, and they took it for granted, as a thing that every body was ſatisfied in, that they did deliver that Paper to the King. I muſt confeſs and agree there is no proof of the delivery of it by my Lords the Biſhops to the King, but we know very well, that it is no wonder, when a Paper is Libellous, that Men ſhould uſe all the skill they can to publiſh it with impunity, and this is a thing that was done after ſome time of Premeditation and ſerious Conſultation; for it was ſome days after the Order for reading the Declaration was publiſhed, that this was framed and delivered, and it concerned them to be wary, (as it ſeems they have been) but take this altogether, my Lord, the Paper being found in the King's Hands, it is in theſe Perſons Power, and it lies upon them to make it out plain, what became of this Paper, which once lay in their own Hands and Cuſtody; they can give an Account of it, they can give Light unto it: If they do not, I ſhall ſubmit to the Jury, whether this is not ſufficient Evidence to Convict them, eſpecially when being examined, they did not make that their Excuſe, they never ſaid, this Paper indeed we ſigned, but we did not intend to publiſh it, we intended to ſtifle it; that had been ſome excuſe: But for them to ſay now, they did not preſent it to the King, I muſt ſubmit to the Jury, whether they will believe upon this Evidence, that theſe Lords the Biſhops did preſent it, or cauſe it to be preſented to the King, then they are guilty of this Matter: And I leave it to them and their Conſciences, what they will think upon the whole.

Mr. Recorder. My Lord, if your Lordſhip pleaſe——

L. C. J. What, again? Well, go on Sir *Bartholomew Shore*, if we muſt have a Speech——

Mr. Recorder. Nay, my Lord, I would not treſpaſs upon your Lordſhip

L. C. J. Gentlemen of the Jury, here is an Information againſt my Lords the Biſhops; I think I need not trouble my ſelf to open all of it, becauſe I ſee you are Men of Underſtanding, Men of great Diligence, and have taken Notes your ſelves ſome of you; therefore, I ſay, only ſomething of the Proof that is required in ſuch a Caſe, and of the manner of the Proof that has been given in this Caſe, and then tell you my Opinion in Point of Law. Here is an Information brought by Mr. Attorney General on behalf of the King, againſt theſe Reverend Fathers of the Church, the Archbiſhop and the reſt; and it is for publiſhing a Seditious Libel, under the pretence of a Petition, in which are contained the words that are ſeen. Gentlemen, the Information is long, it tells you, That the King, out of his Gracious Clemency to all his Loving Subjects, and for other Conſiderations, had thought fit to publiſh a Declaration of Indulgence, that all his Loving Subjects might have Liberty of Conſcience, upon the 4*th* of *April*, in the 3*d* Year of his Reign; and that this was ſet forth by the

the King; and that the King of his farther Grace, about the 27*th* of *April* then next following——

Mr. *Finch.* I humbly beg your Lordſhips Favour.

L. C. J. What ſay you, Mr. *Finch?*

Mr. *Finch.* I ask your Pardon for breaking in upon you when you are directing the Jury: I know I ſhould not do it, but I hope you will not be angry with me for it.

L. C. J. If I thought you did any Service to your Client, I ſhould willingly hearken to you.

Mr. *Finch.* That which I humbly offer to your Lordſhip, is only to remember your Lordſhip where we were.

L. C. J. Go on, Sir.

Mr. *Finch.* I would only ſay this, my Lord, the Queſtion is, Whether this be Evidence, or no?

L. C. J. I am ſorry, Mr. *Finch*, you have that Opinion of me, as to think I ſhould not leave it fairly to the Jury.

Mr. *Finch.* I only ſpeak it, my Lord, becauſe if it be Evidence, we have other Matters to offer in Anſwer to that Evidence, and in our own Defence.

L. C. J. If you have more to offer, why did you conclude here, and let me begin to direct the Jury? but ſince you ſay you have other Matter to offer, we will hear it.

Mr. *S. Pemberton.* My Lord, we ſubmit to your Lordſhips direction.

L. C. J. No, no, you do not, you ſay you have further Matter to offer.

Mr. *Pollixfen.* My Lord, we ſhall reſt it here.

L. C. J. No, no, I will hear Mr. *Finch*; Go on, my Lords the Biſhops ſhall not ſay of me, I would not hear their Council; I have been already told of being Council againſt them, and they ſhall never ſay that I would not hear their Council for them.

Mr. *S. Levinz.* My Lord, we beſeech your Lordſhip go on with your Directions; for all that Mr. *Finch* ſaid, was only that this was not ſufficient Evidence.

L. C. J. No, Brother, he ſays you have a great deal more to offer, and I will not refuſe to hear him; the Court will think there was ſomething more than ordinary, therefore I will hear him, ſuch a Learned Man as he ſhall not be refuſed to be heard by me, I'll aſſure you; Why don't you go on Mr. *Finch?*

Mr. *Finch.* My Lord, I beg your pardon for interrupting you; but all that I was going to ſay, would have amounted to no more than this, that there being no Evidence againſt us, we muſt of courſe be acquitted.

Mr. *Juſt. Holloway.* My Lord did intend to have ſaid as much as that I dare ſay.

L. C. J. Well, Gentlemen of the Jury, we have had Interruption enough——

Mr. *Sol. Gen.* My Lord, I muſt beg your Pardon for interrupting you now; and I am very glad theſe Gentlemen have given us this Occaſion, becauſe we ſhall now be able to clear this Point. There is a Fatality in ſome Cauſes, my Lord, and ſo there is in this, we muſt beg your Patience for a very little while, for we have notice that a Perſon of very great Quality is coming, that will make it appear, that they made their Addreſſes to him, that they might deliver it to the King.

L. C. J. Well——You ſee what comes of the Interruption, Gentlemen, now we muſt ſtay.——

——*Then there was a Pauſe for near half an hour.*

Mr. *Att. Gen.* Pray, my Lord, put the Caſe that a Man writes a Libel in one County, and it is found in another, is not he anſwerable, unleſs he can ſhew ſomething that may ſatisfie the Jury how it came there?

Mr. *Sol. Gen.* Ought he not to give an account what became of it?

L. C. J. No: look you Mr. Attorney, you muſt look to your Information, and then you will find the Caſe that you put, does not come up to it; It is for Writing, Compoſing and Publiſhing, and cauſing to be publiſhed, and all this is laid in *Middleſex*; Now you have proved none of all theſe things to be done in the County.

Mr. *Att. Gen.* They did in *Middleſex* confeſs it was theirs.

L. C. J. Ay, but the owning their Hands is not a publication in *Middleſex*, and ſo I ſhould have told the Jury.

Mr. *Finch.* I beg your Lordſhip's pardon for interrupting you.

Mr. Att. Gen. But, my Lord, does it not put the Proof upon them, to prove how it came out of their Hands into the King's Hands?

L. C. J. No, the Proof lies on your part.

Mr. Pollixfen. Pray, my Lord, give us your favour to diſmiſs us and the Jury.

Mr. Sol. Gen. My Lord, our Witneſſes will be here preſently.

Mr. Att. Gen. Sure, my Lord, the Preſumption is on our ſide.

Mr. J. Powel. No, the Preſumption is againſt you, for my Lord Archbiſhop lived in *Surry*; and it is proved was not out of *Lambeth-Houſe* ſince *Michaelmas*, till he came before the Council.

Mr. S. Pemberton. Pray, good my Lord, we ſtand mightily uneaſy here, and ſo do the Jury, pray diſmiſs us.

L. C. J. I cannot help it, it is your own Fault.

—— *Then there was another great Pauſe.*

L. C. J. Sir *Bartho. Shore*, now we have time to hear your Speech, if you will.

Mr. Pollixfen. My Lord, there is no Body come, nor I believe will come.

Mr. Sol. Gen. Yes, he will come preſently, we have had a Meſſenger from him.

[Call Mr. *Graham.*]

Cryer. He is gone, and ſaid he would come preſently.

Mr. Sol. Gen. My Lord, he will bring our Witneſſes with him.

—— *Then there was another Pauſe.*

Mr. *S. Pemb.* My Lord, this is very unuſual to ſtay thus for Evidence.

L. C. Juſt. It is ſo; but I am ſure you ought not to have any Favour——Mr. *Sollicitor*, Are you aſſured that you ſhall have this Witneſs that you ſpeak of?

Mr. *Sol. Gen.* Yes, my Lord, he will be here preſently.

L. C. Juſt. We have ſtaid a great while already, and therefore it is fit that we ſhould have ſome Oath made that he is coming.

Mr. *Sol. Gen.* The Cryer tells you, that Mr. *Graham* did acquaint him, that he would return preſently.

L. C. Juſt. Give him the Book.

Mr. *Sol. Gen.* Let your Left-hand give your Right-hand the Oath.

The

The Cryer ſworn.

L. C. Juſt. By the Oath that you have taken, did Mr. *Graham* tell you, there was any further Witneſs coming in this Caſe?

Cryer. Yes, my Lord, he did; he went out of the Hall, and returned when your Lordſhip was directing the Jury, and he asked me what the Court were upon? and I told him you were directing the Jury, and then he ſaid my Lord *Sunderland* was a coming, but he would go and prevent him; and afterwards he returned and finding your Lordſhip did not go on to direct the Jury, he ſaid he would go again for my Lord *Sunderland*, whom he had ſent away, and he is now gone for him, and he ſaid he would bring him with him preſently.

L. C. Juſt. Well then, we muſt ſtay till the Evidence for the King comes, for now there is Oath made that he is coming.

——*And after a conſiderable pauſe the Lord Preſident came.*

Mr. *Att. Gen.* My Lord, we muſt pray that my Lord Preſident may be ſworn in this Caſe, on behalf of the King.

The Lord Preſident ſworn.

Mr. *Att. Gen.* My Lord, with your Lordſhip's favour, I would ask my Lord Preſident a Queſtion; Your Lordſhip remembers where we left this Cauſe; we have brought it to this Point, That this Petition came to the King's Hands, that it is a Petition written by my Lord Archbiſhop, and ſubſcribed by the reſt of my Lords the Biſhops, but there is a Difficulty made, whether this Petition thus prepared and written was by them delivered to the King, and whether my Lords the Biſhops were concerned in the doing of it, and were privy or Parties to the Delivery: Now that which I would ask your Lordſhip my Lord Preſident, is, Whether they did make their Application to your Lordſhip to ſpeak to the King.

Mr. *Sol. Gen.* Did they make their Application to your Lordſhip upon any account whatſoever?

L. Preſident. My Lord, my Lord Biſhop of St. *Aſaph*, and my Lord Biſhop of *Chicheſter* came to my Office, and told me, they came in the Names of my Lord Arch-biſhop of *Canterbury*, and four others of their Brethren and themſelves, with a Petition which they deſired to deliver to his Majeſty, and they did come to me to know which was the beſt way of doing it, and whether the King would give them leave to do it or not? they would have had me read their Petition, but I refuſed it, and ſaid, I thought it did not at all belong to me, but I would let the King know their deſire, and bring them an Anſwer immediately, what his pleaſure was in it; which I did, I acquainted the King, and he commanded me to let my Lords the Biſhops know, they might come when they pleaſed, and I went back and told them ſo, upon which they went and fetch'd the reſt of the Biſhops, and when they came, immediately they went into the Bed-Chamber, and into another Room where the King was: this is that I know of the matter.

Mr. *Sol. Gen.* About what time was this, pray, my Lord?

L. Preſident. I believe there could not be much time between my coming from the King, and their fetching their Brethren, and going in to the King.

Mr. *Sol. Gen.* They were with the King that day.

L. Preſident. Yes, they were.

Mr. *Sol. Gen.* Was this before they appeared in Council?

L. Preſident. Yes, it was ſeveral days before.

Mr. *Sol. Gen.* Then I think now, my Lord, the matter is very plain.

Mr. *Juſt. Allibone.* Did they acquaint your Lordſhip that their buſineſs was to deliver a Petition to the King?

L Preſident. Yes, they did.

Mr. *Sol. Gen.* And they would have had my Lord read it (he ſays.)

Mr. *Att. Gen.* And this was the ſame day that they did go in to the King.

L. Preſident. The very ſame day, and I think the ſame hour, for it could not be much longer.

L Ch. Juſt. Now it is upon you truly, it will be preſumed to be the ſame unleſs that you prove that you delivered another——Pray, my Lord, did you look into the Petition?

L. Preſident. No, I refuſed it, I thought it did not concern me.

Mr. *Juſt. Powel.* Did you ſee them deliver it to the King, my Lord?

L. Preſident. I was not in the Room when it was delivered.

Mr. *Juſt. Powel.* They did open their Petition to your Lordſhip, did they?

L. Preſident. They offered me to read it, but I did refuſe.

L. C. Juſt. Will you ask my Lord Preſident any Queſtion, you that are for the Defendants?

Sir *Rob. Sawyer.* No, my Lord.

Mr. *Sol. Gen.* Then my Lord, we muſt beg one thing for the ſake of the Jury, if your Lordſhip can turn your ſelf a little this way, and deliver the Evidence you have given over again that they may hear it.

L. Preſident. My Lord, I will repeat it as near as I can, I think I ſhall not vary the Senſe: The Biſhops of St. *Aſaph* and *Chicheſter* came to my Office, I do not know juſt the day when, but it was to let me know, that they came in the Name of the Arch biſhop and four other of their Brethren——Is it neceſſary I ſhould name them?

L. C. Juſt. Do it, my Lord, if you can.

L. Preſident. They were the Biſhops of *Ely*, *Bath* and *Wells*, *Briſtol*, and *Peterborough*; they came to let me know, in the Name of the Archbiſhop, thoſe four and themſelves, that they had a Petition to deliver to the King, if he would give them leave; and deſired to know of me which was the beſt way to do it. I told them I would know the King's Pleaſure, and bring them word again: they offered me their Petition to read, but I did not think it fit for me to do it, and therefore I refuſed and would not read it, but I went immediately to the King, and acquainted his Majeſty with it, and he commanded me to let them know they might come when they would, which I immediately did, they ſaid they would go and ſpeak with ſome of their Brethren that were not far off; in the mean time I gave order that they ſhould be admitted when they came, and they did in a little time return, and went firſt into the Bed-Chamber, and then into the Room where the King was.

Mr. *Sol. Gen.* And this was before they came and appeared at the Council.

L. Preſident. Yes it was.

Mr.

Mr. *Pollixfen.* Your Lordship did not read any thing of the Petition?

L. President. No, Sir, I did not, I refused it.

Mr. *Pollixfen.* Nor does your Lordship know what Petition they did deliver to the King?

L. President. I did not know any thing of it from them then.

L. C. J. Now you may make your Observations upon this two hours hence; now we shall hear what Mr. *Finch* had further to offer, I suppose.

Then my Lord President went away.

Mr. *Sol. Gen.* I think now it is very plain.

L. C. J. Truly, I must needs tell you, there was a great Presumption before, but there is a greater now, and I think I shall leave it with some effect to the Jury, I cannot see but that here is enough to put the Proof upon you: they came to the Lord President, and asked him how they might deliver a Petition to the King, he told them he would go see what the King said to it; they would have had him read their Petition, but he refused it; he comes and tells them the King said they might come when they would; then those two that came to my Lord President went and gathered up the other four (the Archbishop indeed was not there) but they six came, and my Lord President gave Direction they should be let in, and they did go into the Room where the King was; now this, with the King's producing the Paper, and their owning it at the Council, is such a Proof to me, as I think will be Evidence to the Jury of the Publication.

Mr. *Pollixfen.* Then my Lord thus far they only can go, the Archbishop was not there, and so there is no Evidence against him.

Mr. *Sol. Gen.* As to the Writing, we have given Proof against him, for it is all his Hand.

Mr. *Pollixfen.* That still is in another County, and there is nothing proved to be done by my Lord Archbishop in *Middlesex*; and next, for the other six Lords, my Lord President does not say that this is the Petition that they said they had to deliver to the King; nor did he see them deliver any thing to the King, but that is left still doubtful, and under your Judgment, so that it stands upon Presumption, not upon Proof, that this is the same, and left under Consideration.

Mr. *Att. Gen.* Then we will leave it fairly to the Jury upon this Fact.

Mr. *Pollixfen.* If so, then we desire to be heard in our Defence.

Sir *Rob. Sawyer.* May it please your Lordship, and you Gentlemen of the Jury, you have heard this Charge which Mr. Attorney has been pleased to make against my Lords the Bishops, and that is this, That they did conspire to diminish the Royal Authority, and Regal Prerogative, Power, and Government of the King, and to avoid the Order of Council, and in prosecution of this, they did falsely, maliciously and seditiously make a Libel against the King, under pretence of a Petition, and did publish the same in the King's Presence.

This, Gentlemen, is a very heinous and heavy Charge; but you see how short their Evidence is; The Evidence they bring forth is only, that my Lords the Bishops presented the Paper to the King in the most private and humble manner they could, that which they have been so many hours a proving, and which they cry up to be as strong an Evidence as ever was given, proves it to be the farthest from Sedition in the doing of it that can be; and you see what it is, it is a Petition to be relieved against an Order of Council, which they conceive they were aggrieved by, they indeed do not deal fairly with the Court nor with us, in that they do not set it forth that it was a Petition.

L. C. J. That was over-ruled before.

Sir *Rob. Sawyer.* I do not insist upon it now, so much an Exception to the Information, as I do to the Evidence; they set this forth to be a scandalous matter; but it only contains their Reasons, whereby they would satisfy His Majesty why they cannot comply in a Concurrence with His Majesty's Pleasure; and therefore they humbly beseech the King, and beg and request him (as the words of it are) that His Majesty would be pleased not to insist upon their distributing and reading of this Declaration; so the Petitioners on behalf of themselves, and the whole Clergy of *England*, beg of the King that he would please not to insist upon it.

Gentlemen, you may observe it, that there is nothing in this Petition that contains any thing of Sedition in it, and it would be strange this Petition should be *Felo de se*, and by one part of it destroy the other, it is laid indeed in the Information, that it was with intent and purpose to diminish the King's Royal Authority, but I appeal to your Lordship, the Court, and the Jury, whether there be any one word in it, that any way touches the King's Prerogative, or any tittle of Evidence that has been given to make good the Charge; It is an Excuse barely for their non-Complyance with the King's Order, and a begging of the King with all Humility and Submission, that he would be pleased not to insist upon the reading of His Majesty's Declaration upon these grounds, because the Dispensing Power upon which it was founded, had been several times in Parliament declared to be against Law, and because it was a Case of that Consequence that they could not in Prudence, Honour or Conscience concur in it.

My Lord; Mr. Attorney has been pleased to charge in this Information, that this is a false, malicious and seditious Libel: both the falsity of it, and that it was malicious and seditious are all Matters of Fact, which with Submission they have offered to the Jury no proof of, and I make no question but easily to demonstrate the quite contrary.

For my Lord, I think it can be no question, but that any Subject that is Commanded by the King to do a Thing which he conceives to be against Law, and against his Conscience, may humbly apply himself to the King, and tell him the Reason why he does not that thing he is commanded to do, why he cannot concur with His Majesty in such a Command.

My Lord, that which Mr. Attorney did insist upon in the beginning of this Day (and he pretended to cite some Cases for it) was, that in this Case, my Lords the Bishops, were not sued as Bishops, nor prosecuted for their Religion: truly, my Lord, I do not know what they are sued for else; the Information is against them as Bishops, it is for an Act they did as Bishops, and no otherwise; and for an Act they did and do conceive they lawfully might do with relation to their Ecclesiastical Polity, and the Government of their People as Bishops.

The next thing that Mr. Attorney offered was, That it was not for a Non-feasance, but for a Feasance;

Feaſance; it is true, my Lord, it is for a Feaſance in making of the Petition, but it was to excuſe a Non-feaſance, the not reading according to the Order, and this ſure was lawful for all the Biſhops as Subjects to do; and I ſhall ſhew it was certainly the duty of my Lords the Biſhops, or any Peer of this Realm to do the ſame in a like Caſe. It was likewiſe ſaid, they were proſecuted here for affronting the Government, and intermedling with Matters of State; but I beg your Lordſhip and the Jury to conſider, whether there is one tittle of this mentioned in the Petition, or any Evidence given of it; the Petition does not meddle with any thing of any Matter of State, but refers to an Eccleſiaſtical Matter, to be executed by the Clergy, and to a Matter that has relation to Eccleſiaſtical Cauſes; ſo that they were not Buſybodies, or ſuch as meddled in Matters that did not relate to them, but that which was properly within their Sphere and Juriſdiction.

But after all, there is no Evidence, nor any ſort of Evidence that is given by Mr. Attorney, that will maintain the leaſt tittle of this Charge; and how he comes to leave it upon this ſort of Evidence I cannot tell, all that it amounts to is, That my Lords the Biſhops being grieved in this manner, made this Petition to the King in the moſt private and reſpectful manner; and for him to load it with ſuch horrid black Epithets, that it was done libellouſly, maliciouſly, and ſcandalouſly, and to oppoſe the King and Government, 'tis very hard, 'tis a Caſe of a very extraordinary Nature, and I believe my Lords the Biſhops cannot but conceive a great deal of trouble, that they ſhould lie under ſo heavy a Charge, and that Mr. Attorney ſhould draw ſo ſevere an Information againſt them, when he has ſo little Proof to make it out.

My Lord, by what we have to ſay to it, we hope we ſhall give your Lordſhip and the Jury Satisfaction, that we have done but our Duties, ſuppoſing here has been a ſufficient Evidence of the Fact given, which we leave to your Lordſhip and the Jury.

My Lord, we ſay in ſhort, That this Petition is no more than what any Man if he be Commanded to do any thing, might humbly do it, and not be guilty of any Crime: And, my Lord, as to the matter of our Defence, it will conſiſt of theſe Heads;

Firſt, We ſhall Conſider the Matter of this Petition.

Secondly, The Manner of the delivering it, according as they have given Evidence here; and,

Thirdly, The Perſons that have delivered this Petition. And we hope to make it appear, beyond all Queſtion, that the Matter contained in this Petition, is neither falſe nor contrary to Law, but agreeable to all the Laws of the Land in all Times. We ſhall likewiſe ſhew you (though that appear ſufficiently to you already) that the Manner of delivering it was ſo far from being Seditious, that it was in the moſt ſecret and private manner, and with the greateſt Humility and Duty imaginable. And then as to the Perſons, we ſhall ſhew you that they are not ſuch as Mr. Attorney ſays, who meddle with Matters of State, that are out of their Sphere, but they are Perſons concerned, and concerned in Intereſt in the Caſe, to make this humble Application to the King. And when we have proved all this Matter, you will ſee how ſtrangely we are blackned with Titles and Epithets which we no ways deſerve, and of which, God be thanked, there is no Proof.

For, my Lord, for the Matter of the Petition, we ſhall conſider two things.

The Firſt is, The Prayer, which is this, They humbly beg and deſire of the King, on behalf of themſelves and the reſt of the Clergy, that he would not inſiſt upon the Reading and Publiſhing of this Declaration.

Surely, my Lord, there is nothing of Falſity in this, nor any thing that is contrary to Law, or unlawful for any Man that is preſſed to any thing, eſpecially, by an Order of Council; and this is nothing but a Petition againſt an Order of Council, and if there be an Order that commands my Lords the Biſhops, to do a thing that ſeems grievous to them, ſurely they may beg of the King that he would not inſiſt upon it.

And for this Matter, they were ſo well ſatisfied about it, and ſo far from thinking that it was any part of a Libel, that they left it out of the Information, and ſo have made a deformed and abſurd Story of it, without Head or Tail, a Petition directed to no Body, and for nothing, it being without both Title and Prayer; ſo that this is plain, it was lawful to Petition.

Then, my Lord, the next thing is, the Reaſons which my Lords the Biſhops come to acquaint the King with, why, in Honour and Conſcience, they cannot comply with, and give obedience to this Order; and the Reaſons, my Lord, are two.

The firſt Reaſon that is aſſigned, is, the ſeveral Declarations that have been in Parliament, (ſeveral of which are mentioned) that ſuch a Power to diſpenſe with the Law, is againſt Law; and that it could not be done but by an Act of Parliament, for that is the meaning of the word *Illegal*, that has no other Signification, but unlawful; the ſame word in point of Signification with the word *Illicitè*, which they have uſed in their Information, a thing that cannot be done by Law; and this they are pleaſed to tell the King, not as declaring their own Judgments, but what has been declared in Parliament; though if they had done the former, they being Peers of the Realm, and Biſhops of the Church, are bound to underſtand the Laws, eſpecially when (as I ſhall come to ſhew you) they are made Guardians of theſe Laws; and if any thing go amiſs, and contrary to theſe Laws, they ought to inform the King of it.

My Lord, the next thing is, Becauſe it is a Thing of ſo great moment, and the Conſequences that will ariſe from their publiſhing of this Declaration, and that too, my Lord, (for the latter I ſhall begin firſt with) there can be no Queſtion about, or any pretence that this is libellous or falſe, for certainly it is a Caſe of the greateſt Conſequence to the whole Nation that ever was, therefore it cannot be falſe or libellous to ſay ſo.

My Lord, I would not mention this, for I am loth to touch upon things of this Nature, had not the Information it ſelf made it the very *Giſt* of the Charge; for the Information (if there be any thing in it) ſays, that it was to diminiſh the King's Prerogative and Regal Power in publiſhing that Declaration.

Now, my Lord, what the Conſequence of this would be, and what my Lords the Biſhops meant by ſaying, It was a Cauſe of great Moment, will appear, by conſidering that which is

the main Clause in the Declaration, at which my Lords the Bishops scrupled, which is the main Stumbling block to my Lords, and has been to many honest Men besides, and that is this.

'We do likewise declare, It is our Royal Will 'and Pleasure, that from hence forth the Execu- 'tion of all and all manner of Penal Laws, in 'Matters Ecclesiastical, for not coming to 'Church, or not receiving the Sacrament, or 'for any other Nonconformity to the Religion 'Established; or for or by Reason of the Exer- 'cise of Religion in any manner whatsoever, 'be immediately suspended; and the further 'Execution of the said Penal Laws, and every of 'them, is hereby suspended.

Here the Lord Chief Justice speaking aside said,

L. C. Just. *I must not suffer this, they intend to dispute the King's Power of suspending Laws.*

Mr. *Just Powell. My Lord, they must necessarily fall upon that Point; for if the King hath no such Power, (as clearly he hath not in my Judgment) the natural Consequence will be, that this Petition is no diminution of the King's Regal Power, and so not seditious or libellous.*

L. C. Just. *Brother, I know you are full of that Doctrine; but however, my Lords the Bishops shall have no occasion to say, that I deny to hear their Council. Brother, you shall have your Will for once, I will hear them, let them talk till they are weary.*

Mr. *Just. Powel. I desire no greater liberty to be granted them than what in Justice the Court ought to grant, that is, to hear them in defence of their Clients.*

Now, my Lord, this Clause either is of some legal Effect and Signification, or it is not. If Mr. Attorney, or the King's Council, do say it is of no Effect in Law, then there is no harm done, then this Petition does no ways impeach the King's Prerogative in saying, it has been declared in Parliament, according, as the King's Council do agree the Law to be.

But my Lord, if it have any Effect in Law, and these Laws are suspended by virtue of this Clause in the Declaration, then certainly, my Lord it is of the most dismal Consequence that can be thought of, and it behoved my Lords, who are the Fathers of the Church, humbly to represent it to the King.

For, my Lord, by this Declaration, and particularly by that Clause in it, not only the Laws of our Reformation, but all the Laws for the preservation of the Christian Religion in general are suspended, and become of no force; if there be such an Effect in Law wrought by this Declaration as is pretended, (that is) that the Obligation of Obedience to them ceaseth, the Reason of it is plain, the words cannot admit of such a Quibble as to pretend, that the Execution of the Law is not the suspending of the Law, and that the suspending the Execution of the Law, is not a suspending of the Law; for we all know the Execution of every Law, in its primary Intent, is Obedience to it, that of the Penalty comes in by way of Punishment and Recompence for their Disobedience.

Now, my Lord, if this Declaration does discharge the King's Subjects from their Obedience to, and the Obligation from those Laws: then pray, my Lord, where are we? Then all the Laws of the Reformation are suspended, and the Laws of Christianity it self, by those latter words, [or for, or by reason of Religion in any manner whatsoever] so that it is not confined to the Christian Religion, but all other Religions are permitted under this Clause; and thus all our Laws for keeping the Sabbath, and which distinguish us from Heathens, will be suspended too.

My Lord, this is such an Inconvenience as (I think) I need name no more; and it is a very natural Consequence from that Clause of the Declaration, it discharges at once all Ministers and Clergymen from performing their Duty in reading the Service of the Church, it discharges their Hearers from attending upon that Service.

When a Law is suspended, the Obligation thereof is taken away; and those that before thought themselves bound to obey, now conclude they are not so obliged; and what a mischief that will be to the Church, which is under the Care of my Lords the Bishops, your Lordship will easily apprehend.

These things, my Lord, I only mention, to shew the great and evil Consequences that apparently follow upon such a Declaration, which made my Lords the Bishops decline obeying the Order, and put them under a necessity of applying thus to the King, to acquaint him with the Reasons why they could not comply with his Commands, to read this Declaration to the People, because the Consequences thereof were so great, it tending naturally to lead the People into so great an Error, as to believe those Laws were not in force, when in Truth and Reality they are still in force, and continue to oblige them.

And that being the second Reason in this Petition, I come next to consider it, to wit, that the Parliament had often declared this pretended Power to be Illegal, and for that we shall read the several Records in Parliament mentioned in their Petition, and produce several ancient Records of former Parliaments that prove this Point; and particularly in the Time of *Richard* the Second, concerning the Statute of *Provisors*, where there were particular Dispensations for that Statute, the King was enabled to do it by Act of Parliament, and could not do it without.

L. C. J. Pray, Sir *Robert Sawyer*, go to your Proofs, and reserve your Arguments till afterwards.

Sir *Rob. Sawyer* My Lord, I do but shortly mention these things; so that, my Lord, as to the Matter of this Petition, we shall shew you, that it is true and agreeable to the Laws of the Land.

Then, my Lord, as to the manner of delivering it, I need say no more, but that it is plain from their Evidence, that it was in the most private and humble manner. And, as my Lord President said, Leave was asked of the King, for them to be admitted to present it: Leave was given, and accordingly they did it.

We come then, my Lord, to the third thing, the Persons, these noble Lords; and we shall shew, they are not Busybodies, but in this Matter have done their Duty, and medled with their own Affairs. That, my Lord, will appear,

First, By the general Care that is reposed in them by the Law of the Land: They are frequently in our Books, called the King's Spiritual Judges; they are intrusted with the Care of Souls, and the Superintendency over all the Clergy is their principal Care.

But, besides this, my Lord, there is another special Care put upon them, by the express Words of an Act of Parliament; for, over and above the general Care of the Church, by virtue of their Offices as Bishops, the Act of 1 *Eliz. cap.* 2. makes them special Guardians of the Law of Uniformity, and of that other Law in His late Majesty's Reign; where all the Clauses of that Statute

Statute of 1 *Eliz.* are revived, and made applicable to the preſent State of the Church of *England.* Now in that Statute of 1 *Eliz.* there is this Clauſe.

And for the due Execution hereof, the Queen's Moſt Excellent Majeſty, the Lords Spiritual and Temporal, and all the Commons in this preſent Parliament aſſembled, do, in God's Name, earneſtly require and charge all the Archbiſhops, and Biſhops, and other Ordinaries, that they do endeavour themſelves, to the utmoſt of their Knowledges, that the due and true Execution hereof may be had throughout their Dioceſſes and Charges, as they will anſwer before God, for ſuch Evils and Plagues, wherewith Almighty God may juſtly puniſh his People, for neglecting this good and wholeſome Law.

This is the Charge that lies upon the Biſhops, to take care of the Execution of that Law; and I ſhall pray by and by, that it may be read to the Jury.

Mr. *Sol. Gen.* That is very well, indeed! To what purpoſe?

Sir *Rob. Sawyer.* So that, my Lord, by this Law it is plain, that my Lords the Biſhops, upon pain of bringing upon themſelves the Imprecation of this Act of Parliament, are obliged to ſee it executed; and then, my Lord, when any thing comes under their Knowledge, eſpecially if they are to be Actors in it, that has ſuch a tendency to deſtroy the very Foundations of the Church, as the Suſpenſion of all the Laws that related to the Church muſt do, it concerns them that have no other Remedy, to addreſs the King, by Petition, about it.

For that, Mr. Attorney, my Lord, has agreed, That if a proper Remedy be purſued in a proper Court, for a Grievance complained of, though there may be many hard Words that elſe would be ſcandalous, yet, being in a regular Courſe, they are no Scandal. And ſo it is ſaid in *Lake*'s Caſe, in my Lord *Hobart.*

My Lord, we muſt appeal to the King, or we can appeal to no body, to be relieved againſt an Order of Council, with which we are aggrieved; and it is our Duty ſo to do, according to the Care that the Law hath placed in us.

Beſides, my Lord, the Biſhops were commanded by this Order, to do an Act relating to their Eccleſiaſtical Function, to diſtribute it to be read by their Clergy: And how could they in Conſcience do it, when they thought part of the Declaration was not according to Law?

Pray, my Lord, What has been the reaſon of His Majeſty's conſulting of his Judges? And if His Majeſty, or any the great Officers, by his Command, are about to do any thing that is contrary to Law, was it ever yet an Offence to tell the King ſo? I always look'd upon it as the Duty of an Officer or Magiſtrate, to tell the King what is Law, and what is not Law.

In *Cavendiſh*'s Caſe, in the Queen's time, there was an Office granted of the Retorn of the Writs of *Superſedeas* in the Court of *Common-Pleas*; and he comes to the Court, and deſires to be put into the Poſſeſſion of the Office: The Court told him, They could do nothing in it, but he muſt bring his Aſſize. He applies to the Queen, and ſhe ſends, under the Privy Seal, a Command to ſequeſter the Profits, and to take Security to anſwer the Profits, as the Judgment of the Law ſhould go: But the Judges there return an Anſwer, That it was againſt Law, and they could not do it. Then there comes a ſecond Letter, reciting the former, and commanding their Obedience: The Judges returned for Anſwer, They were upon their Oaths, and were ſworn to keep the Laws, and would not do it.

My Lord, The like was done in the time of my Lord *Hobart*: We have it reported in *Anderſon*, in a Caſe where a Prohibition had gone; There came a Meſſage from Court, that a Conſultation ſhould be granted; and that was a Matter wherein there were various Opinions, whether it was *Ex Neceſſitate*, or Diſcretionary, but there they return'd, That it was againſt Law, for any ſuch Meſſage to be ſent.

Now here, my Lord, is a Caſe full as ſtrong: My Lords the Biſhops were commanded to do an Act, which they conceived to be againſt Law, and they declined it, and tell the King the reaſon; and they have done it in the moſt humble manner that could be, by way of Petition. If they had done (as the Civil Law terms it) *Reſcribere* generally, that had been lawful; but here they have done it in a more reſpectful manner, by an humble Petition. If they had ſaid the Law was otherwiſe, that ſure had been no Fault; but they do not ſo much as that, but they only ſay, it was ſo declared in Parliament; and they declare it with all Humility and Dutifulneſs. So that, my Lord, if we conſider the Perſons of the Defendants, they have not acted as Buſy bodies; and therefore, as this Caſe is, when we have given our Evidence, here will be an anſwer to all the Implications of Law, that are contained in this Information: For they would have this Petition work by Implication of Law, to make a Libel of it; but by what I have ſaid, it will appear, there was nothing of Sedition, nothing of Malice, nothing of Scandal in it; nothing of the Salt, and Vinegar, and Pepper, that they have put into the Caſe. We ſhall prove the Matters that I have open'd for our Defence, and then, I dare ſay, your Lordſhip and the Jury will be of Opinion, we have done nothing but our Duty.

Mr. *Finch.* May it pleaſe your Lordſhip, and you, Gentlemen of the Jury, This Information ſets forth (as you may obſerve upon opening it) that the King having, by his Royal Prerogative, ſet forth his Declarations that have been read, and made an Order of Council for the reading the ſaid Declarations in the Churches; and that the Archbiſhop and Biſhops ſhould ſeverally ſend them into their Dioceſſes, to be read; my Lords the Biſhops, that are the Defendants, did conſult and conſpire together to diminiſh the Kingly Authority, and Royal Prerogative of the King, and his Power and Government in his Regal Prerogative, in ſetting forth his Declaration; and that, in proſecution of that Conſpiracy, they did contrive (as it was laid in the Information) a malicious, ſeditious, falſe, and feigned Libel, under pretence of a Petition, and ſo ſet forth the Petition; and that they publiſhed the Petition in the preſence of the King.

To this Charge in the Information, *not Guilty* being pleaded, the Evidence that hath been given for the King, I know hath been obſerved by the Court and the Jury, and I know will be taken into Conſideration, how far it does come up to the Proof of the Delivery of this Petition by my Lords the Biſhops; for all that was ſaid till my Lord Preſident was pleas'd to come, was no Evidence of any Delivery at all; and my Lord Preſident's Evidence is, that they were going to deliver a Petition; but whether they did deliver it, or did it not, or what they did deliver, he does not know. This is all the Evidence that has been given for the King.

But ſuppoſing now, my Lord, that there were room to preſume that they had delivered this Pe-

tition ſet forth in the Information, let us conſider what the Queſtion is between the King and my Lords the Biſhops: The Queſtion is, Whether they are guilty of Contriving to diminiſh the King's Regal Authority, and Royal Prerogative, in his Power and Government, in ſetting forth this Declaration? Whether they are guilty of the making and preſenting a malicious, ſeditious and ſcandalous Libel; and whether they have publiſhed it, as it is ſaid in the Information, in the King's Preſence?

So that the Queſtion is not now reduced to this, Whether this Paper, that is ſet forth in the Information, was delivered to the King by my Lords the Biſhops; but whether they have made a malicious and ſcandalous Libel, with an Intent to diminiſh the King's Royal Prerogative, and Kingly Authority? And then, if you Gentlemen, ſhould think that there is Evidence given ſufficient to prove that my Lords the Biſhops have delivered to the King that Paper which is ſet forth in the Information; yet, unleſs they have delivered a falſe, malicious, ſeditious and ſcandalous Libel; unleſs they have publiſhed it, to ſtir up Sedition in the Kingdom; and unleſs they have contrived this by Conſpiracy, to diminiſh the King's Royal Prerogative and Authority, and that Power that is ſaid to be in the King, my Lords the Biſhops are not guilty of this Accuſation.

There are in this Declaration ſeveral Clauſes, which, upon reading of the Information (I am ſure) cannot but have been obſerved by you, Gentlemen of the Jury; and one ſpecial Clauſe hath been by the Council already opened to you, and I ſhall not enlarge upon it.

My Lord, This Petition that is thus delivered to the King, if it be a Libel, a ſcandalous and ſeditious Libel (as the Information calls it) it muſt be ſo, either for the Matter of the Petition, or for the Perſons that deliver'd the Petition, or for the manner of their preſenting and delivering it: But neither for the Matter, nor for the Perſons, nor for the manner of preſenting it, is there any Endeavour to diminiſh the King's Royal Prerogative, nor to ſtir up Sedition, nor Reflection upon the King's Royal and Kingly Authority.

The Petition does humbly ſet forth to His Majeſty, that there having been ſuch a Declaration, and ſuch an Order of Council, they did humbly repreſent to His Majeſty, that they were not averſe to any thing commanded them in that Order, in reſpect to the juſt and due Obedience that they owed to the King, nor in reſpect of their want of a due Tenderneſs to thoſe Perſons to whom the King had been pleaſed to ſhew his Tenderneſs; but the Declaration being founded upon a Power of Diſpenſing, which had been declared illegal in Parliament ſeveral times, and particularly in the Years 1662, 72, and 85. they did humbly beſeech His Majeſty (they not being able to comply with his Command in that matter) that he would not inſiſt upon it.

Now, my Lord, Where is the Contrivance to diminiſh the King's Regal Authority, and Royal Prerogative?

This is a Declaration founded upon a Power of Diſpenſing, which undertakes to ſuſpend all Laws Eccleſiaſtical whatſoever; for not coming to Church, or not Receiving the Sacrament, or any other Nonconformity to the Religion eſtabliſhed, or for or by reaſon of the Exerciſe of Religion in any manner whatſoever; ordering that the Execution of all thoſe Laws be immediately ſuſpended, and they are thereby declared to be ſuſpended; as if the King had a Power to ſuſpend all the Laws relating to his eſtabliſh'd Religion, and all the Laws that were made for the Security of our Reformation. Theſe are all ſuſpended by His Majeſty's Declaration (as it is ſaid) in the Information, by virtue of his Royal Prerogative, and Power ſo to do.

Now, my Lord, I have always taken it, with Submiſſion, that a Power to abrogate Laws, is as much a part of the Legiſlature, as a Power to make Laws: A Power to lay Laws aſleep, and to ſuſpend Laws, is equal to a Power of Abrogating them; for they are no longer in Being, as Laws, while they are ſo laid aſleep, or ſuſpended: And to abrogate all at once, or to do it time after time, is the ſame thing; and both are equally parts of the Legiſlature.

My Lord, In all the Education that I have had, in all the ſmall Knowledge of the Laws that I could attain to, I could never yet hear of, or learn, that the Conſtitution of the Government in *England* was otherwiſe than thus, That the whole Legiſlative Power is in the King, Lords and Commons; the King and his two Houſes of Parliament. But then, If this Declaration be founded upon a part of the Legiſlature, which muſt be by all Men acknowledged, not to reſide in the King alone, but in the King, Lords and Commons, it cannot be a legal and true Power, or Prerogative.

This, my Lord, has been attempted, but in the laſt King's time; it never was pretended till then; and in that firſt Attempt, it was ſo far from being acknowledged, that it was taken notice of in Parliament, and declared againſt: So it was in the Years 1662. and 1672.

In the Year—62. where there was but the leaſt Umbrage given of ſuch a Diſpenſing Power; although the King had declared, in his Speech to the Parliament, that he wiſhed he had ſuch a Power, which his Declaration before ſeemed to aſſume; the Parliament was ſo jealous of this, that they immediately made their Application to His Majeſty, by an Addreſs againſt the Declaration; and they give Reaſons againſt it, in their Addreſs: One, in particular, was, *That the King could not diſpenſe with thoſe Laws, without an Act of Parliament.*

There was another Attempt in 1672. and then, after his Majeſty had, in his Speech, mentioned his Declaration to them, the Parliament there again, particularly the Houſe of Commons, did humbly addreſs to His Majeſty; ſetting forth, that this could not be done by Law, without an Act of Parliament: And your Lordſhip, by and by, upon reading the Record, will be ſatisfied what was the Event of all this. His Majeſty himſelf was ſo far pleaſed to concur with them in that Opinion, that he cancell'd his Declaration, tore off the Seal, and cauſed it to be made known to the Houſe of Lords, by the Lord Chancellor, who, by His Majeſty's Command, ſatisfied the Houſe of it, that His Majeſty had broken the Seal, and cancell'd the Declaration; with this further Declaration, which is enter'd in the Records of the Houſe, *That it ſhould never be drawn into Example, or Conſequence.*

My Lord, The Matter ſtanding thus, in reſpect to the King's Prerogative, and the Declarations that had been made in Parliament; conſider next, I beſeech you, how far my Lords the

Biſhops

Biſhops were concerned in this Queſtion, humbly to make their Application to the King.

My Lords the Biſhops lying under a Command to publiſh this Declaration, it was their Duty, as Peers of the Realm, and Biſhops of the Church of *England*, humbly to apply themſelves to His Majeſty, to make known their Reaſons, why they could not obey that Command; and they do it with all Submiſſion, and all Humility, repreſenting to His Majeſty what had been declared in Parliament; and it having been ſo declared, they could not comply with his Order; as apprehending that this Declaration was founded upon that which the Parliament declared to be illegal; and ſo his Majeſty's Command to publiſh this Declaration, would not warrant them ſo to do. This they did, as Peers; and this they had a Right to do as Biſhops; humbly to adviſe the King.

For, ſuppoſe, my Lord, (which is not to be ſuppoſed in every Caſe, nor do I ſuppoſe it in this; but ſuppoſe that there might be a King of *England* that ſhould be miſled;) (I do not ſuppoſe that to be the Caſe now, I ſay, but I know it hath been the Caſe formerly) that the King ſhould be environed with Counſellors that had given him evil Advice; it hath been objected as a Crime againſt ſuch evil Counſellors, that they would not permit and ſuffer the Great Men of the Kingdom to offer the King their Advice. How often do we ſay in *Weſtminſter-Hall*, That the King is deceived in his Grant? There is ſcarce a Day in the Term, but it is ſaid in one Court, or other; but it was never yet thought an Offence to ſay ſo: And what more is there in this Caſe?

My Lord, if the King was miſ-informed, or under a Miſapprehenſion of the Law, my Lords, as they are Peers, and as they are Biſhops, are concerned in it; and if they humbly apply themſelves to the King, and offer him their Advice, where is the Crime?

My Lord, theſe noble Lords, the Defendants, had more than an ordinary Call to this; for beſides the Duty of their Office, and the Care of the Church, that was incumbent on them as Biſhops, they were here to become Actors; for they were, by that Order of Council, commanded themſelves to publiſh it, and to diſtribute it to the ſeveral Miniſters in their ſeveral Dioceſſes, with their Commands to read it: Therefore they had more than ordinary Reaſon to concern themſelves in the Matter.

Next, we are to conſider, my Lord, in what manner this was done; They make their Application to the King, by an humble Petition, with all the Decency and Reſpect that could be ſhewn; asking leave, firſt, to approach his Perſon; and having leave, they offer'd my Lord Preſident the Matter of their Petition, that nothing might ſeem hard, or diſreſpectful, or as if they intended any thing that was unfit to be avowed. When they had taken all this Care in their Approach, and begging leave for it, they come ſecretly to the King, in private, when he was all alone, and there they humbly preſent this Petition to His Majeſty. Now, how this can be called the Publication of a malitious and ſeditious Libel, when it was but the Preſenting of a Petition to the King alone: And how it can be ſaid to be with an Intent to ſtir up Sedition in the People againſt His Majeſty, and to alienate the Hearts of his People from him, when it was in this private manner delivered to him himſelf only, truly, I cannot apprehend.

My Lord, I hope nothing of this can be thought an Offence: If the Jury ſhould think that there has been Evidence ſufficient given, to prove that my Lords the Biſhops did deliver this Paper to the King, yet that is not enough to make them guilty of this Information, unleſs this Paper be likewiſe found to be in Diminution of the King's Royal Prerogative, and Regal Authority, in diſpenſing with, and ſuſpending of all Laws, without Act of Parliament: Unleſs it be found to be a Libel againſt the King, to tell him, That in Parliament it was ſo and ſo declared: And unleſs the preſenting this by way of Petition (which is the Right of all People that apprehend themſelves aggrieved, to approach His Majeſty by Petition) be a Libelling of the King: And unleſs this humble Petition, in this manner preſented to the King in private, may be ſaid to be a malicious and ſeditious Libel, with an Intent to ſtir up the People to Sedition: Unleſs all this can be found, there is no Man living can ever find my Lords the Biſhops guilty upon this Information. Therefore, my Lord, we will go on, and make out this Matter that we have opened to your Lordſhip, if Mr. Attorney, and Mr. Sollicitor think fit to argue the Points that we have opened.

Mr. *Pollixfen.* Pray, my Lord, ſpare me a Word on the ſame Side. For the firſt Point, it is a Point of Law, whether the Matter contained in this Petition be a Libel. The King's Council pretend it is ſo, becauſe it ſays, the Declaration is founded upon a Power the Parliament has declared to be illegal. But we ſay, that whatſoever the King is pleaſed to ſay in any Declaration of his, it is not the King's ſaying of it, that makes it to be Law. Now we ſay, This Declaration under the Great Seal, is not agreeable to the Laws of the Land; and that for this Reaſon, Becauſe it does, at one Blow, ſet aſide all the Law we have in *England*.

My Lord, if this be denied, we muſt a little debate this matter; for they are almoſt all Penal Laws; not only thoſe before the Reformation, but ſince; upon which the whole Government, both in Church and State, does in a great meaſure depend.

Eſpecially, my Lord, in Matters of Religion, they are all Penal Laws: For, by the Act of Uniformity, which my Lords the Biſhops are ſworn to obſerve, and adjured by an expreſs Clauſe in the Act; No Man is to preach, unleſs he be Epiſcopally ordained; no Man is to preach without a Licence. If all this be ſet aſide, I confeſs, then it will go very far into the whole Eccleſiaſtical Government. If this be denied, we are ready to argue that too.

L. C. J. They are to do ſo ſtill.

Mr. *Pollixfen.* My Lord, I am ſure the Conſequence is otherwiſe, if this Declaration ſignifie any thing. And if it be the Will of the King, my Lord, the Will of the King is, what the Law is. If ſo be the King's Will be not conſonant to the Law, it is not obliging.

My Lord, The Caſes that we have had of Diſpenſations, are all ſo many ſtrong Authorities, againſt a general, or particular Abrogation. My Lord, that is a Matter of Law, which if it fall out to be any way doubtful, it will be fit to have it debated and ſetled.

If

If they will ſay, that the Penal Laws in Matters Eccleſiaſtical can be abrogated, or nulled, or made void *pro tempore*, or for Life, without the meeting of the King and People in Parliament; I muſt confeſs, they ſay a great thing, as it is a Point of great Concern; but I think, that will not be ſaid: And all that has been ever ſaid in any Caſe, touching Diſpenſations, proves quite the contrary, and aſſerts what I affirm. For, Why ſhould any Man go about to argue, that the King may diſpence with this or that particular Law, if at once he can diſpence with all the Law, by an undoubted Prerogative? This is a Point of Law, which we inſiſt upon, and are ready to argue with them; but we will go on with the reſt of thoſe things that we have offer'd: And firſt, we will read the Act of Uniformity, made 1 *Eliz.* that Clauſe of it, where they are ſo ſtrictly charged to ſee the Execution of that Law.

This Act, my Lord, by the Act of Uniformity, made in the Beginning of the late King's Reign, is revived, with all the Clauſes in it, relating to this Matter. If then this be a Duty incumbent upon them, and their Oaths require it of them; and if they find, that the Pleaſure of the King, in his Declaration, is that which is not conſonant to this Law, what can they do?

Can any thing be more humble, or done with a more Chriſtian Mind, than by way of Petition, to inform the King in the Matter? For I never thought it, nor hath it ever (ſure) been thought by any body elſe, to be a Crime to petition the King: For the King may be miſtaken in the Law, ſo our Books ſay; and we, every Day, in *Weſtminſter Hall*, argue againſt the King's Grants, and ſay, He is deceived in his Grants. It is the great Benefit and Liberty, which the King gives to his Subjects, to argue the Legality, or Illegality of his Grants.

My Lord, When all this is done, to make this to be a Libel, by putting in the Words, Malicious, Seditious, Scandalous, and with an Intent to raiſe Sedition, would be pretty hard.—— My Lord, We pray, that Clauſe of the Statute may be read.

Mr. *Sol. Gen.* What for?

Mr. *Pollixfen.* It is a general Law, and therefore the Court will take notice of it; and we pray, the Jury may hear it read.

Mr. *Sol. Gen.* I agree it to be as Mr. *Pollixfen* has opened; and I agree it to be as Sir *Robert Sawyer* has opened it.

Mr. *S. Pemberton.* My Lord, We ſhall put it upon a ſhort Point. My Lords the Biſhops are here accuſed of a Crime, of a very heinous nature as can be; they are here branded and ſtigmatized by this Information, as if they were ſeditious Libellers; when, my Lord, it will, in truth, fall out, that they have done no more than their Duty; their Duty to God, their Duty to the King, and their Duty to the Church.

For, in this Caſe, that which we humbly offer to your Lordſhip (and inſiſt upon it, as very plain) is this; That the Kings of *England* have no power to ſuſpend, or diſpenſe with the Laws and Statutes of the Kingdom, that eſtabliſh Religion: That is it, which we ſtand upon for our Defence. And we ſay, That ſuch a Diſpenſing Power with Laws and Statutes, is a thing that ſtrikes at the very Foundation of all the Rights, Liberties and Properties of the King's Subjects whatſoever. If the King may ſuſpend the Laws of the Land, which concern our Religion, I am ſure there is no other Law, but he may ſuſpend: And if the King may ſuſpend all the Laws of the Kingdom, what a Condition are all the Subjects in, for their Lives, Liberties and Properties? All at Mercy.

My Lord, The King's Legal Prerogatives are are as much for the Advantage of his Subjects as of himſelf; and no Man goes about to ſpeak againſt them: But, under pretence of Legal Prerogatives, to extend the Power of the King, to ſupport a Prerogative that tends to the Deſtruction of all his Subjects, their Religion, and Liberties; in that, I think, they do the King no Service, who go about to do it.

But now we ſay, with your Lordſhip's Favour, that theſe Laws are the great Bulwark of the Reformed Religion; they are, in truth, that which fenceth the Religion and Church of *England*, and we have no other Human Fence beſides. They were made upon a Foreſight of the Miſchief that had, and might come, by falſe Religions in this Kingdom; and they were intended to defend the Nation againſt them, and to keep them out; particularly, to keep out the *Romiſh* Religion (which is the very worſt of all Religions) from prevailing among us; and that is the very Deſign of the Act for the Teſts, which is intituled, *An Act to prevent Dangers that may happen from Popiſh Recuſants.*

My Lord, If this Declaration ſhould take effect, what would be the End of it? All Religions are let in, let them be what they will; *Ranters*, *Quakers*, and the like; nay, even the *Roman Catholick* Religion (as they call it;) which was intended, by theſe Acts of Parliament, and by the Act of Uniformity, and ſeveral other Acts, to be kept out of this Nation, as a Religion no way tolerable, nor to be endured here.

If this Declaration take effect, that Religion will ſtand upon the ſame Terms with the Proteſtant Religion. Suſpend thoſe Laws, and that *Romiſh* Religion, that was intended to be prohibited, and ſo much Care was taken, and ſo many Statutes made, to prohibit it, will come in; and all this Care, and all thoſe Statutes go for nothing. This one Declaration ſets them all out of doors; and then that Religion ſtands upon equal Terms with the eſtabliſhed Religion.

My Lord, we ſay this farther, that my Lords the Biſhops have the Care of the Church, by their very Function, and Offices; and are bound to take care, to keep out all thoſe falſe Religions that are prohibited, and deſigned to be kept out by the Law. My Lords the Biſhops finding this Declaration founded upon a meer pretended Power, that had been continually oppoſed, and rejected in Parliament, could not comply with the King's Command to read it.

My Lord, Such a Power to diſpence with, or ſuſpend the Laws of a Nation, cannot, with any ſhadow of Reaſon, be. It is not long ſince, that ſuch a Power was ever pretended to by any, but ſuch as have the Legiſlative too; for it is plain, that ſuch a Power muſt, at leaſt be equal to the Power that made the Laws. To diſpence with a Law, muſt argue a Power greater, or, at leaſt, as great as that which made the Law.

My Lord, It has been often ſaid in our Books, That where the King's Subjects are concerned in Intereſt, the King cannot ſuſpend, or diſpenſe with a particular Law. But, my Lord, how can the King's Subjects be more concern'd in

in Intereſt, than when their Religion lies at ſtake? It has been reſolved, upon the Statute of *Symony*, that where the Statute has diſabled the Party to take, there the King could not enable him, againſt that Act of Parliament: And ſhall it be ſaid, that by his Diſpenſation, he ſhall enable one to hold an Office, who is diſabled by the Teſt-Act?

My Lord, We ſay, The Courſe of our Law allows no ſuch Diſpenſation, as the Declaration pretends to. And he that is but meanly read in our Law, muſt needs underſtand this, That the Kings of *England* cannot ſuſpend our Laws; for that would be, to ſet aſide the Law of the Kingdom: And then we might be clearly without any Laws, if the King ſhould pleaſe to ſuſpend them.

'Tis true, we ſay, the laſt King *Charles* was prevailed upon, by Miſ-information to make a Diſpenſation, ſomewhat of the nature of this, though not ſo full an one; for that diſpenſed only with ſome few Ceremonies, and things of that nature: But the Houſe of Commons (this taking Air) in 1662. repreſent this to the King, by a Petition. And what is it that they do repreſent? That he, by his Diſpenſation, has undertaken to do that, which nothing but an Act of Parliament can do; that is, the diſpenſing with Penal Laws; which is only to be done by Act of Parliament. And thereupon it was thought fit, upon the King's Account, to bring in an Act for it, in ſome Caſes.

My Lord, the King did then, in his Speech to the Parliament (which we uſe, as a great Argument againſt this Diſpenſing Power) ſay this, 'That, conſidering the Circumſtances of 'the Nation, he could wiſh with all his Heart, 'that he had ſuch a Power, to diſpenſe with 'ſome Laws, in ſome Particulars. And thereupon, there was a Bill, in order to an Act of Parliament, brought in, giving the King a Power to diſpenſe; but, my Lord, with a great many Qualifications. Which ſhews plainly, that it was taken by the Parliament, that he had no Power to diſpenſe with the Laws, of himſelf.

My Lord, Afterwards, in 1672. the King was prevailed upon again, to grant another Diſpenſation, ſomewhat larger.——

L. C. Juſt. Brother *Pemberton*, I would not interrupt you, but we have heard of this over and over again already.

Mr. *S. Pemberton.* Then, ſince your Lordſhip is ſatisfied of theſe things (as I preſume you are) elſe I ſhould have gone on, I have done my Lord.

Mr. *S. Levinz.* But, my Lord, we ſhall go a little higher than that, and ſhew, that it has been taken all along, as the ancient Law of *England*, that ſuch Diſpenſations ought to be by the King and the Parliament, and not by the King alone.

Mr. *Sol. Gen.* My Lord, if you will admit every one of the Council to ſpeech it, before they give their Evidence, when ſhall we come to an End of this Cauſe? We ſhall be here till Midnight.

L. C. Juſt. They have no Mind to have an End of the Cauſe, for they kept it three Hours longer than they need to have done.

Mr. *S. Pemberton.* My Lord, This Caſe does require a great deal of Patience.

L. C. Juſt. It does ſo, Brother; and the Court has had a great deal of Patience: but we muſt not ſit here only to hear Speeches.

Mr. *Att. Gen.* Now, after all their Speeches, of two Hours long, let them read any thing, if they have it.

Sir *Rob. Sawyer.* We will begin with the Record of *Richard* the Second —— Call *William Fiſher*.

William Fiſher, *Clerk to Mr.* Ince, *ſworn.*

L. C. Juſt. What do you ask him?

Sir *Rob. Sawyer.* Shew him that Copy of the Record.

The Record was then ſhewn him.

L. C. Juſt. Where had you thoſe, Sir?

Mr. *Fiſher.* Among the Records in the *Tower*.

L. C. Juſt. Are they true Copies?

Mr. *Fiſher.* Yes, my Lord.

L. C. Juſt. Did you examine them by the Record?

Mr. *Fiſher.* Yes, my Lord.

Sir *Rob. Sawyer.* Then hand them in; put them in.

Clerk reads. *Ex Rotulo Parliamenti de Anno Regni Regis* Richardi *Secundi XV.* N. 1.——— My Lord, It is written in *French*, and I ſhall make but a bad Reading of it.

Sir *Sam. Aſtry.* Where is the Man that examin'd it?——Do you underſtand *French*?

Mr. *Fiſher.* Yes, my Lord.

Sir *Rob. Sawyer.* The Record is in another Hand than this; they may eaſily read it.

Mr. *Sol. Gen.* Who copy'd this Paper?

Mr. *Fiſher.* I did examine it.

Mr. *Sol. Gen.* What did you examine it with?

Mr. *Fiſher.* I look'd upon that Copy, and Mr. *Halſtead* read the Record.

L. C. Juſt. Young Man, read out.

Fiſher reads. *Vendredy Lende maine del Almes qu'eſtoit le primier jour*——

Mr. *Sol. Gen.* Pray, tell us what it is you would have read?

Mr. *S. Levinz.* I'll tell you what it is, Mr. *Sollicitor*: 'Tis the Diſpenſation with the Statute of Proviſors: And the Act of Parliament does give the King a Power to diſpenſe, till ſuch a time.

Mr. *Sol. Gen.* Don't you think the King's Prerogative is affirmed by many Acts of Parliament?

Mr. *S. Levinz.* If the King could diſpenſe without an Act of Parliament, what need was there for the making of it?

Mr. *Sol. Gen.* Mr. *Serjeant*, We are not to argue with you about that yet.

L. C. Juſt. Read it in *Engliſh*, for the Jury to underſtand it.

Mr. *Fiſher.* My Lord, I cannot undertake to read it ſo readily in *Engliſh*.

Mr. *J. Powel.* Why don't you produce the Records that are mentioned in the Petition, thoſe in King *Charles* the Second's time?

Mr. *S. Levinz.* We will produce our Records in Order of Time, as they are.

Sir *Sam. Aſtry.* There is the Clerk of the Records of the *Tower*, Mr. *Halſtead*, will read it very well in *French* or *Engliſh*.

Then Mr. *Halſtead* was ſworn to interpret the Records into *Engliſh*, according to the beſt of his Skill and Knowledge; but not reading very readily——a true Copy of the Record in *Engliſh* follows, out of the Rolls of Parliament, in the 15th Year of King *Richard* the Second, *Numero Primo.*

'FRiday, the Morrow of *All Souls*, which was 'the firſt Day of this Parliament, holden 'at *Weſtminſter*, in the fifteenth Year of the Reign

'Reign of our Lord, King *Richard* the Second, 'after the Conqueſt, the Reverend Father in 'God, the Archbiſhop of *York*, Primate and 'Chancellor of *England*, by the King's Com-'mandment, being preſent in Parliament, pro-'nounced and declared, very nobly and wiſely, 'the Cauſe of the Summons of this Parliament: 'And ſaid, Firſt, That the King would, that 'holy Church principally, and afterwards the 'Lords Spiritual and Temporal, and alſo the 'Cities and Burroughs, ſhould have and enjoy 'their Liberties and Franchiſes, as well as they 'had them, and enjoyed them, in the Time of 'his Noble Progenitors, Kings of *England*; and 'alſo, in his own Time. And afterwards ſaid, 'The Summons of this Parliament was principal-'ly for three Occaſions: The firſt Occaſion was, 'To ordain how the Peace and Quiet of the 'Land, which have heretofore been greatly ble-'miſhed and diſturbed, as well by Detraction 'and Maintenance, as otherwiſe, might be bet-'ter holden and kept, and the Laws better exe-'cuted, and the King's Commands better obey-'ed. The ſecond Occaſion was, To ordain and 'ſee how the Price of Wools, which is, beyond 'meaſure, leſſened and impaired, might be bet-'ter amended and inhaunced. And alſo, That 'in caſe the War ſhould begin again, at the End 'of the preſent Truce, to wit, at the *Aſſumption 'of our Lady* next coming, to ordain and ſee, 'how and whereby the ſaid War may be main-'tained at the leaſt Charge of the People. And 'the third Occaſion was, touching the Statutes 'of Proviſors, To ordain and ſee how our Ho-'ly Father might have that which to him be-'longs; and the King, that which belongs to 'him, and to his Crown; according unto that, '*Render unto* Cæſar *the things that are* Cæſar's, *and 'unto God the things which are God's.*

Then the other Record of *Richard* the Second was read as follows, out of the Rolls of Parliament, the fifteenth Year of King *Richard* the Second (N. 8.)

'Be it remembred, touching the Statute of 'Proviſors, That the Commons, for the great 'Confidence which they have in the Perſon of 'our Lord the King, and in his moſt excellent 'Knowledge, and in the great Tenderneſs which 'he hath for his Crown, and the Rights there-'of; and alſo, in the noble and high Diſcretions 'of the Lords, *have aſſented, in full Parliament, 'that our ſaid Lord the King*, by Advice and Aſſent 'of the ſaid Lords, *may make ſuch Sufferance*, 'touching the ſaid Statute, as ſhall ſeem to him rea-'ſonable and profitable, until the next Parliament, 'ſo as the ſaid Statute be not repealed in no Ar-'ticle thereof: And that all thoſe who have any 'Benefices by force of the ſaid Statute, before 'this preſent Parliament; and alſo, That all 'thoſe, to whom any Aid, Tranquillity, or Ad-'vantage is accrued, by virtue of the ſaid 'Statute of the Benefices of Holy Church (of 'which they were heretofore in Poſſeſſion) as 'well by Preſentation, or Collation of our Lord 'the King, as of the Ordinaries, or Religious 'Perſons whatſoever, or by any other manner 'or way whatſoever; may freely have and en-'joy them, and peaceably continue their Poſſe-'ſſion thereof, without being ouſted thereof, or 'any ways challenged, hindred, moleſted, diſ-'quieted, or grieved hereafter, by any *Proviſors*, 'or others, againſt the Form and Effect of 'the Statute aforeſaid, by reaſon of the ſaid 'Sufferance in any time to come. *And moreover, 'That the ſaid Commons may diſagree at the next Par-'liament, to this Sufferance, and fully reſort to the ſaid 'Statute*, if it ſhall ſeem good to them to do it: '*With Proteſtation*, That this Aſſent, *which is a 'Novelty; and has not been done before this time, be 'not drawn into Example or Conſequence for Time to 'come.* And they prayed our Lord the King, 'that the Proteſtation might be entred of Record, 'in the Roll of the Parliament: And the King 'granted, and commanded to do it.

Mr. *S. Levinz.* Now, my Lord, we will go on.——This was in *Richard* the Second's Time: And a Power is given by the Commons to the King, with the Aſſent of the Lords, to diſpenſe, but only to the next Parliament; with a Power reſerved to the Commons; and to diſagree to it, and retract that Conſent of theirs the next Parliament.

Sir *Geo. Treby.* The Statute of *Proviſors* was and is a Penal Law and concerning Eccleſiaſtical Matters too; *viz.* The Collating and Preſenting to Archbiſhopricks, Biſhopricks, Benefices, and Dignities of the Church: And in this Record, now read, the Parliament give the King a limited Power, and for a ſhort Time, to diſpenſe with that Statute. But, to obviate all Pretence of ſuch a Power's being inherent in the Crown, as a Prerogative, they declare, (1) That it was a *Novelty*; that is as much as to ſay, That the King had no ſuch Power before. (2) That it ſhould not be drawn into *Example*; that is to ſay, That he ſhould have no ſuch Power for the future.

Mr. *S. Levinz.* Now we will go on to the Records mentioned in the Petition; thoſe in the laſt King's Time, in 1662, and 1672; and that in this King's Time, in 1685.——Where is the Journal of the Houſe of Lords?

Mr. *Walker* ſworn.

L. C. J. Is that the Book of the Houſe of Lords?

Mr. *Walker.* It is the Journal of the Houſe of Lords.

L. C. J. Is it kept by you?

Mr. *Walker.* Yes, my Lord.

L. C. J. Where is it kept?

Mr. *Walker.* In the uſual place, here in *Weſtminſter.*

Mr. *Sol. Gen.* What is that?

Mr. *S. Levinz.* It is the Journal of the Houſe of Lords——But, my Lord, there is one thing that is mentioned in the laſt Record that is read, which is worth your Lordſhip's, and the Jury's Obſervation; That it is declared a Novelty, and a Proteſtation, that it ſhould not be drawn into Precedent for the future.

L. C. J. That has been obſerved, Brother: Let us hear your Record read.

Clerk reads. —— *Die* Mercurii 18. *die* Februarii, 1662.

'His Majeſty was preſent this Day, ſitting in 'the Regal Crown and Robes, the Peers being 'likewiſe in their Robes: The King gave Or-'der to the Gentleman Uſher of the Black Rod, 'to ſignifie to the Houſe of Commons his Plea-'ſure, that they preſently come up, and attend 'His Majeſty, with their Speaker; who being 'preſent, His Majeſty made this Speech follow-'ing.

'*My Lords, and Gentlemen*;

'I Am very glad to meet you here again, ha-'ving thought the Time long ſince we 'parted, and often wiſhed you had been toge-'ther,

'ther, to help me in some Occasions which have 'fallen out: I need not repeat them unto you, 'you have all had the Noise of them in your 'several Countries; and, God be thanked, they 'were but Noise, without any worse Effects.

'To cure the Distempers, and compose the 'differing Minds that are yet amongst us, I set 'forth my Declaration of the 26th of *December*. 'In which you may see, I am willing to set 'Bounds to the Hopes of some, and to the Fears 'of others; of which, when you shall have ex-'amined well the Grounds, I doubt not but I 'shall have your Concurrence therein. The 'truth is, I am in my Nature, an Enemy to all 'Severity for Religion and Conscience, how 'mistaken soever it be, when it extends to Ca-'pital and Sanguinary Punishments; which I am 'told, were began in Popish Times. Therefore, 'when I say this, I hope I shall not need to 'warn any here, not to inferr from thence, that 'I mean to favour Popery. I must confess to you, 'there are many of that Profession, who, having 'served my Father, and my self very well, may 'fairly hope for some part in that Indulgence, I 'would willingly afford to others who dissent 'from us. But let me explain my self, lest some 'mistake me herein, as I heard they did in my 'Declaration: I am far from meaning by this, 'a Toleration, or Qualifying them thereby to 'hold any Offices or Places of Trust in the Go-'vernment. Nay, further, I desire some Laws 'may be made, to hinder the Growth and Pro-'gress of their Doctrine.

'I hope you have all so good an Opinion of 'my Zeal for the Protestant Religion, as I need 'not tell you, I will not yield to any therein, not 'to the Bishops themselves; nor in my liking the 'Uniformity of it, as it is now established; 'which being the Standard of our Religion, 'must be kept pure, and uncorrupted, free from 'all other Mixtures. *And yet, if the Dissenters 'will demean themselves peaceably and modestly under 'the Government, I could heartily wish, I had such a 'Power of Indulgence to use upon Occasion* ——

Sir *Geo. Treby.* Pray Sir, read that out distinctly.

Clerk reads.——'I could heartily wish I had such 'a Power of Indulgence to use upon Occasion, 'as might not needlesly force them out of the 'Kingdom; or, staying here, give them Cause 'to conspire against the Peace of it.

'*My Lords, and Gentlemen*:

'It would look like Flattering in me, to tell 'you, in what degree I am confident of your 'Wisdom and Affection in all things that relate 'to the Greatness and Prosperity of the King-'dom. If you consider well what is best for us 'all, I dare say, we shall not disagree. I have 'no more to say to you at present, but, once 'again, to bid you heartily welcome'.

Mr. *Finch.* The next thing we shall shew you is, that after the King had made this Speech, and wished he had such a Power of Indulgence to use upon Occasion, there was a Bill in the House of Lords brought in, to enable the King to dispense with several Laws: We shall shew you the Journal, where it was read and committed; but further than that it went not.

L. C. J. What use do you make of this, Mr. *Finch*?

Sir *Rob. Sawyer.* You may easily apprehend the Use we shall make of it. (The King, in his Speech, says, *He wished he had such a Power*;) the House of Lords thought he had not; and therefore they order'd a Bill to be brought in, to enable him.——Read the Journal of the Lords, of the 13th of *March*, 1662.

Clerk reads.

Die Veneris XIII° *die* Martii, 1662.

'After some Debate, whether the House 'should be put into a Grand Committee, for the 'further Debate of the Bill concerning His Ma-'jesty's Power in Ecclesiastical Affairs, it was put 'to the Question; (*viz.*)

'As many of your Lordships as would have 'this House adjourned, and put into a Com-'mittee, to consider of the said Bill, say, *Content*; 'others, *Not Content*.

'Passed in the Affirmative.

'And then the Lord Chamberlain of the 'Houshold was directed to take the Chair, as 'formerly; which he did accordingly.

'And after Debate the House was resumed, 'after the Grand Committee had appointed a 'Sub-Committee, touching the said Bill.

Sir *Rob. Sawyer.* This is all in the Journal of the House of Lords, about this Matter.—— We will now shew you the Bill it self.

Clerk reads. '*An Act concerning His Majesty's 'Power in Ecclesiastical Affairs.*

'WHereas divers of His Majesty's Subjects, 'through Error of Judgment, and mis-'guided Consciences (whereunto the Licentious-'ness of these late unhappy Times have much 'contributed) do not conform themselves to the 'Order of Divine Worship and Service established 'by Law; and although His Majesty and both 'Houses of Parliament are fully satisfied, that 'those Scruples of Conscience, from whence 'this Nonconformity ariseth, are ill grounded; 'and that the Government of the Church, with 'the Service thereof (as now established) is the 'best that is any where extant, and most effectual 'to the Preservation of the Protestant Religion: 'Yet hoping that Clemency and Indulgence 'may, in time, wear out those Prejudices, and 'reduce the Dissenters to the Unity of the 'Church; and considering that this Indulgence, 'how necessary soever, cannot be dispensed by 'any certain Rule, but must vary, according to 'the Circumstances of Time, and the Temper 'and Principles of those, to whom it is to be 'granted; and His Majesty being the best Judge, 'when, and to whom this Indulgence is to be 'dispensed, or as may be most consistent with 'the publick Peace, and without just Cause of 'Offence to others; and to the end His Majesty 'may be enabled to exercise it with univer-sal 'Satisfaction, Be it Enacted by the King's Most 'Excellent Majesty, by Advice and with the 'Consent of the Lords Spiritual and Temporal, 'and Commons, in this present Parliament as-'sembled, and by the Authority thereof, That 'the King's Majesty may, by Letters Patents 'under the Great Seal, or by such other Ways as 'to His Majesty shall seem meet, *dispense with one 'Act, or Law, made the last Session of this present 'Parliament* (intituled, *An Act for the Uniformity 'of Publick Prayers, and Administration of the Sa-'craments, and other Rites and Ceremonies; and for 'Establishing the Form of Making, and Ordaining, 'and Consecrating Bishops, Priests and Deacons in the 'Church of* England) and with any other Laws 'or Statutes concerning the same; or requiring 'Oaths, or Subscriptions; or which do enjoin

'Conformity to the Order, Discipline and 'Worship established in this Church, and the 'Penalties in the said Laws imposed, or any of 'them: And may grant Licences to such of His 'Majesty's Subjects of the Protestant Religion, 'of whose inoffensive and peaceable Disposition 'His Majesty shall be perswaded, to enjoy and 'use the Exercise of their Religion and Worship, 'though differing from the publick Rule; (the 'said Laws and Statutes, or any Disabilities, In-'capacities, or Penalties, in them, or any of 'them contained, or any Matter or Thing to 'the contrary thereof notwithstanding.)

'*Provided always, and be it Enacted*, That no 'such Indulgence, License, or Dispensation 'hereby to be granted, *shall extend, or be construed 'to extend to the Tolerating, or Permitting the Use or 'Exercise of the Popish, or Roman Catholick Religion* 'in this Kingdom; *nor to enable any Person or Per-'sons, to hold or exercise any Place or Office of publick 'Trust* within this Kingdom, who, at the Begin-'ning of this present Parliament, were, by the 'Laws and Statutes of this Realm, disenabled 'thereunto; nor to exempt any Person or Per-'sons from such Penalties, as are by Law to be 'inflicted upon such as shall publish or preach any 'thing to the Depravation, or Derogation of 'the Book of *Common Prayer* or the Government, 'Order and Ceremonies of the Church establish-'ed by Law.

'*Provided also, and be it Enacted*, That no such 'Licence or Dispensation *shall extend to make any 'Priest or Minister capable of any Ecclesiastical Living* 'or Benefice, with Cure, who shall not, before 'the Archbishop of the Province, or Bishop of 'the Dioceſs where he lives, *makes such Subscription 'to the Articles of Religion*, as is enjoyned by the 'Statute of the 13th of *Elizabeth*, made for Re-'formation of Disorders in the Church. *Nor 'shall extend, or be construed to extend to dispense with 'the Book of Common Prayer*: But that the said 'Book shall be constantly read in all the Cathe-'dral and Collegiate Churches, and in all the 'Parish Churches, and publick Chappels.

Sir *Rob Sawyer*. Here your Lordship sees what the Lords did in this Matter.——We shall now shew you, out of the Commons Journal, what they did, concerning this Speech of the King.—Shew the Journal of the 25th of *February*, 1662.

Mr. Jodrell *sworn.*

L. C. J. Did you examine that, Mr. *Jodrell*?

Mr. *Jodrell*. It is the Original Book.

The Book delivered into the Court.

Clerk reads. *Die* Mercurii XXV° *die* Februarii, 15 Car. II. Resolved, that it be presented.——

Sir *Rob. Sawyer*. You must begin above——The House then took into Debate——

Clerk reads. 'The House then took into De-'bate the Matter touching Indulgence to Disſen-'ters, from the Act of Uniformity.

'The Question being put, that the Present 'Debate be adjourned till to Morrow 'Morning.

'The House was divided.

'The *Yeas* went out.

Sir *John Goodrick*, and Sir *William Lowther*, 'Tellers for the *Noes*; 'with the *Noes*, 161.

Sir *Richard Temple*, and Sir *John Talbot*, 'Tellers for the *Yeas*; 'with the *Yeas*, 119.

'And so it passed in the Negative.

'Resolved, *&c.*

'That it be presented to the King's Majesty, 'as the humble Advice of this House, That no 'Indulgence be granted to the Dissenters, from 'the Act of Uniformity.——

Mr. *Sol. Gen.* Does your Lordship think it to Evidence?

L. C. J. Let them read it, Mr. Sollicitor, that we may hear what it is.

Clerk reads on.

'Ordered that a Committee be appointed to 'collect and bring in the Reasons of this House 'for this Vote, upon the present Debate; to be 'presented to his Majesty, and that the nomi-'nating of the Committee be adjourned till to 'morrow Morning.

Sir *Rob. Sawyer*. That's all

Mr. *Sol Gen.* Pray, if there be any thing more, read on; you shall not parcel out a Re-cord, and take, and leave what you will.

Mr. *Finch*. Did not you parcel out our Petition?

Mr. *Sol. Gen.* Read on, if there be any thing about this matter.

Clerk. That is all.

Sir *Rob. Sawyer*. Turn to the 27th of *February*, 1662.

Clerk reads. *Veneris xxvii.* Februarii *xv.* Car. II.

'Sir *Heneage Finch* reports from the Committee 'appointed to collect and bring in the Reasons 'of the House for their Vote of Advice to the 'King's Majesty; and in the close of those Rea-'sons to add, That the House will assist His Ma-'jesty with their Lives and Fortunes, and to pen 'an Address to His Majesty for that purpose; 'the several Reasons and Address agreed by the 'Committee in writing, he read in his place, 'and did bring up, and deliver the same in at the 'Clerk's Table.

'The First Paragraph was read, and upon the 'Question agreed to.

'The Second Paragraph was read, and upon 'the Question agreed to.

'The Third was read, and upon the Question 'agreed to.

Sir *Rob. Sawyer*. Go over that, and go to the Address it self.

Clerk reads. 'May it please your most Excel-'lent Majesty:

'We your Majesty's most Dutiful and Loyal 'Subjects, the Knights, Citizens and Burgesses 'of the House of Commons, in Parliament as-'sembled, having with all Fidelity and Obe-'dience considered of the several matters com-'prised in your Majesty's late Gracious Decla-'ration of the 26th of *December* last, and your 'most Gracious Speech at the beginning of this 'present Session, Do in the first place for our 'selves, and in the Names of all the Commons 'of *England*, render unto your Sacred Majesty 'the Tribute of our most hearty Thanks for that 'infinite Grace and Goodness wherewith your 'Majesty hath been pleased to publish your Royal 'Intention of adhering to your Act of Indemp-'nity and Oblivion by a constant and religious 'observance of it; and our Hearts are further 'enlarged in these returns of Thanksgiving, 'when we consider your Majesty's most Princely 'and Heroick Profession of relying upon the Af-'fections of your People, and the abhorring all 'sorts of Military and Arbitrary Rule: but above 'all, we can never enough remember to the 'honour of your Majesty's Piety, and our own 'unspeakable Comfort, those solemn and most 'endearing Invitations of your Majesty's Sub-

jects,

'jects, to prepare Laws to be preſented to your 'Majeſty againſt the growth and increaſe of 'Popery; and withal, to provide more Laws 'againſt Licentiouſneſs and Impiety, at the ſame 'time declaring your own Reſolutions for main-'taining the Act of Uniformity: and it becomes 'us always to acknowledge and admire your Ma-'jeſty's Wiſdom in this your Declaration, where-'by your Majeſty is pleaſed to reſolve, not only 'by ſumptuary Laws, but by your own Royal 'Example of Frugality, to reſtrain that exceſs 'in men's Expences, which is grown ſo general, 'and ſo exorbitant, and to direct our endeavours 'to find out fit and proper Laws for advancement 'of Trade and Commerce.

'After all this, we moſt humbly beſeech your 'Majeſty to believe; *That it is with extream un-'willingneſs and reluctancy of heart that we are brought 'to differ from any thing which your Majeſty hath 'thought fit to purpoſe*; and though we do no ways 'doubt but that the unreaſonable diſtempers of 'mens Spirits, and the many Mutinies and Con-'ſpiracies which were carried on during the 'late intervals of Parliament, did reaſonably en-'cline your Majeſty to endeavour by your De-'claration to give ſome allay to thoſe ill humours, 'till the Parliament aſſembled, and the hopes of 'an Indulgence, if the Parliament ſhould con-'ſent to it, eſpecially ſeeing the Pretenders to 'this Indulgence did ſeem to make ſome title to 'it by vertue of your Majeſty's Declaration from '*Bredah*; *Nevertheleſs, we your Majeſty's moſt 'Dutiful and Loyal Subjects*, who are now returned 'to ſerve in Parliament from thoſe ſeveral parts 'and places of your Kingdom, for which we are 'choſen, *Do humbly offer it to your Majeſty's great 'Wiſdom, that it is in no ſort adviſeable that there be 'any Indulgence to ſuch Perſons who preſume to diſ-'ſent from the Act of Uniformity, and Religion eſta-'bliſhed* (for theſe Reaſons.)

'We have conſidered the nature of your Ma-'jeſty's Declaration from *Bredah*, and are humbly 'of Opinion, That your Majeſty ought not to 'be preſſed any further.

'Becauſe it is not a Promiſe in it ſelf, but only 'a gracious Declaration of your Majeſty's In-'tentions to do what in you lay, and what a 'Parliament ſhould adviſe your Majeſty to do, 'and no ſuch Advice was ever given, or thought 'fit to be offered; nor could it be otherwiſe un-'derſtood, becauſe there were Laws of Unifor-'mity then in being, which could not be diſ-'penced with but by Act of Parliament.

Sir *Rob. Sawyer*. This is all that we read this for; your Lordſhip and the Jury ſee what is here declared by the Parliament, That the Act of Uniformity could not be diſpenſed with, without an Act of Parliament.

Next, my Lord, we ſhall ſhew you what was done in the Year 1672.——Read the King's Speech the 5th of *February*, 1672.

The Journals of the Lords Houſe were delivered in.

Clerk reads. '*Die Mercurii*, 5 Febr. 1672.

'*My Lords and Gentlemen*,

'I am glad to ſee you here this day. I would 'have called you ſooner together, but that I was 'willing to eaſe you and the Country, till there 'were an abſolute neceſſity.

'Since you were laſt here, I have been forced 'to a moſt important, neceſſary and expenſive 'War, and I make no doubt but you will give 'me ſuitable and effectual aſſiſtance to go through 'with it; I refer you to my Declaration for the 'Cauſes, and indeed the neceſſity of this War; 'and ſhall now only tell you, That I might have 'digeſted the Indignities to my own Perſon, 'rather than have brought it to this Extremity, 'if the Intereſt as well as the Honour of the 'whole Kingdom had not been at Stake; and if 'I had omitted this Conjuncture, perhaps I had 'not again ever met with the like advantage.

'You will find that the laſt Supply that you 'gave me, did not anſwer Expectation for the 'ends you gave it, the Payment of my Debts; 'therefore I muſt in the next place recommend 'them again to your ſpecial Care.

'Some few days before I declared the War, I 'put forth my Declaration for Indulgence to 'Diſſenters, and have hitherto found a good 'effect of it, by ſecuring my Peace at home, 'when I had War abroad; There is one part in 'it, that has been ſubject to Miſconſtructions, 'which is that concerning the Papiſts, as if more 'liberty was granted to them than to other Re-'cuſants, when 'tis plain there is leſs; for the 'others have publick Places allowed them, and I 'never intended that they ſhould have any, but 'only have the freedom of their Religion in their 'own Houſes, without any concourſe of others; 'and I could not grant them leſs than this, when 'I had extended ſo much more Grace to others, 'moſt of them having been loyal, and in the 'Service of me and the King my Father: And 'in the whole courſe of this Indulgence I do not 'intend that it ſhall any way prejudice the 'Church, but I will ſupport its Rights, and It in 'its full power.

'Having ſaid this, I ſhall take it very ill to 'receive Contradiction in what I have done; 'and I will deal plainly with you, I am reſolved 'to ſtick to my Declaration.

'There is one Jealouſie more which is mali-'ciouſly ſpread abroad, and yet ſo weak and 'frivolous, that I once thought it not of moment 'enough to mention; but it may have gotten 'ſome ground with ſome well minded People, 'and that is, That the Forces which I have raiſed 'in this War were deſigned to controul Law and 'Property; I wiſh I had had more Forces the 'laſt Summer, the want of them then, convinces 'me, I muſt raiſe more againſt this next Spring; 'and I do not doubt but you will conſider the 'charge of them in your Supplies.

'I will conclude with this aſſurance to you, 'That I will preſerve the true Reformed Prote-'ſtant Religion, and the Church, as it is now 'Eſtabliſhed in this Kingdom, and that no Man's 'Property or Liberty ſhall ever be invaded. I 'leave the reſt to the Chancellor.

Mr. *S. Pemb.* Now go to the Journal of the Commons of the 14th of *February*, 1672.

The Journal put in.

Clerk reads. '*Veneris xiiij. die Februarii*, 1672.

'Mr. *Powle* Reports from the Committee ap-'pointed to prepare, and draw up a Petition and 'Addreſs to His Majeſty, The ſaid Petition and 'Addreſs, which he read in his place, and after-'wards delivered the ſame in at the Clerks Table, 'and the ſame being again twice read, is as fol-'loweth, (*viz.*)

'*Moſt Gracious Sovereign*,

'We your Majeſties moſt Loyal and Faithful 'Subjects, the Commons Aſſembled in Parlia-'ment, do in the firſt place, as in all Duty bound, 'return your Majeſty our moſt humble and hear-

' ty Thanks, for the many Gracious Promiſes ' and Aſſurances which your Majeſty has ſeveral ' times during this Preſent Parliament given to ' us, That your Majeſty would Secure and ' Maintain unto us the true Reformed Proteſtant ' Religion, our Liberties and Properties, which ' moſt gracious Aſſurances your Majeſty out of ' your great Goodneſs has been pleaſed to re- ' new unto us, more particularly, at the Open- ' ing of this preſent Seſſion of Parliament.

' And further, we crave leave humbly to re- ' preſent, That we have with all Duty and Ex- ' pedition, taken into our Conſideration, the ' ſeveral parts of your Majeſties laſt Speech to ' us; and withal, the Declaration therein men- ' tioned, for Indulgence to Diſſenters dated the ' 15th of *March* laſt: **And we find our ſelves ' bound in Duty to inform your Majeſty, ' That Penal Statutes in Matters Eccleſi- ' aſtical, cannot be Suſpended but by Act of ' Parliament.**

' *We therefore*, the Knights, Citizens and ' Burgeſſes of your Majeſties Houſe of Com- ' mons, *do moſt humbly beſeech your Majeſty, That ' the ſaid Laws may have their free Courſe, untill it ſhall ' be otherwiſe provided for by Act of Parliament.* ' And that your Majeſty would graciouſly be ' pleaſed to give ſuch Directions herein, that no ' Apprehenſions or Jealouſies may remain in the ' Hearts of your Majeſties good and faithful Sub- ' jects.

' Reſolved, *&c.*

' That this Houſe doth agree with the Com- ' mittee in the Petition and Addreſs by them ' drawn up, to be preſented to his Majeſty.

Sir *Rob. Sawyer.* Now turn to the 24*th* of *February*, 1672. in the ſame Book.

Clerk Reads. ' *Lunæ* 24*th* of *February*, 1672. ' Mr. Secretary *Coventry* Reports and Pre- ' ſents in Writing from his Majeſty, his Anſwer ' to the humble Petition and Addreſs of this ' Houſe, which was thrice read, and the Matter ' debated, and is as followeth, (*viz.*)

CHARLES R.

' HIS Majeſty hath received an Addreſs ' from you, and he hath ſeriouſly conſi- ' dered of it, and returns you this Anſwer, ' That he is very much troubled, that that De- ' claration which he put out for ends ſo neceſſ- ' ary, for the quiet of his Kingdom, and eſ- ' pecially in that Conjuncture, ſhould have prov- ' ed the Cauſe of diſquiet in his Houſe of Com- ' mons, and give occaſion to the queſtioning ' of his Power in Eccleſiaſticks, which he finds ' not done in the Reigns of any of his Anceſtors: ' He is ſure he never had thoughts of uſing it ' otherwiſe than as it hath been intruſted in him, ' to the Peace and Eſtabliſhment of the Church ' of *England*, and the eaſe of all his Subjects in ' general. *Neither does he pretend to the Right of ' Suſpending any Laws, wherein the Properties, ' Rights or Liberties of any of his Subjects are concern- ' ed, nor to alter any thing in the eſtabliſhed Doctrine ' or Diſcipline of the Church of* England. But his ' only deſign in this, was to take off the Penalties ' the Statutes inflicted upon Diſſenters, which ' he believes when well conſidered of, you your ' ſelves would not wiſh executed according to ' the Rigour and Letter of the Law; neither ' hath he done this with any thought of avoiding ' or precluding the Advice of his Parliament; ' and if any Bill ſhall be offered, which ſhall ' appear more proper to attain the aforeſaid ' Ends, and ſecure the Peace of the Church and ' Kingdom, when tendred in due manner to ' him, he will ſhew how readily he will Concur ' in all ways that ſhall appear good for the ' Kingdom.

Sir *Rob. Sawyer.* Turn to the 26*th* of *February*, 1672.

Clerk reads. ' *Die Mercurii* xxvj. *Februarii*, 1672. ' Mr. *Powle* Reports from the Committee, ' appointed to conſider of an Anſwer to return ' to his Majeſties laſt Meſſage, upon the debate ' of the Houſe, an Anſwer agreed by the Com- ' mittee, and drawn up, and put into Writing, ' which he read in his place, and then delivered ' the ſame in at the Clerks Table, where it was ' twice read, and is as followeth, (*viz.*)

Moſt Gracious Sovereign,

' WE your Majeſties moſt Humble and ' Loyal Subjects, the Knights, Citizens ' and Burgeſſes in this preſent Parliament ' Aſſembled, do render to your moſt Sacred ' Majeſty, our moſt dutiful Thanks, for that ' to our unſpeakable Comfort, your Majeſty has ' been pleaſed ſo often to reiterate unto us thoſe ' gracious Promiſes and Aſſurances of maintain- ' ing the Religion now Eſtabliſhed, and the Li- ' berties and Properties of your People; and we ' do not in the leaſt Meaſure doubt but that ' your Majeſty had the ſame gracious Intention ' in giving Satisfaction to your Subjects, by ' your Anſwer to our laſt Petition and Addreſs; ' Yet upon a ſerious Conſideration thereof, *We ' find that the ſaid Anſwer is not ſufficient to clear the ' Apprehenſions that may juſtly remain in the minds ' of your People, by your Majeſties having claimed a ' Power to ſuſpend Penal Statutes in Matters Eccleſi- ' aſtical, and which your Majeſty does ſtill ſeem to ' aſſert in the ſaid Anſwer, to be intruſted in the ' Crown, and never queſtioned in the Reigns of any ' of your Anceſtors.* Wherein we humbly con- ' ceive your Majeſty has been very much miſin- ' formed: *Since no ſuch Power ever was claimed or ' exerciſed by any of your Majeſties Predeceſſors; and ' if it ſhould be admitted, might tend to the inter- ' rupting the free Courſe of the Laws, and altering the ' Legiſlative Power, which hath always been acknow- ' ledged to reſide in your two Houſes of Parliament.* ' We therefore with an unanimous Conſent ' become again moſt humble Suiters unto your ' Sacred Majeſty, *That you would be pleaſed to give us ' a full and ſatisfactory Anſwer to our ſaid Petition and ' Addreſs, and that your Majeſty would take ſuch ' effectual order, that the Proceedings in this Matter ' may not for the future be drawn into Conſequence ' or Example.*

' The Anſwer to his Majeſties Meſſage, was ' again read by Paragraphs, and the ſeveral ' Paragraphs to the laſt, were upon the queſtion ' ſeverally agreed.

' The laſt Paragraph being read, and the ' Queſtion being put, that the Word *unanimous* ' ſhould ſtand in the Paragraph.

The Houſe divided.—The *Noes* go out.

Tellers,

Lord St. *John* } for the *Yeas*, 180.
Mr. *Vaughan* }

Sir *Richard Temple* } for the *Noes*, 77.
Sir *Philip Howard* }

' And ſo it was reſolved in the Affirmative.

' The Queſtion being put to agree to the Para- ' graph, it was reſolved in the Affirmative.

That

'Reſolved, *&c.*

'That the whole Addreſs be agreed to, as 'it was brought in by the Committee.

Sir *Rob. Sawyer.* Now turn to the Lords Journal, and there your Lordſhip will ſee, that the King does Communicate this Addreſs to the Lords, and deſires their Advice.

Read the *1ſt* of *March*, 1672.

Clerk reads, *Die Sabbati primo die Martii*, 1672.

'His Majeſty this Day made a ſhort Speech, 'as follows.

My Lords,

'You know, that at the Opening of this Seſ- 'ſion, I ſpoke here to your Satisfaction; it has 'notwithſtanding, begotten a greater diſquiet 'in the Houſe of Commons, than I could have 'imagined.

'I received an Addreſs from them, which I 'looked not for, and I made them an Anſwer 'that ought to have contented them; but on 'the contrary, they have made me a Reply of 'ſuch a nature, that I cannot think fit to proceed 'any further in this Matter without your Ad- 'vice.

'I have commanded the Chancellor to ac- 'quaint you with all the Tranſactions, wherein 'you will find both me and your ſelves highly 'concerned: I am ſenſible for what relates to 'me, and I aſſure you my Lords, I am not leſs 'ſo for the Priviledg, and the Honour of this 'Houſe.

'Afterwards the Lord Chancellor read the ſe- 'veral Papers and Addreſſes of the Houſe of 'Commons, and his Majeſties Anſwer thereun- 'to, and opened his Majeſties proceedings upon 'them.

The Addreſs of the Houſe of Commons was read.

Sir *Robert Sawyer.* Paſs over that, you have read it already.

Clerk reads. The next, his Majeſties Anſwer to the Addreſs of the Houſe of Commons, was read as follows,—

Sir *Robert Sawyer.* That hath been read too.

Clerk reads. Then was read the Reply of the Houſe of Commons to his Majeſties Anſwer, as followeth,—

Mr. *Finch.* You have read that likewiſe.

Clerk reads. 'Upon this it is ordered, that the 'Lord Treaſurer, Duke of *Buckingham*, Earl of '*Bridgwater*, Earl of *Northampton*, Earl of *Briſtol*, 'Earl of *Berks*, Earl of *Bullingbrook*, and the Earl 'of *Angleſy*, do forthwith withdraw and conſider 'what humble Thanks is fit to be given to his 'Majeſty for his great Favour in communicating 'this Buſineſs to this Houſe, and report the ſame. 'And accordingly, the ſaid Lords Committees 'did withdraw themſelves for that purpoſe.

'The Lords being returned, the Duke of '*Buckingham* reported what the Committee had 'prepared to preſent to his Majeſty by way of 'Thanks, which was read as followeth.

'We the Lords Spiritual and Temporal in Par- 'liament aſſembled, do unanimouſly preſent to 'your Sacred Majeſty, Our moſt humble Thanks, 'for having been pleaſed to Communicate to us, 'what has paſſed between your Majeſty and the 'Houſe of Commons, whereby you have graci- 'ouſly offered us the means of ſhewing our Duty 'to your Majeſty, and of aſſerting the Ancient 'Juſt Rights and Priviledges of the Houſe of Peers.

'The Queſtion being put, whether to agree 'with the Committee.

'It was reſolved in the Affirmative.

'Ordered that his Majeſty be deſired, that his 'Speech, and the Papers read this day, may be 'entred into the Journal Book of this Houſe.

'The Lord *Treaſurer*, the Duke of *Buckingham*, 'and the Lord *Chamberlain*, are appointed to attend 'his Majeſty preſently, to know his pleaſure, 'what time and place, this whole Houſe ſhall 'wait upon him, to preſent the humble Thanks 'of this Houſe, for his great Favour ſhewed this 'day.

'Ordered, that upon *Monday* morning next, 'this Houſe will debate the whole Matter of his 'Majeſties Speech, and theſe Papers; and to 'conſider the Points of Priviledge, and what elſe 'may ariſe thereupon.

'The Lords that were appointed to attend his 'Majeſty, return with this Anſwer.

'That his Majeſty has appointed this After- 'noon at five of the Clock, for this Houſe to 'wait upon him in the Banquetting-houſe at '*Whitehall*.

'Ordered, that all the Judges now in Town, 'ſhall attend this Houſe on *Monday* morning 'next.

Sir *Robert Sawyer.* The *3d* of *March*, 1672. is 'the next.

Clerk reads, '*Die Lunæ 3. die Martii*, 1672.

'The Lord *Chancellor* reported, That the 'whole Houſe on *Saturday* laſt, waited upon his 'Majeſty at *Whitehall*, and preſented the hum- 'ble Addreſs of this Houſe, and his Majeſty was 'pleaſed to return this Anſwer.

My Lords,

'I take this Addreſs of yours very kindly; I 'will always be very affectionate to you, and 'expect you ſhould ſtand by me, as I will al- 'ways by you.

'Then the Houſe took into Conſideration the 'whole Matter of his Majeſties Speech on *Sa- 'turday*, and the three Papers which his Majeſty 'acquainted this Houſe withal, and all the ſaid 'Papers in their order were read, and after a 'long debate, the Queſtion being put,

'Whether this Houſe ſhall in the firſt place 'enter into Conſideration of giving Advice to 'his Majeſty?

'It was reſolved in the Affirmative.

'It is ordered, that this Buſineſs ſhall be taken 'into Conſideration to morrow Morning, at 'nine of the Clock, the firſt Buſineſs.

'Ordered that the Judges now in Town, ſhall 'attend to morrow Morning.

Sir *Robert Sawyer.* The *4th* of *March*, 1672.

Clerk reads, 'Next, The Houſe took into 'Conſideration the Advice to be given to his 'Majeſty concerning the Addreſſes made to him 'from the Houſe of Commons.

'The Addreſſes of the Houſe of Commons, 'and his Majeſties Anſwer were read, and after 'a long debate, the Queſtion being put, Whe- 'ther the King's Anſwer to the Houſe of Com- 'mons in referring the Points now controverted 'to a Parliamentary way by Bill, is good and gra- 'cious, that being a proper and natural Courſe 'for Satisfaction therein.

It was reſolved in the Affirmative.

Sir *Robert Sawyer.* The *8th* of *March*, 1672.

Clerk reads, *Die Sabbati* 8. *die Martii*, 1672.

'His Majeſty in his Royal Throne, adorned 'with his Crown and Regal Ornaments, com- 'manded the Gentleman *Uſher* of the *Black*

'*Rod*,

'*Rod*, to give notice to the House of Commons, 'that they attend his Majesty presently.

'The Commons being come with their Speaker, his Majesty made this short Speech, following.

My Lords and Gentlemen,

'Yesterday you presented me an Address, as 'the best means for the satisfying and composing 'the Minds of my Subjects, to which I freely 'and readily agreed, and I shall take care to see 'it performed accordingly.

'I hope on the other side, you Gentlemen of 'the House of Commons will do your part; for 'I must put you in mind, it is near five Weeks 'since I demanded a Supply, and what you Voted unanimously upon it, did both give Life to 'my Affairs at Home, and dishearten mine Enemies abroad; but the seeming delay it hath 'met withal since, hath made them to take new 'Courage, and they are now preparing for this 'next Summer a greater Fleet, (as they say) than 'ever they have had yet, so that if the Supply be 'not very speedily dispatcht, it will be altogether 'ineffectual, and the Safety, Honour and Interest 'of *England*, must of necessity be exposed. Pray 'lay this to heart, and let not the Fears and Jealousies of some draw an inevitable Ruin upon 'us all.

'My Lords and Gentlemen,

'*If there be any Scruple remaining with you, concerning the Suspension of Penal Laws, I here faithfully Promise you, That what has been done in that particular, shall not for the future be drawn either into Consequence or Example.* And as I daily expect from you a Bill for my Supply, so I assure you, I shall as willingly pass any other you shall offer me that may tend to the giving you satisfaction in all your just Grievances.

'Next, my Lord Chancellor reported. That 'both Houses waited upon the King yesterday, 'and presented him with the Address against the 'growth of Popery, and his Majesty hath been 'pleased to return this Answer.

My Lords and Gentlemen,

'I do heartily agree with you in your Address, 'and shall give speedy Order to have it put in 'Execution; there is one part to which I believe 'it is not your Intention that it should extend; 'for I can scarce say, those are in my pay, that 'are presently to be imployed abroad; but as for 'all other parts, I shall take care it shall be done 'as you desire.

'After which the Lord *Chancellor* said, he had 'somewhat more to impart to the House by 'the King's Command, which was,

That his Majesty last night, having spoken with several Members of both Houses, *found some dissatisfaction remaining concerning* his Answer to their Addresses in the particular of *the Officers to be employed abroad*, of which number he had five or six that were of the best Officers of *France* and *Flanders*, and being his own Subjects, he had been very sollicitous to get; *but if that bred any umbrage, the King commanded him to let them know, that he resolves to give both his Houses full satisfaction to their desires.*

There was another particular that the Lord Chancellor said he thought fit to acquaint them with, which, though it was by his Majesties leave, yet it was not by his Command, however he thought it his duty to acquaint the House with it, (Mr. Secretary *Coventry* intending to acquaint the House of Commons with the same) *That his Majesty had the last night, in pursuance of what he then intended, and declared this morning concerning the suspension of Penal Laws not being for the future drawn either into Consequence or Example, caused the Original Declaration, under the Great Seal, to be cancelled in his presence, whereof himself and several other Lords of the Council were Witnesses.*

Sir *Robert Sawyer*. Turn to the 10th of *March*, 1672.

Clerk reads. '*Die Lunæ decimo die* Martii, 1672.

'Ordered, That what my Lord Chancellor 'said on *Saturday* last concerning his Majesty's 'causing the vacating his Indulgence under the 'Great Seal of *England*, shall be entred into the 'Journal Book of this House as on *Saturday* 'last.

Sir *Robert Sawyer*. We shall now come to that which past in the Parliament in 1685.—Read the 9th of *November*, 1685.

'The Journal of the Lords, 1685. put in.

Clerk Reads. 'His Majesty being on his Royal Throne adorned with his Regal Robes and 'Crown (the Lords being in their Robes also) 'commanded the Gentleman Usher to give notice to the House of Commons that they immediately attend his Majesty; who being come, 'his Majesty made the following Speech.

My Lords and Gentlemen,

'After the Storm that seemed to be coming 'upon us when we parted last, I am glad to meet 'you all again in so great peace and quietness; 'God Almighty be praised, by whose blessing 'that Rebellion was suppressed; but when I 'reflect what an inconsiderable number of men 'began it, and how long they carried it on without any opposition, I hope every body willbe 'convinced that the Militia, which hath hitherto 'been so much depended upon, is not sufficient 'for such Occasions, and that there is nothing 'but a good force of well disciplined Troops in 'constant pay that can defend us from such as 'either at home or abroad are disposed to disturb 'us.

'And in truth, my concern for the peace and 'quiet of my Subjects, as well as for the safety of 'the Government, made me think it necessary to 'increase the number to the proportion I have 'done; this I owed as well to the honour as to 'the security of the Nation, whose Reputation 'was so infinitely exposed unto all our Neighbours, by having lain open to this late wretched 'Attempt; that it is not to be repaired without 'keeping such a Body of Men on foot, that 'none may ever have the thoughts again of 'finding us so miserably unprovided.

'It is for the support of this great Charge, 'which is now more than double to what it was, 'that I ask your assistance in giving me a Supply 'answerable to the Expence it brings along with 'it; And I cannot doubt, but what I have begun so much for the honour and defence of the 'Government, will be continued by you with all 'the chearfulness and readiness that is requisite 'for a Work of so great importance.

'*Let no man take Exceptions that there are some Officers in the Army not qualified according to the late Tests* for their Imployments: The Gentlemen, I must tell you, are most of them well 'known to me, and having formerly served with 'me on several Occasions, and always approved 'the Loyalty of their Principles by their Practices, I think them fit now to be employed under me; and will deal plainly with you, that after

after having had the benefit of their Services in such time of need and danger, *I will neither expose them to disgrace, nor my self to the want of them, if there should be another Rebellion to make them necessary to me.*

I am afraid some men may be so wicked to hope and expect that a difference may happen between you and me upon this Occasion; but when you consider what advantages have risen to us in a few months by the good understanding we have hitherto had, what wonderful effects it has already produced in the change of the whole scene of Affairs abroad, so much more to the honour of the Nation, and the figure it ought to make in the World, and that nothing can hinder a further progress in this way, to all our satisfactions, but Fears and Jealousies amongst our selves: I will not apprehend that such a misfortune can befall us as a Division, or but a Coldness between me and you; nor that any thing can shake you in your Steadiness and Loyalty to me, who, by God's blessing, will ever make you all returns of kindness and protection, with a Resolution to venture even my own Life in the defence of the true Interest of this Kingdom.

Sir *Rob. Sawyer.* Turn to the Commons Journal the 16th of *November*, 1685.

The Journal of the House of the Commons put in.

Clerk reads. *Die Lunæ xvi. die* Novemb. 1685.

Most Gracious Sovereign:

We your Majesty's most Loyal and Faithful Subjects, the Commons in Parliament assembled, do in the first place (as in duty bound) return your Majesty our most humble and hearty thanks for your great care and conduct in the suppression of the late Rebellion, which threatned the overthrow of this Government both in Church and State, and the uttermost extirpation of our Religion by Law established, which is most dear unto us, and which your Majesty has been pleased to give us repeated assurances you will always defend and support, which with all grateful hearts we shall ever acknowledge.

We further crave leave to acquaint your Majesty, That we have with all duty and readiness taken into our consideration your Majesty's gracious Speech to us; *and as to that part of it relating to the Officers in the Army not qualified for their Imployment according to an Act of Parliament made in the 25th year of the Reign of your Majesty's Royal Brother* of blessed Memory, Intituled, An Act for preventing danger that may happen by Popish Recusants: *We do out of our bounden duty humbly represent unto your Majesty, That those Officers cannot by Law be capable of their Imployments, and that the Incapacities they bring upon themselves thereby, can no ways be taken off but by Act of Parliament.*

Therefore out of the great deference and duty we owe unto your Majesty, (who has been graciously pleased to take notice of their Services to you) *we are preparing a Bill to pass both Houses for your Royal Assent, to indemnify them from the Penalties they have now incurred; and because the continuance of them in their Employments may be taken to be dispencing with that Law without Act of Parliament, the consequence of which is of the greatest concern to the Rights of all your Majesty's Dutiful and Loyal Subjects, and to all the Laws made for the security of their Religion;*

We therefore, the Knights, Citizens and Burgesses of your Majesty's House of Commons, *do most humbly beseech your Majesty, that you would be graciously pleased to give such directions therein, that no Apprehensions or Jealousies may remain in the hearts of your Majesty's good and faithful Subjects.*

Mr. *Pollixfen.* My Lord, We pray that these half dozen lines of the Statute 1 *Eliz.* may be read.

A Statute-book was then produced by Mr. *Ince.*

L. C. J. We will have it read out of our own Book. *Which was delivered into Court.*

Clerk reads. This is 1 *Eliz. cap.* 2. An Act for Uniformity of Religion, *&c.* Whereabout is it?

Mr. *Ince.* 'Tis the 15th Paragraph, [at these words] —— And for the due execution, *&c.*

Clerk Reads. And for due Execution hereof, the Queens most Excellent Majesty, the Lords Spiritual and Temporal in this Parliament Assembled do in Gods Name earnestly Require and Charge all the Archbishops and Bishops, and other Ordinaries, that they shall endeavour themselves to the utmost of their knowledge, that the due and true Execution hereof may be had throughout their Dioceses and Charges, as they will answer before God for such Evils and Plagues, wherewith Almighty God may justly punish his People for neglecting this good and wholsome Law.

Mr. *Serj. Levinz.* Now, my Lord, if your Lordship pleases, the Charge is a Charge for a Libel, and there are two things to be Considered.

First, Whether the Bishops did deliver this Paper to the King? But that we leave upon the Evidence that has been given; only we say, there has been no direct proof of that.

In the next place, Supposing they did deliver this Petition to the King, Whether this be a Libel upon the Matter of it, the manner of delivering it, or the Persons that did it?

And with submission, my Lord, this cannot be a Libel, although it be true, that they did so deliver it.

First, my Lord, there is a little disingenuity offered to my Lords the Bishops, in only setting forth part and not the whole, in only reciting the Body and not the Prayer.

But, my Lord, with your Lordships favour, taking the Petitionary part, and adding it to the other, it quite alters the Nature of the thing, for it may be, a Complaint without seeking redress might be an ill matter; but here taking the whole together, it appears to be a Complaint of a Grievance, and a desire to be eased of it.

With your Lordships favour, the Subjects have a right to Petition the King in all their Grievances, so say all our Books of Law, and so says the Statute of the Thirteenth of the late King; They may Petition, and come and deliver their Petition under the number of ten, as heretofore they might have done, (says the Statute) so that they all times have had a right so to do, and indeed if they had not, it were the most lamentable thing in the World, that Men must have Grievances upon them, and yet they not to be admitted to seek Relief in an humble way.

Now, my Lord, this is a Petition setting forth a Grievance, and praying his Majesty to give Relief. And what is this Grievance? It is that Command of his, by that Order made upon my Lords the Bishops, to distribute the Declaration, and cause it to be read in the Churches: And

pray

pray, my Lord, let us conſider, what the Effects and Conſequences of that Diſtribution and Reading is; It is to tell the People, that they need not ſubmit to the *Act of Uniformity*, nor to any Act of Parliament made about Eccleſiaſtical Matters, for they are ſuſpended and diſpenſed with; this my Lords the Biſhops muſt do, if they obey this Order; but your Lordſhip ſees, if they do it, they lie under an *Anathema* by the Statute of 1 *Eliz.* for there they are under a Curſe if they do not look to the preſervation and obſervation of that Act; But this Command to Diſtribute and Read the Declaration, whereby all theſe Laws are diſpenſed with, is to let the People know, they will not do what the Act requires of them.

Now, with your Lordſhips favour, my Lords the Biſhops lying under this preſſure, the weight of which was very grievous upon them, they by Petition apply to the King to be eaſed of it, which they might do, as Subjects; beſides, my Lord, they are Peers of the Realm, and were moſt of them ſitting as ſuch, in the laſt Parliament, where (as you have heard) it was declared, ſuch a Diſpenſation could not be, and then in what a Caſe ſhould they have been, if they ſhould have diſtributed this Declaration, which was ſo contrary to their own Actings in Parliament? What could they have anſwered for themſelves, had they thus contributed to this Declaration? when they had themſelves before declared, that the King could not diſpenſe.

And that this was no new thing, for it had been ſo declared in a Parliament before, in two Seſſions of it, in the late King's Reign, within a very little time one of another; and ſuch a Parliament that were ſo liberal in their Aids to the Crown, that a Man would not think they ſhould go about to deprive the Crown of any of its Rights; it was a Parliament that did do as great ſervices for the Crown as ever any did, and therefore there is no reaſon to ſuſpect, that if the King had had ſuch a power, they would have appeared ſo earneſt againſt it.

But, my Lord, if your Lordſhip pleaſes, theſe are not the beginnings of this matter, for we have ſhewed you from the Fifteenth of *Richard* the Second, that there was a power granted by the Parliament to the King to diſpenſe with a particular Act of Parliament, which argues, that it could not be without an Act of Parliament: And in 1662. 'tis ſaid expreſly, that they could not be diſpenſed with, but by an Act of Parliament: 'Tis ſaid ſo again in 1672; the King was then pleaſed to aſſume to himſelf ſuch a power, as is pretended to in this Declaration; yet, upon Information from his Houſes of Parliament, the King declared himſelf ſatisfied that he had no ſuch power, Cancelled his Declaration, and promiſed, that it ſhould not be drawn into Conſequence or Example. And ſo the Commons by their Proteſtation ſaid in *Richard* the Seconds time, That it was a Novelty, and ſhould not be drawn into Conſequence or Example.

Now, my Lord, if your Lordſhip pleaſes, if this matter that was Commanded the Biſhops to do, were ſomething which the Law did not allow of, ſurely then, my Lords the Biſhops had all the Reaſon in the World to apply themſelves to the King, in an humble manner to acquaint him, why they could not obey his Commands; and to ſeek relief againſt that, which lay ſo heavy upon them.

Truly, my Lord, Mr. Attorney was very right in the opening of the Cauſe at firſt, that is, That the Government ought not to receive affronts, no, nor the Inferiour Officers are not to be affronted, a Juſtice of the Peace, ſo low a Man in Office, is not. For a Man to ſay to a Juſtice of Peace, when he is executing his Office, that he does not do right, is a great Crime, and Mr. Attorney ſaid Right in it; But ſuppoſe a Juſtice of Peace were making of a Warrant to a Conſtable, to do ſomething that was not Legal for him to do, if the Conſtable ſhould Petition this Juſtice of the Peace, and therein ſet forth, Sir, you are about to command me to do a thing, which, I conceive, is not Legal, ſurely that would not be a Crime that he was to be puniſhed for, for he does but ſeek relief, and ſhew his Grievance in a proper way, and the diſtreſs he is under.

My Lord, this is the Biſhops Caſe with ſubmiſſion, they are under a diſtreſs, being Commanded to do a thing which they take not to be Legal, and they, with all humility by way of Petition, acquaint the King with this Diſtreſs of theirs, and pray him, that he will pleaſe to give Relief.

My Lord, there is no Law, but is either an Act of Parliament, or the Common Law, for an Act of Parliament there is none for ſuch a power, all that we have of it in Parliamentary Proceedings, is againſt it; and for the Common Law, (ſo far as I have read it) I never did meet with any thing of ſuch a Nature, as a Grant or Diſpenſation that pretended to diſpenſe with any one whole Act of Parliament; I have not ſo much as heard of any ſuch thing mentioned by any of the Kings Council; But here, my Lord, is a Diſpenſation that diſpenſes with a great many Laws at once, truly, I cannot take upon me to tell how many, there may be forty or above, (for ought I know.)

Therefore, my Lord, the Biſhops lying under ſuch a Grievance as this, and under ſuch a Preſſure, being Ordered to diſtribute this Declaration in all their Churches, which was to tell the People they ought to be under no Law in this Caſe, which ſurely was a very great Preſſure, both in point of Law and Conſcience too, they lying under ſuch Obligations to the contrary, as they did. With ſubmiſſion to your Lordſhip and you Gentlemen of the Jury, If they did deliver this Petition, (Publiſhing of it I will not talk of, for there has been no proof of a Publication, but a delivering of a Petition to his Majeſty in the moſt ſecret and decent manner that could be imagined) My Lords the Biſhops are not guilty of the Matter Charged upon them in this Information; it has been expreſly proved, that they did not go to diſperſe it abroad, hut only deliver'd it to the King himſelf; And, in ſhort, my Lord, if this ſhould be a Libel, I know not how ſad the Condition of us all would be, if we may not Petition, when we ſuffer.

Mr. *Finch.* My Lord, I Challenge them to ſhew us any one inſtance of ſuch a Declaration, ſuch a General Diſpenſation of Laws from the Conqueſt, till 1672. The firſt Umbrage of ſuch a thing is, that of *Car.* 2. 1662. but your Lordſhip hears the Declaration of the Parliament upon it. Before that, as there was no ſuch thing, ſo your Lordſhip ſees, what the Parliament did to enable the King (not to do this thing, but ſomething like it) in *Richard* the Seconds Time, where you ſee the Parliament did give the King a Power to Diſpenſe with the Statute of Proviſors for a time;

time; but at the ſame time declared, that very Grant of their own, to be a Novelty, and that it ſhould not be drawn into Conſequence or Example.

My Lord, we ſhall leave it upon this Point, to ſuſpend Laws is all one, as to abrogate Laws; for ſo long as a Law is ſuſpended, whether the Suſpenſion be Temporary, or whether it be for ever, whether it be at once, or at ſeveral times, the Law is abrogated to all Intents and Purpoſes: But the Abrogation of Laws is part of the Legiſlature, that Legiſlative Power is lodged (as I ſaid before, and I could never find it otherwiſe, in all our Law) in King, Lords, and Commons——.

Ld. Ch. Juſt. You did open that before, Mr. *Finch.*

Mr. *Finch.* With this, my Lord, That my Lords the Biſhops finding this Order, made upon them to publiſh this Declaration, did what in Duty they were bound to do, and unleſs the Jury do find, that they have done that which is contrary to Law and to the Duty of their Places, and that this Petition is a Libel, and a ſeditious Libel, with an intent to ſtir up Sedition among the People, (We rely upon it) My Lords, the Biſhops, can never be found Guilty upon this Information.

Ld. Ch. Juſt. Have you now done, Gentlemen?

Mr. *Finch.* Yes, my Lord, till they give us further occaſion, if they have any other Evidence to offer, we muſt Anſwer it, if not, this is the Anſwer we give to what they have ſaid.

Mr. *Sol. Gen.* We make no Bargain with you: If you have done, ſay ſo.

Ld. Ch. Juſt. You muſt know, that you are not to have the laſt word.

Mr. *Sol. Gen.* You have been three hours already, if you have any more to ſay, pray conclude.

Mr. *Finch.* If they ſay they have no more Evidence, then we know what we have to do.

L. C. Juſt. If you do ſay any thing more, pray let me adviſe you one thing, don't ſay the ſame thing over and over again, for after ſo much time ſpent, it is irkſom to all Company, as well as to me.

Mr. *Finch.* My Lord, we have no more Evidence to offer to your Lordſhip at preſent, unleſs they, by offering new Evidence, give us occaſion to Reply upon them.

L. C. Juſt. Gentlemen, you ſhall have all the Legal favour and advantage that can be; but, pray, let us keep to an orderly decent Method of proceeding.

Sir *Rob. Sawyer.* Pray, my Lord, favour me a word before we conclude, My Lord, I do find very few Attempts of this Nature, in any Kings Reign.

In the Reign of *Henry* the Fourth, there was an Act of Parliament that Foreigners ſhould have a Free Trade in the City of *London*, notwithſtanding the Franchiſes of *London*; after the Parliament roſe, the King iſſued out his Proclamation, forbidding the Execution of that Law, and Commanding that it ſhould be in Suſpence, *Uſque ad Proximum Parliamentum*, yet that was held to be againſt Law.

L. C. Juſt. Sir *Robert Sawyer*, that which you are to look to, is the publiſhing of this Paper, and whether it be a Libel or no. And as to the buſineſs of the Parliaments you mentioned, they are not to the purpoſe.

Sir *Rob. Sawyer.* My Lord, I ſay, I would put it where the Queſtion truly lyes, if they don't diſpute the Point, then we need not labour it; but I don't know whether they will or no, and therefore I beg your Lordſhips favour to mention one Caſe more, and that is upon the Statute of 31 *Hen.* 8. *cap.* 8. Which enables the King by Proclamation in many Caſes to create the Law, which Statute was repealed by 1 *Edw.* 6. *cap.* 12. That very Act does recite, that the Law is not to be altered, or reſtrained, but by Act of Parliament, and therefore the Parliament enables the King to do ſo and ſo: But that was ſuch a Power, that the Parliament thought not fit to continue, and it was afterwards repealed, but it ſhews, that at that time the Parliament was of the ſame Opinion, as to this Matter, that other Parliaments have been ſince.

Mr. *Sommers.* My Lord, I would only mention the great Caſe of *Thomas* and *Sorrel* in the Exchequer Chamber upon the validity of a Diſpenſation of the Statute of *Edward* the Sixth, touching Selling of Wine. There it was the Opinion of every one of the Judges, and they did lay it down as a ſettled Poſition, that there never could be an Abrogation, or a Suſpenſion, (which is a Temporary Abrogation) of an Act of Parliament, but by the Legiſlative Power. That was a Foundation laid down quite through the debate of that Caſe: Indeed it was diſputed, how far the King might diſpenſe with the Penalties in ſuch a particular Law, as to particular Perſons, but it was agreed, by all, that the King had no power to ſuſpend any Law: And my Lord, I dare Appeal to Mr. Attorney General himſelf, whether in the Caſe of *Godden* and *Hales*, which was lately in this Court, to make good that Diſpenſation, he did not uſe it as an Argument then, that it could not be expounded into a Suſpenſion; he admitted it not to be in the King's power to ſuſpend a Law, but that he might give a Diſpenſation to a particular Perſon, was all, that he took upon him to juſtifie at that time.

My Lord, by the Law of all civilized Nations, if the Prince does require ſomething to be done, which the Perſon (who is to do it) takes to be unlawful, it is not only lawful, but his Duty, *Reſcribere Principi*, this is all that is done here, and that in the moſt humble manner, that could be thought of; your Lordſhip will pleaſe to obſerve how far it went, how careful they were, that they might not any way juſtly offend the King. They did not interpoſe by giving advice, as Peers, they never ſtirr'd till it was brought home to themſelves, when they made their Petition, all they beg is, that it may not ſo far be inſiſted upon by His Majeſty, as to oblige them to read it, whatever they thought of it, they do not take upon them to deſire the Declaration to be revoked.

My Lord, as to Matters of Fact alledged in the ſaid Petition, that they are perfectly true, we have ſhewn by the Journals of both Houſes. In every one of thoſe Years, which are mentioned in the Petition, this Power of Diſpenſation was conſidered in Parliament, and upon Debate, declared to be contrary to Law; there could be no Deſign to diminiſh the Prerogative, becauſe the King hath no ſuch Prerogative.

Seditious my Lord it could not be, nor could poſſibly ſtir up Sedition in the Minds of the People, becauſe it was preſented to the King in private and alone, falſe it could not be, becauſe the Matter of it is true. There would be nothing of Malice, for the occaſion was not ſought, the thing was preſſed upon them, and a Libel it could not be, becauſe the intent was innocent, and they kept within the bounds ſet by the Act of Parliament, that gives the Subject leave to apply to his Prince by Petition, when he is aggrieved.

Mr. *Att. Gen.* Have you done, Gentlemen?

Mr. *Finch.* We have done, Sir.

Mr. *Att. Gen.* My Lord, I ſhall be a great deal more merciful to your Lordſhip and the Jury, than they have been, who have ſpent theſe four hours, in that which I think is not pertinent to the Caſe in Queſtion: They have let themſelves into large Diſcourſes, making great Complaints of the Hardſhips put upon my Lords the Biſhops, by the Order of Council to read His Majeſty's Declaration; and putting theſe words into the Information of ſeditious, malicious and ſcandalous: But my Lord, I admire that Sir *Robert Sawyer* ſhould make ſuch Reflections, and Obſervations upon theſe words, when I am ſure he will ſcarce find any one of his own exhibiting, that has ſo few of thoſe aggravating words as this has, and therefore, that might have been very well ſpared, eſpecially by him.

In the next place my Lord, we are told, what great Danger our Religion is in by this Declaration, I hope we have an equal concern for that with them, or any Perſon elſe whatſoever: But however, I am ſure our Religion teaches us, not to preſerve our Religion, or our Lives, by any illegal Courſes, and the Queſtion is, whether the Courſe that my Lords the Biſhops have taken to preſerve (as they ſay) our Religion, be legal or not; if it be not legal, then I am ſure our Religion will not juſtifie the uſing ſuch a Courſe, for never ſo good an End.

My Lord, for the thing it ſelf, I do admire that they, in ſo long a time and ſearch that they have made, ſhould not (which I expected) produce more Preſidents of ſuch a Paper as this is; They challenge us to ſhew, that ever there was any ſuch Declaration as this, I'll turn the ſame Challenge upon them; Shew me any one inſtance, that ever ſo many Biſhops did come under pretence of a Petition, to reflect upon the King out of Parliament.

Sir *Robert Sawyer.* Is that your way of Anſwering, Mr. Attorney?

Mr. *Attorney General.* Pray, Sir *Robert Sawyer,* you have had your time, don't interrupt us, ſure we have as much right to be heard as you.

L. C. J. You have been heard over and over again, Sir *Robert Sawyer,* already.

Sir *Robert Sawyer.* My Lord, I don't intend to interrupt him.

Mr. *Sol. Gen.* We cannot make them be quiet, they will ſtill be chopping in upon us.

Mr. *Att. Gen.* That is an Art that ſome People have always practiſed, not to permit any body to ſpeak, but themſelves.

But my Lord, I ſay, that thoſe few Inſtances that they have produced, are nothing at all to this Matter, that is now upon Tryal before your Lordſhip and this Jury; nay, they are Evidences againſt them, for they are only matters tranſacted in Parliament, which are no more to be applied to this thing that is in Controverſy now, than any the moſt remote matter that could be thought of; and though they have gone ſo high in point of time, as to the Reign of *Richard* the Second, yet they have nothing between that and the late King's Reign, to which at laſt they have deſcended down.

But my Lord, I ſay, that all the talk of *Richard* the Second's time is wholly out of the Caſe; truly, I do not doubt, but that in *Richard* the Second's time they might find a great many Inſtances of ſome ſuch ſort of Petitioning as this, for our Hiſtories tell us, that at that time they had 40000 Men in Arms againſt the King, and we know the troubles that were in that King's Reign, and how at length he was depoſed; but certainly there may be found Inſtances more applicable to the Caſe, than thoſe they produce; as for thoſe in King *Charles* the Second's time, do they any ways juſtifie this Petition? for now they are upon juſtifying the words of their Petition, that this power has been declared to be illegal in 1662, 1672, and 1685.

For what was done in 1662, do they ſhew any thing more than ſome Debates in the Houſe of Commons? And at laſt an Addreſs, an Anſwer by the King, a Reply of the Commons, and then the thing dies. Pray, my Lord, is a Tranſaction in the Houſe of Commons, a Declaration of Parliament? Sure, I think, no one will affirm that any thing can be a Declaration of Parliament, unleſs he that is the Principal part Concurs, who is the King: for if you ſpeak of the Court of Parliament in a Legal Senſe, you muſt ſpeak of the whole Body, King, Lords and Commons, and a Declaration in Parliament muſt be by all the whole Body, and that is properly an Act of Parliament.

Why then they come to the Year 1672, where your Lordſhip obſerves, that the late King did inſiſt upon his Right, for after the Diſpute which was in 1662, His Majeſty did iſſue out another Declaration, and when it comes to be debated in Parliament, he inſiſts upon his Right in Eccleſiaſtical Matters, and though his Declaration was cancelled, yet there is no formal Diſclaimer of the Right.

My Lord, after all, how far theſe things that they have offered may work, as to the point that they have debated, I ſhall not now meddle with it, nor give your Lordſhip any trouble about it, becauſe it is not at all pertinent to the Caſe in queſtion, for I do (after all this time and pains that they have ſpent) take leave to ſay, that theſe Gentlemen have ſpent all this time to no purpoſe.

L. C. J. Yes, Mr. Attorney, I'll tell you what they offer, which it will lie upon you to give an Anſwer to; They would have you ſhew, how this has diſturbed the Government, or diminiſhed the King's Authority?

Mr. *Att. Gen.* Whether a Libel be true or not, as to the matter of Fact, was it ever yet in any Court of Juſtice permitted to be made a Queſtion, whether it be a Libel or not? Or whether the Party be puniſhable for it; and therefore I wonder to hear theſe Gentlemen to ſay, that becauſe it is not a falſe one, therefore 'tis not a Libel: Suppoſe a Man ſhould ſpeak ſcandalous Matter of any Noble Lord here, or of any of my Lords the Biſhops, and a *Scandalum Magnatum* be brought for it, though that which is ſpoken has been true, yet it has been the Opinion

nion of the Courts of Law, that the Party cannot justifie it, by reason it tends to the disturbing of the Peace, to publish any thing that is matter of Scandal; The only thing that is to be lookt into, is, whether there be any thing in this Paper, that is reflecting and scandalous, and not whether it be true or no, for if any Man shall *Extra-Judicially*, and out of a legal Course and way, reflect upon any of the great Officers of the Kingdom, nay, if it be but upon any Inferior Magistrate, he is to be punished, and is not to make his Complaint against them, unless he do it in a proper way; A Man may Petition a Judge, but if any Man in that Petition shall come and tell the Judge, Sir, you have given an illegal Judgment against me, and I cannot in Honour, Prudence or Conscience obey it, I do not doubt, nor will any Man, but that he that should so say would be laid by the Heels, though the Judgment perhaps might be illegal.

If a Man shall come to Petition the King, as (we all know) the Council Doors are thronged with Petitioners every day, and Access to the King by Petition is open to every body, the most Inferior Person is allowed to Petition the King, but because he may do so, may he therefore suggest what he pleases in his Petition, shall he come and tell the King to his Face, what he does is Illegal? I only speak this, because they say, in this Case His Majesty gave them leave to come to him to deliver their Petition; but the King did not understand the Nature of their Petition I suppose, when he said, he gave them leave to come to him.

My Lord, for this Matter we have Authority enough in our Books, particularly there is the Case of *Wrenham* in my Lord *Hobart*, the Lord Chancellor had made a Decree against him, and he Petitioned the King, that the Cause might be reheard, and in that Petition he Complains of Injustice done him by my Lord Chancellor, and he put into his Petition many reflecting things, this my Lord, was punished as a Libel in the Star-Chamber; and, in that Book it was said, that though it be lawful for the Subject to Petition the King against any Proceedings by the Judges, yet it must not be done with Reflections, nor with Words that turn to the Accusation or Scandal of any of the King's Magistrates or Officers, and the Justice of the Decree is not to be questioned in the Case; for there *Wrenham* in his Defence would have opened the Particulars, wherein he thought the Decree was unjust, but that the Court would not meddle with, nor would allow him to justifie for such Illegality in the Decree; so in this Case, you are not to draw in question the truth or falshood of the Matter complained against, for you must take the way the Law has prescribed, and prosecute your Right in a legal Course, and not by Scandal and Libelling.

My Lord, there is a great deal of difference between not doing a thing that is Commanded, if one be of Opinion that it is unlawful, and coming to the King with a Petition highly reflecting upon the Government, and with scandalous Expressions telling him, Sir, you act illegally, you require of us that which is against Prudence, Honour or Conscience, as my Lords the Bishops are pleased to do in this Petition of theirs. I appeal to any Lord here, that if any Man should give him such Language, either by Word of Mouth or Petition, whether he would bear it, without seeking Satisfaction and Reparation by the Law?

My Lord, there is no greater proof of the Influence of this Matter than the Croud of this Day, and the Harangue that hath been made, is it not apparent that the taking this Liberty to Canvas and dispute the King's Power and Authority, and to Censure his Actions, possess the People with strange Opinions, and raises Discontents and Jealousies, as if the free Course of Law were restrained, and Arbitrary Will and Pleasure set up instead of it?

My Lord, there is one thing that appears upon the Face of the Information, which shews this not to be the right Course, and if my Lords the Bishops had given themselves the opportunity of reading the Declaration seriously, they would have found in the end of the Declaration, that the King was resolved to call a Parliament in *November*; might not my Lords the Bishops have acquiesced under their Passive Obedience till the Parliament met? But nothing would serve them, but this, and this must be done out of Parliament, for which there is no President can be shewn, and this must be done in such a manner, as your Lordship sees the Consequence of, by your Trouble of this Day.

There is one thing I forgot to speak to, they tell us, that it is laid malicious and seditious, and there is no Malice or Sedition found, we know very well, that that follows the Fact, those things arise by Construction of Law out of the Fact. If the thing be illegal, the Law says it is Seditious, a Man shall not come and say, he meant no harm in it: That was the Case of *Williams* in his treasonable Book, (says he) I only intended to warn the King of the Danger approaching, and concludes his Book with God save the King, but no Man will say, that a good Preface at the beginning, or a good Prayer at the end, should excuse Treason, or Sedition in the Body of a Book; if I meet another Man in the Street and kill him, though I never saw him in my Life, the Indictment is, that it was *ex Malitia Præcogitata*, as it often happens, that a Person kills one he never had acquaintance with before, and in *favorem vitæ*, if the Nature of the Fact be so, the Jury are permitted to find according to the Nature of the Case, but in Strictness of Law, there is Malice imply'd: But, my Lord, I think these Matters are so common, and that is a Point that has been so often settled, that the form of the Indictment and Information must follow the Nature of the Fact, that I need not insist upon it, if the Act be unlawful, the Law supplies the Malice, and evil Intentions.

Mr. *Sol. Gen.* My Lord and Gentlemen of the Jury, I am of Council in this Case for the King, and I shall take leave to proceed in this Method; Firſt, I shall put the Case of my Lords the Bishops, and then consider the Arguments that have been used in their Defence, and answer them as much as is material to be answered; and then leave it to your Lordship and the Juries Consideration, whether what has been said by these Gentlemen, weigh any thing in this Case?

Firſt, my Lord, I take it for granted, and I think the Matter is pretty plain by this time, by my Lord President's Evidence, and their own Confession; that it is not to be disputed, but that this Paper was presented by these Lords to the King, I think there is no great difficulty in

that Matter at all, but I juſt touch upon it, becauſe I would follow them in their own Method.

Then my Lord, let us take this Caſe as it is, upon the Nature of the Petition, and the Evidence that they have given, and then let us ſee, whether that will juſtifie the thing that is done: For the buſineſs of Petitioning, I would diſtinguiſh and enquire, Whether my Lords the Biſhops out of Parliament, can preſent any Petition to the King: I do agree, that in Parliament the Lords and Commons may make Addreſſes to the King, and ſignifie their Deſires, and make known their Grievances there, and there is no doubt, but that is a natural and proper way of Application. For in the beginning of the Parliament, there are Receivers of Petitions appointed, and upon Debates, there are Committees appointed, to draw up Petitions and Addreſſes, but to come and deduce an Argument, that becauſe the Lords in Parliament have done thus, (there being ſuch Methods of Proceedings uſual in Parliaments) therefore my Lords the Biſhops may do it out of Parliament, that is certainly a *Non ſequitur*, no ſuch Concluſion can be drawn from thoſe Premiſes.

My Lord, I ſhall endeavour to lay the Fact before you, as it really is, and then Conſider, what is proper for the Court to take notice of, as legal Proof or Evidence: And I take it, all thoſe Preſidents that they have produced, of what the Lords did, and what the Commons did, in Parliament, is no Warrant for them to ſhelter themſelves under, againſt the Information here in Queſtion.

Here *Mr. Juſtice Powell* ſpake aſide to the *Lord Chief Juſtice*, thus:

Mr. *Juſt. Powel.* My Lord, this is ſtrange Doctrine; ſhall not the Subject have Liberty to Petition the King, but in Parliament? If that be Law, the Subject is in a miſerable Caſe.

L. C. J. Brother, let him go on, we will hear him out, tho' I approve not of his Poſition.

Mr. *Sol. Gen.* The Lords may Addreſs to the King in Parliament, and the Commons may do it, but therefore, that the Biſhops may do it out of Parliament, does not follow. I heard nothing ſaid, that could have given Colour to ſuch a thing, but the Curſe that has been read in 1 *Eliz.*

But pray, my Lord, let us conſider that Evidence they have given, they have begun with that Record in *Richard* the Second's time, and what is that? That the King may diſpenſe with the Statute of Proviſors, till the meeting of the next Parliament, and a Proteſtation of the Commons at the end of it, whether that be an Act of Parliament, that is Declaratory of the Common Law, or Introductory of a new Law, *Non Conſtat*; and for ought appears, it might be a Declaratory Act: And if ſo, it is a Proof of the King's Prerogative of Diſpenſing. It might be an Act in Affirmance of the King's Prerogative, as there are a great many ſuch, we very well know; and generally moſt of the Laws in that kind, are in Affirmance of the King's Power, ſo that the Law turns as an Argument for the King's Prerogative, and they have given him that, which will turn upon themſelves, ſo it ſtood in *Richard* the Second's time, but whether that be an Argument one way or other Concluſive, is left to your Lordſhip, and the Jury.

Ay, but ſay they, there is no Execution of ſuch a Power, till very lately, and the firſt Inſtance that they produce is, that in the Year 1662. But your Lordſhip knows, that before the Reign of *Henry* the Fourth, there was great Juriſdiction aſſumed by the Lords in original Cauſes, then comes the Statute of Appeals, 1 *Hen.* 4. which takes notice, that before that time, the Lords had aſſumed an original Juriſdiction in all Cauſes, and would proceed, and determine them in Parliament, and out of Parliament, and it fell out to be ſo great a Grievance, that it was thought neceſſary to make a Law againſt it, that Appeals in Parliament ſhould be aboliſhed and deſtroyed, and then comes that Law in favour of the Subject of *England*, and that ſettles the bounds between the King and the Lords in a great meaſure; before that time, the Lords were grown very powerful, and where there is a Power, there always will be Applications, and what is the effect of that Statute 1 *Hen.* 4. for all that we endeavour is, to make things as plain as can be, that no further Applications, no Accuſations, no Proceedings in any Caſe whatſoever be before the Lords in Parliament, unleſs it be by Impeachment of the Commons; ſo that there is the *Salvo*; and the uſe that I make of it, is this, The Commons by that very Statute did aboliſh the Power that the Lords had arrogated to themſelves, and ordered, that they ſhould not meddle with any Cauſe, but upon the Impeachment of the Houſe of Commons, and eſtabliſh the Impeachment of the Commons, which is as ancient as the Parliament, for that was never yet ſpoken againſt; the Power of the Commons impeaching any Perſon under the degree of the Prince, and that is the regular legal way, and ſo the Commons aſſerted their ancient Right, and whatſoever the Lords took notice of, muſt come by Application of the Commons, then Conferences were to paſs between the Houſes, and both Houſes by Addreſs apply to the King, this is the proper way and courſe of Parliament; of which my Lord *Cook* ſays, It is known to few, and practiſed by fewer, but it is a venerable honourable way, and this is the Courſe that ſhould have been taken by my Lords here, and they ſhould have ſtayed till the Complaint had come from the Commons in Parliament, and then it had been regular for them to Addreſs to the King; but they were too Quick, too Nimble.

And whereas the Statute of *Hen.* 4. ſays, That no Lord whatſoever ſhall intermeddle with any Cauſe, but by the Impeachment of the Commons, they interpoſe and give their advice before their time; if there be any Irregularity in Parliament, or out of Parliament, the Commons are to make their Complaint of it, and a Man muſt not be his own Judge, nor his own Carver, nor muſt every Man create Difficulties of his own, nor ſet upon petitioning in this ſort: But there I lay my Foundation, That in ſuch a matter as this, there ought to have been the Impeachment of the Commons in Parliament before theſe Lords could do any thing; and I know nothing can be ſaid for the Biſhops more than this, That they were under an Anathema, under the Curſe that Sir *Robert Sawyer* ſpeaks of, and for fear of that they took this Irregular Courſe: But ſome would ſay, Better fall into the hands of God than of Men; ſome would ſay ſo, (I ſay) I know not what they would ſay; but theſe being the Methods that

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theſe Lords ſhould have taken, they ſhould have purſued that Method, the Law ſhould have carved out their Relief and Remedy for them, but they were for going by a new Fancy of their own.

My Lord, the Law continued thus, and was practiſed ſo till the 3 *Hen.* 7. where the Grievance was found, that Offences in the Intervals of Parliament could not be well puniſhed, and then comes the Statute that ſets up the Court of Star-Chamber, and there Men were often brought to Judgment and Puniſhment for their Sins; and though very great Power was given them, yet they arrogated to themſelves a greater; and therefore that Court is aboliſhed by the Statute of the 15*th Car.* 1. and what is the reaſon of aboliſhing that Statute? Becauſe the Star-Chamber did not keep within their Bounds that the Law ſet them, but aſſumed to themſelves a larger Power than the Law would allow; and grew very Exorbitant and very grievous to the Subject: And another reaſon was, which the Statute of 15 *Car.* 1. founded it ſelf upon, becauſe there was nothing that was brought in Judgment before that Court, but might be relieved and remedied in the ordinary methods of Juſtice in the Courts of *Weſtminſter-Hall*: So that upon thoſe two Conſiderations, becauſe that Courſe was exorbitant, and becauſe all the Sins and Miſdemeanours that were puniſhed there, might be puniſhed in an ordinary way of Law in another Court, and therefore there was no need of that Court, and ſo it was aboliſhed, and the Subject was pretty ſafe; If there was a Crime committed here, a Man might come properly before your Lordſhip into this Court, and have it puniſhed.

My Lord, they find fault with the Words in the Information, and they ſay, Why are theſe Words put in, ſeditious, malicious? If the matter be libellous and ſeditious we may lawfully ſay, and it is no more than the Law ſpeaks, it reſults out of the Matter it ſelf; and, if it be a libellous Paper, the Law ſays, it is maliciouſly and ſeditiouſly done, and theſe Gentlemen need not quarrel with us for ſo are all the Informations in all times paſt, and 'tis no more than the *Vi & Armis*, which is Common Form. It may be ſaid, How can the publiſhing of a Libel be ſaid to be done *Vi & Armis*? That is only a Suppoſition of Law; and they may as well object to the Concluſion of the Information, that it was *Contra Coronam & Dignitatem Domini Regis*; if it be an illegal thing, or a Libel, theſe are neceſſary Conſequences, it is no more than the ſpeaking of the Law upon the Fact.

But, my Lord, let us a little conſider, whether this Matter were warrantable, and whether they had any Warrant to do what was done; they pretend it was done upon this account, That the King had ſet forth a Declaration, and had ordered them to read it; which to excuſe themſelves from, they make this Petition, or this Libel, (call it what you will) and they uſe this as the main Argument, That they ſay the King has done illegally, and they tell the King plainly ſo, that it is illegal; for they take notice of this Declaration, and ſay, it is illegal; becauſe it is contrary to the Declarations of Parliament in 1662, 1672, and 1685.

Pray, my Lord, let us conſider a little, whether there be any Declaration in Parliament that they have given Evidence of; Have they read any Declaration of the Parliament in 1662? What is a Declaration in Parliament, but a Bill that is paſſed by the King, Lords and Commons? That we know to be the meaning, and no other; if it paſs the Commons it is no Declaration in Parliament; nay, if it paſs the Lords and Commons, it is not a Declaration in Parliament, except it alſo paſs the King; all theſe things are Nullities, and the Law takes no notice of them; we have it in our Books over and over, and no Court ought to ſuffer ſuch Evidence to be given. I know theſe Gentlemen are very well acquainted with the Authority in *Fitz-Herbert's*, Title, Parliament, there was ſuch an Act that was ſaid to be by the King and the Lords, but becauſe the Commons did not agree to it, it is declared and adjudged to be a Nullity, and the Court would take no notice of it; and how can any Man call that a Declaration in Parliament, which is only a Vote of the Houſe of Commons, or of the Lords? No ſure; that is one of the Heads I go upon, it's not a Declaration in Parliament, unleſs it be by an Act of Parliament.

Indeed my Lord, there is another ſort of a Declaration in Parliament before the Lords, as they are a Court of Judicature, and that is a fair Declaration too; for if any thing comes judicially before the Lords, either by Writ of Error, or by natural Appeal from any of the other Courts, or by Adjournment, and there be any Judgment given, That is a Declaration in Parliament, and may be fairly ſo called. So likewiſe there is another judicial Declaration, which is, when any thing comes before the Lords judicially, upon an Impeachment of the Commons, and they give Judgment upon that Impeachment, That is a Declaration in Parliament: But to ſay, that there is any other Declaration in Parliament, is to ſay more than theſe Gentlemen can make out; if they will ſhew me any ſuch I will ſubmit to them, and not ſpeak a Word againſt my Lords the Biſhops, but, if theſe Learned Gentlemen cannot ſhew me any ſuch, then they have not ſaid that was true in this Petition, that it was ſo and ſo declared in Parliament.

For let us conſider what there is in this Caſe upon this Evidence, for that in 1662. is only a Vote and Opinion of the Houſe of Commons; and I always underſtood, and have been told ſo by ſome of the Gentlemen of the other ſide, that ſuch a Vote ſignifies nothing: But beſides, it ſeems to be a miſtaken Addreſs; for they ſay in it, That the Declaration in 1662. which they Addreſs againſt, was the firſt Declaration of that ſort, to ſuſpend Laws without Act of Parliament; and yet, in the ſame Breath, they do take notice of the King's Declaration from *Breda*. But here is a mighty Argument uſed from the King's Speech, That becauſe he wiſhed he had ſuch a Power, this muſt be declared in Parliament that he had no ſuch Power: Is the Speech of the Prince a Declaration in Parliament? All the Speeches that were made upon the opening of the Parliament, will you ſay, they are Declarations in Parliament? Then the Chancellor, or the Keeper's Speech, or the Lord Privy Seals, muſt be a Declaration in Parliament. Whoever ſpeaks the Senſe of the King, if he does not ſpeak that which is Law and Right, is queſtionable for it, and ſeveral have been impeached for ſo doing; for they look

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not upon it as the King's Speech, except it be according to Law: Nothing can turn upon the Prince but what is Legal; if it be otherwise, it turns upon him that speaks it. I never did hear that a Speech made by the Chancellor (and I will appeal to all the Lords that hear me in it) was a Declaration in Parliament.

Then my Lord, we come to the business in 1672. which with that in 1662. and that in *Breda*, shews, That this of the King's is not such a Novelty, but has been done often before. In 1672. the King was in Distress for Money, being intangled in a *Dutch* War, and wanted Supply; He Capitulates with his Commons, you have heard it read, and, upon the Commons Address, he asserts it to be his Right, and makes his Complaint to the Lords how the Commons had used him; for when he gives them a fair Answer, they Replyed, and there are Conferences with the Lords about it; but at length it all ends in a Speech by the King, who comes and tells them of his present Necessities, and so he was minded to remit a little at the Instigation of the Commons, and he has a good Lump of Money for it. Would this amount to a Declaration in Parliament? Can my Lords the Bishops fancy or imagine that this is to be imposed upon the King, or upon the Court, for a Declaration in Parliament?

Then last of all, for that in 1685. in this King's time, What is it? The Commons make an Address to the King, and Complain to his Majesty of some of his Officers in his Army, * that might pretend to have a Dispensation, something of that Nature, contrary to the Test Act; and what is done upon it? They make their Application to the King, and the King answers them, and that is all: But since it is spoken of in the Court I would take notice, That it is very well known by the Case of *Godding* and *Hales*, the Judgment of this Court was against the Opinion of that Address.

* *Here Mr. Justice* Powel *speaking to the Lord Chief Justice,*

Mr. J. Powel. My Lord, this is wide, Mr. Sollicitor would impose upon us; let him make it out if he can, that the King has such a Power, and answer the Objections made by the Defendants Council.

L C J. Brother, impose upon us? he shall not impose upon me, I know not be what he may upon you; for my part, I do not believe one word he says.

But what sort of Evidence is all this? Would you allow all the Addresses of the House of Commons to be Evidence? Give me leave to say it, my Lord, If you suffer these Votes, these Copies of imperfect Bills, these Addresses, and Applications of one or both Houses to the King, to be Evidence and Declarations in Parliament, then what will become of the * Bill of Exclusion? Shall any Body mention that Bill of Exclusion to be a Declaration in Parliament? If so, then there is Declaration against Declaration, the Declaration of the Commons against the Declaration of the Lords. I know not what Judgment my Lords the Bishops may be of now, concerning those things of Votes and Addresses being Declarations in Parliament, but I am sure they have spoken against it heretofore; nay, I am sure, some of them have preached against it.

* *Here there was a great Hissing.*

And if my Lords the Bishops have said, These are Declarations in Parliament, and they are not Declarations in Parliament; and if they accuse the King of having done an illegal thing, because he has done that which has been declared in Parliament to be illegal, when it was never so declared, then the Consequence is very plain, That they are Mistaken sometimes; and I suppose by this time they believe it.

I dare say, it will not be denied me, That the King may, by his Prerogative Royal, issue forth his Proclamation; it is as essential a Prerogative, as it is to give his assent to an Act of Parliament to make it a Law. And it is another Principle, which I think cannot be denied, That the King may make Constitutions and Orders in Matters Ecclesiastical; and that these he may make out of a Parliament, and without the Parliament. If the King may do so, and these are his Prerogatives, then suppose the King does issue forth his Royal Proclamation (and such in effect is this Declaration under the Great Seal) in a Matter Ecclesiastical, by Virtue of his Prerogative Royal, and this Declaration is read in the Council, and published to the World, and then the Bishops come and tell the King, Sir, you have issued out an illegal Declaration, being contrary to what has been declared in Parliament; when there is no Declaration in Parliament: Is not this a diminishing the King's Power and Prerogative in issuing forth his Declaration? And making Constitutions in Matters Ecclesiastical? Is not this a questioning of his Prerogative? Do not my Lords the Bishops in this Case raise a Question bewteen the King and the People? Do not they (as much as in them lyes) stir up the People to Sedition? For who shall be Judge between the King and the Bishops? (Says the King) I have such a Power and Prerogative to issue forth my Royal Proclamation, and to make Orders and Constitutions in Matters Ecclesiastical, and that without the Parliament, and out of Parliament: Say my Lords the Bishops, You have done so, but you have no Warrant for it. Says the King, Every Prince has done it, and I have done no more than what is my Prerogative to do: But this, say the Bishops, is against Law. How shall this be tryed? Should not the Bishops have had the Patience to have waited till a Parliament came? When the King himself tells them, he would have a Parliament in *November* at furtheſt.

L. C. Just. Pray, Mr. Sollicitor, come close to the business, for it is very late.

Mr. *Sol. Gen.* My Lord, I beg your Patience; you have had a great deal of Patience with them, pray spare me a little. I am saying, when the King himself tells them, that he would have a Parliament in *November* at furtheſt, yet they have no Patience to stay till *November*, but made this Application to him. Is not this raising a Question upon the King's Prerogative in issuing forth Declarations? and upon the King's Power and Right in Matters Ecclesiastical? And when I have said this, that my Lords the Bishops have so done; If they have raised a Question upon the Right of the King, and the Power of the King in Matters Ecclesiastical, then they have stirred up Sedition. That they have so done is pretty plain; and for the Consequence of it, I shall appeal to the Case in the 2 *Cro.* 2. *Jac.* 1. That is a plain direct Authority for me.

Mr. *Just. Powel.* Nay, Mr. Sollicitor, we all very well know, to deny the King's Authority in Temporals and Spirituals, as by Act of Parliament, is High Treason.

Mr.

Mr. *Sol. Gen.* I carry it not ſo far, Sir; we have a Gracious Prince, and my Lords the Biſhops find it ſo by this Proſecution: But what ſays that Caſe? It is Printed in Three Books, in *Noy* 100. in *Moor* 375. and in Mr. Juſt. *Cro.* 371. Says that Caſe, The King may make Orders and Conſtitutions in Matters Eccleſiaſtical.

Mr. *Juſt. Powel.* But how will you apply that Caſe to this in hand, Mr. Sollicitor?

Mr. *Sol. Gen.* I will apply it by and by, Sir. I would firſt ſhew what it is; there is a Convention of the greateſt Men in the Kingdom.

Mr. *Juſt. Powel.* Indeed, Mr. Sollicitor, you ſhoot at Rovers.

Mr. *Sol. Gen.* There is the Lord Privy Seal, the Archbiſhop of *Canterbury*, and a great many others; it is the greateſt Aſſembly we meet with in our Books, and all of them are of this Opinion, That the King may make Orders and Conſtitutions in Matters Eccleſiaſtical.

My Lord, there is another Authority, and that is, from the Statute 1 *Eliz.* which erected the High Commiſſion Court, and that Statute was not Introductory of a New Law, but Declaratory of the Old Law; The King by his Proclamation declares his Senſe to do ſuch and ſuch a thing; the Court, and all Perſons there, give their Judgment and Opinion upon that Statute, That they looked upon it as the groſſeſt thing, and the fouleſt affront to the Prince, for any Man to bring into Queſtion that Power of the King in Matters Eccleſiaſtical; 'tis ſaid to be a very High Crime. Why then, my Lord, what is done in this Caſe?

Mr. *Juſt. Powel.* Mr. Sollicitor, Pray, when you are applying, apply that other part of the Caſe too, which ſays, that it was a heinous Offence, to raiſe a Rumor that the King did intend to grant a general Toleration; and is there any Law ſince that has changed it, Mr. Sollicitor?

Mr *Sol. Gen.* In the main, Judgment goes another way; as for that part, it was perſonal to the Prince that then was, of whom they had Scandalouſly reported, that he intended to do ſuch a thing; they look'd upon it as a Scandal to King *James*, that it was a ſowing Sedition, and ſtirring up People againſt the Government, and that will come up to our Caſe; for as ſome Men do it on the right ſide, others do it on the left; and whoever he be that endeavours to bring a diſlike of the King in the People, that is moving Sedition againſt the Prince, but that is perſonal to the Prince himſelf, and does not go to his Succeſſors.

Now, my Lord, I come to that which is very plain from the Caſe of *De Libellis Famoſis*; If any Perſon, in any Paper, have Slandered the Government, you are not to Examine who is in the Right, and who is in the Wrong, whether what they ſaid to be done by the Government be Legal or no; but whether the party have done ſuch an Act. If the King have a Power (for ſtill I keep to that) to Iſſue forth Proclamations to his Subjects, and to make Orders and Conſtitutions in matters Eccleſiaſtical, if he do Iſſue forth his Proclamation, and make an Order upon the matters within his Power and Prerogative; and if any one would come and bring that Power in Queſtion, I ſay, that is Sedition, and you are not to Examine the Legality, or Illegality of the Order or Proclamation; and, that I think is very plain upon that Caſe, in the Fifth *Report*, for it ſays, If a Perſon does a thing that is Libellous, you ſhall not Examine the Fact, but the Conſequence; whether it tended to ſtir up Sedition againſt the Publick or to ſtir up Strife between Man and Man; in the Caſe of private Perſons, as if a Man ſhould ſay of a Judge, He has taken a Bribe, and I will prove it; this is not to be ſent in a Letter, but they muſt take a regular way to Proſecute it according to Law.

If it be ſo in the Caſe of an Inferior Magiſtrate, what muſt it be in the Caſe of a King, to come to the Kings Face, and tell him (as they do here) that he has Acted Illegally, doth certainly, ſufficiently prove the matter to be Libellous. What do they ſay to the King, they ſay, and admit, that they have an averſneſs for the Declaration, and they tell him from whence that averſneſs doth proceed; and yet they inſinuate, that they had an inclination to Gratify the King, and Embrace the Diſſenters, that were as averſe to them, as could be, with due tenderneſs, when it ſhould be ſettled by Parliament and Convocation. Pray, what hath their Convocation to do in this matter?

L. C. J. Mr. Sollicitor General, I will not interrupt you; but, pray, come to the Buſineſs before us; Shew us that this is in diminution of the Kings Prerogative, or that the King ever had ſuch a Prerogative.

Mr. *Sol. Gen.* I will, my Lord; I am obſerving what it is they ſay in this Petition——They tell the King it is inconſiſtent with their Honor, Prudence, and Conſcience, to do what he would have them to do; and if theſe things be not reflective upon the King and Government, I know not what is; this is not in a way of Judicature, poſſibly it might have been allowable to Petition the King to put it into a courſe of Juſtice, whereby it may be Tryed; but, alas, there is no ſuch thing in this matter.

It is not their deſire to put it into any Method for Tryal, and ſo it comes in the Caſe *De Libellis Famoſis*; for by this way, they make themſelves Judges, which no man by Law is permitted to do. My Lords, the Biſhops have gone out of the way, and all that they have offered does not come home to juſtify them; and therefore I take it under Favour, that we have made it a good Caſe for the King, we have proved what they have done, and whether this be Warrantable or not, is the Queſtion, Gentlemen, that you are to try. The whole Caſe appears upon Record; the Declaration, and Petition are ſet forth, and the Order of the King and Council. When the Verdict is brought in, they may move any thing what they pleaſe in arreſt of Judgment: They have had a great deal of Latitude, and taken a great deal of Liberty; But truly, I apprehend, not ſo very pertinently. But, I hope, we have made a good Caſe of it for the King, and that you, Gentlemen, will give us a Verdict.

Mr. *Juſt. Holloway.* Mr. Sollicitor, there is one thing I would feign be ſatisfied in; you ſay the Biſhops have no Power to Petition the King.

Mr. *Soll. Gen.* Not out of Parliament, Sir.

Mr. *Juſt. Holloway.* Pray give me leave, Sir; Then the King having made ſuch a Declaration of a General Toleration and Liberty of Conſcience, and afterwards he comes and requires the Biſhops to diſperſe this Declaration; this they ſay, out of a tenderneſs of Conſcience, they cannot do, becauſe they apprehend it contrary

trary to Law, and contrary to their Function: What can they do, if they may not Petition?

Mr. *Sol. Gen.* I'll tell you what they ſhould have done, Sir. If they were commanded to do any thing againſt their Conſciences, they ſhould have acquieſced till the Meeting of the Parliament.

[*At which ſome People in the Court hiſſed.*]

Mr. *Att. Gen.* This is very fine indeed; I hope the Court and the Jury will take notice of this Carriage.

Mr. *Sol. Gen.* My Lord, it is one thing for a Man to ſubmit to his Prince, if the King lay a Command upon him that he cannot obey, and another thing to Affront him. If the King will impoſe upon a Man what he cannot do, he muſt acquieſce; but ſhall he come and fly in the Face of his Prince? Shall he ſay it is illegal? And that the Prince acts againſt Prudence, Honour or Conſcience? And throw Dirt in the King's Face. Sure that is not to be permitted; that is libelling with a Witneſs.

L. C. J. Truly, Mr. Sollicitor, I am of Opinion that the Biſhops might Petition the King, but this is not the right way of bringing it; I am not of that Mind, that they cannot Petition the King out of Parliament, but if they may Petition, yet they ought to have done it after another Manner: For if they may in this reflective way petition the King, I am ſure, it will make the Government very precarious.

Mr. *J. Powel.* Mr. Sollicitor, it would have been too late to ſtay for a Parliament, for it was to have been diſtributed by ſuch a time.

Mr. *Sol. Gen.* They might have lain under it, and ſubmitted.

Mr. *Juſt. Powel.* No, they would have run into Contempt of the King's Command, without petitioning the King not to inſiſt upon it; and if they had petitioned, and not have ſhewn the Reaſon why they could not obey, it would have been looked upon as a piece of Sullenneſs, and that they would have been blamed for, as much on the other ſide.

Mr. *Serj. Baldock.* After ſo long a Debate I ſhall not trouble you long, moſt things that are to be ſaid have been ſaid, but I ſhall only ſay this in ſhort; I cannot deny, nor ſhall not, but that the Subject has a right to Petition, but I ſhall affirm it alſo, he has a Duty to obey; and, that in this Caſe, the Power of the King to diſpenſe with Penal Laws in Matters Eccleſiaſtical is not a thing that is now in Queſtion, nor need we here have had theſe long Debates on both ſides: It may be perceived plainly, by the Proofs that have been read, that the Kings and Princes have thought themſelves that they had ſuch a Power, though it may be, the Parliament thought they had not; and therefore the Declarations of the one, or the other, I ſhall not meddle with in this Caſe. That Power it ſelf which the King has, as King of this Realm, in Matters rather Eccleſiaſtical and Criminal than Matters of Property, may ſomewhat appear by what has been read before your Lordſhip; but all this will be nothing in our Caſe, neither has His Majeſty now depended ſo much upon this thing; the Declaration has been read to you; and what's there ſaid? The King there ſays, That for thoſe Reaſons he was ready to ſuſpend thoſe Laws; and be they ſuſpended? Yet, my Lord, with this too, That he refers it to, and hopes to make it ſecure by a Parliament: So that there being this, it has not gone, I think very far; and, it not having been touch'd here, it is not a point of Duty in my Lords the Biſhops, as Biſhops, that's here inquired into; Whether they ſhould have meddled with this or no, in this manner, is the Queſtion. That the King is Supream over all of us, and has a particular Supremacy over them, as Supream Ordinary and Governor, and Moderator of the Church, is very plain; and my Lord, it is as plain that in ſuch things as concern the Church, he has a particular Power to Command them; this is not unknown, but very frequent and common in Matters Eccleſiaſtical, and Matters of State; It is not here a Queſtion now, whether theſe Declarations which they were Commanded to take Care of getting read, were legal or not legal; what Prudence there was, what Honour there was, what Conſcience there was, for their not reading it, is not the Queſtion neither: But the point was, the King as ſupream Ordinary of his Kingdom, to whom the Biſhops are Subject, does in Council Order; and what is it he Orders? Their ſending out and diſtributing his Declaration; they were concerned in no more than that, and it had been a very petty thing, a ſmall thing, to ſend out the King's Declaration to be read by the Clergy: All the Clergy were ordered to read it, but my Lords the Biſhops were only commanded to diſtribute it; this he might do by Virtue of his Power Eccleſiaſtical. And if this be not an Evil in it ſelf, and if it be not againſt the Word of God, certainly Obedience was due from my Lords the Biſhops; active Obedience was due from them to do ſo much as this; it was no Conſent of theirs, it was no Approbation of theirs, of what they read, that was required. So that if they had read it, or another had read it, by the King's Order, eſpecially if that Order be legal, they are bound to do it by Virtue of their Obedience, and not to Examine more.

And my Lord, in this Petition, here they come to relieve, not only themſelves that were preſent, (for I ſpeak to the Preamble, as others before me have ſpoke to the Concluſion) but they do involve the reſt of the Biſhops that were abſent; for it is in behalf of themſelves, and their Brethren, and all the Clergy of that Province. Now that all theſe ſhould joyn in the Petition, is a thing very uncertain; how does it conſtrue here, whether they were altogether, and conſented to it, or how all their Minds could be ſo fully known, that they would be all involved in the Diſobedience to this Order of the King. Then, my Lord, What is the thing they are greatly averſe to? There are two things required in the Order, The Biſhops required to diſtribute the Declaration to the inferior Clergy; and the inferior Clergy are required to read it. Then their Averſeneſs muſt be to diſtribute it, and the others to read it, and ſo they will be involved; none of whom did ever appear to have joyned in it. And then they give Reaſons for their Averſeneſs; and it is true, Reaſons might have been given, and good Reaſons ſhould be given, why they ſhould not do this in Duty to His Majeſty; more gentle Reaſons, and other kind of Reaſons, than thoſe that they have given.

L. C. J. Pray Brother, will you come to the Matter before us.

Mr.

Mr. *Serj. Baldock.* I have almoſt done, my Lord.

Mr. *Juſt. Powel.* The Information is not for Diſobedience, Brother, but for a Libel.

Mr. *Serj. Baldock.* No, Sir, it is not for Diſobedience, but it is for giving Reaſons for the Diſobedience in a libellous Petition; and I am going on to that. The Declaration is ſaid in the Petition to be illegal, which is a Charge upon the King, That he has done an illegal Act. They ſay, they cannot in Honour, Conſcience or Prudence do it; which is a Reflection upon the Prudence, Juſtice, and Honour of the King in Commanding them to do ſuch a thing: And this appearing to have been delivered to the King by my Lords the Biſhops; Perſons, to whom certainly we all owe a Deference, as our Spiritual Maſters, to believe what things they ſay, as moſt likely to be true; and therefore it having an Univerſal Influence upon all the People, I ſhall leave it here to your Lordſhip, and the Jury, whether they ought not to Anſwer for it.

Mr. *Recorder.* Will your Lordſhip pleaſe to ſpare me one Word?

L. C. J. I hope, we ſhall have done by and by.

Mr. *Recorder.* If your Lordſhip don't think fit, I can ſit down.

L. C. J. No, no, go on, Sir *Bartholomew Shower*, you'll ſay I have ſpoiled a good Speech.

Mr. *Recorder.* I have no good one to make, my Lord, I have but a very few Words to ſay.

L. C. J. Well, go on, Sir.

Mr. *Recorder.* That which I would urge, my Lord, is only this; I think my Lord, we have proved our Information, and that they have made no Anſwer to it; for the Anſwer they have made, is but Argumentative, and taken either from the Perſons of the Defendants, as Peers, or from the Form of its being a Petition: As Peers, it is ſaid, they have a right to Petition to, and adviſe the King; but that is no Excuſe at all, for if it contains Matter reproachful or ſcandalous, it is a Libel in Them, as well as in any other Subject; and they have no more Right to Libel the King than His Majeſties other Subjects have; nor will the Privilege of their Peerage exempt them from being puniſhed. And for the Form of this Paper, as being a Petition, there is no more Excuſe in that neither. For every Man has as much Right to publiſh a Book, or Pamphlet, as they had to preſent their Petition. And as it would be puniſhable in that Man to write a ſcandalous Book, ſo it would be puniſhable in them to make a ſcandalous, and a libellous Petition. And the Author of *Julian the Apoſtate*, becauſe he was a Clergy Man, and a Learned Man too, had as much right to publiſh his Book, as my Lords the Biſhops had to deliver this Libel to the King. And if the City of *London* were ſo ſeverely puniſhed, as to loſe their Charter, for petitioning for the Sitting of a Parliament, in which there were reflecting Words, but more ſoft.——

Mr. *Juſt. Holloway.* Pray, good Mr. Recorder, don't compare the Writing of a Book to the Making of a Petition; for it's the Birth-right of the Subject to Petition.

Mr. *Recorder.* My Lord, it was as lawful for the City of *London* to petition for the ſitting of a Parliament, as it was for my Lords the Biſhops to give Reaſons for their Diſobedience to the King's Command: And if the Matter of the City of *London*'s Petition was reckoned to be libellous, in ſaying that what the King had done in diſſolving the Parliament, was an Obſtruction of Juſtice, what other Conſtruction can be made of my Lords the Biſhops ſaying that the King's Declaration is illegal? And if the Matter of this Petition be of the ſame Nature with that of the City of *London*, your Lordſhip can make no other Judgment of it; but that it ought to have the ſame Condemnation.

Mr. *Juſt. Powell.* Mr. Recorder, you will as ſoon bring the two Poles together, as make this Petition to agree with *Johnſon*'s Book; they are no more alike, than the moſt different things you can name.

Mr. *Serj. Trinder.* My Lord, I have but one Word.

L. C. J. How unreaſonable is this now, that we muſt have ſo many Speeches at this time of Day? But we muſt hear it; go on Brother.

Mr. *Serj. Trinder.* My Lord, if your Lordſhip pleaſes, That which they ſeem moſt to inſiſt upon on the other ſide, and which has not been much ſpoken to on our ſide, is, That this Power which His Majeſty has Exerted, in ſetting forth His Declaration, was illegal, and their Arguments were Hypothetical; if it were illegal, they had not offended; and they offered at ſome Arguments to prove it illegal: But as to that, my Lord, we need not go much further, than a Caſe that is very well known here, which I crave leave to mention, only becauſe the Jury perhaps, have not heard of it; and that was the Caſe of Sir *Edward Hales*, where after a long Debate, it was reſolved, That the King had a Power to diſpenſe with *Penal Laws*.

But my Lord, if I ſhould go higher into our Books of Law, that which they ſeem to make ſo ſtrange of, might eaſily be made appear, to have been a frequent and conſtant practice.——

L. C. J. That is quite out of the Caſe, Brother.

Mr. *Serj. Trinder.* I beg your Lordſhips Favour, for a Word or two; if your Lordſhip pleaſe to conſider the Power the King has, as ſupream Ordinary, we ſay, he has a Power to diſpenſe with theſe Statutes, as he is King, and to give Eaſe to his Subjects, as ſupream Ordinary of the whole Kingdom, and as having ſupream Eccleſiaſtical Authority throughout the Kingdom. There might be abundance of Caſes cited for this, if there were need; the Statute of *primo Eliz.* doubtleſs is in force at this time, and a great many of the Statutes that have been made ſince that time, have expreſs Savings of the King's Supremacy; ſo that the King's Power is unqueſtionable: And if they have come and queſtioned this Power in this manner, by referring themſelves to the Declarations in Parliament, they have done that, which of late days has been always look'd upon as an ill thing, as if the King's Authority was under the Suffrages of a Parliament. But when they come to make out their Parliament Declarations, there was never a one, unleſs it be firſt in *Richard* the Second's time, that can properly be called a Parliament Declaration; ſo that that of the ſeveral Parliaments is a Matter perfectly miſtaken; and if they have miſtaken it, it is in the Nature of falſe News, which is a Crime, for which the Law will puniſh them. More things might be added, but I conſider your Lordſhip has had a great deal of Patience already, and

much time has been ſpent, and, therefore I ſhall conclude, begging your Lordſhips Pardon for what I have ſaid.

L. C. Juſt. I do aſſure you, if it had not been a Caſe of great Concern, I would not have heard you ſo long: It is a Caſe of very great Concern to the King, and the Government, on the one ſide, and to my Lords the Biſhops on the other; and I have taken all the Care I can to obſerve what has been ſaid on both ſides. 'Tis not to be expected that I ſhould repeat all the Speeches, or the particular Facts, but I will put the Jury in mind of the moſt Material things, as well as my Memory will give me leave; but I have been interrupted by ſo many Long, and Learned Speeches, and by the length of the Evidence which has been brought in, in a very broken, unmethodical way, that I ſhall not be able to do ſo well as I would.

Gentlemen, thus ſtands the Caſe; It is an Information againſt my Lords the Biſhops, his Grace my Lord of *Canterbury*, and the other Six Noble Lords; and it is for Preferring, Compoſing, Making, and Publiſhing, and Cauſing to be Publiſhed, a Seditious Libel; the way that the Information goes is ſpecial, and it ſets forth, That the King was Graciouſly pleaſed, by his Royal Power and Prerogative, to ſet forth, a Declaration of Indulgence for Liberty of Conſcience, in the Third Year of his Reign; and afterwards upon the 27. of *April*, in the Fourth Year, he comes and makes another Declaration; and afterwards, in *May*, orders in Council that this Declaration ſhould be Publiſhed by my Lords the Biſhops in their ſeveral Dioceſſes; and after this was done, my Lords the Biſhops come and preſent a Petition to the King, in which were contained the Words which you have ſeen.

Now, Gentlemen, the Proofs that have been upon this, you'll ſee what they are; the two Declarations are proved by the Clerks of the Council, and they are brought here under the Great Seal; a Queſtion did ariſe, whether the Prints were the ſame with the Original Declarations, and that is proved by *Hills*, or his Man, that they were Examined, and are the ſame; then the Order of the Council was produced by Sir *John Nicholas*, and has likewiſe been read to you; then they come to prove the Fact againſt the Biſhops, and firſt they fall to proving their Hands; they begun indeed a great way off, and did not come ſo cloſe to it as they afterwards did; for ſome of their Hands they could hardly prove, but my Lord Archbiſhop's Hand was only proved, and ſome others, but there might have been ſome Queſtion about that Proof; but afterwards it came to be proved, that my Lords the Biſhops owned their Hands, which, if they had produced at firſt, would have made the Cauſe ſomething ſhorter than it was.

The next Queſtion that did ariſe, was about the Publiſhing of it, whether my Lords the Biſhops had Publiſhed it, and it was inſiſted upon, That no body could prove the Delivery of it to the King; it was proved, the King gave it to the Council, and my Lords the Biſhops were called in, and there they acknowledged their Hands; but no body could prove how it came to the King's Hands. Upon which, we were all of Opinion, That it was not ſuch a Publiſhing, as was within the Information; and I was going to have directed you to find my Lords the Biſhops Not Guilty: But it hapned, that being Interrupted in my Directions, by an Honeſt, Worthy, Learned Gentleman, the Kings Council took the Advantage, and informing the Court that they had further Evidence for the King, we ſtaid till my Lord Preſident came, who told us how the Biſhops came to him to his Office at *White-hall*, and after they had told him their Deſign, That they had a mind to Petition the King, they asked him the Method they were to take for it, and deſired him to help them to the Speech of the King: And he tells them he will acquaint the King with their Deſire, which he does; and the King giving leave, he comes down and tells the Biſhops, that they might go and ſpeak with the King when they would; and (ſays he) I have given Direction that the Door ſhall be opened for you, as ſoon as you come. With that the Two Biſhops went away, and ſaid, they would go and fetch their other Brethren, and they did bring the other Four, but my Lord Archbiſhop was not there; and immediately when they came back, they went up into the Chamber, and there a Petition was Delivered to the King. He cannot ſpeak to that particular Petition, becauſe he did not read it, and that is all that he knew of the Matter; only it was all done the ſame Day, and that was before my Lords the Biſhops appeared at the Council.

Gentlemen, after this was proved, then the Defendants came to their Part; and theſe Gentlemen that were of Council for my Lords let themſelves into their Defence, by notable Learned Speeches, by telling you that my Lords the Biſhops are Guardians to the Church, and great Peers of the Realm, and were bound in Conſcience to take care of the Church. They have Read you a Clauſe of a Statute, made in Queen *Eliz.* time, by which they ſay, my Lords the Biſhops were under a Curſe, if they did not take care of that Law. Then they ſhew you ſome Records; One in *Richard* the Seconds time, which they could make little of, by reaſon their Witneſs could not Read it; but it was in ſhort, a Liberty given to the King, to Diſpenſe with the Statute of Proviſors. Then they ſhew you ſome Journals of Parliament; Firſt in the Year 1662. where the King had Granted an Indulgence and the Houſe of Commons Declared it was not fit to be done, unleſs it were by Act of Parliament. And they Read the King's Speech, wherein he ſays, he wiſh'd he had ſuch a Power, and ſo likewiſe that in 1672. which is all nothing, but Addreſſes and Votes, or Orders of the Houſe, or Diſcourſes, either the King's Speech, or the Subjects Addreſſes; but theſe are not Declarations in Parliament, that is inſiſted upon by the Council for the King, That what is a Declaration in Parliament is a Law, and that muſt be by the King, Lords, and Commons; the other is but common Diſcourſe, but a Vote of the Houſe, or a Signification of their Opinion, and cannot be ſaid to be a Declaration in Parliament: Then they come to that in 1685. where the Commons take notice of ſomething about the Soldiers in the Army that had not taken the Teſt, and make an Addreſs to the King about it; but in all theſe things (as far as I can obſerve) nothing can be gathered out of them, one way or other, it is nothing but Diſcourſes. Sometimes this Diſpenſing Power has been allowed, as in *Ric.* 2. time; and ſometimes it has been denied, and the

the King did once wave it; Mr. Sollicitor tells you the Reaſon, There was a Lump of Money in the Caſe: But I wonder indeed to hear it come from him.

Mr. *Soll. Gen.* My Lord, I never gave my Vote for Money, I aſſure you.

L. C. Juſt. But thoſe Conceſſions which the King ſometimes makes for the Good of the People, and ſometimes for the Profit of the Prince himſelf; (but I would not be thought to diſtinguiſh between the Profit of the Prince, and the Good of the People, for they are both one; and what is the Profit of the Prince is always for the Good of the People;) but I ſay, thoſe Conceſſions muſt not be made Law, for that is reſerved in the King's Breaſt, to do what he pleaſes in it at any time

The truth of it is, the Diſpenſing Power is out of the Caſe, it is only a Word uſed in the Petition; but truly I will not take upon me to give my Opinion in the Queſtion, to determine that now, for it is not before me: The only Queſtion before me is, and ſo it is before you, Gentlemen, it being a Queſtion of Fact, Whether here be a certain Proof of a Publication? And then the next Queſtion is a Queſtion of Law indeed, Whether if there be a Publication proved, it be a Libel?

Gentlemen, upon the point of the Publication, I have ſummed up all the Evidence to you; and if you believe, that the Petition which theſe Lords preſented to the King was this Petition, truly, I think, that is a Publication ſufficient; if you do not believe it was this Petition, then my Lords the Biſhops are not Guilty of what is laid to their Charge in this Information, and conſequently there needs no Inquiry whether they are Guilty of a Libel: But if you do believe, that this was the Petition they preſented to the King, then we muſt come to Inquire whether this be a Libel.

Now, Gentlemen, any thing that ſhall diſturb the Government, or make Miſchief and a Stir among the People, is certainly within the Caſe of *Libellis Famoſis*; and I muſt in ſhort give you my Opinion, I do take it to be a Libel. Now, this being a point of Law, if my Brothers have any thing to ſay to it, I ſuppoſe they will deliver their Opinions.

Mr. *Juſt. Holloway.* Look you, Gentlemen, it is not uſual for any Perſon to ſay any thing after the Chief Juſtice has ſummed up the Evidence, it is not according to the Courſe of the Court; but this is a Caſe of an Extraordinary Nature, and there being a point of Law in it, it is fit every body ſhould deliver their own Opinion: The Queſtion is, whether this Petition of my Lords the Biſhops be a Libel, or no; Gentlemen, the End and Intention of every Action is to be Conſidered, and likewiſe, in this Caſe, we are to Conſider the Nature of the Offence that theſe Noble Perſons are Charged with; it is for delivering a Petition, which, according as they have made their Defence, was with all the Humility and Decency that could be: So that if there was no ill Intent, and they were not (as it is nor can be pretended they were) Men of Evil Lives, or the like, to deliver a Petition cannot be a Fault, it being the Right of every Subject to Petition: If you are ſatisfied there was an ill Intention of Sedition, or the like, you ought to find them Guilty; but if there be nothing in the Caſe that you find, but only that they did deliver a Petition to ſave themſelves harmleſs, and to free themſelves from blame, by ſhewing the Reaſon of their Diſobedience to the King's Command, which they apprehended to be a Grievance to them, and which they could not in Conſcience give Obedience to; I cannot think it is a Libel: It is left to you, Gentlemen, but that is my Opinion.

L. C. J. Look you, by the way, Brother, I did not ask you to ſum up the Evidence, (for that is not uſual) but only to deliver your Opinion, whether it be a Libel, or no.

Mr. *Juſt. Powel.* Truly, I cannot ſee, for my part, any thing of Sedition, or any other Crime, fixed upon theſe Reverend Fathers, my Lords the Biſhops.

For, Gentlemen, to make it a Libel it muſt be falſe, it muſt be malicious, and it muſt tend to Sedition; as to the Falſhood, I ſee nothing that is offered by the King's Council, nor any thing as to the Malice: It was preferred with all the Humility and Decency that became the King's Subjects to approach their Prince with.

Now, Gentlemen, the Matter of it is before you; you are to conſider of it, and it is worth your Conſideration, they tell His Majeſty, It is not out of averſeneſs to pay all due Obedience to the King, nor out of a want of Tenderneſs to their diſſenting Fellow Subjects, that made them not perform the Command impoſed upon them; but they ſay, That becauſe they do conceive, that the thing that was commanded them was againſt the Law of the Land, therefore they do deſire His Majeſty, that he would be pleaſed to forbear to inſiſt upon it, that they ſhould perform that Command which they take to be illegal.

Gentlemen, we muſt conſider what they ſay is illegal in it; they ſay, they apprehend the Declaration is illegal, becauſe it is founded upon a diſpenſing Power, which the King claims, to diſpenſe with the Laws concerning Eccleſiaſtical Affairs.

Gentlemen, I do not remember in any Caſe in all our Law, and I have taken ſome Pains upon this Occaſion to look into it, that there is any ſuch Power in the King, and the Caſe muſt turn upon that, in ſhort; If there be no ſuch diſpenſing Power in the King, then that can be no Libel which they preſented to the King, which ſays, that the Declaration, being founded upon ſuch a pretended Power, is illegal.

Now Gentlemen, this is a Diſpenſation with a Witneſs, it amounts to an Abrogation and utter Repeal of all the Laws; for I can ſee no Difference, nor know of none in Law, between the King's Power to diſpenſe with Laws Eccleſiaſtical, and his Power to diſpenſe with any other Laws whatſoever: If this be once allowed of, there will need no Parliament, all the Legiſlature will be in the King, which is a thing worth conſidering, and I leave the iſſue to God and your Conſciences.

Mr. *Juſt. Allybone.* The ſingle Queſtion that falls to my ſhare, is, to give my Senſe of this Petition, whether it ſhall be in Conſtruction of Law a Libel in it ſelf, or a thing of great Innocence; I ſhall endeavour to expreſs my ſelf in as plain Terms as I can, and as much as I can, by way of Propoſition.

And I think, in the firſt place, That no Man can take upon him to write againſt the actual Exerciſe of the Government, unleſs he have leave from the Government, but he makes a

Libel, be what he writes true or falſe; for if once we come to impeach the Government by way of Argument, 'tis the Argument that makes it the Government, or not the Government: So that I lay down that in the firſt place, That the Government ought not to be impeached by Argument, nor the Exerciſe of the Government ſhaken by Argument; becauſe I can manage a Propoſition in it ſelf doubtful, with a better Pen than another Man: This ſay I, is a Libel.

Then I lay down this for my next Poſition, That no private Man can take upon him to write concerning the Government at all; for what has any private Man to do with the Government, if his Intereſt be not ſtirred or ſhaken? It is the buſineſs of the Government to manage Matters relating to the Government; it is the buſineſs of Subjects to mind only their own Properties and Intereſt: If my Intereſt is not ſhaken, what have I to do with Matters of Government? They are not within my Sphere: If the Government does come to ſhake my particular Intereſt, the Law is open for me, and I may redreſs my ſelf by Law: And when I intrude my ſelf into other Mens buſineſs, that does not concern my particular Intereſt, I am a Libeller.

Theſe I have laid down for plain Propoſitions; now then let us conſider further, Whether if I will take upon me to contradict the Government, any ſpecious Pretence that I ſhall put upon it ſhall dreſs it up into another Form, and give it a better Denomination; and truly I think 'tis the worſe, becauſe it comes in a better Dreſs; for by that Rule, every Man that can put on a good Vizard, may be as miſchievous as he will to the Government at the bottom; ſo that whether it be in the form of a Supplication, or an Addreſs, or a Petition, if it be what it ought not to be, let us call it by its true Name, and give it its right Denomination, It is a Libel.

Then, Gentlemen, conſider what this Petition is; This is a Petition relating to ſomething that was done and ordered by the Government. Whether the Reaſons of the Petition be true or falſe, I will not examine that now, nor will I examine the Prerogative of the Crown, but only take notice that this relates to the Act of the Government: The Government here has publiſhed ſuch a Declaration as this, that has been read, relating to Matters of Government; and ſhall, or ought, any body to come and impeach that as illegal, which the Government has done? Truly in my Opinion, I do not think he ſhould or ought; for by this Rule may every Act of the Government be ſhaken, when there is not a Parliament *de Facto* ſitting.

I do agree, That every Man may Petition the Government, or the King, in a matter that relates to his own private Intereſt; but to meddle with a matter that relates to the Government, I do not think my Lords the Biſhops had any Power to do more than any others: When the Houſe of Lords and Commons are in Being, it is a proper way of applying to the King, there is all the openneſs in the World, for thoſe that are Members of Parliament, to make what Addreſſes they pleaſe to the Government, for the rectifying, altering, regulating, and making of what Law they pleaſe; but if every private Man ſhall come and interpoſe his Advice, I think, there can never be an End of adviſing the Government; I think, there was an inſtance of this in King *James*'s Time, when by a ſolemn Reſolution it was declared to be High Miſdemeanour, and next to Treaſon, to petition the King to put the Penal Laws in Execution.

Mr. *J. Powel.* Brother, I think, you do miſtake a little.

Mr. *J. Allybone.* Brother, I dare rely upon it, that I am Right; it was ſo declared, by all the Judges.

Mr. *Sol. Gen.* The Puritans preſented a Petition to that purpoſe, and in it they ſaid, if it would not be granted, they would come with a great number.

Mr. *J. Powel.* Ay, there it is.

Mr. *J. Allybone.* I tell you, Mr. Sollicitor, the Reſolution of the Judges is, That ſuch a Petition is next Door to Treaſon, a very great Miſdemeanour.

Mr. *J. Powel.* They accompanying it with Threats of the Peoples being Diſcontented.

Mr. *J. Allybone.* As I remember, it is in the Second Part of the Folio 35, or 37. where the Reſolution of the Judges is, That to frame a Petition to the King, to put the Penal Laws in Execution, is next Door to Treaſon; for (ſay they) no Man ought to intermeddle with Matters of Government without leave of the Government.

Mr. *Serj. Pemberton.* That was a Petition againſt the Penal Laws.

Mr. *J. Allybone.* Then I am quite miſtaken indeed, in caſe it be ſo.

Mr. *Serj. Trinder.* That is not material at all, which it was.

Mr. *Pollixfen.* They there threatned, unleſs their Requeſt were granted, ſeveral Thouſands of the King's Subjects would be diſcontented.

Mr. *J. Powel.* That is the Reaſon of that Judgment, I affirm it.

Mr. *J. Allybone.* But then I'll tell you, Brother, again, what is ſaid in that Caſe that you hinted at, and put Mr. Sollicitor in mind of; For any Man to raiſe a Report that the King will, or will not, permit a Toleration, if either of theſe be diſagreeable to the People, whether he may, or may not, It is againſt Law; for we are not to meaſure things from any Truth they have in themſelves, but from that Aſpect they have upon the Government; for there may be every tittle of a Libel true, and yet it may be a Libel ſtill: So that I put no great ſtreſs upon that Objection, That the Matter of it is not falſe; and, for Sedition, it is that which every Libel carries in it ſelf; and as every Treſpaſs implies *Vi & Armis*, ſo every Libel againſt the Government carries in it Sedition, and all the other Epithets that are in the Information; This is my Opinion as to the Law in general.

I will not Debate the Prerogatives of the King, nor the Privileges of the Subject; but as this Fact is, I think, theſe venerable Biſhops did meddle with that which did not belong to them; they took upon them, in a petitionary way, to contradict the actual Exerciſe of the Government, which I think no particular Perſons, or ſingle Body may do.

L. C. J. Gentlemen of the Jury, Have you a Mind to drink before you go?

Jury. Yes, my Lord, if you pleaſe.

[*Wine was ſent for, for the Jury.*]

Juryman. My Lord, we humbly pray, that your Lordſhip will be pleaſed to let us have the Papers that have been given in Evidence.

L. C. J.

L. C. J. What is that you would have, Sir?

Mr. *Sol. Gen.* He deſires this, my Lord, That you would be pleaſed to direct that the Jury may have the uſe of ſuch Writings and Statute-Books, as may be neceſſary for them to make uſe of.

L. C. J. The Statute Book they ſhall have.

Mr. *Sol. Gen.* But they can have no Papers, but what are under Seal.

Mr. *Serj. Levinz.* They may have them by Conſent, and they may have a Copy of the Information.

L. C. J. They ſhall have a Copy of the Information, and the Declarations under Seal.

Mr. *Pollixfen.* If they have thoſe, and the Libel, (as they call it) they will not need a Copy of the Information.

Mr. *Att. Gen.* My Lord, we pray that your Lordſhip would be pleaſed to aſcertain what it is they ſhall have.

L. C. J. They ſhall have a Copy of the Information, the Libel, and the Declarations under the Great Seal.

Mr. *Sol. Gen.* But not the Votes of the Houſe of Commons, nor the Journals, for they are not Evidence.

L. C. J. No, I don't intend they ſhall.

Sir *Rob. Sawyer.* My Lord, we pray they may have the whole Petition.

Mr. *J. Holloway.* That is, with the Direction, and Prayer, you mean.

Mr. *Att. Gen.* Yes, with all our Hearts.

[*Then the Court aroſe, and the Jury went together to conſider of their Verdict, and ſtayed together all Night, without Fire or Candle.*

On Saturday *the* 30th *day of* June, Anno Dom. 1688. *about Ten of the Clock in the Morning, the Archbiſhop, and the reſt of the Biſhops, came again into the Court, and immediately after the Jury were brought to the Bar.*

Sir *Sam. Aſtry.* Cryer, Take the Appearance of the Jury. Sir *Roger Langley.*

Sir *Roger Langley.* Here.

Cryer. Vous avez, *&c.*

[*And ſo all the reſt were called, and anſwered*] *Then Proclamation for Silence was made.*

Sir *Sam. Aſtry.* Gentlemen, are you agreed on your Verdict?

Jury. Yes.

Sir *Sam. Aſtry.* Who ſhall ſay for you?

Jury. Foreman.

Sir *Sam Aſtry.* Do you find the Defendants, or any of them, guilty of the Miſdemeanour whereof they are Impeached, or not guilty?

Foreman. Not Guilty.

Sir *Sam. Aſtry.* Then hearken to your Verdict, as the Court hath Recorded it——

You ſay, the Defendants, and every of them, are *Not Guilty* of the Miſdemeanour whereof they are Impeached; and ſo you ſay all?

Jury. Yes.

[*At which there were ſeveral great Shouts in the Court, and throughout the Hall.*]

Mr. Sollicitor General, taking Notice of ſome Perſons in Court that Shouted, moved very earneſtly that they might be committed; whereupon a Gentleman of Grays-Inn *was laid hold on, but was ſoon after diſcharged. And after the Shouting was over, the Lord Chief Juſtice reproving the Gentleman, ſaid,*

L. C. J. Sir, I am as glad as you can be, that my Lords the Biſhops are acquitted; but your manner of rejoycing here in Court is Indecent, you might rejoyce in your Chamber, or elſewhere, and not here.

[*Then ſpeaking to Mr. Attorney, he ſaid,*]

Have you any thing more to ſay to my Lords the Biſhops, Mr. Attorney?

Mr. *Att. Gen.* No, my Lord.

[*Then the Court aroſe, and the Biſhops went away.*]

The Tryal of Philip Standsfield, *Son to Sir* James Standsfield *of* New-Milns, *for the Murder of His Father, and other Crimes Libel'd againſt Him.*

Curia Juſticiaria *S. D. N.* Regis, tenta in prætorio *Burgi de Edinburgh*, Sexto die Menſis *Februarii* 1688. per Nobilem & Potentem Comitem *Georgium* Comitem de *Linlithgow*, Domin um *Livingſtoun*, &c. Juſticiarium Generalem totius Regni *Scotiæ*, & honorabiles viros Dominos *Joannem Lockhart* de *Caſtle-hill*, *Davidem Balfour*, de *Forret*, *Rogerum Hodge* de *Harcaſe*, & *Johannem Muray* de *Drumcairn*, Commiſſionarios Juſticiariæ dicti *S. D. N.* Regis. *Curia Legitime affirmata.*

INTRAN.

Philip Standsfield, *Eldeſt lawful Son to Umquhile Sir* James Standsfield *of* New-Milns, *Priſoner within the Tolbooth of* Edinburgh.

INdyted and Accuſed at the Inſtance of Sir *John Dalrymple* Younger of *Stair*, His Majeſties Advocate for His Highneſs's Intereſt: That where notwithſtanding by the Law of God, the Common Law, Law of Nations, Laws and Acts of Parliament of this Kingdom, and conſtant Practice thereof, the expreſſing of malicious and ſeditious Words to the diſdain of His Sacred Majeſties Perſon, and contempt of His Royal Government, ſuch as drinking or wiſhing Confuſion to His Majeſty, is High-Treaſon, particularly by the 2d *Act.* 2d *Seſſ. Par.* 1ſt King *Charles* IId. of ever glorious Memory: The Plotting, Contriving or Intending Death or Deſtruction to the King's *Majeſty*, or any bodily harm, tending to Death or Deſtruction, or who ſhall by Writing, Printing, or other malicious Plotting,

and adviſed ſpeaking, expreſs and declare ſuch their Treaſonable Intentions, after ſuch perſons, being legally Convicted thereof, they ſhall be deemed, declared and adjudg'd Traytors: And the Curſing, Beating, Invading, or Aſſaſſinating of a Parent by a Child above the Age of ſixteen Years, who is not Mad and Furious, is puniſhable by Death, and Confiſcation of Moveables: And of all other Murders, Parricide is the moſt atrocious and unnatural; and Murder under Truſt, is puniſhable as Treaſon with forfaulture of Life, Land and Goods, and particularly by the 20 *Act.* 1ſt *Seſſ.* 2d *Par.* K. *Ch.* 2d. The King's Majeſty and Eſtates of Parliament, conſidering how great and atrocious a Crime it is for Children to Beat or Curſe their Parents, and how the Law of God hath pronounced juſt Sentence of Death againſt ſuch as ſhall either of theſe ways injure either of their Parents; therefore the King and Eſtates of Parliament did Statute and Ordain, *That whoſoever Son or Daughter above the Age of Sixteen Years, not being Diſtracted, ſhall Beat or Curſe either their Father or their Mother, ſhall be put to Death without Mercy.* And ſicklike by the 31 *Act*, 11 *Par.* K *Ja.* 6th. It is Statuted and Ordained, *That the Murder or Slaughter of whatſomever of the Leidges, where the Party ſlain is under the truſt, credit, aſſurance, and power of the Slayer, all ſuch Murder or Slaughter to be committed in time coming, the ſame being lawfully tryed, and the Perſon dilated found guilty by an Aſſiſe thereof ſhall be Treaſon, and the Perſon found culpable ſhall forfault Life and Goods*; as in the ſaid Laws and Acts of Parliament at more length is contained. Nevertheleſs it is of Verity, that the ſaid *Philip Standsfield* ſhaking off all Fear of God, the Bonds and Ties of Nature and Chriſtianity, Regard and Obedience to the ſaid Laws and Acts of Parliament, did dare and preſume to commit the ſaid horrid and deteſtable Crimes, in ſwa far as upon the firſt, ſecond, third, or one or other of the Days of the Moneths of *June*, *July*, *Auguſt*, or *September* laſt, by paſt, one or other of them, he did, within the Houſe and Kitchin of *New milns*, call for Ale to Drink ſome Healths, and in the preſence of *John Robiſon*, then his Fathers Servant, *Agnes Bruce*, likewiſe his Fathers Servitrix, and ſeveral others, he did, as a moſt villanous and avowed Traitor, preſume and dare to begin a Health to the Confuſion of his Sacred Majeſty, his native Soveraign, and did drink off the ſame, and cauſed others in his Company to do the like. And ſicklike Sir *James Standsfield* of *New-milns* his Father, having cauſed Educat and bring him up Decentlie, and in plenty conform to his Rank and Quality, and having left no means uneſſayed for his Literature, Education and Subſiſtence; yet he being a profligate and debauched Perſon, did commit, and was acceſſory to ſeveral notorious Villanies, for which, both at home and abroad, he was apprehended and detained Priſoner, as in the *Marſhal-Sea-Priſon* in *Southwark*, in the publick Priſons of *Antwerp* and *Orleance*, and ſeveral other places; and tho' his Father out of his natural compaſſion to him, did cauſe releaſe him out of theſe Priſons, in which he was ſo juſtly confined, he no ſooner had his Liberty, than he of new invented and went about his villanous Practices and Debauches: And his Father at laſt perceiving that nothing could reclaim him from theſe and the like proceedings, having ſignified his inclinations to Diſheriſh him, and in order thereto having diſponed his Eſtate in Favours of *John Standsfield* his ſecond Son; the ſaid *Philip* did thereupon conceive, harbour and entertain ane Helliſh Malice and Prejudice againſt the ſaid Sir *John Standsfield* his Father, and moſt barbarouſly did declare, threaten and vow at ſeveral times, that he would cut his Throat. And particularly upon the firſt, ſecond, or third, or remanent days of the Months of the Year 1680, within the Houſe of *James Smith* in *Nungate* or *Haddingtoun*: and upon the firſt, ſecond, or third, or one or other of the days of the Months of *January*, *February*, *March*, and remnant Months of the Year 1687, within the Houſe of *James Baikbie* Fermorer in *New-Milns*; and within his Fathers own Houſe of *New Milns*, and in the Houſe of *William Scot* there; and upon the firſt, ſecond, third, or one or other of the days of the Months of *January*, *February*, *March*, and remanent Months of the Year of God 1683, 1684, and 1685 Years, when he was both in *Bruſſels* and *Breda*, and ſeveral other places, both in *Holland* and *Flanders*, and in Priſons within which he was detained in the City of *London* and *Southwark*, or upon one or other of the days, of one or other of the Months of the ſaids Years, or either of them moſt wickedly, unnaturally, and bitterly Rail upon, abuſe and Curſe the ſaid Sir *James Standsfield*, his natural and kindly Parent. And being tranſported with rage and malice, he did, contrary to the light and tyes of Nature, nor once, but often, and frequently curſe his Father, by bidding, and praying the Devil to take him, and the Devil rive him. God damm him, and ſwear, if he had a Sword, he would run it through him, and if ever he came to *Scotland*, he would be avenged upon him. And particularly upon the day of *November* laſt, which was the laſt time his Father went to *Edinburgh*; he did moſt impiouſly, and unnaturally imprecate, God let him never return, and God let him never ſee his Face. And frequently when he ſaw his Fathers diet taken to him; he uſed to ſay, God grant he may choak upon it; and at other occaſions, when his Father refuſed to eat, he was in uſe to ſay, God let never more be in his Stomach than was in it then. And upon the firſt, ſecond, or third, or one, or other of the days of the Months of *September*, *October*, or *November*, laſt by paſt, or one or other of them, His Mother being recovered out of a Swond, and having ſaid to him, *Philip*, ye will ſhortly want your Mother, which will be a gentle Viſitation to Sir *James* your Father. To which he did Anſwer: By my Soul, my Father ſhall be dead before you, Mother; and about eight days after, he upon the like occaſion did renew the ſame Words: As alſo he was in uſe to declare, that though at preſent he had neither Cloaths nor Money, yet ſhortly (and no body did think how ſoon) he would be Laird of all, and then would uſe other Perſons as they did him now: And at other times declared, that before *Chriſtmas* he would be Laird of all; which Curſes and Imprecations, he the ſaid *Philip Standsfield*, by a continual Habit, uſed, and repeited theſe ſeveral Years by paſt; and lately ſome few Months or Weeks, before his Fathers Murder. And not ſatisfied therewith, the ſaid *Philip* did proceed to that degree of unnatural Cruelty, and malicious Spite and Enmity againſt his Father; that upon the firſt, ſecond, third, or one or other of the days of the Months of *January*, *February*, *March*, and remanent Months of the years of God, 1680, 1681, 1682, 1683, and 1684 years, or one or other

other of the Days, of one or other of the Months, of one or other of the ſaids Years; he did attempt to aſſaſſinate, and offered Violence to his Fathers Perſon, and did chaſe and purſue him upon the King's High-way at *Lothian burn*, and did fire Piſtols upon his Father. And likewayes upon one or other of the Days of one or other of the Months, of one or other of the Years of God above ſpecified, he did attempt to aſſaſſinat his Father for his Life, at *Culterallors*; and did fire Piſtols upon him: And his Father being afraid of his Life, and under the apprehenſion of Violence, from the cruel and bloudy Hands of the ſaid *Philip*, his unnatural Son, He did to ſeveral Perſons both of Quality, and intire Reputation, declare that the ſaid *Philip* his Son, had both attempted to aſſaſſinate, and offered Violence to his Perſon, and that he was deviſing, and contriving his Death. And the ſaid Sir *James Standsfield* his Father, having upon the day of *November* laſt, gone from the City of *Edinburgh*, to his own Houſe of *New milns*, and about Ten a Clock at Night, or thereby having gone to his own Chamber, in order to his reſt, and being alone in the Room, under the Credit, Truſt, and Aſſurance of the ſaid *Philip* his Son, and his own Servants within his own Family; The ſaid *Philip* did conſult, and adviſe, and correſpond with ſome other Perſones, within and about the Houſe for the time, to aſſaſſinat and and cruelly murder his ſaid Father, and perticularly with *George Thomſon* in *New-Milns*, and *Helen Dickſon* his Spouſe, and *Janet Johnſtoun* Spouſe to *John Nicols*, there, in the Houſe of the ſaid *George Thomſon* many times, particularly the *Saturdays* Night, immediately preceeding the Murder, where he curſed his Father, and ſaid he ſhould ſhortly make an end of him, and be Maſter of all: And accordingly he and they did Murder and Strangle him in his Bed-Chamber, and in the dead time of the night, did carry and tranſport him from the ſaid Room, to the Water, near by the Houſe, and laid his Body down upon the Waterſide, and tyed a Stone about his Neck, to make him ſink in the Water; and before he was throwen therein, he went back with his Accomplices to a little Kiln near by, and conſulted and adviſed, whether it was more fit to throw him in the Water, with the Stone about his Neck, to make him ſink, or to take away the Stone, leaſt when he ſhould be found, it might thereby appear that the Stone had been tyed by ſome other hand than his own; and at laſt reſolved to take away the Stone, and throw his Body in the Water, which they returning, did accordingly: And ſome Perſons being accidentally lying in the Houſe at the time, they did hear a Noiſe of many Tongues and Voices, to their great Terror and Amazement; And the next Morning very early, ſome of the Servants in the Houſe, having come to the Room, where his ſaid Father did lye, and having miſſed him out of the Room, gave notice thereof, to ſome others of the Servants. He declared that he had been ſeeking him about the Water-pools; and a Noiſe and Cry having ariſen, Search and Inquiry was made for his ſaid Father: (and by him ſeemingly amongſt the reſt) And after ſome time his Body was found in the Water hard by his own Houſe, and being dead, and his Neck broken before he was thrown in the Water, his Body did neither ſink to the ground, nor receive Water, (as all drowned Bodies are in uſe to do) and he knowing where his Fathers Body had been put, went on the Sabbath Morning directly to the place where his Body was in the Water, and ſtood a conſiderable ſpace on the Water-ſide, directly oppoſite to the Body, with his Eyes fixed on the ſame, before his Body was found or knowen to any others than the Murtherers; and when *John Topping* (a ſtanger) paſſing that way, and ignorant of the whole Matter, or that Sir *James* was amiſſing, called to him, and asked, who that was in the Water: He made no anſwer, but went away from that place ſtraight to *New-Milns*, and gave no intimation to him, or any other Perſon what he had ſeen in the Water, but appeared ſurprized when his Body was found there, by other Perſons; and his Fathers Body being taken out of the Water, the ſame was by his order, carried to a dark Out-houſe; and though he was deſired by the Friends and Servants preſent, to ſuffer his Fathers dead Body to be carried to his own Houſe, and kept therein, and not to be buried till his Friends in *Edinburgh* and elſewhere, and Phyſicians in *Haddingtoun*, or near by, might ſee the ſame. Yet he refuſed ſo to do, and cauſed bury the dead Body of his Father privately, and in haſte. And the Noiſe having ſpread abroad, that his Father had been barbarouſly Murdered by him, and his Accomplices: Order was given by theſe in Authority, to cauſe open the Grave that Phyſicians and expert Chirurgians might inſpect his Body, and make Report anent the Truth of the Matter: And accordingly by the Report of the ſaids Chirurgians who inſpected the Body, it did appear, that his ſaid Father was cruelly ſtrangled and murdered, and not drowned, and that he had been caſt in the water of purpoſe to conceal the ſame: And when his Father's dead body was ſighted and inſpected by Chirurgians, and the clear and evident ſigns of the Murder had appeared, the Body was ſewed up, and moſt carefully cleaned, and his neareſt Relations and Friends were deſired to lift up his Body to the Coffin: And accordingly *James Row*, Merchand, (who was in *Edinburgh* in the time of the Murder) having liſted the Left ſide of Sir *James* his Head and Shoulder, and the ſaid *Philip* the Right ſide, his Father's Body, though carefully cleaned, as ſaid is, ſo as the leaſt Blood was not on it, did (according to God's uſual Method of diſcovering Murders) blood afreſh upon him, and defiled all his hands, which ſtruck him with ſuch a terror, that he immediately let his Father's Head and Body fall with Violence, and fled from the Body, and in conſternation and confuſion, cryed, *Lord, have Mercy upon me*, and bowed himſelf down over a Seat in the Church (where the Corps were inſpected) wiping his Father's innocent blood off his own murdering Hands upon his Cloaths. By all which it is manifeſt, that he did moſt traiterouſly expreſs his hatred and malice to his Majeſties Sacred Perſon, by wiſhing and drinking to his confuſion, and cauſing others to do the ſame. And likewiſe, that he did not only unnaturally curſe, invade, attempt to aſſaſſinate or beat his ſaid Father, but under truſt and aſſurance, barbarouſly and treaſonable did ſtrangle, kill, and murder him in manner forſaid, and is actor, art and part of the forſaids Crimes, or one or other of them, which being found by an Aſſyſe, he ought to be puniſhed for the treaſonable Crimes above ſpecified, with forefaulture of Life, Land and Goods, and for the other Crimes above-mentioned, Capitally, and with the pains of Death and Confiſcation of Moveables, to the Terror and Example of others to commit the like hereafter.

Purſuers.

Purſuers.

Sir *John Dalrymple*, younger of *Stair*, His *Majeſties* Advocat.

Sir *George Mackenzie*, Advocat.

Procurators in Defence.

Sir *David Thoirs.*

Sir *Patrick Hume.*

Mr *William Moniepenny.*

Mr. *William Dundaſs.*

The Pannal's Procurators produced two Warrands of Privy Council, Commanding them to compeir and plead the Pannals Defence.

SIr *Patrick Hume* for the Pannal (always denying the Inditement, and whole members and qualifications thereof) alleadges, That as to the firſt part of the Indictment, in relation to the drinking an Health to the Confuſion of his Sacred *Majeſty*, as it is moſt calumnious, ſo it is not to be ſuppoſed, that any man in his right wits would have been guilty of ſuch a thing; And it is poſitively offered to be proven, that at or about the time libel'd, and ſeveral times before and after, the Defender did moſt heartily and chearfully in ſeveral Companies drink the King's Health, and upon all occaſions he was ready to teſtifie his Loyalty to the King, and particularly the time of the Invaſion by the late Duke of *Monmouth* in *England*, where he did enter himſelf voluntarly a Souldier in the Earl of *Dumbarton*'s Regiment, and continued in the King's Army till the Rebels were defeat, and the Voluntiers diſmiſſed.

As to the ſecond part of the Libel, in relation to the Pannal, his alledged committing and being guilty of, and acceſſory to many notour Crimes abroad, and being detained Priſoner in *London*, *Antwerp*, *Orleance*, &c. and that he vented and entertained malice againſt his Father, and that he declared many times that he would cut his Throat, and that he did rail againſt and curſe his Father, by many Imprecations.

It is anſwered, *primo*, That it is abſolutely deny'd, that the Pannal was guilty of, or acceſſory to any notorious Crime abroad, or put in Priſon upon that account, nor is there ſo much as any Crime condeſcended upon.

2. The Defender could not conceive any prejudice againſt his Father, upon the account of Diſponing his Eſtate to his ſecond Son; for he knew nothing thereof till after his Father's deceaſe, that one *Alexander Ainſlie* told him that his Father had made ſuch a Diſpoſition.

3. As to the pretended Expreſſions, that the Defender ſhould have had of Railing, Curſing, and uſing Imprecations againſt his Father, in ſo far as the ſamen are lybel'd to have been done abroad, in *England*, *Holland*, or other places, he cannot be lyable to the Puniſhment inflicted by the Law of this Kingdom, becauſe when a party commits a Crime in another Nation, he is only to be puniſhed according to the Law of the place where the Crime was committed, and not according to the Law of the Nation where he is a Subject, or has his Dwelling: As is clear by the Common Law, Authentick *Cod*: *ubi de criminibus agi oportet. Qua in provincia quis delinquit, aut in qua pecuniarum aut criminum reus ſit, ſive de terra, ſive de terminis, ſive de poſſeſſione, ſive de proprietate, ſive de hypotheca, aut de alia qualibet occaſione, vel de qualibet re fuerit reus, illic jure ſubjaceat, quod jus eſt perpetuum.* In that Nation where any Perſon commits a Crime, or is lyable to anſwer upon any account whatſomever, he is to be judged by the Law of that place, which is eſtabliſhed as a perpetual Law, and *Matthæus de Criminibus*, in his Title, *de pœnis*, is expreſs of the ſame Opinion.

4. As to all thoſe pretended Expreſſions of railing, curſing, and threatning, lybel'd, that were before *March*, 1685. The Defender is ſecured by the Act of Indemnity, by which all Crimes are indemnified, preceeding that time, againſt the Government and Laws.

5. As to any pretended Expreſſions, of railing and curſing, ſince that time, they being but Injuries alledged done to the Father, he might and did remit the ſamen, in ſo far he did not challenge and purſue the ſame in his own time, and this is clear from the Common Law, *Carpzov. Part* 2. *Queſt.* 65. *Actio autem injuriarum nec activè nec paſſive in Hæredes tranſit etiamſi mortuus illatas injurias ignoraverit. Inſtitut. lib.*4. *tit.*12. *par.* 1. *de perpetuis temporalibus action. Leg.* 10. *par.* 2. *ff. ſi quis cautionibus in judicio ſiſten.* And *leg.* 13. *ff. de injuriis, injuriarum actio neque hæredi neque in hæredem datur*; As alſo it is a Principle in Law, that *diſſimulatione tollitur injuria*; and if it could be made appear, that the Pannal had any ſuch Expreſſions, the Father did diſſimulat and paſs from the ſame, in ſo far as by a Letter, dated in *June* laſt, written by the Father to the Pannel, he orders him to take in his Chamberlain Accompts of the Rents of his Lands, and of any Money he had received from the Tenements, or for the Corns ſold, and that he expects he will do the ſame exactly, and recommends to him, to be careful of all his Affairs, and ſubſcribes himſelf to be his Loving Father; By which it is evident, that all former Differences (if any were) betwixt them were then taken away.

As to the third part of the Indytement, in relation to the ſeveral Acts and Qualifications inſiſted upon: To inferr, that the Defender had Acceſſion to his Father's death. It is anſwered, (*primo*) That the Indytement, in ſo far as it is founded upon the 51. *Act Par. K. Ja.* 6. in relation to the Murder under truſt, which is declared to be puniſhable as Treaſon, is not relevant: Becauſe the Father cannot in Law be ſaid to be under truſt and aſſurance of the Son, and that Act of Parliament takes only place in Caſes where a Man is invited to his Neighbours Houſe, or of an Traveller being in an Inn, and that he be murdered under that truſt, and the ſame Act of Parliament being founded on in the Caſe of *Swinton*, who killed his Wife, in the year 1666. the Inditement was reſtricted to ſimple Slaughter. And in the Caſe of Maſter *James Oliphant*, in the year 1665, The Lords of the Seſſion found, that a Son's killing his Mother, was not Murder under truſt, and ſo he was not puniſhable by that Act of Parliament, as guilty of the Crime of Treaſon.

2. The Acts and Qualifications condeſcended on to infer the Defenders Acceſſion to his Father's death, are but very remote and uncertain, for as to that Expreſſion, That the Defender is alledged to have threatned his Fathers death, It is the Opinion of all Lawyers, who have written upon the Subject, that that is but a very remote Preſumption. And as *Carpzovius* expreſſes it, *Part.* 3. *Queſt.* 121 *Numb.* 51. *quod eſt indicium admodum periculoſum, quippe cum homines ſæpe nil minus faciant quam quod minas exequantur & ira*

iracundia agitatus minas de crimine perpetrando ſæpe jactet, ipſo tamen animo fervore paulo poſt diſcuſſo, cohibeat manus, & abſtineat a facinore illo quod forſan ab alio poſtea committitur. And *Paris de puteo* gives an inſtance in his *Tractat de ſyndicatu* upon the word *Tortura*; and *Boverius*, That a Woman ſeeing a Perſon going by her Window, againſt whom ſhe had a Prejudice, and that another having a hatred againſt her, and hearing that ſhe had threatned to cut off that Perſons Leggs, the party that did hear the Woman uſe the threatning, did the thing, upon which the Woman that did threaten, being challenged, and put to the Torture, did confeſs; Yet thereafter it was found, that ſhe was altogether innocent, and that another had done it.

3. As to the pretended Acts of the Defender's alledged purſuing, and invading his Father, and fireing Piſtols at him, at *Lothian burn* and *Culterallors in Annis* 1683, and 1684. As it is moſt groundleſs, ſo if need were it could be made appear by the Perſons who were in company with him at that time, That the Defender, and his Father, were then in intire Friendſhip all alongſt the Journey, and he was ſo far from making any ſuch Attempt, That it can be made appear, that the Defender did behave himſelf towards his Father, with all the Submiſſion and Reſpect that became a Son to have to his Father; But as to theſe and all other Acts preceeding *March*, 1685. the Defender is ſecured by the Act of Indemnity, and as the Defender cannot be purſued for any Crime preceeding that time; neither in Judgment nor out with the ſame, they in effect being no Crimes, being taken away by the Act of Indemnity, they cannot be ſo much as made uſe of as Qualifications or Aggravations to infer another Crime poſterior thereto.

4. As to that pretended Qualification, that when the Defender did touch his Fathers dead body after it was taken out of the Grave, the Corps did bleed.

It is anſwered, That this is but a ſuperſtitious Obſervation without any ground either in Law or Reaſon. And *Carpzovius* relates, *Part* 3. *Queſt.* 122. *Numb.* 31. That ſeveral Perſons upon that ground had been unjuſtly challenged, and that he in his own Experience, had ſeen a dead body bleed in preſence of the Perſon who was not guilty,-as alſo that he has ſeen the body not bleed in preſence of the Perſon that was guilty. And *Mattheus de Criminibus*, is of the ſame Opinion, *Tit.* 16. *de Quæſtionibus*, *Numb.* 12. *de Sanguine porro de Cadavere profluente quod dicitur id de plurimis experimentis comprobetur, tamen cum experimenta falſa ſint; ratio vero idonea nulla reddi poſſit, non putaverim indicium ad torturam ſufficiens eſſe; non enim ſapientis Judicis eſt incerto experimento credere quod certa ratione dirimendum eſt.* And the truth is, the occaſion of the dead bodies bleeding, was that the Chirurgions that came out to viſit the body, did make an Inciſion about the neck, which might be the occaſion of the bleeding, and alſo the very moving of the dead body when it was taken out of the Grave, and out of the Coffin might occaſion the bleeding; eſpecially ſeeing the body did not bleed for ſome time after, which certainly was made by the Motion, and by the Inciſion: As alſo as a further Evidence, that it could not be the Defenders touching the body, the Chirurgions did likeways touch the body as well as he, and ſeveral others preſent, ſo that the bleeding could no more be aſcribed to his touching, than the touching of the other perſons preſent.

5. As to the other Articles lybel'd, relating to the pretended Murder, They are but meer Stories, and the Truth is, and it is offered to be proven, That the Defender having gone to his Chamber and Bed the night before his Father's death, he did not ſtir out of his Bed, nor out of the Roum, till the next morning, that *John Robertſon* his Fathers Servant came to his Chamber, where he was in Bed, and told him that he had been in his Maſter's Roum, and that he could not find him; Upon which the Defender immediately aroſe, and put on his Cloaths, and went out to ſee where his Father was. And ſhortly after word being brought him, by ſome Perſons in the Town, that they did ſee his Father's Body lying in the Water, and it being generally concluded by all, that he had thrown himſelf in the Water, and the body being taken out, and laid in a Low-Roum; it was thought fit by all the Neighbours about, that he ſhould be buried the next day.

6. The particulars lybel'd, to infer the Defender's Acceſſion to his Fathers death, being but remote and uncertain Conjectures, it is a certain principle in Law, that *ex præſumptionibus & conjecturis nemo criminaliter condemnari poteſt*, eſpecially as to a Capital Puniſhment: As is clear from the common Law, *Leg.* 5. *digeſt. de pœnis, ſed nec de ſupplicationibus debere aliquem damnari, ſatius enim eſt Impunitum relinqui facinus nocentis quam Innocentem damnari.* And which is the Opinion of all Lawers, writing upon the Subject; As *Bartol*, upon the foreſaid Law, and *Farin. part.* 3. *oper*: *Crim. Queſt.* 86. and the Lawers by him there cited. And *Muſcard de prob*: *Concluſ.* 223. layes it down as a certain concluſion, *quod Argumenta quantumcunque urgentiſſima, etiamſi eſſent talia quæ mentem indicantis adeo coactarent quod aliud credere non poſſit non tamen ſufficerent ad condemnationem pœnæ corporalis ſed duntaxat pecuniariæ.*

7. The Preſumptions and Qualifications lybel'd, cannot be ſuſtained even to infer an Arbitrary Puniſhment: Becauſe they may and are taken off by other Preſumptions, That either the Father was not murdered, but that in a Frainzie or melancholy fit he had thrown himſelf in the Water: Or at leaſt if he was murdered, that the Defender had no Acceſſion thereto, and the Preſumptions condeſcended upon in behalf of the Defender, eleid the Preſumptions contained in the Inditement, *are theſe.* That it is notourlie known, That his Father was ſubject to melancholly Fits, and that in the Year 1679, the time of Bothwell-bridge, It is offered to be proven, that he was in a fit of Diſtraction; and at another time in his Houſe at the *Netherbow*, he was going to throw himſelf out over the Window, if one *Thomas Lindall* had not come in at the time and pulled him back by the Leggs, when his body was half out at the Window: And ſome few days before he went out of *Edinburgh* laſt, he came to *George Sterling*, *Chirurgeon*, and deſired him to draw blood of him, for a Diſtemper in his Head, which he refuſed, unleſs he had advice from a *Phyſician.* As alſo a day or two before he went out of the Town, he was ſeen reading upon the Book of *Burtouns Melancholly.* And that day when he went out of the Town in company of Mr. *Bell* the Miniſter,

and *Aiton* Merchant in *Haddingtoun*, they obſerved him to be melancholy, diſordered, and more troubled than ordinary; or if it could be made appear, that the Father was murdered, yet it cannot be preſumed that the Defender had any Acceſſion thereto, or that he would have committed ſuch an Act againſt the very Ties and light of Nature: As alſo it appears by the foreſaid letter, written to the Defender by his Father, that they were in intire Friendſhip; as alſo when the ſurmiſe went abroad, that his Father had been murdered, if he had been conſcious to himſelf that he had any Acceſſion thereto, he would have certainly fled the Country, and gone away: But he was ſo far from that, that upon the firſt Rumor of it he came preſently in to *Edinburgh*, and ſeveral days thereafter, it being told him, that he was ſuſpected to have Acceſſion to his Fathers Death, he came voluntarily and entered himſelf in Priſon, that he might undergo the ſtricteſt and ſevereſt Tryal. Which alone is ſufficient, if it were no more to take off all the Preſumptions lybell'd, and to convince the World of the Defender's innocence; and it being a principle in Law, That *una præſumptio tollit aliam*, The Preſumptions adduced for the Defender ought to be preponderat, *Maſcard. Concluſ.* 1205. is poſitive, That *præſumptiones quæ ſtant pro reis prævalent*. As alſo that *Præſumptio affectionis naturalis prævalet contrariis præſumptionibus*. So that upon both theſe Conſiderations, the Preſumptions alledged for the Defender ought to be ſuſtained, to take away the Preſumptions lybel'd, and to free him from the Crime.

His Majeſties Advocate anſwers, That the Libel conſiſts of three Articles, (*Primo*) Treaſon by the Pannal's drinking the King's Confuſion, and by the Murder under Truſt. 2o. The Curſing of a Parent. 3o. The Qualifications inferring the Pannal's Acceſſion to the Murder of his Father.

As to the firſt, it cannot be denied, but that the drinking or wiſhing Confuſion to His *Majeſty*, is the higheſt Act of Contempt, Malice, and Diſdain to his Royal Perſon; and as the Relevancy of this Article is not expreſly contraverted, ſo the atrocity of the Act, and the forcing others to do the ſame upon the common grounds of Law, does clearly infer Treaſon, and it cannot be expected, that ſuch extravagant Words ſhould either be expreſt, or particularly provided againſt by any Law in expreſs Terms; but the nature of the words in expreſs Terms of our Law diſcharging all Speeches to the diſdain of his *Majeſty*, the Contempt of his Authority, do clearly and naturally comprehend the words libelled, and by the common Law, *Ad leg: jul. Maj. crimen læſæ Majeſtatis ad exemplum legis ſcriptæ eſt vindicandum*.

And whereas it is pretended, that theſe words were inadvertantly ſaid, and that it appears by the Tract of the Pannal's Life, and his Readineſs to engage in His *Majeſties* Service, that the words could not be deliberate and malicious. It is replyed, That it is offered to be proven, that the drinking Confuſion to the King, was openly and plainly propoſed; and that the Pannal did deliberately ſend out for Ale to drink certain Healths, and that this Health to the King's Confuſion was the firſt or ſecond, and that it was no lapſe or miſtake in the Expreſſion; but that he forced others to pledge and drink that ſame Health: And the malice and diſloyalty is evident by the Healths ſubſequent, *viz.* Antichriſt's, *&c.* and it is not at all relevant, (after the reiterate and deliberat expreſſing of theſe words) that he had retracted or drank the King's Health; for a Crime once committed, is not retracted or taken off by ſuch inconſiſtent and unconſequential Speeches; but to ſhew the ſence the Pannal had of the importance of his own Words, the Pannal being informed, that ſome of the Perſons preſent had divulged his having drunk the King's Confuſion, the Pannal did conjure them to Secrecy, and did menace the Witneſſes with a great Kane, that he would beat and brain them if ever they told it.

Whereas it is anſwered in general, as to all Crimes committed without the Kingdom, that they cannot be cognoſced or puniſhed here. It is replyed, That as to all Crimes againſt Nature or the Law of Nations, as every party is competent to be an Accuſer, ſo every Judicature is competent, and therefore as to the Crimes of Treaſon, or curſing of Parents, wherever committed, they are puniſhable by the Juſtices: But becauſe in relation to the Crimes committed abroad, there is not poſitive Probation, but Declarations and Teſtimonies; Therefore as to theſe Crimes, His *Majeſties* Advocate does not inſiſt on them as diſtinct Crimes *per ſe*, but as Qualifications, Documents and Evidences of the habitual Debauchery, and unnatural Malice expreſt by the Pannal againſt his Father for a Tract of many Years.

Whereas it is anſwered, That as to all Crimes preceeding 1685, they are taken off by the Indemnity. It is replyed, The Indemnity 1685, is no general Indemnity, neither as to Perſons nor Crimes, but particular Crimes are remitted, and particularly enumerat without any general Clauſe: And as curſing of Parents is not particularly enumerat, ſo by the Nature of that Crime, it cannot be included or comprehended in any general Indemnity: And the words of the Act of Parliament, 20. *Act.* 1. *Par. K.* Ch. 2d. bears expreſly, *That the Curſers of Parents ſhall be put to death without Mercy*. So that a general Act of Indemnity or Mercy without a ſpecial Remiſſion, could not include this Crime, which as the Act of Parliament bears, is expreſly againſt Nature and the Law of God: And by the Opinion of all Lawers, general Indemnities do not extend to all Crimes; but theſe Crimes which are called in Law *Crimina excepta*, are never intended to be Indemnified, nor ſuch Crimes, where the Intereſt of Parties is more than the Intereſt of publick Juſtice, and in all former and general Indemnities, Murther and other Crimes are particularly excepted with a general Clauſe, excepting all ſuch Crimes as uſe not to be comprehended in general Acts of Indemnity; So that this ſo horrid a Crime, wherein the Parent was more intereſted than the Publick, neither was nor could be comprehended under a general Indemnity: As alſo that reſtricted, limited Indemnity, bears expreſly an Exoneration for all perſons below the degree and quality of an Heretor, Wodſetter or Burgeſs; and whether the Pannal were an Heretor or not, yet it cannot be ſaid, that he is below the degree and quality of a Wodſetter or Burgeſs; and therefore the Act of Indemnity is of no uſe to him.

Whereas

Whereas it is answered, That Sir *James* was reconciled with the Pannal, and wrote kind Letters to him, whereby *dissimulando* former Injuries were taken off. It is replyed, That Injuries are only taken off *dissimulando*, which are not atrocious, but never specifick Crimes, wherein the discharge or expres Renunciation of the Party injured cannot liberat *à vindicta publica*, the Punishment of Crimes, especially in Capital Punishments, belonging to the Magistrat, and the privat Party has not the sole Interest, nor can dispense with Capital Punishments: But the Letter founded upon, does not in the least infer the Parties Forgiveness or Dissimulation of the Injury: And a Father ordering his Son to call in for Chamberlain Accompts, without impowering him to discharge the same, is not the least evidence of Confidence in his Son, much less a remitting of his Crime.

As to the second Article in relation to the Cursing, it is positively offered to be proven, not in single Acts, but by a tract and habit of cursing his Father in the most abominable termes imaginable.

As to the third Article in Relation to the Murder, that this matter may be clear, *& ut constet de corpore delicti*, these undoubted Qualifications are offered to instruct, that Sir *James Standsfield* was murdered and strangled, and that he did not drown himself. 1. It is offered to be proven by the Minister, that was that night in the House, that long after ten a Clock at night, and that Sir *James* had retired to the Chamber, where he lay alone, the Minister heard the confused Whispers, Murmurs, and Noise of several Persons, both Men and Women, which afrighted him, and that he heard the noise go away by the back-side of the House, which leads directly to that Pool where Sir *James* his Body was thrown in the Water.

2. Sir *James*'s Body was found swimming above the Water, and albeit it appeared by the Ice upon the top of his Cloaths, that he had been several hours in the Water, yet there had no Water entred into his Body, which is a Demonstration, that he was dead before he was thrown in the Water; for a person thrown alive into Water drawing in of Air and Respiration, being in the Water, he must draw in Water, and if the person drawes in as much Water as fills his concavitie, he becomes heavy, having so much more weight of Water, and therefore he sinks; But if a Person be thrown dead into the Water, when the Clap of his Throat is shut, the Water cannot enter, and there being so much Emptiness, the Body is light and supported by more parts of Water, than the gravity of the Body can depress. 3. There being several Chyrurgions and others sent out by order from Authority to take up and inspect the Body; to see whether there was any evidence of Strangling, or other Symptoms of Murder upon the Body: It did appear to all these Persons who did depone before a Committee of the Privy-Council; That from the one Jugular Vein to the other round the Neck, there was a tumour of congealed black bruised Blood, three inches broad, and that there was congealed Blood in the Throat, upon which matter of Fact, the Colledge of Physicians have given an unanimous Testimony in writing, that Sir *James Standsfield* was Strangled and not drowned: And the Deaconry of the Chirurgions being conveened, have emitted a Declaration in Writing, concurring and agreeing with the Report of the Physicians; So that it is as clear as the light of Day, that Sir *James Standsfield* was murdered.

2. For the Qualifications that the Pannal was the Murderer, or accessory to the Murder of his Father, these clear Evidences are offered, which makes his Crime without possibility to be palliat or denyed. 1. It is notorious that the Pannal is a most debauched, vitious, pernicious Person, and has been Prisoner or condemned to dy in all the Places or Societies he ever haunted; He entred a Souldier in the *Scots* Regiment where he was condemned to die at *Treves*, but made his escape, and his being in Prison, in the *Marshal-Sea-Prisons*, *Orleance*, and *Brussels*, (which makes the Circuit of his Travels) are not denyed; and his profligat life and constant Drunkenness, since he came to the Prison, is offered to be proven by the Keepers: and as it is unnecessar to trace all his Debauches; so there is one material point offered to be proven, That upon the least Provocation either by Man or Woman, the Pannal used to swear by horrid Oaths, that he would take their lives, though he should die in the *Grass-mercat* for it.

3. Sir *James Standsfield* for these Debaucheries having disherished the Pannal, and disponed his Estate to his second Son: It is positively offered to be proven, That in the *Nun gate* of *Haddingtoun*, in *James Smith*'s House, the Pannal being told, that his Father would disherish him, he with horrible Oaths vowed to cut his Fathers Throat.

And whereas it is answered to this Qualification, That the saying that a Son would cut a Father's Throat, is but a remot circumstance. It is replyed, That the Law, and all Lawers do agree, That *Minæ præcedentes & damnum sequutum*, is a most pregnant Qualification of that Party's Crime, especially where the Threats were to cut a Father's Throat, which of it self was so horrid and unnatural a Villany, that it cannot be doubted he who durst vow it, wanted but an occasion to act it. And it is acknowledged, that though this be the cleareſt Presumption, yet *per se*, it is not full Probation: For though the Son had both vowed, and resolved, yet by an accident he might have been prevented; but the Presumption at least lays the Burden, that except the Pannal could condescend, and document, that some other Person killed his Father, he must be reputed the Murderer.

2. It is offered to be proven, That Sir *James Standsfield* who was a Person of eminent Sobriety and Veracity, did declare to several Persons, that his unnatural Son had attempted his Life, and offered violence to his Person, and particularly, that he had pursued him on Horseback, and fired Pistols on him; and that same *Friday* before Sir *James* was Murdered, he did declare that it was not his Debts, or any thing under Heaven that troubled him, but that his Son and Family were plotting and contriving his Destruction, and the next night he was murdered.

3. It is offered to be proven, That the Pannal's Mother declared, That her Son had vowed to be his Fathers death, and that he was a vindictive Person, and that she did apprehend he had murdered him. So as to this Article, there is a concourse of the Pannals own Oaths, to murder his Father, and of his Father and Mo-

ther's Declarations, that he had attempted, and was ſtill plotting the ſame.

The ſecond Qualification is, that, that *Saturdays*-night, Sir *James Standsfield* came home: The Pannal would not come where his Father was, either to Supper, or Prayer, and being expreſly deſired by ſeveral Perſons, to go to his Father, and ſpeak with him: He declared, (that ſame night he was murdered) he could not endure to ſee, or look upon his Father; and he had been all that day cloſs with *Thompſon* and his *Wife*, and *Janet Johnſton*. So after ten hours at even, after the Family was gone to Bed, he came out to *Thomſon*'s Houſe, which is hard by the Gate, and there in preſence of *Thomſon*, his *Wife*, and *Jannet Johnſton*, he declared that his Father would neither give him Money, nor Cloaths, and curſed his Father, and declared that he would ſhortly make ridd of him, which agrees with what he had ſeveral times ſaid in other Companies, that he was to be Laird before *Chriſtmas*; and that he was ſhortly to be Maſter of all, and none could think how ſoon. As alſo ſhortly before Sir *James*'s Death, the Pannal's Mother falling in Swound, it was ſaid to him, *Philip*, ye will ſhortly want your Mother; to which he anſwered, by *God* his Father ſhould be dead before her: And eight days after, his Mother falling again Sick, he repeated the ſame words, whereby it is evident the Murder was deliberate and determined.

3. On the *Sunday* Morning, before Sir *James*'s Body was found, *Philip* came to the Miniſter's Chamber, and told him that his Father was gone out in the night, and that he had been ſearching for him about the Pools, and water ſide; and when the Miniſter reproved him for making ſuch Inſinuations againſt his Father, he laughed at him, and went away to the Pool, and ſtood looking upon his Father in the water, but made no Diſcovery; and thereafter a Stranger coming by upon the Highway likeways, ſeeing Sir *James*'s body in the water, he came back and diſcovered the matter; at which *Philip* ſeemed ſurpriſed, and told that he had ſeen his Father's Body in the Water before, but he did not think fit to be the firſt Diſcoverer, which ſhews, that he was conſcious of his own guilt; otherwayes upon the firſt ſight of his Father in the Water, he would have gone to him, but on the contrary, he never laid a hand upon his Father's Body, either to pull him out of the water, or to carry him into the Houſe, for the dread of ſome extraordinary diſcovery, and did not allow the Corps to be brought within his Father's Gates, but cauſed carry the Corps to the Wake-miln, where to cover the Appearance of Strangling upon his Body, he entruſted *Jannet Johnſton* with the care of woonding him, who was known to be a Perſon ſo odious to Sir *James*, that he could not ſee her for her baſeneſs with the Pannal, and ſhe did acknowledge, that ſhe had not been for three quarters of a Year within the Houſe before; and yet this infamous Strumpet, who has been Tortured by order of the Privy Council, as Acceſſory to the Murder, chiefly intruſted to ſee the naked body, and the Cloaths put on.

4. The Pannal did refuſe to ſend for a Chyrurgion, and to let his Father's Body be ſighted, though the Miniſter, and others did expreſly demand it; and the *Engliſhmen* in the *Manufactory*, who were acquainted with the *Crowner-Laws*, they made a muriny anent the Burial, till the Corps were ſighted; yet the Pannal cauſed bury the Corps that ſame night without ſhewing them.

The Corps being raiſed by order, and inciſion being made, whereby the Strangling did clearly appear, and the Corps being dreſſed clean, and Linnen put on, there did appear no bloud; but to take off Suſpition, the Corps were liſted up, and the Night-Cap being wrong put on, it was altered and changed, and thereafter the Corps were laid down without any Bloud upon the Linen; and the Pannal (who to this time had never touched his Father's Corps) being required to aſſiſt to lift the Body into the Coffin, having taken his Father by the right ſide of the Head with his left hand, *James Row* bearing the left, the Pannal's hand was altogether blooding, as if his Hand had been put in a Veſſel of Blood, which notwithſtanding of all his Impudent reſolution to the contrary, had that horrible Impreſſion, and Conviction upon him, that he let his Father's Head fall to the ground, and cryed out, *O God*, and run away and went to a Desk in the Church, where he lay groaning and in Confuſion, but durſt never return to touch the Corps, and as there can no natural reaſon be given, but an ordinar and wonderful Providence of God, in this kind of diſcoveries of Murder: So the Fact was never more evident, and ſure, though half a dozen of Perſons were bearing the Corps, no Mans hands were bloody but the Pannals, and the Corps being two intire days in the Grave, in that Weather and Seaſon, the Blood by the courſe of nature was become ſtagnat and congeal'd, ſo that the former toſſing, and liſting of the Corps, and even the Inciſion it ſelf had occaſioned no ſuch Effuſion, but only ſome water or gore; but upon the firſt touch of the Pannal the Murderer, there appeared abundance of liquid florid Blood, and though this *per ſe* might not be ſufficient, and as *Mattheus* is cited, it ſhould not inferr Torture, yet *Mattheus* acknowledges that moſt part do ſuſtain this, as a violent preſumption oft times experimented, yet in his Opinion it is not ſufficient for Torture, becauſe Torture being in it ſelf a Puniſhment, it cannot be uſed, except where there is *ſemiplena probatio*, or where the Conſcience of the Judge is ſatisfied, as to the truth of the Crime, and therefore uſes an extraordinar courſe, to extort a Confeſſion, which proves that this preſumption is *ſemiplena probatio per ſe* according to their own grounds.

And whereas it is alledged, that Capital Puniſhment cannot be infered from Conjectures, but from clear and poſitive Teſtimonies. It is anſwered, that the *Lex ult. Cod*: *de probationibus*, clearly ſtates that probation is either, *Teſtibus, tabulis inſtrumentis documentis & indiciis.* And *Matthæus* ſtates a particular title upon this ſingle Queſtion, *Cap. 6. Titulo 15 de probationibus*, and does moſt poſitively determin that Crimes are to be proven *Documentis, Argumentis & Indiciis.* And it is moſt evident, that the probation which ariſes from the nature of the thing, which is incapable to be ſoffiſticate, or impoſed upon, as Witneſſes may be, that kind of probation is the ſureſt, becauſe it is always the ſame, and admits no variation: It's true, and it is acknowledged that *Argumenta & Indicia* muſt be *clara & evidentia*, and probation being *Quod facit fidem Judici*,

Judici, every Man's Experience tells him, that the complication and conjunction of ſo many evident Qualifications, though none of them *per ſe* were ſufficient, yet being all of them joyned, it induces a greater certainty, than two Witneſſes poſitively deponing upon the Fact. And therefore the evidence of the probation belongs to the Inqueſt, and the relevancy that theſe Articles conjoyn'd, or any part of them are ſufficient to infer the Crime, belongs to the Judge.

As to the Preſumptions offered for the exculpation of the Pannal, they are not at all relevant; for though ſo horrid a Murder is not to be preſumed againſt Nature, yet being proved, or ſo ſtrongly evinced, it does but conclude the Pannal's greater Guilt; and ſuppoſe that Sir *James Standsfield* was formerly Melancholy, and had been Frantick in the Year 1679, yet it is known he recovered his Health, and was of a compos'd, ſedat temper of mind for many Years thereafter, aud was as capable and diligent about his Affairs, theſe many Years, as he had been formerly, and was ſo conſidered and employed by the wiſeſt Men in the Kingdom; and at the time of his Death there was no Sickneſs, or returning of Frenzie upon him, but all that Week he had compoſedly done his Affairs; and did upon the *Saturday*, when he went Home, diſcourſe rationally upon all the Subjects that occurred: But it being ſo clearly documented and proven that he was Strangled, it is a ridiculous conceit, and there remains no poſſibility that after he was Strangled, he walked out and drowned himſelf. And as to that Preſumption, that the Pannal rendered himſelf Priſoner, it was indeed ſuitable to the reſt of his Impudence, and he did not render himſelf till after the Order to apprehend him was intimate to him, when he could not Eſcape, and when he was under Obſervation, and there did not want Project in fixing upon this Impudence when he could not Eſcape, as an Qualification of Innocence, that he would render.

Sir David Thoirs *without repetition of the Replyes made by His* Majeſties *Advocat, doth make his Duply to the foreſaids Replyes, and every Member thereof, in order as follows*, viz.

TO the firſt, Anent the Treaſonable Words, the Pannals Procurators oppon their former Anſwers, and the Act of Parliament whereupon that part of the Ditty is founded, being only in order to ſuch Treaſonable Speeches adviſedly ſpoken. The conſtant tract of the Pannal's Life, in drinking his *Majeſties* good Health at all occaſions, and offering to adventure his Life in his Service in the laſt Rebellion, ſufficiently demonſtrats, that if any ſuch Expreſſion did eſcape the Pannel, as it is denyed, the ſame was only raſh and unadviſed, and not deliberate and adviſed, as is required by the Act of Parliament, to infer the pains libelled; and the Qualifications added by my Lord Advocat, bearing, that the Pannal did conjure the Perſons then preſent to Secrecy, demonſtrats that the Pannal was *ex incontinenti* heartily ſorrowful and penitent for the ſame. And it's clear by that excellent Law of the *Cod*, the words whereof are, *Si quis Imperatori maledixerit, ſi ex inſania miſerando, ſi ex temeritate, & petulantia temnenda, ſi ex animo injuriandi ad principem remittendum*, which demonſtrats, that by the Common Law, ſuch an raſh and unadviſed Expreſſion was never to be laid hold on to infer a capital Puniſhment, where the Perſon alledged, expreſſer thereof, was not otherways ſuſpect of Diſloyalty.

2. Repeats the Defence as to Crimes alledged committen abroad, and it were againſt reaſon and equity, that Perſons for one and the ſelf ſame Crime, ſhould be ſubject to the Puniſhments of ſeveral Juriſdictions, where the Puniſhment of the ſaids Crimes are different: But ſeeing my Lord Advocat declares he hath no Probation for theſe alledged Crimes, but Certificats and Affidavits, they cannot be obtruded as a part of the Libel, becauſe the ſaids pretended Certificats and Affidavits, are neither inſert in the Libel, or given out to the Pannal, and all Crimes are to be proven *teſtibus, non teſtimoniis*; and if the cuſtom of Affidavits ſhould be introduced in this Court, all Pannals (how innocent ſoever) might be murdered, by being deprived of their unanſwerable Objections againſt the Granters of theſe Affidavits, *&c.* and therefore they cannot be ſuſtained as a Qualification to load the Pannal, or make the Inqueſt have a prejudicat opinion of him.

3. As to my Lord Advocat's Reply anent the Act of Indemnity, the former Defence and Act of Indemnity is opponed, and bears expreſly Murders, Robberies, Slaughters, and all other Crimes committed againſt His *Majeſty*, and Laws of the Kingdom, either by Word, Writ, or Deed, which undoubtedly excludes all alledged Crimes, ſaid, done, or committed by the Pannal before that time, and this favour *& gratia principis*, is to be ampliat and extended, and not reſtricted, and all His *Majeſties* Judges and Officers of State are commanded to ſuſtain the ſame, according to the moſt ample Interpretations for the Pannal, that the Words will allow.

4. The pretence that the Pannal was of the quality of a Burger, or a Barron, is moſt irrelevant, the Pannal having no viſible Fortune at the ſame time, and as my Lord Advocat himſelf acknowledgeth, no Expectation of any Fortune whatſoever, ſo that if Barons, Burgars, Liferenters, Woodſetters, and likewiſe theſe who have nothing in poſſeſſion at the time, ſhall be ſecluded from the benefit of that Indemnity, it is ſcarce intelligible, to whom, and for what cauſe the ſame was granted. 5. And as to that part of the Reply, bearing, that this was a privat Injury, and ſo not comprehended within the Act of Indemnity, the former Defence is opponed, and all pretence of privat Injury was taken away by Diſſimulation or Death.

As to the pretence that the Reconciliation can be no defence againſt the Libel, as to *vindicta publica*, and that the Letter whereupon the Defence is founded doth not import a Diſſimulation. It is Duplyed, That the Act of Parliament being an Comminatory Law, and principally intended in favours of Parents, the ſame was never yet made uſe of, and it were very hard to make uſe of the ſame to deprive a Parent of his Child, for any raſh or paſſionate Expreſſion, eſpecially where upon Repentance the Father had remitted the Injury; but the Father being in effect Judge of the Injury, his remitting the ſame ought at leaſt to Aſſoilzie the Child, from any capital Concluſion. And as to the alledged habitual Curſing, the ſame is denyed, and the former

former Defence founded upon the Act of Indemnity is repeated and opponed, and the Libel is opponed, which doth not bear habitual Curſing, but particular Acts at particular Times.

And as to the Qualifications alledged by my Lord Advocat, for clearing that the Defunct Sir *James Standsfield* was murdered, the Pannal is truly ſorry, that for his own Defence, and for clearing of his own Innocence, his Lawers ſhould be neceſſitated to plead any thing relating to his Fathers Infirmities, or way and manner of his Death. But it is duplyed, That the whole Preſumptions adduced by my Lord Advocat are allanerly fallacious Conjectures, and can neither be *ſeparatim*, or complexly relevant to infer any ſuch thing, becauſe, 1. That the Miniſter did hear a whiſpering noiſe, and was thereby terrified, his Terror and Conſternation having (as he himſelf pretends) put him in a Diſorder and Confuſion, he was thereby rendered incapable to obſerve or judge of any thing that happened. 2. That the Body was ſwimming above Water, imports nothing, the Defunct having a great Coat of thick Cloth about him, which was ſufficient to keep him floating above. 3. The pretence that there was no Water in the Defunct's Body when the Chirurgions viſited the ſame, imports nothing, becauſe the Defunct's Body having been ſeveral times ſtirred before that time, by which the Water might have run out, as it actually did (in Caſe there was any water within it).

4. Albeit where a Man is drowned unwillingly, and endeavours to breathe, ſo long as he can, his breathing may ſuck in the Water; Yet if a Man intend to drown himſelf, he will certainly endeavour all means for quick diſpatch of himſelf, and thereby keep in his Breath, and the keeping in of the Breath after that manner was ſufficient, both to keep the Body floating, and the water from coming in.

5. To put the matter beyond all queſtion, the Defunct was laying in the water a conſiderable ſpace from the Bank; And albeit the Ice was not ſo ſtrong as to have carried a Child, yet the Ice was whole and entire betwixt the Defunct and the Bank, which demonſtrats, that the Defunct had jumped in from the Bank, to that place where he was lying. 6. As to that pretence, that there was Blood about the Defunct's Neck, all lapper'd and bruiſed before inciſion was made, the Defunct being pulled out of the water, by an great Cleik, the touching of the Neck with the Cleik, when his breath was juſt gone out, was ſufficient to have made the Blood where that part was to lapper and congeal. 7. As to the Declarations of the Phyſicians, and Chirurgions, they are only Declarations *ex auditu*, and upon Report of one or two Chirurgions, and hath no Foundation, but the ignorance or knowledge of the ſaids two Reporters; neither can any ſuch Declarations be obtruded againſt the Pannal, becauſe not given out with the Libel; But whatever may be inferred from theſe Preſumptions, whether the Defunct was Murdered or not, the ſame does not concern the Pannal, unleſs his acceſſion to the Murder were inſtructed, as is impoſſible it can be.

As to the Qualifications alledged by my *Lord Advocat*, for fixing the Murder, or acceſſion thereto upon the Pannal; It is duplyed to the firſt, That the Pannal's alledged vitious Life, and the Story at *Treves*, his being Drunk in Priſon, and Threating to cut Throats upon ſmall Provocations, the ſame are extrinſick to the Lybel, and cannot be reſpected. 2. As to the alledged threatning uſed in *James Smith*'s Houſe, the Lybel is opponed, bearing theſe Expreſſions, to have been uſed in the Year 1684, or ſome Year preceeding; And therefore the former defence founded upon the Indemnity, is repeated, and opponed. And whereas my *Lord Advocat* pretends, that *minæ præcedentes cum damno ſequuto*, is ſufficient either to fix the guilt upon the Perſon who uſed the Threats, or at leaſt to burden him with the probation, that another committed the Crime. It is Duplyed, 1. That my *Lord Advocat's* Poſition is abſolutly denyed, unleſs he can inſtruct ſome other poſitive Acceſſion againſt the Pannal, and theſe pretended Threats being taken away, not only by the Act of Indemnity, but likeways by Diſſimulation, which is not only offered to be inferred from the Letter made mention of in the Defence, but likeways by the Defunct's owning, receiving, intertaining, furniſhing, and providing for the Pannal, in every thing ſuitable as his eldeſt Son, the ſame doth undoubtedly take away all pretence that can be founded upon threatning, ſo many Years preceeding; and by no Law can the Pannal be burdened to prove who were either Actors, or in Acceſſion to his Fathers Murder.

As to the ſecond Qualification bearing, that the Defunct ſaid to ſeveral Perſons, that the Pannal offered to invade him (denying the ſame) the Father's Aſſertion could not infer a Crime againſt the Pannal, unleſs the Crime it ſelf were otherways proven by Witneſſes, and the ſame is Libeled to have been ſaid by Sir *James* before the Act of Indemnity. And Sir *James*'s other Aſſertion, that he was in trouble, for fear of Prejudice from his Family, cannot infer a Crime, eſpecially againſt the Pannal; and far leſs can it be proven by the Relict and the other Son, who in Sir *James*'s apprehenſion were deſigning miſchief againſt him, and for their own Vindication, they would certainly depone partially againſt the Pannal. And the ſame is repeated againſt the other Expreſſions alledged ſpoken by the Mother; And Witneſſes cannot be received to prove what another Witneſs ſaid.

As to the Pretence, that the Pannal refuſed to ſup with his Father the night before his Death. It is Duplyed, the Pannal was not at all in uſe to ſup, except on *Sundays*-night. And the Pannal had no Kindneſs for the Miniſter, Becauſe he and others of his Gang had endeavoured to keep up diſcord betwixt him and his Father.

As to the alledged Bleeding of the Corps, the former Defences are opponed; And albeit the Pannal did help to lift his Fathers Corps before the inciſion, yet no Blood did appear till long thereafter that the inciſion was made, and the Pannel did fall to grip that part of his Father's Head where the Inciſion was. So that the Blood falling from the wound, can neither be a Ground nor Preſumption for guilt; And though the Pannal was ſurpriſed to ſee his Father's Blood, Yet the ſame did only proceed from natural Duty and Affection, and not from any apprehenſion of Guilt. And theſe qualifications being all Libel'd and Debated upon, It is humbly deſired for the Pannal, that the

the Lords of Justiciary would give a separat Interloquitor upon every particular qualification.

Sir *Patrick Hume* for the Pannal adds, That as to the point of Treason, It is offered to be proven, that it was when he was Drunk, and after Cups, and is so presumed, especially it being, as it is acknowledged by the Libel, in a Drunken company.

2. As to the Act of Indemnity, It is extended to all Crimes except the *Arch-bishop's* Murder, and *exceptio firmat regulat, &c.* And the Act bears not that Clause excepting other Crimes, which uses to be excepted.

3. As to the qualifications condescended on in my *Lord Advocat's* answer, either they are Libel'd, and so oppones the former answer; And if they be not Libel'd, they cannot be considered as qualifications.

4. Whereas it is alledged, That the Pannal was in use to threaten to cut Throats, when in passion; the Argument is retorted, For though he threatned, nothing followed; And so his Threatnings were but *verba jactantia.*

5. As to the citation out of *Mattheus*, that parties may be punished upon presumptions. It is answered, That the Case there stated is where the Person who committed the Slaughter, was apprehended in the place where it was committed, That he was all bloody and with a bloody Sword, answerable to the Wound, and that he became pale when he was apprehended, and that he had made no answer, but in terrour fled away, which are such Acts as do evidently make appear the Slaughter, and could admit of no other construction, but that cannot be pretended in this Case, where all the Presumptions are remote and extrinsick, and even in the Case instanced by *Mattheus*, and others of that Nature, they are only to take effect in order to an Arbitrary, but not a capital Punishment, which is the opinion of all Lawers, who ever wrote upon the subject, and particularly *Muscard, de prob: conclus.* 123. *Numb.* 20. and 31. where the question is stated, *an plures præsumptiones conjunguntur*, in order to inferr a capital punishment? And he concludes in the negative as a general conclusion by all Lawers, but only to inferr an arbitrary Punishment,

As to the bleeding of the Body, It is offered to be proven, that the Pannal touched his Father's Body before the Incision, and it did not bleed.

THe Lords, Justice General, and Commissioners of Justiciary, Having considered the Libel, pursued by His *Majestie's* Advocat against *Philip Standsfield* the Pannal: And the first part thereof, anent the Treason libel'd, they find the samen as it is lybel'd, relevant to inferr the pain of Treason.

And as to the Pannal's cursing of his Father, mentioned in the Inditement; They find these Expressions, or either of them, *viz.* the Devil take him, the Devil rive him, God damn him, relevant to inferr the pain of Death: And repells the Defence founded upon the Act of Indemnity, and finds the Pannel is not under or below the quality therein specified.

As to the Pannal's murthering of his Father mentioned in the Inditement, they found the Libel as it is lybelled and qualified relevant to inferr the pain of Death, and remits the same with the qualifications lybel'd to the knowledge of the Assise, and allowes Witnesses to be led for the Pannal's proving his Father to have been Melancholy the day before the committing of the Murder, and remits to the Assise to consider the Import thereof, if it be proven, and repells the whole other Defences proponed for the Pannal.

The Lords continues the Dyet against the said *Philip Standsfield*, till to Morrow at two of the Clock in the Afternoon: And ordains him to be carried back to Prison, and the Witnesses and Assises to attend, ilk Person under the pain of 200 Merks.

Edinburgh the seventh of *February*, 1688.

Philip Standsfield Prisoner, being this day entered on Pannal, dilated, indyted and accused for the Treasonable drinking of the King's Confusion, cursing his Father, and for the cruel and unnatural murdering of him in manner mentioned in this Ditty.

The Interloquitor above-written was this day read again in presence of the Pannal, and the Assisers afternamed, *viz.*

William Bailly of *Lamingtoun.*
James Glen, Stationer.
Alexander Reid, Elder, *Goldsmith.*
Charles Charters, Merchant.
David Hepburn of *Humby.*
Edward Gillespy, Merchand.
Robert Sandilands, Merchand.
Samuel Moncrief, Merchand.
Thomas Tendall, Merchand.
James Cleiland, Merchand.
Hepburn of *Beinstoun.*
William Paton, Merchand.
George Braithwood, Stabler.
John Marshal, Merchand.
Alexander Edgar, Chirurgion in *Haddingtoun.*

The Assise lawfully sworn, no Objection of the Law in the contrary.

His *Majesties* Advocat for Probation adduced the Witnesses deponing, *viz.*

John Robertson late Servitor to Sir *James Standsfield* of *New-Milns*, aged twenty four Years, unmarried, purged of malice, prejudice, hatred, ill will, and partial Counsel, and solemnly sworn, Depones, a little time before harvest last, the Pannal being in the Kitchin of *New-Milns*, in the deceast Sir *James Standsfield's* House, where the Deponent was likewise present, he saw the Pannal *Philip Standsfield* take a Cup of Ale, and heard him say: There is the Pope's Confusion, the Antichrists, the Chancelours, and the King's Confusion, and put the Cup to his Head, and drink a little, and then gave it to *Samuel Spofforth*, and commanded him to drink it on his Knees; depones, that there were likewise besides *Samuel Spofforth, Jeremy Smith, Agnes Bruce* and *Elspeth Jameson*; and depones, that *Philip Standsfield* the Pannal was not drunk at the time; Depones, That at the naming of the several Confusions above-mentioned, he still drank a little of the Cup; And this is the Truth as he shall answer to God: The Deponent further depones, that he said to the Pannal, after the drinking of the saids Confusions, that it was Treason, and he answered, Ye Dog what are you concerned; ye do not understand to whom ye speak. *Sic Scribitur*, *John Robertson.*

Agnes Bruce, Servant to the deceast Sir *James Standsfield*, aged twenty four years, unmarried, purged

purged and ſworn, Depones, That a little before Harveſt laſt, ſhe being in the Kitchin of *New-milns* with *Philip Standsfield* the Pannal, ſhe ſaw him take a Cup of Ale, and drink the confuſion of the Pope, and the King, and heard him bid *Samuel Spofforth* ſit down on his Knees and drink the ſame, which accordingly he did, after this the Deponent went up Stairs, and knows no more what paſt at that time, but heard they drank more confuſions; Depones, that about a week after it being talked in the houſe, that he had drank the confuſions aforeſaid, he ſaid to the Deponent, God damn him, if he knew who divulged it, he would be their Death: And this is the Truth as ſhe ſhall anſwer to God, depones ſhe cannot write. *Sic ſubſcribitur,* *Linlithgow.*

Samuel Spofforth, late Servitor to Sir *James Standsfield* of *New milns*, aged 19 years, unmarried, purged and ſwore, Depones, that a little before Harveſt laſt, the Deponent was in the Kitchin of *New milns* with *Philip Standsfield* the Pannal, where he heard him drink a confuſion to the Pope, Antichriſt, and the King, and to the Devil, and the Pannal preſt the Deponent to drinke the ſame confuſions upon his knees; Depones, *John Robertſon*, *Agnes Bruce*, *Jeremy Smith* and *Elſpheth Jameſon* were all likewiſe preſent at that time, and that theſe confuſions were drunk ſeverally: And this is the Truth as he ſhall anſwer to God. *Sic ſubſcribitur,* *Samuel Spofforth.*

John Robertſon above deſign'd being Re-examined, purged and ſworn, Depones, That the Deponent being at *Morum* Caſtle after Harveſt laſt, in order to give a call to a Miniſter, the Deponent having met with *Philip Standsfield* the Pannal, he ſaid to him, Ye are a wiſe lad, if ye have ſubſcribed that Bond, the Devil take him, and particularly, the Devil take his Father, and named his Father; depon'd, that at another time in the midſt of Harveſt laſt, the Deponent and Sir *James Standsfield* the Pannal's Father being going to *Smeitoun* with a Miniſter, the Pannal asked him, Where he and his Father was going and the Deponent anſwered, that he was going to *Smeitoun* with his Father; And the Pannal *Philip Standsfield* ſaid, Devil, let never one of them come back again, Horſe nor Man: Depones further, That ſeveral times, and frequently, when the Deponent has been ſeeking the Pannal to come to Dinner with his Father, the Pannels ordinar Anſwer was, the Devil dame him, and you both, and Devil rive him, for I will not go to him, and if he had a ſixpence a day, he would not go near him, for his Father girned upon him like a Sheeps-head in a tongs, and that he has heard him ſay ſometimes, God damn his Father: And this is the Truth as he ſhall anſwer to God. *Sic ſubſcribitur* *John Robertſon.*

William Scot Clothier in *New-milns*, Aged 30 years, Married, Purged and Sworn, Depones, That betwixt *Michaelmaſs* and *Martimaſs* laſt, the Pannal *Philip Standsfield* having come to the Deponent's Shop, and asked for ſome Tobacco, the Deponant ſaid to *Philip*, his Father would not let him want for Money to buy Tobacco; and the Pannal *Philip* ſaid, the Devil take him and his Father both, for there never came an honeſt man out of *York-ſhire*: Depones, his Wife was preſent with him, when that Diſcourſe paſt: Depones, he cannot write. And this is the truth as he ſhall anſwer to God. *Sic ſubſcribitur.* *Linlithgow.*

Agnes Bruce above-deſigned being Re-examined, Purged and Sworn, Depones, That ſhe did hear the Pannal uſually vow and ſwear he would kill any perſon that offended him; and that the Pannal did haunt much with *Janet Johnſton*, *George Thomſon* and his Wife, and that he went frequently out of his Fathers Houſe after Supper to theſe perſons; and further Depones, that ſhe has heard the Pannel frequently curſe his father, and bid the Devil damn him, and rive him, and ſwell him; and that ſhe has frequently heard him expreſs his hatred and abhorrence of his Father, and that he could not abide to ſee his Father: further Depones, that the *Munday* at Night before Sir *James* came to *Edinburgh*, the laſt time he was in it, being about a Fourthnight before his Death, the Deponent was ordered to call the Pannal to his Mother after he was gone to his Chamber, and that accordingly ſhe did it, and when the Pannal came down, the Deponent left him with his Mother alone, and when ſhe was without the Door, ſhe heard him ſay to his Mother ſeveral times, *God damn him if he did it not*; and deſired his Mother to take a good Heart, for as long as he had, ſhe ſhould not want: Depones, ſhe knows not what he meaned by theſe words, but knows there had been a little quarrel betwixt Sir *James* and his Lady that ſame Night: Further Depones, that on *Tueſday* thereafter, when Sir *James Standsfield* was going in to *Edinburgh*, ſhe did hear *Philip Standsfield* the Pannal ſay in his Mothers Chamber (his Father not being preſent,) God let him never return, God let him never ſee his Fathers face again, the Devil go with him, the Devil rive him, and take him away: and that there was no body in the Room at the time but the Pannal and his Mother, and the Deponent was at the Door: Further Depones, that about a month before, Sir *James* having reproved the Pannal, upon the occaſion of an Accompt given in by *William Anderſon* Brewer, ſhe did hear the Pannal ſay in his Mothers Chamber (Sir *James* not being preſent,) God damn him if he ſhould not do ten times worſe, and that he could not endure to ſee his Fathers face, and that he had hated his Father theſe ſix or ſeven years: Further Depones, that about a Fourth-night or twenty days before Sir *James* his death, it being ſaid that *Philip* was to go to Town with his Father, ſhe heard him ſay, he would be hang'd ere he went with him, let him go, the Devil go with him, and let him never return, and this likewiſe in his Mothers Chamber, and in her preſence: Depones, the Pannal did ordinarly ſhift occaſions of being in his Fathers company: Depones, that the *Friday* before Sir *James* his death, ſhe knows the Pannal and *Janet Johnſtoun* were a conſiderable time together in the Pannal's Chamber, where the Deponent heard *Janet Johnſtoun*'s tongue, but doth not know if *George Thomſon* and his Wife were with them, Depones, that on the *Wedneſday* before Sir *James* his death, *Philip* having curſed ſome of the Servants, the Deponent ſaid to him, God be thanked, he was not their Maſter; and that he anſwered her with an Oath, ſhe knew not how ſoon he might be their Maſter: and Further Depones, that ſhe thought Sir *James* not ſo merry as his ordinar the night before his death, but that he conveyed Mr. *Bell* to his Chamber, and thereafter came down to his own; and the Deponent having deſired to ſpeak with

with Sir *James*, his Servant *John Robertſon* told her ſhe could not, becauſe his Chamber-door was ſhut, and he was gone to Bed; and that ſhe did then ſee light in his Roum, and when ſhe was going away, found the Hall-door which was without his Chamber-door ſhut, and that the Hall-door was not uſually cloſed in the night time except Sir *James* had done it himſelf, and which he did but once in two or three Nights: Depones, that on the *Saturday*'s night when Sir *James* came home, he did go to his Ladies Chamber, where he ſtayed not a quarter of an hour, and that his Lady fell a quarreling of him for going to another Houſe before he came there, and that the Deponent came out of the Chamber, and knows not what more paſt there: Depones, the next morning, when Sir *James* was miſt, the Deponent went in to his Roum to put on a Fire, and found the Bed better ſpread up than it uſed to be, and the Curtains more drawn about it, and the Candle which uſually was at the Bed-head, ſhe found it ſtanding on a Chair at the Bed-foot. And further Depones, that when the Defunct's body was bringing up to the Houſe, the Deponent would have had him brought to his own Chamber, but *Philip* ſwore that the Body ſhould not enter there, for he had not died like a Man, but like a Beaſt: Depones, that the Body was then put in the *Walk miln* (but knows not if *Philip* cauſed do it,) and that the Body from that was brought to a Cellar within the Cloſs where there was very little light: Depones, that ſhe did not ſee any water come out of his mouth, and that when the Deponent lifted up the Linen-ſheet, which was over him in the Cellar, ſome of them cauſed let it down again, for it was not fit to let the Body be ſeen. Depones, that *Janet Johnſtoun* was preſent with the Body in the Cellar with the reſt, and though it was known that neither Sir *James* nor his Lady would look upon her for a good time before, nor was ſhe openly ſeen about the Houſe, yet that morning ſhe went to the Ladies Chamber, as ſoon as the Body was taken out, and the Deponent was preſent and ſaw her come in, and well enough taken with: Depones, ſhe heard *Philip* after his Father's death, Greet and Cry, but ſaw no Tears: Depones, immediatly after his Fathers body was found, he would have forced his Fathers Chamber-door it being ſhut, but the Key being gotten, it was opened and he entred in, and firſt took his Fathers Gold and Money out of his pocket, and then got the Keys, and ſearched the Cabinet, and that within an hour after his Father was brought from the Water, he got the Buckles of his Father's ſhoes, and put them in his: Depones, that on the *Munday* after Sir *James*'s death, the Lady and *Janet Johnſtoun* having quarrelled together about ſome remains of the Holland of the Woonding-ſheet, *Philip* came down out of his own Chamber, and the Deponent heard him ſay to *Janet Johnſtoun*, hold your peace when I command you, for he would reward her well for the kindneſs ſhe had done to him at that time: Depones, that when the order came from *Edinburgh* to raiſe the Corps again, the Deponent did meet *George Thomſon* the Taylor, and perceived him ſhaking and trembling, and asked him what troubled him? and that his anſwer was, he heard the blackeſt News that ever he heard in his life, for Sir *James*'s body was to be raiſed again, and ſaid he would ſew no more in the Houſe of *New-milns* for the World, and carried the Mournings to his own Houſe: Depones, ſhe knows nothing of falſe Keys made uſe of about the Houſe, only ſhe heard the Lady ſay, that there were: Depones, *Philip* had no lock-faſt place in the Houſe, except a little Coffer, and that it once being opened, the Deponent did ſee ſeveral Keys within it, and that he offered once the Key of one of the Roums to the Deponent, but the Deponent took it not, becauſe ſhe had the ordinar Key of the Roum: Depones, that *Philip* was in uſe to ly alone, but that after his Fathers death, he would not ly in a Roum alone, at *New-milns*, and that he declared to the Deponent that he was afraid to be alone in a Roum, either night or day, and that he ſleept not the night after his Father died, and that he ſhould not go into the Roum where his Father lay, if once he had the Cabinet out of it: Depones, that a ſhort time before Sir *James* died, the Lady having fallen in a Swond, and the Deponent having told *Philip* of it, *Philip* came to his Mothers Chamber, and that his Mother told him then, that he was like in a ſhort time to loſe his Mother; and that he anſwered in the Deponents hearing, that his Father ſhould be dead firſt: And depones, that ſome few days thereafter, in his Mothers Chamber again, and in the Deponents hearing, he renewed the ſame Words with an Oath: Further depones, that two Nights after Sir *James*'s Death, the Lady told to the Deponent, that ſomething then came in her Mind which ſhe had heard, to wit, that *Philip*, before he went to *London*, when he was in his Pomp, having heard that Sir *James* was to give his Eſtate to his ſecond Son, in the Houſe of *James Smith* in the *Nungate*, had vowed to kill his Brother, and the like, or little leſs to his Father; and that thereafter, when they were coming into *Edinburgh*, the Lady renewed again to the Deponent the ſame Words, and added, what if they ſhould put her Bairn in Priſon. And this is the Truth, as ſhe ſhall anſwer to God. Depones ſhe cannot write,

Sic Subſcribitur. *Linlithgow.*

John Shand, ſometimes Servitor to Sir *James Standsfield*, Aged 43 Years, unmarried, purged and ſworn, depones, that a little after *Philip Standsfield*, the Pannals Marriage, the Pannal and the Deponent being in *James Smith*'s Houſe, in *Nungate*, of *Haddingtoun*, the Pannal did expoſtulat with the Deponent, that his Father dealt too narrowly with him, he being then married; and the Deponent told the Pannal that his Father was in ſtraits, and exhorted him to be dutiful to his Father; thereafter the Pannal ſaid, if I knew my Father would give his Eſtate to my Brother *John*, I would cut his Throat, and the Land-lord of the Houſe being by, and preſent, and ſurprized, cryed out, *God preſerve me, what means the Man*; the Land lord underſtanding by the Word, *His*, his Father: And though the Deponent took the Expreſſion in the ſame ſenſe, as *James Smith* did; yet the Deponent endeavoured to excuſe it, by ſaying it was not his Father that he meaned, but his Brother, or his man *Donald*; and the Pannal being preſent, ſaid nothing for clearing of the Expreſſion; whereupon the Deponent went away, and left the Pannal, and could not endure to ſtay longer in his Company: Depones, the night before Sir *James*'s Death, being the *Friday*, the Deponent was with Sir *James* in his Chamber, in

Edinburgh, where the Defunct was reading a Sermon-book, and appeared to be ſad, and ſaid to the Deponent, I have no Comfort in my Wife and Family. And this is the Truth as he ſhall anſwer to God, *Sic ſubſcribitur. John Shand.*

Mr. *Roderick Mckenzie* Advocate, Being ſolemnly Sworn, and Purged, depones, that about eight dayes before Sir *James Standsfield's* Death; the Deponent and he having met in the Parliament Cloſs, the Defunct invited him to take his morning Draught. And when they were gone to Mr. *Sheil's* Houſe, the Deponent perceiving him to be in ſome concern, the Deponent asked him, what troubled him? The Defunct anſwered, that he had no ſatisfaction at Home; whereupon the Deponent ſaid, that People reported that he was partly the occaſion of it, having diſheriſhed his Son the Pannal, and acquainted him therewith: And the Defunct anſwered, ye do not know my Son, for he is the greateſt Debauch in the Earth: And that which troubles me moſt is, that he twice attempted my own Perſon: And this is the truth as he ſhall anſwer to God. *Sic ſubſcribitur, Rod. Mckenzie.*

Archibald Dumbar Merchant in *Edinburgh*, aged 26 Years, Married, purged, and Sworn, Depones, that the Deponent having met with the deceaſt Sir *James Standsfield* at *Culter*: But he does not remember poſitively the time, but it was either in the year of this King's Parliament, or the Harveſt before, and Sir *James* and the Deponent, and ſome other company being in an Roum: Sir *James* was diſcourſing of his Sons undutyfulneſs, and within a little while having heard a ſhot at the utter-door of the houſe, and the Deponent, and others offering to go out to ſee what the matter was. Sir *James* was unwilling to let them, leſt they ſhould come to haſard. And thereafter having heard another Shot, they did offer to go down again, and Sir *James* ſtill diſſwaded them, and ſaid, that it might be his diſtracted Son *Philip*. And they having enquired, if he was in the Country, and how he came to fear any harm from him; Sir *James* ſaid, he believed he was in the Country, and that in his going South, he had followed him to *Lotbianburn*, and ſhot two Piſtols, firſt one, and then another at him, and if it had not been that Sir *James* was well horſed, and his Son *Philip* upon a work Horſe, he had killed him. And *Samuel Menzies* having ſaid he was ſure there could not be Ball in them. Sir *James* ſaid, he had gotten too many proofs of his Son's unnaturality to him, that he had no will to be in his reverence. Depones that Sir *James* all that night went not to Bed, and the Deponent ſat up with him, and conveyed him into *Edinburgh*. And this is the truth as he ſhall anſwer to God. *Sic ſubſcribitur. Archibald Dunbar.*

Mr. *William Clerk* Advocat, purged, and ſworn, Depones, that having frequent occaſions to be with Sir *James Standsfield*, and he having deſired him to draw a diſpoſition of his Eſtate to his Son *John*. Sir *James* did complain of his Son *Philip's* undutyfulneſs to him. And the Deponent having diſwaded him to do it, ſince his Son *Philip* might be reclaimed: Sir *James* ſaid, no, for he had no expectation of it; for when he was at the *Lead-hills*, there was ſome Piſtol ſhot at him, which he was ſure came from his Son *Philip*. And this is the truth as he ſhall anſwer to God. *Sic ſubſcribitur. William Clerk.*

Mr. *John Bell* Miniſter of the Goſpel, aged 40 years, *Solutus*, purged and ſworn, produces a written Declaration ſigned under his hand, upon what he knows relating to the Murder. And Depones the ſame is truth as he ſhall anſwer to God. *Sic ſubſcribitur. John Bell.*

Follows the tenor of the ſaid Declaration.

The declaration of Mr. *John Bell*, in anſwer to ſeveral interrogatores propoſed by his Majeſties Advocat before the Lords of the Committee of the Council.

Imprimis, I declare, that at Sir *James Standsfield's* earneſt deſire, I went from this Town with him to *New-milns*. And that by the way I diſcerned nothing but ſound Judgment, and reaſon in Sir *James*, for his diſcourſe was both rational and pertinent, and that both at Supper that night, and after Supper his diſcourſe he was rational, and his carriage moſt civil, and was pleaſed to accompany me to my Chamber, and ſat with me there (as I ſuppoſed) until it was about ten a Clock at night, diſcourſing pertinently, and to good purpoſe.

2. I declare, that having ſlept but little I was awakened in Fear by a Cry (as I ſuppoſed) and being waking I heard for a time a great Dinn, and confuſed noiſe of ſeveral voices, and Perſons ſometimes walking, which affrighted me (ſuppoſing them to be evil wicked Spirits) And I apprehended the Voices to be near the Chamber door ſometimes, or in the Tranſe, or Stairs, and ſometimes below, which put me to ariſe in the night and bolt the Chamber door further, and to recommend my ſelf by Prayer, for Protection and preſervation to the Majeſtie of God: and having gone again to Bed, I heard theſe voices continue, but more laigh till within a little time, they came about to the Chamber Window; and then I heard the voice as high as before, which encreaſed my fear, and made me riſe again to look over the Window, to ſee whether they were men or women; but the window would not come up for me, which window looked to the Garden, and Water, whither the voices went on till I heard them no more, only towards the morning I heard walking on the Stairs, and in the Tranſe above that Chamber where I was lying.

3. I declare that I told the Women who put on my fire in my Chamber that Sabbath morning, that I had reſted little that night through dinn I heard, and that I was ſure there were evil Spirits about that houſe that night.

4. I declare that about an hour after day, *Philip* came to my Chamber, and asked if Sir *James* came to that Chamber this morning, and told me that he had been ſeeking him upon the bank of the Water; unto which I replyed, I have not ſeen your Father, but what mean ye by the Banks of the Water? whereupon *Philip* without anſwering went down Stairs immediately, and within a little time, I followed to ſee what he meaned, and having gone without the Gate, and up the Cawſey that leads to the Manufactory; One came running, and ſaid, they had found Sir *James* lying in the Water, whereupon I was ſtricken with ſuch aſtoniſhment, fear, and trembling, that I could go no further, but returned trembling to the Chamber, and having ſitten down on the bed ſide, I ſaid to an honeſt man who accompanied me, this is the ſaddeſt day that ever I ſaw; my affrightment in the night was terrifying to me, but this is more grievous; and having gone to an honeſt mans houſe,

houſe, where I took horſe that morning, I ſaid, if the Majeſtie of God did ever permit the devil, and his inſtruments, to do a honeſt man wrong, then Sir *James Standsfield* has received wrong this laſt night, which the Lord will diſcover in his good time.

5. I declare that after my return from *Morum*, that Sabbath evening, *Philip* told me that he had advertiſed ſeveral Freinds at *Edinburgh*, and that he was expecting the Commiſſary amongſt others that night, whereupon I commended what he had done, in ſending for ſuch intelligent Perſons, and that for two reaſons (1) becauſe it was neceſſary his Fathers body ſhould be ſighted, (2) Becauſe they could adviſe him about his Burial. *Philip* anſwered that he was ſeen by theſe that took him out of the Water. But I replyed that was not enough, for the Murder committed was either a violent Murder, or a diſtracted Murder; and having deſcribed what a diſtracted Murder was (upon *Philip*'s relateing ſome diſtemper his Father had been in ſome years formerly) I ſaid, That I conceived no Perſon could come to ſuch a high Act of frenzie, to do ſuch a thing, but it would be known on him many hours, yea ſome days before; But I could teſtifie, that Sir *James* was in his right reaſon at ten a clock, wherefore I inclin'd to think it was a violent Murder committed by wicked Spirits; And ſo adviſed that the Corps might be ſighted by the neareſt Phyſicians, and Friends, and the honeſt men living in that Town; nevertheleſs they went and buried Sir *James* that night, without either acquainting me, or ſeveral honeſt Perſons who lived in the place. Mr. *John Bell* depones his above written declaration is truth, as he ſhall anſwer to God, *Sic ſubſcribitur.*

Linlithgow. *John Bell.*

Sir *Robert Sinclar* of *Steinſtoun*, purged and ſworn, Depones, Sir *James Standsfield* being at the Deponent's Houſe, told the Deponent, that he regrated that his Son *Philip* had miſpent his Time and Money, and when he came Home from *London*, he was aſhamed to tell how he came on him in his Chamber, at *London*; And this is the Truth as he ſhall anſwer to God.

Sic ſubſcribitur. *Ro: Sinclar.*

James Murehead Chirurgeon, aged 32 years, married, purged and ſworn, Depones, that after the Deponent and *James Craufurd* Chirurgion had opened the Corps, about the Neck, and ſewed it up again, and removed the foul Linen, and put on again the clean Linens, in doing whereof they were obliged to ſhake the Body to and fro, and move the head back and foreward: The Deponent deſired that the Friends might liſt the Body, and put it in the Coffin, and that the Pannal having come and lift up the Head, he did let it fall upon the Table ſuddenly, and that it made a conſiderable noiſe at the falling, and that the Pannal retired back quickly rubbing his Hands on his Breaſt, and crying, O *God*! O *God*! and ſome ſuch other Words, and that the Deponent being aſtoniſhed thereat, looked to the Corps, and as the Pannal did take away his hand from it, did ſee it darting out Blood through the Linnen, from the left ſide of the Neck which the Pannal touched, and that the Deponent was amazed at the ſight, partly through the darting out of the Blood, and partly through the apprehenſion he had of the Murder. Depones he ſaw no Body touch the left-ſide of the Defunct's Head, the time it bled, but the Pannal: Depones, that as ſoon as the Deponent recovered out of his amazement, he cryed to the Boy to give the Pannal ſome Triacle-water, which he did: but Depones he did not ſee *Philip* the Pannal return again to the Body of his Father: Depones when the Deponent and the other Chirurgion were putting on the clean Linens, and ſtirring and moving the Head and Craig, he ſaw no Blood at all. And this is the Truth as he ſhall anſwer to God.

Sic ſubſcribitur. *Ja. Murehead.*

James Murehead, and *James Craufurd* Chirurgions give in their Report and Declaration in Write, anent the Murder of Umquhile Sir *James Standsfield*, which they renewed upon Oath, in preſence of the Juſtices and Aſſiſers, and whereof the Tenor follows:

Edinburgh, December 1. 1687. } *November* 30. 1687. We viewed the Corps in *Morum* Church.

We under Subſcribers *James Craufurd* and *James Murehead* Chirurgions in *Edinburgh*, having order from Sir *John Dalrymple* his Majeſties Advocat to go to *Morum*, and there to take up the Corps of Sir *James Standsfield*, and to ſight and view the ſame exactly, and if need were to open up the Body, and to conſider, whether there appeared any evidence of Wounds, Bruiſes, or Strangling upon the Corps beſides what might have happened by his falling or drowning in the water, *&c.* In obedience thereto, we cauſed take up the ſaid Corps, and in preſence of *Philip Standsfield*, Mr. *Andrew Melvil* Miniſter of *Morum*, *James Hamilton* Writer to the Signet, *James Row* and *Alexander Campbel* Merchands in *Edinburgh*, *Umphray Spurway*, *James Dick*, *James Mitchel*, and *John Robertſon* Indwellers in *New-Milns*, and ſome others having with all poſſible exactneſs viewed the Corps; We obſerved the Face a little ſwelled and inclining to a dark reddiſh colour, ſome fulneſs of ſome capillarie Veins in the Pallat of the Mouth towards the Uvula, as alſo a large and conſpicuous ſwelling about three inches broad of a dark red or blae colour, from one ſide of the Larinx round backwards to the other ſide thereof, we obſerved the Jugular Veins on both ſides the Neck very large and diſtended and full of Blood; There was a large ſwelling under and betwixt the Chin and the Cartilago Scutiformis, there was alſo a little ſcratch below the left Mandibula, which had rankled the Cuticula, and made ſome little Impreſſion on the Cutis, having made Inciſion from the Chin down about the Larinx, and croſs upon the ſwelling of the Neck: We found a greater laxneſs and diſtance (as we think) than ordinary betwixt the Cartilago Scutiformis and Os hyoides; we found the Tumour on the Neck, containing bruiſed like dark or blackiſh Blood; the Jugulars, when cut, bled conſiderably, eſpecially that on the left-ſide.

Having opened his Breaſt, we found the Lungs diſtended to the filling up their Capacities, but free of Water, his Stomach, Liver, *&c.* were all in good condition, we found no water within the Corps, the Corps had no ſmell at all; The Breaſt, Belly, Privy Parts, *&c.* were all well coloured, there was no ſwelling in his Belly, nor any thing by ordinary to be ſeen on his Head; This we atteſt and ſubſcribe with our Hands. *Sic ſubſcribitur.*

James Craufurd. *James Murehead.*

Edinburgh,

Edinburgh 6. December 1687.

IN preſence of the Lord Arch-biſhop of *Glaſgow*, Lord Tarbat, Preſident of Seſſion, Advocat, and Caſtlehill.

James Murehead, and *James Crawfurd* Chirurgions, being ſolemnly ſworn in the preſence of the Committee of Council, Depones that the written report anent the Body of the Deceiſt Sir *James Standsfield* is true, according to their Skill, and this is the truth, as they ſhall anſwer to God. *Sic ſubſcribitur*,

James Craufurd. James Murehead.
John Glaſcow. J. P. D. C.

Edinburgh 7 February 1688. in preſence of the Juſtices and Aſſiſers.

James Murehead, and *James Craufurd* Chirurgions, being ſolemnly ſworn, Depone upon the truth, and verity, of the above written declaration in all points. *Sic ſubſcribitur*,

James Craufurd, James Murehead. Linlithgow.

Follows the Chirurgions of Edinburgh their opinion anent the ſaid Murder.

WE underſubſcrivers, Chirurgions in *Edinburgh*, having fully conſidered the Report made by *James Craufurd*, and *James Murehead*, concerning the condition of the Corps of Sir *James Standsfield*, and though it be not uſual to declare more than matter of Fact, yet in obedience to your Lordſhips commands, where ye deſire to be informed, if theſe Symptoms, found upon the Body, do import, Drowning, or Strangling. We humbly offer our opinion, ſo far as our Art or Experience will allow. And whereas the report informs us, that there was found a ſwelling, and preternatural redneſs in the Face, a large conſpicuous Tumour, about three Inches broad, of a dark red, or black colour, from the one ſide of the Larinx, round backwards to the other ſide thereof, a large ſwelling betwixt the Chin and the Cartilago Scutiformis, the Jugular Veines, on both ſides very large, and diſtended, and when Inciſion was made downwards, betwixt the Os hyoid and Larinx was obſerved a laxnes, and diſtance between the Os hyoid and the Cartilago Scutiformis, Inciſion was made croſs alongſt the Tumor, it was found full of bruiſed Blood; The Jugulars likeways when opened yielding a conſiderable quantity of Blood, eſpecially on the left ſide, no ſmell, or corruption appearing in any part of the Body. It is very probable theſe parts have ſuffered ſome external violence, which hath made them appear ſo far different from their natural figure and colour, and could not be cauſed by Drowning ſimply. As to the other part of the report, the Breaſt, and Belly, being opened, the Lungs found diſtended, the Bronchi full of Air, without any Water, nor any Water found in the Stomach, or Inteſtines, a Body when drowned, being generally found to have much Water in it, with other circumſtances of the Report conſidered, gives juſt ground to think he was not drowned. This we ſubſcribe at *Edinburgh*, the 3 day of *February*, 1688. *Sic ſubſcribitur*,

John Ballie Deacon, William Borthwick,
George Stirling, Thomas Edgar,
James Craufurd, James Murehead.

Follows the Report of the Colledge of Phyſicians.
Edinburgh 6 February 1688.

THE Colledge of Phyſicians, being aſſembled at the deſire of His *Majeſties Advocat*: To conſider a Report made by ſome Chirurgions, concerning the Body of the late Sir *James Standsfield*, and to give their Opinion, whether by the ſaid Report, there is any juſt ground to believe, that the ſaid Sir *James Standsfield* was Strangled, or Drowned? And they have accordingly conſidered the ſaid Report. They are of Opinion, ſuppoſing the verity of the ſaid Report or Declaration, that there is ſufficient ground to believe, that the ſaid Sir *James Standsfield* was Strangled, and not Drowned, in teſtimony whereof their Preſents are ſubſcribed by Sir *Andrew Balfowr*, Preſident of the ſaid College. *Sic ſubſcribitur*,

A. Balfowr. P. C. R. M.

Umphry Spurway Clothier at *New Milns*, aged 50 Years, *ſolutus*, purged and ſworn; Depones upon the truth and verity of his own Declaration given in by him, which is all written, and ſubſcribed with his own hand, and conſiſts of two leaves of paper, written on all ſides, which is Truth, as he ſhall anſwer to God.

Sic ſubſcribitur, Umphray Spurway.

Follows the Declaration of Umphray Spurway, *Engliſhman.*

I *Umphray Spurway* of *New Milns*, Clothier, being ſummoned to appear before the Lords of his *Majeſties* Privy Council in *Edingburgh*, the 6 of *December*, 1687. To declare my Knowledge of what I had ſeen, and heard, relating to the death of Sir *James Standsfield* of *New Milns*, Did then and there declare before the ſaids Lords, as hereafter followeth. And after declaring what I had to ſay, was commanded to commit to writing my ſaid Declaration, under my own hand, which I the aforeſaid *Umphray Spurway* do hereby humbly offer to the above ſaid Lords of His *Majeſties* Council, ſubſcribing the ſame with my own hand.

About ſix Weeks before the death of Sir *James Standsfield*, after Night I went to pay my Reſpects to Sir *James*, as I uſually did when he was at *New Milns*, at which time I found him not ſo free for Diſcourſe, nor ſo pleaſant as at other times: In ſo much that I uſed that freedom with him, to *Quere* the reaſon why his Honour was ſo Melancholy? who with a great Sigh, wringing his hands together, with Tears trickling down his Cheeks; ſaid, Mr. *Spurway*, I have great cauſe for it; I have born my own burden, without complaining to others, but I have a very wicked Family, and it's very ſad that a Man ſhould be deſtroyed by his own Bowels; But let me be never ſo ſparing in my Expence, both at home and abroad, yet they at home of my Family conſume me; condeſcending on ſome particulars, of ſome extravagant Sums of Money, monethly brought into him, that his Family had expended beſides what he allowed for them, which was very ſufficient: But that which grieved him moſt was, that his youngeſt Son, whom he had ſome comfortable hopes of, and upon whom he had ſettled his Eſtate upon, his juſt Debts being firſt payed; and that to the knowledge of his Son; But now

he

he was fruſtrated of his hopes of that his Son too: For his eldeſt Son had debauched his youngeſt Son, who had ſeveral times of late come in Drunk, as the other; This he declared to me with very great Grief of Heart: But the Saturday's-night after Sir *James*, and a Miniſter, one Mr. *Bell*, came to *New Milns* from *Edinburgh*, I came in at the Houſe of one *James Marr*, where I ſaw Sir *James*, and Mr. *Bell* ſitting by the Fire, before he had been at his own Houſe, which I wondred at, having never known the like done by him before; but ſince, I have had my Thoughts, that he had a fear upon him, (good Gentleman) of going to his own Houſe, but having ſat ſome time with him, he deſired Mr. *Marr* to ſend one of his People at his Houſe, to know, if they had kindled a Fire for him; and upon the return the Meſſenger gave this anſwer: *May it pleaſe your Honour, your Fire is kindled for you*; upon which Sir *James*, and the Miniſter aroſe, and took their leave of Mr. *Marr*; And I alſo accompanyed Sir *James* and the *Miniſter* half the way toward his home, and ſo took my leave of him, wiſhing his Honour a good Night: But the next Morning being Sabbath-day after the light well appeared, one *Agnes Bruce* came at my Chamber-door, and knocked. I went and opened the Door, ſays ſhe, *Sir, Sir* James *is gone out of his Lodging Roum this Morning, and we have ſought all the Roums of the Houſe for him, but cannot find him*; ſhe goes off, I immediately followed her, and when I came out of my door, I met with Maſter *Philip Standsfield*, and *James Dick*, Mr. *Standsfield* declares to me, *Lord, Maſter* Spurway, *what ſhould be the cauſe of this Man's diſcontent, that he ſhould thus leave his Lodgings, and walk out?* To which I replyed, *Sir, do you wonder the cauſe of his diſcontent, who never gave him content, but had been the cauſe of grieving him, from one to the other of them, ever ſince I knew the Family:* But he turned his back upon me, and made no reply at all; however I went at Sir *James's* Houſe, but could not procure the Keys of neither of the Gardens, and I ſent abroad of Sir *James's* Servants, and of my own, ſome on Horſe back, and ſome on foot, to inquire after him: At laſt a Servant of mine, one *William Bowman* found him in the River, a little be weſt the Town; I went at the place, and ſaw him lying about two Yeards, or eight Foot from the Brink of the River, lying upon his Belly, juſt at the top of the Water, as it were floating, only his Coat and Weſtcoat looſe about him, and a Shirt on him that I ſaw. I ſaw the place at the Brink of the River, where ſome one had ſtood all beaten to maſh with Feet, and the ground very open and mellow, although a very hard froſty Morning; So I gave order to ſome to get a Ladder, and to ſet one end into the River, as near the hinder part of Sir *James* as they could, and the other end of the Ladder to fall at the top of the Brae, which was very ſteep, and ſo they might get him out eaſily; So I came away from the place, and deſired Mr. *Marr* to ſee the Body landed, declaring that I would go home, and write to Mr. *George Hume* Merchand in *Edingburgh* of the ſad ſight which I had ſeen, deſiring him to communicat the ſame to my Lord Advocat, with deſire to know by the Meſſenger his Lordſhip's Pleaſure, what of advice or direction he would be pleaſed to give concerning it, and it ſhould be followed; But the Meſſenger that I ſent, after he had delivered my Letter to Mr. *Hume*, and Order given by Commiſſary *Dalrymple*, how to proceed further with the Body of Sir *James*, which Order was directed to my ſelf by a Letter, which when I read the Letter, the Contents was: That I ſhould endeavour to procure two or three diſcreet Perſons of *New Milns* to my ſelf, andwe together view the Body of Sir *James*; and if we found no grounds to believe that his Perſon had been wronged by others, that then with all ſpeed he ſhould be Buried, and that as privatly, and with as little noiſe as could be; But this Letter, which was the Commiſſary's Order to me, was ſent by the hand of one *James Mitchel*, Kinſman to Sir *James*; For that Horſe that the Expreſs rode on to *Edingburgh*, was taken out of the Stable, where he was ſet up: And one Mr. *Patrick Smith*, the Brother-in-Law of Sir *James Standsfield*, mounted on him to come for *New Milns*: So that my Expreſs was thereby diſabled, to bring me the anſwer of my Letter; and the ſaid *James Mitchel*, who brought my Letter, came home at the place by Nine of the Clock, that Sabbath day at Night, and gave an account of the Letter that he had for me; but they diſwaded him from bringing it me, ſo that I had it not till three Hours after Sir *James* was buried. But upon *Monday* Morning, I aroſe about three or four of the Clock; and coming out of my Houſe, I ſaw great Lights at Sir *James's* Gate, which occaſioned my going down, to ſee what the matter was; and as I went, I met with one *William Robinſon*, coming up of Home, I asked what the meaning was of theſe Lights, and of the Horſes that I then ſaw at Sir *James's* Gate? who anſwered me, that Sir *James's* Corps were brought out at the Gate, and that they were carrying it at *Morum* to be buried, having received orders from my Lord Advocate for that purpoſe: At which I returned to my Houſe, thinking it very ſtrange thus to proceed without having had the Corps viewed by ſome Perſon, as I well knew was cuſtomary in *England* in ſuch Caſes. The next ſtep to my Remembrance, was, That upon the *Tueſday* night following, after I was in Bed, one Mr. *Alexander Campbell* in *Edinburgh*, with one Mr. *James Row*, and an Gentleman, one Mr. *Hamilton*, with two Chirurgions, came at my Houſe, and cauſed me to riſe out of my Bed, ſhowing me an Order, which they had from my Lord Advocat, for the taking up again the Body of Sir *James Standsfield*; and commanded me to make ready to go with them, and having ſeen the Order, readily ſubmitted thereunto, and when coming upon the place at *Morum*, cauſed the ſaid Grave to be opened, and the Coffin taken up. It was carried into the Church, and there opened; and as ſoon as Sir *James's* Grave-Cloaths were taken off him, and all his upper parts uncovered home to his privy parts, methought his Face looked not as I expected, nor as others had inſinuated, that were at the dreſſing of him at firſt; for they ſaid that his Body and Face was very fair and freſh; but I found his Face at firſt view of another Complection, being blackiſh with ſome ſtrakes of red like ſtanding, or rather ſtrangled Blood; and under his left Ear I ſaw a ſwelling home to his Throat, of a blackiſh red Colour: After this I ſaw the Chirurgions opening his Body, beginning at the top of his Chin, and ſo down to the Pit of his Stomach, and then cut his Skin on both ſides

his

his Throat, towards each Ear, and coming at the place near his left Ear, that I saw swoln, I there saw of corroded, or congeal'd Blood, lying a lump of a great thickness, and two or three inches long, which proved to me he had been Strangled: And one thing more I observed, that when Mr. *Murehead* put off his Cap at first from his Head, in slipping it back, Sir *James*'s Eye-lids opened, and his Eyes appeared, but his Eye-lids much swoln, and very red, which did also prove to me a Symptom of Strangling.

This being done, and his Breast opened, so that his Intrals appeared, and to me seemed in good order, and no appearance of water in his Body; neither then, nor when first he was taken out of the River; the like I think, has not been ever known by any Man that cast himself, or that has been cast into a River alive, and not to have his Body full of water; nor that ever a dead Man should ly at the top of the water, where no running Stream is, but a still Water, of about 5 foot deep: But to me in this it showes, that as God is a Wonder-working God, so he has in this shown no less, to convince Men, that this worthy Gentleman murdered not himself, but was murdered.

But my last Observation was of a wonder more, that the Lord did show, when the Chirurgions had caused the Body of Sir *James* to be by their Servants sewen up again, and his Grave-Cloathes put on. A Speech was made to this purpose, It is requisit now, that those of Sir *James Standsfield*'s Relations, and neareſt Friends should take him off from the place where now he lyes, and lift him into his Coffin. So I saw Mr. *James Row* at the left-side of Sir *James*'s Head and Shoulder, and Mr. *Philip Standsfield* at the right-side of his Head and Shoulder, and going to lift off the Body, I saw Mr. *Philip* drop the Head of his Father upon the Furm, and much Blood in his Hand, and himself flying off from the Body, crying, *Lord, have Mercy upon me*, or upon us, wipeing off the Blood on his Cloaths, and so lay himself over a Seat in the Church, some supposing that he would swarff or swoun away, called for a Bottle of Water for him. After this we went for *Morum* Castle, where Mr. *Philip Standsfield*, my self, and several others stayed until it was day: In which time I challenged Mr. *Philip* for his unkindness to me, by his not inviting me to accompany the Corps of his Father, when first buried, knowing the Intimacy that there was betwixt his Father and my self; and that of all the People in or about the Town, his Father delighted in no ones Company, as in mine; and that he did not give me notice of his Burial, that I might do my last Office of Love and Service to him by accompanying his Body to his Burial place; I took it very ill from him: So then Mr. *Philip* swore that he had sent two of his Servants to invite me, but if those damn'd Rogues would not do it, what could he help it; and yet did declare, as is proved, and as himself since confest before my Lord Advocat, that he would not invite me, assigning this as his Reason, supposing that my self, and *James Marr* had been Instruments of setting his Father against him, which was a false suggestion: All which particulars I have before the Lords of His *Majesties* Honourable Privy Council declared: So by their Command I have in this Sheet of Paper written it over with my own Hand, and do hereby subscribe my Name, the sixth of *December*, 1687. *Sic subscribitur, per me Umphray Spurway.*

Edinburgh, the 7th of *February*, 1688.

In presence of the Justices and Assisers, *Umphray Spurway* owns his Declaration above written to be Truth in all poynts; As he shall answer to God. *Sic subscribitur,*

Umphray Spurway. *Linlithgow.*

James Mitchel, Nephew to the deceast Sir *James Standsfield*, aged 20 Years, unmarried, purged and sworn, Depones, that about twenty dayes before Sir *James Standsfield*'s Death, being in company with *Philip* the Pannal, he heard the Pannal say, That if his Father did dispone his Estate by him, he would kill him, though he should die in the *Grass Mercat* for it: Depones that several times about a Month before Sir *James*'s Death, he heard the Pannal say, that little thought the People had how soon the Pannal would be Laird, and when he was, he would then ride in their Skirts that had been ill to him. And this is the Truth, as he shall answer to God. *Sic subscribitur, James Mitchel.*

John Topping in *Monkrig*, aged 25 Years, married, purged and sworn, Depones that upon the *Sabbath*-morning, after Sir *James Standsfield*'s Death, the Deponent coming from *Monkrig* to *New-Milns*, by the side of the Water, he discovered a Body Floating, and saw *Philip Standsfield* looking to that place of the Water where the Body was, and the Deponent asked the Pannal, whose Body that was in the Water, and the Pannal made no answer; and when he came to *New Milns*, he heard that Sir *James*'s Body was found in the water; Depones he saw the Body taken out of the Water, and went alongst with it, near to the Walk-Miln, but observed no Water come from the Body. This is the Truth, as he shall answer to God. Depones he cannot write. *Sic subscribitur, Linlithgow.*

James Dick in *New Milns*, aged fourty seven Years, married, purged and sworn; Depones that the Pannal *Philip Standsfield* and the Deponent being at *Morum* after taking up of the Corps, and discoursing about the finding of the Body in the water, the Deponent said to the Pannal, that he saw something in the water, when they were searching after Sir *James*, but he did not suppose it to be Sir *James*'s Body, and the Pannal said, I saw him before any of you: Depones that he saw the Body after it was taken out of the Water at the Brink of the Brae, and went alongst with the Body a piece of the way, and observed no water come from the Mouth. And this is the Truth as he shall answer to God. *Sic subscribitur, James Dick.*

His *Majesties* Advocat desired that *James Thomson*, Son to *George Thompson* in *New Milns*, and *Anna Mark*, Daughter to *Janet Johnstoun*, Spouse to the said *James Thompson*, might be examined as Witnesses against the Pannal, for proving his Accession to his Father's Murder. And the Procurators for the Pannal having alledged, that the foresaids Persons were but Children, and so not by Law capable to be Witnesses, the Boy not being above thirteen years of Age, and the Girl not above ten years.

The Lords, Justice General, and Commissioners of Justiciary, refused to receive them as Witnesses, but in regard the Persons on the Inquest earnestly desired the said *James Thompson* and *Anna Mark* might be examined, anent their knowledge of the Pannal's Accession to the forsaid

ſaid Murder, they allowed the forenamed perſons their Declararions to be taken for clearing of the Aſſiſe. And accordingly the ſaid *James Thomſon* being examined in preſence of the Juſtices and Inqueſt, declared as after ſollows; That *Janet Johnſtoun* came to *George Thomſon*'s Houſe betwixt nine and ten at Night, and *Philip Standsfield* the Pannal came there ſhortly thereafter, and the Houſe being dark, the ſaid *Philip* gave the Declarant a turnor to buy a Candle, which he did in the neighbouring Houſe, and after the Declarant return'd with the Candle, his Mother ordered him to go to his Bed, which was in the ſame Roum, and beat him becauſe he did not preſently obey. Declares he heard one come to the Door, and inquire for *Janet Johnſtoun*, and deſire her to come home, and give her Child ſuck: Declares he knew by the Voice that the Perſon who came was *Agnes Mark* the ſaid *Janet's* Daughter, and that *Janet* ordered her to go away, and ſhe ſhould follow her; declares ſhe ſtayed a conſiderable time thereafter, and the ſaid *Thomſon*'s Wife was deſired to go for a pint of Ale, and *Philip* took out a handful of Money to ſee if he had any ſmall Money, and finding he had none, the Ale was taken on upon truſt; Furder declares, that the ſaid *George Thomſon* and his Wife, and *Janet Johnſtoun* did ſtay together, and whiſper ſoftly a conſiderable time; declares he heard *Philip Standsfield* complain that his Father would not give him Money, and pray the Devil take his Father, and God damn his own Soul if he ſhould not make an end of his Father, and then all would be his, and then he would be kind to them; declares *Philip Standsfield* and *Janet Johnſtoun* went away about eleven, and ſhortly after his Father and Mother came to the Bed where the Declarant was lying croſs the Bedfoot; and the Declarant in the night time perceived his Father and Mother riſing out of the Bed, and going out of the Houſe, and that they ſtayed a conſiderable time away, about an hour and an half, or two hours, and that the Declarant was perfectly awake, when they went and were away, and he wondred what they were going about: declares his Mother came in firſt, and came ſoftly to Bed, and within ſome time after his Father came in, and put a Stool to the back of the door, without locking it, for the Lock made always a great noiſe when they locked the door, and the Declarant's Father called to him whenever he came in, but the Declarant made no anſwer, that it might be thought he was ſleeping, and his Mother asked, what had ſtayed his Father; and thereupon his Father and Mother did fall a diſcourſing of ſeveral things, and particularly his Father ſaid, that the Deed was done, and that *Philip Standsfield* guarded the Chamber-door, with a drawen Sword and a bendet Piſtol, and that he never thought a Man would have died ſo ſoon, and that they carried him out towards the water-ſide, and they tyed a Stone about his Neck, and leaving him there came back to the little Kiln, and reckoned whether they ſhould caſt him in the water with the Stone about his Neck or not, and whether they ſhould caſt him in far in or near the ſide, and at length they returned and took away the Stone from about his Neck, and threw him in the water; declares his Father ſaid, that yet he was afraid for all that, that the Murder would come out, and his Mother anſwered, Hout Fool, there is no fear of that, it will be thought he has drowned himſelf, becauſe he will be found in the Water; declares when Sir *James* was miſſed in the Morning, the Declarant's Mother ſaid to his Father, riſe quickly, for if ye be found in your Bed, they will ſay that ye have a hand in the Murder; declares the Coat and Waſtecoat which were upon Sir *James*, when he was found in the water, were ſent to *Thomſon*'s Houſe, and *Thomſon*'s Wife ſaid to her Husband and *Janet Johnſtoun* in preſence of the Declarant, that ſhe was affrighted to ſee the ſaid Coat and Waſtecoat, for ſhe thought that ſome evil Spirit was in it, and deſired her Husband to ſend it away, which he would not; And further that his Mother ſaid to her Husband in the Declarant's hearing, that ſhe was affrighted to be in the Houſe alone after night fell, and accordingly when ever her Husband went out, ſhe went out with him, which was not her ordinary; declares the ſaid *George Thomſon* did go into *Edinburgh* ſeveral days before the Declarant's Mother was brought in, and ſhe did immediatly after he came into *Edenburgh* ſend away Sir *James*'s Coat and Waſtecoat, and that ſhe was never in her own Houſe after night, ſince her Husband came in, but did lie in *Janet Johnſtoun*'s Houſe.

Sic ſubſcribitur,
Linlithgow, I P. D.

Anna Mark Daughter to *Janet Johnſtoun* declares that on the ſaid Saturdays-night *Philip* came up to her Mother's Houſe and ſent for *George Thomſon* and his Wife, and thereafter he ſent her to ſee if Sir *James* was come home; declares that ſhe ſaw *Philip* with his Hat off give a low Salutation to *George Thomſon* when he came up to him, and when ſhe returned and told that Sir *James* was come, *Philip* did take a drink, and runs down to *New Milns*, that about eleven a Clock that night, her Good father ſent her to ſeek her Mother, and that ſhe found her Mother with *Philip* in *George Thomſon*'s Houſe, and that her Mother bad her go home, and ſhe would come after her, and that her Good-father thereafter finding her Mother did not come, ſent her for *Margaret Iſles* to give ſuck to the Child, and went home again; but that her Mother did not come long after that, as ſhe thinks about two in the Morning, and that ſhe heard her Good-father ſay, Bitch and Whore, where have ye been ſo long? And ſhe anſwered, where-ever I have been, the Deed is done, and then went to Bed, and that after that, ſhe heard them ſpeak together, but could not know what they ſaid; ſhe declares alſo, that her Mother ſaid, ſhe was ſtill feared, and would not abide alone, nor lie alone in the Bed; but ſaid, ſhe was afraid.

Edinburgh, February 7th 1688. The ſaid *Anna Mark* being Examined in preſence of the Aſſiſe and Juſtices, declares *affirmativè*, conform to the above written Declaration in all points.

Sic ſubſcribitur, Linlithgow, I. P. D.

Sir George M'kenzie's *Speech to the Inqueſt.*

Gentlemen of the Inqueſt,

I Am glad to ſee ſo ſtrong, and univerſal a propenſity for Juſtice in my native Country, that every Man upon firſt hearing this Death, concluded it a Murder, and trembled leaſt it ſhould not have been diſcovered; every Man became Sollicitor in it, wiſhed to be of the Inqueſt

queſt; and ardent Prayers were generally put up to Almighty God for this end, with as much earneſtneſs as uſes to be for removing general Plagues: And the Almighty in return of thoſe, did firſt make ſo clear Impreſſions on all Mens Spirits, of *Philip*'s being the Murderer, that he had fallen by theſe; but his Divine Majeſty, who loves to ſee juſt things done in a legal way, furniſhed thereafter a full probation in an extraordinary manner, whereby we might not only convince our ſelves, but all ſuch as are not wicked enough to have been the Authors. You will diſcern the Finger of God in all the Steps of this Probation, as evidently as *Philip*'s Guilt; and this extraordinary Diſcovery has been made, as well to convince this wicked Age, that the World is govern'd by Divine Providence, as that he is guilty of this Murder. He is accuſed before you for three Crimes, *Treaſon*, the *Curſing of his Father*, and *the Murdering him*: Crimes in great Affinity, and naturally ſubſervient to one another; for to pray Confuſion to the King, who is *Pater patriæ*, is a Curſing our great Parent; And what can prove better a deſign to Murder his Parent, than the malitious hatred that prevails over a Son to Curſe him? What reſtrains vitious Men from Murdering thoſe, by whoſe Death they may expect licentious Liberty, and an opulent Succeſſion, ſave the fear of the Laws of the Land, or at leaſt an innate awe of the Law of Nature? But here you ſee in the Treaſon a Contempt of the Laws of the Land, and in the Curſing an abhorrence of the Laws of Nature.

There is no Reaſon to ſuſpect our Zeal in this Caſe from any State Deſign; for we took pains to ſhun a Probation of the Treaſon: It was forced upon us, and not ſought by us, ſo violent were, and are we in the ſearch of the Murder, that even Treaſon was not able to divert us. Nor preſs I it at this time; but to let you ſee there is nothing ſo wicked or dangerous, which this Pannal durſt not attempt. He not only wiſhes the King's Confuſion, but drinks it openly; and not only drinks the King's Confuſion himſelf, but he forces others to do ſo; nor needed he to be drunk, to be guilty, for this was the firſt Step of his drinking; and to convince you that he knew it was a Crime, it is proved that he took his Complices ſworn, never to detect it, the fatal Encouragement which always tempt him to commit his Villanies. The Curſing his Father is not from meer humour or diſſoluteneſs, but it becomes yet probable by a previous deſign to have his Eſtate, and from the reſtraint he found from him, of being debarred from the raviſhing hopes of a boundleſs Liberty: The Expreſſions are various and execrable, ſuch as, Devil take him, drown him, rive him, let him never come back, let him never eat more, *&c.* and theſe Expreſſions, which ſhould never have been once ſpoke, were frequently repeited, and are proved, not by ſuſpected Perſons, or Strangers, but by his Father's, and his own Servants, and ſuch of them too as were *Philip*'s own Favourits, and who think themſelves very unhappy in being obliged to Depone againſt him.

You are then, *Gentlemen*, in the third place to judge, how far this Murder and Parricide are prov'd, in which you need to be the leſs ſcrupulous, that the Son, who is accuſed of it, is to die however; for either of the two former Crimes are ſo far prov'd beyond all doubt, that though he ſhould eſcape this, he cannot theſe. And as to the Probation of this Crime, I muſt firſt repreſent to you, that in occult or atrocious Crimes, the Law has relaxed, and remitted much of its ſcrupulouſneſs in Probation, becauſe in theſe the ordinary Probation cannot be had, and to admit none but ſuch, were to reject all: And therefore in Hameſucken, which is the Beating a Man in his own Houſe, but much more the Murdering a Man by way of Hameſucken in his own Houſe, wherein all means are uſed to cover, and few can be got for diſcovering; you muſt not expect two Witneſſes who ſaw the Murder committed, but only ſuch Probation as can before God convince you, that this Murder was committed by that Man; no Inqueſt ever failed to find the Murder of Children to be clearly prov'd, though there were no Witneſſes that ſaw it committed, and the Murdering Parents is a more atrocious Crime, becauſe we owe more Duty to our Parents, than any Parent does to a Child, and never Son ow'd more than this did, nor can be more believ'd to have killed a Parent. For clearing whereof you are to conſider firſt, that he did not Drown himſelf, as was pretended, but was Murdered by ſome Perſons; and as the Law violently preſumes, that no Man would Murder himſelf, ſo without the help of this Preſumption, it is prov'd moſt convincingly by ocular Inſpection, that he was Strangled, the marks of Strangling, *viz.* the congeal'd Blood, the Diſlocation of one of the Vertebræ in his Neck, *&c.* being viſible Signs prov'd in the ordinary way, and we have added to this the Opinion both of the Chirurgions and Phyſicians, who at once declared, that he was not Drown'd, and that he was Strangled; the outward marks likewiſe of his not being Drown'd, appearing as viſibly as that he was Strangled; ſo you muſt conclude that he was Strangled; except you can think, that after he had Strangled himſelf, and broke his own Neck, he drown'd himſelf.

In the next place, who could have Murdered this innocent and obliging Gentleman, except ſome Perſon who had acceſs to his Houſe, wherein he was Murdered, and had Malice againſt himſelf? And theſe two can meet in no Perſon, but this unnatural barbarous Son; for one of the things that heightens his Guilt is, that he ſhould abhorre a Father, who engaged meer Strangers to love him as a Friend: and we have prov'd that he not only hated his Father, and that he had done ſo for many years, but that he vowed he would take away his Life before Chriſtmaſs next, and that in many various, but clear expreſſions, and at many ſeveral times; for ſometimes he ſwore, if he made a Diſpoſition to his ſecond Son, he ſhould take his Life; ſometimes, that he ſhould be Maſter of all before Chriſtmaſs, and he ſhould uſe the Servants as they uſed him; that though his Mother was like to die, that his Father ſhould die before her: and he ſcarce ever ſpoke of his Father, without ſwearing he would ſtrike a Sword to his Heart; nor would his Paſſion ſo much as ſuffer him to diſſemble this even to his Mother; and he who durſt own it to her, durſt certainly do it whenever he had occaſion.

I proceed now to you clear to, that I have prov'd, that he not only design'd and vow'd in Paſſion, that he would Murder his Father, but that he actually attempted to Murder him, and for this I have led theſe Witneſſes, who prove, that when his Father came from the Leaden-Mines, he fled into *Culter*, as a trembling Partridge purſued by a Haulk, telling ſome Gentlemen, that he had been purſued ſeven Miles by his unnatural Son, who accordingly came to the Houſe, and ſhot ſeveral Piſtols in at the Windows, whereupon the Gentlemen, who now Depone, were forc'd to watch with his Father all the night, and were forc'd to Convoy him the next day near to *Edinburgh*. We have alſo produc'd other Gentlemen, to whom his Father declared, that he attempted againſt his Life: and who will not believe the beſt of Fathers Deponing againſt the worſt of Sons? Nor could any thing have drawn this from the Father, ſave the terrifying danger, to which he was hourly expoſed. All the Supream Courts of *Europe* have found the attempt to kill, ſufficient to inſer Parricide, this is a higher degree of Guilt than Curſing, and yet that infers Death; and to attempt to kill a Father is more villanous, than to kill a Stranger. What ſhall be ſaid then of frequent, and deliberate attempts? And thus you have this Son again prov'd guilty of Death, and even of Paricide. That which haſtened the perpetrating this Crime was, that his Father wearied out with his Villanies, was at laſt forc'd to diſpone his Eſtate to his ſecond Son, and tho' there be nothing more ridiculous than to ask, What Reaſon the Son had to kill his Father, as he now does? For there can be no Reaſon for ſo barbarous an Action; yet this was a Motive to him, and may be a Proof to you; for ſo kind a Father, who had tryed all Means and Methods to reclaim his licentious Son, had never proceeded to this, unleſs he had been driven to it by thoſe frequent Attempts made by his Son upon his Life, in hopes to enjoy his Eſtate by the Death that he was to give. To diſappoint which hopes his Father deſign'd to ſettle the Eſtate on the ſecond Brother, after which Settlement he could gain nothing but the Gallows by killing his Father. Whereupon he to prevent the delivery of the Diſpoſition, did aſſociat to himſelf *Thomſon*, whom himſelf uſed to call the Devil's Taylor, *Thomſon*'s Wife, and *Janet Johnſton*, who was his own Concubine, and his Father's known Enemy, whom he could never have frequented, except upon ſo barbarous a deſign. *Thomſon* denyed that he was in the Houſe for eight days before, and yet it is prov'd he was in Sir *James*'s Houſe, the night the Murder was committed; *Johnſton* deny'd alſo before the Council, that ſhe was out of her Houſe after nine a Clock that night, and yet it is prov'd that ſhe ſtay'd abroad till after twelve, ſo that her Husband was forc'd to ſend for a Stranger, to give ſuck to her Infant. Why did they both deny, or ſhe abandon her Child, at ſo ſuſpect a time? And it is ridiculous to pretend as they do, that they forgot ſo extraordinary a circumſtance in ſo extraordinary a night, eſpecially being examined upon it, within two or three days thereafter. By their aſſiſtance the Murder was deſign'd to be upon *Saturday*, the day of *January*; but God to diſcover, and revenge a Murder (which he thought fit to ſuffer to be committed, for the puniſhment of ſo many preceeding horrid Crimes) inſpired Sir *James* to bring with him that night, a devout Miniſter, for preparing the Father, and proving againſt the Son; and this pious and grave man, whoſe Merit may be laid in Ballance with many Witneſſes, Depones, that he heard that night, the noiſe of many People within the Houſe, which was inconſiſtent with Sir *James*'s drowning himſelf without it: And Depones, that his attention followed this noiſe until it died out towards the River, into which he was thrown by them; and the Brink is prov'd to have been broken, and beat by many Feet, which fortifies much this Depoſition. It is alſo prov'd, that he refuſed that night to come to publick Prayer with his Father, ſwearing that he could not look upon him, and that the next morning, when all went to find out his Father, he confeſſed he had firſt found him; but that he came away, without diſcovering that he had found him, nor did he ſhew the leaſt grief when he was found by others; whereas if Nature had not been quit devour'd by Vice and Guilt, he had certainly thrown himſelf upon his dead Father, and had lamented that fatal Death, which no man, except he, ſaw with dry eyes; but whilſt others were mourning for his Father, this Miſcreant would not ſuffer him to be carried in to his own Houſe, ſaying that he died like a Dog. O criminal Moderation that never appeared in this paſſionat Creature ſave upon the Death of his Father. O curſed Juſtice, never ſhowen or pretended to, ſave in aſſerting, that his Father deſerved no reſpect, becauſe he drown'd himſelf. Upon this villanous pretext, he cauſed throw him into a remot Houſe, where none were allowed to ſee the Body, ſave his own Accomplices, to prevent all Diſcovery by Inſpection of it, and for the ſame reaſon cauſed bury him very ſuddenly, in ſpight of a Countermand from his Freinds at *Edinburgh*. But they fully perſwaded, that Sir *James* was was Murdered by his own Son, ſent out ſome Chirurgions and Freinds, who having raiſed the Body, did ſee it bleed miraculouſly upon his touching it. In which God Almighty himſelf was pleaſed to bear a ſhare in the teſtimonies which we produce; that Divine Power, which makes the Blood circulat during Life, has oft-times, in all Nations, opened a paſſage to it after Death, upon ſuch occaſions; but moſt in this caſe, for after all the Wounds had been ſewed up, and the Body deſignedly ſhaken up and down, and which is moſt wonderful, after the Body had been buried for ſeveral days, which naturally occaſions the Blood to congeal; upon *Philip*'s touching it, the Blood darted and ſprung out to the great aſtoniſhment of the Chirurgions themſelves, who were deſired to watch this Event, whereupon *Philip* aſtoniſhed more than they, threw down the Body, crying, *O God*! *O God*! and cleanſing his Hand grew ſo faint, that they were forc'd to give him a Cordial. But leaſt any ſhadow of difficulty might remain with you, his Divine Providence, which oft-times reveals it ſelf by the mouths of Babes and Sucklings, has brought us two little Witneſſes, whom as no body could be ſo unworthy as to corrupt, ſo none can be ſuch Infidels as not to believe, eſpecially ſince they Depone againſt their own Parents, and have owned firmly in their preſence, what they now De-

pone in yours; from them ye have an account how *Philip* that night came into the Houſe of their Parents, and there ſwore, *He would be rid of his Father that very Night*; how they went out at midnight, and after their return made their reflections, how eaſily Sir *James* had died, and how briskly *Philip* had behaved, by guarding the door with a Piſtol in his one Hand, and a Sword in the other, how they had hung a Stone about his Neck, but had thereafter taken it away, and how the Mother durſt not ſtay in her own Houſe, while Sir *James*'s Coat was there, and if you had ſeen this little Boy upon his knees, begging his Father to confeſs with ſo much Affection, ſo much Judgment, ſo much Piety, you had needed no other Probation but himſelf; the Father himſelf before his Death was convinced, and frequently foretold, that his Son would kill him, and the Mother how ſoon ſhe heard of her Husband's death, and ſome of the circumſtances, now inſiſted upon, and remembred what ſhe had heard her Son ſay to her ſelf, and what he had ſaid at *Nunland*, concluded he was the Murderer, in ſpight even of that criminal kindneſs which ſhe had for him; almoſt the whole Nation was convinced of this before any Probation was led: and the Lords of the Privy Council, among whom many of our Judges ſit, did declare, that they thought that half of the Probation which was led before them, ſufficient to convince an Inqueſt. How then ſhould the leaſt ſcruple remain with you, before whom ſo full, ſo clear, and ſo legal a Probation has been led, that like a Bend, every part of it ſupports another, and like a Chain, every Link draws on another?

I need not fortifie ſo pregnant a Probation, by laying out before you how often he and his Complices have contradicted one another, and even how often he has contradicted himſelf, in the moſt obvious and material points, and how he denyes every thing with Oaths, and with equal confidence, though never ſo clearly prov'd: Albeit ſuch as theſe are the chief things that make up the Probation in other Caſes, nor how he ſuffered the greateſt Indignities imaginable from his Complices, in preſence of the Privy Council, though this convinced many of their Lordſhips, that he was at the mercy of thoſe Complices, who were too far upon his Secrets, not to be ſlaviſhlie ſubmitted to. But I cannot omit, how that ſince he came into Priſon, he has lived ſo Impiouſlie, and Atheiſticallie, as ſhewes, that he had no awe upon his Spirit, to reſtrain him from committing any Crime from a love to God, or a fear to Hell, and that he conſtantly filled and kept himſelf drunk from morning till night, thereby to drown the voice of his Conſcience, and to make himſelf inſenſible of the Terrors of the Almighty.

The Judges have declared what was neceſſary to be prov'd, and you are only to judge, if we have prov'd what they thought neceſſary; and therefore there is no place to doubt, if a man's life may be taken upon meer preſumptions; for the Judges have eaſed you of that ſcruple, by finding the grounds in this qualified Libel relevant: and his own Advocates have acknowledged this Probation to be ſo ſtrong and unanſwerable, that before the half of it was led, they went away and deſerted a Client, whom they found they could not defend, nor ſhould any man doubt of a Probation, which ones own Advocats think invincible. If then ſuch amongſt you as are Fathers, would not wiſh to be murdered by your own Children; or ſuch of you as are Sons, would not wiſh the World to believe that you are weary of your Fathers, you will all concur, to find this Miſcreant guilty of a Crime that God has taken ſo much pains to detect, and all mankind has ſuch reaſon to wiſh to be puniſhed. May then the Almighty God who form'd your Hearts, convince them; and may this poor Nation Cite you, as the remarkable Curbers of Vice, to all ſucceeding Ages.

Thereafter His Majeſties Advocat proteſted for an Aſſiſe of Error againſt the Inqueſt, in caſe they ſhould aſſoilzie the Pannal.

The Perſons who paſt upon the Aſſiſe of *Philip Standsfield*, returned their Verdict in preſence of the ſaids Lords, whereupon the Tenor follows.

The whole Aſſiſe called upon the Jury of *Philip Standsfield*, upon the three Points following, particularly lybel'd againſt him, to wit, the Crime of Treaſon, the Curſing of his Father, and acceſſion to his Father's Murder, they unanimouſly in one voice by the Mouth of *William Baillie* of *Lamingtoun* their Chancelor, finds the Pannal guilty of the foreſaid three Crimes. *Sic ſubſcribitur*,

William Baillie of *Lamingtoun* Chancelor.

THE Lords, Juſtice General, and Commiſſioners of Juſticiary, having conſidered the Verdict of the Aſſiſe returned againſt *Philip Standsfield*, they by the Mouth of *John Leſlie* Dempſter of Court, decerned and adjudged the ſaid *Philip Standsfield*, to be taken upon *Wedneſday* next, being the fifteenth of *February* inſtant, to the Mercat Croſs of *Edinburgh*, and there betwixt two and four a Clock in the Afternoon to be hanged on a Gibbet till he be dead, and his Tongue to be cut out, and burnt upon a Scaffold, and his right hand to be cut off, and affixt on the Eaſt Port of *Haddingtoun*, and his Body to be carried to the *Gallowlie* betwixt *Leith* and *Edinburgh*, and there to be hanged up in Chains, and ordains his Name, Fame, Memory, and Honours to be extinct, his Arms to be riven forth, and delet out of the Books of Arms, ſwa that his Poſterity may never have Place, nor be able hereafter to bruik or joyſe any Honours, Offices, Titles, or Dignities within this Realm in time coming, and to have forfaulced, amitted and tint all and ſundry his Lands, Heretages, Titles, Offices, Tacks, Stedings, Roums, Poſſeſſions, Goods and Gear whatſomever pertaining to him, to our Soveraign Lord, to remain perpetuallie with his Highneſs in Property; which was pronounced for Doom, whereupon His Majeſties Advocat asked, and took Inſtruments. *Sic ſubſcribitur*,

Linlithgow. *Jo. Lockhart, David Balfour, Roger Hoge, P. Lyon.*

Extracted forth of the Books of Adjournal, By me Mr. *Thomas Gordon* Clerk to the Juſtice Court.

Sic ſubſcribitur, *Tho. Gordon.*

Which Doom and Sentence above-written, was accordingly put to due Execution upon the Perſon of the ſaid *Philip Standsfield*, in manner above preſcribed.

PRO-

Proceedings in the Houſe of Commons againſt the Earl of Caſtlemaine. 1 W. *and* M. 1689.

THE Attorney General [Sir *Geo. Treby*] being (on *Saturday* the 26*th* of *October*, 1688.) inform'd, that the Earl of *Caſtlemaine*, Sir *Edward Hales* and other Priſoners of the *Tower*, were brought by their *Habeas Corpus* to the Hall to be bail'd, deſir'd to know the Pleaſure of the Houſe in that Affair; who order'd that they ſhould preſently be ſent for to their Bar; which was done accordingly; Only the ſaid Earl was not there; for he remain'd ſtill in the Tower, having (it ſeems) made uſe of no ſuch Writ; However the Houſe directed the Governour to bring him up (as he did) the *Monday* following; And then the Speaker ſaid to this Effect.

Mr. *Speaker* to my Lord.

MY Lord, the Houſe having underſtood, That You went Embaſſador to Rome; *and alſo took your place at the Board as a Privy Councellor without taking the Oaths (which are great Crimes, and againſt Law.) They have ſent for you to know what you have to ſay for your ſelf.*

His Lordſhip's Anſwer.

IT cannot (Mr. *Speaker*) but put me into more than an ordinary Confuſion, when I find my ſelf in this place as a Criminal; eſpecially, ſeeing (through the whole courſe of my Life) the Glory and Welfare of *England* has been my chief Aim and Endeavour. You are pleas'd Sir to lay ſo great a Charge upon me, that (without ſhuffling or impertinence) I might ask time to conſider it; Yet ſince I well know how much you value your time, and ſince time alſo may make what I ſay ſuſpected more of Artifice than Candor, I ſhall now (without further delay) let you and this great Aſſembly ſee (where ſo many of Birth and Quality are met) how far I am from deſerving either cenſure or reproach. But (Mr. *Speaker*) before I go further, I muſt humbly beg theſe few Favours of you. *Firſt*, that you would Pardon all Tautologies or want of Method, as beginning perchance in the middle, and ending again where I ſhould have begun. *Secondly*, That you would not take any advantage at my Anſwers, for I ſhall be Ingenuous to the utmoſt, and heſitate at nothing you ſhall ask. And *Laſtly*, if (through inadvertency or haſt) I ſhould ſay what might ſhock you, that you would not ſtand upon the rigor of the Words, but upon the ſincerity and clearneſs of my Explanation.

Be pleas'd then to know, Sir, I was ſo far from ſeeking this Employment, that I did not ſo much as dream it was deſign'd me; And when I knew it, I us'd my utmoſt endeavour to avoid it. My ignorance of the King's Intentions appears by this, that (in the Year I went to *Rome*) returning out of the Country (according to my uſual cuſtom) after *Michaelmas*, I found a Proteſtant, a Perſon of Note at my Houſe, who told me, that before I ſpoke with any Man, he was to bring me to my Lord *Sunderland*, and from thence I was to go to his Majeſty; Nor would he (ſcarce) afford me time to put my ſelf in a tolerable order to attend them. My Lord *Sunderland* ſoon hinted to me, what the King's intentions were; And when I recurr'd to his Friendſhip, I had this Anſwer, or Words to this purpoſe; That if Subjects ſhould refuſe their King's Service in every thing that was troubleſom or *Contre-Cœur*, all Kings would be in an ill Condition; that my requeſt was beyond his Power; and that he believed I ſhould find his Majeſty very poſitive; and ſo I did Mr. *Speaker*, I'll aſſure you. Nay to ſatisfie you yet more fully of my backwardneſs to this Journey; can you think, Sir, that I, that had been at *Rome* more than once; that had ſeen the Grandeur of ſo many *Roman* Embaſſies; and knew they exceeded in Splendor and Expence three times thoſe to any Crown'd Head whatſoever, ſhould not be extraordinarily concern'd at an Employment, which had for its Subſiſtance (as the Lords of the Treaſury well know) no other Eſtabliſhment than to *Spain* or *France*, which (being 100 *l.* a week) amounts only to 5200 *Pounds per annum*?

Having thus Sir, ſhew'd you how little fond I was of the thing, let me now (with Submiſſion) ask you, what could I otherwiſe do in my Circumſtances? For firſt I call all that's Good to witneſs, I never heard of Law againſt it, nor know of any to this very day; And yet (on the other ſide) I was not only Commanded by the King, but knew his Royal and Legal Power of Commanding the Service of his Subjects, and moſt particularly in Embaſſies, as appears by many old Examples; Nay, by a fatal one in this very Century; I mean the Caſe of *Overbury*, to which no body here (I'm ſure) is a ſtranger. In the next place, Sir, what did I go to *Rome for*? Why only with a Letter; with a Complement from a profeſt and open Catholic King to his Holyneſs, as all Princes of that Communion do in the beginning of their Reſpective Reigns. Beſides Mr. *Speaker*, as I know no Law, that forbad my Obedience, ſo I muſt needs ſay (and this without cramping or putting any Bounds to the Legiſlative Power) that no ſuch Law can be made; For Sir, the Pope is a very conſiderable Temporal Prince, whoſe Territories border on two Great Seas, the *Mediterranean* and *Adriatic*; If then our Merchants ſhould be by ſtorm or other neceſſities, driven into his Ports; if *Engliſhmen* ſhould be ſurpriz'd by any *Roman* Party as they travel in a Neighbouring Country, ſhall our Government (not to mention a hundred other greater accidents) want Power to ſend a Meſſenger to Ranſom and Compound for them? What Law therefore was there ever yet fram'd,

or can be enacted (let the Commerce or Intercourſe between Nations be never ſo much broken and prohibited) but that a Commander in Chief, a General, and much more a King, may beat a Parley, diſpatch a Trumpet, nay, ſend and receive Letters as often as occaſion does require?

Now (Mr. *Speaker*) for Religion, I neither had any Commiſſion concerning it, nor Tranſacted with his Holyneſs about it; And as no body ever did, or could lay any thing of that nature to my charge, ſo for ſome confirmation of it, I will appeal even to the *Aqua freſca* Houſes of *Rome*, and to all the *Proteſtant* Gentlemen of our Nation there during my Embaſſie; for though what I tell you, Sir, be a Wonder, yet the Honourable Perſons, who have reſided in thoſe parts, know it to be true, that for a Diſh of Chocolate or a Diſh of Limonade, one may know the meaſures and particulars of an Embaſſy in that City, as well as we do what paſſes within theſe Walls at our Coffee-houſes. I am ſure my under Servants have often ſmil'd at the Grimaces and Myſteries which my *Secretaires* us'd in the beginning to make before my *Audiences*; for they have told them (within few hours after my return) almoſt Word by Word what had paſs'd. Give me alſo leave, Sir, to add one truth more, which will aſſure you that I had no dangerous intreague in hand; and this is, that notwithſtanding his *Holyneſs* never had the leaſt imagination or thought, but that I was as real and ſincere a Catholic as any Man living; and the ſame thing alſo I can ſay of all the Cardinals; and in fine, of the whole Court in general; Yet none of them (and every *Engliſh-man* in Town knew it) but look't upon me as one, that if any Immunity of the Crown were in queſtion, or any Temporal Concern of the Kingdom touch't, would ſtand as much in the Gap, and be in as Diametrical an oppoſition, as any Perſon of the Reform'd Religion whatſoever.

You ſee then Sir, both how, and why I went; nor have I done any thing certainly to merit any Man's unkindneſs or ill-will; nay to lay yet further before you the hardſhip I am under, I ſhall ſtate you a Caſe, not fetch't out of old forgotten Records, or Tranſacted in an Age diſparate from ours, but of a Man attainted in this very Houſe, in the memory of ſeveral now ſitting, and even whil'ſt I my ſelf had the Honour to be a Member of it. The Caſe Mr. *Speaker* is *Axtels* the *Regicide*; one whoſe Crime (I dare ſay) my greateſt Enemies think I abhor in the higheſt manner; no do I mention the thing in favour of the Criminal, but in Honour of his grave and worthy Judges. *Axtel* you know (Mr. *Speaker*) was Indicted for the Murther of *Charles* the Firſt; And to ſhew that he maliciouſly contriv'd and abetted it, the Kings Council urged his Commanding in the Hall at the Tryal; his placing the Sentinels all about; and in ſhort, his performing there the whole Office of Captain of the Guard. The Priſoner anſwer'd; but pray Mr. *Speaker*, let me beg Pardon, if the Interval of almoſt Thirty Years has made me forget his Words, I am ſure the ſenſe of them I have not; I ſay, Sir, the Priſoner anſwer'd; *My Lords I am under great oppreſſion, I am hardly dealt with. Has* Charles *the Second been ſo gracious as to paſs over the ordinary tranſgreſſions of his ſtrayed Subjects, and to look upon the Obedience of Soldiers to their then Superiours, as if the Authority had been more Legal? And ſhall I now dye (who was under Military Diſcipline) for that, which I muſt have preſently died for, had I not done it*; to wit, *had I not drawn up my Regiment, kept the Poſt order'd me, and perform'd the other duties, the Concourſe being great and troubleſom?* Upon this the Judge reply'd; I confeſs (conſidering the Kings merciful Reſolutions) that your Argument is ſtrong; it has great weight in it; But Mr. *Axtell*, did you no more? Did you only perform the Duty of a Commanded Soldier? Who was it (I pray) that animated the Rabble? Who beat the Soldiers for not crying Juſtice? Who encourag'd ſpitting in the King's Face? And who barbarouſly revil'd and threatned a Noble Lady, that in the tranſports of her zeal (when ſhe ſaw her Sovereign abus'd, when ſhe heard ſuch Blaſphemy againſt him, and all this Father'd upon the Nation) made a noiſe or ſtir in the Court? Theſe things therefore Sir, being prov'd againſt him; He was convicted, condemn'd, and ſo paid a Debt to Juſtice, and to the Sacred Aſhes of that great and juſt Man.

Now Mr. *Speaker* to application; And firſt, (after a little glance on the tenderneſs of theſe Judges, when any neceſſity could be pretended) let me with your Pardon ask you, ſhall I ſuffer as a Tranſgreſſor of the Law, were there any, when I muſt have ſuffer'd by the Law, had I refus'd his Majeſties Orders and Commands? But Sir, if you demand, did I no more than carry a Letter, or go with a Ceremonious *how dye* from the King? I muſt anſwer yes, and a great deal more too. For my Houſe was an *Aſylum*, a Place of Refuge to all diſtreſt or oppreſt Fellow Subjects. If Seamen mutiny'd or had any conteſt with their Captains, here a Reconciliation was made, and here they return'd to their Obedience, if the Captains themſelves (fraught-ed for the *Camera*) were delay'd their Money, or miſus'd by under Officers, they quickly found Redreſs, and often (by my intereſt) receiv'd more than they themſelves expected; And if the queſtion happened about quantity, or how Goods were condition'd at delivery, the Verdict I am ſure went ſtill on their ſide. Nor was my care confin'd to *Rome* only, but reach't to all the Factories of *Italy*: For the *Conſuls* themſelves, nay every private Perſon found both an eaſie acceſs to me, and an indefatigable Zeal in their concerns; ſo that the Merchants in general that had to do in thoſe Parts, were far from being behind hand in their thankful acknowledgments. Nay one of the greateſt Companies of our Nation, I mean that for *Turkey*, not only return'd me their thanks very heartily by Letter, but did it again by Word of Mouth after my Arrival home.

I am ſure (Mr. *Speaker*) if the Employment I ſubmitted to were a fault, I have already not a little ſuffer'd for it; for I never put bounds (as our Travellers, as well as my own Officers, fully know) to any Expence that could be imagin'd for the Dignity of the Nation; And give me leave to tell you alſo Sir, that though the Name of *Rome* may be harſh and ungrateful to your Ears, yet what I did, was with a good intention, and like a true and faithful *Engliſhman*. For had I been ſent with a Character to *Conſtantinople*, where they are *Mahometans*; or to *China*, where *Gentiles*; the *Eclat* or Figure which I ſhould have endeavour'd to make, would never be conſider'd by you as an Honour to their Religion, but our Country; therefore ſince it is a Diſparagement

and

and great Reflection to a Kingdom, to come below or ſhort of others in any thing that is public and of note, I cannot but have (at leaſt) faint hopes, that you will have ſome Conſideration, ſome Opinion of an Embaſſador (though at *Rome*) that kept up (to his Power) the Glory and Grandeur of *England*.

But Mr. *Speaker*, not to trouble you longer on the preſent Head, I'll end when I have told you this; That if I have done amiſs in obeying the King's Commands, no *Conſul* that has purſu'd a Pirate or *Bandite* to *Rome*; no private Factor that has follow'd a Debtor thither; Nor in ſhort any Man that has written ſo much as one Letter to that City, though it were to demand his own, but is a far greater Criminal than my ſelf, and lyes at the Mercy of every Enemy to be indicted as a Contemner and Breaker of the Laws.

Your ſecond Charge, Mr. *Speaker*, is my being a *Privy Counſellour*, without taking the appointed Oaths; To which I can truly ſay, they were never offer'd me; though I muſt alſo confeſs (for I ſhall be ſincere with you in every thing) that I believe, nay that I am certain, I ſhould not have taken them, had they been offer'd; ſo that I do acknowledge the Omiſſion a fault againſt Law——

Here the Speaker, *thinking that his Lordſhip had made an End, deſir'd him to withdraw; but being inform'd that he had not done; He excus'd the Interruption, and then his Lordſhip went on.*

I ſay (Mr. *Speaker*) I acknowledge this a fault againſt Law, were there not ſeveral things of weight, that will (I hope) juſtify me to you; And here, Sir, I muſt entreat you, not to conceive that I come now to defend or make good the *Diſpenſing Power*, but only to ſhew you how neceſſarily I was driven and induc'd to the aforeſaid Omiſſion; for (Mr. *Speaker*) in Controverſies and Diſputes, what can one do, but recur either to his own Obſervation, or to the Opinion of learn'd Men, and Profeſſors in the Science?

In the *firſt* place then, when I began to examine my ſelf as to the Right the King claim'd and aſſerted; I ſaw *Non obſtantes* deem'd Legal, which ſignified to me *Diſpenſing*; I found the Power of continuing Sheriffs own'd for many Ages to be undoubted Law, and yet I knew there was a poſitive Statute againſt it; Nay I remember'd an Act, which I my ſelf had in this Houſe given my Vote and Conſent to, *viz.* That about *the Regulation of Carriages and Waggons*; Or if this be not the exact Title, I muſt beſeech you to pardon my Treacherous Memory, and 'tis I'll aſſure you the only Traytor I ever yet ſuccoured or ſupported; I ſay Sir, I remember'd this very Act (almoſt as ſoon as made) ſuſpended by *Charles* the Second's Proclamation without the leaſt Queſtion or Murmur; and I took ſo much notice of it, as to make even then this Reflection (and I do aſſure you upon my Honour 'tis true) That though our *Monarchs* could not *impoſe* and *abrogate Laws* of themſelves, yet they had the *Power* (I perceiv'd) to *reſpite* them.

In the *ſecond* place (Mr. *Speaker*) if I went abroad; I mean if I conſulted the Thoughts and Sentiments of others, I found not only Great Men of the long Robe, but the Judges alſo themſelves declaring in favour of this Prerogative; and the Interpretation or determination of theſe Sages was always told me to be Law, till a new Law or a new Explanation ſhould be enacted. What would you then (Mr. *Speaker*) have me to do, who was call'd to the Board by the King; who could not in Conſcience take the Oaths; and yet had no reaſon to think I committed (in not taking them) a Crime; ſeeing the Law was thus openly expounded and publiſh'd?

And now, Sir, ſince I have been forc'd to mention my Religion which, I know is a legal Fault, and of a high Nature; I muſt not forget alſo to celebrate the Goodneſs of this Houſe, which has pardon'd the Fault, even in the ſolemneſt Way, and by the ſolemneſt Act that ever paſt ſince *Magna Charta*; to wit, *The great Act of Oblivion*. Give me leave, Sir, to ſay this too, for I can juſtly do it; That being ſo faithful and ſo true an *Engliſhman*, I neither ſhould nor could (I am ſure) have ever, during my Life, offended my Country, but in my Religion. Pardon alſo I humbly beſeech you this Digreſſion, and together with it the Incoherences and Disjunctions all along; Nor ſhall I any ways doubt of it, ſince you ſo well know how uneaſy and troubleſome a long Diſcourſe (which my Circumſtances have now required) muſt needs be to one, that wants both Eloquence and Practice.

But (Mr. *Speaker*) to return where I left, and ſo conclude; How, Sir, I pray you (and I demand it again of you with great reſpect) could I think the Omiſſion (as I ſaid) of the Oaths a Breach of the Laws, when our Guides, who had the Laws in their keeping, told us explicitely, and without reſerve the ſaid Oaths were not neceſſary? Shall I then ſuffer that had neither Buoy nor Mark to direct me? certainly no; for if there were a fault, 'tis not I muſt ſuffer, but the Judges, and thoſe knowing and deputed Pilots, that hung out (it ſeems) the wrong Flag and Signal. I have Sir, but one Word more to trouble you with, and this I ſpeak in behalf of all here; Nay, in behalf of all the People of *England*; That if I now undergo your Severity, and that ſingle Perſons (notwithſtanding the Determinations and Judgments of our Courts of Juſtice) muſt be ſtill reſponſible; No Man can be ſafe, no Man can be at reſt; for no body that acts can know (as accidents will often happen) whether he be innocent or guilty.

Mr. *Speaker*, I am in great diſorder for impoſing thus on your Patience; and eſpecially ſeeing I muſt yet preſume to do it, one thing more occurring to me (as I hope) for your further Service, or at leaſt Satisfaction; And 'tis to let you know how I came to be a Priſoner, and why I continued ſo thus long. Be pleas'd then, Sir, that I tell you, that as ſoon as the King firſt left *White-Hall*, I thought it decency to go out of Town; and therefore three days after I took Coach for *Montgomery ſhire*, where of late I us'd to reſide in the Summer time. On the Borders of that County, at a ſmall Corporation called *Oſweſtree*, I was firſt ſtopt by the Rabble, and afterwards detain'd (with a ſtrong Guard) at my Inn by the Major; though no body (as he confeſt) made any Oath againſt me; and tho' he had no Orders (as he ſaid) from *London* for it; Nay, (after a Months reſtraint

reſtraint) he deny'd me my Liberty upon Bail, notwithſtanding two Neighbouring Lawyers (whom I ſent for) aſſur'd him he could not juſtify the refuſal by Law. I do not Sir, complain of any Incivility, either from him or the People; for I was us'd with reſpect enough; But I judge it extremely fit to let you ſee how the Liberty of a Subject was wilfully invaded by a Magiſtrate, and how little conſcious I was of any Guilt, ſince inſtead of flying, I went to a place where I was known by every body.

In fine, Mr. *Speaker*, after a confinement of Seven Weeks, I was ſent for up, and brought hither by a Party of Horſe; Nor was I ever queſtion'd or examin'd by any body, but kept (upon the ſuſpenſion of the *Habeas Corpus* Act) at a Meſſenger's Houſe for Three Months; And when the ſaid Act was ſuſpended the laſt time, I was Committed by my Lord *Shrewsbury*'s Warrant to the Tower, *for Suſpicion of treaſonable practices.*

His Lordſhip having ended, retir'd with the Serjeant at Arms to his Room, where after a little ſtay, he was ſent for in again; And then the *Speaker* told him; That ſince he ſaid his Journey to *Rome* was with a Letter of Civility to a Temporal Prince, and not about Religion, The Houſe (to be more fully ſatisfied of it) deſir'd to ſee his Inſtructions. To which his Lordſhip thus anſwer'd.

I hope (Mr. *Speaker*) though I ſhall readily acknowledge my own natural Weakneſs, you will not yet think me ſo imprudent, as that (in a time of ſuch troubles and diſtraction) I would keep Papers by me, and eſpecially about *Rome*, to render my ſelf lyable to every malicious Man's Extravagancy and Comment. This therefore caus'd me Sir (the Night before I went towards *Wales*) to burn all Papers that came to hand; and truly ſome among the reſt, that I have ſince wanted; Nay this I can alſo juſtly aver, that I remember not now one Word of thoſe Inſtructions, having (I'm confident) never read them twice; only this I remember, they were Things of Courſe; Words of Form; and needed no further conſideration. Yet Sir, that you may plainly ſee my Sincerity, and how far I am from any deſign of illuding and deceiving you, I ſhall ſhew you how you may retrieve them, when I tell you, that Mr. *Monſtevens* brought them me, and that they were drawn (as I take it) by Mr. *Bridgman*; For I'm certain they came from my Lord *Sunderland*'s Office.

But my Lord (reply'd the *Speaker*) had you no private Inſtructions? None; Anſwered his Lordſhip. What none at all, ſaid Mr. *Speaker* again. None I'll aſſure you Sir, reply'd his Lordſhip; unleſs the Kings Orders, to demand a Cardinals Cap for Prince *Reinaldo* of *Eſte*, were private Inſtructions; Nor do I certainly know, whether thoſe Commands were in my forementiond Inſtructions, or whether I had them by Word of Mouth.

My Lord, ſaid the Speaker, *I have another queſtion to ask you; to wit, who of the long Robe told you of the Kings Power of* Diſpenſing, *and that there was no neceſſity of taking the Oaths?*

I am Sir (anſwer'd his *Lordſhip*) infinitely troubled, if I have through want of Care, or by any improper Expreſſion given you occaſion to miſapprehend me; For I never askt any particular Man of that Profeſſion about this Affair; But my meaning was (and I hope my words are not contrary to my meaning) that the ſaid Power was manifeſtly and openly declar'd to be Law by Judges and Lawyers; So that I deem'd it no Solecism in Diſcourſe to mention it as if they themſelves had told it me.

Then his Lordſhip retir'd again, and after a long Debate, the Houſe paſt this Order. *That the Earl of* Caſtlemaine *ſtand committed to the Tower by a Warrant from this Houſe of High Treaſon, for endeavouring to reconcile this Kingdom to the See of* Rome, *and for other High Crimes and Miſdemeanors.*

As ſoon as his Lordſhip was inform'd of this Vote, he entreated a Member to let the Houſe know, that he had a Word or two more to trouble them with; So that being brought in, the *Speaker* told him, that the Houſe having notice (he had ſomething further to acquaint them with) was very willing to hear him.

Mr. *Speaker* (reply'd his Lordſhip) I have nothing more to ſay about the former Matters; but underſtanding your Pleaſure, I thought it my Duty to let you know, how the cuſtom of the Tower as to Priſoners is chang'd; for in courſe heretofore (unleſs there were a particular Order of State to the contrary) they had the Liberty of the Tower; that is to ſay, they could walk about at ſeaſonable hours with a Warder; But now as ſoon as one is committed (though it be upon bare ſuſpicion, as I was) he is confin'd to his Lodging, and hindred from the Conſolation of ſeeing his Friends, till (after much ſollicitation and trouble) leave be granted by the Secretaries. Therefore Sir, being morally certain that I ſhall be confin'd again aſſoon as I return, I humbly deſire the Favour of this Freedom; It being alſo what I hitherto enjoy'd after I had been reſtrain'd for ſome days in the aforementioned Manner.

This ſaid, his Lordſhip went out, and then was carried to the Tower, where he was made a cloſe Priſoner, as he foretold, though what he moved, occaſion'd the following Vote.

That a Committee be appointed to bring in a Bill for the better regulating the Impriſonment of the Subjects of this Kingdom, and to ſettle the Fees of Goalers; And it was likewiſe referr'd to them, to examine into the abuſes of Goalers towards their Priſoners which have been heretofore Committed.

On *Wedneſday* the 5*th* of the following *February*, His Lordſhip mov'd for his *Habeas Corpus*, and was brought by the Lord *Lucas*, (the preſent Governour of the Tower) to *Weſtminſter*, on the 10*th*; So that appearing at the *King*'s *Bench*, his Commitments were read, and Mr. *Attorney* having nothing to object againſt his being Bail'd, the Court awarded it upon the Security of Thirty Thouſand Pounds; that is to ſay, a Recognizance of Ten Thouſand for himſelf, and Five Thouſand a piece from his four Sureties; which were, *John* Earl of *Bath*, *Thomas* Earl of *Ayliſbury*, *Thomas* Earl of *Suſſex*, and *Charles* Lord *Landſdown*.

THE

The Tryal of John Price, *Esq; late Receiver of* Ireland, *and One hundred other Protestants at the Town of* Wicklow *in* Ireland.

John Price, Esq; Receiver General to the late King *Charles* the Second, having his Countryhouse in the County of *Wicklow*, at *Ballinderry*, twenty four miles from *Dublin*, did for the safety and preservation of himself and Family, obtain the Lord Deputy *Tyrconnels* Protection, (as many more of the English Protestants living in the Country at the same time did) for the late King *James* going away for *France*, and the Administration of the Government being put into the hands of his present Majesty; the Lord *Tyrconnel* gave out Commissions (for the raising a mighty Army) to any Irish Papist that would take one, and promise to subsist, Maintain, and Cloath their Men for three Months; most of these new Officers are men of mean Fortunes, not capable of subsisting themselves; their men live altogether on the English, coming into their Houses in the day time, and commanding from them their Meat and Drink; and often Robbing them in the night, stealing away their Cattle. Likewise the Priests of every Parish obliged all their people to furnish themselves with Half pikes and Skeanes, and bring them to Mass, or not presume to appear there, on the penalty of Excommunication, or a severe punishment; which caused all the *Irish* to Arm themselves with the aforesaid Weapons; upon which Robberies, Thefts, and other Outrages were daily committed upon the *English*; particularly in the County of *Wicklow*, where some Hundreds were got together for that purpose, who gave themselves the Name of *Merry Boys*, and had very great success in their theivish attempts upon their Protestant Neighbours, that lived hitherto secure in their own Houses; it is observable, what great power the Romish Clergy have over the *Irish*, they Arm themselves immediately at their Command, and yet to this day have neither kept them from Robbing of the *English*, nor restored them any thing taken away, which if they had been so minded, they might have done by the same Power; several of Mr. *Price*'s Neighbours repaired to *Ballinderry*, to preserve themselves and Goods; but an order coming out soon after, for the taking away all Horses and Arms from the Protestants, both in City and Country; Colonel *Toole* with a Party of his Men came to demand what Arms and Horses they had at *Ballinderry*, Mr. *Price* and the rest having the aforementioned Protection, refused to obey their orders; and complaint coming to *Dublin*, Colonel *Sheldon* was immediately sent away with a Body of Horse and Foot, against *Ballinderry*; Mr. *Price* upon his Approach presently submitted to him, who thereupon was made Prisoner, and all the rest of the Men that were in the House; but the Prison of *Wicklow* not being able to contain them, several of them were admitted to Bayl, until the following Assizes, which began *March* the fifth last past, and ended the eighth.

The Prisoners Names that were Indicted for this Treason, are as followeth, viz.

1 *John Price*, Esq;
2 *Thomas King*, Gent.
3 *Richard Westland*, Gent.
4 *William Heatly*, Gent.
5 *James Lewis*, Gent.
6 *Edward Lewis*, Gent.
7 *John Burroughs*, Gent.
James Bacon, Gent.
8 *Thomas Burroughs*, Gent.
9 *Thomas Fetherston*, Gent.
10 *Joseph Chrichley*, Gent.
11 *John Chrichley*, Gent.
12 *George Chrichley*, Gent.
13 *Thomas Williams.*
14 *James Williams.*
15 *J. Clark.*
16 *Caleb Chad.*
17 *Tho. Bathe.*
18 *Joseph Thompson.*
19 *Thomas Halson.*
20 *Henry Gibson.*
21 *John Cock.*
22 *Thomas Peterson.*
23 *John Ward.*
24 *William Turner.*
25 *Thomas Evans.*
26 *George Atkinson.*
27 *William Evans.*
28 *Robert Milton.*
29 *William Neale.*
30 *William Hill.*
31 *George Dizy.*
32 *Stephen Robinson.*
33 *Charles Evans.*
34 *Stephen Rathborn*, Jun.
35 *Edward Philips.*
36 *John Colson.*
37 *William Wotton.*
38 *Henry Delauny.*
39 *Thomas Cross.*
40 *John Kempson.*
41 *Thomas Watts.*
42 *Edward Acton.*
43 *Robert Anthony.*
44 *Alexander Hill.*
45 *James Hill.*
46 *John Hill.*
47 *William Savill.*
48 *Edward Jones.*
49 *Peter Bland.*

50 *John Tomlinſon.*
51 *Daniel Royce.*
52 *John Jones.*
53 *Thomas Howard.*
54 *Charles Fryers.*
55 *Andrew Wills.*
56 *Michael Wills.*
57 *Samuel Allen.*
58 *Triſtrum Tineſly.*
59 *Robert Aſhton.*
60 *Henry Tuton.*
61 *Ralph Kidd.*
62 *William Fulham.*
63 *William Erwin.*
64 *Agabus Kidd.*
65 *Thomas Page.*
66 *Thomas Allen.*
67 *Rice Bibbin.*
68 *Nicholas Scot.*
69 *Arnold Sutton.*
70 *Alexander Rathborne.*
71 *William Holſon.*
72 *Iſaac Colliſon.*
73 *Jacob Colliſon.*
74 *William Edwards.*
75 *Peter Barton.*
76 *John James.*
77 *John Jordan.*
78 *Randle Burroughs.*
79 *Richard Price.*
80 *Agabas Bardin.*
81 *Henry Moody.*
82 *John Burroughs.*
83 *Edward Hughs.*
84 *Edward Jemſon.*
85 *James Uton.*
86 *William Ryder.*
87 *Luke Young.*
88 *William Shorter.*
89 *John Goodwin.*
90 *James Tench.*
91 *Thomas Manning.*
92 *Edward Bowers.*
93 *Thomas Adams.*
94 *Robert Dunbar.*
95 *Thomas Colſton.*
96 *John Bromwell*
97 *Samuel Price.*
98 *James Tipping.*
99 *Edward Graham.*
100 *Chriſtopher Cooper.*
101 *William Phillips.*

Grand-Jurors Names. Papiſts mark'd †.

† *Chriſtopher Wickam.*
William Hoy.
Cromwell Wingfield.
† *William Wolverſton.*
† *Redmond Birne.*
† *Thomas Birne.*
† *William Birne.*
† *Peirce Cromwell.*
† *Toby Walſh.*
† *Toby Tooll.*
Edward Burly.
Leonard Froſt.
Peter Ayris.
William Baker.
† *Lawrence Tooll.*
Richard Lamb.
† *Daniel Birne.*

After they were Sworn as uſual, they received the following Charge:

L. C. Juſt. Keating's *Charge to the Grand-Jury.*

GEntlemen, You that are here Returned to Serve on this Grand-Jury, you have this day before your Eyes the greateſt Example, and the firmeſt Proof that a Gracious Prince can give to the beſt of Subjects; you ſee his Sacred Majeſty, King *James* the Second, (whom God long preſerve for the Protection of all his good and dutiful Subjects, and for the ſubverſion and irradicating of all thoſe who deſire the Subverſion of his Government, either by Foreign Force, or inbred Conſpiracy) notwithſtanding the great Troubles on his own Perſon, yet he is not wanting in his care towards you; and I dare boldly ſay, it is the laſt thing he will relinquiſh in the World, after that of his own Conſcience, the care of his Subjects: He hath ſent us with his Commiſſion to enquire into all the Maladies, Diſeaſes, and Sores within your County. He has likewiſe given us Command to apply the healing Balſam of the Laws, which will preſerve the Subject moſt entirely in his Property. And I am ſorry, I muſt tell you, that there was never more need than now at this time: I am glad at the ſame time that I can ſay, that the Miſchiefs fallen on a great part of this Kingdom, and on no part more than on this County, that is under the very Eye of the Government; I ſay, I am glad it can be ſaid to have ariſen, for the moſt part, from a Rabble of People, who have arm'd themſelves without any direction from the Government, and that with unuſual Weapons; I mean Half-pikes and Skeans: Gentlemen, I muſt tell you plainly, it looks rather like a Deſign to Maſſacree and Murder, than any elſe. They do not belong to the Army, neither are they any part of them; but theſe are the Vultures, Kites, and Ravens that follow Armies. Souldiers that have travelled abroad, ſay, Such are not known among them there: I am told, and very well aſſured, That in Foreign Parts, where theſe Vultures and Birds of Prey are, it is hard for an Army to lie conceal'd, without being diſcovered by them; for it is odds, but that a Horſe or a Man drops where ſuch multitudes of People are. I am very far from laying this to the Charge of any that are under Command; tho' it is poſſible, that ſome of them, under the ſcarcity they are in, do give their aſſiſtance, or at leaſt encouragement to theſe Robbers; otherwiſe it could not be, that whole Flocks and Droves of Cattle are daily driven away, and yet no one taken or brought to Juſtice for it. The King is not wanting in his Care, he has given Directions to have the Laws put in execution, that Criminals may be brought in and puniſhed; and the Government has iſſued out many Proclamations; but they are grown too familiar with them. You are to enquire into this Matter, in order to bring to puniſhment, not only them that ſteal, but thoſe that receive. I am told that open Markets are ſet up in this County of *Wicklow*: A fat Bullock for 5*s.* and a fat Sheep for 1*s.* but it will fall heavy on them at laſt. Divines ſay, That God Almighty oftentimes makes the very Crime to become their own puniſhment: And I verily fear, that a few Months will produce

a

a Famine in this Kingdom: And what ſucceeds, a Peſtilence, and the worſt of all Peſtilences; for it is obſerved, that a ſtarved Rot is the worſt of all Rots; it falls out unhappily at this Seaſon of the Year, when the Cattle are breeding: Under the Old Law the *Jews* were not to ſeeth the Kid in the Mother's Milk; but theſe unmerciful Wretches go further than that, ſparing none, but deſtroying old and young, the increaſe and all. Pray Gentlemen, conſider of it, and ſearch the Houſes of ſuch as you have reaſon to ſuſpect, that had not any thing to eat the laſt Year, go now into their Houſes, and you will find whole Carcaſes of Beef powdered up; nay, it may be, for want of Salt, or Money to buy it, lying rotting and ſtinking. Let me tell you, it will be your turn next, when they have robbed and ſpoiled your Proteſtant Neighbours, they will come to you, unleſs you take ſpeedy care to prevent it. The King has done what he can, and the Government what they can; in vain is the Law made, if Offenders be not brought to condign puniſhment. You all know there has been an Invaſion in *England* of a Forreign Enemy, the *Prince of Orange*; and the ſame is deſigned on this Kingdom: The effects of an Invaſion is not known: Defence is natural to all Kingdoms and States, and therefore the Government has given Directions for raiſing a greater Army than at any time heretofore this Kingdom ever had: It was ſo among the *Romans* of old, who in caſes of neceſſity did things clear contrary to the Fundamentals of their Laws. The ſame neceſſity has put the King on arming here; (in *France* they have their Ban, and with us our Commiſſion of Array, from ſixteen to ſixty) but without any deſign that the effects ſhould be to arm the Country with Half-pikes and Skeans; they are fit indeed for the Mountains, or to guard a Man's Houſe, but not to go abroad with at Noon day. Gentlemen, you that are Juſtices of the Peace, and Officers of the Army, where ever you meet, you ought to ſecure them, and bind them over, and know by what Authority they dare go abroad with ſuch Weapons. I need not ſay any thing to you in Defence of the King, for it is really and truly your own Defence; and therefore I ſhall proceed into the Heads which are prepared for your Enquiry at this time: our buſineſs here is like to be very great, and our time ſhort, and therefore I ſhall not trouble you with ſmall things, we have greater matters than Aſſaults and Batteries. We have Deſolations and Ruines to ſhew you and ſet before you, and without your care we are like to fall into the Gulph of Miſery and Deſtructions. The firſt thing we have to ſpeak of, is High Treaſon, we have no Petty Treaſon in *Ireland*. If any ſhall go about to Conſpire the Death of the King, Queen, or the Heir Apparent, the Prince of *Wales*, this is High Treaſon at all times, it was ſo at Common Law, you muſt look to this betimes, for if a blow be once ſtruck here, there can be no retrieving of it. If any one ſhould go about to Seize the Kings Perſon, or Impriſon him, this Gentlemen is Treaſon, there is but few ſteps between the Priſons and Graves of Kings; and by all the obſervation that I can make out of the Engliſh or Scotch, or Iriſh Hiſtories, where we have had ſwarms of Murdered Kings, that if once they went into Priſon, they ſeldom ever eſcaped with Life. Our King has more reaſon than any to dread this, his Father who now is a glorious Martyr in Heaven loſt his Life, and the King himſelf ever ſince his Eſcape with Colonel *Bamfield* from St. *James's*, has had ſo many miraculous Deliverances both by Sea and Land, that we may conclude he is preſerved for ſome mighty matter, or elſe Providence had not done ſuch great things for him; and 'tis but of late that he himſelf is eſcaped out of Priſon. I am told by Authority, and am ordered to tell you, that he is expected in this Kingdom very ſuddenly, as a Place of Refuge. He is the firſt King I think, ſince *Henry* the Second, except *Richard* that has been in this Kingdom. It is a great misfortune that he ſhould be forced to it, but we may look upon it as a great Bleſſing, that he ſhould think himſelf ſafe here, when he cannot be ſo elſewhere.

To ſeize any of the King's Forts or Ships of War, for theſe are the Bulwarks to defend him againſt his Enemies, this Gentlemen is Treaſon.

To hold Correſpondence with any of the King's Enemies, or with Rebels in actual Rebellion, or to joyn with them, this is Treaſon; you are not to enquire into the Puniſhment, but to open a Door for the Petty Jury to enquire into the matter of Fact, and what the Law is, ſhall by the Bleſſing of God be our buſineſs.

To Counterfeit the King's Coin, or Clip it, and you have very little of it at this time, therefore you had need be careful in a more eſpecial manner, this likewiſe is Treaſon

It is likewiſe Treaſon to counterfeit the Great Seal of the King, for 'tis the common Security, by which many hold their Eſtates, and ſome their Lives.

The killing of the Chancellor or any of the Judges or Juſtices of *Oyer* and *Terminer* in the doing of their Duty, this likewiſe is Treaſon, not ſo much with regard to their Perſons, as to the work that they are about, they repreſenting the King's Perſon. The meaneſt Conſtable there, if he has his Staff in his Hand, and doing his Duty, he that kills him ſhall dye the ſame death, as he that kills the beſt Man that wears Scarlet on the Bench. Gentlemen, I muſt tell you another Crime, and it looks like a mark of Infamy on this Kindom. Murder in *England* is but Felony, but it has been thought fit to make it Treaſon here, and they that go out on burning and robbing Houſes, they ſhall be indicted for Treaſon. And, Clerk of the Crown, if any ſuch be here, now take notice I will have them indicted for Treaſon.

The next thing for your Enquiry is Felony, that concerning the Life of the Subject; for a Man to kill his Fellow Subject, this is Felony, if he does it on a ſudden paſſion and heat, a Man may kill another in his own Defence; for 'tis natural for a Man to kill rather than be killed, and therefore he ſhall have his Pardon of courſe. But Gentlemen, this is not in favour of Duels, and only where there is a great Provocation, there is not a Man but has ſome paſſion about him, but for a Man to go to bed with Malice, and ariſe the next Morning and go meet his Fellow Subject and kill him, this is Murder and Treaſon in *Ireland*.

The next thing that is Felony, is concerning the Goods of the Subject, for an honeſt labouring Man, that by the induſtry of his whole Life has gotten a fair ſtock for the maintenance of himſelf,

ſelf, his Wife and Children, at night goes to bed, and next Morning when he ariſes, he is a Beggar and wants Bread. Gentlemen, it would make every honeſt Man's Heart bleed to hear what I have heard ſince I came into this County, it is ill in other parts of the Country, but here they ſpare not even the wearing Clothes and Habit of Women and Children, that they are forced to come abroad naked, without any thing to cover their Nakedneſs; ſo that beſides the Oath you have taken, and the Obligation of Chriſtianity that lies upon you as you are Chriſtians, I conjure you by all that is Sacred, and as ever you expect eternal Salvation, that you make diligent Enquiry, let it never be ſaid by any of you, that it was your Neighbour, or your Neighbour's Servant did it, and you are ſorry for it, but will not trouble your ſelves, I tell you it is every Man's buſineſs, and I beſeech you look into it.

To break into any Man's Houſe after night fall is Felony, it is a ſound ſleep that the labouring Man takes, but the idle Rogue that lies lurking and ſleeping all the Day, at Night he ariſes and ſeeks whom he may devour. If you were to do the moſt charitable Work, as building of a Bridge or Chappel, or mending a High-way, how many do you think of theſe Men with half Pikes and Skeines would come to your aſſiſtance? not one of them I'll engage. But if a Houſe or Town be to be Plundered, they all run thither. All Riots and Routs are to be enquired into, numbers of People may meet for their own Defence, if they ſhould hear or ſee the Country robbing and ſpoiling. By a riotous Multitude coming to burn and rob their Houſes, in this Caſe they may meet and defend their Goods, and apprehend the Robbers, in order to bring them to Juſtice; but after all this, they are not to conteſt with the Government, nor do any thing to the Prejudice of that; I told you, I would not trouble you with unneceſſary Matters, all are loſt in the greateſt of Crimes and Outrages that are committed daily in the Country round about.

If I ſhould go through all the Heads of this Charge, it would take up more time than we have to ſpend here, and therefore I ſhall ſhut up all and ſay no more than this, that every Man do apply himſelf to his Husbandry and Tillage, to prevent that imminent danger of an approaching Famine, that ſeems to be coming upon us, and that you make it your buſineſs to ſearch after, and bring to Judgment thoſe Robbers that live on the Mountains, and while you continue to do your Duty, you ſhall have all the Protection the Government can give you. So upon complaint of any Juſtice of the Peace, that ſhall be backward or unwilling to appear againſt them, care ſhall be taken to puniſh ſuch and make them Examples. Go together Gentlemen, and conſider of theſe things.

The Priſoners brought into Court.

Clerk of the Crown. Set *John Price* to the Bar, *Tho. King* to the Bar, *W. Lewis*, *James Beacon*, *William Heatly*, *Tho. Burroughs* to the Bar, *&c.*

Hold up your Right Hands.

Cl. John Price, *Tho. King*, &c. You ſtand here indicted for that you on the 25th day of *February*, in the 5th Year of the Reign of our Sovereign Lord King *James* the Second, at *Ballindery* in the County of *Wicklow*, with divers others wicked Traytors and Rebels, in a warlike manner, then and there did aſſemble your ſelves, and a cruel and open War and Rebellion againſt our Sovereign Lord the King, and his faithful Subjects of this His Majeſties Kingdom of *Ireland*, did raiſe and levy, and did intend our Sovereign Lord the King to Death and Deſtruction, to bring, and to depoſe him from his Kingly Authority and Government of this his Kingdom of *Ireland*, and to fulfil and accompliſh this your ſaid traiterous Intentions and Deſigns, you the ſaid Perſons, with others the ſaid wicked Traytors and Rebels, the Day, Year, and Place aforeſaid, did arm your ſelves with divers Warlike Weapons, as well offenſive as defenſive; and did move and excite divers others the Subjects of our Sovereign Lord the King, to joyn themſelves wickedly and traiterouſly, againſt the Peace of our Sovereign Lord the King, and the Duty of your Allegiance, and the Statute in that Caſe made and provided, *&c.*

Cl. How ſayſt thou *John Price*, art thou guilty of the Treaſon that thou ſtandeſt here indicted, *&c.* or not guilty?

Mr. *Price.* Not Guilty.

Cl. Culprit, How wilt thou be tryed?

Priſoner. By God and the Country.

Cl. God ſend you a good Deliverance.

Note, *The Priſoners were brought into Court in ſeveral Parties, to be Arraigned, as many as the Dock would hold at one time.*

The ſecond time the Dock was filled.

Cl. Cr. Set *William Fulham* to the Bar, *&c.*

Thady Brine, *the High-Sheriff*, *ſtood up and ſaid*, My Lord, *Fulham* was cleared.

Bar. Lynch. Pray, Sir, who cleared him?

High Sheriff. The Chief Commiſſion'd Officer that was here, Colonel *Sheldon* did acquit him.

Lynch. He acquit him, how could that be? If there be nothing againſt him, we ſhall acquit him.

J. Keating. Clerk of the Crown, is he indicted?

Cl. Yes, My Lord, a Bill of Indictment is found againſt him.

Pendergaſs the Sub Sheriff. My Lord, I will tell you, Mr. Sheriff is miſtaken; there was ſome Boys diſcharged, and he thinks *Fulham* is one of thoſe Boys.

Lynch. Sir, you do well to reflect on your Imployer.

High Sheriff to the *Sub-Sheriff.* You have done this to get Money for your ſelf: My Lord, *Fulham* was not concern'd at all, and therefore was diſcharg'd.

Priſoner Lewis. My Lord, we are ſo crouded with a File of Muſqueteers and a Serjeant, that they take up our Chairs, that we cannot ſit down; and they come with their lighted Matches to our very Noſes, and laſt Night a Piece went off in the Room among us, we have not the conveniency of quiet Repoſe, nor our Friends the liberty of ſeeing us. My Lord, we were not born Lawyers, therefore deſire we may have our Friends come to us, and Council to adviſe with.

This Lewis *and Lord* Galmoy *are Brother and Siſters Children, and was offered a Troop if he would turn Papiſt.*

J. Keating. Mr. *Lewis*, you have been bred to the Law; but you ſhall have Council allowed you; And you, Mr. Sheriff, you are not to keep them with Fire-Arms, nor with Souldiers. I ſaw a Centry at this Door Yeſterday, and forbad it—

I

I remember that when *Warren*, *Jephson*, and *Thompson* were tryed in 1663. for a Design to surprize *Dublin*-Caſtle, becauſe this was a great matter, forſooth, they muſt be guarded with Souldiers——— (They were tryed at the King's Bench; and ſeveral Perſons deſirous to ſee or hear, being gotten up into the Arch in the Wall next the Court of Common-Pleas,) as they were going up ſtairs, a Piece went off, and ſhot a Man through the Head. I tell you Mr. Sheriff, that Brown Bill is your Guard (*pointing at one in Court*) the Law knows nothing of Fire Arms; (*ſpeaking to the Priſoners*) Gentlemen, I muſt tell you plainly, that I received Directions from my Lord Deputy (by the Attorney General) that you ſhould have all the Juſtice imaginable.

Bar. Lynch. Mr. Sheriff, you muſt Command thoſe Souldiers to be Civil, they are your Guards when you employ them.

Seventy Priſoners were Arraign'd and return'd back to Priſon; 31 more that were indicted, and upon Bail, did not appear.

Next day———Thurſday *March* the 7th they were again brought to Court to their Tryals; and the Jury was Impannel'd, whoſe Names were as followeth, Papiſts marked thus † *viz.*

† *Thomas Cowdell.*
Philip Cradock.
John Pew.
† *Alexander Higden.*
† *Chriſtopher Talbot.*
† *Garret Birne.*
† *Dudley Keogh.*
† *John Keogh.*
† *David Toole.*
† *James White.*
† *Darby Toole.*
† *Garret Harold.*
† *Daniel Birne.*
† *Patrick Mac Donnel.*
† *Patrick O Donnelly.*
† *Chriſtopher Birne.*
Daniel Powel.
† *Richard Jenſton.*
† *Theophilus Higgens.*
† *Nicholas Wall.*
† *Charles Tool.*
† *Anthony Archer.*
† *Charles Birne.*
† *Cornelius Kenan.*
Tho. Elliot.
Richard Baker.
† *Thady Birne.*
† *Francis Tute.*
† *James Moore.*
† *Hugh Birne.*
† *Bryan O Neal.*
† *Dennis Cullen.*

Jaylor, ſet the Priſoners to the Bar.

Cl. Cr. You good Men that are to try the ſeveral Iſſues between the King and *John Price*, &c. and other Priſoners at the Bar, that ſhall be given you in Charge, *&c.* Jury, look at the Priſoners; Priſoners, look at the Jury, *&c.*

Cl. Cr. Thomas Cowdell, to the Book.

Priſoner Lewis. I challenge him.

Cl. What is your Cauſe of challenge?

Lewis. I challenge him peremptorily.

Deputy K's Council, Fitz-Patrick. My Lord, before they begin their Challenges; let us know whether they will all agree in their Challenges; otherwiſe we muſt be forc'd to Try them ſeverally.

It was at length agreed, That if any one made a peremptory Challenge, the other Priſoners were to be ſatisfied with it.

Coll. Tool *on the Bench, ſpeaking to the L. Chief J.* Keating. My Lord, Mr. *Lewis* has been Sub-Sheriff of the County, and knows all that have Freehold.

J. Keating. It is the better for himſelf that he does know them.

Priſoner Lewis *continued to Challenge, until they had gone through the Pannel, and only two Gentlemen that were Proteſtants, Mr.* Cradock, *and Mr.* Pew, *were Sworn.*

Cl. Cr. Mr. Sheriff, a New Pannel ——The Sheriff gave in another of Eleven in number, which were all likewiſe challeng'd by Mr. *Lewis.* ——Whilſt both the High and Sub-Sheriff were looking about the Court, for to make up a third Pannel. Says

L. C. J. Keating. Mr. Sheriff, How many Freeholders have you on the Grand-Jury?

Sheriff. Six or Seven, my Lord.

J. Keating. You have been ſparing enough of your Freeholders. The Law requires that all the Grand-Jury ſhould be Freeholders, and have you but ſix?

Sheriff. —— There is but very few Freeholders in the County, My Lord.

C. Fitz-Patrick. — In Caſes of neceſſity, my Lord.

J. Keating. You know the Law is ſo.

C. Fitz-Patrick. Yes, there is a Statute for it.

J. Keating. — The Priſoner for his Life may challenge Twenty peremptorily, without ſhewing cauſe; and the whole World for want of Freehold —— And ſhall I put ſuch a one on for his Life? Sir, I will not be hang'd for any Body.

Fitz-Patrick. Was ever a Judge hang'd?

Mr. Handcock, *Council for the Priſoners.* Yes, above twenty in a few Years.

J. Keating. Mr. *Fitz-Patrick*, I will not be hanged with Juſtice *Belknap*, nor *Treſſilian* neither.

C. Handcock. My Lord, they were hanged at *Tyburn.*

J. Keating. I think they were.——The greateſt part of this County is in the hands of two or three Men, my Lord *Strafford* and *Roſs.*

J. Keating. Who is here that is concern'd for my Lord *Strafford*, and my Lord *Roſs*?

Court. Here is Dr. *Hall* on the Bench, for the Lord *Strafford*, and the Sheriff is concerned for my Lord *Roſs.*

J. Keating. Dr. *Hall*, and you Mr. Sheriff, let me tell you, I do not know but that their Lordſhips have forfeited their Eſtates, for this day's work. In the Act for Plantation, there was proviſion made for Freeholds, and there were enough before the Wars. I fear theſe great Lords have ſwallowed up the Freeholds their Anceſtors made. I only tell you this.

The Sheriff by this time had drawn up a third Pannel, being eight in number.

J. Keating. Mr. Sheriff, have you all your Freeholders here?

Sheriff. My Lord, we ſummoned all here.

J. Keating. On the firſt Pannel you might have Return'd forty, becauſe you do not know how far Peremptory Challenges will run; and you are obliged after to Return a fewer Number

when you enlarge your Pannel, but you can never enlarge it farther than it was at firſt.

Cl. Cr. Birne, to the Book.

Priſ. Lewis. I Challenge him for want of Freehold.

J. Keating. Mr. *Birne*, have you a Freehold in this County?

Birne. My Lord, I have a Leaſe of Lives.

Priſ. Weſtland. I Challenge him peremptorily.

Bar. Lynch. What, Sir, do you begin to Challenge? This ſhall not be allowed you, to Challenge one upon another.

C. Hancock. My Lord, you are Council for the Priſoners.

Lynch. Sir, you are not to tell me my Duty; I will have you to know, Sir, I ſhall give an Account for my ſelf. I am Judge for the King too, as well as Council for the Priſoners; and I am concern'd for the King.

J. Keating. (*turning towards him.*) And do you think I am not concern'd as well as you?

Lynch. Yes, my Lord, I ſpeak for you as well as my ſelf.

Coun. Fitzpatrick. My Lord, they agreed at firſt, that one Man ſhould Challenge for them all — At this rate we are never like to get a Jury for them; it is but an ill ſign of their Innocency, that they are not willing to come to a Tryal.

Mr. *Handcock*, *Council for the Priſoners.* } In the Peremptory Challenges they agreed (but not in the Challenges for Freehold) and this peremptory Challenge we will ſtand by.

J. Keating. I will tell you how I underſtood it; that in their Peremptory Challenges, if any one of them Challeng'd, the reſt ſhould be concluded by it; Mr. *Weſtland* has made a Peremptory Challenge, and they are willing to ſtand by that—however, Mr. *Birne*, ſtand by, do not go away, we may call you again. Clerk of the Crown, proceed, — *&c.* — which he did, until he ended the Third Pannel.

Sub-Sheriff calls Will. Baker. My Lord, he has a Free-hold.

Baker. My Lord, I have no Free-hold.

Keating. You ſee the Sub Sheriff is a fit Man to be an Officer; he is blind — he is indifferent.

High Sheriff calls Peter Ayris. An. He is on the Grand-Jury.

Keating. Mr. Sheriff, why do you call ſuch?

Sheriff. I ſaw him in Court, and ſo I called him, my Lord.

J. Keating. There is already but five Peremptory Challenges made, ſo that they may Challenge fifteen more peremptorily; and there is but two Sworn, ſo that there wants ten.

Cl. Cr. Sheriff, ſee if you can get any more.

Sheriff. I ſee never a Free-holder in the Court.

C. Fitz-patrick. My Lord, the Sheriff ought to be puniſhed for his Neglect.

Bar. Lynch. Sir, why did you not take care to Return a Jury of Free-holders? You ſhall be Fined for it.

High Sheriff. My Lord, I have Return'd all the Free-holders there is in the County (I ſent yeſterday above Twenty Miles for one Gentleman here;) They are all gone out of the Country;—I hope you do not expect I ſhould go to the North, or *Iſle of Man*, or *England*, or *Scotland*, among the Rebels, to Summon them.

J. Keating. I do really believe you, Mr. Sheriff, you have done like an honeſt Man; —— Mr. *Fitz patrick*, what do you ſay in this Caſe?

Fitz-patrick. My Lord, I cannot tell what to ſay.

Deputy King's Coun. Hamond. } What if there was not one Freeholder in the County, muſt not Juſtice be done?

J. Keating. Can we make a Law for it?

Hamond. My Lord, I know that in caſe of an Ejectment, a Tryal has been removed from one County to another.

J. Keating. Can you by Law go to another County in Caſe of Life?

Hamond. It appears there is not ſufficient Free-holders in this County, the Lands being in ſome few hands.

J. Keating. You know the Law is otherwiſe, and what would you have us that are Judges, do? Pray tell us, Sir, what you would be at?

Hamond. We would have it removed to the next County, or another County.

J. Keating. For Gods ſake, Mr. *Hamond*, do not put us on making Law.

Lynch. Mr. *Hamond*, when did you hear, that ever a Matter Capital was tryed in a Foreign County? In matters Civil, by Rule of Court, or Order of Chancery it may be, but of a Capital Offence it was never known; and we are by our Commiſſion to Try Offences committed againſt the Law in the Counties where the Fact was committed. — We muſt Try them in this County, and cannot remove them from one County to another.

J. Keating. Mr. *Hamond*, becauſe I would take you off of this new Law that you ſo much inſiſt on, that in caſe of an Ejectment it may be Tryed in a Foreign County —— I tell you it cannot be Tryed in a Foreign County: We have no Law for it but that of K. *James*, and the Reaſon was, becauſe of the Story that was here on foot, for an Heir Male, if Collateral he carried it againſt the Heir general. K. *James* he gave direction that in that caſe it ſhould be Tryed in a different County. And that my Brother tells you of Trying in a different County, by order of Chancery is this, A perſon comes in Chancery, and he ſuggeſts, that ſuch an one was too potent in ſuch a County, and therefore he deſired it might be Tryed in an indifferent County, or get ſuch a Rule of Court on ſuch a ſuggeſtion. And this was the caſe of the Archbiſhop of——, when he was Biſhop of *Limerick*. And if *Walcot* might be believed, he ſaid, was the occaſion of his running into Rebellion.

C. There is a Caſe in *Hobart*, *&c.*

J. Keating. I would undeceive you in that particular. As in the Caſe of *Auſten* and Collonel *Garret Moor*. If in the County of *Galloway* it was *Auſtens*, if in the Kings County it was Colonel *Moors*. So that you ſee in diſputable Caſes, the Law has regard, that it be Tryed by Juries in proper Counties. And truly I think it one of the moſt reaſonable Laws in the world, that a man ſhall be Tryed by his Country, by the Neighbourhood; and it has given ground to a good Engliſh Proverb, *He that has an ill Name is half Hanged.* A Mans Repute among his Neighbours goes a great way in this matter. When his Neighbours ſhall ſay they never knew ill by him. And this Man to be carried out of the County of *Wicklow*, to be Tryed at *Wexford*, you may by the ſame rule bring a Jury from *Tyrone*, or the fartheſt part of *Connaught*. There is nothing like what you ſay in the Law.

Hamond.

Hamond. I do not ſay that ever I met with ſuch a thing in the Law.

Lynch. And do you think that we will make the Precedent?

Hamond. That two or three perſons ſhould have almoſt the whole County.

J. Keating. Before God I believe they think they have little enough, whatever you may think of their having too much.

Lynch. What you ſay Mr. *Hamond*, if there be any thing in it, we ſhall adviſe with all the Judges. The Judges declaring their Opinion, that the Priſoners after being Arraigned, could not be admitted to Bayl.

C. Suxborough, to Baron Lynch. My Lord, you took Bayl for Captain *Ruth* at *Kilkenny*, after his Arraignment.

Bar. Lynch. What, Sir, do you reflect on me? There was no Evidence appeared, and my Brother bayled him as well as I.

Suxborough. I ſay he was Bayled.

Hancock. My Lord, Mr. *Cooper* at *Galaway* was Bayled by your Lordſhip likewiſe.

L.C.J. Keating ſent privately to *Dublin* to the Deputy, acquainting him, that if they were left in priſon untill the next Aſſizes, they would certainly periſh, they having loſt all they had, and the County was not able to maintain them; upon which he received Orders to Bayl all but Seven of the Principal, *viz.*

John Price Eſq;	*James Bacon.*
Tho. King.	*Joſeph Crichley.*
Richard Weſtland.	*George Crichley.*
William Lewis.	

Who are kept cloſe Priſoners in order to their Tryal the next Aſſizes, which will be in this Month of *July*. Upon the taking theſe Gentlemen Priſoners, the Souldiers and Rabble plundered and ſpoyled all the Engliſh Families in *Balinderry*, *Redrum*, *Balina-Claſh*, *&c.* and the Iriſh Women with their Skeans came afterwards and ſtript the Women and Children Naked, leaving them in a moſt miſerable and deplorable condition, having not left them either Bread, or any Food in ſeveral Towns, but carried all away with them. And as an Iriſh man a Tanner declared to ſeveral at the Aſſizes, in the hearing of this Relator, That one Captain *Toole* had for his ſhare Twenty ſix Horſe Loads (or more) of Plunder; and the Lord of *Lowths* Troop of Dragoons that were quartered in *Wicklow* Town, had great quantities of Woollen and Linen Cloth, Womens Cloaths, Pewter and other Goods in abundance. But the *L. C. J. Keating* coming there to the Aſſizes, and having an account of the extream poverty and miſery the Proteſtants thereabouts were reduced to, did encourage their Petitioning, and where they could find their Cloaths, *&c.* he endeavoured to help them in the recovery of them. And Mr. *Richard Lamb* having Ten fat Bullocks taken away by Collonel *Tooles* men, and brought to *Wicklow*, and there killed and eaten by the Souldiers. He preferred a Petition to the Court, Colonel *Toole* being preſent on the Bench.

L. C. J. Keating Collonel *Toole*, you heard the Petition read; do you know any thing of theſe Oxen Mr. *Lamb* had taken from him by your Soldiers?

C. Toole. My Lord, I will tell you how it was; Mr. *Lamb* had ſold the Bullocks to Mr. *Price*, and as they were driving them to *Balenderry*, the Soldiers met them and took them away.

L. C. J. Keating. But Mr. *Lamb* was at home at his own Houſe, and not at *Balinderry*, the Bullocks were to be paid for upon Mr. *Lambs* delivering them to Mr. *Price* at *Balinderry*, your Souldiers took them away from his Servant ſeveral miles from *Balenderry*; I ſee no reaſon why Mr. *Lamb* ſhould not be paid for them.

C. Toole. My Lord, Colonel *Sheldon* came down ſoon after with the Kings Army, and I adviſed with him, and he ordered they ſhould be killed for the Army, which was done accordingly.

L. C. J. Keating. Pray Colonel *Toole* however, Mr. *Lamb* ought to be paid for them; he was not concerned with *Balinderry*, but kept his own Houſe.

Council Fitzpatrick. My Lord, his Houſe was a Garriſon too.

Mr. Hancock. For ſhame Mr. *Fitzpatrick*, a Thatcht Cabin a Gariſon; I find you are for making all Proteſtants Rebels that live peaceably at home in their own Houſes.

C. Toole. My Lord, I have no more to ſay to the matter.

Clerk of the Crown. Calling over the Gentlemen of the County, called one —— *Savil* Gent.

Savil. Here I am, my Lord, God knows, a poor Gentleman, being Robb'd of all, and not a penny left me to buy a pint of drink.

L. C. J. Keating. Pray Sir when were you Rob'd?

Savil. The laſt Wedneſday they came and took away what little they had left untaken before, my Wife and Childrens Cloaths, Robbing me of all.

L. C. J. Keating. Pray Sir, what value may your loſs be?

Mr. Savil. Truly my Lord, I have not yet computed my loſs, but they have taken away all; I deſire your Lordſhip will diſcharge me from attending the Court, for I have not wherewithal to ſubſiſt while I am here.

L. C. J. Keating Sir I am ſorry for you, I diſcharge you.

L. C. J. Keating. Colonel *Toole*, Let the Officers be ſent for into Court, to hear this Proclamation read, that is ſent down here by the Government.

Toole. My Lord, they are here moſt of them, here is Captain *Archbold*, Captain *Toole*, *&c.*

Clerk of the Crown. Read the Proclamation, the ſubſtance whereof was, That they ſhould reſtore the Proteſtants ſuch of their Horſes again, as were not fit for the Kings Service, *&c.*

J. Keating. Calls for it from the Clerk, and giving it to Colonel *Tools* hand, who ſtood next him on the Bench, Sir, Pray take this Proclamation, and I hope you will take care that obedience be given to it.

Toole. My Lord, we have received other Orders, Colonel *Sheldon* who is our Chief Commander, has given directions to have them kept for Draught for Carriages.

J. Keating. Nay, Sir, if Colonel *Sheldon* muſt be obeyed before the Government, I have no more to ſay, I have done.

Toole. My Lord, I ſhall obey it.

J. Keating. Pray then Col. *Toole*, let the Horſes be ſent for, while that I am here, that what Horſes are not muſterable may be return'd: I cannot in my Conſcience go about to fine Men,

Men, for not appearing at the Aſſizes, when they have not a Horſe left them to ride on.

The further Proceedings at the Aſſizes at Wicklow, *in* Ireland: *Being an account of the Tryal of ſeveral Felons,* &c. March, *the 6th and 7th,* 1688-9.

SEveral were Arraigned for ſtealing conſiderable Numbers of Cows, Sheep, &c. *but the Evidence againſt moſt of them durſt not appear to proſecute.*

Leaghlin Birne *Indicted for ſtealing Nine Head of black Cattle, from one* Colwell: *No Perſon appearing to proſecute, ſays,*

J. Keating *(to the Jury)*: Gentlemen, you have nothing againſt this Man; he was born in the ſtate of Innocency: But the truth is, the Parties dare not appear againſt him.

Witneſſes came in againſt three Fellows, (viz.) Maurice Cavenagh, Edmond Poor, William Bowland.

Clerk of the Crown, calling them to come and proſecute and they appearing.

J. Keating. You that are Evidences againſt the Priſoners at the Bar, I charge you as you will anſwer it before God, that you neither for favour or affection be inclined to ſpare any of theſe Villains; and likewiſe, that you will conceal nothing of the Truth, as you will anſwer it at the Great Day; for I tell you, the Cries and Groans of the poor Women and Children, and the many Families that are ruined, and in great Diſtreſs, will go up to Heaven againſt you.

Evidence againſt Ed. Poor. My Lord, when I came to him, and asked him, why he ſtole my Cows? He ſaid, The Devil did make him do it. I ſpake him fair, and he gave me Money for my Cows.

Poor. I, my Lord, and he promiſed not to trouble me.

J. Keating. It was an unlawful Promiſe, the Law would not juſtifie him in it; he has done like an honeſt Man: If you paid the Money out of Conſcience, you did well; but I fear it was your danger of the Halter made you part with your Money; for if 22 *s.* and Damnation ſtood in the way, I believe you would have kept the Money: I am ſure without Satisfaction you cannot expect Abſolution; the Prieſt that gave the other Advice, for the Maddoge or Skean, will, I ſuppoſe, tell you ſo.

Two Proteſtant Evidences againſt Maurice Cavenagh, *for ſtealing ſeveral Head of black Cattle, hearing Judge* Keating *ſpeak againſt Skeans, ſaid,*

Evidence. My Lord, when we ſeized him, we took a Skean away from him.

J. Keating. Sir, How durſt you carry ſuch an unlawful Weapon?

Cavenagh. My Lord, I am a Butcher, it was a Butcher's Knife.

J. Keating. Ay, I do not queſtion but thou canſt butcher upon occaſion.

One Hicky *ſpoke.* My Lord, he is no Butcher; but one of the greateſt Rogues in the County round us. I have been in purſuit of him ſeveral times.

Cavenagh. He is a Murderer, my Lord, do not believe him.

Evidence. My Lord, it was near ten Inches long, thick at the back, and ſharp point, every way a Skean.

J. Keating. Is that your Butcher's Knife? you are a great Villain, for carrying ſuch a Weapon.

Cavenagh. I was order'd to have a Skean, my Lord.

J. Keating. Pray, Sir, who order'd you?

Cavenagh. The Prieſt of the Pariſh.

J. Keating. A Prieſt, Sir, *(turning to his Brother Judge)* Do you hear that Brother?

Bar. Lynch. What Prieſt, Sir? What Prieſt? What is your Prieſt's Name?

J. Keating. Hold Brother. Come, Sir, I ſhall not ask your Prieſt's Name; I believe you will have occaſion to ſee your Prieſt ſoon, to do you a better Office, than to adviſe you to carry Skeans.

(And looking towards Coll. Tool, *and two Prieſts on the Bench, next Sheriff* Birne.)

J. Keating. A Prieſt, Gentlemen; a Prieſt is a Miniſter, and a Miniſter of the Goſpel, his Doctrine ought to be Peace, for the Goſpel is a Doctrine of Peace: When our Saviour came into the World, Peace was proclaimed; and when he went out of the World, he left it for a Legacy to his Diſciples: *My Peace be with you.* And pray, Sir, tell your Prieſt ſo from me, when you ſee him. It is not for Prieſts to arm or animate ſuch Villains as you are for Miſchief. I ſhall not ask your Prieſt's Name.

Clancy *an Iriſh Gentleman.* My Lord, he belies the Prieſt; he is a Rogue.

Cavenagh. I do not: The Prieſts of every Pariſh did give Orders to get Half-pikes, and Skeans; and they were getting together in Companies, in every Pariſh.

J. Keating. Who were they that were gotten together; ſuch Fellows as you?

Cavenagh. No, my Lord, better Men than I; a great many that are here in Court.

The Jury withdrawing, and returning ſoon again, brought Poor *and* Bowland *in guilty,* Cavenagh *not guilty.*

J. Keating. Gentlemen, you have acquitted the greater Villain; at your Door let it lie.

The Ordinary being called to give Bowland *and* Poor *the Book, for their Clergy.*

J. Keating. Sir, I expect as true a Return from you, as if I were there my ſelf: The Times are ſo that Men muſt forget Bowels of Mercy. Ordinary, do your Duty: What place do you ſhew them?

Ordinary. My Lord, I ſhew them the 50*th Pſalm.*

J. Keating. Let them read the 5th Verſe—*This is an Act of Mercy*; and I know not why it ſhould not be in *Iriſh* rather, the Country Language; it was formerly in *Latin*, becauſe the *Romiſh* Church hath their Worſhip in *Latin.*

The Ordinary return'd them both (Non Legit).

J. Keating. You *William Bowland*, and you *Edmund Poor*, you have been Arraigned for ſtealing of Cows, two ſeveral Thefts: It is a great misfortune and ſin to be guilty of ſuch Crimes at any time; but yours is ſo much the worſe, becauſe it falls in a time when there are ſuch general and vaſt Depredations in the Country; that many honeſt Men go to Bed poſſeſt of conſiderable Stocks of black and white Cattle, (gotten by great labour and pains, the Induſtry of their whole Lives) and in the Morning when they ariſe, not any thing left them; but turn'd out of all, to go a begging, all being taken away by Rebels, by Thieves and Robbers, the

Sons

Sons of Violence, that make every thing they lay their Hands on their own. On this side the *Cape* of *Good Hope*; (where are the most brutish and barbarous People we read of) there is none like the People of this Country; nor so great a Desolation as in this Kingdom, at this day, any where to be found, and particularly in this County: It is come to that pass, that a Man that loses the better part of his Substance, chuses rather to let that, and what he has besides go, than come to give Evidence: And why? Because he is certain to have his House burnt, and his Throat cut, if he appears against them. Good God! what a pass are we come to! For what has any Man, if the stronger Hand can take it from him; it is better to live under no Law, than in such a place. We have lived to see twenty nine Years of Peace pass over our Heads: And I have sat on this Bench before now; I pray God, that my Lenity and others, has not given Encouragement to these Thieves and Robbers; there may be a Rogue in the Court, or one that is evilly inclined (I know none) but take notice of this, the Government is at length tyr'd with Mercy, they see it does no good; and Examples and Punishments of this kind, are not intended so much in a great part for the Punishment of the Offender, as for discouraging of others; to make them take warning by their Example, that, seeing what evil Courses bring Men to, they may reform.

I will not take up time to tell you how the benefit of Clergy came; whether in the room of the Cities of Refuge that were in the old times; I know that Restitution was under the *Jewish* Law sufficient Satisfaction; and if the Thief could not make Restitution, he was to be sold for a Slave, and the Money given to the Party. But as the World grows old, it grows worse, and those Lenitives signifie nothing for preventing Thieving and Robbery; for Thieves and Robbers are like a Gangreen in the Commonwealth, they are worse than Drones in the Hive. I cannot tell my self, that under the Circumstances we are in, I should advise to pardon any that are taken in this general Depredation that we are under, and therefore you *Bowland* and *Poore*, that might have lived as safely under the Laws, as the biggest Man in the Kingdom, and none of your fellow Subjects durst lay his Hand upon you, but he was liable to answer for it; and thus you might have lived to a fair old age, and ended your days in Peace, but you have chosen the quite contrary, for the Law provides likewise for the Punishment of wicked and offending Persons, among which number you are found by a Jury of Twelve able Men of your Country; and therefore the Sentence of the Law is this, *That you be both and each of you taken from this place, to the place from whence you came, and there your Irons to be struck off, and from thence to the place of Execution, and there you shall be Hanged by the Neck till you are dead, and the Lord have Mercy upon your Souls.*

And now let me give you advice, your time is short, spend it well, and flatter not your selves with the hopes of a Reprieve or Pardon; and for you *Poore*, you have shortned the work of your Life, you have gone a great way towards Heaven, if that Restitution you made was out of Conscience. Mr. Sheriff, let them have a Confessor sent to them, for *Saturday* is the day of their Execution. *The Women their Friends setting up the Cry in the Court.*

J. Keating. They did not cry thus when the Cows were brought home to them, they were busied then in the killing and the powdring them up.

The Copy of a Protection or Pass, given by an *Irish* Officer to some notorious Robbers of the County of *Wicklow*.

I James Byrne, *Ensign to Captain* Charles Byrne, *do hereby certifie to you,* Terlagh Kelly, Patrick Byrne, *and* Patrick Mac-Teige, *and* William Doyle, *to save you harmless from any Misdemeanors whatsoever. As witness my Hand this* 24th *of* April, 1689. James Byrne.

The following Letter being sent by the Lord-Deputy to the Judges of Assize, was read in Court to the Grand-Jury, *&c.*

By the Lord-Deputy, General, and General Governour of *Ireland*.

After Our hearty Commendations, We Greet you well. As His Majesty was graciously pleased to entrust us with the Government of this his Kingdom, so upon the Invading of England, *and upon receiving certain Information, that the Prince of* Orange *doth intend also to invade this Realm. We have, for the Defence thereof, raised a considerable Army, far above what could be maintained by the King's Revenue at the best of Times, and when the Trade of this Country was in the most flourishing Condition; this we have done by the King's Command, to support his Regal Authority, Crown and Dignity, and to preserve the Lives, Liberties, and Properties of all his Liege People within this Kingdom. And since our Dangers are at hand, and that we may daily expect the Landing of an Enemy, who intends the Subversion of His Majesty's Government, the total Destruction of all his good Subjects. Here we find our selves under an absolute Necessity to keep the King's Army still on foot, in order to our Preservation from the approaching Dangers. And tho' we have hitherto with all the Care and Industry imaginable, and by the generous Concurrence of the Officers, supported the new raised Forces, without being a Burthen to any of His Majesty's People. Yet considering the decay of Trade, the great fall of the Revenue in these distracted Times, the great Charges the Officers have been at in subsisting Men, it cannot be expected that the standing Forces can hereafter be maintained without Supplies; and since the same cannot be done by Parliament, We cannot think of a more effectual Expedient, than by voluntary Subscriptions, by way of Loan, from the People; which if generously done, with what may be made of the Revenue, may support the Army, and will stop all the Disorders that may be committed by the Souldiers, which we shall always endeavour to prevent with all the Care and Industry possible. By this Husbandry may go on as formerly, and we shall be in a Capacity to form the Army so, as that, with the Assistance of Almighty God, we do not doubt to put this Kingdom in a perfect posture of Defence. We do therefore pray your Lordships to Recommend this weighty Matter effectually at the open Assizes in every County when you sit, to all the Inhabitants of such Counties, and to appoint the respective Sheriffs of such Counties, to procure voluntary Subscriptions, by way of Loan, from the Inhabitants of such*

Counties,

Counties, of ſome certain Sum of Money from each, to be ſubſcribed to their Names, to be afterwards ſatisfied by them reſpectively, in Money, Wheat, Oats, or Oatmeal, towards the Maintenance of the Army, to be paid in, or delivered to the reſpective Sheriffs, or their Order, and in ſuch places as the ſaid Sheriffs ſhall reſpectively appoint, from whom we expect an account of their Proceedings herein, and a Copy of ſuch Subſcriptions as ſhall be made. We do not doubt but every True and Loyal Subject will, according to his Ability, and the Excellency of the Subject matter, generouſly and chearfully Contribute towards the carrying on of ſo great, ſo neceſſary, and ſo glorious a Work. We expect your diligent Care herein, and ſo we bid you heartily Farewel. From His Majeſty's Caſtle of *Dublin*, the Second Day of *March*, 1688. Your very Loving Friend,

Tyrconnel.

An Anſwer to the foregoing Letter being drawn up by the Grand Jury, and entred into their Book, and preſented to Sir *Henry Lynch*, ſetting forth the extream Poverty of their County, occaſioned by the daily Ruin of the *Engliſh*, &c. That they were not in a Capacity to ſubſiſt themſelves, and therefore not capable to raiſe any thing conſiderable for the Army; (Chief Juſtice *Keating* returning to *Dublin*, and leaving Baron *Lynch* to go on to the other Counties, &c.) the ſaid *Lynch* told the Grand Jury before he diſcharged them, that the Writing they had drawn up, was a Reflection and Scandal to their Country, would be taken very ill by the Government, and did not queſtion but it would be brought in hereafter as an Evidence againſt them; and therefore order'd it ſhould be torn out of the Book, which was done accordingly.

The Tryals of Sir Richard Grahme, *Baronet*, *Viſcount* Preſton *in the Kingdom of* Scotland, *and* John Aſhton, *Gent.*

Anno Regni Domini Willielmi & Dominæ Mariæ, *Angl.* &c. Secundo. *Die Veneris*, 16. *die Januarii*, *Anno Dom.* 1690. The King and Queen's Writ of *Habeas Corpora* was ſent to the Governour of the *Tower* of *London*, to bring up the Bodies of Sir *Richard Grahme*, Baronet, Viſcount *Preſton* in the Kingdom of *Scotland*, *John Aſhton* and *Edmund Elliot*, Gent. to the Seſſions-Houſe in the *Old-Baily*, *London*; where they were brought between the Hours of Ten and Eleven in the Forenoon; and being placed at the Bar, were Arraigned upon an Indictment of High-Treaſon, found the Day before by the Grand-Jury for the County of *Middleſex*, at *Hicks*'s-Hall, in manner following.

Cl of Arraignments. SIR *Richard Grahme*, hold up your hand, (which he did, and ſo the other two.)—You ſtand indicted by the Names of Sir *Richard Grahme*, late of the Pariſh of St. *Anne* within the Liberty of *Weſtminſter*, in the County of *Middleſex*, Baronet; *John Aſhton*, late of the Pariſh of St. *Paul Covent-Garden* in the County aforeſaid, Gentleman; and *Edmond Elliot*, late of the Pariſh of St. *James* within the Liberty aforeſaid, in the County aforeſaid, Gent. for that you, as falſe Traytors againſt the moſt Illuſtrious and moſt Excellent Princes *William* and *Mary*, King and Queen of *England*, Defenders of the Faith, &c. your Sovereign Lord and Lady, not having the fear of God in your Hearts, nor weighing the duty of your Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, the cordial Love, and true, due, and natural Obedience, which every true and faithful Subject of our ſaid Sovereign Lord and Lady, the King and Queen that now are, towards them our ſaid Sovereign Lord and Lady the King and Queen ſhould, and of right ought to bear, wholly withdrawing; and contriving, practiſing, and with all your ſtrength intending the Peace and Common Tranquillity of this Kingdom of *England* to diſquiet, moleſt, and diſturb; and War and Rebellion againſt our ſaid Sovereign Lord and Lady, the King and Queen that now are, within this Kingdom of *England* to ſtir up, move, and procure; and the Government of our ſaid Lord and Lady the King and Queen of this Kingdom of *England* to ſubvert, change and alter; and our ſaid Lord and Lady, the King and Queen, from the Title, Honour, and Royal Name of the Imperial Crown of this their Kingdom of *England* to depoſe and deprive; and our ſaid Lord and Lady the King and Queen to death, and final deſtruction to bring and put; you the ſaid Sir *Richard Grahme*, *John Aſhton*, and *Edmund Elliot*, the nine and twentieth day of *December*, in the ſecond year of the Reign of our ſaid Lord and Lady the King and Queen that now are; and

and divers other days and times, as well before as after, at the Pariſh of St. *Clement Danes*, in the County aforeſaid, Falſly, Maliciouſly, Devilliſhly, and Traiterouſly, with Force and Arms, *&c* with divers falſe Rebels and Traytors, to the Jurors unknown, did Conſpire, Treat of, Compaſs, Imagine, and intend our ſaid Lord and Lady the King and Queen that now are, (your ſupreme and natural Lord and Lady) from the Royal State, Crown, Title, Power, and Government of their Kingdom of *England*, to Deprive, Depoſe, and Caſt down; and the ſame our Lord and Lady the King and Queen that now are, to Kill, and bring and put to Death; and the Government of this Kingdom of *England* to Change, Alter, and wholly to Subvert; and a miſerable Slaughter among the Subjects of our ſaid Lord and Lady, the King and Queen, within their Kingdom of *England*, to Cauſe and Procure; and an Inſurrection, War, and Rebellion againſt Our ſaid Lord and Lady, the King and Queen that now are, within this Kingdom of *England* to Move, Procure, and Aid; and the ſame your moſt evil, wicked, and Devilliſh Treaſons, and Traiterous Compaſſings, Imaginations, and Purpoſes aforeſaid, to fulfil, perfect, and bring to effect, you the ſaid Sir *Richard Grahme*, *John Aſhton*, and *Edmond Elliot*, as falſe Traitors, then and there, to wit, the ſaid Ninie and twentieth day of *December*, in the ſaid ſecond Year of the Reign of our ſaid Lord and Lady, the King and Queen that now are, and divers other days and times, as well before, as after, at the Pariſh of St. *Clement Danes* aforeſaid, in the County aforeſaid, with Force and Arms, *&c.* falſly, unlawfully, wickedly, and traiterouſly, did Propoſe, Conſult, and agree to Procure and Prepare great Numbers of Armed Men, War and Rebellion againſt our ſaid Lord and Lady the King and Queen, within this Kingdom of *England* to Levy and Make; And that you the ſaid Sir *Richard Grahme*, *John Aſhton*, and *Edmund Elliott*, afterwards, to wit, the ſame Nine and twentieth day of *December*, in the aforeſaid ſecond year of the Reign of our ſaid Lord and Lady, the King and Queen that now are, at the Pariſh of St *Clement Danes* aforeſaid, in the County aforeſaid, falſly, maliciouſly, and traiterouſly, did Prepare, and Compoſe, and then and there did Cauſe, and Procure to be Prepared, and Compoſed, ſeveral Traiterous Letters, Notes, Memorandums, and Inſtructions in writing, to ſhew and inform *Lewis* then and yet the *French* King, and his Subjects, then and yet Enemies of our ſaid Lord and Lady, the King and Queen that now are, and very many other evil-diſpoſed Perſons, and falſe Traytors, to the Jurors unknown, of and concerning the Number, Force, and Condition of certain Ships, for, and on the behalf of our ſaid Lord and Lady, the King and Queen of *England*, then, and there deſigned and prepared for the defence of their Kingdom of *England*, and their Enemies aforeſaid to repel and reſiſt; and how ſome of the ſame Ships were Manned, and of the Names of the Captains of ſeveral of the ſaid Ships; and how the Caſtles and Fortreſſes of our ſaid Lord and Lady, the King and Queen, called *Portſmouth*, *South-Sea*, and *Goſport*, within this Kingdom of *England*, were ſtrengthened and fortified, and how the ſame Caſtles and Fortreſſes, into the hands and poſſeſſion of Enemies and falſe Traytors againſt our ſaid Lord and Lady, the King and Queen, might be taken and ſeized; as alſo of the time, places, ways, manners, and means by which, when, and where the ſame Enemies of our ſaid Lord and Lady, the King and Queen, this Kingdom of *England* might invade and infeſt; and the ſame Enemies, and the Ships of the Enemies of this Kingdom of *England*, ſhould fight againſt our ſaid Lord and Lady, the King and Queen, and their faithful Subjects; as alſo to procure, provide, prepare, and obtain againſt our ſaid Lord and Lady, the King and Queen that now are, Aſſiſtance and Armed Men, our ſaid Lord and Lady the King and Queen that now are, from their Royal State and Government of this Kingdom of *England* to caſt down and Depoſe, and to ſtir up, promote, and procure the aforeſaid *Lewis* the *French* King, (then, and yet an Enemy of our ſaid Lord and Lady the King and Queen) this Kingdom of *England* to Invade; and to ſend Ships within this Kingdom of *England*, the City of *London*, of our ſaid Lord and Lady the King and Queen that now are, to Plague; as alſo to cauſe very many Subjects of our ſaid Lord and Lady the King and Queen that now are, to Riſe, and War and Rebellion againſt our ſaid Lord and Lady the King and Queen within this Kingdom of *England* to move, procure, make, and levy. And you the ſaid Sir *Richard Grahme*, *John Aſhton*, and *Edmund Elliott* afterwards, to wit, the ſame day and Year, at the aforeſaid Pariſh of St *Clement Danes* in the County of *Middleſex*, of and for the ſame your Treaſons and Traiterous Compaſſings, Imaginations, and Purpoſes aforeſaid, to execute, fulfil, perfect, and bring to effect into your Hands, Cuſtody, and Poſſeſſion, then and there ſecretly, Knowingly, Unlawfully, and Traiterouſly did obtain, procure, detain, had, concealed, and kept two ſeveral Bills of Exchange then before made, for the Payment of ſeveral Sums of Money to the Enemies of our ſaid Lord and Lady the King and Queen that now are; as alſo very many Traiterous Letters, Notes, Memorandums, and Inſtructions in Writing, then and there compoſed and prepared with that intent to ſhew and inform *Lewis* then and yet the *French* King, and his Subjects, then and yet Enemies of our ſaid Lord and Lady the King and Queen that now are, and very many other Evil Diſpoſed Perſons, and Falſe Traytors to the Jurors unknown, of and concerning the Number, Force and Condition of the Ships, for and on the behalf of them our ſaid Lord and Lady the King and Queen of *England*, then and there deſigned, and prepared for the Defence of their Kingdom of *England*, and to Repel, and Reſiſt their Enemies, and how ſome of the ſame Ships were Manned, and of the Names of the Captains of divers of the ſame Ships, and how the Caſtles and Fortreſſes of our ſaid Lord and Lady the King and Queen called *Portſmouth*, *South-Sea* and *Goſport*, within this Kingdom of *England*, were Strengthned, and Fortified; and how the ſame Caſtles and Forts into the Hands and Poſſeſſion of Enemies and falſe Traytors againſt our ſaid Lord and Lady the King and Queen, might be taken and ſeized; as alſo the Times, Places, Ways, Manners, and Means, by which, when, and

'where the ſame Enemies of our ſaid Lord and 'Lady the King and Queen, this Kingdom of '*England* might Invade, and Inſeſt, and the 'Enemies, and Ships of the Enemies of this 'Kingdom of *England* ſhould Fight againſt the 'ſame our Lord and Lady the King and Queen 'of *England*, and their faithful Subjects; as alſo 'to procure, provide, prepare, and obtain a-'gainſt our ſaid Lord and Lady the King and 'Queen, Aſſiſtance and Armed Men, to Invade 'this Kingdom of *England*, and our ſaid Lord 'and Lady the King and Queen that now are, 'from their Royal State and Government of this 'Kingdom of *England*, to caſt down and depoſe, 'and to ſtir up, promote, and procure the afore-'ſaid *Lewis* the *French* King then, and yet an 'Enemy of our ſaid Lord and Lady the King 'and Queen, to Invade this Kingdom of *Eng-'land*, and to ſend Ships within this Kingdom of '*England*, the City of *London*, of our ſaid Lord 'and Lady the King and Queen to plague; as 'alſo to cauſe very many Subjects of our ſaid 'Lord and Lady the King and Queen, to Riſe, 'and War, and Rebellion againſt our ſaid Lord 'and Lady the King and Queen, within this 'Kingdom of *England*, to move, procure, make, 'and levy. And you the ſaid Sir *Richard Grahme*, '*John Aſhton*, and *Edmund Elliott*, afterwards, to 'wit, the Thirtieth day of *December*, now 'laſt paſt, at the aforeſaid Pariſh of St *Cle-'ment Danes*, in the County of *Midâleſex*, con-'cerning, and for the ſame your Treaſons, and 'Traiterous Compaſſings, Imaginations, and 'Purpoſes aforeſaid, to execute, fulfil, perfect, 'and bring to Effect, for One Hundred Pounds 'in Moneys, numbred by you the ſaid Sir *Rich-'ard Grahme*, *John Aſhton*, and *Edmund Elliott*, 'then and there paid, and depoſited, unlawfully 'and Traiterouſly did hire and prepare, and 'then and there did cauſe and procure to be hi-'red and prepared a certain Ship, and three 'Men; you, the ſaid Sir *Richard Grahme*, *John 'Aſhton*, and *Edmund Elliott*, with the ſaid Bills 'of Exchange, and the aforeſaid Traiterous 'Letters, Notes, Memorandums, and Inſtructi-'ons in Writing, into the Hands, Cuſtody and 'Poſſeſſion of you the ſaid Sir *Richard Grahme*, 'John Aſhton*, and *Edmund Elliott*, ſecretly, un-'lawfully, and traiterouſly, kept concealed and 'detained, from this Kingdom of *England*, unto, 'and into *France*, in Parts beyond the Seas, then 'and yet under the Rule and Government of the 'ſaid *Lewis* the *French* King, then and yet an 'Enemy of our ſaid Lord and Lady the King 'and Queen, ſecretly to carry and tranſport, 'with that intent the ſaid Bills of Exchange, 'Traiterous Letters, Notes and Memorandums, 'and Inſtructions in Writing there in parts be-'yond the Seas, to the Enemies of our ſaid 'Lord and Lady the King and Queen, and o-'ther Evil-diſpoſed Perſons to deliver and diſ-'perſe. And the ſaid moſt wicked Treaſons, 'and Traiterous Compaſſings and Imaginations 'aforeſaid, to fulfil, perfect, and bring to effect, 'as alſo to cauſe, promote and procure the afore-'ſaid Enemies of our ſaid Lord and Lady, the 'King and Queen, to invade this Kingdom of '*England* with Ships and Armed Men. And 'you the ſaid Sir *Richard Grahme*, *John Aſhton*, 'and *Edmund Elliott*, afterwards, to wit, the '30th Day of *December* now laſt paſt, at the 'aforeſaid Pariſh of St *Clement Danes*, in the 'County aforeſaid, concerning, and for the 'ſame your Treaſons, and Traiterous Compa-'ſſings, Imaginations and Purpoſes aforeſaid, 'to execute and fulfil, maliciouſly, traiterouſly, 'and adviſedly, then and there, and diverſe o-'ther days and times, as well before as after, 'took upon your ſelves to very many other 'Traytors to be aiding and aſſiſting in the Exe-'cution of the Treaſons, and Traiterous Com-'paſſings, Imaginations and Purpoſes aforeſaid; 'and then and there, to wit, the ſame 30th 'day of *December* now laſt paſt, at the Pariſh of 'St. *Clement Danes*, in the County aforeſaid, ma-'liciouſly, ſecretly and traiterouſly did hire, and 'prepare, and then and there did cauſe and pro-'cure to be hired and prepared a certain Boat, 'and one Man, to the Jurors aforeſaid un-'known; you the ſaid Sir *Richard Grahme*, *John 'Aſhton*, and *Edmund Elliott*, from thence to, and 'into the aforeſaid Ship, ſo as aforeſaid, hired 'and prepared to carry and convey. And you 'the ſaid Sir *Richard Grahme*, *John Aſhton*, and '*Edmund Elliott*, maliciouſly and traiterouſly into 'the ſame Boat, then and there did enter; and 'your ſelves from thence, in and by that ſame 'Boat, unto and into the Ship aforeſaid, then 'and there unlawfully and traiterouſly did cauſe, 'and procure to be carried with the intention 'aforeſaid. And you the ſaid Sir *Richard Grahme* 'John Aſhton*, and *Edmund Elliott*, with the ſame 'Bills of Exchange, and the aforeſaid traiterous 'Letters, Notes, Memorandums and Inſtruct-'ions in Writing, and in your Hands, Cuſtody 'and Poſſeſſion then and there, in and with the 'Ship aforeſaid, did ſail, and depart towards the 'aforeſaid Kingdom of *France*, in Parts beyond 'the Seas; the ſame your moſt wicked, evil 'and traiterous Intentions, Purpoſes, Compaſ-'ſings and Imaginations aforeſaid, to fulfil, per-'fect and promote, againſt the Duty of your 'Allegiance, againſt the Peace of our ſaid Lord 'and Lady the King and Queen that now are, 'their Crown and Dignity, and againſt the 'Form of the Statute in that Caſe made, and 'provided. *And the Indictment further ſets forth*, 'that long before the aforeſaid Nine and Twen-'tieth day of *December* now laſt paſt, open War 'between our ſaid Lord and Lady the King and 'Queen, and the aforeſaid *Lewis* the *French* 'King was begun, declared, and waged, and 'yet is; Which ſaid *Lewis* the *French* King, and 'his Subjects, and the men of thoſe parts, then 'and yet, were, and are, Enemies to our ſaid 'Lord and Lady the King and Queen that now 'are, and to their Kingdom of *England*: And 'that in the time of the aforeſaid War between 'them our ſaid Lord and Lady the King and 'Queen, and the aforeſaid *Lewis* the *French* 'King, you the ſaid Sir *Richard Grahme*, *John 'Aſhton*, and *Edmund Elliott*, being Subjects of 'our ſaid Lord and Lady the King and Queen 'that now are, as falſe Traitors againſt our ſaid 'Lord and Lady the King and Queen, during 'the War aforeſaid, to wit, the Nine and 'Twentieth day of *December*, in the Second 'year of the Reign of our ſaid Lord and Lady 'the King and Queen that now are, and diverſe 'other days and times as well before as after, at 'the Pariſh of St *Clement Danes* aforeſaid, in the 'County aforeſaid, with force, and Arms, *&c.* 'To the aforeſaid Enemies of our ſaid Lord and 'Lady the King and Queen that now are, un-'lawfully, and traiterouſly were adhering, and 'aſſiſting, and in Execution, and performance

'of

of the ſame adhering you the ſaid Sir *Richard Grahme*, *John Aſhton*, and *Edmund Ellyott*, then, and there, to wit, the ſame Nine and Twentieth day of *December* in the Second year of the Reign of our ſaid Lord and Lady the King and Queen that now are, aboveſaid, at the aforeſaid Pariſh of St. *Clement Danes* in the County aforeſaid, falſly, Maliciouſly, and Traiterouſly did prepare, and compoſe, and then and there did cauſe and procure to be prepared and compoſed, as alſo into your Cuſtody, and Poſſeſſion then, and there unlawfully ſecretly, and Traiterouſly did obtain, detain, conceal, and keep, divers traiterous Letters, Notes, Memorandums, and Inſtructions in writing, to ſhew and inform the aforeſaid *Lewis* then and yet the *French* King, and his Subjects, then and yet Enemies of our ſaid Lord and Lady the King and Queen that now are, of and concerning the Number, Force, and Condition of certain Ships, for and on the behalf of our ſaid Lord and Lady the King and Queen of *England*, then and there deſigned, and preparing, for their defence of their Kingdom of *England*, and their Enemies aforeſaid to repel, and reſiſt; and how ſome of the ſame Ships were manned, and of the Names of ſeveral of the Captains of the ſaid Ships; and how the Caſtles, and Fortreſſes of our ſaid Lord and Lady the King and Queen, called *Portſmouth*, *Southſea*, and *Goſport* within this Kingdom of *England* were ſtrengthened, and fortified, and how thoſe ſame Caſtles and Fortreſſes into the hands and poſſeſſion of the ſame Enemies of our ſaid Lord and Lady the King and Queen might be taken, and Seized, as alſo of the Time, Places, Ways, Manners, and Means, by which, when and where the ſame Enemies of our ſaid Lord and Lady the King and Queen that now are this Kingdom of *England* might invade, and Infeſt, and they the ſaid Enemies, and the Ships of the ſaid Enemies of this Kingdom of *England* ſhould fight againſt our ſaid Lord and Lady the King and Queen, and their faithful Subjects. And that during the War aforeſaid, to wit, the aforeſaid Thirtieth day of *December* now laſt paſt, you the ſaid Sir *Richard Grahme*, *John Aſhton*, and *Edmund Ellyott*, at the aforeſaid Pariſh of St. *Clements Danes* in the County aforeſaid, unlawfully, and Traiterouſly did hire, and prepare, and then and there did cauſe and procure to be hired and prepared a certain Ship, and three men, you the ſaid Sir *Richard Grahme*, *John Aſhton*, and *Edmund Ellyot*, with the ſame Traiterous Letters, Notes, Memorandums, and Inſtructions in writing, from this Kingdom of *England*, unto, and into *France* in parts beyond the Seas, then and there under the Rule and Government of the aforeſaid *Lewis* the *French* King, then and yet an Enemy of our ſaid Lord and Lady the King and Queen, ſecretly, during the War aforeſaid, to carry, and tranſport, to the intent the ſame Traiterous Letters, Notes, Memorandums, and Inſtructions in writing there, in parts beyond the Seas, to the aforeſaid Enemies of our ſaid Lord and Lady the King and Queen that now are to deliver, and diſperſe during the War aforeſaid, in aid of the ſaid Enemies of our ſaid Lord and Lady the King and Queen in the War aforeſaid: And that you the ſaid Sir *Richard Grahme*, *John Aſhton* and *Edmund Elliot*, during the War aforeſaid, to wit, the aforeſaid thirtieth day of *December* now laſt paſt, at the Pariſh of St. *Clement Danes*, in the County aforeſaid, concerning, and for the ſame your Treaſons and traiterous Adhearings and Purpoſes aforeſaid to execute and fulfil, maliciouſly, traiterouſly, and adviſedly, then, and there did hire and prepare, and then and there did cauſe, and procure to be hired, and prepared a certain Boat, and one Man to the Jurors unknown you the ſaid Sir *Richard Grahme*, *John Aſhton*, and *Edmund Elliot* from thence to and into the Ship aforeſaid, by you as aforeſaid, hired and prepared to carry and convey: And that you the ſaid Sir *Richard Grahme*, *John Aſhton*, and *Edmund Elliot*, maliciouſly, and traiterouſly into the ſame Boat then and there did enter, and your ſelves from thence ſecretly in and by the ſame Boat unto and into the ſame Ship then and there did cauſe and procure to be carried in Proſecution of the adhering aforeſaid. And you the ſaid Sir *Richard Grahme*, *John Aſhton*, and *Edmund Elliot* then and there with the ſame traiterous Letters, Notes, Memorandums, and Inſtructions in writing, in your cuſtody and poſſeſſion being, during the War aforeſaid, to wit, the ſame day and year, in and with the Ship aforeſaid did ſail, and depart towards the aforeſaid Kingdom of *France*, to the intent the ſame traiterous Letters, Notes, Memorandums and Inſtructions in writing, in parts beyond the Seas to the ſaid Enemies of our ſaid Lord and Lady the King and Queen that now are to deliver, concerning and for Aid, Intelligence, and Council by you the ſaid Sir *Richard Grahme*, *John Aſhton*, and *Edmund Elliot* to the ſame Enemies of our ſaid Lord and Lady the King and Queen that now are to give and yield, during the War aforeſaid, againſt the Duty of your Allegiance, againſt the Peace of our ſaid Sovereign Lord and Lady the King and Queen that now are, their Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided. *How ſay you* Sir Richard Grahme, *are you guilty of this Felony, and High Treaſon whereof you ſtand indicted, or not guilty?*

L. Preſton. My Lord, I have ſomething humbly to offer to your Lordſhips.

L. C. J. Holt. What is it your Lordſhip would ſay?

L. Preſton. My Lord, I find I ſtand indicted by the name of Sir *Richard Grahme*, Baronet, but I do take my ſelf to be intituled to another way of Tryal, as being a Peer of *England*, by vertue of a Patent before the Vote of Abdication was made; and it was in a time when all your Proceſſes, and all your Writs went in the late King's Name, and all Officers acted by vertue of his Commiſſions. My Lord, this is a matter that concerns me in point of Life, Eſtate, Poſterity, and all that's dear to me; and therefore I deſired to know whether your Lordſhips think fit to allow me my Peerage; I offer it, my Lord, with all the reſpect and modeſty imaginable.

L. C. J. Holt. My Lord, I apprehend your Lordſhip to offer againſt your being tried here, that you are a Peer.

L. Preſton. I take my ſelf to be ſo, my Lord.

L. C. J. Holt. My Lord, you muſt make that out to the Court.

L. Preſton. I told your Lordſhips the Ground of my Claim and Apprehenſion; it is from a Patent I received before the Vote of Abdication, when all Commiſſions, and all Proceſs, and all the Courts of Judicature run in that Name.

L. C. J. Holt. Where is that Patent, my Lord?

L. Preſton. It is in the Hands of the Houſe of Lords.

L. C. J. Holt. My Lord *Preſton*, we cannot take notice of that Patent; if your Lordſhip plead that you were made a Peer by a Patent under the Great Seal of *England*, you muſt produce it under the Great Seal, that the Court may ſee what it is, and whether it be ſufficient to juſtifie your Plea.

L. Preſton. I hope your Lordſhip and this Court will enable me to do that, by ſending an Order to the Clerk of the Houſe of Lords, to bring the Patent hither; for it is in his hands.

L. C. J. Holt. My Lord, that is not in our power: If your Lordſhip take your ſelf to be a peer, and would thereby ſtop this Court from proceeding to try you, you muſt be ready to make it out.

L. Preſton. I am ready to make it out, if I had my Patent here, that would make it out. Certainly there is ſome Authority now in being (I humbly offer it with all Submiſſion and Reſpect) that may order the Clerk of the Houſe of Lords to attend this Court, and produce this Patent.

L. C. J. Holt. My Lord *Preſton*, we are not to enable you to plead to the Juriſdiction of the Court:

L. Preſton. My Lord, I offer it with all reſpect to the Court: I am concerned in it for my Life, and my All, and if that be over-ruled, this I hope you will do before you go on, you will hear me by my Council.

L. C. J. Holt. My Lord, it is nothing that you have ſaid; for if your Lordſhip plead this Plea to the Juriſdiction of the Court, it ought not to be received without ſhewing your Patent.

L. Preſton. My Lord, I deſire my Council to be heard to this matter.

L. C. J. Holt. I know your Lordſhip has had the benefit of Council, and I know your Council muſt tell you, that what you ſay goes for nothing, unleſs you put in your Plea, and produce your Patent, that the Court may judge upon it.

* Sir *John Somers.* * Mr. *Sol. Gen.* My Lord, I have obſerved what my Lord *Preſton* has mentioned——

L. Preſton. Pray Mr. Sollicitor will you ſpeak out, that I may hear what you ſay?

Mr. *Sol. Gen.* My Lord, I ſay, I have taken notice of what your Lordſhip has offered: It has been moſt truly obſerved by the Court, that it is your Lordſhips part to make good your Plea, and it ought not to be expected that any Court ſhould help a Perſon to plead to its Juriſdiction: But becauſe it ſhould not be pretended that an advantage was taken againſt the Priſoner for a defect in point of form, or that any thing was inſiſted on which ſhould have the leaſt appearance of a hardſhip, and that we may proceed in the moſt clear and unexceptionable manner that can be, I muſt beg leave to obſerve to your Lordſhip and the Court, how far this matter which my Lord *Preſton* has inſiſted on has been debated and determined in another place.

L. C. J. Holt. So; on Mr. Sollicitor:

Mr. *Sol. Gen.* My Lord, upon the 11th of *November* 1689. My Lord *Preſton* did make ſome claim in the Houſe of Lords that he was a Peer of the Realm; the Houſe of Lords demanding of him upon what he founded his pretence; he ſaid he claimed by Letters Patents from the late King *James*, which paſſed the Great Seal before the time of the Vote of Abdication. The Lords required that thoſe Letters ſhould be produced, which being done, and my Lord *Preſton* inſiſting upon his Claim to be a Peer of *England*, the Lords thought fit that day to commit my Lord *Preſton* to the cuſtody of the Black Rod. The next day being the 12th of *November*, upon ſolemn debate of the validity of theſe Letters Patents, and conſulting with the Judges then preſent, the Lords *nemine contradicente* did adjudge and declare thoſe Letters Patents to be void and null: And by another Order of the ſame date, they did order Mr. Attorney General to proſecute my Lord *Preſton* in the *King's Bench* for a High Miſdemeanour in preſuming to claim Peerage by thoſe Letters Patents. And by a third it was ordered that the Letters Patents ſhould remain in cuſtody of the Clerk of the Parliament. Thus you ſee, my Lord, this matter hath had already a ſolemn Determination in a Court which had the moſt proper Conuſance and Juriſdiction of Claims in this Nature. And they having pronounced their Judgment, I did not think it would have been urged again in this place. I thought it proper to mention theſe things to ſhew how it comes to paſs that my Lord *Preſton* has not his Letters Patents to produce, and to ſatisfy every Man that there is no hardſhip put upon my Lord *Preſton*, by trying him here when he ought to be tried by another Judicature. The Lords have given Judgment againſt theſe Letters Patents, and have ordered that they ſhall remain in cuſtody of the Clerk of the Parliament, and my Lord *Preſton* is not a Stranger to theſe Tranſactions, and therefore if my Lords Council had been of Opinion he could have made any uſe of them, they would have inform'd him he muſt have taken another courſe to have got them, and could not expect this Court ſhould make an Order for him, contrary to the Order of the Houſe of Lords, to take the Letters Patents out of the hands of the Clerk of the Parliament, and this, to help him to a Plea againſt their own Juriſdiction. I omitted one thing, that upon the 27th of the ſame Month of *November*, upon my Lord *Preſton*'s humble Submiſſion and Petition, his Lordſhip was diſcharged of his Impriſonment, and the Houſe of Lords were pleaſed to remit the Order given to Mr. Attorney, for Proſecuting him in the King's Bench for the Miſdemeanour. So that I cannot but wonder to hear of this Claim of Peerage after that Submiſſion. But there is nothing offered to the Court by my Lord that the Court can take any legal notice of. If my Lord will plead any thing to the Juriſdiction of the Court, he ought to have his Plea in Form, and be ready with his Proofs to make it good.

Mr. *Serj. Thompſon.* My Lord *Preſton* upon this laſt Order of the Houſe of Lords has diſclaimed any right of Peerage when he made his Petition, otherwiſe he had not been diſcharged. ——

L. Preſton. My Lord I beg leave——

Mr.

Mr. *Serj. Thompſon.* Beſides, my Lord, what my Lord *Preſton* offers is a matter of Record as all Letters Patents are, and tho' out of his hands he might have had recourſe to the Record of the Inrolment.

L. Preſton. For that, my Lord, I muſt humbly beg of your Lordſhips a little time to put my ſelf in a Capacity to plead it in Form. If you will over rule it, I can ſay nothing to it; I offer it with all the modeſty and reſpect imaginable.

L. C. J. Holt. It ſhall do your Lordſhip no prejudice, my Lord, God forbid but that you ſhould make uſe of all advantages that you can invent for your defence. But, my Lord, we muſt tell you what you have offered is nothing that we can take any notice of, unleſs you had your Patent to produce, and we cannot give your Lordſhip time to plead to the Juriſdiction of the Court.

L. Preſton. Then if your Lordſhips are pleaſed to over rule this matter I ſubmit, but I hope you will give me leave to make all the juſt defence I can for my ſelf. Does your Lordſhip over rule me in it?

L. C. J. Holt. I ſuppoſe we are all of the ſame Opinion, if not, I ſuppoſe they will declare their minds.

L. C. J. Pollexfen. That which has been ſaid by Mr. Sollicitor, was only that you and all the World may be ſatisfied that there is nothing of hardſhip put upon you. But the Court, if this had not been ſaid, yet could take no notice of what you ſay, unleſs it were pleaded, and pleaded in legal Form. But if the matter be, as the King's Council have repreſented it, that this Patent you now pretend to have, hath already had its determination in a proper place, this Court (which is an inferiour Court to that of the Lords in Parliament) cannot intermeddle with it. We cannot help you, nor can we ſet up what was condemned there. So that you can entertain no hope or expectation of our doing any thing for you in this matter, or any relief or help by ſuch a Plea.

L. C. Baron. My Lord *Preſton*, you may remember, (I am ſure ſome of us that were there preſent do,) that you did decline further inſiſting upon this matter in the Houſe of Lords, and thereupon you had that great favour from the Houſe ſhewn you, as the King's Council have opened.

L. Preſton. I did decline it, 'tis true, my Lord; when they had declared it a Miſdemeanour, I made my application to the Court, and therein declared I was ſorry for having miſdemeaned my ſelf.

Mr. *Serj. Thompſon.* If your Lordſhips pleaſe, we will read the very Orders of the Houſe of Lords, to ſatisfie my Lord *Preſton*, that we put no hardſhip upon him.

L. Preſton. If there be any thing of hardſhip upon me in this Caſe, it is becauſe I think I have a right to inſiſt upon this matter, and cannot have an occaſion or power to have that which I would make my Defence by.

L. C. J. Holt. Your Lordſhip ſhall have a fair Tryal, if you will pleaſe to put your ſelf in a Condition to be tryed, by pleading to the Indictment.

Mr. *B. Lechmere.* The Lords in Parliament have diſclaimed you for being a Peer, and we cannot make you one.

L. Preſton. My Lord, I hope your Lordſhips will put no hard thing upon me, but give me leave and your Lordſhips help to make my defence.

L. C. J. Holt. You ſhall by the Grace of God have all the liberty you can deſire to make your Defence; but you muſt firſt plead.

L. Preſton. Since your Lordſhips are pleaſed to over rule me in this Caſe, I ſhall ſay no more of it. I did not intend to offer any thing that might be an Offence to the Court.

L. C. J. Holt. As I told your Lordſhip before, ſo I aſſure you now again it ſhall do you no prejudice.

L. Preſton. Then if your Lordſhip pleaſe, ſince the Language is different in which the Indictment is written from that in which it was read, and ſome things may be of different Signification in both Languages, I deſire the Indictment may be read in *Latin.*

L. C. J. Holt. Read it in *Latin.*

L. Preſton. I have one thing to beg of your Lordſhip before it be read.

L. C. J. Holt. What is it you deſire, my Lord?

L. Preſton. My Lord, I humbly deſire, becauſe I cannot retain all the Contents in my Memory, that my Sollicitor may have leave to ſtand by me.

L. C. J. Pollixfen. Do you all joyn in this deſire, for if you ſhould each of you ſeverally, have it read a great many times over, they that take Notes in Short-hand may take a Copy of it as it is read, and a Copy not to be allowed.

L. C. J. Holt. If we find they deſire to be troubleſome, we can over rule them.

L. Preſton. I would be guilty of nothing that may give the Court Offence, nor offer any thing that ſhould take up the time of the Court unneceſſarily.

L. C. J. Holt. If they would have it read in *Latin*, let it be read.

L. Preſton. If it be troubleſome to the Court, I wave it my Lord.

L. C. J. Holt. No, we do not think it troubleſome.

L. C. J. Pollixfen. Mr. *Aſhton* and Mr. *Elliot*, do you deſire to have it read again?

Aſhton, Elliot. We all joyn with my Lord, and deſire it may be read in *Latin.*

L. C. J. Holt. Read it. (Which was done.)

Cl. of Arr. *Juratores pro Domino Rege & Domina Regina: ſuper Sacramentum ſuum preſentant quod—— & contra formam Statuti in eo caſu editi & proviſi.*

L. Preſton. My Lord, I am ſorry I have taken up ſo much of your time, I thought the difference of Language might have made ſome miſtake, which I thought would be of advantage to me in my Tryal: And for the ſame reaſon I humbly requeſt you will pleaſe to order me a Copy of the Indictment.

L. C. J. Holt. My Lord, that we cannot do; it hath been frequently demanded upon theſe occaſions, but always denied. I have always known it denied.

L. Preſton. Your Lordſhip will give me leave to ſay what your Lordſhip muſt needs know much better than I, there is a Statute in the 46 of *Ed.* 3. that doth order a Copy of any Record to any Priſoner, or other Perſon if he demand it: And it has been granted, as I am informed in other Caſes, particularly in the Caſe of Colonel *Sidney.*

L. C. J. Holt. No, my Lord, it was denied in Colonel *Sidney*'s Caſe.

L. Preſton. If I miſtake I beg your Lordſhips pardon. It is a Reaſon in a late Law made for the Reverſal of Mr. *Corniſh*'s Attainder. The Parliament do there ſay that it was not a legal Tryal, becauſe he had not a Copy of the Indictment, and time given him to prepare for his Defence.

L. C. J. Holt. Truly, my Lord, I do not know how that matter ſtands: That Reverſal of Mr. *Corniſh*'s Attainder is but a private Act of Parliament. I never ſaw it, nor heard it read, nor can we take notice of it. But your Lordſhip is to be tryed by the ſame methods of Law, that all Perſons that have gone before you have always been, it has always been the courſe, that the Priſoner ſhould not have a Copy of his Indictment, Colonel *Sidney* had it not, and I remember in the Caſe of Sir *Hen. Vane* in the year 1662, he demanded a Copy of the Indictment, and it was denyed him, and it has been conſtantly denyed ever ſince in ſuch Caſes.

L. Preſton. I humbly deſire to know whether it was not granted in the Caſe of my Lord *Ruſſel.*

L. C. J. Holt. No indeed my Lord, my Lord *Ruſſel* had it not, I can take it upon me to ſay that. for I know all the Proceedings in that Cauſe.

L. C. J. Pollexfen. No my Lord, never any Man had it in all my Experience.

L. C. J. Holt. Some of us that are here were of Council for my Lord *Ruſſel* at that time, and we did not adviſe him to demand a Copy of the Indictment, for we knew he could not have it by Law.

L. Preſton. I am very tender of taking up your Lordſhips time unneceſſarily, but it ſtands me upon to do all I can to defend my ſelf, may not I have my Council heard to that point? becauſe if it be a point of Law, though your Lordſhips are of Council for the Priſoner, yet I beg that I may have my Council heard to argue it.

L. C. J. Holt. To what point would you have your Council heard?

L. Preſton. To that point, whether I may not have a Copy of my Indictment according to the 46. of *Ed.* 3. that is the point I would have my Council heard to.

L. C. J. Holt. There is no ſuch Statute as your Lordſhip mentions, that gives the Priſoner a Copy of his Indictment.

Mr. *Jones.* If your Lordſhip pleaſe to hear me for my Lord *Preſton.*——

L. C. J. Holt. Nay, Mr. *Jones*, you are miſtaken in this matter: If my Lord himſelf will ſhew that there is any ſuch Statute, we will conſider of it, and if it be a matter that requires debate, we may aſſign my Lord Council to argue it, but till then Council are not to be heard. My Lord *Preſton*, if your Lordſhip can ſhew us that Statute, pray do?

L. Preſton. My Lord, I deſire none if it be not ſo.

L. C. J. Holt. I have heard a Diſcourſe concerning ſuch a Statute, but I could never find it.

L. Preſton. I ſuppoſe my Sollicitor is here with it, there is ſuch a Statute my Lord.

L. C. J. Pollexfen. The Court over ruled it in the Caſe of Sir *H. Vane.*

L. C. J. Holt. And ſo it was I remember in another Caſe, and in none of the Tryals that have been ſince King *Charles* the Second came in, was ever a Copy given that I know or heard of.

Mr. *Sol. Gen.* My Lord, this Statute that my Lord *Preſton* mentions, the 46 of *Ed.* 3. is printed at large in the Preface to my Lord *Coke*'s 3*d* Report; and has been inſiſted upon in ſeveral Caſes in the *King's Bench*, where the Priſoner has deſired a Copy of his Indictment, but a Copy has been always denied, and this Statute has been taken to extend only to Records, which may be Evidence for the Subject.

L. C. J. Pollixfen. 'Twas always ruled that it did not extend to this matter.

L. C. J. Holt. My Lord, 'tis a miſconſtruction of that Statute that your Lordſhip thinks that it gives the Priſoner a Copy of his Indictment: For that Statute ſays that all Perſons ſhall be free to make uſe of the Publick Records, and take Copies of them, becauſe oftentimes the Records are Evidences of Mens Eſtates, and their Titles.

L. Preſton. My Lord, an Indictment I ſuppoſe is a Record.

L. C. J. Holt. But not ſuch a Record as is within the intent of that Statute.

L. Preſton. My Lord, I am tender of taking up your Lordſhips time, but ſince all that is dear to me is at Stake, I deſire to this point I may be heard by Council.

L. C. J. Pollexfen. My Lord, I am ſatisfied you have had Council with you, I have heard a great many. Does any one of them tell you that this has been done? If ever any one of them will come and ſhew us when it has been done, you ſay ſomething, but I dare ſay none of them will or can. Mr. *Jones* there, is as like as any body, but I believe he will not ſay it ever was done.

L. Preſton. My Lord, I cannot ſay my Council has told me ſo, but I have read ſuch a Statute my ſelf, for it ſtands me upon it, and I believe there is ſuch a Statute, and it will be produced before your Lordſhips. If your Lordſhips will inſiſt upon not allowing me a Copy, I deſire I may be heard to it by my Council, for I take it to be a point of Law, with humble Submiſſion to your Lordſhips.

L. C. J. Holt. My Lord, we muſt not hear Council to debate plain points that have no manner of Queſtion in them; It has been always diſallowed, and 'tis a ſettled point at Law, and as plain as any whatſoever, that no Copy of an Indictment ought to be allowed to a Priſoner in Felony or Treaſon.

L. Preſton. My Lord there is a Statute that ſays it ſhall be allowed to all Perſons to have Copies of Records, as well for, as againſt the King, and certainly the Indictment is a Record, and a Record of great conſequence to me at this time; and though my Council has not told me when it was done, yet thoſe that I have adviſed with, do ſay that the Statute is expreſs.

L. C. Baron. If any doubtful words be in ſuch a Statute, yet the conſtant practice muſt expound it, and ſince it has been ſo often denied, nay always, the Law is now ſettled that it is not within the meaning of that Statute.

L. C. J. Holt. We muſt go in the way of our Predeceſſors we received the Law from them, and muſt not contradict the received practice of the Judges in all Ages, nor alter the determinations

tions that have been made in all Caſes of the like nature.

L Preſton. I hope your Lordſhips intend, and I don't queſtion it, that my Tryal ſhould be a legal Tryal; If there be ſuch a Statute that gives me a Copy of the Indictment, and the Court deny it me, I am not legally tryed.

L. C. J. Pollixfen. If you pleaſe to name the Statute my Lord, It ſhall be read to you, but you are miſtaken if you think there is any thing in that Statute that will do your Lordſhip ſervice in this point.

L. C. J. Holt. See the 46 of *Ed.* 3. Read it.

L. Preſton. Here is a Copy of the Record in Court.

L. C. J. Pollixfen. It is not Printed, but it is mentioned in the Preface to my Lord *Cokes* third Report, and 'tis mentioned no where but there that I know of; but whether there were any ſuch Statute or no *Non conſtat*, for it is not printed. But if it be a Statute it does not meddle with things of this nature, ſuch as Indictments; for you muſt conſider, my Lord, yours is not a Caſe different from all other Caſes of like nature as to this; But it is the Caſe of all men that are Tryed as you are to be. And if all people were to have Copies of their Indictments to make exceptions out of them before they plead, inſtead of days of Gaol delivery, the whole year would not be ſufficient, but would be ſpent before they could be brought to their Tryal.

L. Preſton. My Lord, I am to defend my ſelf as I can by Law, and not to conſider what other peoples Caſes are. It is my particular Caſe now, what the Caſe may be as to any other hereafter, or what the general conſequence may be is not to be conſidered, but if there be any thing that is legal that can give me an advantage in making my defence, I know your Lordſhips are too juſt to hinder me from taking advantage of it.

L. C. Baron. My Lord it is no new thing to demand it, it has been frequently demanded, but it has been always over ruled.

L. Preſton. My Lord, it is now deſired, and a reaſon is given you that perhaps was not given before; there is ſuch a Law. My Lord Chief Juſtice ſays well it is not printed, but it is a Record, and there is a Copy of that Record in Court. I deſir'd there ſhould be, I am ſure.

L. C. J. Holt. If you have a Copy of any Record of an Act of Parliament, it ſhall be read, if it be proved.

L. Preſton. Nay we offer nothing if we don't prove it, but there is ſuch a Record, and the *Sollicitor* is ready to atteſt it. Pray ſwear Mr. *Whitaker.*

Mr. *Serj. Thompſon.* Swear him.

Cl. of *Ar.* You ſhall true anſwer make to all ſuch queſtions as ſhall be demanded of you by the Court. So help you God. Is this a true Copy?

Mr. *Whitaker.* It is a true Copy.

L. C. J. Holt. Where did you examine it?

Mr. *Whitaker.* My Lord it is a true Copy of the Record, I examined it at Mr. *Pettyts* Office in the Tower.

L. C. J. Pollixfen. Upon what Number Roll is it?

Mr. *Whitaker.* There is the Number Roll and all upon the Book.

Clerk reads. *Item pria les Commons que come record & queconque choſe en la Court le Roy de reaſon devoient demurrer illeoques pur perpetuel evidence & eide de touts parties a ycelly & de touts ceux a queux en nul manner ills atteignent quant, meſtier lour fuit. Et ja de nouvel refuſent en la Court noſtre dit Seignior de ſerche ou evidence encounter le Roy ou diſadvantage de luy. Que pleaſe os deiner per Eſtatute que Serch. & Exemplification ſoit faitz as touz Gentz de queconque Record que les touche en aſcun manner auxy bien de ce que chiet encountre le Roy come autres Gentz. Le Roy le voet.*

L. C. J. Pollexfen. It is only Copies of Records that they ſhall have for Evidence.

L. C. J. Holt. My Lord *Preſton*, your Lordſhip hears by this Record, you may as well pray that an exemplification be made of this Indictment as a Copy, for ſo the words of this Act run, it is only meant of thoſe Records that were to be given in Evidence. But this Indictment that you would have a Copy of, is not now to be given in Evidence nor to be exemplyfied, and ſo it does not reach your Caſe.

L. Preſton. My Lord, this Indictment is a Record, and a Record againſt me, and I think it is given in Evidence againſt me.

Mr. *J. Eyres.* No my Lord, it is no Evidence but an Accuſation, it is no proof at all.

L. Preſton. It is always ſworn unto.

Mr. *J. Eyres.* The Witneſſes are Sworn that Teſtifie the matter of it to the Grand Jury, but the Indictment it ſelf is no Evidence.

L. C. J. Holt. Suppoſe a Statute be doubtful, as truly I do not take this to be, we are to expound the Statute as it has been expounded in all Ages: It was never thought by any Judges in any Reign, that this Statute did entitle a Priſoner to have a Copy of his Indictment, but always held the contrary.

L. Preſton. Will your Lordſhip be pleaſed then to allow me Council to be heard to it?

L. C. J. Holt. No, my Lord, not Council in a plain Caſe: If the Court apprehend there is any Matter that may be debateable, or whereupon a Doubt may be made, we may aſſign Council, and ſhall; but never in a plain Caſe, where there is no manner of Queſtion.

L. Preſton. My Lord, here is a Doubt in this Caſe.

L. C. Baron But, my Lord, it's not the Doubt of the Priſoner, but the Doubt of the Court that will occaſion the aſſigning Council.

L. Preſton. But the Priſoner may offer his Doubt to the Court, and your Lordſhips are ſo juſt, that you will take care that the Doubt may be legally reſolved.

L C. J. Holt. My Lord, it is our Duty to ſee Juſtice and Right done, and God willing, it ſhall be.

L Preſton. And I am bound in Duty to my ſelf in ſuch a Caſe to inſiſt upon all Advantages I can have by Law.

L. C. J. Holt. My Lord, no Body blames you, though your Lordſhip do urge things that are unneceſſary, or improper; and we ſhall take care that it ſhall not tend to your Lordſhips prejudice. We conſider the Condition you are in; you ſtand at the Bar for your Life; you ſhall have all the fair and juſt Dealings that can be; and the Court, as in Duty bound, will ſee that you have no Wrong done you.

L. C. J. Pollexfen. My Lord *Preſton*, for this thing that you now mention, in all Ages, in all our Books, it is the ſame thing, and has been in all Mens Caſes that have been for their Lives, denied; and this Statute that you bring is quite of another intent: For it is ſaid, the Records ſhall remain in Court for perpetual Evidence, and the Aiding of all Perſons to whom they ſhall belong. My Lord, this is none of your Caſe; for God knows, you expect no Aid from this Indictment: But this is meant of all Copies that concern the Eſtates of Men, that they may have recourſe to their Records to make out their Evidences to their Eſtates, or to have them Exemplified under the Seal of the Court for Evidence: But to have a Copy of an Indictment, thereby to be enabled to conſult with Council, how to make Exceptions to that Indictment, is a thing that has been denied in all Ages by all the Judges that ever were. If any one can ſay to the contrary, it were ſomething; but ſhall we now admit Council to debate a thing that has been in all Ages denied, and never admitted ſo much as once? That cannot be expected from us.

L. Preſton. The Act ſays, That it ſhall be all Records that ſhall be in Aid to any Perſon that ſhall deſire it. Here is no diſtinction made of what kind the Records are to be: If it be for the Aid of any Perſon, it ought to be granted, and I may be aided by this Record, if I have a Copy of it; and I think it is hard, when I am ſo much concerned in this Record, that I cannot be helpt to it by this Law.

L. C. J. Pollexfen. Conſtant Experience has gone according to what we ſay.

L. Preſton. If that be Law, and it has not been demanded, then they are not entituled to have the benefit of it: But now I demand it, ſure it is good Law.

L. C. J. Holt. It is no queſtion a good Law, but not applicable to your Lordſhip's Caſe: I ſuppoſe we are all of the ſame Opinion; if any think otherwiſe, I deſire they would ſpeak.

L. Preſton. My Lord, I ſubmit to the Court, but then I deſire one Thing, you know my Life, my Fortune, my Reputation, my Poſterity, and all are at Stake, and all that is Dear to me muſt fall with me if I miſcarry. Therefore I take leave to repreſent, That I have had very ſhort Notice of my Tryal, I aſſure you I have not had above 6 or 7 days Notice, I hope you will not refuſe me a little longer time before I come to my Tryal, and I have had no Copy of the Jury yet.

Mr. *Sol. Gen.* If my Lord pleaſe to Plead to the Indictment, that will be time enough to move afterwards, and till Iſſue is joyn'd, it cannot properly be moved for.

L. C. J. Holt. It is not proper to deſire time yet, till you have put your ſelf upon your Tryal by Pleading to the Indictment.

L. Preſton. It was granted in Colonel *Sidney*'s Caſe, he had 8 or 10 days granted him after he had Pleaded; and in the Act for the Reverſal of Mr. *Corniſh*'s Attainder, it is given as one Cauſe for the Reverſal, that he had not time to prepare for his Defence.

L. C. J. Holt. My Lord, 7 days is very fair Notice, your Lordſhip knew when the Seſſions would be, and your Lordſhip might reaſonably expect, that you ſhould be Tryed here, I think truly you have had very fair Notice.

Mr. *Aſhton.* My Lord, we have had 7 days Notice of our Tryal 'tis true, this day Seven night at Night we had Notice we were to be Tryed as this day, but 3 days of the 7 we had not the Liberty of ſeeing any Friend or Council, or any Body, not till *Tueſday* Night, and that we got with great Application, and great Charge to get an Order for Council to come to us, ſo that though we have had 7 days Notice, yet we have had but 3 days in all to conſult with any Body, and we never have had a Copy of our Jury till this Minute.

L. C. J. Pollexfen. We ſee the Nature of the Thing, and I am ſorry that I muſt ſay it is fit that we ſhould take notice of it, perhaps the thing that you are accuſed of is not true; but if it be true, you ſee what it is, that there are Letters and Papers preparing for a Deſign to ſet all the Kingdom in Confuſion: Men that will venture upon ſuch ſort of Things are not to Condemn the Law if it be a little hard upon them, for 'tis the common Preſervation that is principally aimed at in Proſecutions of this Nature; and if this Accuſation be true, 'tis but Juſt and Reaſonable, that all ſpeed ſhould be uſed to enquire into and prevent it, and as it falls out in this Caſe, it is not in our Power to do it. This Seſſions is ſet before this Buſineſs is known, and this is an Act done in this County, and therefore the Seſſions is the proper place for the Tryal, and ſo you have the ſame ſort of Proceedings that all other Criminals have, which are very many, though I hope not many of ſo high a Nature, 7 days Notice you have had you acknowledge; if my Lords pleaſe we will Indulge you as far as we can, and give you time for your Tryal till to morrow, but you muſt Plead preſently,

L. C. J. Holt. My Lord, we debate the time of your Tryal too early, for you muſt put your ſelf upon your Tryal firſt, by Pleading.

L. Preſton. My Lord, I hope I ſhall always carry my ſelf as becomes me towards the Court, but I do not really think, you have any Tryals that are of ſo great Concernment, and this ſure is a fit time for me to offer it, for it may be, I have a great many Witneſſes in the Country, and at a diſtance from this place and one another.

L. C. J. Holt. My Lord, we cannot diſpute with you concerning your Tryal, till you have Pleaded, I know not what you will ſay to it, for ought I know there may be no occaſion for a Tryal, I cannot tell what you will Plead, your Lordſhip muſt Anſwer to the Indictment before we can enter into the Debate of this matter.

L. Preſton. Will your Lordſhip give me leave to move it afterwards?

L. C. J. Holt. You may offer any thing then concerning your Tryal, if you can ſhew any Reaſon to defer it, it will be proper to do it then.

L. Preſton. Truly, my Lord, I think one Reaſon why my Tryal ought to be put off, is, Becauſe I have Privilege of excepting againſt ſo many of my Jury, but if I have not time to look into the Pannel I ſhall loſe that Privilege.

L. C. J. Holt. We are not to come to that yet, you are to Plead now.

L. Preſton. Then your Lordſhips are pleaſed to over-rule my Claim of Peerage.

L. C. J Holt. My Lord, we are of Opinion you ought to Plead to this Indictment.

C. of Ar. What ſays your Lordſhip, Are you Guilty of this High Treaſon, or not Guilty.

Lord

L Preſton. Not Guilty.

Cl of *A.* Culprit. How wilt thou be Try'd?

L Preſton. By God and my Country.

Cl. of *Ar.* God ſend you a good Deliverance.

John Aſhton, What ſayſt thou? Art thou Guilty of the ſame High Treaſon, or not Guilty?

Mr. *Aſhton.* My Lord, I have only this to obſerve, beſides what my Lord *Preſton* has offered, as to the Buſineſs of the Act of Parliament, your Lordſhips have been pleaſed to over-Rule that Plea; But, my Lord, I am told, That if an Indictment be faulty, but even in a Letter, we cannot be found Guilty upon that Indictment. Now, if we never have a Copy of that Indictment, how ſhall we know whether there be any ſuch Fault in it? Your Lordſhips, who are our Council, I ſuppoſe have never ſeen the Indictment, and ſuppoſe there be Twenty Faults, we have not the advantage of them, by not having a Copy, and how ſhall we come to have any Advantage, if neither your Lordſhips, who are our Council, nor we our Selves can ſee them. It may turn upon that.

L. C. J. Holt. But we will ſee it when you come upon your Tryal.

L. C. J. Pollexfen. That is a Miſ-Information, for it may be ſuch a Letter as is not Material, and it may be ſuch as is Material; as, ſuppoſe, your Name being *Aſhton,* the *A* ſhould be left out, it would then be a Queſtion, What there would be to Charge you.

Mr. *Aſhton.* We know that it has been ſo in ſeveral Inſtances.

L. C. J. Pollexfen. It may be ſuch an Omiſſion that may make it no Crime, but we muſt not preſently conclude that it is ſo, but you have heard it Read, and ſo have we; if there had been any ſuch Letter miſtaken, it would have been taken Notice of.

Mr. *Aſhton.* As to the Reading, there may in the Reading of the Indictment be many Words not nicely obſerved; I ſuppoſe the Indictment be Right, I ſay it is poſſible, it may, or it may not; but if your Lordſhips never ſee it, who are our Council by Law, nor you will allow us Council to look into it; if there be Forty Faults in it, we can have no advantage of it.

L. C. J. Holt. We muſt not allow you Council to pick holes in the Indictment, that never was done. If you aſſign any Reaſon, we may aſſign you Council to debate any matter of Law that may ariſe, but never was Council allowed to find out Faults in an Indictment, when you come to your Tryal we ſhall try you upon your Indictment, and if there be any thing conſiderable, you are to ſuppoſe we ſhall obſerve it for your advantage.

Mr. *Aſhton.* My Lord, We never had a Copy of the Pannel of our Jury, I pray we may have it.

L. C. J. Holt. That you cannot have till you have Pleaded.

L. C. Baron. Mr. *Aſhton,* We have over-ruled my Lord *Preſton* about a Copy of the Indictment, Do you think we ſhall Grant it you when we have denied it him?

Mr. *Aſhton.* My Lord, I deſire we may have a Copy of the Pannel.

L. C. J. Holt. You muſt Plead firſt.

C. of *A.* Are you Guilty of the High Treaſon, or not Guilty?

Mr. *Aſhton.* Not Guilty.

C. of *A.* How will you be Tryed.

Mr. *Aſhton.* By God and my Country.

C. of *A.* God ſend you a good Deliverance.

Edmund Elliot, How ſay you? Are you Guilty of the ſame High Treaſon, or not Guilty?

Mr *Elliot.* Not Guilty.

Cl. of *Ar.* How will you be tryed?

Mr. *Elliot.* By God and the Country.

C. of *A.* God ſend you a good Deliverance.

L. Preſton. My Lord, I hope now it may be time to pray that my Tryal may be deferred.

L. C. J. Holt. Why would you have it deferred?

L. Preſton. Becauſe of the diſtance of my Witneſſes, and other Things that would be neceſſary for me to have to prepare me for my Defence; and beſides, we have not had a Copy of the Pannel of our Jury, and the Reaſon of the Law does Order, that becauſe it gives us liberty to except againſt them, and that we cannot know how to do, unleſs we inform our ſelves of the Men; and therefore I beg, that I may have a Copy of the Pannel.

L. C. J. Holt. As for having a Copy of the Pannel, the Court grants it. Let them have a Copy of the Pannel.

C. of *A.* Here is one ready for you.

Mr. *Sol Gen.* There was Direction given that there ſhould be one ready.

Mr. *Aſhton.* We have demanded it every day ſince we had notice of our Tryal.

L. C. Baron. You could not have it till there was an Iſſue joyned, and that could not be till you had Pleaded.

L. C. J. Holt. And as to the putting off your Tryal, I know not to what time to put it off.

L. Preſton. My Lord I am willing to have this matter Tryed as ſoon as poſſible, for it cannot but be uneaſie to me to lie under theſe Accuſations; but ſome of my Witneſſes live in the Country, at a remote diſtance; if it may be next Term my Lord, or the next Seſſions; for, if I have a Copy of the Pannel to Night, and am to be Tryed to morrow Morning, How can I provide for my Defence? I cannot be prepared to except againſt the Jury, and I am ſure you will be tender, and conſider the Caſe of a Man, whoſe Life and Fortune are concerned in this Buſineſs.

L. C. J. Holt. To put it off till the next Term is to remove it out of this Court, that we cannot do, and to put it off till after the Term will be too long a time.

L. C. J. Pollexfen. We cannot ſit here after *Monday,* becauſe the Term begins on *Tueſday.*

L. Preſton. My Lord, this Term is always a ſhort Term, and if I be Tryed to morrow, it is Trying me without giving me time for my Defence.

Mr. *Sol. Gen.* My Lord, there has been all the care taken that the Nature of the Thing was capable of, to prevent any complaint of this kind. Order was given, that my Lord and theſe Gentlemen ſhould have notice as early as was poſſible. As ſoon as ever Mr. Attorney General had had an opportunity of looking into the Evidence, notice was given them, that they ſhould be Tryed, and that this was the day appointed for their Tryal. But there ſhall be no contending in a Matter of this Nature, for a day. If it be deſired, and the Court pleaſe to put it off till to morrow, we are contented, but there can be no reaſon to put it off for a longer time. As there is always a tenderneſs to be uſed, and I know will be,

and as far as I am concerned, always ſhall be towards Perſons in theſe Circumſtances, ſo there is a regard to be had towards the Government and the Publick. I am ſure if the Accuſation that is againſt theſe Gentlemen is true, the Government is highly concerned that this Matter ſhould come to a ſpeedy Examination, and that Perſons that enter into ſuch Deſigns be brought to Judgment: The Charge in the Indictment is of ſuch a Nature as draws very great Conſequences along with it, it concerns no leſs than the Life of the King and Queen, the Deſtruction of the Fleet of the Kingdom, and the Invaſion of the Realm by the Forces of a Declared Enemy. Theſe are the things that the Priſoners are charged with, and certainly there ought to be no delay in the ſearching into ſuch Matters as theſe. They have had a Weeks notice of Tryal already, and for many days of that week at leaſt they have had as many Council to aſſiſt them as they deſired, and all the Sollicitors that they had a mind to, have had free acceſs to them, ſo that they have wanted no opportunity to prepare for their Tryal that Men in their Circumſtances could have. As to what has been ſaid with relation to the Jury, the Law indulges them in the Number of their peremptory Challenges without being put to ſhew Cauſe, and the Court hath granted them at the very inſtant of their Pleading a Copy of the Pannel, and there is a reaſonable time between this and to morrow for their making ſuch Enquiry into the Jury as is juſtifiable and fit to be made. But if by time to look into the Jury, it be meant, that there may be a time for tampering, that I am ſure your tenderneſs of the Government will not permit, you will take care as much that no ſuch thing be done, as you will, that they ſhould not be ſurprized. If your Lordſhips are pleaſed, that the Tryal be put off till to morrow, we will be ready to morrow to attend it.

L. Preſton. My Lord, 'tis a very hard preſumption that Mr. Sollicitor makes of our asking a Copy of the Pannel, that it is with a deſign to tamper with the Jury.

Mr. *Sol. Gen.* I did not ſay ſo, but I ſaid till to morrow was time enough to make a Juſtifiable Enquiry.

L. Preſton. But if I be to be tryed to morrow, I am willing to be tryed to day, for I am as ready now as I ſhall be then.

L. C. J. Holt. It may be ſo, and as ready as you will be after the Term: But I know not what your Lordſhip means by expreſſing ſuch reſentment, that becauſe you can't have what time allowed you would, therefore you will have none, but be tryed now.

L. C. J. Pollexfen. You may have time enough to prepare your ſelf as to the Jury certainly between this and to morrow.

Mr. *Serj. Thompſon.* My Lord, we that are for the King have given theſe Gentlemen notice long enough to be prepared, if we ſhould try them now, for that's the time we gave notice for, but becauſe we would indulge them as far as we could, we are willing that they ſhould have till to morrow, and intending them that kindneſs, are not ready to try them to day, and there can be no pretence for them to put off their Tryal any longer, for there can be no want of Evidence as to the Fact we charge them with, for all the Evidence that we ſhall bring againſt them was taken from themſelves, or the greateſt part of it.

L. C. J. Holt. Well, what time will you be ready then?

Mr. *Serj. Thompſon.* To morrow morning.

L. C. J. Holt. Then to morrow at Eight a Clock you are to be tryed.

L. C. J. Pollexfen. My Lord *Preſton*, do but conſider you have had ſeven days notice, and to morrow makes eight.

L. C. J. Holt. You had notice for this day this day ſevennight.

Mr. *Aſhton.* But we have had only three days time to conſult with our Council, though we deſired we might have our Council come to us that day.

Mr. *Sol. Gen.* They were told, they muſt apply themſelves to the King for that at the ſame time.

Mr. *Aſhton.* We did ſo that night to my Lord *Sidney*, then Sunday interven'd, which was no day for Buſineſs, and we could not have our Order. On Monday we could not have it till night; ſo that it was Tueſday before we could get any Body to us. My Lord it is a weighty concern, and all ſuch haſty Proceedings were thought very hard in the late Times, and particularly the denying Mr. *Corniſh* time, and 'tis one of the Reaſons given in this Kings Declaration for his coming here into *England*, the hardſhips that the Law laid upon Men in their Tryals, which he came to prevent.

L. C. J. Pollexfen. The hardſhip that was upon Mr. *Corniſh* was, that he was taken upon the *Tueſday* off from the *Exchange*, and tryed before that day ſevenight, and that was hard indeed; but beſides, he was taken about his Buſineſs off from the *Exchange*, I know not whether you were about your Buſineſs, your Lawful Buſineſs, when you were taken, God of Heaven knows that. And pray conſider here is a matter of very great conſequence on the one ſide and on the other: For if Men be Plotting againſt the Government, to give them time to carry on their Plots will be miſchievous on that ſide.

Mr. *Aſhton.* My Lord, till that be legally proved before your Lordſhips, that is but a ſuppoſition.

L. C. J. Pollexfen. That will lie upon them to prove.

L. C. J. Holt. Mr. *Aſhton*, we are to ſuppoſe you not Guilty, till you are proved Guilty.

Mr. *Aſhton.* Then my Lord, the Law ſays we may except againſt ſo many Perſons, what is the end of the giving us a Copy of the Pannel? 'tis not to be preſumed we can do it by their Faces, for what can I ſay to the Face of one I never ſaw? We muſt enquire concerning the Men, and that is a work of time, for ſome of theſe Gentlemen I preſume live eight or ten miles out of Town, Is it poſſible for me before to morrow morning eight a Clock to ſend to 35 Men to enquire after them?

L. C. J. Holt. No, nor is it intended you ſhould.

L. C. J. Pollexfen. Nay, if you intend to ſend to the Jury-Men, we have no reaſon to give you time.

Mr. *Aſhton.* I mean to enquire after the Men, their Lives, what Religion they are of, what ſort of Men they are.

L. C. J. Holt. I ſuppoſe they are all Proteſtants of the Church of *England*, but ſuppoſe they are all Strangers to you, and yet good and lawful

lawful Men of the County, and there be no difference between you and them, then they are fit to try you.

Mr. *Aſhton.* 'Tis true my Lord, but if I have liberty to except againſt 35, I ought to know ſomething of them.

L. C. J. Pollexfen. Yes, and inform your ſelf as well as you can of them, but not to ſend to them, that is not to be permitted.

L. Preſton. There is another Point to enquire of them, and that is, Whether they be Freeholders or not?

L. C. J. Pollexfen. We have neither your Lordſhips Affidavit, nor the Oath of any other Perſon, only an Allegation.

L. C. J. Holt. My Lord, you muſt expect your Tryal to Morrow Morning, we cannot put it off, we are limited in time, the Seſſions can hold no longer than *Monday*, becauſe of the Term.

Mr. *Aſhton.* Then will your Lordſhip pleaſe to put it off till Monday?

L. C. J. Holt. No, we ſhall not have time to do it, it may be a long Tryal.

L. Preſton I proteſt to your Lordſhips I cannot be ready to Morrow to make that Defence I deſire, and deſign to make, and which I may make if your Lordſhips give me a longer day.

Clerk of Arraignments. Here is a Copy of the Pannel for your Lordſhip.

It was delivered to the Lord Preſton, *who gave it to his Sollicitor.*

Mr. *Aſhton.* My Lord, we ſhall not have time to enquire into the Jury.

L. C. J. Holt. Look you, we are not bound to do this, but you have it as ſoon as you have Pleaded.

Mr. *Aſhton.* My Lord, it will take up 5 or 6 Hours in writing of it out, and we muſt each have a Copy.

Mr. *Sol. Gen.* They are all joyned in one Indictment, and have joynt-Council, and joynt-Sollicitors, as we are informed.

Mr. *Aſhton.* Then I hope you will allow us liberty till *Monday* for our Tryal.

L. C. J. Pollexfen. The Court cannot allow longer time; the Court here can Sit no longer than *Monday*, and here muſt needs be a great deal of Buſineſs to do of the ordinary Buſineſs of the Seſſions, and when that day comes, perhaps it will not ſerve to go through with the Tryal, and then it muſt be Adjourned till after the Term, and in the mean while ſome are in hopes the King of *France* may come and determine the Matter.

Mr. *Aſhton.* Pray my Lord, Let no Suggeſtion againſt us, prepoſſeſs the Opinion of the Court before we be Tryed.

L. C. J. Pollexfen. I don't Suggeſt any thing, but 'tis in the Indictment alleadged againſt you, and that you are to be Tryed upon, and if ſuch things be there Suggeſted, as we would give you all reaſonable time for your Defence, ſo we muſt take care that the Government ſuſtain no hurt by delays.

L. C. J. Holt. It is obſerved by the King's Council, that they are Things of very great Conſequence, and therefore they preſs for the Tryal.

L. C. J. Pollexfen. I cannot believe but that you will be as ready to Morrow, as you can be on *Monday*.

Mr. *Aſhton.* The Government cannot be prejudiced by putting of it off till *Monday*, ſure.

L. C. J. Pollexfen. The Evidence that is to Convict you, lies all on their Side that are for the King, and I cannot imagine, where your Witneſſes ſhould be, unleſs they are in *France*; but you had reaſon to expect your Tryal, being apprehended in the manner as you were, and to provide for it.

L. C. J. Holt. The want of Witneſſes is only a Surmiſe, and a Pretence, for there is no Oath of any Witneſſes that they want, or who they are; indeed if we had Oath made that they wanted material Witneſſes, and to material Points for their Defence, that might be occaſion for our further Conſideration; but ſhall we put off a Tryal upon a bare ſuggeſtion of the want of Witneſſes? ſure that was never done.

L. C. J. Pollexfen. Name any one particular Man that is your Witneſs, and the particular thing that he can prove, for if any of your Witneſſes do know any thing of this kind, it muſt be Particulars and not Generals; If you will not name them, it is plain, it is only a pretence you inſiſt upon for delay.

Mr. *Aſhton.* My Lord, I inſiſt upon the point of the Jury, that we have not time to look after them.

L. C. J. Holt. Then that of the Witneſſes is waved.

L. Preſton. 'Twas I that deſired Time for my Witneſſes.

L. C. J. Pollexfen. But you neither name them, nor bring us any Oath about them, or of any thing they can prove for you.

L. C. J. Holt. Pray don't ſpend the time of the Court, nor your own time unneceſſarily, you muſt prepare for your Tryal to Morrow.

Mr. *Aſhton.* My Lord, there is not a perſon in Court, I believe, but will think it hard that we are ſo ſtraitned in time.

L. C. J. Holt. The time you have had notice to prepare for your Tryal, is ſufficient.

Mr. *Aſhton.* Mr. *Corniſh*'s Caſe has been complained of as a very hard Caſe in this very reſpect, and we would hope, the King, that now is, came to reform ſuch abuſes.

L. C. J. Holt. You have been already told, wherein the hardſhip of that Caſe lay, I am ſure yours is not like it; but take notice, we will be Sitting here punctually at Eight.

L. Preſton. Will your Lordſhip pleaſe to let us have our Council come to us, and our Friends.

L. C. J. Holt. Yes ſure, you ſhall have all that is neceſſary for your Defence, that we can allow you, but unneceſſary Delays muſt be avoided.

Then the Priſoners were taken away by the Keeper of *Newgate* to the Goal.

Sabbati xvii. *January* 1690.

THis Day between the Hours of Eight and Nine in the Morning, the Court being ſat, and thoſe Perſons who were return'd upon the Jury were called over twice, and their Appearances Recorded; then the Priſoners were brought to the Bar.

Clerk of Arraignments. You the Priſoners at the Bar, theſe Men that you ſhall hear called and perſonally appear, are to paſs between our Sovereign Lord and Lady our King and Queen, and you upon tryal of your ſeveral Lives and Deaths; if therefore you, or any of you will

challenge them, or any of them, your time is to challenge them as they come to the Book to be Sworn, and before they be Sworn.

L. Preſton. My Lord, I beg your Lordſhip will inform me, whether if I have any thing to offer to the Court, it is proper before the Jury be impannelled, or after.

L. C. J. Holt. My Lord, I don't know what your Lordſhip has to offer, I think you have nothing to offer why the Jury ſhould not be ſworn, for now your Lordſhip has put your ſelf upon your Tryal, and are going to proceed in that Tryal, and the Jury are going to be ſworn; if you have any thing to offer, as to them, you may challenge them.

L. Preſton. Truly my Lord, I have ſomething to offer, but it is only what I did humbly offer Yeſterday, and that is, That my warning was ſo ſhort, that I am not prepared for my Tryal. We had not above three or four days wherein we might conſult about it, all the former time we have been kept cloſe Priſoners; we are now brought here to be tryed, without having time to look into the Pannel of our Jury. The Pannel we had not till Yeſterday, and I humbly beg, that I may have ſome time to prepare for my Defence.

L. C. J. Holt. My Lord, this is that which you inſiſted upon Yeſterday. Your Lordſhip ſaid you wanted Witneſſes, and your Lordſhip did not then mention what Witneſſes you wanted, nor was any Oath made of any one that you wanted; and therefore the Court over-rul'd you, and wiſhed you to prepare for your Tryal, and would not put it off: For if it ſhould not be to Day, but ſhould be put off till another time, it muſt be the putting of it off till another Seſſions; for we are ſtreightned with it in point of time, for the Seſſion can laſt no longer than *Monday*, and you have had convenient Notice.

L. Preſton. Truly, my Lord, I think it is hard when my Life and Fortune, and all are concerned, that I ſhould be hurried on to a Tryal, only becauſe the Court is ſtreightned in point of time; and yet that is the only Reaſon that I can perceive, why ſuch haſte is made. I deſire a little more time to prepare my ſelf; and I think it very hard I ſhould be denied; I muſt ſubmit it to your Lordſhips: if you will not allow me time, I cannot make my Defence as I would.

L. C. J. Holt. My Lord, as to the Shortneſs of the time, that is no Objection; you have had convenient Notice, as much Notice as the Law requires, and as much time as without particular cauſe ſhewn, hath here at any time been given in ſuch a Caſe. If indeed there had been any particular Reaſon offered for putting off the Tryal, and you had made it appear by Oath, the Court poſſibly might have put off the Tryal; but becauſe your Lordſhip only ſuggeſted you wanted a Witneſs, naming neither Perſon, nor Place, or Matter ſuch Witneſs ſhould prove, they are of Opinion no cauſe appears for ſuch delay of your Tryal.

L. Preſton. My Lord, I aſſure you I am not prepared for my Tryal.

L. C. J. Holt. My Lord, the Court overruled this Matter Yeſterday, it cannot be put off.

Mr. *Sol. Gen.* My Lord, I would humbly offer your Lordſhip one thing before the Jury be called and ſworn. By the Law, theſe Gentlemen at the Bar have the Privilege to challenge peremptorily to the Number of 35; which is ſo great a Number, that if each of them ſeverally take advantage of it, (as they may do by Law, and God forbid they ſhould be denied any advantage the Law gives them) it will be next to impoſſible to have a ſufficient Number of Jurors appear ſo as that we may proceed in the Tryal.

L. Preſton. Truly, my Lord, we don't hear what Mr. Sollicitor ſays.

L. C. J. Holt. Do you not? Then I'll tell you what he ſays when he has done: Go on, Mr. Sollicitor.

Mr. *Sol. Gen.* My Lord, all that I would know of them is, Whether they intend to take the Advantage that the Law gives them, of ſingle and particular Challenges; for then they muſt be tried ſeverally: Or whether they will be content that the ſame Perſons that are challenged by any one, ſhall ſtand challenged for all three. I leave it to them to take their own choice; let them do what they pleaſe in it.

L. C. J. Holt. My Lord *Preſton*, Mr. Sollicitor tells you what the Law is, that every one of you may challenge five and thirty without Cauſe; and if the Court ſhould proceed to try you all together, and every one of you ſhould challenge five and thirty, perhaps a ſufficient Number will be wanting to try you, the Number challenged will then amount to 105 in all. If ſo be you agree in your Challenges, that what one challenges ſhall be challenged by the other two, then the Court will go on, and try you all together, otherwiſe they will be forced to ſever you; therefore he deſires to know, whether you will joyn or ſever in your Challenges.

Mr. *Sol. Gen.* Take your own choice, Gentlemen, and do what you think beſt.

L. Preſton. My Lord, the matter of challenging is ſo great an Advantage to a Man upon his Life, that for my part I muſt inſiſt upon that which the Law gives me, to challenge as many for my ſelf as I think fit, to the Number that the Law allows me.

L. C. J. Holt. My Lord *Preſton* ſays, he will, as 'tis fit he ſhould, take all Advantages he can; What ſays Mr. *Aſhton* to it?

Mr. *Aſhton.* My Lord, I expect the ſame Advantage.

L. C. J. Holt. You muſt have it; it is not propoſed to preclude you from any Advantage that the Law allows you: If you inſiſt upon that Advantage, you muſt have it, and then you muſt be tryed ſeverally.

Mr. *Sol. Gen.* Then my Lord, ſince they are pleaſed to declare they will ſever in their Challenges, we muſt deſire to ſever them in their Tryal, and to begin with the Tryal of my Lord *Preſton*.

Mr. *Aſhton.* My Lord, I deſire the Liberty to be by when my Lord is tried.

L. C. J. Holt. No, no, that is not to be permitted.

Mr. *Serj. Thompſon.* If you had joyned in your Challenges, then you had been tried all together.

L. C. J. Pollexfen. That advantage you loſe by ſevering in your Challenges; you loſe the Aſſiſtance of each other at your Tryal.

L. C. J. Holt. That is the Conſequence; but do as you pleaſe; ſet them by.

L. C. J. Pollexfen. It may be they do not ſo well weigh the Conſequence, therefore call them

them again. Gentlemen, Do you conſider the Conſequence of your not joyning in your Challenges? You muſt not be by if my Lord *Preſton* be tried by himſelf, but muſt withdraw, and thereby you will loſe the Advantage of helping one another.

Mr. *Elliot.* My Lord, I deſire to be tried alone.

Mr. *Aſhton.* And ſo do I, my Lord.

L. C. J. Holt. Then, Captain *Richardſon*, take them away.

Afterwards the Court was informed that Mr. *Elliot* deſired to be tryed with my Lord *Preſton*, and thereupon they were called again.

L. C. J. Holt. Gentlemen, Do you deſire to be tried alone, or with my Lord *Preſton*?

Mr. *Elliot.* My Lord, if you pleaſe, I deſire to be tried with my Lord.

Mr. *Sol. Gen.* Does Mr. *Aſhton* deſire it too?

Mr. *Aſhton.* No, my Lord, I deſire to be tried by my ſelf.

Mr. *Sol. Gen.* Then we will try my Lord *Preſton* by himſelf.

L. C. J. Holt. Mr. *Elliot*, the King's Council do not think fit to try you with my Lord *Preſton*, without Mr. *Aſhton*; and unleſs you will all join, you muſt all be tried ſeverally.

Mr. *Elliot.* I can only anſwer for my ſelf.

Mr. *Aſhton* I am for being tried alone.

L. C. J. Holt. Then my Lord *Preſton* muſt be tried alone.

The other two were carried back to *Newgate*, and the Lord *Preſton* was bid by the Clerk to look to his Challenges.

Cl. of Ar. Sir *Goddard Nelthorp*, Baronet. *Challenged.*
Sir *Thomas Cooke*, Knt. *Challenged.*
Sir *William Hedges*, Knt. *Challenged.*
James Boddington, Eſq; *Challenged.*
Thomas Johnſon, Eſq; *Challenged.*
Ralph Bucknal, Eſq; *Challenged.*
Craven Peyton, Eſq;
L. Preſton. I do not except againſt him.
Cl. of Ar. Then ſwear Mr. *Peyton.* *(Which was done).*
Lucy Knightley, Eſq; *Challenged.*
Scory Barker, Eſq; *Challenged.*
Thomas Cuthbert, Eſq; *Challenged.*
Alban Chaire, Eſq; *Challenged.*
John Herbert, Eſq; *Challenged.*
Hugh Squire, Eſq;
L. Preſton. I have nothing to ſay to him. *Sworn.*
Cl. of Ar. John Tully, Eſq; *Challenged.*
George Ford, Eſq;
L. Preſton. I do not challenge him. *Sworn.*
Cl. of Ar. Henry Whitehcot, Eſq; *Challenged.*
John Croſſe, Eſq; *Not appeared.*
Thomas Smith, Eſq; *Challenged.*
William Withers, Eſq; *Challenged.*
Richard Cradock, Eſq;

Mr. *Cradock.* My Lord, I know not how I came to be ſummoned upon this Jury; for I am no Freeholder.

L. C. J. Holt. Then ſet him aſide.

Cl. of Ar. John Cane, Eſq; *Challenged.*
William Jacomb, Eſq;

Mr. *Jacomb.* My Lord, I am no Freeholder.

L. C. J. Holt. How long have you not been a Freeholder?

Mr. *Jacomb.* Near this four Months.

L. C. J. Holt. Give him his Oath. *(Which was done.)*

Have you no Freehold in the County of *Middleſex* in your own Right, nor in the Right of your Wife?

Mr. *Jacomb.* No, my Lord.

L. C. J. Holt. Then you muſt go on to the next.

Cl. of Ar. Joſeph Dawſon, Eſq;

Mr. *Dawſon.* My Lord, I am an ancient Man, and not fit to ſerve upon the Jury.

L. C. J. Holt. Well, now you are here, for this time ſerve; we will excuſe you hereafter.

Mr. *Sol. Gen.* My Lord, we challenge him for the King.

L. Preſton. My Lord, I deſire to know when any one is challenged for the King, whether they muſt not ſhew cauſe.

L. C. J. Holt. By and by, if there be not enough, they ſhall ſhew cauſe.

L. C. J. Pollexfen. You ſhall have all that the Law allows you certainly, my Lord.

Cl. of Ar. Thomas Auſtin, Eſq; *Not appeared.*
Richard Paget, Eſq;

L. Preſton. Has this Gentleman any Freehold?

Mr. *Paget.* Yes, my Lord, I have in the County of *Middleſex.*

L. Preſton. I do not except againſt him.

Mr. *Serj. Tremain.* My Lord, we challenge him for the King.

L. Preſton. My Lord, I humbly deſire they may ſhew their cauſe.

L. C. J. Holt. My Lord, Cauſe is not to be ſhewn by the King's Council till all the Pannel be gone through; and then, if there be not Twelve left to try, then they are bound to ſhew Cauſe; that is the Law.

L. Preſton. My Lord, it is a thing of a very tender concern to me; I deſire to know, if it be not uſual that they ſhould aſſign the Cauſe, when they Challenge any for the King: For if it be not according to Law, it may be a prejudice to me; and I deſire I may have Council heard to that point.

L. J. C. Holt. My Lord, ſhall we aſſign Council to diſpute Matters not diſputable? There is not any more clear Caſe in all our Law, than that: If your Lordſhip pleaſe, you ſhall have a Book to read, that the King is not bound to ſhew Cauſe till the Pannel is perus'd.

L. Preſton. Then I don't inſiſt upon it.

Cl. of Ar. Walter Bridal, Eſq; *Challenged.*
Samuel Hodgkins, Eſq; *Challenged.*
Thomas Elton, Eſq;

L. Preſton. I do not challenge him.

Mr. *Serj. Tremain.* Then we challenge him for the King.

Cl. of Ar. Arthur Bayly, Eſq;

L. Preſton. I have nothing to ſay againſt him. *Sworn.*

Cl. of Ar. John Milner, Eſq; *Not appeared.*
Richard Page, Eſq;

L. Preſton. I do not except againſt him.

Mr. *Serj. Thompſon.* Then we challenge him for the King.

Cl. of Ar. Richard Marſh, Eſq;

Mr. *Marſh.* My Lord, I deſire to be excuſed; I am not fit to ſerve upon a Jury.

L. C. J. Holt. Why?

Mr. *Marſh.* I am thick of hearing.

L. C. J. Holt. Methinks you hear me very well.

Mr.

Mr. *Marſh.* Truly, my Lord, I do not hear well.

L. C. J. Holt. Well, you may ſpare him, if there be enough.

L. Preſton. My Lord, I do not challenge him; I deſire he may be ſworn.

Mr. *Serj. Tremain.* We challenge him for the King.

Cl. of *Ar.* *Thomas Harriot* Eſq; *Challenged.*
Nath. Wall Eſq;

L. Preſton. I do not except againſt him.

Mr. *Sol. Gen.* We challenge him for the King.

Cl. of *Ar.* *Matthew Browne* Gent.

L. Preſton. I do not challenge him.

Mr. *Serj. Tremain.* We challenge him for the King.

Cl. of *Ar.* *Thomas Croſſe* Gent. *Not appeared.*
Robert Breedon Gent.

L. Preſton. I have nothing to ſay againſt him. *Sworn.*

Cl. of *Ar.* *James Partherick* Gent. *Challenged.*
John Baily Gent. *Challenged.*
William Bourne Gent. *Challenged.*
Henry Gerrard Gent. *Challenged.*
Richard Cooper Gent.

L. Preſton. I ſay nothing to him.

Mr. *Serj. Thompſon.* I challenge him for the King

Cl. of *Ar.* *John Bignal.*

L. Preſton. I do not challenge him. *Sworn.*

C. of *Arr.* *James Firne* Gent.

L. Preſton. I do not challenge him. *Sworn:*

C. of *Arr.* *Robert Longland* Gent. *Challenged.*
Edmund Salter Gent. *Challenged.*
John Howlet Gent. *Challenged.*
Richard Fitz-Gerald.

L. Preſton. I do not except againſt him.

Mr. *Serj. Tremain.* We challenge him for the King.

Cl. of *Arr.* *John Owting* Gent.

L. Preſton. I do not except againſt him. *Sworn.*

Cl. of *Arr.* *Mark Lawne.*

L. Preſton. I do not challenge him. *Sworn.*

Cl. of *Arr.* *Thomas Battle.* *Not appeared.*
Francis Chapman Gent. *Challenged.*
Gilbert Urwin Gent. *Challenged.*
Richard Bealing Gent. *Challenged.*
Edward Fuller Gent.

L. Preſton. I do not Challenge him. *Sworn.*

Cl. of *Ar.* *John Collins* Gent.

L. Preſton. I don't Challenge him. *Sworn.*

Cl. of *Ar.* *Thomas Hollings.*

L. Preſton. I have nothing to ſay againſt him.

Mr. *Ser. Tremain.* We challenge him for the King.

Cl. of *Ar.* *William Silcock* Gent.

L. Preſton. I do not Challenge him.

M. Serj. Tremain. We Challenge him for the King.

Cl. of Ar. *John Preſton* Gent. *Challenged.*
Thomas Wright Gent. *Challenged.*
Benjamin Boultby Gent.

L. Preſton. I do not Challenge him. *Sworn.*

Then they were counted, and the Twelve Sworn were thoſe whoſe Names follow.

JURORS,

Craven Peyton, Eſq;
Hugh Squire, Eſq;
George Ford, Eſq;
Arthur Baily, Eſq;
Robert Breedon, Gent.
John Bignal, Gent.
James Ferne, Gent.
John Owting, Gent.
Mark Lawn, Gent.
Edward Fuller, Gent.
John Collins, Gent.
Benjamin Boultby, Gent.

Then Proclamation for Information and Evidence was made, as uſual.

Cl. of *Ar.* Sir *Richard Grahme*, Hold up your Hand —— (*which he did*) —— Gentlemen, you that are Sworn, look upon the Priſoner, and hearken to his Cauſe. He ſtands Indicted by the Name of Sir *Richard Grahme*, late of the Pariſh of St *Anne* within the Liberty of *Weſtminſter* Baronet, together with *John Aſhton*, &c. —— *prout* in the Indictment *mutatis mutandis* —— and againſt the form of the Statute in that Caſe made and provided; upon this Indictment he hath been Arraigned, and thereunto hath pleaded *Not Guilty*, and for his Tryal hath put himſelf upon God and his Country, which Country you are; your Charge is to enquire, whether he be Guilty of this Felony and High Treaſon whereof he ſtands Indicted, or Not Guilty; if you find that he is Guilty, you are to enquire what Goods or Chattels, Lands or Tenements he had at the time of the Felony and High Treaſon Committed, or at any time ſince: If you find him Not Guilty, you are to enquire whether he fled for it, if you find that he fled for it, you are to enquire of his Goods and Chattels, as if you had found him Guilty; If you find him Not Guilty, nor that he did fly for it, you are to ſay ſo, and no more, and hear your Evidence.

Mr. *Knapp.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, This is an Indictment of High Treaſon againſt my Lord *Preſton*, who is Indicted by the Name of Sir *Richard Grahme* Baronet, and ſtands now Priſoner before you at the Bar; and the Indictment ſets forth, that the Priſoner, together with one *John Aſhton* and *Edmund Elliot*, as falſe Traitors againſt our Soveraign Lord and Lady King *William* and Queen *Mary*, not weighing the Duty of their Allegiance, the 29*th* of *December*, in the Second year of their now Majeſties Reign, at the Pariſh of St *Clement Danes*, in this County of *Middleſex*, did Conſpire, Conſult and Imagine to Depoſe their Majeſties from the Throne and Government of theſe Kingdoms, and to bring the King and Queen to final Death and Deſtruction, and to Levy War within this Kingdom, and procure an Invaſion to be made here; and that to bring their Treaſons to paſs, they did prepare and compoſe, and cauſe to be prepared and compoſed divers Treaſonable Letters, Notes, Memorandums, and Inſtructions in Writing, which were to inform the *French* King and his Subjects, and other Enemies of the King and Queen, of the Number, Force and Condition of their Majeſties Ships, and how ſome of them were Mann'd, and the Names of ſeveral of the Commanders of them, and how the Caſtles and Forts of *Portſmouth*, *South-Sea* and *Goſport* within this Kingdom were fortified, and how they might be Seized and Surprized by the King's Enemies; as alſo to inform them of the time, places, ways and means how they might Invade this Kingdom, Depoſe their Majeſties, and Fight with their

their Ships againſt their Majeſties Ships, and cauſe and procure great Forces to be raiſed againſt the King and Queen, and ſend Ships to plague the City of *London*, and War and Rebellion within the Kingdom to procure; and that they did knowingly and ſecretly prepare and conceal two ſeveral Bills of Exchange for the payment of Money to the King's Enemies, and got theſe Bills of Exchange, Letters, Notes and Memorandums into their Cuſtody; and afterwards, the 30th of *December*, for the Sum of One Hundred Pounds, by them, or ſome of them paid, they did hire a Ship to carry them and the ſaid Bills of Exchange, Letters, Notes, Memorandums, and Inſtructions, into parts beyond the Seas, to, and among their Majeſties Enemies; and did alſo prepare a Boat, which was to carry them to the Ship, and accordingly they went into the Boat, and went on Board the Ship with the Bills of Exchange, and Papers aforeſaid, and being on Board they ſet Sail, and made away towards *France* with thoſe Bills of Exchange and Papers, with intention to diſperſe them, and to perfect their ſaid Treaſons. And the Indictment further ſets forth, that there was, and is a War between our King and Queen, and the French King, and the People of thoſe parts, under his Dominions, who are Enemies of the King and Queen; the Priſoner, together with thoſe other two named before, as falſe Traitors, did adhere to the Enemies of the King and Queen, and to bring about this Treaſon, they did procure ſuch Bills of Exchange, Letters, Notes, Memorandums and Inſtructions, and did hire ſuch Ship and Boat to carry them and thoſe Papers into *France*, and did go on board the ſaid Ship, and Sailed away for *France*, with intention to aid and aſſiſt the King's Enemies in Counſel and Intelligence, by thoſe Papers, and Bills of Exchange, as I before opened unto you, and this is laid to be againſt the Duty of his Allegiance, againſt the Peace of their Majeſties, their Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided. To this Indictment, Gentlemen, the Priſoner Pleaded he is Not Guilty, and for his Tryal hath put himſelf upon his Country, which you are; if we prove him Guilty, it is your Duty to find him ſo.

Mr. *Sol. Gen.* My Lords and Gentlemen of the Jury, the Indictment hath been opened to you at large, and I do not doubt but you have obſerved it: It conſiſts of two Parts, which are formed upon two ſeveral Branches of the Statute of the 25*th* of *Edward* 3. the one is for compaſſing and imagining the Depoſing and Deſtruction of the King and Queen; the other, aiding and aſſiſting the King and Queens Enemies.

Treaſon, Gentlemen, conſiſts in the imagination of the Heart, but becauſe that imagination of the Heart can be diſcovered no other way but by ſome open Act; therefore the Law doth require, that ſome Overt Act, manifeſting that Intention and Imagination, be aſſigned and proved. I doubt not but you have obſerved that there are ſeveral Overt-Acts of both theſe kinds of Treaſon, aſſigned in this Indictment.

Gentlemen, the general Deſign of the Conſpiracy (as will appear by the Evidence) was this: The King and Queen were to be Depoſed, and this was to be effected by a French Army and a French Fleet.

It will be eaſily Granted, that nothing more dreadful can enter into the Imagination of an Engliſh-man, than the deſtruction of our Fleet, and the Conqueſt of the Kingdom by the Arms of *France*.

But yet it will be part of the Evidence that we ſhall offer to you, that the Priſoners, and others of the Conſpirators ſeem to be of another Mind, for amongſt the Papers which were taken with the Priſoners, you will ſee one, which is ſtyled, *The Reſult of a Conference*, wherein they pretend to ſhew the poſſibility of Reſtoring King *James* by the Power of the French King, and yet to preſerve the Proteſtant Religion, and the Laws and Liberties of the Kingdom. They themſelves went no farther than to think it poſſible, and I believe it will be hard to perſwade any other Engliſh-man, that it is poſſible, unleſs one Inſtance could be given, that the French King ever employed his Arms for ſetting up any Body but himſelf, his own Religion, and his own Government. I never heard that he did pretend to Form any part of his Glories upon the virtue of Moderation, or Self-denial. And there can hardly be imagined a greater Inſtance of Self-denial, than for the French King, after he had deſtroyed the Dutch and Engliſh Fleets, and ſubdu'd our Forces at Land, not to make uſe of his Succeſs, ſo as to add theſe Three Kingdoms to his Conqueſts, and poſſeſs himſelf of the uncontеſted Dominion of the Sea for ever, but only to Intitle him at ſo great Hazard and Expence, to become a Mediator between King *James* and the People of *England*, and by his Mediation, to eſtabliſh the Proteſtant Religion, and the Liberties of the People; And yet as abſurd as this ſeems, you will find this to be the Reſult of one of their Conferences. I did never think it was the part of any who were of Council for the King in caſes of this Nature, to endeavour to aggravate the Crime of the Priſoners, by going about to put falſe Colours upon Evidence, or to give it more than its due weight; and therefore I ſhall be ſure to forbear any thing of that Nature. But I think it my Duty to give ſome ſhort Account of the Nature and Courſe of the Evidence to be produced to you, which conſiſting of ſeveral ſorts, it will be in ſome ſort neceſſary to open it, that you may the more clearly apprehend it, and with more eaſe make your Obſervations upon it.

Gentlemen, we ſhall produce in Evidence, as well living Witneſſes, as Papers and Writings, which by a ſtrange kind of Providence were taken upon my Lord *Preſton*, and the other two Perſons named in the Indictment when they were Apprehended; and therein this Deſign that I have opened to you, will be made Evident beyond all contraction.

As to the living Witneſſes, the courſe of the Evidence will be this. One *Nicholas Pratt* is the Owner of a Smack, called the *Thomas and Elizabeth*, he does uſually entruſt his Wife *Jane Pratt* with the Hiring out of this Smack; *William Paceley* is Maſter of the Veſſel, and has of late been made a Part-owner, to protect him from being Preſs'd; for it is a Priviledge that the Owners of Veſſels claim, not to be Preſs'd.

Some time ſince, (the Witneſſes will tell you the preciſe time) this *Jane Pratt* was ſent for to one Mr. *Burdett's* Houſe in the City, where ſhe met with Mr. *Aſhton*, who deſired to know, whether ſhe could undertake to Convey him

and

and ſome others, with ſafety into *France*. She ſaid, ſhe did not doubt but ſhe could do ſo; and thereupon Mr. *Aſhton* told her, That he and his Friends were Merchants and Traders, and that they ſhould make great advantage, to the value of a Thouſand Pounds at leaſt, if they could be there quickly; their Diſcourſe went no farther at that time, but Mrs *Pratt* was appointed by Mr. *Aſhton* to bring the Maſter of the Veſſel along with her, for he had a mind to Diſcourſe himſelf with the Maſter, and they were to meet at the *Wonder* Tavern in *Ludgate ſtreet*; and becauſe there ſhould be no miſtake about the Meeting, Mr. *Aſhton* gave the Woman a Note of Direction in Writing, ready to be produced.

Accordingly by the 29*th* of *December*, Mrs. *Pratt* and the Maſter came to the *Wonder* Tavern, where Mr. *Aſhton* met with them, and there they treated of the Price to be given for the Hiring of this Veſſel to carry them to *France*, and I think 150 Guineas was the Sum then inſiſted upon, but no Bargain was made at this time, but there was a new Appointment to meet the next day, which was the 30*th* of *December*, at Mr. *Burdett*'s Houſe.

The next day when ſhe and the Maſter came thither, they found there together *Aſhton* and *Ellyot*, the two other Perſons named in the Indictment, and there this Matter was treated of with great ſecreſie in Mrs *Burdet*'s Bed-Chamber.

And they came to an Agreement, that 100 *l.* ſhould be the Sum to be paid to Mrs *Pratt* for conveying into *France*, *Aſhton* and *Ellyot*, and two other Perſons; So the Contract was Originally made for others beſides Mr *Aſhton* and *Elliot*, and the Money was actually depoſited by Mr *Aſhton* and *Ellyot* in Mrs *Burdet*'s Hand, and a Six-pence was broken, one half of which was delivered to Mrs *Burdet* to keep, the other half Mr. *Aſhton* was to take along with him, and when the Maſter had ſafely landed them in *France*, Mr. *Aſhton* was to deliver his half of the Six-pence to the Maſter; which being brought to Mrs *Turdet* either by him or Mrs *Prat*, upon the joining of the two pieces together, the Maſter was entituled to receive the Hundred Pounds.

The next Appointment was to meet at one Mr. *Rigby*'s Houſe in *Covent Garden*, and that was to be on the One and thirtieth of *December*, when the Voyage was to be begun: And the Tide not ſerving to go through-Bridge till late, the appointment was to meet the later. When they, Mrs. *Prat*, and the Maſter came there, they found only Mr *Aſhton* and Mr *Ellyot*, but before that time care was taken to provide a Sculler at *Surrey*-Stairs to be ready to carry them on board the Smack, and the Waterman was appointed to ſtay in a little Ale-Houſe thereabouts to be ready when he ſhould be called.

About ten a Clock at Night four Perſons came down together, and went into this Sculler with the Maſter of the Smack, and made what haſt they could through-Bridge till they came to *Pickleherring* Stairs over-againſt the *Tower*, where the Smack lay, and there went aboard the Maſter and theſe four Perſons, my Lord *Preſton*, a Servant of my Lord *Preſton*'s, Mr *Aſhton* and Mr. *Ellyot*.

The Smack ſet ſail immediately after they were on Board, and their haſt made them carry away the Watermans Coat which he had lent them whilſt they were in the Sculler, and that accident was the occaſion of diſcovering who the Waterman was that carried them from *Surrey*-Stairs.

After they were on Board the Smack, they were poſſeſſed with great fear of being ſurpriſed, they knew the nature of the Buſineſs they were about, and the danger they were in if they ſhould be diſcovered, and therefore when they were to paſs by the *George* Frigat, a Man of War that lay in the River, they deſired the Maſter to hide, which he did, by putting them under the Quarter Hatches, a place where they could not ſtand or ſit, but muſt lie along on the Ballaſt. When they were paſſed by the *George* Frigat they quitted that place, but when they were near the Block Houſe at *Graves*, they grew apprehenſive, and they deſired to be hid a ſecond time, which was accordingly done.

And they continued to lie in that place till they were taken, and it was a happy thing they did ſo, the place was ſuch that they had not any poſſibility of throwing away their Letters and Papers, though they had made preparation for it in caſe of any Accident, having tied them together, and fix'd a piece of Lead to them, that ſo if they ſaw themſelves in danger of being taken, they might eaſily ſink the Pacquet; But being ſo cloſe ſhut up in this place, that they could not execute their Purpoſe, the Papers were taken, and will be offered to you in Evidence.

Gentlemen, Captain *Billop*, by the Order of a noble Lord now preſent, was directed to uſe his utmoſt diligence to ſeize ſome dangerous Perſons, of whoſe deſign of going beyond Sea for ſome very ill Ends, an Intimation had been given. He got ready a Pinnace well Mann'd, and went in purſuit of them down the River, and both as he went and return'd, he took care to ſearch ſuſpected Veſſels; when he came to this, he demanded of the Maſter what number of Men he had on Board, pretending he came to preſs Men; the Maſter told him he had but three, and for thoſe he had a Protection. But the Captain ſaid he muſt be better ſatisfied, and muſt ſearch the Veſſel, and in the ſearch he found theſe four Perſons lying concealed in this ſecret place, under the Quarter-Hatches.

As they were taken out one after another, one of the Seamen obſerved Mr. *Aſhton* to take up a Bundle of Papers from off the Ballaſt, and put it in his Boſom, and near the place where Papers lay, he took up two Seals, which after proved to be my Lord *Preſton*'s Seals when he was Secretary. Captain *Billop* being inform'd of this by that Seaman, he put his Hand into Mr. *Aſhton*'s Boſom, and took away from him the Bundle of Papers with the Lead fix'd to it.

When they were put on board the Captain's Pinnace, they all preſſed him much, that he would let them go on ſhore at *Graveſend*, pretending want of Refreſhment, they not having eaten, and the Night having been cold, but he did not think that proper, nor ſafe, but told them, they ſhould go on Board the *George* Frigat, and refreſh themſelves there.

When they came on Board the *George* Frigat, all the three Gentlemen, and my Lord *Preſton* in particular, were very earneſt with Captain *Billop* to diſpoſe of the Bundle of Papers, mixing extraordinary Promiſes, with great Complements.

Not

Not prevailing there, when they were return'd to the Pinnace, they renew'd their Sollicitations, and one of them told him, it would be eaſie to remove all Suſpicion by fixing the Lead to ſome other Papers of little Signification, which were found in my Lord *Preſton*'s Pocket, which he might produce, and they would without difficulty paſs for the Papers that were taken.

But the Captain was too juſt to comply with this Propoſal. When they found he was not to be moved, you will find from the Witneſſes, that their Promiſes were turned into Threats, and they uſed another ſort of Language.

When they were brought to *Whitehall* Stairs, upon their landing they gave Money to the Maſter and the Seamen, deſiring them to ſay, they were hired to go for *Flanders*, and not for *France*.

Gentlemen, theſe things which I have opened carry a ſtrong Preſumption of Guilt, for *Engliſhmen* eſpecially one of that Quality of my Lord *Preſton*, to go into the Country of an Enemy without any manner of Paſsport, and in ſuch a manner as they could not expect but to be ſeized for Spies, unleſs they were aſſured, that their Character was ſo well known there, that they ſhould be look'd upon not as Perſons coming to get Intelligence, but to give it, unleſs they were well aſſured of a good Reception, when they came there.

But there is no occaſion to leave any thing to Conjecture in this Caſe, what is contained in theſe Papers makes the Deſign of the Voyage beyond diſpute. I think, Gentlemen, after you have heard the Evidence, you will be very well ſatisfied, that my Lord *Preſton* and the other two who ſtand indicted, were equally concerned in the Papers; they were all alike earneſt to preſerve them from being ſeen, they all ſollicited for the diſpoſing of them, and promiſed Rewards if they might prevail.

Gentlemen, theſe Papers are of various Natures.

One I mentioned before, is Entituled, *The Reſult of a Conference between ſeveral Lords and Gentlemen, both Tories and Whigs*, in which it was undertaken to prove the Poſſibility and Methods of Reſtoring King *James* by a *French* Power, without endangering the Proteſtant Religion, and the Civil Adminiſtration according to the Laws of this Kingdom.

Another contains Heads for a Declaration to be prepared, in order to be publiſhed when the *French* have had Succeſs at Sea, and are landing, and that is filled with ſuch Pretences as they thought moſt ſpecious, and moſt likely to amuſe and delude the People.

There is another ſort of theſe Papers which conſiſts of Letters. Theſe Letters are directed in falſe Names, and are not ſubſcribed, and it is not to be imagin'd it ſhould be otherwiſe. Yet, Gentlemen, (though that is not the preſent Buſineſs) the Hands of the Writers of theſe Letters are very well known, and the Subject Matter of them will eaſily reveal to you for whom they were intended, for though theſe Letters are moſt of them Written under divers Cants, ſome under the Colour of Trade, ſome of them under the Colour of a Law-Suit for the Redeeming of a Mortgage, others under the Notion of a Match, and a Settlement to be made upon that Match, yet the real Buſineſs is ſo plain, that you need but hear them read to ſee through the Diſguiſe.

Though they begin generally in the Stile of Merchants writing to one another, or the like, yet towards the end of the Letters you will obſerve Expreſſions of Duty and Reverence (Terms which do not uſually paſs in Correſpondence between Perſons of that ſort) ſufficient to ſhew, that ſomewhat elſe was intended to be covered in what went before.

Gentlemen, It will appear to you, that ſome of the Writers of theſe Letters were of the number of thoſe who were ſecured the laſt Summer when the *French* Fleet was upon our Coaſts, and you will obſerve they complain, that by reaſon of that Reſtraint, the Deſign was very much hindred, though they have endeavoured to redeem that loſs of time ſince their Diſcharge, and have carried on the Buſineſs with more vigor than ever.

In ſhort, The deſign of theſe Letters is to importune the ſetting out of the *French* Fleet with all poſſible Expedition: They ſay they muſt not ſuffer ſuch a fit Seaſon to be ſpent unprofitably; That the beſt time is between this and the firſt of *March* to come to a good Market; and if they come not before the 10th of *March*, all will be loſt. In another of their Letters they ſay, If the Suit be well ſollicited and managed, it may come to a final hearing before the end of *Eaſter* Term.

They complain that there are ſeveral indiſcreet Letters came from St. *Germains*, that turn to the prejudice of the Deſign. Thoſe Letters are not enough diſguis'd to deceive the People here, but ſpeak too plainly what is to be expected from themſelves, and from the *French*. You will take notice, that the Letters which all you will hear are all Bills with high Characters of the Bearer: for which reaſon they write in ſuch general Terms, becauſe the Bearer was intruſted with the whole. Some of the Letters ſay, no Particulars are or need be expreſſed, becauſe he will inform them of every thing. Others, That they could not write ſo much as he could ſay; and that nothing was wanting but to allow him a full and fit Seaſon to give an account of all the Buſineſs; and that they intirely depend upon his account of them and their Condition.

And, Gentlemen, in one of the Letters the Bearer is ſtyled a Lord; and to whom can that be applied, unleſs to the Priſoner at the Bar?

In another Letter, when they ſpeak of ſending the Copper and the Linen (the Goods pretended for carrying on the Trade) it is added, And what the meaning of that is, they muſt refer to the Bearer, who was able to give them a particular account.

I have mention'd ſo much of the Papers, only that you might have a general Notion of them; that ſo when you hear them read, you may more readily make your Obſervations. I aſſure you I have been as careful as I could, not to exceed the Truth in opening any part of the Evidence. But it is your part to ſee whether what I have opened be made out in Proof.

There is another Paper that gives an account of their Majeſties Fleet to be ſent out this Summer; and there is an Obſervation at the end of it, that it was hoped it may be out in *March*. But you will find by other Papers (and particularly by one of my Lords own Hand-writing) that he was of another mind, that the Fleet will not be out before *June*.

Gentlemen, the laſt ſort of Papers which I will mention to you, are ſome *Memorandums* and Notes, written by my Lord *Preſton*; wherein he gives an account of ſeveral things of great moment; which as his memory ſerved him, are put together without Connexion or Method, being only to remind him of them when he ſhould have occaſion to mention them.

He therein gives an account of the number and ſtrength of the *Engliſh* Fleet, how they are manned, and who are the Principal Officers and Commanders, and in what time they will be out.

He likewiſe gives an account of the number and ſtate of the *Dutch* Fleet, and how that is to be divided and diſpoſed of.

And with relation to the *French* Fleet, there is a particular *Memorandum*, That they muſt be out at fartheſt in *April*; That they muſt be out ſo as to ſeparate the *Dutch* Fleet and ours; That they muſt be ſure to look in at *Spithead* as they come by, and ſecure what Ships ſhould be in that Harbour from joyning the reſt.

There is alſo a hint given of thoſe that were moſt likely to come in to them. And there is Advice in what place their Fleet ſhould fight ours. They muſt not come ſo high as *Beachy*, where they fought the laſt year, but rather chuſe to fight in the Chops of the Channel.

There is an account of *Portſmouth*, how fortified and garriſon'd, that it had but 500 Men; that *Goſport* had nothing but Palliſadoes about it; and *Southſea* Caſtle very weak.

There are Memorandums of other Heads proper for a Declaration.

There are the Names of ſeveral Perſons, ſome of them with particular Characters, and ſome without; and amongſt the reſt, there is this Character given of the Clergy of the City of *London*, that they are the worſt of all others.

Gentlemen, we ſhall proceed to the Evidence, and firſt call the Living Witneſſes, and then read the Papers; and when you have heard what the one can ſay, and what the other contain, we muſt leave it to your Conſideration, and ſubmit all to the Direction of the Court.

Mr. *Serj. Tremain.* Pray ſwear Mrs. *Pratt.*

Jane Pratt.

Who was ſworn with Seven or Eight more.

Mr. *Serj. Tremain.* Mrs *Pratt*, Pray will you tell us what you know concerning the hiring of a Veſſel, and whither it was to go? and by whom it was hired, and for what? Pray tell your whole Knowledge in this Matter.

Mrs. *Pratt.* Mr. *Burdet*, may it pleaſe your Lordſhip, ſent for me to his Houſe, to hire a Veſſel to go for *France*, and asked me if I could carry them ſecure; I told them I could let them have a Smack that would carry them; and if it pleaſe you my Lord, we met ſeveral times at his Houſe, and at laſt there was Mr. *Aſhton* there, and Mr. *Aſhton* appointed to meet at the *Dog Tavern* upon *Ludgate-hill*; I think they call it the *Wonder-Tavern.*

L. C. J. Holt. Miſtreſs, Pray begin again, and ſpeak out.

Mrs. *Pratt.* Mr. *Burdet* ſent for me to hire my Smack to go for *France*, and they asked me if I thought it would carry them ſecure; I told them yes, I thought it would. And I came ſeveral times about it to Mr. *Burdet*'s Houſe; the Smack was not then come to the *Tower*, as it did afterwards; and then after they ſent for Mr. *Aſhton*, and he met me at Mr. *Burdet*'s, and meeting at Mr. *Burdet*'s, he gave me a Note, to meet at the *Dog Tavern* upon *Ludgatehill*, and there *Aſhton* met, but Mr. *Burdet* did not come.

Mr. *Serj. Tremain.* Who was with *Aſhton* when you met at the *Dog Tavern*?

Mrs. *Pratt.* None but a Man of his, as Mr. *Aſhton* ſaid; there we ſat about an hour and an half and did nothing: At length we went away, and appointed to meet at Mr *Burdet*'s Houſe the next day at ſeven or eight a Clock, and there we met, and the Bargain was made.

Mr. *Serj Tremain.* What Bargain?

Mrs. *Pratt.* I askt 150 *l.* and they told me that was too much; ſays *Aſhton*, I will give you Fourſcore: Says Mr. *Burdet*, pray encourage them, offer them 100 *l.* thereupon he did offer 100 *l.* and we agreed for 100 *l.*

Mr. *Serj. Tremain.* What day was that, can you remember?

Mrs. *Pratt.* We met on the *Monday*, and the *Tueſday* we agreed.

Mr. *Serj. Thompſon.* What Money was paid?

Mrs. *Pratt.* Ninety three Guineas and Six-pence.

Mr. *Serj Tremain.* Who was by when the Bargain was made?

Mrs. *Pratt.* Mr. *Elliot* was along with them; Mrs. *Burdet* and the Maſter of the Veſſel at the Agreement.

Mr. *Serj. Tremain.* What is the Maſter's Name?

Mrs. *Pratt.* His Name is *Paſely*, and there was Six-pence broken, and Mr. *Aſhton* took one of the Six-pences, and Mr. *Burdet* ordered him to give his Wife the other, and ſo he did; and when the money was paid, Mr. *Aſhton* brought it in a Paper wrapt up, and ſaid, we ſhould ſee it told out, and he told it out there, and it was Ninty three Guineas and the Six-pence.

Mr. *Serj. Thompſon.* Who did they tell you they were to carry into *France*?

Mrs. *Pratt.* Truly my Lord they ſaid Three, that was all.

Mr. *Serj. Tremain.* What followed then? Did they give you any Note where you were to come for them?

Mrs. *Pratt.* Mr. *Aſhton* bid Mr. *Elliot* write a a Note where they ſhould come; it was at Mr. *Rigby*'s in *Covent-Garden*, at the *Seven Stars*, and there we were to meet at Eleven a Clock at night; and when we came there, Mr. *Aſhton* was within, and went out and fetch'd in ſome Company, Mr. *Elliot* came and two other Gentlemen that I never ſaw in my Life before.

Mr. *Serj. Thompſon.* Miſtriſs, you ſpeak of the breaking of a Six-pence, what was to be done with that?

Mrs. *Pratt.* My Maſter was to bring the half of the Six-pence that Mr. *Aſhton* had, to Miſtriſs *Burdett*, and then we were to have the 100 *l.*

Mr. *Serj. Tremain.* Had Mrs. *Burdet* the other Piece?

Mrs. *Pratt.* Yes, Mr. *Aſhton* had one half, and ſhe had t'other.

Mr. *Serj. Thomp.* Was there any Proviſion carried on Board this Smack?

Mrs. *Pratt.* Yes, there was a Hamper and a Trunk, which were fetch'd from Mr. *Burdet*'s Houſe; my Man *John Fiſher* carried the Trunk, and a Porter carried the Hamper, and I took care to ſee it put in the Veſſel.

Mr.

Mr. *Serj. Tremain.* When you came to *Covent-Garden* that Night, what Diſcourſe had you? and what Inquiries were there made, and by whom?

Mrs. Pratt. *Mrs. Aſhton* comes in, as ſhe ſaid *Mr. Aſhton* was her Husband, and ſaid there was ſome News from Court, of having Papers in a Hat, and that they had choſen ſome Lord or other: Something it was I remember, I can't tell what; but ſays one Gentleman that ſtood by, and ſaid, I was choſen the laſt Year, that ſignifies nothing; and another ſaid, I miſſed it; It is only a *Chriſtmas* Gambal, it ſignifies little.

Mr. *Serj Tremain.* What further diſcourſe had they?

Mrs. *Pratt.* Mrs. *Aſhton* ſaid ſhe was afraid they ſhould have no very good Luck, for the Cock crowed.

Mr. *Serj. Tremain.* Was there any diſcourſe what advantage they ſhould get by going, or you by carrying of them?

Mrs. *Pratt.* They ſaid they would help us to the earning of 1000 *l.* before *Lady-day*, if they went this time ſafe.

Mr. *Serj. Tremain.* Pray Mrs. recollect your ſelf; were they to go to *Flanders*? or where?

Mrs. *Pratt.* They were to go for *France*: they were not to go for *Flanders*.

Mr. *Serj. Tremain.* What time of Night did you depart from Mr. *Rigby*'s?

Mrs. *Pratt.* About Eleven a Clock.

Mr. *Serj. Thompſon.* How did they go away from Mr. *Rigby*'s?

Mrs. *Pratt.* I did not go with them: Mrs. *Aſhton* kept me, and gave me the Leg of a Gooſe and ſome Drink.

Mr. *Serj. Tremain.* Do you know any thing further?

Mrs. *Pratt.* No; I think I have told all.

Mr. *Serj. Tremain.* Were you hired for *France*, or *Flanders*? I ask you once again.

Mrs. *Pratt.* We were hired for *France*; any place there where we could touch.

Mr. *Serj. Tremain.* Was there any particular Port mentioned?

L. C. J. Holt. If you have done with her, will my Lord ask her any queſtion?

L. Preſton. My Lord, I deſire ſhe may be askt, whether ſhe ever ſaw me before?

Mrs. *Pratt.* No; never, my Lord, but in the *Tower*.

L. C. J. Pollexfen. But, ſhe ſays, when they were at *Rigby*'s there came in two Gentlemen with Mr. *Ellyot* that Night.

L. Preſton. I deſire to know of her whether I was one of them two.

Mr. *Serj. Thompſon.* My Lord, ſhe does not ſay your Lordſhip was one of them.

Mrs. *Pratt.* No, my Lord, you were not one of them.

Mr. *Serj. Thompſon.* Then ſet up *Paſeley*. *Paſeley*, what do you know about hiring of this Smack to go for *France*? I think you are Maſter of the Smack, called the *Thomas* and *Elizabeth*, are you not?

Mr. *Paſeley.* Yes.

Mr. *Serj. Thompſon.* Then pray give an account of the whole matter.

Mr. *Paſeley.* The Smack was hired of the Woman, and not of me; and when I came up to *London* ſhe told me ſhe had got a Voyage over to *France*, if I was minded to go; I ſaid, yes: and ſhe appointed me to go along with her to this Miſtris, what do ye call um's Houſe, this Mrs. *Burdet*, and when he came to this Houſe, there was no body within but Mr. *Aſhton*: preſently after came in Mr. *Ellyot*; after they came in they told us the things were not ready yet, but they would be ready preſently to carry on Board; when theſe things were ready, *John Fiſher* carried the Trunk down, and the Porter carried the Hamper, and I went with them along to *Billingſgate* and carried them on Board; and when I carried them on Board I went to *Billingſgate* again, and ſo we went along to this Mr. *Burdet*'s Houſe; and ſo when we came up to *Burdet*'s Houſe, *Aſhton* and *Elliot* were not there preſent, but we had been there but a little time e'er they came in, and then they came and ſaid to my Owner and me, You ſhall ſee the Money told; it was all in Gold but one Six-pence; there was Ninety three Guineas: And, after the Money was told, there was a Six-pence that was broken in half, and the Guineas he rolled up in a Paper, and gave them to Miſtreſs *Burdet*, and bid her lay them up; and he gave her one half of the Sixpence, and kept the other half himſelf; and when I brought that other half that he had, or my Owner, then ſhe was to give the Money to her or me.

Mr. *Serj. Tremain.* Pray what Room of the Houſe was this in at Mr. *Burdet*'s?

Paſeley. It was on the Left-Hand going in.

Mr. *Serj. Tremain.* Was it a Bed-Chamber?

Paſeley. Yes, 'twas.

Mr. *Serj. Tremain.* What time of Night was it pray?

Paſeley. About Eight a Clock.

Mr. *Serj. Tremain.* What diſcourſe had you with them there, pray?

Paſeley. They asked me if I thought they might get well over? I told them yes, I believed they might.

Mr. *Serj. Thompſon.* Did they tell you what part of *France* they were to go to?

Paſeley. No, they named no place, but any part in *France*.

Mr. *Serj. Tremain.* Well, go on, tell us what they ſaid further.

Paſeley. So, Sir, they gave us direction to meet them at the *Seven Stars* in the little *Piazza*'s in *Covent Garden*: when we came there it was Eleven a Clock at Night, and they were not in the Houſe when we came in, except 'twere Mr. *Aſhton*; but preſently after *Aſhton* and *Ellyot* came in, and they ſate down; and ſo in came two Gentlemen more, but what they were, or who they were, I don't know, and they diſcourſed about Papers ſhaking in a Hat, and ſaid they ſhould have no good Luck, for the Cock crowed: And after this *Ellyot* and *Aſhton* came out of the Houſe and called me to go with them, and after we were gone out, Mr. *Aſhton* leaves *Ellyot* and went away from him, and *Ellyot* bid me go along with him, ſays, come Maſter, come along with me; he did not name any place whither they were to go, but it happened to be *Surry-Stairs*, and going down, he calls in at the corner Houſe, which is an Ale-houſe, for the Water-man, and bid me go before to the Waterſide; and when we came thither the Water-man ſteps into his Boat, and I after him; and when I was in the Boat I went into the Stern, and by that time I was ſeated in the Stern there came down four Men; but I never ſaw my Lord and his Man before they came into the Wherry.

L. C. J. Holt. Who came into the Wherry?

Paſeley. There was all thoſe four, Mr. *Aſhton*, Mr. *Ellyot*, my Lord, and his man.

L. C. J. Holt. Where was this do you ſay?

Paſeley. At *Surry-ſtairs*, there the Boat was.

Mr. Serj. *Tremayn.* Was the Priſoner at the Bar one of them?

Paſeley. Yes, he was.

L. C. J. Holt. Well, what did you do then?

Paſeley. After we were ſeated in the Boat at *Surry-ſtairs* we put off, and went down through Bridge, and going through Bridge we came on Board; the Veſſel, riding juſt againſt the *Tower* almoſt, and we went all on Board; and when we came on Board, my men were all aſleep, and being aſleep, I called them out of the Cabin to hale up the Anchor; and there being very little Wind ſtirring, we could not go very far, but came juſt below the half-way Tree, and then we ſtopt, and I order to drop the Anchor for fear of the Veſſels in the River: and the next morning about Eight a Clock we weighed our Anchor again, and went on till we came near to the *George* Man of War, and there they all of them hid.

Mr. Serj. *Tremayn:* Who?

Paſeley. All of them, my Lord. There was *Aſhton*, and *Ellyot*, and my Lord *Preſton*, and his man.

Mr. Serj. *Thompſon.* In what place did they hide?

Paſeley. In the Quarter-hatches, under the Hatches where we lie.

Mr. Serj. *Thompſon.* Did they deſire you to hide them?

Paſeley. Yes, they did.

Mr. Serj. *Thompſon.* What did they ſay?

Paſeley. They ſaid, that if there ſhould come any Boat on board to preſs, I ſhould ſhew them my Protection; and ſo there came no Boat then.

Mr. Serj. *Tremayn.* How big is this place that they hid in?

Paſeley. 'Tis in the Quarter under, near the Cabin-hatches.

Mr. Serj. *Tremayn.* I ask you what kind of place it is?

Paſeley. They cannot ſit upright, nor ſtand upright, but they are fain to lie along, or lean upon their Elbows.

Mr. Serj. *Thompſon.* Well, go on, what happened afterwards?

Paſeley. After that we were paſt the man of War, they came up and ſate in the Cabin where we uſed to eat our Victuals; and when we came to *Graveſend*, over againſt the *Dock-houſe*, they would go down again and hide, and did ſo till we paſſed the *Block-houſe*, and then they were for coming up again, and then I ſaw a Boat coming about *Tilbury* which made towards us, and thereupon they ducked down again, and the Hatches were laid down upon them, and there they remained till they were taken.

Mr. Serj. *Tremayn.* Where were they taken?

Paſeley. They were taken between the North *Block-houſe* and the *Little*——

Mr. Serj. *Tremayn.* But I mean in what part of the Ship?

Paſeley. They were taken in that little place where they were hid.

Mr. Serj. *Tremayn.* Were the Hatches ſhut down upon them?

Paſeley. Yes, they were.

Mr. Serj. *Tremayn.* How long had they been hid before they were taken?

Paſeley. A quarter of an Hour, or thereabouts.

Sir *W. W.* Did they deſire to be hid there?

Paſeley. Yes, they did, and they were hid there.

Mr. Serj. *Thompſon.* Now tell us, after ſuch time as they were taken, what they ſaid, and what you obſerved.

Paſeley. After they were taken, they ſaid nothing to me, my Lord, nor none of them did ſpeak to me after the Boat had taken them.

Mr. Serj. *Thompſon.* But what happened after they were taken?

Paſeley. After they were taken, Captain *Billop* ordered them to go into the Boat, and us with them; and when we came to *White hall-ſtairs*, one of them ſaid to me, Maſter, when you come upon your Examination, ſay you were bound to *Flanders*, and not for *France*.

Mr. Serj. *Thompſon.* Which was that that ſaid ſo?

Mr. *Paſeley.* 'Twas *Ellyot*, and he gave me half a Crown to bear my expences that Night, and ſaid he would remember to take care of us afterwards.

Mr. Serj. *Thompſon.* Did they give any money to the Seamen?

Paſeley. Yes, *Aſhton* gave one of my men half a Crown, and bid him ſay he was bound for *Flanders*, and not for *France*; and my Lords man gave my other man half a Crown.

L. C. J. Holt. Was my Lord *Preſton* by when that money was given?

Paſelet. My Lord was upon the Bridge, but not near me.

Mr. Serj. *Thompſon.* If my Lord have any Queſtions to ask him, we have done with him for the preſent.

L. Preſton. No, my Lord, I have no Queſtions to ask him.

L. C. J. Pollexfen. Was my Lord *Preſton* by when the directions was given you to ſay you were to go to *Flanders*, and not to *France*?

Paſeley. I ſay he was upon the Bridge, bnt was not near me.

Mr. Serj. *Tremayn.* What diſcourſe had you on board with any of them?

Paſeley. Very little. They askt me if I thought they ſhould go clear, and I told them yes, I thought they might.

Mr. Serj. *Tremayn.* Clear of what?

Paſeley. Clear of the Veſſels ſearching: They examined me that Night I was at the Seven Stars, if I knew the way of the *Swing* on the back of the Channel, to go clear of the Town. I told them I did not know the way by the Back of the Sands by *Margaret's*, but the *Swing* would not keep them clear of the Town.

Mr. Serj. *Tremayn.* Was there a Note written whither you were to come?

Paſeley. Yes. There was a Note written to meet them at the Seven Stars in the little *Piazza's*.

L. C. J. Pollexfen. Whereabouts is *Burdet's* Houſe?

Paſeley. That is in *Queen-ſtreet* in the City.

Mr. Serj. *Tremayn.* You *Paſely*, Did the Waterman that brought them on Board, leave two Coats behind him?

Paſeley. Yes, the Waterman did leave two Coats;

Coats; and I put them into my Cheſt, and afterwards they broke open my Cheſt, and took them out, and brought them to my Lord Chief Juſtices.

Mr. Serj. *Tremayn.* Then we will next produce that Waterman. Set up *Charles Betſworth.*

Mr. Serj *Thompſon.* Come, will you give us an Account who you carried on Board a Smack, and what hapned.

Betſworth. I was going over the Water from *Surry* Stairs about Seven or Eight a Clock, and a Gentleman at the Stairs call'd Sculler, and ask'd me if I would carry him down the River; ſaid I how far, ſays he to the Tower; ſaid I 'tis againſt Tide, and I can't carry you down ſo low; he ſaid he would ſtay till the Tide turn'd; ſaid I, if I be out of my Bed ſo long, I deſerve to be well paid for it; If you will give me Half a Crown I'll carry you down; ſays he I'll give it you; ſo then I came a-Shore, and he ask'd me what my Name was, I told him *Charles Betſworth*; ſays he, will you be ſure to ſtay for us; Yes, ſaid I, if you will be ſure to come: If I be not at the Stairs, I'll be at that Ale-houſe there in the Corner; ſo I ſtaid, and carried over a Fare or two over the Water; and about Eleven a Clock, as I was ſitting in the Houſe a Gentleman comes, and calls *Charles*, and ſo out I went to my Boat, and took them in. There was one man, as I ſuppoſe, in the Stern, and he that called me out followed me down, and by and by came three more into my Boat; one of them had a Whitiſh Cloak on, and the other a gray looſe Coat, and a red Bag, of the quantity of a Peck; and ſo we put off, and rowed away; and juſt under the Temple Wall, which was all the Words I heard from them, that I can remember, ſays one Gentleman, When do you hear the King goes away? and another made anſwer and ſaid, a *Tueſday*: So we rowed down through Bridge, and when we were through Bridge, they asked where the Veſſel lay; and he that was in the Stern ſaid, it was *Southwark* ſide, over againſt the Tower, and bid me row over thither. And when we came juſt below *Battle-Bridge*, that man ſaid, that is ſhe that rides a Head of us. I look'd, and ſhe had a Pennant up; ſo they were put on Board; and as ſoon as they were on Board, ſhe went off, and I rowed up to the Bridge, and went through Bridge, and came up as far as

and there I ſtaid and took my Scull and my Staff out of my Boat; and when I took them out, I miſſed my Clothes; ſays I, God bleſs me, I have loſt my Clothes; but then I thought it was but a ſtill Tide, and therefore I would try if I could overtake them; for I thought they could not be got far, there being little or no Wind; ſo I went down to the Place where the Veſſel lay, and ſhe was gone; and I enquired of ſeveral Smacks that lay there, but could hear nothing, and I rowed as low as *Limehouſe Reach*; and about *Black Wall* and *Limehouſe Reach*, I came up to a Smack, that I ſuppoſed was ſhe, and I cry'd out, Ho the Smack, and they anſwered me So; I asked them if I did not bring a Fare a board that Smack a while ago; then they ſaid no; I told them I had brought a Fare on Board ſome Smack that lay about *Horſleydown* and *Pickle-herring Stairs*, and they had got two Coats of mine, which I had forgotten, and it had a Pennant up when they went on Board, but this had none; ſo I rowed on further, till I came as far as *Berking Sherf*; and I thought there being ſo little Wind that none could be gone beyond me; and therefore waited to ſee a Smack with a Pennant coming down, but I could not meet with it, and there I lay all Night in my Waſtcoat; and the next day I came back to *Greenwich*, and as I came along, I went on Board ſeveral Veſſels to enquire, becauſe I took her for an Attendant upon a Man of War, but I could not hear of my Clothes, till laſt *Friday* was Seven-night, two Watermen came, and brought me the Clothes I loſt.

L. C. J. Then you have your Clothes again?

Betſworth. Yes, I have.

Mr. *Serj. Thomſon.* Pray look upon that Gentleman there, my Lord *Preſton*, are you ſure that he was one of them that was in your Boat?

Betſworth. I can't tell that ever I ſaw him in my Life before.

Mr. *Serj. Tremain.* You *Paſely*, I ask you, was my Lord *Preſton* one of the Gentlemen the Waterman brought on Board your Smack?

Paſely. Yes, he was.

Mr. *Serj. Tremain.* Is that the Waterman?

Paſely. Truly my Lord I can't tell; but the Waterman's Coat was left on Board.

Mr. *Serj. Tremain.* Then let me ask you another Queſtion, Had you a Pennant?

Paſely. Yes, I had when I came on Board.

Mr. *Serj. Tremain.* Did you take in your Pennant?

Paſely. Yes, I did afterwards.

Mr. *Serj. Tremain.* Why did you take it in?

Paſely. They asked me if there was a Pennant; and I told them yes; and they bid me take it in.

Mr. *Serj. Tremain.* Who bid you take it in?

Paſely. Ellyot did; ſo we took it down.

Mr. *Serj. Thompſon.* Will my Lord ask *Betſworth* any Queſtions?

L. Preſton. No, I have nothing to ſay to him.

Mr. *Serj. Tremain.* What did they carry a board with them, *Paſely*?

Paſely. They had nothing a board but the Trunk and Hamper, that were brought down before from *Burdet*'s Houſe: and there was nothing brought in the Boat but only a Leather Bag.

Mr. *Serj. Tremain.* Then ſet up *Fiſher.* I think his Name is *John Fiſher.* You were one of the Seamen that did belong to the Smack, I think.

Fiſher. Yes. I was.

Mr. *Serj. Thompſon.* Pray then tell us, who were brought thither; and what happened upon it.

Fiſher. About ſix Hours before they came on board us, our Maſter came himſelf on Board, and took me along with him; but whither I was to go then I did not know. He carryed me to a Houſe in the City, and there gave me a ſmall Trunk to carry, and a Hamper to a Porter: and we went away with them; and he bid us, at *Billingſgate*, carry them a Board, which we did.

L. C. J. Holt. When was the Trunk and Hamper brought on board?

Fiſher. About ſix or ſeven a Clock at night, on *Wedneſday*, I think.

L. C. J. Holt. Well, and what followed?

Fiſher. My Lord, and Mr *Aſhton*, and Mr *Ellyot*, and my Lords man, and the Maſter came on Board between eleven and twelve: There was no more came on Board that I know of; but we were aſleep when they came on Board:

Board; and immediately our Maſter ordered us to hale up the Anchor. Now there was but little Wind ſtirring; and by that time we were ſain down as low as half-way Tree, it being ſtill Flood, we could go no farther: ſo there we were ordered to ſtop, and we lay by till morning; and about eight in the morning we weighed Anchor again, and about nine, when we came to the *George* Man of War, they hid, they deſired to go down into the Quarters, and we laid the Hatches upon them.

Mr *Serj. Tremain.* What kind of place is it that they hid in?

Fiſher. They could not ſtand upright, nor ſit upright, but they muſt lie or lean upon their Elbows. So when we were got below the Ship, they came up again into the Cabbin: And when we came at *Graveſend* near the Block Houſe, then they hid again till we were below the Block-Houſe; and then we ſpyed a Boat coming, which made them to keep below; and there they continued till Captain *Billop* took them.

Mr. *Serj. Tremain.* Were they all four there?

Fiſher. Yes all four.

Mr. *Serj. Tremain.* After they were taken, what ſaid they?

Fiſher. After ſuch time as they were taken, and come up to *Whitehall Stairs,* Captain *Aſhton* gave me a Half-Crown piece, and bid me ſay they were going to *Flanders* and not to *France.*

Mr. *Serj. Tremain.* But whither were you going?

Fiſher. Truly, I did not know where we were to go, till ſince we came on Shoar. I underſtood nothing till they hid; and then indeed I thought we were going to *France.*

Mr. *Serj. Tremain.* When did any Body tell you you were to go to *France?*

Fiſher. Since we came on Shoar.

Mr. *Serj. Thompſon.* Will my Lord ask him any Queſtions?

L. Preſton. No.

Mr. *Serj. Tremain.* Then the next Witneſs we call is one *Amonds,* Pray tell us what you know of this Matter.

Amonds. May it pleaſe you my Lord, I know nothing concerning my Maſters Buſineſs, but all that I know of this Buſineſs is, That they came on Board about Twelve a Clock at Night, and I was then aſleep in the Cabin, and hearing ſome come on Board, and my Maſter call, I looked out, and there were three or four Gentlemen and my Maſter, and he ordered us to ſet ſail immediately, and make our way down as faſt as we could; there was little or no Wind; ſo that when we came down to the half way Tree, we were forced to come to an Anchor, and there we rid at Anchor till it was broad day, when there was a brave Gale to the Weſtward, and by that time we got down to *Long Reach*; about Nine a Clock we came to the *George* Frigat, a Man of War, and they underſtanding that, deſired to hide theſe Gentlemen.

L. C. J. Holt. What Gentlemen?

Amonds. My Lord *Preſton,* Mr *Aſhton* and Mr *Ellyot,* and the other Gentleman that was with them.

L. C. J. Pollexfen. Look upon my Lord there, was he one?

Amonds. Yes, that Gentleman was one.

L. C. J. Holt. Well, go on.

Amonds. And ſo Sir, after we were paſſed the Frigat, they came up again, and did not deſign to go down any more till they ſee ſome other danger. When we came almoſt to *Graveſend,* they went down again: When we were paſt the *Block Houſe* I was at the Helm and they were reſolving to go to Dinner, and bid that Man, my Fellow, to reach them ſome Victuals out of the Hamper: And while he was reaching them ſome Victuals, I ſee the Pinnace coming towards us; ſaid I, here is a Pinnace coming a Board; ſays my Lord and they, we muſt go down again and hide, and ſo they did go down again; we apprehended that they were coming aboard to preſs us, and they had no mind to be ſeen. When the Pinnace came near, they waved to us in this manner, as much as to bid us ſtay; ſo we laid the Sail by, and ſtaid for them till they came up; and when the Captain came on Board, ſays he, this is worth our coming on Board, here are a couple of briſk Seamen will do the King Service; I muſt have them, I think; ſays I, I hope not ſo, Noble Captain; ſays he, have you any thing to keep your ſelves clear? Yes, ſays our Maſter? I am ſorry for that, ſays the Captain; what is it? ſays the Maſter, I have a Protection; ſays the Captain, let us ſee your Protection: ſo the Maſter pulls out his Protection, and ſhews it: Well, ſays the Captain, I muſt look a little further, and away he goes into the Cabin, and takes up the Hatches where theſe Gentlemen were; ſays the Captain; Hye, hye, who is here? Turn out, ſays he; but I ſuppoſe they did not make ſo much haſt as the Captain expected; ſo he called ſome of his men on Board; and when they came on Board, my Lord came out, and the reſt of the Gentlemen and ſays my Lord to the Captain, I hope you will be ſo kind as not to take any thing from us: Says he, I'll meddle with nothing but Papers, 'tis Papers I look for, and put his Hands in both his Pockets and pulled out Papers, and put them into his own Pocket, but whether they were new or old I can't tell; and there was a Watch likewiſe, but that he gave my Lord again, and ſaid, I'll meddle with nothing but Papers: then he ſearcht Mr. *Ellyot,* and Mr *Aſhton* was the laſt that came out, and there was one of my Lords Watermen in the Cabin with him; and, ſays he, and pleaſe you Noble Captain, That Gentleman puts ſomething in his Boſom: Says the Captain, What did you put in your Boſom, Sir; nothing, ſays he, but my Handkerchief.

L. C. J. Holt. Who ſaid ſo?

Amonds. Mr. *Aſhton,* and ſhews him his Handkerchief, and afterwards the Captain put his Hand in Mr. *Aſhton's* Boſom, and pulled it out.

Mr. *Serj. Thompſon.* What did he pull out?

Amonds. A Roll of Papers with a Piece of Lead to it.

Mr. *Serj. Thomſon.* Did you ſee the Lead fix'd to the Papers.

Amonds. I did ſee it fix'd to the Packthread that tyed the Papers.

Mr. *Serj. Tremain.* What ſort of Place is it in which they were taken?

Amonds. They could not ſit nor ſtand upright in it.

Mr. *Serj. Tremain.* Had you any money given you?

Amonds. I had half a Crown given me by my Lord's man.

L. C. J. Holt. Who was it gave you the money?

Amonds.

Amonds. It was my Lord's man, he that was on Board the Ship; he gave me half a Crown in *Whitehall*, and ſaid, I ſhould ſay we were bound for *Flanders*, and not for *France*, but who the half Crown came from I can't tell, my Lord ſaid nothing to me at all.

Mr. *Serj. Tremain.* Did you hear any Diſcourſe as they came down?

Amond. No, I did not mind any thing of diſcourſe, for I never came among them, unleſs it were at the Hour of Watching.

L. Preſton. Pray did I ſay any thing to you at *Whitehall*?

L. C. J. Holt. My Lord, your way is to propoſe your Queſtions to the Court, and they will ask them for you.

L. Preſton. My Lord I deſire to ask him if I ſaid any thing to him at *Whitehall.*

L. C. J. Holt. What ſay you? Did my Lord *Preſton* ſay any thing to you at *Whitehall*?

Amond. No my Lord, he never ſaid any thing to me at all; it was his man that gave me the half Crown, and ſpoke to me.

L. C. J. Holt. Will your Lordſhip ask him any other Queſtions?

L. Preſton. No my Lord.

L. C. J. Holt. Then call your next Witneſs.

Mr. *Serj. Tremain.* Swear Captain *Billop.*

Which was done.

Mr. *Serj Thompſon.* Come, Captain *Billop*, Pray will you tell my Lord and Jury, where you did apprehend my Lord *Preſton*, and the Circumſtances of what happened at their taking.

Capt. *Billop.* Sir, I met with them at the upper end of the *Hope.*

Mr. *Serj. Thompſon.* Pray give us an Account from the beginning to the end, what paſſed, how you came with the Boat, and all that happened at that time.

Capt. *Billop.* About Two a Clock, or between One and Two, upon the laſt of *December*, my Lord *Danby* came to me at one of the Doors of the Houſe of Lords, and told me his Father would ſpeak with me; and he carried me to my Lord *Linſey*'s Chamber, where immediately my Lord Preſident came, and told me there were ſome Perſons were going for *France* about Buſineſs of dangerous Conſequence, and he deſired me to uſe ſome means to get them apprehended; I then propoſed what I ſhould have to enable me for the Undertaking. My Lord *Danby* ſaid there was ſuch a Boat, that he would procure for me, and my Lord Preſident gave me a Letter to another Perſon, who was to inſtruct me further about this Matter: My Lord *Danby* got the Boat ready, and ſome Men and Arms in it; but I thought there was not Arms enough, ſo I borrow'd ſome Arms of my Lord *Lucas*, and about Eleven a Clock as near as I remember we put off from *Tower Wharf*, it being very calm; I thought we ſhould be ſwifter than any Veſſel, and ſhould have the advantage of them all; and therefore run down as far as *Graves-End*; and I brought ſeveral Veſſels by the Lee, in which time I preſſed ſome *Barkin* men, two or three of them; and amongſt them, one that knew the Veſſels that lay in the River, having been on Board ſeveral; and we did board divers, and took out ſome Men, having a Preſs Warrant; and he that I had taken of the *Barkin* Men, after he had paſſed by ſeveral Veſſels, ſeeing this Veſſel ſailing, told me that was the *Thomas* and *Elizabeth*; whereupon we made up to them, and waving towards them, they ſtaid for us: when we came up, there was ſtanding by the Maſter two luſty Sailors, and I told him I would take but one of them; he ſaid he had a Protection, I bid him ſhew it me; when I was come on Board, and had looked upon his Protection, I told him I muſt look a little further, and I went down into the Cabin, and took up the Hatches, and there I found them all four lying together.

Mr. *Serj. Thompſon.* What four?

Captain *Billop.* My Lord *Preſton.* I did not know him then, nor till afterwards.

Mr. *Serj. Tremain.* Who elſe was there?

Captain *Billop.* Mr. *Elliot* was there, and Mr. *Aſhton*, who were both my former Acquaintance, but my Lord *Preſton* I had forgotten, till one of them called him my Lord, and I asked them what Lord it was; and they ſaid it was my Lord *Preſton*; ſo then I ſaluted my Lord, ſo we rowed up.

Mr. *Serj. Thompſon.* Pray Captain tell us what happened in the Veſſel before you went out of it, after you found them there?

Captain *Billop.* I handed my Lord *Preſton* up firſt, and after he came out of that little place, which he was forced to creep out of on his Knees, I turned my Lord about, and told him I muſt ſearch him; he ſaid, he hoped I would not meddle with any thing; I told him I would meddle with nothing but Papers, ſo I put my Hand in his Pocket and took all the Papers I could find, and put them in my own Pocket, and taking out a Watch, I delivered it to my Lord again. The next was Mr. *Elliot*, and I ſearcht him, and found nothing at all upon him. After that *Aſhton* came up, and one of my Men told me that Gentleman had put ſomething in his Boſom; whereupon I gave him a ſudden turn, his Back being towards me, and asked him what was that he put in his Boſom? he told me nothing but his Handkerchief, and pluckt his Handkerchief out; with that I clapt my Hand in and got the Packet, and took it out, with the Lead fixt to it; I have the Lead now in my Pocket.

Mr. *Serj. Tremain.* Pray will you produce it, Sir. *Which he did.*

Captain *Billop.* This is the Lead, ſeveral of my Men ſaw it when 'twas fix'd to the Packet.

Mr. *Serj. Thompſon* What did you do with the Packet?

Captain *Billop.* I put it immediately into my Pocket, as ſoon as I had ſearcht Mr. *Aſhton* further, and then commanded theſe Gentlemen all into my Boat, and took all the People that belonged to the Smack with me, after I had brought her to an Anchor, and left two of my men on board of her, and there ſhe rid till next Day, when I ſent two more of my men to bring her up, and thoſe two men I order'd to ſearch all the parts of the Veſſel, and take what they could find, and whatſoever they found they ſhould carry it to the *Tower* to my Lord *Lucas*; which, I ſuppoſed, they did.

Mr. *Serj. Tremain.* Well, Captain *Billop*, after ſuch time as you had taken theſe Papers, and brought theſe Gentlemen into your Boat, pray what diſcourſe had you with them? What ſaid they to you concerning the Papers?

Captain *Billop.* It was a pretty while before we talked of any thing; the beginning of our talk was, I remember, they deſired to go aſhore at *Graveſend* to refreſh themſelves, for it was cold, and they had not eaten any thing: it was my

Lord

Lord that desired it; but I begged his pardon for that, and told him there was a Man of War that lay at *Long-reach*, where as I believed his Lordship would be very well accommodated with any thing he wanted.

Mr. *Serj. Thompson.* Well, what said they afterwards?

Captain *Billop.* My Lord *Preston*, after I had saluted him upon knowing who he was, and Mr. *Ashton* and Mr. *Elliot* telling him I was of their Acquaintance, he said he was glad he was fallen into a civil Gentleman, and they said they were glad they were fallen into the hands of an Acquaintance. I told my Lord I hope he should never find any thing otherwise than civil from me; my Lord was very civil to me in Complementing, and assuring me he would acknowledge my favour and kindness to him.

Mr. *Serj. Thompson.* Ay, what did he say to you?

Captain *Billop.* My Lord *Preston* told me, if ever it lay in his Power to do me service he would, and he did not doubt but he might, and he used a great many Words and Expressions of Kindness, and his readiness to do me service; and amongst the rest, my Lord said once to me, if I would dispose of the Packet——

Mr. *Serj. Thompson.* Pray speak that again.

Captain *Billop.* My Lord *Preston*, in one of his Discourses of his Kindness in doing me service, had this Expression, as near as I can remember, if I would dispose of the Packet.

Mr. *Serj. Tremain.* What he would do for you if you would dispose of the Packet?

Captain *Billop.* He did not come to any particular instance of what he would do: but he said he would serve me in any thing that lay in his Power; Mr. *Elliot* and Mr. *Ashton* discoursed me several times about it; they courted me, and desired me to throw the Packet over board; but I told them I would not do any thing of that kind; and Mr. *Elliot* said that I might take the Papers that I took out of my Lord *Preston*'s Pocket and tie the Lead to them, and say that was the Packet, and throw the t'other over-board. I told him he took the King's Council to be odd People, and very indiscreet, that could not find out such a thing as that: After this was over, we had a little interval, and there was a Hamper in the Boats Stern, and there was some Bottles of Wine taken out, and we drunk several times; and by and by we had some discourse a little further about the same thing, and they pressed me to throw the Packet away; and one time particularly Mr. *Ashton* I remember, said it would be a generous thing, *Billop*, if you would go along with us, I think you may do as well there as here.

Mr *Serj. Tremain.* Whither would he had you gone with them?

Captain *Billop.* He did not name any place, as I remember.

Mr. *Serj. Tremain.* What promises did they any of them make you?

Captain *Billop.* *Mun Elliot* whispered me several times, Dear *Billop* throw the Packet over-board, what good would it do you to injure so many honest Gentlemen? And Mr. *Ashton* and Mr. *Elliot* said, I had it now in my Power to make my self as great and as rich as I would be.

Mr. *Serj. Tremain.* What did any of them say about the Tide turning?

Captain *Billop.* *Mun Elliot* also said, It was impossible the Current or the Tide could run long this way, or always this way.

Mr. *Serj. Thompson.* When you had refused this that they desired of you, notwithstanding their Promises, pray tell us how they turned their discourse into Threatnings

Captain *Billop.* *Elliot* told me, when nothing would prevail, that every Dog had his day; but I answered, I hoped never to see it your day; but however, said I, pray desist from any such Language, for I can't bear it. After that they never askt me any thing about it.

Mr. *Serj. Thompson.* Now tell us what you did with these Gentlemen, and these Papers afterwards?

Captain *Billop.* I brought these Gentlemen up to my Lord *Nottingham*'s Office, and delivered the Packet with the Lead fixed to it, and stood by my Lord *Nottingham* in the Room till he had opened the Papers, except while my Lord *Preston* was examined, and when he opened the Papers I stood by, that I might see him make them up again; and, I think, I took some of them in my hand, and said I might read them, but I was uneasie, and not disposed at that time to read many of them, so I did not read them all.

Mr. *Serj. Tremain.* They were all by when *Ashton* said you would do generously to go along with them, were they not?

Captain *Billop.* Yes, they were all in the Boat.

Mr. *Serj. Tremain.* Did not one of them say to you, I know if Captain *Billop* do serve us, he will do it generously.

Captain *Billop.* Yes.

Mr. *Serj. Tremain.* Who was it?

Captain *Billop.* It was *Ashton.*

L. Preston. I desire I may ask Captain *Billop* a Question.

L. C. J. Holt. Pray, my Lord, put your Question to the Court and they will ask it him.

L Preston. I desire to know my Lord, where it was, I said this to Captain *Billop*, that he would dispose of the Packet.

Captain *Billop.* Just after I had first saluted your Lordship, you said, you were glad you were fallen into the Hands of a civil Gentleman.

L. Preston. Was it aboard the Boat that I desired you to dispose of the Packet?

Captain *Billop.* Yes, and before we came on board the *George* Frigat, when we drunk about, upon the opening of the Hamper, it was in the Boat I am very sure, and before we came on board the *George.*

L. C. J. Holt. My Lord *Preston* said to you, you say, he would do you all the Kindness that lay in his Power if you would dispose of the Packet; how would he have you dispose of it? What did he mean by it?

Captain *Billop.* I don't remember he used any other Word, but that dispose of the Packet.

Mr. *Serj. Thompson.* But *Ashton* and *Elliot* did desire of you a great many times to throw it over board?

L. Preston. I desire he may be ask'd this Question. You said you carried these to my Lord *Nottingham*: Did you see them opened?

Captain *Billop.* Yes, I did see them opened, and I saw my Lord as he opened, lay them one by one, and read them over, and put them up again. And I looked upon several of them, while my Lord *Nottingham* was reading others; and

and I ſtood by the Fire, and I ſee my Lord make them up, and he tied them with a piece of Twine, and he clapt his Seal upon them, and delivered them to me; and I went immediately and delivered them to my Lord Preſident.

L. Preſton. Were you all the while by, while my Lord *Nottingham* was reading the Papers?

Captain *Billop.* Yes, I was by when he opened them, and read them, and ſtaid till he put them up again; and as they came from his hands, I preſently carried them to my Lord Preſident.

L. Preſton. Are you ſure, or can you ſwear that theſe are the ſame Papers which were taken on board the Smack, that you carried from my Lord *Nottingham* to my Lord *Danby*?

Captain *Billop.* So many of them as I looked into, I marked; and all that I marked I can ſwear to, and no more than them I cannot.

Mr. *Serj. Thompſon.* I think you ſay all thoſe Papers that you delivered to my Lord *Nottingham*, you ſaw my Lord *Nottingham* ſeal up, and all them you carried to my Lord Preſident.

Capt. *Billop.* Yes, I did ſo; all that my Lord opened at that time, were put together again, and his Seal put to them.

L. C. J. Holt. But my Lord asks you, whether you can ſwear the particular Papers?

Captain *Billop.* What I read, I marked, and them I can ſwear to.

L. C. J. Holt. You ſay you carried all thoſe Papers my Lord *Nottingham* ſealed, after he had opened them, to my Lord Preſident.

Captain *Billop.* Yes, my Lord, I did ſee my Lord *Nottingham* open them, I ſee him make them up again; and when they were made up, he put his Seal to them, and I carried them to my Lord Preſident.

Jury-man. My Lord, I deſire Captain *Billop* may be asked one Queſtion.

L. C. J. Holt. Ay; What is it you would ask him?

Jury-man. I deſire to know whether the Papers were ſealed when he took them and brought them to my Lord *Nottingham*?

Captain *Billop.* No; they were all tied up together with a Tape, or a Twine, I think with both, very faſt together.

Jury-man. There was no Seal on them when he took them,

Captain *Billop.* No; but there were ſeveral Letters within the Pacquet that were ſealed.

L. C. J. Holt. Was not the out-ſide of the Pacquet ſealed?

Captain *Billop.* I don't remember, the out-ſide was ſealed; there was a Cover, but as near as I remember, they were folds of Paper faſt tied together.

Mr. *Serj. Thompſon.* You delivered them as you took them, to my Lord *Nottingham*?

Captain *Billop.* Yes: I never took them out of my Pocket after I had taken them from Mr. *Aſhton* till I came to my Lord *Nottingham*'s Office, where I deliver'd them to him.

Mr. *Serj. Thompſon.* Had you ever opened them, or ſeen them opened, before they came to the Hands of my Lord *Nottingham*?

Captain *Billop.* No indeed.

Mr. *Serj. Tremain.* Then ſet up *Johnſon.* *(which was done.)* Pray tell us what you know of this Matter?

Johnſon. I was in my Lord *Dunblain*'s Barge, and I went down with this Captain *Billop*, and we were on board ſeveral Veſſels; and we light upon a Ketch, where we preſſed ſome Men, we thought it had been only ſome Seamen that were to be preſſed, we did not know of any thing elſe. When we had rowed down as far as you have heard, we rowed up again, and ſearched ſeveral little Veſſels and Smacks that were in the River; when a Fiſher-man that we had preſſed, ſaid, That that was the Veſſel the Captain enquired after: And then the Captain bid us take ſome ſmall Arms; and I took a Piſtol, and I went aboard. The Captain read the Protection, and then ſaid, he muſt look further: When the Captain look'd into one of the Cabins, and took up the Hatches, I ſaw a great piece of Roaſt-Beef, and my Lord *Preſton* by it, and a Mince-Pye, and a Fowl; and we took the Beef out, but my Lord's Man ſaid, he miſſed his Knife, it lay upon the Bench: And then came my Lord up, and his Man, and Mr. *Elliot*; and when Mr. *Aſhton* (the Man with the Pock-holes) came up, he went down again and pretended to look for his Hat; but when he was down, I ſee him cram ſomething into his Boſom, and I told the Captain, I had ſeen him put ſomething in his Boſom; and the Captain took him hold by the Buttons of his Coat and turned him about, and asked him, what he put into his Boſom? He ſaid, nothing but his Handkerchief; and pulling it out of his Boſom, he ſhewed it the Captain: but the Captain put his Hand into Mr. *Aſhton*'s Boſom and pulled out the Pacquet.

Mr. *Serj. Thompſon.* You ſay you ſee him put ſomething in his Boſom when he went down: Did you obſerve whence he took it?

Johnſon. It was upon the Gravel, and there were a couple of Seals which he afterwards took up lying by, and I believe he took up the Pacquet, and forgot the Seals.

Mr. *Serj. Tremain.* Pray let us ſee the Seals.

Mr. *Sol. Gen.* Your Lordſhip obſerves the Pacquet was not at firſt in Mr. *Aſhton*'s Boſom.

L. C. J. Holt. No, it was not.

Mr. *Sol. Gen.* But he took it up from the place where the Seals lay, and put it in his Boſom. Pray in what place did this Pacquet and theſe Seals lie?

Johnſon. Upon the Ballaſt, for they had ſhoved away the Board.

Mr. *Sol. Gen.* Was my Lord *Preſton* upon the Ballaſt?

Johnſon. Yes, my Lord lay almoſt upon his Back, he was the firſt that we ſaw, and he came out firſt; they were all four lying together there.

Mr. *Sol. Gen.* Who lay next my Lord *Preſton*?

Johnſon. My Lord's Footman, Mr. *Aſhton* lay next, and Mr. *Elliot* lay next.

Mr. *Sol. Gen.* Where were the Seals then?

Johnſon. My Lord was the firſt that I ſee come up.

Mr. *Sol. Gen.* But I ask you where the Seals were?

Johnſon. The Seals were down upon the Ballaſt; whether they were my Lord's or no, I cannot tell, or whoſe they were?

Mr. *Serj. Tremain.* Now that we will ask Captain *Billop*: Are theſe the Seals?

Captain *Billop.* Yes, theſe are the Seals this Man gave me.

Johnſon. I took them from off the Ballaſt.

Mr. *Serj. Thompſon.* Did my Lord own theſe to be his Seals?

Captain *Billop.* I did not ask him that I know of.

Mr. *Serj. Thompſon.* Well, *Johnſon*, go on, tell what you know further.

Johnſon. After we came to *Long-reach*, a Gentleman that had a long Perriwig, a black Gentleman, Mr. *Ellyot* I think they call him, had a pair of Whiskers on when he was taken; and he took a pair of Sciſſers and cut them both off; and he ſaid, if ever he liv'd, he ſhould remember me, having a Tooth out, becauſe I was ſo ſharp upon him to make him come out: And when we came on board the *George* Frigat in *Long-reach*, my Lord's Man came to me, and ſaid, he would give me ſomething to drink, if I would deliver him the Seals.

L. C. J. Holt. Had you any Diſcourſe with my Lord *Preſton* himſelf about them?

Johnſon. No, it was his Footman that came to me, and ſaid there was no body there but my ſelf and him; I had them, and he would give me ſomething to drink if I would deliver them, but I delivered them to Captain *Billop*.

L. Preſton. My Lord, may I ask a Queſtion or two of this Witneſs?

L. C. J. Holt. Yes, my Lord, if they have done with him. What ſay you, Brother *Thompſon*?

Mr. *Serj. Thompſon.* We ſhall have done with him preſently, my Lord. Pray had you any Money given you?

Johnſon. No, but my Lord gave the Ship's Company ten Shillings to drink, and one piece was a Braſs Half-Crown.

Mr. *Serj. Thompſon.* What did they ſay as they went along, as you remember?

Johnſon. They had a great deal of Diſcourſe while we rowed; I was at the next Oar to them, but I cannot tell what 'twas.

Mr. *Serj. Thompſon.* Who did diſcourſe?

Johnſon. Aſhton, Elliot, and the Captain.

Mr. *Serj. Thompſon.* Cannot you remember what they ſaid any of them?

Johnſon. They did talk together ſeveral times, *Elliot* ſaid he was a cold; and came and rowed at the Oar a while, and *Elliot* ſwore an Oath, ſays he, they row all as if they were rowing to Priſon; but truly I did not much mind their Diſcourſe, I minded my rowing. There were ſome Victuals handed to us which we did eat.

Mr. *Serj. Tremain.* Did *Elliot* ſeem to be angry? What did he ſay?

Johnſon. Elliot wiſhed that a Thunderbolt might drop into the Boat ſeveral times, and ſink it; and when we went through Bridge againſt Tide, he wiſhed that *London*-Bridge might have fallen upon our Heads.

L. Preſton. Now I would ask him, if your Lordſhip pleaſe, Did you ſee *Aſhton* take up the Pacquet?

Johnſon. Yes, I did, as it lay by the Seals.

L. Preſton. I perceive there ſeems to be ſome ſtreſs laid upon my lying next to Mr. *Aſhton*, and my Seals lying by the Pacquet.

L. C. J. Holt. My Lord, here has been no Inference made from that yet by the King's Council.

L. Preſton. My Lord, it is in vain to deny we were all together there.

Johnſon. You were the firſt that I ſee, my Lord.

L. Preſton. We were all together, but there is no ſuch thing to be gathered from thence as they would inſinuate; but I ſuppoſe 'twould be deduced from hence, as if this Pacquet, becauſe it lay near theſe Seals, ſhould be my Pacquet.

L. C. J. We have not yet heard, my Lord, what uſe they will make of it.

L. Preſton. But I deſire to take notice of it, my Lord, and I think it is a very hard Preſumption becauſe we were in one place and the Seals at a little diſtance from the Pacquet, therefore the Pacquet muſt be preſumed to be mine, I hope it ſhall not be preſumed againſt me.

L. C. J. Holt. Since your Lordſhip mentions it, I will take notice a little of it too: It is only a circumſtantial Evidence that is made uſe of againſt you; how far it will weigh, is to be left to the Jury when all the Evidence is heard. The Pacquet is found in the place where your Lordſhip lay, and by it Seals that belong to you; one is the Seal of your Office, as Secretary of State, the other is your own proper Coat of Arms.

Jury-man. With Submiſſion, my Lord, I deſire this Witneſs may be asked this Queſtion, Whether he ſaw Captain *Billop* take the Pacquet out of *Aſhton*'s Boſom?

Johnſon. Yes, I did.

Jury man. And, whether he ſaw *Billop* deliver the ſame Pacquet to my Lord *Nottingham*?

Johnſon. No, I did not.

L. C. J. Holt. You Gentlemen of the Jury, conſider this, he was not then by: Captain *Billop* tells you, that very Pacquet which he took out of *Aſhton*'s Boſom he carried to my Lord *Nottingham*, and he tells you my Lord opened it in his preſence, and he is ſure he put all the Papers together again and ſet his own Seal upon them, and then he took them from my Lord *Nottingham*, and carried them to my Lord Preſident.

Johnſon. As ſoon as I came to *White-hall*, I was ſet Sentinel over thoſe three Men that came out of the Smack, and was not admitted into the Room.

Mr. *Sol. Gen.* Then we muſt deſire my Lord *Nottingham* may be ſworn.

The Earl of Nottingham *ſworn.*

Mr. *Serj. Tremain.* Where are the Papers?

Earl of *Nottingham.* Mr. *Bridgman*, I think you have the Papers.

Mr. *Sol. Gen.* Pray, my Lord, does your Lordſhip remember Captain *Billop* brought a Bundle of papers to you, and what became of them? Will your Lordſhip be pleaſed to give the Court and the Jury an account of it?

Earl of *Nottingham.* My Lord, all that I have to ſay in this matter is, Captain *Billop* brought to me a Bundle of papers tied about with a Packthread, to which was fixed a piece of Lead, I believe the ſame piece that was now produced, at leaſt it was one very like it, he brought alſo a Signet which I preſume I can know again when I ſee it.

Mr. *Serj. Thompſon.* Pray ſhew my Lord the Seals. *(which was done.)*

Earl of *Nottingham.* This is the Signet I preſume which he brought to me, I am ſure he brought juſt ſuch a one, if not the ſame: thoſe Papers when he delivered them to me, I opened in his Preſence, and when I had ſo done, I read them and put them up together again and ſealed them with my own Seal, and delivered them to him

him back again. What the Papers are, and what he did with them, I ſuppoſe he will give you an account.

L. C. J. Holt. But your Lordſhip ſays the Bundle of Papers he delivered to you, you ſealed up and delivered to him again.

Earl of *Nottingham.* All thoſe Papers that he brought to me, I did ſeal up, and deliver back to him again.

Mr. *Serj. Thompſon.* Pray, my Lord, were they ever out of Captain *Billop*'s ſight while your Lordſhip had them?

Earl of *Nottingham.* Not after they were opened: there was a little Paper that was tied to the Bundle which fell looſe upon the taking away the Lead, and I opened that while he was by, and the Bundle lay upon the Table while I examined my Lord *Preſton*, and after my Lord *Preſton* was gone out, I called in Captain *Billop* (who went out while I examined my Lord) and I opened that great Pacquet in his ſight and read the Papers, and he read ſome of them, and all the Papers in the great Pacquet, and the little Paper that was ſtuck in, I delivered ſealed up to Captain *Billop*.

Mr. *Serj. Thompſon.* Pray, my Lord, were the Letters in the Pacquet ſealed?

Earl of *Nottingham.* Yes, there were ſome of them ſealed, and all that I received from him I delivered to him, and no more.

L. C. J. Holt. The Gentlemen of the Jury hear what my Lord ſays.

Earl of *Nottingham.* The very ſame, all, and no more, I ſay.

Mr. *Serj. Thompſon.* Captain *Billop*, when you had them back from my Lord of *Nottingham*, pray to whom did you deliver them?

Captain *Billop.* To my Lord Preſident.

Mr. *Serj. Tremain.* Then we muſt deſire my Lord Preſident would be pleaſed to be ſworn.

The Marqueſs of Carmarthen, *Lord Preſident of the Council, was ſworn.*

Mr. *Sol Gen.* We muſt deſire the favour of your Lordſhip, to acquaint the Court when Captain *Billop* came to your Lordſhip, what he ſaid, and what he brought with him.

L. Preſident. Captain *Billop* did bring me a bundle of Papers, and he told me he brought them from my Lord of *Nottingham*, and they were ſealed, wrap'd up with a Packthread, and ſealed with a Seal, which I knew to be my Lord's Seal; he delivered them to me my ſelf; and theſe Papers I kept till I ſhew'd them the King the next morning. And after I had ſhewed them the King, the King delivered them up back to me, having read ſome of them, and commanded they ſhould be delivered to the Cabinet Council. A Cabinet Council was called, and accordingly there I did deliver them Paper by Paper, and they were all marked by my Lord *Sidney*, and ſome I think by my Lord *Marlborough*; and ſo I delivered them all together to my Lord *Sidney*.

Mr. *Sol. Gen.* Then we deſire my Lord *Sidney* would pleaſe to be ſworn.

The Lord Sidney *Sworn.*

Mr. *Serj. Thompſon.* Will your Lordſhip pleaſe to acquaint the Court and the Jury what Papers were delivered to you, and by whom, and where thoſe Papers are?

L. Sidney. The Papers that were delivered by my Lord Preſident, I have kept them, my Lord, ever ſince: As ſoon as I had them, I read them, and marked them with a Letter of my own Name, the Letter *H.* I have kept them ever ſince, only one morning I gave them to Mr. *Bridgman* to be copied out as ſoon as he could; and he delivered them me back again, and they have not been out of my Cuſtody ſince, only the night before laſt Night they were ſent to Mr. Sollicitor to read, and brought immediately to me again.

Mr. *Sol. Gen.* To whom did your Lordſhip deliver them to be copied?

L. Sidney. To Mr. *Bridgman*, I tell you.

Mr. *Sol. Gen.* So that they were never out of your Lordſhip's Hands till now, but only in Mr. *Bridgman*'s Hands?

L. Sidney. No, I kept them in my Pocket ever ſince, only the Night before laſt Night when they were ſent to you.

Mr. *Sol. Gen.* Did your Lordſhip mark them before they were delivered to Mr. *Bridgman* to copy?

L. Sidney. Yes, I marked them when I received them.

L. Preſton. My Lord Chief Juſtice, your Lordſhip does obſerve that Captain *Billop* ſwears that they were never out of his Poſſeſſion till he delivered them to my Lord *Nottingham*; my Lord *Nottingham* ſays he never opened them, but left the Pacquet upon the Table while I was examining.

L. C. J. Holt. Pray, my Lord, will you ſpeak a little louder that I may hear you?

L. Preſton. My Lord, I am ſaying, my Lord *Nottingham* ſays, That while he was examining me, the Pacquet lay upon the Table unopened, and were never out of his Eye till he ſent them ſealed by Captain *Billop*, and ſo they come to my Lord Preſident, and they were kept by my Lord Preſident; my Lord Preſident ſays, my Lord *Churchill* ſaw the Papers, and they were in his Poſſeſſion.

L. C. J. Holt. My Lord *Preſton*, your Lordſhip does miſtake my Lord Preſident, he does not ſay that they were in my Lord *Marlborough*'s Hands; but he did communicate them at the Cabinet Council where my Lord *Marlborough* was; he ſaid indeed, they were in the King's Hands, but he was by all the while.

L. Preſton. From that time they came out of my Lord Preſident's Hands, I know not what may be put in, nor what taken out, theſe Papers are not ſealed, as I hear of, afterwards; and paſſing through ſo many Hands, no body knows what may be done to them: Truly, I think it very hard to ſwear, after all this, that theſe are the Papers that were taken aboard the Smack.

L. C. J. Pollexfen. Will you pleaſe to ask any Queſtions to ſatisfy your ſelf of any of theſe Noble Lords?

L. C. J. Holt. My Lord, I'll put your Lordſhip right.

L. Preſton. With all my Heart, my Lord.

L. C. J. Holt. Your Lordſhip hears what Captain *Billop* ſays; he ſays, he brought them, as he took them out of *Aſhton*'s Boſom, to my Lord *Nottingham*: My Lord *Nottingham* opened them before him, and did deliver them to him again, having made them up. My Lord *Nottingham* ſays, the ſame Papers Captain *Billop* delivered him, he delivered back again, all, and no more; and *Billop* ſays, he carried them to my Lord Preſident; my Lord Preſident ſhewed them to the King, and afterwards carried them

to the Cabinet Council; there the ſame Papers were opened, and there they were marked, ſome by my Lord *Marlborough*, and all by my Lord *Sidney*.

L. Preſton. Your Lordſhip will pleaſe to obſerve this; my Lord *Nottingham* was pleaſed to ſay, he opened no Papers till I was called in and examined, and then Captain *Billop* withdrew. Now, my Lord, I don't know whether the Captain can ſay that theſe were the very ſame Papers that he took in the Smack?

L. C. J. Holt. Captain *Billop* ſays, that he ſaw the Papers opened by my Lord *Nottingham*.

Captain *Billop.* My Lord *Preſton* obſerves a thing that is very right, my Lord, that after I had delivered the Pacquet to my Lord *Nottingham*, while my Lord was examined, I withdrew; but my Lord *Nottingham* has given your Lordſhip an account, that he had not opened the Pacquet then, but only the ſmall Letter or Note that lay apart from the reſt: But, my Lord, the Pacquet was in the ſame condition when I came in again, upon the Table, as when I left it; my Lord *Nottingham*, as I believe, had not opened that Pacquet, for I found it juſt as I left it, upon the Table.

L. C. J. Pollexfen. My Lord *Nottingham* ſays, he delivered back to Captain *Billop* all the Papers that he received from him; they were never out of my Lord *Nottingham*'s preſence; nor were they opened, as my Lord ſays, but in *Billop*'s preſence, nor opened till after my Lord's Examination, except the little Paper that was ſtuck in, and was looſe upon taking away the Lead.

Mr. *Sol. Gen.* Pray ſwear Mr. *Bridgman.*

(Which was done.)

Mr. *Serj. Thompſon.* Pray, when you received the Bundle of Papers from my Lord *Sidney*, to whom were they carried, and to whom were they delivered?

Mr. *Bridgman.* My Lord *Sidney* gave me theſe Papers to have them copied; and I copied ſome of them with my own Hand, the others I delivered to Mr. *Poultney*, and were copied in my preſence in the Office: They were never out of my ſight, and as ſoon as ever they were copied, I carried them back to my Lord *Sidney*, and delivered them to him my ſelf.

L. Preſton. Were any of them taken from you, Sir?

Mr. *Bridgman.* My Lord, I ſay I copied ſome of them my ſelf, the others were copied in my ſight and preſence, in the Office.

Mr. *Serj. Thomſon.* Pray, Sir, let me ask you one Queſtion; Were the ſame papers that were delivered to you by my Lord *Sidney*, re-delivered back again and altered?

Mr. *Bridgman.* I am very ſure I gave them all the ſame back again, becauſe I read them every one before they were copied.

Mr. *Serj. Thompſon.* Did you obſerve my Lord *Sidney* had marked them before you had them?

Mr. *Bridgman.* Yes, they were all marked before I had them.

L. Preſton. My Lord, I deſire to ask Mr. *Bridgman* this Queſtion, Pray, Sir, were they ſealed up when you ſent them to my Lord *Sidney*?

Mr. *Bridgman.* No, they were not ſealed, they were tied up, but about the Seals I remember when I was in my Lord *Sidney*'s Office ——

L. C. J. Holt. The Queſtion is ask'd you, Whether you carried them back ſealed or no?

Mr. *Bridgman.* No. They were not ſealed when they were delivered to me, but I can ſafely ſwear they were never out of my Cuſtody till I delivered them back again; for what I did not copy my ſelf, were copied in my ſight.

Mr. Serj. *Thompſon.* But your Lordſhip is pleaſed to obſerve they were all mark'd by my Lord *Sidney* before they were delivered unto him.

Mr. *Sol. Gen.* Then, my Lord, we have done with our living Witneſſes for the preſent, and will read the Papers.

Mr. *Bridgman.* One thing, my Lord, I do remember, as ſoon as my Lord *Sidney* received the Papers back again, he looked over every one of them and read them, and looked upon the Marks.

L. Preſton. If your Lordſhip pleaſe, I would beg the favour to ask one Queſtion of my Lord *Sidney*; Pray, my Lord, did your Lordſhip number the Papers?

L. Sidney. No, my Lord, I did not number them.

L. Preſton. But your Lordſhip ſays upon your Oath and Honour, that thoſe are the very Marks upon them that your Lordſhip ſet there.

Mr. *Sol. Gen.* We are indeed to produce them, and then we ſhall ask that particular Queſtion.

L. C. J. Holt. My Lord *Sidney* will ſee them, and then he will anſwer your Lordſhip's Queſtion.

L. C. J. Pollexfen. My Lord *Preſton*, my Lord *Nottingham* is here a Witneſs, and his Occaſions call him away, have you a mind to ask him any more Queſtions?

L. Preſton. No, my Lord.

L. C. J. Pollexfen. What ſay you, Gentlemen, have you any further occaſion for my Lord *Nottingham*?

Mr. *Sol. Gen.* My Lord, we muſt beg his Lordſhip's Patience, we do not know what occaſion there may be; I deſire this Paper may be ſhewn to my Lord *Sidney*.

(which was done)

L. Sidney. That is my mark, that Paper I know is one of the Papers.

Mr. *Serj. Tremain.* Here are two of them, one of theſe is the Copy of the other, both were taken in the ſame Packet, the one is fairer written than the other.

Mr. *Soll. Gen.* Gentlemen, the Paper we are now offering to you is that which I mentioned before, it is the Reſult of a Conference; there were two of them taken in this Bundle, the one of them ſeems to be the firſt Draught, the other is a Copy more fairly written; but I think they are both in effect the ſame; however they were both taken in the ſame Pacquet, and you ſhall hear them read.

L. Preſton. My Lord, I deſire that before it be read, it may be ſhewn to Capt. *Billop*, to know whether it be the very Paper that he took.

L. C. J. Holt. Ay, let Capt. *Billop* look upon it.

Capt. *Billop.* My Lord, I do not remember that Paper.

L. Preſton. Your Lordſhip obſerves that Capt. *Billop* cannot ſwear that this was one of the Papers that he took.

Capt. *Billop.* All the Papers that I looked into I marked, and all the Papers that I mark'd I can ſwear to, and no others.

L. C. J. Pollexfen. Did you look into all the Papers?

Capt.

Capt. *Billop.* No, I did not.

L. C. J. Holt. But he ſwears all that he brought to my Lord *Nottingham* were ſealed up by my Lord *Nottingham*, and carried by him from my Lord *Nottingham* to my Lord Preſident, and my Lord Preſident ſwears he delivered them all to my Lord *Sidney*, and my Lord *Sidney* ſwears this is one of thoſe Papers.

L. Preſton. Certainly, my Lord's ſwearing to a Paper in this manner cannot be a good Proof: my Circumſtances, my Lord, are very hard, and your Lordſhip, I have heard, ought to be of Council for me in any Point of Law; and, my Lord, I humbly deſire to know, whether this can be a Proof of a Paper, that he ſays was taken in a Pacquet, and yet he can't ſwear it?

L. C. J. Holt. My Lord, he does not ſwear that this was one of the Papers; but the Queſtion is, Whether all theſe Witneſſes together do not prove it? You ſee how the Evidence runs; All the Papers taken were delivered to my Lord *Nottingham*: All that were delivered to him were ſent back by him ſealed, and delivered to my Lord Preſident; my Lord Preſident brought them all to the Cabinet-Council, and delivered them to my Lord *Sidney*, and this my Lord *Sidney* ſays is one of thoſe Papers;

L. Preſton. My Lord, I have a very great Honour for that Noble Lord, and I am ſure, if he had not been upon his Oath, he would have ſaid that which was truth; but in this condition that I am in, I muſt crave leave to obſerve every thing I can for my ſelf, and I cannot but ſay theſe Papers are very oddly managed, and delivered up and down from one hand to another; I deſire your Lordſhip would pleaſe to obſerve that theſe Papers are here brought after a very odd manner.

Mr. *Serj. Thompſon.* My Lord *Preſton*, you are not to ſum up the Evidence to the Jury till we have done, nor to make your Obſervations.

L. C. J. Holt. Brother, my Lord oppoſes the reading of the Paper, as not well proved.

L. Preſton. I do ſo, my Lord, and I hope your Lordſhip will adviſe me whether you do think it a ſufficient Evidence and Proof of theſe Papers; they are Papers that have been copied out, and ſent unſealed from hand to hand by ſome Meſſengers from one to another, and which now appear to be unſealed, and ſome of which he that took them cannot ſwear to.

Jury-man. My Lord, we cannot hear one word that is ſaid.

L. Preſton. That is my misfortune: but I am urging to my Lords the Judges, whether this Paper ought to be read, and I deſire your Lordſhip to adviſe me, whether it can be admitted as Evidence, being thus oddly proved?

L. C. J. Holt. It is Evidence ſurely, my Lord: but the Queſtion is, What Credit the Jury will give to this Evidence, the Jury are Judges of that; but certainly it is Evidence to have the Paper read.

L. Preſton. I doubt not but your Lordſhip will do me Juſtice, and I readily acquieſce in what your Lordſhips do appoint.

L. C. J. Pollexfen. Pray, my Lord, ſee how the Evidence ſtands about this matter; firſt it is ſworn by *Billop*, that he took a Bundle of Papers, tho 'tis true, the Particulars he does not undertake to ſwear to; Well, what is next? why, ſays he, all that was in that Bundle I carried to my Lord *Nottingham*, and I received from my Lord *Nottingham* all that I carried to him. What ſays my Lord *Nottingham*? he ſwears I delivered back again to Capt. *Billop* the ſame Papers he delivered to me, and all and no more, ſealed up with my Seal. When he has it ſealed up, what does he do with it? why he carries it to my Lord Preſident. Is there any poſſibility of creeping out of this Evidence? Well, he delivers them to my Lord *Sidney*, and my Lord *Sidney* ſays this is one of thoſe Papers: Can there be a plainer Evidence than this? when he ſays, all he had he carried to my Lord *Nottingham*, and my Lord *Nottingham* ſwears all he did receive he ſent back ſealed by him to my Lord Preſident, and my Lord Preſident ſwears all he received ſo ſealed he gave to my Lord *Sidney*, and my Lord *Sidney* ſwears this is one of thoſe Papers.

L. Preſton. But your Lordſhip will pleaſe to obſerve they were carried to the King, and they were in the hands of my Lord *Marlborough*.

L. C. J. Holt. No, my Lord, not out of the ſight of my Lord *Preſident*: My Lord *Preſident* ſays my Lord *Marlborough* marked ſome of them, but they were delivered to my Lord *Sydney*, and my Lord *Sydney* does ſay they are the ſame Papers that he had from my Lord *Preſident*, and my Lord *Preſident* ſays, they are the ſame that were brought him by Captain *Billop* from my Lord *Nottingham*, and my Lord *Nottingham* ſwears he ſealed them, the ſame Papers, all and no more than he received from Captain *Billop*.

L. C. Baron. Your Lordſhip ſhould obſerve where the defect of the Proof is, and then it may be ſupplyed; for truly, put it altogether, I cannot ſee how there could be a plainer Proof given.

L. Preſton. My Lord, I deſire to be heard as to this, my Lord *Preſident* was pleaſed to ſay, that ſome of them were delivered to the King.

L. C. J. Holt. No, they were ſhewn to the King, but my Lord *Preſident* was by all the while that the King did read them.

L. Preſton. My Lord, where a Mans Life lyes at ſtake, and all that is dear to him, your Lordſhip will certainly allow him to make what obſervations he can for himſelf.

L. C. J. Holt. Ay, in God's Name, by all means: You ſhall have all the Liberty you can deſire.

Mr. *Sol. Gen.* My Lord, we deſire my Lord *Preſident* will be pleaſed to look upon thoſe Papers.

Which was done.

L. Preſident. This is one of the Papers that I received from Captain *Billop*, and which I ſhewed to the King, and which I brought to the Cabinet Council; and this is another of the Papers.

L. Preſton. Pray my Lord, was your Lordſhip by when His Majeſty read thoſe Letters.

L Preſident. Yes, my Lord, I was.

L. Preſton. My Lord, I ask it for this end, to know whether they were out of your Lordſhips ſight.

L. Preſident. No never; I was in the Kings Cabinet, His Majeſty read ſome of them, and then put them up again, and gave them me, and I delivered them at the Cabinet Council to my Lord *Sidney*.

Mr. *Sol. Gen.* My Lord, we deſire this Paper may be read.

L. C. J. Holt. Read it.

Clerk of the Peace, Reads.

The Result of a Conference between some Lords and Gentlemen, both Tories *and* Whigs, *in which it was undertaken to prove the possibility and method of restoring by a* Fr. *Power, without endangering the Protestant Religion and Civil Administration, according to the Laws of this Kingdom.*

'1 F. Must either Oblige or Conquer us: If 'F. the last, he will find few helps here, but 'a bloodyer resistance than ever the *Romans*, '*Saxons*, or *Normans* found: It being incredible, 'how unanimous and obstinate that very thought 'renders the Peop e, so that it may make us a 'heap of ruin, but no Nation that can ever help 'or import any thing to *F.*

'2. If K. *L.* desires to oblige Us, and make 'the Work easie, that he may be at leisure to 'ply the *Empire* or *Italy*, or to have an advanta-'geous Peace, he must take off the frightful 'Character we have of him, and shew us he has 'no such design, as returning our Offended *K.* 'a Conqueror upon us, but that he can and will 'be our Friend and Mediator; upon which 'terms he will find that many Lords and Gen-'tlemen will speedily shew themselves to his Sa-'tisfaction; especially, if he makes haste, and 'loses no approaching Opportunity.

'3. If he incline to this sort of Sense, he 'must over rule the Bigotry of St. *G.* and dispose 'their Minds to think of those Methods that are 'more likely to gain the Nation; for there is one 'silly thing or other daily done there, that comes 'to our notice here, which prolongs what they 'so passionately desire. The Methods thought 'upon are these,

'*First*, To prevent dangerous and foolish In-'telligence, by forbidding all in that Court to 'write any News hither, and that K. *J.* only 'have his Correspondence by whom to hear 'from, and speak to People here; since Letters 'so often miscarry, and are filled with nothing 'but what we should not hear; and what we 'have are Arguments for the most part against 'the K's Restoration.

'*Secondly*, Since there is a great Body of Pro-'testants that never defected, and that many 'Thousands are returning, and that they are 'the Natural Weight and Power of these King-'doms, by having the Heads, Hands and Wealth 'of their side, to the odds and advantage of at 'least Two Hundred Protestants to one Catho-'lick; the K. may think of nothing short of a 'Protestant Administration, nor of nothing 'more for the Catholicks than a Legal Liberty 'of Conscience; for much e mutt is against all 'other Notions, to which all private Passions, 'and artificial Frames in Government must yield 'or break. He may Reign a Catholick in De-'votion, but he must Reign a Protestant in Go-'vernment. *Cromwel* could not, yet on a broad-'er bottom, with a Victorious Army, subsist or 'keep what he had got.

'*Thirdly*, He must give us a Model of this at 'St. *G.* by preferring the Protestants that ate 'with him above the Catholicks; one being 'Loyal upon less tyes of Interest, and to tell 'the Nation here what they are to hope for 'when he comes.

'*Fourthly*, He must give Incouragement to 'Lords and Gentlemen here to come to him, at 'least Seven or Nine for a standing Council, 'which will make us here think he is in some 'degree ours again, and that we have a relation 'to him, and some interest and share in him, by 'the Men of Quality of our own Religion that 'are with him. This will incomparably facili-'tate the matter here, nor will they, when they 'come, come empty, and in their own Names, 'which is still better, and will be more 'satisfactory there.

'*Fifthly*, To induce this, *English* Protestants 'should be encouraged by an Edict of Liberty 'from the K. of *F.* to have Chappels at their own 'Costs, in which to Worship God after their res-'pective ways, by which that K. will make us 'reflect upon his Conduct towards his *Hugonots*, 'rather to flow from the hazard he thought him-'self in by their Antimon. and resisting Princi-'ples, than a desire of Persecution.

'*Lastly*, All other requisite Measures depend-'ing upon the acceptance this finds, an Answer 'hereunto is impatiently desir'd by those that 'have Discoursed the K's Business to this Matu-'rity. So ended with an Unanimous Consent, 'both *Tories* and *Whiggs* upon this Occasion, that 'are in a way of closing in his Interest.

L. Preston. I can very safely swear, my Lord, that I never saw that Paper in my Life.

L. C. J. Holt. Come, go on with your Evidence.

Mr. *Sol. Gen.* This is another Paper of the same, but the Words that are written short in that are written at length in this.

The Paper was read accordingly, and in the first blank there was written K. *J.* in the first Paragraph (*France*) twice, in the third Paragraph (St. *Germains*) in the Fifth, (*Mathemat.* for *Much e mutt*) the rest are obvious, and need not to be supplied.

Mr. *Sol. Gen.* Pray shew my Lord *Sidney* that Paper, what says your Lordship to it?

L. Sidney. This is one of the Papers that I marked, and that I received from my Lord *President.*

Mr. *Sol. Gen.* Pray will my Lord *President* be pleased to give himself the trouble to cast his Eye upon that, and see if that be one of the Papers.

L. President. My Lord, I remember it well, it is one of the Papers I received from Capt. *Billop.*

Mr. Serj. *Tremayn.* This Paper is what Mr. Sollicitor mention'd as heads of a Declaration.

L. Preston. My Lord, I think it necessary to offer one thing to your Lordships before it be read, I desire Capt. *Billop* should swear it to be one of his Papers.

Mr. *Sol. Gen.* If your Lordship pleases, you observe what has been done already. My Lord *President* says 'tis one of those Papers that was sent him by my Lord *Nottingham*; and my Lord *Sidney* has sworn it is one of the Papers he had from my Lord *President.*

L. Preston. I shall not give your Lordship any more trouble than needs; I only offer it to your Lordship: I wave it.

L. C. J. Holt. There is Evidence enough to have the Paper read.

Clerk of the Peace, Reads.

'That the King will return with a design of 'making an Entire Conquest of his People, is so

'ſo ridiculous as well as difficult, that it needs 'not be ſpoken to.

'That the Kings Declaration be worded in 'General Terms, That he will Govern by the 'Laws, that they ſhall be the Rule of his Acti-'ons, that he will Endeavour to ſettle Liberty 'of Conſcience by Law, that whatſoever things 'were formerly done by him, which occaſioned 'Jealouſies in the minds of his People, ſhall be 'left to the determination of a Parliament, to 'be formally and regularly called as ſoon as is 'poſſible.

'That he has given ſufficient Evidence of his 'unwillingneſs to bring an Army of Strangers 'into his Kingdom, by refuſing the Succours of 'the King of *France* offered him, and which 'were even ready to be Embarked upon the firſt 'Notice of the P. of *Oranges* intended Invaſion.

'That he brings with him ſuch an Army on-'ly as is neceſſary for his own defence, and for 'the ſecurity of ſuch of his Loyal Subjects as 'ſhall reſort to him, that he will diſmiſs them 'as ſoon as he ſhall have rid the Nation of thoſe 'Foreigners who have Invaded it, and trampled 'upon the Laws and Liberties of his People.

'The Kings large exerciſing his Diſpenſing 'Power gave the great alarm to the People, 'and contributed moſt of all toward the General 'Defection. Yet when that Power came to be 'debated in the laſt Convention, there appeared 'ſo many difficulties in the limiting of it, (every 'Body, even the preſent Judges believing it ne-'ceſſary, That a diſpenſing Power ſhould be in 'the K.) That it was let fall, and that point re-'mains as it was. And without mentioning 'that, or any other particular, the K. can be in 'no danger by leaving all things which have 'been the occaſion of Jealouſies to the determi-'nation of Parliament, where beſides the Kings 'profeſſed Friends and Servants, there will not 'want others who will be glad of opportunity 'to ingratiate themſelves.

L. C. J. Pollexfen. Gentlemen of the Jury, If you deſire any thing to be read again, or any thing doubtful in it, ſhould be Explained, tell us, and it ſhall be done.

Juryman. No, my Lord, There is no occaſion for that. I believe we apprehend theſe three Papers that have been read.

L. Preſton. My Lord, It is neceſſary the Gentlemen of the Jury ſhould be ſatisfied in this point.

L. C. J. Pollexfen. Ay in any point, and if they deſire any ſcruple ſhould be cleared, the Court will do it for them.

Juryman. My Lord, I deſire to know whether Captain *Billop* Signed that Paper or no.

L. C. J. Holt. No, he did not ſign half of them, but unleſs it be proved, you ought to take it for granted, that it is not Signed by him.

L. Preſton. My Lord, I think it fit the Jury ſhould be ſatisfied in any ſcruple they raiſe.

L. C. J. Holt. They asked this Queſtion, Whether Captain *Billop* did ſign the Paper, and I told them Captain *Billop* did not ſay ſo, and therefore they are to take it for granted, that he did not.

Juryman. My Lord, We take this laſt Paper that was read to be a Paper that was delivered in the Bundle taken from Mr. *Aſhton* to my Lord *Nottingham*, but not Signed by Capt. *Billop.*

L. C. J. Pollexfen. Then you take it right.

Mr. *Sol. Gen.* Then the next paper that we produce is a Liſt of the *Engliſh* Fleet that theſe Gentlemen were carrying over into *France.*

L. Preſton. That is printed, and to be found in every Coffee-Houſe.

Mr. *Serj. Tremain.* Shew that paper to Captain *Billop.* (*Which was done.*)

Can you take it upon your Oath, Captain, That that paper was in the Pacquet that was taken in Mr. *Aſhton's* Boſom.

Captain *Billop.* That paper I have marked, and that paper I ſwear was in the Pacquet I took away from Mr. *Aſhton* aboard the Smack.

L. C. J. Holt. You are ſure of it.

Captain *Billop.* Yes my Lord.

L. C. J. Holt. Then read it.

Cl. of Peace. Reads.

SHIPS.

Rates.	Ships.	In Repair.	Not.	Building.
1	8	5	3	
2	12	11	1	
3	35	34	1	
4	38	34	4	4
5	14	14		1
6	9	9		
Fireſhips	25	25		8
Bomb-Veſſels	1	1		8
Ketches	1	1		
	143	134	9	21

Brought in by Admiral Ruſſel *to the Houſe of Commons,* December *the* 24*th* 90. *the Fleet, whereof* 60 Dutch.

Memorandum, *The new Ships Building are expected, will be ready to be launched by the end of* March.

Mr. *Serj. Tremain.* Pray ſhew this Paper to Captain *Billop.* (*Which was done.*)

Pray was that paper there among the others that were taken with theſe Gentlemen?

Captain *Billop.* Yes it was.

Mr. *Sol. Gen.* Can you take it upon your Oath, that that paper was in the Pacquet that was in Mr. *Aſhton's* Boſom.

Captain *Billop.* Yes, my Lord, I can.

Mr. *Serj. Tremain.* Pray ſhew him that paper too. (*Which was done.*)

Mr. *Sol. Gen.* And can you take upon you to ſay, That that was one of the papers in the Pacquet?

Captain *Billop.* Yes, it was.

Mr. *Sol. Gen.* My Lord, We deſire theſe may be read.

Clerk of the Peace reads, New-Years Eve, and it is directed for Mr. *Redding.*

'*Sir*, Though the Bearer of this will do us 'the Juſtice, to aſſure you, we are as full of 'Duty, as unfeignedly, and unconcernedly 'yours, as your ſelf could wiſh; yet this Gen-'tleman has undertaken. You will forgive the 'Preſumption, if I do my ſelf the Honour to 'give you this freſh aſſurance in a few words, 'which I hope we do by our Accounts; I ſhall 'omit no Occaſions, not neglecting the leaſt, 'and making zealous Wiſhes for the greateſt, to 'ſhew our ſelves ſuch as we ought to be'.

Si-

'*Sir*, I ſpeak in the plural, becauſe I write 'my Elder Brother's Sentiments as well as my 'Own, and the reſt of the Family, though 'leſſened in Number; yet if we are not mighty out in our Accounts, we are growing in 'our Intereſt, that is in yours: He that delivers 'this, will I hope, intirely to your Satisfaction, 'repreſent us and me in particular, as with all 'the Devotion imaginable, and unchangeable 'Affection'.

Yours, God grant the happieſt New Year.

Mr. *Serj. Tremain.* Read the other paper.

Cl. of Peace. This is dated *Dec.* 31. 1690. I muſt not let this Bearer depart, Madam, without aſſuring you——

Mr. *Sol. Gen.* Hold, Sir, Don't read that yet. Here, ſhew this paper to Captain *Billop*.

(*Which was done.*)

What ſay you Captain *Billop*? Is that one of the papers taken from Mr. *Aſhton*.

Captain *Billop*. Yes, This is one that I read and marked.

Mr. *Sol. Gen.* Then read it.

Cl. of Peace, reads: This is directed for Miſtreſs *Redding*.

'As 'tis impoſſible for me to expreſs that Extraordinary great Satisfaction it gave me this 'time Twelve Month, when I had the Honour 'to receive that mark of your Favour and 'Goodneſs under your own hand; ſo I have 'lived in ſome pain for an Opportunity to write 'you my humbleſt Acknowledgments and trueſt 'Duty, from which by the Grace of God, I am no 'more capable of ſwerving, than of renouncing 'my hopes of Heaven: I ſay this in behalf of my 'Elder Brother and the reſt of my neareſt Relations, as well as for my ſelf: You may intirely depend upon us, not only for a conſtant adherence to ſo well choſen a Principle, but for 'our utmoſt Activity to promote your Intereſt, 'which are inſeparable from our own: I need 'come to no Particulars by this Bearer, who 'can and will tell our whole heart; and I wiſh 'you could ſee them, how ſincerely they are 'devoted to your Service. God grant you a 'moſt happy New Year, and many, very many, 'and very happy. Our young Maſter hath all 'our beſt Wiſhes, he daily gains more Friends, 'and we get ground of his Adverſaries.

New Years-Eve.

Mr. *Sol. Gen.* Now read your other Paper of the 31. *Dec.* 1690.

Cl. of Peace. Reads, December 31. 1690. 'I muſt not let this Bearer depart, Madam, without aſſuring you of my beſt reſpects: I have 'written by him to a Friend of yours, but depend upon you to give my Note Credit.

'Though my Creditors were no Friends to 'the Match which has been ſo long in treaty, 'for your Relations have been very hard upon 'me this laſt Summer; yet as ſoon as I could 'go ſafely abroad, I purſued the buſineſs, and 'do beg you to believe, that no Endeavours of 'mine ſhall be wanting to perfect the Settlement. You once put me in hopes of ſeeing 'you before this *Chriſtmas*: Your Friends are 'ſorry for the Diſappointment, pray loſe no 'more time than is of abſolute neceſſity: The 'Bearer will tell you all things may be now 'eaſily ſettled, if the right way be taken. I 'long to hear how your young Daughter does, 'ſhe will find many Friends, and I hope her 'Portion will be well ſecured. God ſend you a 'happy New-Year, and that I may be merry 'with you before it be far ſpent, and I beſeech 'you, keep me in the good Opinion of your 'Friend, I will always make good what I promiſed to you. *It is directed for Mrs.* Charlton.

Jury man. My Lord, I deſire to know what that is directed to.

Cl. of Peace. 'Tis directed to Mrs. *Charlton*.

Mr. *Serj. Tremain.* Shew Captain *Billop* thoſe two Papers. (*Which was done.*)

What ſay you to them Captain?

Captain *Billop*. My mark is on the outſide, but there is nothing written in that, I believe it is taken off from the Inner paper.

L. Preſton. Pray my Lord is this any proof? I beſeech you for God's ſake to have a regard to a Man's Life.

Mr. *Sol. Gen.* Pray ſhew the paper to my Lord *Sidney*. (*Which was done.*)

Lord *Sidney*. This was one of the papers I received from my Lord Preſident.

Mr. *Sol. Gen* Then we muſt beg my Lord Preſident would be pleaſed to look on it.

(*Which was done.*)

L. Preſident. This was one of the papers brought me by Captain *Billop*, from my Lord *Nottingham*, in that Bundle.

L. Preſton. Captain *Billop* does not know the paper, though his mark be to it.

L. C. J. Pollexfen. It is not indeed very material, whether he does or no, becauſe he did not read all; but I would obſerve that 'tis ſworn by my Lord *Sidney*, that this was delivered to him by my Lord Preſident, and ſworn by my Lord Preſident, that he had it in that Bundle from Capt. *Billop*.

L. Preſton. But, my Lord, it does ſhew that there may be ſome alteration in the papers, becauſe he having marked it, and marking none but what he read, he does not now own that to be the paper.

Mr. *Sol. Gen.* Pray will your Lordſhip be pleaſed to take it as it is: Theſe are two papers; the one is only the Cover, the other is the Writing: Captain *Billop* has only marked the Cover, and not the Writing, but my Lord *Sidney* he has marked the paper it ſelf, as delivered him by my Lord Preſident, and my Lord Preſident has given you an account, that it is one of the Papers he received in that Bundle from Captain *Billop*.

L. Preſton. I only mark, That there may be alterations made in theſe papers ſince they were taken.

Mr. *Serj. Tremain.* Pray read it.

Cl. of Peace, December 31. 1690. it is directed to Mr. *Jackſon*.

'The Bearer can give you ſo full an account 'of all things relating to your Eſtate here, that 'I need not have troubled you at this time, but 'that I am deſirous to lay hold of any Opportunity I think ſafe to aſſure you of my Service, 'and that I will never quit your Intereſt whatever the reſt of the Freeholders do: Your Adverſary has been ſo hard to his Neighbours, 'that he has extreamly diſoblig'd all the old 'Tenants, and a little matter would redeem the 'whole Eſtate, if you would appear in *Weſtmin-*

ſter

'*fter Hall* your ſelf, the beſt Council have a 'good Opinion of your Title, and will zea-'louſly purſue your Inſtructions: I only beg you 'wou'd haſten them to us, and that you will ap-'pear your ſelf as ſoon as is poſſible, no time 'ſhould be loſt, and the Cauſe may be brought 'to a final hearing before the end of *Eaſter* 'Term, if it be well ſollicited. I heartily wiſh 'you a happy New-Year, and beg you to tell 'Mr. *Charlton* that I long to know wherein I 'may ſerve him, and that I will follow his Dire-'ctions to the utmoſt, while I live. God keep 'you and yours.

L. Preſton. Pray, Sir, to whom is that Letter directed?

Cl. of Peace. To Mr. *Jackſon*, my Lord.

Mr. *Serj. Tremain.* Pray ſhew that paper to my Lord *Sidney*. (*Which was done.*)

L. Sidney. This is one of the papers I receiv'd from my Lord Preſident.

Then it was ſhewn to my Lord Preſident.

L. Preſident. This is one of the ſame papers that I received in the Bundle from Captain *Billop*.

L. C. J. Holt. Read it.

Cl. of Peace. Reads, 31*ſt. December.*

'The Interruption of the former Correſ-'pondency had a very ill Effect many ways, but 'for that reaſon, no Opportunity ought now 'to be loſt, and I hope this will prove a happy 'one.

'In Trade as well as in Government Schemes 'muſt be laid, for there is no living from hand 'to mouth any more in Commerce than in 'Politicks. Lay therefore your deſigns pro-'bably, and purſue them diligently, and with 'Vigour, though it be a hazardous time, yet by 'venturing boldly, where venturing is adviſe-'able, it often returns great profit.

'There is nothing more to be ſaid, but to 'give the Bearer fit and full Seaſons to tell what 'he knows, both as to Goods fit for our Market 'and when and where to be ſent; the Sea will 'quickly grow ſo troubleſome, that unleſs you 'diſpatch what you intend for us, you will 'loſe a great opportunity of advantage. I 'hope the account he has to give of our Nego-'tiations here, with the Merchants that deal 'with us, eſpecially thoſe that have lately 'brought us their cuſtom, will both encourage 'a larger Trade, and excite the utmoſt dili-'gence; I will ſay nothing of my ſelf, it ſhall 'be enough that I can live in the good Opinion 'of one I bear ſo great a reverence and affecti-'on for; but for this honeſt Factor, I muſt own 'I can hardly ſay enough. Truth and Boldneſs 'are excellent qualities in a Servant, and he has 'ſhewn both, as occaſion has required him to 'ſhew them.

'I have but one word to add, and pray take it 'as the trueſt mark of unalterable reſpect, chuſe 'well, but have to do but with a few, for a 'multitude may give, but can never keep 'Council.

'I ſhall with more impatience than becomes 'me, wait the reſult of this, and it will be a 'great mark of Goodneſs, to let us have it the 'beſt and ſafeſt way.

'Once more, let not the Seaſon ſpend unpro-'fitably, for a more likely one can hardly come 'than between this and the 1ſt of *March*. In-'terpret this I pray, as no private intereſt of my 'own, or partial motion of any other Perſon. 'It is my Senſe, my Duty, and my Friendſhip, 'which will not let me prevaricate, nor ſuffer 'thoſe I love and honour to loſe ſo happy and 'preſſing an occaſion of advantage. With the 'the beſt Wiſhes I cloſe up this, and am *&c.*

L. Preſton. Pray, my Lord, who is that Paper directed to?

L. C. J. Pollexfen. This is directed to no body at all.

Mr. *Sol. Gen.* Shew that Paper to my Lord *Sydney*.

(*Which was done.*)

Lord *Sydney.* This was one of the Papers I had from my Lord *Preſident*.

Then it was ſhewn to my Lord *Preſident*.

Lord *Preſident.* This is one of the Papers I had from Captain *Billop*.

L. C. J. Holt. Read it.

Clerk of the Peace Reads. This is Dated *December* 31. but is not directed to any Body at all.

'IT is a preſumption incident to thoſe that 'are any where upon the ſpot, to think that 'they know better than thoſe that are not, what 'is fitteſt to be done in any Occurrence. This 'makes me ſay, that now is the time to make 'large advantages by Trading; the Sea being 'freer than two Months paſt, or we can hope 'it will be two Months hence. This Gentleman 'is well inſtructed in our Markets, and what 'the Goods are we want, and when and where 'they ſhould be ſent: It is moſt earneſtly deſired 'that this happy opportunity may not be loſt, 'eſpecially by the late Undertakers, and I would 'not for much, they ſhould receive the leaſt 'diſguſt. They are ſomewhat poſitive in their 'terms; but they alſo ſay, they will be good 'and conſtant Cuſtomers; and I have more than 'once ſeen the miſchief of over-rateing and 'over-ſtaying the Market. Opportunities are to 'be uſed, they cannot be given by Men.

'The Bearer needs nothing from me to re-'commend him, but he is deſerving in our Opini-'on here, and many will take their meaſures by 'the uſage he finds there; and indeed the preſ-'ſing poſture of our Trading Affairs will not 'permit more Experiments. If the ſeveral Par-'cels arrive not, that have been promiſed, be-'fore the 10th of *March* at furtheſt, (eſpecially 'the *Copper* and *Linnen*, of which the Bearer 'will be more particular) I am ſatisfied we ſhall 'loſe this Summers profit. I am the more preſſing 'becauſe I am well aſſured of what I write; 'and if ever I judged right it is upon this oc-'caſion.

'I have ſaid nothing of another Gentleman 'that takes this Opportunity to ſee thoſe parts, 'but he has ſhewn a zeal and a ſincerity in this 'affair equal to moſt. *Jo.* is not yet gone, by 'a misfortune, but he will follow with a good 'Poſtſcript in this affair. Of my ſelf I will ſay 'nothing, I hope I need not, for no body with-'out Vanity can be more ſincerely and affection-'ately a Friend and Servant to the Company 'than my ſelf. I writ at large yeſterday, and 'cannot write what the hand that gives this 'can ſay; and therefore will write no more, 'but that with the greateſt Reſpect, I am, *&c.*

Mr. *Serj. Tremain.* Pray ſhew this Paper to my Lord *Sydney*.

(*Which was done.*)

Lord *Sydney.* This is one of thoſe Papers I received from my Lord *Preſident*.

Then it was shewn to the Lord *President*.

Lord *President*. This was one of the Papers in the Bundle I received from Capt. *Billop*.

L. C. J. Holt. Then read it.

Clerk of the Peace, Reads.

'SIR, I vow to you, I do not repine at having lost all for your sake which I got by your favour, but it grieves me extreamly that there is not that left which can secure me from being troublesome to you; for that is the thing in the World I would not be. I have told my Lord my condition. What I desire of you he thinks very moderate, I hope you will. Pray Sir be not backward in setling my little affair, for I have deserved your Care. Your Daughter and I must starve, if this Government can make us. I hope our Interests are not divided, that is, you have an equal tenderness at least for both. If you think fit to speak what I would have you to this Bearer, he will give me a just account of it. You know he is obliged to be my Friend, and I believe him grateful, since he ventures so boldly for you. He brings with him some merry Papers. Adieu, for I dare write no more; but pray send a Messenger on purpose to me, that I may know exactly what you will do, and would have me do. If you send upon no other business, there will be no danger. Pray Sir ask my Lord, and he will tell you how I have been used, and upon what account; I believe you know it not.

'*Dec.* 29. Your Daughter is very well,

'very tall, and very pretty, as I am told.

L. C. J. Pollexfen. That is not directed to any body neither.

Mr. *Serj. Tremain*. Pray then shew these Papers to my Lord *Sydney* and my Lord *President*; (which was done). *They were two*.

L. C. J. Pollexfen. These Papers my Lord *Sydney* swears he received from my Lord *President*, and my Lord *President* swears he received them in the Bundle from *Billop*.

Mr. *Serj. Thompson*. We pray they may be read.

Clerk of the Peace. Dec. 31. 90.

'WAs my Condition more desperate and uneasie than it is, I desire no greater satisfaction than to have done my Duty to so good a Master, I wish it was of more use to him; that is not my fault, nor of those I have acted with: Let it be looked into what has been foretold both as to *Engl. Scot.* and *Irel.* and see if most of it is not come to pass already, and the rest will follow if not prevented. I wish it may also be considered what usage we have met with from men imployed, and how they have left your Business and Friends; how they managed it, you will know from all hands; things they could not do, nor durst not undertake were better undone than not done by them. Men in this Place, and in these Times, must have some Courage as well as Sense to do any thing with People here. It is not my own ill usage makes me say this, but my concern for one I wish the best to in the World, and will give my Proofs of this upon all occasions. I need not enlarge, since all our Grievances are known to him that brings this. For my own part I will stay here, so long as I can be safe, if with ne're so great trouble; but it would be some Comfort to know Men (when driven from hence) may be so; therefore the reports of Peoples usage are terrible, as well as of the indiscretions of St. *Germ.* Family, we feel the smart of it by ridiculous Letters falling daily into the hands of the Government. Their Master and Mistress are little obliged by it no more than we: If there is any thing, Sir, you do particularly command me, or depend upon me for, let me know it. I cannot undertake much, nor furnish more. I have still helped every Body, and paid to every thing I could; and if a twelve month ago my condition was what I then represented, you best know if it has been mended. Use, and considering that of others, makes me grow more contented; and if the prospect of misery to us us all was any satisfaction, that is now plainly seen.

'Pray God bless us all, by restoring every Man his own, and you with long Life.

'He that gives you this, hath furnisht for your use to me, *&c.* Two Hundred Pounds, which I desire may be repaid.

Mr. *Sol. Gen.* Read the t'other, it is in the same hand, and was enclosed in the former.

Clerk of the Peace Reads. 'I only beg Madam, no ill malicious Report may take any place in your Thoughts, in regard to me. I value your good Opinion, and will endeavour to deserve it. I can do little towards, but wish most heartily for your Happiness. I know no Interest, Madam, but my Masters and yours, nor do I think they are to be made two: If you command me any thing, I will faithfully obey you, as I have ever done him.

'We all depend upon this Bearers accounts of us and our Condition. His Faith and Courage hath been enough experienced.

Mr. Serj. *Tremain*. Here is another Paper, shew that to Capt. *Billop*.

(*Which was done.*)

Capt. *Billop*. This Paper I did mark, and this was one that was in the Bundle.

L. C. J. Pollexfen. What is it Brother, pray open it.

Mr. Serj. *Tremain*. 'Tis a draught of a Cypher, with an Alphabet of Names for carrying on the Correspondence.

Mr. *Serj. Thompson*. Your Lordship observes these matters were designed to be carryed on under several sorts of Cants.

L. C. J. Holt. What says Captain *Billop* to that Paper?

Capt. *Billop*. That was one of the Papers that I read at my Lord *Nottingham*'s, and markt it there.

L. C. J. Holt. Then Read it.

Clerk of the Peace Reads. For Mrs. *Anne Russell*, to be left with Mrs. *Richeson* at the *Blue-Boar* in *Ryder-street*, near St. *James*'s.

A —— *the King*.
B —— *the Queen*.
C —— *the Prince of* Wales.
D —— *the Prince of* Orange.
E —— Canon *and the* Scotch *Officers*.
F —— *the Duke of* Berwick.
G —— *Duke* Tyrconnel.
H —— *Major General* Sarsfield.
I —— *Lieutenant General* Shelden.
L —— *King of* France.
M —— *Marshal* Luxemburgh.
N —— Marshal *Belford*.
O —— Duke *Powis*.
P —— Dutchess *Powis*.

Amsterdam

Amſterdam —— *Breaſt.*
Rotterdam —— *Deip.*
Hague —— *Havre de Grace.*
Brill —— *Dunkirk.*
Harlam —— *Callis.*
Italy —— *England.*
Germany —— *Scotland.*
Spain —— *Ireland.*

Mr. Serj. *Tremayn.* Then the next Papers we produce are the Bills of Exchange; Pray ſhew them to Capt. *Billop.* What ſay you Capt. *Billop*, were thoſe among the other Papers?

Capt. *Billop.* Yes, they were I remember very well.

Mr. Serj. *Tremain.* My Lord, they are in *French*, and therefore we muſt Swear a Gentleman that we have here, to interpret: Call Mr. *Humphry Levermere.*

Mr. *Levermere*, Here I am.

(He was ſworn)

A Londres, le 29 Decembre.

Monſieur,

LE preſante vous ſera rendus par *Monſieur* Orbinet, *qui eſt un de mes bons amis, & qui ſe fera cognoiſtre par quelque perſonne de voſtre Cognoiſſance. Vouz m'obligerez treſenſiblement en de luy rendre ſervice en tout ce que vous pourriez. Il pourra vous communiquer quelque Affaire en Commiſſion; vouz pouvez avoir Confiance en luy de toutes les manieres, je vous prie doncque l'obliger en tout ce que vous pourriez. Je ſuis*

Monſieur, Voſtre tres humble & tres obeiſſant Serviteur

A Mon. Mon. *Jo. du Livier*, Paris. *P. du Livier.*

A Londres le 29 Decembre / 8 Janvier } 1690.

Monſieur,

A *Un jour de veue il vous plaira payer par cette premiere d'Eſchange, a l'Order de Mr.* Michel Orbinet, *Trois Mille trois cents trente trois Livres valeur, du dit Sieur ſuivant l'advis de*

Voſtre tres humble & tres obeiſſant Serviteur,

A Mon. Mon. *Jo. du Livier*, Paris. *P. du Livier.*

Londres le 29 Decembre / 8 Janvier } 1690. Pour Liv. 3333.

Monſieur,

A *Un jour de veue, plaira payer par cette me premiere d'Eſchange, a l'Ordre de Mr.* Michel Orbinet, *Trois Mille trois cents trente trois Livres Tournois, valeur du dit Sieur & ſuis*

Voſtre tres humble Serviteur,

A Mon. Mon. *Anthoine Pelletyer*, Merchand, *a* Paris. *J. Berionde.*

London the 29th *December.*

SIR,

THis preſent will be delivered you by Mr. *Orbinet*, who is one of my good Friends, and who will make himſelf known by ſome Perſon of your Acquaintance. You will very ſenſibly oblige me in doing him Service in all that you can. He will be able to communicate ſome Affair in Commiſſion; you may have Confidence in him about all Points: I pray you then to oblige him in all that you can. I am,

SIR, Your moſt humble, moſt obedient Servant,

To Mr. *Joſeph Du Livier. Paris.*

P. Du Livier.

London the 29th, *December* / 8 *January* } 1690.

SIR,

AT one days ſight be pleaſed to pay by this First of Exchange to the Order of Mr. *Michael Orbinet*, Three thouſand three hundred thirty three *Livres*, Value of the ſaid Gent. according to the Advice of

To Mr. *Joſeph Du Livier. Paris.* *Your moſt humble, and moſt obedient Servant,*

P. Du Livier.

London, 29 *December* / 8 *January* } 1690. For 3333 *Livres.*

SIR,

AT one days ſight be pleaſed to pay by this my firſt of Exchange, to the Order of Mr. *Michael Orbinet*, Three thouſand three hundred thirty three *Livers Tournois*, Value of the ſaid Gent. And I am

To Mr. *Anthony Pelletier*, Merchant, at *Paris.* *Your moſt humble Servant,*

J. Berionde.

Mr. Serj. *Tremain.* Pray how much do they all come to?

Mr. *Levermere.* They come to 500 *l.* wanting but Twelve pence.

Mr. Serj. *Tremayn.* My Lord, we have ſhewn your Lordſhip part of the Papers that were taken in this Pacquet, but we have reſerved three of the Papers till the laſt place; and theſe three Papers, if we had no other, were ſufficient to maintain this Indictment, for they are written all with my Lord *Preſton*'s own Hand, wherein he gives an Account how the *French* ſhould Invade us, how the Forts may be taken, how *London* ſhould be plagued, and what a ſort of Raſcals the Clergy of *London* are; theſe are the Contents of the Papers among other things. Pray ſhew them to Captain *Billop.*

(Which was done.)

Captain *Billop.* Theſe were two Papers that were in the Pacquet, and the other little one with them.

L. Preſton. My Lord, I would deſire your Lordſhip to obſerve one thing, to the beſt of my remembrance, Captain *Billop* ſaid, he only mark'd ſix of the Papers.

L. C. J. Holt. How many has he ſworn to?

L. Preſton. I believe he has proved more.

Capt. *Billop.* I never ſaid ſo; I mark'd a great many, tho' not all, but I did not ſay how many.

Mr. Serj. *Tremain.* Were theſe Papers taken in the Pacquet?

Capt. *Billop.* Yes, all three.

L. Preſton. Juſt now he ſaid but two.

Mr. *Sol. Gen.* Have you look'd upon them all, Sir?

Capt. *Billop.* Yes, I marked but two of them, but the other little Paper was with them, I read them my ſelf. I remember it very well.

Mr. Serj. *Thompſon.* Then we pray the Clerk may read them.

(*Cl. of Peace reads.*) Lady *D.* 2000 *l.*
And 200 *l.* for Shop Debts

Mr. Serj. *Thompſon.* My Lord, we would open this piece of Evidence before we read it,

that it may be underſtood, and we ſhall prove it to be my Lord's Hand afterwards. It conſiſts of many Heads and Particulars, without Order or Method; and ſeems to be no more than *Memorandums* made by my Lord *Preſton*, to put him in mind what he was to enlarge upon when he came thither.

(*Cl. of the Peace reads.*) Lady *D.* 2000 *l.* And 200 *l.* for Shop Debts.

Penſion upon the

14 — 3 Deckt Ships.—*Britania*, Ad.

Soveraign out and R — *James.*

33 3d Rates, make the 14 and 30 67.

Sundry Hoſpitals and Fire-Ships, ſome built on purpoſe proportionable.

Of Third Rates moſt mann'd: 14 not mann'd, great ones.

Reſt in ſome proportion'd mann'd, not well manned, nor will be.

—— *Britania* not out till *March*, the reſt perhaps in *April.*

—— The *French* muſt be out in *April*, and in the *Downs:* Look in at *Spithead* to ſecure them.

The *Dutch* Fleet cannot then joyn them.

Carter and others at *Portſmouth*, the likelieſt Men to come to him — *Dutch* Fleet 36 Sail, 9 from 70, to 60 Guns; —— 12 from 50 to 60 —the reſt betwixt 60 and 70 — Get to it before the Conjunction, otherways nothing. To fight in the Chops of the Channel; not to come ſo high as *Beachy* —— *Portſmouth* not mann'd above 500——One *Gibſon* a *Scotch* Pedler —— Lands behind South-Sea Cattle Nothing but Palliſado's about *Goſport*——*Jennings*, or *Strickland*, or *Trevannion* comes from St. *Maloes* in one Night —— moſt of the Gentlemen have done him moſt miſchief, the Tarpaulins his beſt Friends, which diſpirited —— *Danby* deſires to be in the *Monk*, keeps and fortifies *Hull*——— King not to be on Board the Fleet———Fooliſh Letters from St. *G's* taken every day in the *D.* Poſt, and read in Council—about *June*—*England* 67 great Ships. Dutch 60—commanded 36 to us, 24 to act by themſelves——*Ruſſel* in the *Britania* Admiral—— *Killegrew* the Blue — the Duke——*Aſhby* the *Royal James*—*Delaval* the Soveraign, Vice-Admiral Blue——*Carter* the Vanguard—— Thoſe who ſhall not oppoſe or reſiſt him to be pardoned— Not 21 days coming in, or ſhall not help the P. of O. 600000 *l.* to the States of *Holland* ——No Taxes in his Time——and the K. of *Fr.* will require nothing—— Chimney-Money to be taken away——not excepting Outlaws —— *Scotland* ——let know whether the King will come or not ſoon, and acquaint him with the weakneſs of the Pr. Councel——3 Daſhes——— or the like F. of——That's ſome kind Anſwer——— Mr. *Eaſt* Merchant of *Briſtol* to be kept till called for *William* St——— from *Amſterdam*——— *Alexander* —— *England* —— *George* ——— *Scotland* —— *Dorſet, Cornwallis, Montague, Stamford, Shrewſbury, Macclesfield, Monmouth, Devonſhire* ——— In *Feb.* the K. come to *Scotland* — endeavour to unite the Epiſc. and Presbit. Parties—A leſs ſum not interfere with the Fr. K. from Highlanders —— Campaigns ——— land at *Leith*——— the *Scotch* Army not a *French* one, 5000 good *Suediſh* Foot, the reputation of a Proteſtant Ally, two Months to ſettle *Scotland*——a Commiſſion given to me from Mr. P.——— For *Fl.* hinder *Eng.* and *D.* from joyning ——— two Veſſels of 150 *l.* price for *Penſilvania*, for 13 or 14 Months — *Ormond* and *Brandon* diſobliged about the Guards.

To have 1200 Seamen from *Denmark* and *Holland*.——To ſave *Cambell.*—— To be left at the *Ship* in Sheets *Weſtminſter.*——*Flanders.*——*R*—— *Scotch* Ships in *New-Caſtle* Harbour to plague *London.*——The *Modeſt Enquiry*, the Biſhops Anſwer.——Not the Chilling of them.—But ſatisfying of Friends.——To tell him that to Protect Friends, and as ſoon as Forreigners are gone, he will diſmiſs his —— The Woman that was with the K. in *Ireland*, and ſent Commiſſion to *Stafford*, and failing, not to be ſent again, her Friends live in *Covent Garden*——Private Letters not———Proteſting Lords againſt the Uſurper, Three of Five againſt the Vacancy of the Crown, *Beauford*, *Newcaſtle*, *Thanet*, *Sawyer*, *Lutwich*, *Pemberton*, *Levintz*, *Winnington*, *Montague*, *Shore* — *London* Clergy the worſt, we have their Wiſhes, and they their Oaths——K. Betrayed by *J. Porter*, *Seymour* ſaid it——Lord *Nottingham* ſays there will be a Peace with *Fr.* and the K. left out ——Bring Foreigners to drive out Foreigners, then diſmiſs them, leave all to Free Parliament. —— No Juſtices of Peace, *&c.* actually in Commiſſion to be Criminal.

L. C. J. Holt. Well Gentlemen have you any more Evidence?

Mr. *Serj. Tremain.* My Lord, we ſhall now prove theſe Papers to be my Lord *Preſton's* own Hand. Pray call Mr. *Warr*, Mr. *Townſend*, Sir *Henry Johnſon*, and Mr. *Bland.*

Mr. *Townſend* ſworn.

Mr. *Serj. Thompſon.* Pray ſhew Mr. *Townſend* that Paper. (*Which was done*) Pray, Sir, whoſe Hand writing is that?

Mr. *Townſend.* I believe this to be my Lord *Preſton's* hand; I did not ſee him write it.

L. C. J. Pollexfen. Are you well acquainted with my Lord *Preſton's* hand?

Mr. *Townſend.* I have ſeen his Lordſhip's Hand ſometimes.

L. C. J. Pollexfen. How often?

Mr. *Townſend.* Not very often, but I have ſeen it ſometimes.

Mr. *Serj. Thompſon.* Pray were you Clerk in any Office?

Mr. *Townſend.* Yes, I am in the Office of the great Wardrobe, where I have had occaſion to ſee his Lordſhip's Hand ſometimes, and I believe this to be his Hand.

Mr. *Serj. Thomſon.* Look upon the t'other two.

Mr. *Townſend.* I do believe theſe three Papers are my Lord *Preſton's* hand.

Mr. Serj. Tremain. Thoſe are the three Papers that have been read laſt, which he ſays are my Lord's Hand.

Mr. *Townſend.* I do believe it, Sir.

Mr. *Serj. Tremain.* Pray look upon that Paper, with the little one within it; Do you know whoſe Hand that is?

Mr. *Townſend.* I did not ſee it written, Sir.

Mr. *Serj. Tremain.* Do you believe you know who Writ it, by the Hand?

Mr. *Townſend.* The latter part looks like my Lord *Preſton's* Hand; but I cannot well ſay any thing to the other, it is written ſo ſmall.

Mr. *Serj. Tremain.* Then ſwear Mr. *Bland.*

(*Which was done.*)

Mr. *Serj. Thompſon.* Give him the Papers. We ask you, Mr. *Bland*, Whether you were well acquainted with my Lord *Preſton's* Hand?

Mr.

Mr. *Bland.* I have ſeen my Lord's Hand ſometimes.

Mr. *Serj. Thompſon.* Have you looked upon thoſe Papers, Sir?

Mr. *Bland.* Yes, I have.

Mr. *Serj. Thompſon.* Pray whoſe Hand are they?

Mr. *Bland.* I do believe theſe three Papers are my Lord *Preſton*'s Hand-writing.

Mr. *Serj. Tremain.* Then we pray Mr. *Warr* may be ſworn. *(Which was done.)*

Mr. *Serj. Thompſon.* Do you know my Lord *Preſton*'s Hand?

Mr. *Warr.* I have ſeen my Lord *Preſton* write, but not very often; moſt commonly it was only his Name: but I have ſeen him write ſome Letters too.

Mr. *Serj. Tremain.* Pray, Sir, look upon thoſe Papers; whoſe Hand are they do you believe?

Mr. *Warr.* This Paper ſeems to be like my Lord *Preſton*'s Hand; the other I cannot ſay much of, becauſe that which I commonly ſaw him write was a large fair Hand, and this is a little Hand.

Mr. *Serj. Tremain.* Pray, Mr. *Warr*, look upon theſe Seals; whoſe Seals were they?

Mr. *Warr.* I believe the Seals to be my Lord *Preſton*'s; one of them was his Seal when Secretary of State.

Mr. *Serj. Thompſon.* You were under him in that Office, were you not?

Mr. *Warr.* Yes, my Lord, I was.

Mr. *Serj. Tremain.* Now my Lord, we have done with our Evidence, and ſhall reſt here till we hear what my Lord *Preſton* ſays to it.

L. C. J. Holt. My Lord *Preſton*, you have heard what has been ſaid concerning the matter you have been indicted for; What has your Lordſhip to ſay for your ſelf?

L. C. J. Pollexfen. If the Gentlemen of the Jury deſire to ſee the Seals, they may have them.

(The Seals were ſhewn to the Jury.)

Mr. *Sol. Gen.* My Lord, we have done for the preſent.

L. C. J. Holt. Then if your Lordſhip pleaſe, you may make your Defence.

L. Preſton. My Lord, in the firſt place I muſt refer my ſelf again to my Indictment, for I find, my Lord, that the Treaſons of which I am accuſed, were none of them done in the County of *Middleſex*, and they are laid to be done within this County; I find nothing of that kind proved upon me to be done here, for any Memorandums that they ſay may be in that hand, I hope the Gentlemen of the Jury will conſider, that there was nothing followed upon any of theſe things, that may be found in thoſe Papers: And in the next place, I deſire to know, whether they are ſufficiently proved to be mine; that is, whether ſimilitude of Hands is proof or not againſt me in ſuch a Caſe. I humbly offer theſe things to your Lordſhip, and hope your Lordſhip and the Jury will conſider of it.

L. C. J. Holt. Is this your Lordſhip's Defence, my Lord?

L. Preſton. My Lord, I leave theſe things to the Conſideration of the Court and the Jury.

L. C. J. Holt. Your Lordſhip inſiſts upon it firſt, that there is no act of Treaſon proved in the County of *Middleſex*; and then, whether ſimilitude of Hands be a good proof to prove theſe three Papers, or any of them to be your hand.

L. Preſton. No body ſaying they ſee me write them, if I did write them.

L. C. J. Pollexfen. My Lord, have you no Witneſſes, nor nothing that you would uſe of Evidence for your ſelf?

L. C. J. Holt. Would your Lordſhip diſprove any thing of the matter that has been proved againſt you?

L. Preſton. I muſt deny the whole Fact; but I have no Witneſſes or Evidence to offer you.

L. C. J. Holt. Then your Lordſhip has no more to ſay?

L. Preſton. I have not. I muſt leave it ſo with your Lordſhip and the Gentlemen of the Jury.

Mr. *Sol. Gen.* We ſhall offer nothing farther, but leave it wholly to your Lordſhip.

L. C. J. Holt. Your Lordſhip has done then?

L. Preſton. Your Lordſhip obſerves none of the Witneſſes have declared that I was going into *France*, nor knew any thing of it. I did not hire the Ship, nor any thing of that kind; tho' I ſuppoſe if they had, it is not Treaſon; but your Lordſhip obſerves there is no ſuch thing has been ſworn.

L. C. J. Holt. My Lord, as to the firſt matter that your Lordſhip makes a Queſtion upon, Whether there be any act of Treaſon proved in *Middleſex*, that does depend upon the proof of your Lordſhip's being concerned in the papers, for if your Lordſhip had an intention in carrying theſe papers into *France*, which ſpeaks a deſign to invade this Realm, your Lordſhip took Boat in *Middleſex* at *Surrey*-Stairs, in proſecution of that Intention, there is an Overt-act in this County of *Middleſex*.

L. Preſton. Your Lordſhip and the Gentlemen of the Jury obſerve theſe papers were not found upon me.

L. C. J. Holt. No, my Lord; but if it be proved that your Lordſhip had an intention to carry theſe papers into *France*, and took Boat in order to go with them into *France*, in the County of *Middleſex*, where-ever your Lordſhip acted in order to that deſign, that is Treaſon, and there you are guilty. It is a Treaſon complicated of ſeveral Facts, done in ſeveral places.

L. Preſton. My Lord, I humbly deſire to know, whether they have been proved to be my papers?

L. C. J. Holt. That is a Queſtion that muſt be left to the Jury upon the Evidence.

L. Preſton. No body ſwears they are mine, nor were they found upon me.

L. C. J. Holt. But what I am ſpeaking to your Lordſhip, is in anſwer to your Queſtion about the place, for you ſay, that there is nothing proved done in the County of *Middleſex*; now the Queſtion is, Whether your Lordſhip had a deſign to go to *France* with theſe papers; if you had, and if your Lordſhip did go on Ship-board in order to it, your taking Boat in *Middleſex* in order to go on Ship-board, is a Fact done in the County of *Middleſex*.

L. Preſton. It is not proved by any Witneſſes that I deſigned to go into *France*.

L. C. J. Holt. That is before the Jury upon the Evidence.

L. Preſton. I hope your Lordſhip, and the Jury will obſerve 'tis not proved, and in the next place, there are no papers taken upon me, with humble Submiſſion, there is no proof of any ſuch thing.

L. C. J.

L. C. J. Holt. Well, how far your Lordſhip was concerned in theſe papers, and whether you were going with them into *France*, is to be left upon the Evidence that hath been heard, to the Conſideration of the Jury.

L. Preſton. But I humbly ſubmit that.

L. C. J. Holt. Have you any more to ſay?

L. Preſton. As to what I offer, that nothing has been proved in *Middleſex*, I hope your Lordſhip will take it to be a point of Law, and then it ought to be argued; and I deſire I may have Council.

L. C. J. Holt. No, 'tis a Matter of Fact only; but if you pleaſe, the reſt of my Lords the Judges may give you their Opinion; for this is a Queſtion upon a Suppoſition that your Lordſhip was guilty of a Deſign of going into *France*, and this with a purpoſe to depoſe the King, and alter the Government; then the Queſtion is upon ſuch a Suppoſition that you were guilty of that Deſign, whether you were guilty in *Middleſex* or no.

L. Preſton. My Lord, they have not proved that Deſign.

L. C. J. Holt. We do not ſay, it is taken for granted now, but 'tis a Queſtion upon a Suppoſition. Now my Lord, I'll tell your Lordſhip in ſhort my Opinion, the reſt of the Judges will tell you theirs, I am of Opinion, if your Lordſhip had ſuch a Deſign to go with theſe papers into *France*, and theſe Papers were formed by you, or you were privy to the Contents of them, then it is plainly proved, that you went into a Boat in the County of *Middleſex*, in order to carry on this Deſign, and that will make it a good Indictment, and here is a plain Overt-act of High-Treaſon in *Middleſex*.

L. C. J. Pollexfen I am of the ſame Opinion; for your Fact as to this particular point in Law ſtands thus: You are indicted of High-Treaſon in two points; one is, For conſpiring to depoſe the King and Queen, and alter the Government: and the other is, For aiding and aſſiſting the *French* King, and his Subjects, declared Enemies, and in open War againſt the King and Queen, and to invite the Enemies of the Kingdom to invade the Kingdom. Now this Deſign, and this Help and Aſſiſtance, are written in theſe papers; for they are Inſtructions for the carrying on of this Deſign. You my Lord are the Perſon that is charged to go with theſe papers to help on this Deſign; you began your Journey in the County of *Middleſex*, for according to the Evidence, you took Water at *Surrey* Stairs, which is in the County of *Middleſex*, and every ſtep you made in purſuance of this Journey, is Treaſon, where-ever it was: So then here is a ſufficient proof of a Fact in *Middleſex*.

L. Preſton. That, my Lord, is a point of Law, and I humbly deſire your Lordſhip, that I may have Council in this Caſe. It is not proved by any Body, that I ſaid I would go into *France*; and in the next place, it is not proved that I had theſe papers about me; there has been no Evidence given that I did take Water with an intention to go with theſe papers into *France*.

L. C. J. Holt. The Jury are to be Judges of that.

L. Preſton. Then my Lord, what have I done? I have not done any thing within the danger of any Statute upon which I am indicted; beſides, Lord, what I have to offer further, is this, I think I ought to have two credible Witneſſes to prove every Fact, and I hope the Gentlemen of the Jury will conſider, there is nothing but Suppoſition as to me; and I hope I and my Family ſhall not be ruined upon a Suppoſition.

L. C. J. Holt. Has your Lordſhip any more to ſay?

L. Preſton. All the Judges have not given their Opinion.

L. C. J. Holt. The reſt will give their Opinions, if you deſire it

My Lord Chief Baron, what ſay you?

L. C. Baron. My Lord *Preſton*, I am called upon, it ſeems, to give my Opinion in this Caſe, but this I take it muſt be left to the Jury, what credit they will give to the proof. Your Lordſhip makes a Queſtion, as the proof ſtands, whether here be any thing done in this County; here are Inſtructions given to the *French* King how to invade *England* and carry on the War againſt us. Theſe Inſtructions are contained in ſeveral papers, and theſe papers in a Pacquet are carried to the Smack, which Smack was hired to go to *France*. You are found taking water at *Surrey*-Stairs, which is in the County of *Middleſex*, in order to go to the Smack: You did go to the Smack; the papers were taken in your Company, and were ſeen lying by your Seals; and the Witneſſes ſwear, they believe ſome of them to be your Hand; you took care to deſire to have them diſpoſed of. Now how far the Jury will believe this matter of Fact, that is thus teſtified, is left to them; this ſeems to be the Proof, and if the Jury do believe it, here is a plain Evidence of an Overt Act in the County of *Middleſex*.

L. Preſton. I do inſiſt upon it, with humble Submiſſion, it is not proved that theſe papers were taken upon me, or that I did take water at *Surrey* Stairs to go to *France*.

L. C. Baron. That muſt be collected out of all the Circumſtances; the Credit of which is left to the Jury.

L. C. J. Holt. All the reſt of my Lords the Judges are of the ſame Opinion, as they tell me? Have you any more, my Lord?

L. Preſton I muſt ſubmit.

L. C. J. Holt. Gentlemen of the Jury, My Lord *Preſton* ſtands indicted for High Treaſon, in imagining and compaſſing the Depoſition, Death, and Deſtruction of the King and Queen; and for that purpoſe, did write, or cauſe to be writ, ſeveral treaſonable Papers and Letters, deſigned to go into *France*, and there to correſpond with the *French* King and his Subjects, who are Enemies to the King and Queen; and to carry with him thoſe treaſonable Papers and Letters, containing a Project and a formed Deſign how this Kingdom ſhould be invaded by Foreigners.

There is another Treaſon in the Indictment mention'd, and that is for adhering to and abetting the King's Enemies, there being open War declared between the King and Queen, and the *French* King.

You have heard, Gentlemen, a very long Evidence, Witneſſes have been produced *viva voce*, and ſeveral papers have been read to you; ſome of the papers that have been produced, tho' they may ſeem miſterious and canting, yet they are not ſo very obſcure and unintelligible, but if you conſider them well, the meaning of them will appear. Others of them are more expreſs, and do plainly demonſtrate a Deſign, that this

King

King Queen ſhould be depoſed, and that there ſhould be another Prince ſet upon the Throne, and reſtored to the Government of this Kingdom.

Gentlemen, There are two other Perſons mentioned in the Indictment with my Lord, and tho' my Lord is only now upon his Tryal, yet the evidence which doth affect them, doth alſo concern my Lord.

You have heard how there was an Intention of ſome Perſons to go to *France*, and how Mr. *Aſhton*, one of the two others that ſtands indicted with my Lord, did treat with one Mrs. *Pratt*, one of the Witneſſes, to hire a Veſſel for that purpoſe, and it was by the means of one Mr. *Burdett*, that lives in the City; they had a Meeting at *Burdett*'s Houſe, where they treated about the Price that ſhould be given for the Hire of this Ship to go to *France*, but at that time they did not agree. It was concluded, that the Woman and *Aſhton* and *Burdett* ſhould meet at the *Wonder Tavern*, but Mr. *Burdett* not being there, nothing was concluded upon then.

After that the Woman, Mr. *Burdett*, and *Aſhton*, and *Elliot*, met at Mrs. *Burdett*'s; the Woman inſiſted at firſt upon 150 *l.* After they had been treating for ſome time, the Bargain was made to go to *France* for 100 *l.*

Then the next thing conſidered was, how this Money ſhould be paid, by agreement, 93 *Guineas* and 6*d.* which made up the 100 *l.* was depoſited in Mrs. *Burdett*'s hand; a *Six-pence* broken, one part Mrs. *Burdett* had, and the other part of the *Six-pence* Mr. *Aſhton* had; and when either Mrs. *Pratt*, or the Maſter of the Veſſel did bring back that part of the *Sixpence* that *Aſhton* had to Mrs. *Burdett*, the Money was to be paid.

After this Agreement, they were appointed to go to the *Seven Stars* in *Covent Garden*, to the Houſe of one Mr. *Rigby*, and there the Woman, Mrs. *Pratt*, and the Maſter of the Veſſel, *Aſhton* and *Elliot* met, and they were that Night to go away and to take Water at ſome place near to go on Ship-board; and having ſtayed there till it was about ten a Clock at Night, then they went away into the *Strand* and ſo into *Surry ſtreet*, and took Water at *Surry-ſtairs*.

But before that they came from Mr. *Rigby*'s, ſome Perſons went to *Surry Stairs* to ſee for a Boat, and met with that Fellow that was here produced, who was a Sculler, and did hire him to go through the Bridge when the Tide ſerved, and to carry ſome Gentlemen on Ship-board; they agreed with him for half a Crown, and he was to ſtay in an Houſe near the Stairs until they came.

And at the time appointed, Mr. *Aſhton* and Mr. *Elliot* and the Maſter of the Veſſel came to that place, and my Lord *Preſton* and his Man with them to take Water. My Lord *Preſton* was not at *Burdett*'s Houſe at the hiring of the Ship, nor at Mr. *Rigby*'s; but it is proved by the Maſter of the Veſſel, that he took Water with the reſt of them at *Surry-ſtairs*, that he went with them on Ship-board, and was to go along with them.

Being on Board the Ship, they did appear to have ſome Apprehenſions of Danger, and paſſing by a Man of War, my Lord *Preſton*, his Man, and the other two went under the Quarter-Hatches, where they lay down to prevent themſelves from being taken or diſcovered; and they hid another time when they came near *Graveſend*, and coming up they ſeeing a Boat coming towards them, they hid themſelves again. Captain *Billop*, who it ſeems, was ſent to apprehend them, pretended he was to preſs Seamen, and when he came on Board the Smack he ſaid he would preſs the Mariners, who anſwered they had a Protection: But he being upon his Search pulled up the Boards of the Quarter-Hatches, and there was my Lord *Preſton* and the other Perſons lying down: It was not a place that was very proper for Gentlemen, or indeed for any Paſſengers, to repoſe themſelves in; it was an uneaſie place, no body could ſtand or ſit upright in it, nay, there was no convenient place for lying down, but they muſt lean upon their Elbows, which poſture thoſe Gentlemen were in; ſo that their purpoſe was plainly to conceal themſelves, and their concealing themſelves muſt be becauſe of ſome Deſign they were about, which they would not have diſcovered.

They being taken out from under the Hatches, one of the Witneſſes tells you he ſaw a Pacquet lying there, and *Aſhton* pretending to fetch his Hat, went down, took it up, and put the Pacquet into his Boſom; and the Witneſſes informing Captain *Billop* thereof, he cauſed *Aſhton*'s Coat to be ſearched, and from thence took the Pacquet and a piece of Lead tyed to it, which was produced here in Court.

When they were bringing away in Cuſtody, they ſeemed all of them to be very much concerned about this Pacquet; ſome of them, that is, *Aſhton* and *Elliot*, would have had it thrown with the Lead over-board. My Lord *Preſton* did not ſay ſo much, but Complimented Captain *Billop* in this manner, He was glad he was fallen into the hands of a Civil Gentleman, a Perſon of worth, and he ſhould always acknowledge his Kindneſs, and would do him all the ſervice he could if he would diſpoſe of the Pacquet.

My Lord *Preſton* was ſearched at that time, and Letters of no great moment taken about him. *Aſhton* and *Elliot* would have had Captain *Billop* to take thoſe Letters which were taken in my Lord *Preſton*'s Pocket and tye the Lead to them and have thrown the Pacquet over-board, and to report to the King and Council, That thoſe Letters were the Pacquet that was taken with the Lead, and ſo have perſwaded him to be falſe to the Truſt that was repoſed in him.

And *Aſhton* and *Elliot* uſed many Expreſſions to induce him to that Compliance; they told him the Government was unſtable, and every Dog had his Day, and the Tide would turn; and that he would deſerve very well if he would change ſides and go with them where they were going, and that he had opportunity to get any Preferment he would have.

L. Preſton. My Lord, I hope your Lordſhip obſerves that I ſaid none of all this.

L. C. J. Holt. No, my Lord, I do not ſay you did; my Lord *Preſton* did not ſay any thing of all this, but only about diſpoſing of the Pacquet that his Lordſhip ſpoke of to Captain *Billop*, and Complimented him, and promiſed him Kindneſs if he would diſpoſe of the Pacquet.

But, Gentlemen, as there was a Pacquet taken, ſo there were two Seals taken at the ſame time and in the ſame place, which have been produced and ſhewn to you; they lay both of them upon the Ballaſt under the Quarter-Hatches, near the Pacquet: the one of them is the Seal of my

my Lord *Preſton*'s own Coat of Arms, the other Seal belongs to the Secretaries Office, which Office my Lord once held in the late Reign.

L. Preſton. I beg your Lordſhip would be pleaſed to obſerve that the Papers were not taken upon me, and it can be no Treaſon to have Seals, I ſuppoſe.

L. C. J. Holt. Good my Lord, I will not do your Lordſhip any wrong; I do not ſay that the Papers were taken about you; no nor the Seals; but only that they lay upon the Ballaſt from whence the Pacquet was taken: And I ſay further, That theſe Seals are not denyed by your Lordſhip to be your Seals; the one is your own Seal of your Coat of Arms which was taken at that time, and ſo I do not your Lordſhip any wrong, and by the Grace of God will not.

L. Preſton. It is no Crime, I hope, to have Seals.

L. C. J. Holt. I do ſay, my Lord, the Papers were taken about *Aſhton* and not about your Lordſhip; but they lay upon the Ballaſt where the Seals were, and where your Lordſhip lay: But how far my Lord *Preſton* is concerned in this matter, is to be conſidered by you of the Jury by and by.

Now, Gentlemen, you have heard how earneſt Mr *Aſhton* and Mr. *Elliot* were; one of them, to wit, *Elliot*, wiſht a Thunder-Bolt might ſtrike the Boat under Water as they were coming back; and when they came through Bridge he wiſht that *London Bridge* had fallen upon them and knockt them upon the head.

L. Preſton. But I hope that is not to lye upon me neither, for I ſaid no ſuch thing.

L. C. J. Holt. No: But *Aſhton* and *Elliot* did ſay theſe things, and how the caſe ſtands as to that in Relation to your Lordſhip is to be conſidered. It is proved they afterwards gave Money to the Seamen, half a Crown a piece, to two of them, to ſay they were going to *Flanders*, and not to *France*.

Now Gentlemen, that my Lord was on Board this Veſſel, that my Lord was under the Hatches, and that the Papers were taken in this manner, is beyond all contradiction: So likewiſe that the Ship was hired for *France*; that my Lord took Water at *Surrey* Stairs, and was taken in this Veſſel in that manner that you have heard.

The next thing Gentlemen is about the Papers: I muſt tell you though there are ſeveral of them that do ſeem myſterious, yet they are Papers that do ſhew a very great deſign of Depoſing the King and Queen, and a purpoſe of altering the preſent Government.

But Gentlemen, I will mention to you thoſe Papers that are very plain, and leave you to conſider what conſtruction to put upon thoſe that are obſcure. There is one Paper that ſeems to be inſtructions and heads for a Declaration, that is to ſay, That the King of *France* muſt not come with a deſign to make an intire Conqueſt.

L. Preſton. My Lord, with ſubmiſſion to your Lordſhip, I hope you will pleaſe to remember and obſerve to the Jury, that Paper is not proved to be mine.

L. C. J. Holt. No my Lord, I'll do your Lordſhip no wrong, but I cannot ſpeak all my words at once.

L. Preſton. I am ſure you will not my Lord, but I beg leave to put your Lordſhip in mind.

L. C. J. Holt. Well then Gentlemen the Paper begins, *That the King's Declaration is to be formed in general Terms, that he will govern by the Laws, that they ſhall be the Rule of his Actions, that he will endeavour to ſettle Liberty of Conſcience by a Law, and that whatſoever was done by him that gave any occaſion of Jealouſy, ſhall be ſetled by Parliament. That the hath given ſufficient Proofs and Evidence of his not being willing to bring an Army of Strangers into the Kingdom, by refuſing the Succours the King of* France *offered him, and that were even ready to be Embarqued upon the firſt notice of the Prince of* Orange's *coming. That he brings ſuch an Army only as is neceſſary for his own Defence, and ſecuring ſuch of his Loyal Subjects as ſhould come to him; and that he will diſmiſs them as ſoon as he ſhall have rid the Nation of thoſe Foreigners that had invaded us, and trampled upon the Laws.*

So that Gentlemen, here is a Paper in this Pacquet, that has plainly laid open and proved the Deſign, and ſhews the meaning of it was to ſeduce their Majeſties Subjects from their Allegiance; it was to be in ſuch general Terms, making general Promiſes, hoping thereby that People would be the more eaſily impoſed upon to renounce their Allegiance to their preſent Majeſties.

But Gentlemen, the Declaration imports farther, that the Realm was to be invaded by Foreigners, and to palliate it, it is pretended that Foreigners were only brought in to rid the Nation of Foreigners, and you know who are meant by that: So that this Project was only to colour a Foreign Invaſion; and this Declaration was to direct them how and upon what pretences they ſhould invade this Kingdom.

Gentlemen, there is no manner of doubt but this is a Treaſonable Declaration, and if any Perſon had this in his Poſſeſſion, and was going into *France* to carry, with an intention there to make uſe of it, that is Treaſon, though it be coucht under ſpecious Pretences of reſtoring People to their Liberty: It was plainly a Deſign to invade *England* by a *French* Army.

L. Preſton. My Lord, that Paper was not found about me.

L. C. J. Holt. No, no, my Lord, it was not; but good my Lord give me your favour, I will certainly obſerve every thing that is fitting; but I tell you I cannot do it all at once.

Then Gentlemen, there is another paper found in the Pacquet, that is ſaid to be the reſult of a Conference that was had between divers Lords and Gentlemen, as well *Tories* as *Whiggs* as they call them, to prove it poſſible to reſtore the late King by *French* Arms; and how this may be effected, were Propoſals made: Yet ſtill it was pretended to preſerve the Proteſtant Religion, and the Civil Adminiſtration according to Law.

And that it might be brought to paſs, the credulous were to be impoſed upon, and made to believe that the *French* King would not conquer *England* for himſelf; no, but he would conquer it for the late King; he would be at that vaſt Charge, that great Expence of Men and Arms to reſtore King *James*, and make no Profit of it himſelf.

And it was propoſed how to ſeduce the People of *England* into a belief of the *French* King's Kindneſs; He was to indulge the *Engliſh* Proteſtants in *France*, and let them have the exerciſe of their own Religion there at their own Charges; and this to ſatisfy the *Engliſh* Proteſtants, that

that his Perſecution of the *Hugonots* in *France*, was not out of averſion to the Proteſtant Religion, but only becauſe of their Antimonarchical and reſiſting Principles. So that they were propoſing among themſelves what they were to do to make the People believe the *French* King had no dangerous Deſign againſt our Religion and Liberties; and if they could meet with Perſons to believe this, that was a probable way thought upon in this Conference to get a great many Adherents to the *French* King, thereby this Invaſion to be facilitated, and the whole Project rendred more ſucceſsful.

There is another thing Gentlemen, in this Paper, and that is this; they complained of the miſmanagement of their Affairs at St. *Germains*; that though they did earneſtly deſire the Reſtitution of the late King, yet there was always ſome fooliſh thing or other that came from St. *Germains* that obſtructed their Deſign.

What that fooliſh thing is, I can't ſay, it does not appear; but whether it were not too great a Diſcovery of their Zeal for Popery, and the advancement of the Popiſh Religion, is worth your Conſideration.

And ſomething is to be done for Satisfaction of the People as to that; and it is adviſed that there ſhould be Seven or Nine, or ſuch a Number of *Engliſh* Men that ſhould go over, and be received into favour at St. *Germains*, and they ſhould be of the Council there, and theſe were to be Proteſtants; and that was to be a colour and pretence that the late King was reconciled to the Proteſtant Intereſt, becauſe he choſe Proteſtant Counſellors, and had received them at St. *Germains*, and was adviſed by them.

This, ſays the Paper, will make the World believe, he is ours, and that we have gained him; which was to delude a great many of the People of *England*, that they ſhould not be affrighted in caſe there ſhould be ſuch an Invaſion of *England*, but invited rather and encouraged to joyn with the *French* when they came.

But, Gentlemen, the three laſt Papers that have been produced to you, are Papers that do ſomewhat more nearly concern my Lord *Preſton*.

The firſt Paper contains ſeveral Memorandums; It begins with Lady *D.* 2000 *l.* who that Lady *D.* is, I muſt leave it to you to imagine, tho' perhaps it may not be hard to gueſs.

It takes notice that the *Engliſh* and *Dutch* were like to joyn; and theſe Memorandums do alſo ſhew a deſign and purpoſe of ſomething to be done for the prevention of that Conjunction. They ſeem alſo to be Inſtructions to be made uſe of upon going into *France* to negotiate or tranſport ſome matters of dangerous Conſequence.

L. Preſton. My Lord, I hope that your Lordſhip will obſerve, that theſe Memorandums are broken kind of Notes, incongruous and incoherent.

L. C. J. Holt. Ay, my Lord, they are ſo, they are but broken things; but I ſay ſtill, they are Memorandums that were to be uſed for ſome purpoſe: Now I leave it to the Jury to conſider of the matter of them: What can be plainer than what is there expreſſed? The *French* are to come in time, before the *Dutch* and the *Engliſh* joyn; they are to watch their Opportunity and come betimes, and they are to fight at the Chops of the Channel, and not to come ſo far as *Beachy*.

L. Preſton. This is all but preſumptive Evidence, my Lord.

L. C. J. Holt. I appeal to your Lordſhip if it was not in the Paper, and I appeal to the memory of the Jury whether I miſrepeat it or not.

The Paper mentions *Gennings* and *Strickland* and *Trevannion*, that they were to come from St *Malo*'s in one Night; the King (meaning the late King) was not to be on Board; and there were Ships to lye at *Newcaſtle*, to plague *London*: It is eaſy to underſtand what they meant. Among theſe Memorandums, it is made as a remark, that the *London* Clergy are the worſt. It gives an account how *Portſmouth* was fortified, and *Goſport*, and what number of Men were in them; and of the ſtate and condition of our Navy; what rates our Ships were, and how many, and who were to be the Commanders.

L. Preſton. I beg your Lordſhip to obſerve this is not Treaſon.

L. C. J. Holt. I ſhall tell you that my Lord, by and by; I am now ſtating the Evidence.

Gentlemen, my Lord *Preſton* inſiſts upon it, that theſe Papers were not found about him: It is true, they were not, but it does not therefore follow that they were none of his Papers: But you have Three Witneſſes, Mr. *Townſend*, Mr. *Bland*, and Mr. *Warr*, produced to prove theſe Papers to be my Lord's Hand; Mr. *Townſend* ſays he was acquainted pretty well with my Lord *Preſton*'s Hand; he was one of his Clerks in the Office of the Wardrobe; he ſays he has ſeen my Lord write ſeveral times, and does believe the Writing to be his Hand; and to the ſame purpoſe ſays *Bland*; and Mr. *Warr* ſwears to one of the Papers, that he believes it to be my Lord *Preſton*'s Hand.

L. Preſton. I hope your Lordſhip will pleaſe to obſerve to the Jury, That this is only a proof of Similitude of Hands, no body ſee me write them.

L. C. J. Holt. They only ſay they do believe it to be your hand; no body ſays they ſaw you write them; if I omit any thing, pray tell me when I have done.

Gentlemen, there are other Papers which have been produced and read, that are writ in Canting Terms, which yet plainly ſhew the general Deſign; they tell the Party that Council are of Opinion, he has a very good Title; they hope he will appear himſelf, and if the Cauſe be well ſolicited it may come to a hearing before the end of *Eaſter Term*.

There is another matter mentioned in another Letter which is under the diſguiſe of Trade, That the Goods muſt come before the firſt of *March*. And another of them ſays, That unleſs the Copper and the Linnen come before the tenth of *March* they ſhould loſe this Summers Profit.

Gentlemen, what can be the meaning of all this?

L. Preſton. I know not indeed, my Lord.

L. C. J. Holt. In another of the Papers it is ſaid, 'Tis thought our Fleet will be ready by *March* or *April*, but they believe not till *June*.

Truly, Gentlemen, I have not been able to take particulars of every Letter, but I muſt leave it to your Obſervation; only there is one of them that makes mention of acquainting my Lord with the condition of the Writer, and direction is therein given to ſpeak to the Bearer; and what other Lord was there, but he in the Company?

L. Preſton. I deſire to obſerve, my Lord, that I was not the Bearer.

L. C. J. Holt. Truly, my Lord, I can't tell who was meant; I muſt leave it to the Jury to judge of that; but there was no other Lord in that Company.

L. Preſton. I give your Lordſhip thanks for obſerving that it was not proved that they were taken upon me before; but I beg your Pardon for interrupting of your Lordſhip.

L. C. J. Holt. Interrupt me as much as you pleaſe, if I do not obſerve right; I will aſſure you I will do you no wrong willingly.

Now, Gentlemen, the Queſtion is in the firſt place, Whether this be Treaſon? and I told you before, without queſtion, if any Perſons do go into *France* to Negotiate ſuch a deſign as this, or do purpoſe to go into *France*, and do any Act in order thereunto, that is High Treaſon; and theſe Letters do import High Treaſon as great as can be committed, a Treaſon againſt the King and Queen, a Deſign to invade the Realm, to ſubvert the Government, to reſtore another Prince to the Throne by the aſſiſtance of Foreign Force.

There was a Deſign to delude and impoſe upon a great many People, and thoſe that would not be deluded into a belief by theſe fair Pretenſions of Friendſhip, they were to be ſubdued by an Army of Foreigners.

Then, Gentlemen, the next Queſtion will be, how my Lord *Preſton* is affected by this Evidence, and whether you have ſufficient proof from what has been offered, to ſatisfie you, that he is Guilty of this Treaſon or no.

Firſt my Lord tells you, there has not been a clear proof that theſe are the Papers that were taken; for (ſaith he) they have been conveyed from hand to hand, ard therefore poſſibly there might be ſome Alteration made in them. You, Gentlemen are to conſider, notwithſtanding this objection, whether the Identity of the Paper be not proved.

Captain *Billop* tells you he took them, and in what manner; and afterwards carried them to my Lord *Nottingham*, who laid them by for a little while upon his Table, and Captain *Billop* withdrew (that is part of my Lords Objection) while my Lord *Nottingham* examined my Lord *Preſton*: after that, my Lord *Nottingham* called in *Billop* again, and *Billop* ſwears the Pacquet was not opened, but remained intire in ſuch manner as they were delivered to my Lord *Nottingham*; and ſo ſays my Lord *Nottingham*. Then Captain *Billop* ſaw my Lord *Nottingham* open it at that time, and he ſaw all theſe Papers every one put up again by my Lord *Nottingham*; ſo that he could not be deceived: and my Lord *Nottingham* delivered them to him, and he carried them to my Lord Preſident all ſealed up with my Lord *Nottingham*'s Seal: And my Lord Preſident tells you he opened them, and brought them to the King, and had them back from the King; but they were never out of his ſight while the King read ſome of them, but he took them all and brought them to the Cabinet Council, where my Lord *Sidney* received all theſe Papers that have been read, and marked them. You have my Lord *Sidney*'s Oath that theſe are the Papers he had from my Lord *Preſident*; you have my Lord *Preſident*'s Oath that he had them from *Billop* ſealed with my Lord *Nottingham*'s Seal; you have my Lord *Nottingham*'s Oath that he had them from *Billop*; and *Billop* ſwears that they were taken in the Smack.

So that it is plain, if you believe this Evidence, that they are the ſame papers. Beſides, as to ſeveral of them, *Billop* marked them, and ſwears directly to them. If you believe theſe Witneſſes, as you have no reaſon I think, to the contrary; it is plainly proved theſe are the very Papers which were taken from the Boſom of *Aſhton*, and taken up by him from under the Quarter-Hatches in the Smack.

L. Preſton. I beg your Lordſhips pardon for one thing.

L. C. J. Holt. My Lord, what ſay you, pray? Say what you will

L. Preſton. With humble Submiſſion, there is one thing that I think the Jury ought to take notice of, That when the papers were ſent from Mr. *Bridgman* to my Lord *Sidney*, they were ſent by a Meſſenger.

L. C. J. Holt. My Lord, you are miſtaken as to that Objection, for my Lord *Sidney* did not ſend them to Mr. *Bridgman* by a Meſſenger, but he delivered them with his own hand, and after he had ſet his own Mark upon them; and Mr. *Bridgman* ſays they were never out of his ſight, he copied them all but two or three, the other Mr. *Poultney* copied in his preſence, and ſo he ſwears he re-delivered them to my Lord *Sidney*.

L. Preſton. With humble ſubmiſſion, my Lord, if I remember right, they were in a third hand.

L. C. J. Holt. Never, never.

L. Preſton. Did not my Lord *Sidney* ſay ſo, or Mr. *Bridgeman*?

L. C. J. Holt. No: neither my Lord *Sidney*, nor Mr. *Bridgman* ſaid ſo; I ſuppoſe the Jury are apprehenſive of the matter; I would not miſlead them, I'll aſſure you, nor do your Lordſhip any manner of Injury in the World.

L. Preſton, No, my Lord, I ſee it well enough that your Lordſhip wou'd not; I am for my Life, and beg your Lordſhips pardon for interrupting of you.

L. C. J. Holt. Gentlemen, the next thing is to conſider, Whether my Lord *Preſton* be anſwerable for theſe Papers or a Party in this Treaſon.

Firſt, Gentlemen, I would have you to conſider that there was the hiring of a Veſſel for *France*: It is true, my Lord *Preſton* was not preſent at the bargain; but you obſerve that my Lord *Preſton*, his Servant, *Aſhton* and *Elliot* took Water at *Surrey-Stairs* on purpoſe to go on Board that Smack.

Now, Gentlemen, Whether or no you can intend any other ways than that my Lord *Preſton* was privy in the hiring of this Veſſel, though he was not preſent at the hiring of it; for how ſhould my Lord *Preſton* be ready to take Water with them at *Surrey-ſtairs*? Can you imagine my Lord came there by chance, and took a ſuddain Reſolution? If you can imagine that he came only to go a Ship board without knowing the previous Deſign, truly you imagine a very great thing for my Lords advantage.

It is plain he went voluntarily without Compulſion; truly, I think the Evidence is very ſtrong to induce you to believe he was privy to this deſign, and that he did know of hiring the Veſſel.

L. Preſton. I hope your Lordſhip will obſerve at the ſame time, that I was never ſeen before we took Boat.

L. C. J. Holt. My Lord I have obſerved it, and I lay that weight upon the Evidence, that I think it will naturally bear, and no more; and leave it to the Jury to conſider, whether your Lordſhip was privy to the Deſign or no, when they

they weigh the Circumſtances of the Evidence together.

L. Preſton. I hope I ſhall not be condemned upon Preſumption and Argument.

L. C. J. Holt. What weight the Evidence has they will conſider.

And then, Gentlemen, there is another thing that I would obſerve; Why ſhould my Lord *Preſton*, a Noble Man, a Perſon of his Honour and Quality, put himſelf in ſuch a place as he was found in, and that twice? It muſt ſure be out of an Apprehenſion of ſome Danger. As for the Seamen they were ſecure enough; they were not frightned, becauſe they thought they were protected, and my Lord *Preſton* knew he was not lyable to be preſt; the Maſter of the Veſſel tells you they were fearful, and therefore hid themſelves in a place they could not ſtand in, nor ſit in; there was the Gravel and Ballaſt, it was uneaſie to them, dangerous to their Health to be there.

Gentlemen, why do Men avoid the light and put themſelves under covert, unleſs they have ſome evil deſign? Perſons that are innocent ſeek not obſcurity.

The Seals were found there, and my Lord does not deny they were his Seals.

L. Preſton. I do not deny that, I hope it is no Crime to have ſuch Seals.

L. C. J. Holt. Ay but, ſays my Lord, that does not affect——becauſe the Papers were not found about me, but were found about *Aſhton*. Gentlemen, if you can imagine my Lord *Preſton* had a different Deſign from the reſt of the Company that were with him, then you may acquit my Lord, and find him Not Guilty. But it is left to you to conſider whether he had not the ſame Deſign with them. Beſides there's mention made in one of the Letters, *My Lord*, and there was no other Lord but he; and here are Papers proved to be my Lord's own hand, containing ſeveral of the matters of which he ſtands Indicted, and he would have had the Captain to have diſpoſed of the Papers.

Now, Gentlemen, what account does my Lord give you where he was going? it ſeems they did pretend at the time they were taken, and they would have had the Maſter of the Veſſel ſaid, that their deſign was for *Flanders*; but the Witneſſes tell you poſitively, That the Veſſel was hired for *France*.

Truly, Gentlemen, I muſt leave the matter to your Conſideration whether my Lord be Guilty of this Deſign or Not Guilty.

There is another thing that my Lord has urged (for I would not willingly omit any thing material on the one ſide or the other) he ſays his Indictment is laid in the County of *Middleſex*, but the Papers were not taken there, the Ship they went on board lay at Anchor in *Surrey*; and when they were taken it was in the County of *Kent*, and ſo there is no Proof of Treaſon in *Middleſex*.

Ay, but Gentlemen, give me leave to tell you, if you are ſatisfied upon this Evidence, that my Lord was privy to this Deſign, contained in theſe Papers, and was going with them into *France*, there to excite an Invaſion of this Kingdom, to Depoſe the King and Queen, and make uſe of the Papers to that end, then every ſtep he took, in order to it, is High Treaſon, whereever he went; his taking Water at *Surry-ſtairs*, in the County of *Middleſex*, will be as much High-Treaſon, as the going a Ship-board in *Surrey*, or being found on Ship-board in *Kent*, where the Papers were taken.

Gentlemen, I have failed of recollecting ſeveral of the Particulars of the Evidence, becauſe they are many; and you will not depend upon my Recollection of things ſo very incoherent as ſome Parts of the Evidence in the Papers are, but upon your own Notes and Obſervations.

If you do think, having heard this Evidence, That my Lord was not concerned in this Matter, That my Lord had no Deſign to go into *France* with theſe Papers, but that he was an utter Stranger to all theſe things, then you are to acquit my Lord. But if you believe my Lord was privy to, and knew of the hiring of this Veſſel, and that he went to carry on the Deſign, contained in theſe Papers; and that he wrote ſome of theſe Letters, and with the others he was acquainted, then you are to find him guilty.

L. C. J. Pollexfen. My Lord, if you pleaſe, I would obſerve one thing, to the Jury.

L. C. J. Holt. Ay, by all Means my Lord.

L. C. J. Pollexfen. Gentlemen of the Jury, I ſhall ſay but a few Words to you, becauſe indeed my Lord has ſum'd up the Evidence very fully, for matter of Law: I am fully of Opinion there never was a more black nor horrible Treaſon than is in this Plot that is now diſcovered; for I think *Engliſhmen* have no greater Enemies than the *French* and the *Papiſts*, and you ſee this is a Plot to bring in both; and therefore I think there was never any thing of greater Conſequence to the Government and the Nation than to have this Plot detected and puniſhed; tho' perhaps never any thing was more improbable than this ſame Plot, that it ſhould ever take effect, whatſoever they promiſed to themſelves, and their Deſire of having it effected might perſwade them to the contrary.

But, Gentlemen, the thing that I would mention about the Matter before you now, is this; Here are three Papers that by three ſeveral Witneſſes, acquainted with my Lords Hand-writing, are teſtified, as they believe, to be his Hand-writing; if ſo, then there is an End of all, for therein is a horrid deal of Treaſon contained. If theſe Inſtructions, theſe Memorandums, theſe Heads that were written down were my Lords, and he did intend to go with theſe in a Voyage towards *France*, that will be ſufficient of it ſelf, if there were nothing elſe in the Caſe, to maintain this Indictment.

But, Gentlemen, you have in the reſt of the Papers, that were taken, a great Character of the Bearer; that the Bearer had done great things; that the Bearer could inform them fully of every thing; and there ſhould be full and intire Confidence put in the Bearer, and a great ſuch many Phraſes.

But, ſays my Lord, I was not the Bearer, it was Mr. *Aſhton* that the Papers were found about; it does not appear directly who the Bearer was; and they were not found about me.

Now, Gentlemen, pray let us look a little how this Evidence ſtands: Pray where was this Bundle found? even upon the Gravel, where my Lord *Preſton* and Mr. *Aſhton* lay; there was it found, and my Lord's own Seal with it.

How, in the Name of God, came my Lord's Seals to be found with other Peoples Papers, if they did belong to any body elſe? How came they together in that place? It may be he had

a mind to leave his Seals behind him. becauſe they would diſcover his Quality. But why ſhould my Lord *Preſton* have all this fear upon him? Why ſhould two Men go and take a Ship for themſelves and two others; and when they came to take Boat, take in my Lord and his Man, if they were not the two others that were deſigned? and this to be done at Night in the Dark? Why ſhould my Lord be under ſuch terrible Apprehenſions as to creep into a hole ſo unfit for one of his Quality?

Why do you not hear from my Lord ſome good Account upon what occaſion my Lord and his Man were going to *France*? Or whither elſe my Lord was really going? for ſome where or other it was plain he was going.

Gentlemen, no Man goes into an Enemies Country without ſome Licence, unleſs he go upon ſome ill Deſign: Fear ſeldom is without ſome Guilt; and there appears, throughout the whole management of the Story, that there was a great deal of fear upon theſe Gentlemen.

Beſides afterwards, when he is taken, and the Letters taken with him in the ſame Company, you hear what endeavours there were to ſuppreſs the Truth, even by my Lord's deſiring to have the Pacquet diſpoſed of; and my Lord's Man gave one of the Seamen half a Crown to ſay they were going to *Flanders*, not to *France*. I ſuppoſe the Man knew how unfit it was to be known that they were going to *France*: And my Lords two Companions ſpared for no Pains to get the Pacquet thrown over-board; tho' all that my Lord ſaid was what great Kindneſs he would do him when it lay in his Power, if he would diſpoſe of the Pacquet; I ſuppoſe that is very eaſily intelligible.

Gentlemen, there is one thing which is mentioned in one of the particular Letters that I deſire particularly to obſerve to you, and that is all I ſhall ſay to you; Here is a Letter in my Hand that in divers places has ſomewhat remarkable, it ſays, *Your Daughter and I muſt ſtarve, if this Government can make us: That the Party did not repine at all for having loſt all for your ſake, which your favour had beſtowed.* And in another place this Letter doth ſay, *Your Daughter grows very tall, and very pretty, as I am told.* But that which I chiefly mention it for, is, it's twice mentioned, *My Lord will tell you all my Condition, how I have been uſed; and I have told my Lord my Condition: what I deſire of you, he thinks very moderate.*

And pray conſider and remember, that the firſt Article of my Lord's Paper, that is taken to be under my Lord's own Hand, there is two thouſand pound to the Lady *D.*

Now if any body ſhould put theſe together, do they lack any great Interpreter for? for my part I leave them to you.

Then in another place, towards the end of the Letter, it is ſaid, *Pray, Sir, ask my Lord how I have been uſed.*

Now this Letter being thus taken, and there is never a one of the reſt that was a Lord, do you think any of the reſt was meant? I muſt leave it to you.

If my Lord *Preſton* had produced any Teſtimony to prove his own good Carriage and Behaviour towards the preſent Government, it had been very much for his advantage, and might have had great weight with you; but when things appear only in this manner as they do now, I muſt leave it to you.

Gentlemen, 'tis a great Matter, and of great Moment; if thoſe that conſpire againſt the Kingdom, againſt the Proteſtant Religion, and againſt the preſent Government, may do it with impunity, it will be worth the conſidering what the Conſequence of that may be. Your own Conſciences require you to do Right and Juſtice on both ſides; and if you are ſatisfied he is not guilty, you will find him ſo; if you are ſatisfied that he is guilty, you will find him ſo.

L. Preſton. My Lord, may I have the liberty to ſay any thing before the Jury go out?

L. C. J. Holt. Your Lordſhip ſhould have ſaid what you had to ſay before. It is contrary to the courſe of all Proceedings in ſuch Caſes to have any thing ſaid to the Jury after the Court has ſummed up the Evidence, but we will diſpence with it. What has your Lordſhip to ſay?

L. Preſton. My Lord, I humbly thank your Lordſhip; I am not acquainted with ſuch Proceedings.

L. C. J. Holt. My Lord, you know I permitted your Lordſhip to interrupt me as much as you wou'd, which was never done before in any ſuch Caſe.

L. C. J. Pollexfen. It is contrary to the courſe of the Court: But yet if you have any thing to ſay to the Court or the Jury, for this once we permit it.

L. Preſton. Gentlemen of the Jury.——

L. C. J. Holt. My Lord, what you have to ſay, pray direct your ſelf to the Court, that we may hear what it is.

L. Preſton. My Lord, I only deſire the Jury may be informed that I am a Proteſtant, that I was baptized in the Religion of the Church of *England*, and have always lived in it, and hope to dye in it. My Lord, 'tis true, things have been urged with Severity againſt me that are a little hard; in making that, which I hope will amount to but a Preſumption, to be a Proof; as in the Caſe of the Letters that are written in a Cant, and my Intention to go to *France*, and thoſe words in the Letter, where *my Lord* the Bearer is named. But your Lordſhip obſerves, That that Letter is not directed to any body, and that is full of Cant as well as all the reſt; Why ſhould I be ſuppoſed to be the Bearer any more than either of the others, and they were found about one of them? But, my Lord, for the reaſon of my going beyond Sea, it was this; I deſigned to go to *Flanders* or any place I could be driven to, and that ought not to be wondred at; for really I who had lived quietly after the loſs of my Places, upon this Revolution, and ſuffered great Inconveniences in my Eſtate, and was retired to my own Houſe, with a Deſign to live a retired Life, was impriſoned twice in the *Tower*, and proclaimed a Traytor in every Market Town, without any Indictment; and my Impriſonment tended greatly to the impairing my Health and my Fortune; all this made me very uneaſie here: and, my Lord, I went under a fixed Reſolution to go to *Flanders* or any place where I thought I could be quiet.

L. C. J. Holt. My Lord, your Lordſhip ſhould have ſaid all theſe things before, for it is not the courſe to reply upon the Court; if you had had any thing to ſay, you know we heard you out of Courſe, and I let you interrupt me as much

much as you did think fit, though that has not been allowed at any time before. But, my Lord, pray let me ſay one thing more: Suppoſe your Lordſhip did think your ſelf hardly uſed, though I know not any reaſon you had to think ſo; yet your Lordſhip muſt remember it was in a time of danger that your Lordſhip was taken up before, and you had ſhewed your Diſſatisfaction with the preſent Government, and therefore they were not to be blamed if they ſecured themſelves againſt you; but if you had a mind to retire into the Country, or to go abroad, was *France* the only Country you could chooſe? a known declared Enemy's Country at open War with the Government?

L. Preſton. My Lord, I beg your Lordſhip's Pardon, if I give any Offence.

L. C. J. Holt. No, my Lord, you give me no Offence at all; but your Lordſhip is not right in the courſe of Proceedings; I acquaint you with it not by way of Reproof, but by way of Information.

L. Preſton. Then I hope the Gentlemen of the Jury will conſider, that all that is alledged againſt me is but Preſumption; my Life and Fortune, my Poſterity and Reputation, are all at Stake; I leave all to the Jury's Conſideration, and the God of Heaven direct them.

L. C. J. Holt. If you go on thus to reflect upon the Court, you will make the Court to reflect upon you. The Jury hear how the Evidence has been ſtated: I think it has been done very impartially, and without any Severity to you: Why ſhould you think we would preſs the Evidence further than it ought to go againſt you? You are a Stranger to moſt of us, and I am ſure we do not deſire your Life; but ſtill we muſt take care that Juſtice be done to the Government and the Kingdom, as well as to any particular Perſon; and Evidence that is given muſt have its due Weight and Conſideration: If any one can deſign innocently to go into *France*, at this time of day, with ſuch Papers, and in ſuch a manner, that I leave to the Jury's Conſideration.

Then the Jury withdrew, to conſider of the Evidence, and the Court adjourned for a little while, and returned in half an hour; and the Jury came in and were called over, and appeared.

Cl. of Ar. Are you all agreed of your Verdict?

Jury. Yes.

Cl. of Ar. Who ſhall ſay for you?

Jury. Our Fore-man.

Cl. of Ar. Sir *Richard Grahme*, hold up your Hand, (which he did) Look upon the Priſoner. How ſay you? Is he guilty of the Felony and High-Treaſon whereof he ſtands indicted, or not guilty?

Foreman. Guilty.

Cl. of Ar. What Goods and Chattels had he?

Foreman. None at all that we know of.

Then the Verdict was recorded.

L. C. J. Pollexfen. I think, truly, Gentlemen, you have done according to your Evidence; and though it be a hard Caſe upon particular Men that have brought themſelves into theſe Incoveniences; yet it is neceſſary Juſtice ſhould have its due courſe, or elſe there is no longer living for any Man in any Society or Government.

Then the Priſoner was carried back to Newgate, *and the Court Adjourned till* Monday *Morning following at ſeven a Clock.*

Die Lunæ, xix *Januarii*, 1690.

The Court being Sate, the Jury was called over, and the Appearance of thoſe who anſwered Recorded. Then Mr. Aſhton *and Mr.* Ellyot *were brought to the Bar; but Mr.* Ellyot *was ordered to be carried back to* Newgate, *the King's Council reſolving to try Mr.* Aſhton *by himſelf.*

JOhn *Aſhton*, hold up thy Hand. *(Which he did.)* Thoſe Men that you ſhall hear called, and perſonally appear, are to paſs between our Sovereign Lord and Lady our King and Queen, and you upon your Tryal of your Life and Death. If therefore you will challenge them, or any of them, your time is to ſpeak as they come to the Book to be Sworn, and before they be Sworn.

Mr. *Aſhton.* Pray ſtay a little.

L. C. J. Holt. What ſay you, Mr. *Aſhton?*

Mr. *Aſhton.* My Lord, I humbly deſire your Lordſhip will allow me the benefit of Pen, Ink, and Paper.

L. C. J. Holt. Pray let him have Pen, Ink and Paper.

Mr. *Aſhton.* And likewiſe that you would give my Sollicitor leave to be as near me as poſſibly he can, only to refreſh my Memory, if I ſhould forget any thing.

L. C. J. Holt. That is a thing you cannot of right demand, the other of Pen, Ink, and Paper you may.

Mr. *Aſhton.* My Lord, I ſhall acknowledge it as a very great Favour.

L. C. J. Holt. That is an Innovation that ought not to be, the Court cannot allow it.

Mr. *Aſhton.* I acknowledge it a Favour, but if the Court thinks it not fit to allow it, whatſoever your Lordſhip ſhall order I readily ſubmit to.

L. C. J. Holt. You ſhall have Pen, Ink and Paper; and what is fit for the Court to do they will do it.

L. C. Baron. If the Witneſſes ſay any thing that you do not hear, you muſt ſpeak to the Court, and you ſhall have them ſay it over again.

Pen, Ink, and Paper was given to the Priſoner.

Cl. of Arraign. Sir *William Hedges*, Knight. *(He appeared)*

Mr. *Aſhton.* My Lord, I would not trouble your Lordſhip and my ſelf with unneceſſary Challenges; I intend to put my ſelf with an intire dependance upon the firſt Twelve Men that

that appear, be they who they will.

L. C. J. Holt. What you pleaſe for that matter, you have your own choice.

Mr. *Aſhton.* Whoever they are, I ſubmit to them; I know them not.

Cl. of Arr. Swear Sir *William Hedges.*

Which was done.

And ſo were the Eleven next ſucceeding in the Pannel; and the Names of the Twelve Sworn follow.

Sir *William Hedges*, Knight.
John Wolſtenholm, Eſq;
James Boddington, Eſq;
Thomas Johnſon, Eſq;
Ralph Bucknall, Eſq;
Lucy Knightley, Eſq;
Thomas Cuthbert, Eſq;
John Herbert, Eſq;
John Tully, Eſq;
Thomas Smith, Eſq;
William Withers, Eſq; and
Daniel Thomas, Eſq;

Then the Jury were Numbred, and Proclamation made for Information and Evidence in the uſual manner.

Mr. *Aſht.* Gentlemen of the Jury, if you deſire Pen, Ink, and Paper, I hope the Court will take care to provide them for you.

L. C. J. Holt. Ay, ay, let the Gentlemen of the Jury have Pen, Ink, and Paper.

(Which was done.)

Cl. of Arr. John Aſhton, hold up thy Hand.

(Which he did.)

Gentlemen, you that are ſworn, look upon the Priſoner, and hearken to his Cauſe: He ſtands Indicted by the Name of *John Aſhton*, late of the Pariſh of St. *Pauls Covent-Garden*, in the County of *Middleſex*, Gent. For that he, together with Sir *Richard Grahme*, late of the Pariſh of St. *Ann*, in the Liberty of *Weſtminſter*, Baronet, who ſtands Convicted of High Treaſon, and *Edmund Ellyot*, late of the Pariſh of St. *James*, in the ſaid Liberty, Gent. For that they as falſe Traytors, *&c.* (*Prout* in the Indictment, *mutatis mutandis,*) and againſt the Form of the Statute in that Caſe made and provided. Upon this Indictment he has been Arraigned, and thereunto hath Pleaded Not Guilty, and for his Tryal hath put himſelf upon God and the Country, which Country you are; your Charge is, to enquire whether he be Guilty of the Felony and High Treaſon whereof he ſtands Indicted, or not Guilty; If you find him Guilty, you are to enquire, what Goods or Chattels, Lands or Tenements he had at the time of the Felony and High Treaſon Committed, or at any time ſince; If you find him Not Guilty, you are to enquire whether he fled for it; If you find that he fled for it; you are to enquire of his Goods and Chattels, as if you had found him Guilty; If you find him not Guilty, nor that he did fly for it; you are to ſay ſo, and no more, and hear your Evidence.

Mr. *Knap.* May it pleaſe your Lordſhip, and you Gentlemen of the *Jury*; This is an Indictment of High Treaſon againſt *John Aſhton*, the Priſoner at the Bar, and the Indictment, Gentlemen, Charges him, That he as a falſe Traytor againſt their preſent Majeſties King *William* and Queen *Mary*, his Supreme and Natural Lord and Lady, not weighing the Duty of his Allegiance, did upon the Twenty Ninth of *December* laſt paſt, together with Sir *Richard Grahme*, who ſtands Convicted, and one *Edmund Ellyot*, and divers others ill diſpoſed Perſons unknown to the Jury, did Conſpire, Imagine, and Intend to depoſe, and deprive the King and Queen, and to bring them to Death and Deſtruction, and to ſubvert and alter the Government; and to cauſe War and Rebellion within this Kingdom againſt their Majeſties; and to bring theſe Intentions and Purpoſes to paſs, the Priſoner, with the reſt of them, did prepare divers Notes, Papers, Letters, and Memorandums in Writing, which were to inſtruct the *French* King, and other Enemies of the King and Queen, of the number of their Majeſties Men of War, how they were Mann'd, and the Names of the Commanders of ſeveral of them, and to inform them how the Caſtles and Forts of *Portſmouth*, *Southſea*, and *Goſport* were fortified, and how they might be ſurpriſed by the King's Enemies, and of the Times, Ways and Means how they might invade the Kingdom, in order to depoſe the King and Queen; and to Procure and Incite ſuch an Invaſion, and further to bring theſe Purpoſes to paſs, the Priſoner and the other Traytors did ſecretly conceal, and detain in their cuſtody ſeveral Bills of Exchange for the payment of Money to the King's Enemies, and the ſeveral Letters, Notes, and Memorandums before mentioned, which were for the purpoſes I before opened to you; and further to bring theſe Purpoſes, and Treaſonable Intentions to paſs, they did for one Hundred Pound hire and prepare a Ship, which was to carry them ſecretly out of this Kingdom into *France*, with an intent there to deliver theſe Inſtructions, and Memorandums, and Bills of Exchange into the Hands of their Majeſties Enemies; and did hire a Boat to carry them to the Ship, and did enter into it at St. *Clement Danes*, within your County, and rowed to the Ship, and went on Board the Ship, and there with the Bills of Exchange, Notes, and Memorandums, they ſet ſail to go to *France*, in order to deliver them to the *French* King, and other Enemies of the King and Queen; and the Indictment does further ſet forth, that there hath, and ſtill is a War between the *French* King and our King and Queen, and that he and his Subjects are Enemies to the King and Queen and their Subjects; and that during this War, the Priſoner, together with the reſt that were before named, were adhering to the King and Queen's Enemies in this War; and in purſuance thereof, did prepare ſuch Letters and Inſtructions before opened, and had, and concealed in their cuſtody, and hired a Ship and a Boat, and went into the Ship, and ſet ſail in order to go for *France*, to aid and aſſiſt the King's Enemies there with Money, Intelligence, and Counſel; and this is laid to be againſt the Duty of his Allegiance, againſt the Peace of the King and Queen, their Crown and Dignity, and againſt the form of the Statute in that caſe made and provided. To this he hath pleaded Not Guilty; if we prove him Guilty, you are to find him Guilty.

Mr. *Serj. Thompſon.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, The Priſoner at the Bar ſtands indicted of a very heinous Offence, no leſs than High-Treaſon, the greateſt Offence that can be committed againſt any Humane Law. You have heard the Particulars in the Indictment read. I will not trouble you with any Repetition, but go to open the Evidence according to the Steps that are obvious in the caſe. You have heard in general the Deſign was to depoſe this King and Queen, which the Law expounds

pounds to be to bring them to Death and Deſtruction: You have heard it was to alter the Government, and cauſe a Rebellion in the Kingdom, and to bring in Foreign Power; and theſe are laid to be the Heads of the Offences that the Priſoner ſtands charged with.

Gentlemen, the firſt ſtep that was made in this matter was by the Priſoner at the Bar; for there was one Mr. *Burdett*, which it ſeems had been one of his Acquaintance, and had undertaken to bring him acquainted with a Perſon that could furniſh him with a Ship; and in order to that, one Mrs. *Pratt*, that had the management of the Smack which belonged to her Husband, ſhe by *Burdett*'s means was brought to *Burdett*'s Houſe, where ſhe met Mr. *Aſhton*, the Priſoner at the Bar, and they had ſome Treaties about the hiring of a Ship; the purpoſe declared by the Priſoner then was to hire a Ship to go to any part of *France*, and he would give a conſiderable Reward for it; he ſaid it was for himſelf and Three more. They did not come to any concluſion about the Ship; but there was an Appointment made to have the Maſter of the Ship to meet with them at the *Wonder* Tavern in *Ludgate-ſtreet*, and in order to that, *Paſeley* that is the Maſter, and the Woman came there, and met with Mr. *Aſhton*; but becauſe Mr. *Burdett* was not there, they came only to this propoſal, one Hundred and Fifty Pound was demanded for the Hire of this Veſſel; but there being no concluſion then made, they thought it better to do it at *Burdett*'s Houſe, and about a day after they came to Mr. *Burdett*'s, and then it hapned that *Elliot*, one of the Perſons that is Indicted, but not one before you, came thither too; and at that time it was agreed to give one Hundred Pounds for the Hire of the Ship. Ninety Three Guineas were depoſited in Mrs. *Burdett*'s Hands; and there was a Token paſt betwixt them by the breaking of a Six-pence, one part whereof was to ly with Mr. *Aſhton*, and the other with Mrs. *Burdett*; and whenever the Maſter of the Veſſel brought back the broken piece of Six pence that Mr. *Aſhton* had, then ſhe was to pay the Money, that being the ſign that they had attained their Ends, and were ſafely landed in *France*.

The next ſtep they take, is this, they appoint to meet at the *Seven Stars* in *Covent Garden*, thither the Maſter of the Veſſel and the Woman were to come, and that was near the time, that very day that they deſigned to go down, and there was Mr. *Aſhton*, and Mr. *Elliot*, but the other Perſon did not appear as yet, there the Sea-men were ordered to go along with them, and thence they went down to the Water ſide, to *Surry-ſtairs*, and the Waterman was called, and in the mean time came my Lord *Preſton* and his Man to them, and they four did go in that Boat, by the Direction of the Maſter, and were carryed on Board his Smack.

After they came on Board (for I would note the particular Circumſtances) they were very apprehenſive of Danger, for they knew what they went about, their own Guilt gave them Reaſon of Fear, and when they came near a Man of War, which lay at Anchor in *Long-Reach* in the River, they deſired the Maſter to hide them, that they might be ſafe from any Search, and they were hid and put cloſe under the Hatches for ſome time; afterwards when they came to another place of Danger, it was by the *Block Houſes* at *Graves-end*, (as they apprehended) there they deſired to be hid again, and ſo they were put in that place were they were in very difficult Circumſtances under the Hatches, and there they remained till a Pinnace, that had been ſent to enquire after them, came and Boarded this ſame Veſſel.

Upon its Boarding of them, the Captain made a ſearch, and found theſe Gentlemen, my Lord *Preſton*, Mr. *Aſhton*, and Mr. *Elliot*, and I ſuppoſe his Man alſo, all hid under the Hatches.

Then the next thing which is obſervable, Gentlemen, and the great Matter that will ſhew where the Treaſon was, is this, there was a Bundle of Papers that was on Board, ready prepared, if they had not been ſurprized, but could have had an Opportunity for it, to have been caſt Over-Board, and there was Lead fixt to it, to have ſunk it, and Mr. *Aſhton* the Priſoner at the Bar, was the Perſon that concealed this Bundle of Papers, betwixt his Body and his Coat, and from thence it was taken by the Captain that took them.

When they were ſo taken, the Captain, according to his Duty, was bringing the Priſoners to *Whitehall*, they deſired to go on Shore at *Graves-End*, but the Captain did not think that ſo fit, but carryed them on Board the *George Frigot*, and then you will hear theſe Gentlemen did fall into a Treaty with the Captain, to ſuppreſs theſe Papers, and one Inſtance I remember they did tell him, that ſince there were a parcel of Papers that he had taken out of my Lord *Preſton*'s Pocket, he might take off the Lead and fix it to thoſe Papers, and ſink the others; and what ſhould he have for it? they promiſed him great Rewards, they told him he might be a great Man, he had an Opportunity of making his Fortune; and when that would not do, they uſed many Threatnings to him, all which will appear in the ſeveral Circumſtances that the Witneſſes will tell you of.

I come, Gentlemen, in the laſt place to ſhew you, That all the whole Conſpiracy, all this Treaſon, did lye hid under this Bundle of Papers that were taken from Mr. *Aſhton*, and ſo he might well be afraid of having them opened, for there you will find a formed Deſign, to alter this Government by a *French* Power and Aſſiſtance; and they contain ſo many Particulars, that in regard, I would not do the King's Evidence injury on the one hand, nor the Priſoner on the other, I will forbear repeating the Particular Inſtances.

Gentlemen, You will have all the Letters and Papers Read, but in the General, I muſt needs ſay, you will find it manifeſt, that there is a black and wicked Conſpiracy to introduce a Foreign Power, to Eſtabliſh the Proteſtant Religion, and that by a Popiſh Intereſt, and to ſettle our Laws, Liberties, and Properties, by a *French* Army. And let them pretend what they will for the Proteſtant Religion, when you hear theſe Papers read, no body will imagine it was to any other purpoſe, (if the Plot had taken Effect,) but to have what Religion, what Laws, the *French* King had pleaſed to impoſe upon us.

If the Priſoner be Guilty, Gentlemen, of theſe Matters, I know you will do your Duty; but if he be not Guilty, God forbid that you ſhould find him Guilty.

L. C. J. Holt. Call your Witneſſes, Brother.

Mr. *Serj. Thompſon.* We begin with Mrs. *Pratt*.

She was Sworn.

Sir *W.*

Sir *W. Wil.* Look you, Mrs. *Pratt*, here is another Gentleman at the Bar to be Tryed, againſt whom you are called as a Witneſs.

Mrs. *Pratt.* Yes, my Lord.

Sir *W. Wil.* Pray hear what we ask you. Pray do you give the Court and the Jury an account, what Treaty you have had with that Gentleman, about a Veſſel to go to *France*, and what was done in it.

Mrs. *Pratt.* If it pleaſe you, my Lord, I was ſent for to Mr. *Burdett's* Houſe in *Queen-ſtreet* by *Cheapſide*, to know whether he could have a Smack to go for *France*; I told him yes, I could help him to one; he told me, there were two or three Gentlemen bound for *France*, as Merchants to fetch Silk, and I was at Mr. *Burdett's* two or three times, and at laſt Mr. *Aſhton* met me there.

L. C. J. Holt. Look upon the Gentleman, is that he?

Mrs. *Pratt.* Yes, that is the Gentleman, and he met me there, and meeting with Mr. *Aſhton*, he hired the Veſſel; but firſt of all, he deſired us to meet at the *Dog* Tavern upon *Ludgate-Hill*, to make the Bargain, and we did meet there, and were there about an hour, or an hour and a half, and Mr. *Burdett* did not come; and the next Morning, Mr. *Aſhton* deſired me to meet him at Mr. *Burdett's* again; and the next Morning I met at Mr. *Burdett's*, and there we made the Bargain for 100 *l.* and there was Sixpence broke in two pieces.

Mr. *Serj. Tremain.* Was the Hundred Pound paid?

Mrs. *Pratt.* Yes, but we agreed on the *Tueſday* Morning, and there was a Sixpence broken in two, and Mr. *Aſhton* had both the Six-pences in his hand, and the *Tueſday* night the Hundred Pound was paid at Mrs. *Burdett's*.

Mr. *Sol. Gen.* Who was by?

Mrs. *Pratt.* There was one Mr. *Elliot*, and the Maſter of the Smack, and Mrs. *Burdett*.

Mr. *Serj. Tremain.* Did they pay the Money in Gold or Silver?

Mrs. *Pratt.* This Gentleman, Mr. *Aſhton*, told the Money, there was 93 Guineas and a Six-pence, and Mr. *Aſhton* gave one half of the broken Six-pence with the 93 Guineas to Mrs. *Burdett*; and when the Maſter of the Veſſel brought the other half of the Six-pence, or I, either of us, we were to have the 100 *l.*

Sir *W. Wil.* Pray to what Place did they hire the Ship to go?

Mrs. *Pratt.* To *France.*

Sir *W. Wil.* Who hired the Ship?

Mrs. *Pratt.* That Gentleman.

Sir *W. Wil.* Who paid the Money?

Mrs. *Pratt.* That Gentleman, Mr. *Aſhton.*

Sir *W. Wil.* To what hand was the Money paid?

Mrs. *Pratt.* It was paid in Mrs. *Burdett's* Bed-Chamber, into her Hand.

Sir *W. Wil.* Who broke the Sixpence?

Mrs. *Pratt.* Mr. *Aſhton*, that day the Bargain was made.

Sir *W. Wil.* Who carried it away?

Mrs. *Pratt.* When the Money was paid, Mr. *Aſhton* had one, Mrs. *Burdett* had the other part.

Mr. *Serj. Tremain.* To which part of *France* were you hired to go?

Mrs. *Pratt.* To any part where they could touch.

Mr. *Serj. Tremain.* Pray did they give you any Note about any thing?

Mrs. *Pratt.* Yes, they gave me one Note to meet at the *Dog* Tavern, and another to meet at the *Seven Stars* in *Covent Garden.*

Mr. *Serj. Tremain.* Who gave you the Notes?

Mrs. *Pratt.* Mr. *Aſhton* and Mr. *Elliot.*

Mr. *Serj. Tremain.* Look upon that Note.

(*Which ſhe did.*)

Mrs. *Pratt.* This to my beſt remembrance Mr. *Aſhton* wrote, I cannot well remember the Hand.

Mr. *Serj. Tremain.* Did Mr. *Aſhton* deſire to meet at the *Dog* Tavern?

Mrs. *Pratt.* Yes, and he did meet at the *Dog* Tavern, but *Burdett* did not.

L. C. J. Holt. When did you meet at the *Dog* Tavern?

Mrs. *Pratt.* On the *Monday* Night before New Years Day.

L. C. J. Holt. When was the Money paid?

Mr. *Pratt.* On *Tueſday* Night, at Mrs *Burdett's.*

Mr. *Serj. Tremain.* After the Money was paid, what did you do the next day?

Mrs. *Pratt.* Mr. *Aſhton* Ordered a Note to be written, to meet at the *Seven Stars* in *Covent Garden*, at one Mr. *Rigby's.*

L. C. J. Holt. At what time were you to go to *Rigby's*?

Mrs. *Pratt.* A *Wedneſday* Night.

L. C. J. Holt. But at what time?

Mrs. *Pratt.* Some time about Ten a Clock, and we came there accordingly.

Mr. *Sol. Gen.* Who was with you at *Rigby's*?

Mrs. *Pratt.* There was the Maſter of the Veſſel, Mr. *Aſhton* and Mr. *Elliot*, and two Gentlemen more, that I never ſaw before, nor ſince.

Sir *W. Wil.* I ask you again, who firſt Treated with you about Hiring this Veſſel?

Mrs. *Pratt.* Mr. *Burdett* firſt treated with me about it.

Sir *W. Wil.* Who next?

Mrs. *Pratt.* Mr. *Aſhton.*

Sir *W. Wil.* Who made the Bargain with you?

Mrs. *Pratt.* Mr. *Aſhton.*

Sir *W. Wil.* Who paid the Money?

Mrs. *Pratt.* Mr. *Aſhton.*

Sir *W. Wil.* What can you ſay more?

Mr. *Serj. Tremain.* Pray let me ask you, when you came to Mr. *Rigby's*, in what manner did you go away from his Houſe, and what was ſaid at parting?

Mrs. *Pratt.* Mr. *Aſhton* was not there himſelf at firſt, but he and Mr. *Elliot*, and two other Gentlemen were there afterwards, and Mr. *Aſhton's* Wife ſaid ſomething about Papers hove in a Hat at Court, and about ſome bodies being choſen; and one of the Gentlemen ſaid there was nothing in that, I was one that was Choſen laſt Year.

Mr. *Serj. Tremain.* Did *Aſhton* and *Elliot* go out together from Mr. *Rigby's*?

Mrs. *Pratt.* I did not ſee them go.

Mr. *Trevor.* Had you any directions from Mr. *Aſhton*, to ſend for a Hamper or a Trunk?

Mrs. *Pratt.* Yes, that was at Mr. *Burdett's* Houſe.

Mr. *Trevor.* When was that Hamper and Trunk to be ſent for?

Mrs. *Pratt.* On the *Wedneſday* Night before we went to *Rigby's* Houſe.

Sir *W. Wil.* Do you know one *William Paſely*?

Mrs. *Pratt.* Yes.

Sir *W. Wil.* Was he with them?

Mrs. *Prat.* Yes, he was with them.

Sir *W.*

Sir *W. W.* What occaſion brought him thither?

Mrs *Pratt.* I carryed him to Mrs. *Burdett's* Houſe.

Mr. *Trevor.* Pray did the Priſoner deſire to ſee the Maſter of the Veſſel, or ſpeak with him?

Mrs. *Pratt.* Yes, and when I brought him, he ſaid he liked him very well.

Mr. *Trevor.* What is the Maſter's Name?

Mrs. *Pratt William Paſeley.*

Mr. *Serj. Tremain.* Had you any Diſcourſe with Mr. *Aſhton's* Wife after they went away?

Mrs. *Pratt.* We had little diſcourſe, only ſhe gave me ſome Victuals and Drink; and ſhe ſaid ſhe hop'd I would not tell of her Husband.

Mr. *Serj. Tremain.* What elſe did ſhe ſay?

Mrs. *Pratt.* She hoped God would deliver them out of the Lyon's Mouth.

Mr. *Serj. Tremain.* Did ſhe ſay any thing about Cock Crowing?

Mrs. *Pratt.* Yes, ſhe ſaid ſhe thought ſhe ſhould have no good Luck for the Cock crowed.

Mr. *Serj. Tremain.* Who was by in the Chamber when the Money was paid?

Mrs. *Pratt.* There was the Maſter of the Veſſel by, and Mrs. *Burdett.*

Juryman. My Lord, I heard her ſay ſomewhat of ſome Papers, which I do not very well underſtand. Does ſhe know of any Papers that the Priſoner had?

Mr. *Serj. Tremain.* That was only about the Two Notes.

L. C. J. Holt. She talks of Papers being ſhaken in a Hat, but nothing can be made of it.

L. C. J. Pollexfen. If you would ask her any Queſtions before ſhe goes, now is your time to do it.

Mr. *Aſhton.* My Lord, I deſire ſhe may ſtand up again. Mrs. I ask a Queſtion, not ſo much in kindneſs to my ſelf, as Juſtice to another Gentleman. You ſay Mr. *Ellyot* writ one of the Notes.

Mrs. *Pratt.* Yes, as I remember, it was that to meet at Mr. *Rigby's.*

Mr. *Aſhton.* I do it to juſtifie that Gentleman, I take that Note upon my ſelf; and you ſay I hired the Ship, and Mr. *Ellyot* was by.

L. C. J. Holt. Look you, Mr. *Aſhton,* Mr. *Ellyot* is not now upon his Tryal, it concerns you only to ask ſuch Queſtions as relate to your ſelf. What is ſaid now concerning Mr. *Ellyot,* goes for nothing againſt him.

Mr. *Aſhton.* My Lord, I do it only to do him Juſtice.

L. C. J. Holt. But you are to ask Queſtions only for your ſelf.

Mr. *Aſhton.* Remember, good Woman, you are upon your Oath; and have a care of forſwearing your ſelf; my Blood is at ſtake.

Mrs. *Pratt.* I am ſure I ſay nothing but the Truth.

Mr. *Aſhton.* Did I ever ſpeak to you of going to *France?*

Mrs. *Pratt.* Yes, you did.

Mr. *Aſhton.* As I hope for Salvation I did not.

Mrs. *Pratt.* And another thing you told me more; if I help'd this well away, you would help me to the earning of 1000l. before Lady-day.

Mr. *Aſhton.* Gentlemen, as to what was ſaid of that kind, of helping her to 1000l. is no great matter to the thing in Hand; for if I was minded to go out of the Kingdom, it was neceſſary to uſe all Arguments I could, to perſuade her to help me to go away.

L. C. J. Holt. Mr. *Aſhton,* you muſt ſtay your time before you ſpeak to the Jury; make your Obſervations upon the Evidence to your ſelf, you ſhall be heard at large all that you can ſay in your proper time.

Mr. *Aſhton.* I do aſſure my ſelf, my Lord, of all the favour that can be ſhewn to a Man in my Circumſtances.

L. C. J. Holt. You ſhall have all that is juſt, I do aſſure you.

Mr. *Aſhton.* My Lord, I am glad in the Circumſtances I am in, that I am to be tryed before your Lordſhip. But, good Woman, by Vertue of the Oath that you have taken, did I ever ſpeak to you directly or indirectly of going to *France?*

Mrs. *Pratt.* Yes, and you askt for a hole to hide what you might have occaſion to keep ſecret.

Mr. *Aſhton.* But I ask you about going to *France;* did I ſpeak to you about going to *France?*

Mrs. *Pratt.* Yes you did.

Mr. *Aſhton.* Then, as I hope to be ſav'd, I never ſpoke directly or indirectly of going to *France* to her.

Mrs. *Pratt.* You were not to go for *Holland* nor *Flanders,* I am ſure.

Mr. *Aſhton.* Nay, I did take it for granted, that you did know before I met you, that we were to go to *France;* but I never ſpoke to you of it in my Life, that I am ſure of; but I only urge this to let your Lordſhip know, that Woman has forgotten her ſelf.

L. C. J. Pollexfen. Mr. *Aſhton,* You will have all lawful favour; but your time for arguing upon the Evidence is not come.

Mr. *Serj. Thompſon.* You muſt ask your Queſtions now, and make your Obſervations afterwards; you muſt reſerve your ſelf for that, till after we have done.

Mr. *Aſhton.* But then, my Lord, I ſhall have too many things for my Memory to retain; and therefore I beg leave, as they occur to my Memory now, and as the Witneſſes go along, to make my Obſervations.

Mr. *Serj. Tremain.* Mrs. *Pratt,* Pray, when the Veſſel was hired, and you were told it was to go to *France,* what Perſons did Mr. *Aſhton* ſay were to go with him?

Mr. *Pratt.* Three Perſons he ſaid were to go, but he did not name them.

Mr. *Serj. Tremain.* Then ſet up *William Paſeley.*

(Which was done.)

Sir *W. Williams.* What can you ſay of any for the hiring of a Veſſel?

Paſeley. I did not know the Veſſel was hired before I came thither.

Mr. *Serj. Thompſon.* Prithee tell us what thou doſt know?

Paſeley. The Woman came to me when I was at *Billingsgate,* and ſaid I muſt go a little way along with her: and as we were going ſhe told me it was to go to Mr. *Burdett's* in *Queen-ſtreet;* and when we came there, *Ellyot* and *Aſhton* were not within: But by that time we had been there a little while, in came Mr. *Aſhton,* and preſently after him Mr. *Ellyot;* and Mr. *Aſhton* bid the Woman give him the Money out of the place where it was.

Juryman. My Lord, we do not hear him.

Sir *W. Williams.* Pray begin again, and ſpeak out.

Paſeley. I met with this Woman at *Billingſgate,*

and ſhe told me I muſt go a little away along with her.

L. C. J. Holt. That Woman, name her.

Paſeley. Mrs. *Pratt*; and I went along with her, and askt her where ſhe was going; ſhe ſaid up into *Queen-ſtreet*: And coming to *Queen-ſtreet*, we went to Mr. *Burdett*'s Houſe, I was never there in my Life before. When I came there *Aſhton* nor *Ellyot* were either of them there; after a little while in came *Aſhton*, and preſently after in came *Ellyot*, and he went up Stairs into the Bed Chamber; and being in the Bed-Chamber, they brought the Money out, rolled up in a half-Sheet of Paper, ſet up an edge, and told it out at the Window.

L. C. J. Holt. Who told it?

Paſeley. *Aſhton* told the Money out; and after the Money was told, he pulled out two pieces of a Six-pence, and when he had pulled out the two pieces of a Six-pence, he gives one half to this Mrs. *Burdett*, and the other half he kept himſelf; and he bid her pay this ſame Money, when the other half Six-pence that *Aſhton* kept came to this Woman, to match that which ſhe had; and after the Money was told, we ſtayed but a ſmall while there, and came down Stairs; and when we came down Stairs we went down to *Billingſgate*. I think *John Fiſher* was there, and we carried away with us a Trunk and a Hamper; *John Fiſher* carried the Trunk, and another Man the Hamper; and after that we had carried the things on Board, I came up to the Houſe again; and after I came up to the Houſe, they directed us to go to the *Seven Stars* in the little *Piazza*, there was a Note written to direct us, which ordered us to go thither betwixt 10 and 11 at Night. When we came there, I think there was neither of them there preſent, but by that time we had been there a ſmall ſpace, in they both came, and ſat down; and a Gentleman came in and ſaid the Cock crowed; and therefore they ſhould have no good luck. And then they talkt about Papers being toſſed in a Hat, I dont know what, and in came two Gentlemen more, juſt before we went away, to ſee them; and after thoſe Gentlemen had ſeen them, they ſtaid but a little while. Says *Ellyot* to me, Maſter, come along with me; ſo I went along with him, and we came to *Surrey* Stairs; and on the Corner on the left hand, there was an Ale-houſe. He called the Waterman out of the Ale-houſe, and he bid me go before, and I went down; and by the time that I had gotten down, the Waterman came and halled his Wherry to, and I went in; and by that time I was gotten to the Stern, down came *Aſhby* and *Ellyot*, and my Lord, and his Man.

L. C. J. Holt. You mean *Aſhton*, not *Aſhby*?

Paſeley. Yes, my Lord, that is the Man. And after they had got into the Wherry, and were ſeated, they bid the Waterman put off from Land, and ſo we went through Bridge; and after we were through Bridge, we got on board the Smack, and they got into the Cabin; and when they were got into the Cabin, I called my Men, and bid them hale up the Anchor, and they did ſo; it proved to be but little Wind, but that Tide we got below half-way Tree, and were forc'd there to drop our Anchor, and ſtay till the next Morning: the next Morning we weighed Anchor, and by that time it was Nine a Clock, we got to *Long-Reach*, where lay the *George* Man of War, and there they hid.

Mr. *Sol. Gen.* And how was the hiding, pray?

Mr. *Paſeley.* It was down in the Quarters under the Hatches.

Mr. *Sol. Gen.* Why did they hide?

Paſeley. We reckoned they would come on Board a Preſſing, and they bid me ſhow my Protection.

Mr. *Serj. Tremain.* Did they deſire to be hid?

Paſeley. Yes, and after we came by the *George* Man of War, they came up again, and remained afterwards in the Cabin, till we came almoſt to *Graveſend*: a little before we came to *Graveſend*, they all hid again; and when they were hid, remained hid all, I think, but only *Ellyot*; I think, he popt up; and they were reſolved to go eat their Victuals; but then I told them, there was a Barge coming, and ſo he went down again, and there they remained, till they were taken, for the Barge was on Board preſently, and found them there.

Mr. *Serj. Tremain.* What kind of place was it, that they were hid in?

Paſeley. They could not ſit, nor ſtand upright in it, but lay all along, or lean'd on their Elbows.

L. C. J. Holt. What did they lie upon there, pray?

Paſeley. There was Ballaſt, and ſlit Deal a top of the Ballaſt.

Mr. *Serj. Thompſon.* Well, what happened when the Captain came on board?

Paſeley. When Captain *Billop* came on board, Maſter, ſays he, you have got a couple of ſtout young Men, I muſt preſs them, or to that effect. I hope not ſo, Captain, ſaid I. Why, what have you to ſhew, ſays he? I told him, I had a Protection. Let me ſee it, ſays he: So I ſhews him my Protection, and he looks in it. Well, ſays he, Maſter, I muſt look farther; and went to rights to the Place where they lay, and found them lying all together. After they were taken, and were come out, Captain *Billop* commanded them into his Boat, and commanded me, and my two Men, to go into the Barge; afterwards he ſet his Man on ſhoar at *Hungerford* Stairs; and when we came to *Whitehall* Bridge, the Gate was not opened, and we ſtayed a little while at *Whitehall* Bridge; and when we came a ſhoar, *Ellyot* gave me half a Crown, and bid me ſay, when I came upon my Examination, that we were bound for *Flanders*, and not for *France*.

Mr. *Serj. Tremain.* Where were you bound for, pray?

Paſeley. They examined me in the Chamber, when they paid the Money, if I knew they went to *France*; and I told them, yes, very well.

Mr. *Serj. Thompſon.* Did they deſire you to go to any particular Port in *France*?

Paſeley. No, we were to touch at any Place we could.

Sir *Willi. Williams.* Did they mention any thing of *Flanders* to you?

Paſeley. No, they did not.

L. C. J. Holt. Did any body mention going to *France* to you?

Paſeley. Yes, they did. They askt me, whether I could carry them to *France* ſafe.

L. C. J.

L. C. J. Holt. Who did ask you that?

Paſeley. *Ellyot* or *Aſhton*, one of the two, I cannot directly ſay which; but if I be not miſtaken, it was *Aſhton*.

Mr. Serj. Tremain. When you came from *Rgby's* at the *Seven Stars*, Who came away with you?

Paſeley. *Aſhton* and *Ellyot*.

Mr. Serj Tremain. Did *Ellyot* and *Aſhton* both come out with you?

Paſeley. Yes, they did.

Mr. Serj. Tremain. And did they part, after they were come out?

Paſeley. Yes. *Aſhton* did go away from us preſently after we were come out.

Mr. Serj. Thompſon. When you came on Board, had you any Diſcourſe with *Aſhton*, about going to *France*?

Paſeley. No, not that I remember.

L. C. J. Holt. Did you go on foot, from the *Seven Stars*?

Paſeley. Yes.

L. C. J. Holt. And did they part, after you came out?

Paſeley. Yes, they did.

L. C. J. Holt. And who went with you, did you ſay?

Paſeley. *Ellyot* came with me.

L. C. J. Holt. Whither went Mr. *Aſhton* then?

Paſeley. I cannot tell, my Lord.

Mr. Sol. Gen. What did he ſay to you, when he went from you?

Paſeley. He bid me go along with *Ellyot*.

L. C. J. Holt. Was Mr. *Aſhton* there as ſoon as you?

Paſeley. Not quite; but by that time the Waterman had got the Boat to the Shoar, and I in the Stern, they were all come down.

L. C. J. Holt. When *Aſhton* came, who came along with him?

Paſeley. I ſaw them all upon the Stair-head; I was in the Boat when they came. I never ſaw my Lord, till he was upon the Stairs.

Juryman. My Lord, I deſire to ask him, What the Sum of Money was, that was paid at *Burdett's*?

Paſeley. It was 93 Guineas and Six Pence.

L. C. J. Holt. Who brought it?

Paſeley. It was laid down in the Window.

L. C. J. Holt. But I ask you, who brought it?

Paſeley. I did ſee *Aſhton* bring it, and lay it down in the Window, and he told it out, and put it up again, and gave it to Mrs. *Burdett*.

Juryman. My Lord, I deſire to know what is the uſual Rate to go to *Flanders*; What may a Smack and three Men deſerve?

Paſeley. Truly I cannot tell, I never went upon my own account in my Life.

L. C. J. Holt. Mrs. *Pratt*, what ſay you, what is the uſual Rate to go to *Flanders* or *Holland*?

Mrs. Pratt I believe they may go for a matof 20 *l.* or 30 *l.*

L. C. J. Holt. You hear them Gentlemen, what they ſay.

Juryman. Yes; but, my Lord, he ſays, he gave them notice the Barge was a coming. I deſire to ask him. Did he know there was a deſign to ſearch him or no?

Paſely. Sir, I knew that there was a ſearch for Seamen.

L. C. J. Holt. But did you know there was to be a ſearch, in order to the taking theſe Gentlemen on board you? For that is the Queſtion, I believe, the Jury wou'd ask you.

Paſely. No, I did not know of it.

Mr. Sol. Gen. But you ſay, theſe Gentlemen deſired to be hid?

Paſely. Yes.

Mr. Sol. Gen. And you hid them according to their deſire?

Paſely. Yes.

Mr. Serj. Tremain. Before you went on Board, had you any diſcourſe of hiding? did they ask you for a place to hide in?

Paſely. Yes, they did.

Mr. Serj. Tremain. Who did?

Paſely. *Aſhton* and *Elliot* both askt if there were a place in the Ship to hide them, and I told them, yes, there was.

L. C. J. Pollexfen. Mr. *Aſhton*, will you ask him any Queſtions?

Mr. Aſhton. My Lord, I deſire to ask him this Queſtion. Did we deſire you to come and hide us, or did you deſire us to go down?

Paſely You deſired this of us, that if we ſaw any Man of War's Boat we would tell you that you might be hid.

Mr. Serj Tremain. Pray repeat that over again, did they deſire you to give them Information when any Boat was coming, that they might hide, or did you deſire them to hide your Self?

Paſely. They deſired it of me.

Mr. Serj. Thompſon. Then ſet up *Charles Betſworth*.

Mr. Serj. Tremain. Before *Betſworth* is examined, I would ask *Paſely* one Queſtion? was there any Coat left on board you?

Paſely. Yes, there were two Coats of the Waterman's left on Board, and I took them and lockt them up.

Mr. Serj Tremain. Is that the Man that own'd the Coats?

Paſely. Yes, it is.

Sir *W. Williams.* Then *Betſworth*, will you give an Account of what you know againſt the Priſoner at the Bar?

Betſworth. I cannot tell, my Lord, I never ſaw the Gentleman in my Life before, that I know of.

Sir *W. Williams.* Prethee hear, Friend, tell what you know of carrying any Gentlemen on Board the Smack.

Betſworth. If it pleaſe your Lordſhip, I was going home from our Stairs about 7 or 8 a Clock in the Evening; that is, from *Surrey ſtairs*, and a Gentleman called Sculler. Said I to him, Sir, where do you go? ſays he, As far as the *Tower*; ſaid I, 'tis againſt Tide, I cannot go; it will be ten a Clock before it be high Water. Says he, will you go with us at that time? Said I, what will you give me? Will you give me half a Crown? then I'll carry you down, for I cannot ſtay out ſo late for nothing. Yes, ſays he, I will give it you. Then I came and brought my Boat to the Shoar; he asked me then what my Name was; I told him *Charles Betſworth*. Says he, will you be ſure to ſtay till we come? Yes, ſaid I, if you will be ſure to come; and if I be not here, I will be at ſuch a Houſe, an Ale-Houſe, that was there by; the Sign of the *Swan*: So I ſtaid, and carryed a Fare or two over the Water, and about 11 a Clock comes a Gentleman down, and calls *Charles*; and I went out 2 doors down towards my Boat, and there comes one Gentleman down, and a kind of a Seaman,

as I thought; and the Seaman went into the Stern, and the Gentleman ſat down at the Back-board, and there was three Gentlemen more came down the Stairs into the Boat; one had a whitiſh Cloak, and the other a looſe Coat; and they brought a Leather Bag that would hold about a Peck; ſo I put off with them, and rowed down the River, and all that I heard them ſay, was when we came under the *Temple*; ſays one of the Gentlemen, when do you hear the King goes away? Says another of them, he goes away a *Tueſday*; and when we got through Bridge, one of the Gentlemen askt where the Veſſel lay, and a Man in the Stern ſaid on *Southwark* ſide, over againſt the *Tower*, and when we came a little below *Battle-bridge* near *Pickle-Herring-Stairs*, the Maſter ſaid, there lies the Veſſel, and it had a long Pendant and a top Sail looſe; ſo they paid me before they came on Board, and when they were got a Board, away rowed I; and when I came to land to take out my Sculls and things, there I miſt my Cloaths; and I rowed after them, thinking they could not be got far; but when I came to the place where they went on Board, the Veſſel was gone, and I rowed down as low as *Lime-houſe-Reach*, and in *Black Hall-Reach* I overtook a Veſſel, which I thought was the Veſſel. I askt them who they belonged to, and they ſaid they came from *Horſeleydown*, and I made anſwer I brought two Fares on Board a Veſſel at *Pickle-herring-Stairs*; and had forgot to take my Cloaths that they had; they made anſwer, I brought no Fare on Board them, ſo I rowed on farther beyond *Barkinſhelf*, and becauſe there was no Wind, I thought none could have gone beyond that Place, and therefore reſolved to row back again when it was Flood; and I rowed up to *Greenwich*, but could not meet with the Veſſel; and I heard nothing of my Cloaths, till laſt *Friday* was Seven-night I had my Cloaths brought to me.

Sir *W. Williams*. Can you ſay this Gentleman Mr. *Aſhton*, the Priſoner at the Bar was one of them that you carryed on Board the Smack?

Betſworth. No, I know never a one of them.

Mr. Serj. *Tremain*. But you ſay the Perſons that you took in at *Surrey-Stairs* carried away your Cloaths with them?

Betſworth. Yes, Sir.

Mr. Serj. *Tremain*. Then I ask you, *Paſely*, Is that one of the Perſons that he brought on Board your Smack?

Paſely. Yes, he was.

Mr. *Serj. Tremain*. How many came on Board the Smack?

Paſely. Four; My Lord *Preſton*, Mr. *Aſhton*, Mr. *Elliot*, and my Lord *Preſton*'s Man.

Mr. *Serj. Tremain*. Did you take in your Pendant?

Paſely. Yes, I did.

Mr. *Serj. Tremain*. When did you take it in?

Paſely. As ſoon as we weighed Anchor.

Mr. *Serj. Tremain*. How came you to take it in?

Paſely. *Elliot* ſpoke to me to take it in.

L. C. J. Holt. Did they mention how many were to go in the Smack?

Paſely. He ſaid, they were three of them, not four, as I remember, that were to go.

Sir *Wil. Williams*. Will you ask him any thing Mr. *Aſhton*?

Mr. *Aſhton*. No, Sir: But I deſire the Woman may not go out of Court.

L. C. J. Holt. No, no; ſhe ſhall ſtay.

Mr. *Serj. Thompſon*. Then call *John Fiſher*, and *James Amonds*. (Fiſher *ſtood up*.)

Sir *W. Williams*. Pray do you acquaint the Court and the Jury what you know of this matter, whether you carried any things on Board the Smack, and what; and who came on Board, and what hapned.

Fiſher. My Lord, a matter of ſix Hours before they came on Board, my Maſter carryed me a Shoar, and brought me to Mr. *Burdett*'s Houſe, and gave me a Trunk, and I went with it, and another Man with a Hamper, and brought them on Board; and about 11 or 12 a Clock, my Maſter comes and brings Mr. *Aſhton* and the other aboard; and he bid me go forward, and heave up the Anchor, and ſo I did, and we went down the River; but we could go but a little way becauſe there was no Wind; and when we came to *Half-way tree*, the Tide Turning, we were forced to caſt Anchor again, and ſtay till the Morning; and in the Morning we weighed Anchor again about 8 a Clock, and about 9 we came into *Long-reach*, where lay the *George* Man of War, and then Mr. *Aſhton* and they hid; and when we came below them again, they came up again till we came almoſt near the *Block-Houſes* at *Graveſend*, and there they hid again; and Mr. *Aſhton* I think came up afterwards, and bid me go down to the Hamper, and fetch them up ſome Victuals for their Dinner, and I went down and fetch'd up ſome Beef, and Mr. *Aſhton* took hold of it; and I took a Bottle of Wine or two out; and juſt before I brought all the Victuals up, the Barge was ſpied a coming to us; and then he went down again: And there they hid, and the piece of Beef was a top of them. Captain *Billop*, when he came near, waved his Hat, to bid us lie by; and we did lie by, till he came up to us; and when he came up to us, ſays he, Maſter, you have gotten a couple of good likely Men, worth the coming on Board for. Says the Maſter, I hope Captain, you wont preſs them. What have you to keep you clear. Says he, I have a Protection. Have you ſays the Captain? Let me ſee it. So he ſhew'd him the Protection, and he read both our Names in it. Then, ſays he, Maſter, I muſt look farther; and he went down to the Quarter Hatches, and took them up, juſt where they lay. Firſt my Lord came out; and he ſearcht them all, as they came out. Mr. *Elliot* came out next, and Mr. *Aſhton* ſtay'd within, being the laſt Man. And after he had ſearcht them, and done what he pleaſed; he got all the Papers and Writings: then he commanded us all to go into the Barge; and they came on Board the *George* Frigate in *Long-Reach*. And at the Ship, Mr. *Elliot* came to us; and bid us ſay, we were going for *Flanders*. And after we came to *Whitehall*, Mr. *Aſhton* gave me a half Crown Piece, and bid me ſay, we were bound for *Flanders*, and not for *France*.

L. C. J. Holt. Was that after they were taken, or before?

L. C. J. Pollexfen. When was the firſt time, that they would have you ſay, they were bound for *Flanders*?

Fiſher. It was on board the *George* Frigat in *Long-Reach*.

L. C. J. Holt. Who was it that bid you ſay ſo?

Fiſher. Mr. *Ellyot* and Mr. *Aſhton* both, in the Ship's Steerage, where they came to us.

L. C. J. Pollexfen. Where was the next Place, that they bid you ſay ſo?

Fiſher.

Fiſher. At *Whitehall* Bridge *Aſhton* gave me a half Crown Piece, and bid me ſay ſo.

Juryman. Did he ſpeak that aloud, or ſoftly at *Whitehall?*

Fiſher. He whiſpered it in my Ear.

L. C. J. Holt. Did they ever ſay they were bound for *Flanders*, till after they were taken?

Fiſher. No.

Mr. Serj. Tremain. What manner of Place was this that they hid in?

Fiſher. An ugly hole, where a Man has no room to lie along at eaſe; he can neither ſtand upright, nor ſet upright.

Mr. Serj. Tremain. Did you ſee the Waterman that brought them on Board?

Fiſher. No.

Mr. Serj. Tremain. Was there any Waterman's Coat left?

Fiſher. Yes, there was two.

L. C. J. Holt. But didſt thou ſee the Boat?

Fiſher. We were aſleep when they came on Board, and the Boat was put off aſſoon as ever they came on Board.

Mr. Serj. Tremain. Then aſſoon as ever they were on Board, you got up the Anchor, and pulled in the Pendant?

Fiſher. Yes. We immediately hove up the Anchor, and took in the Pendant.

Mr. Serj. Tremain. Did any Sculler hale you afterwards, as you were going down?

Fiſher. Yes, as we were going down there did.

Mr. Serj. Tremain. What did you ſay to him?

Fiſher. I was not ſteering then: but this other Man made anſwer.

L. C. J. Holt. Mr. *Aſhton*, Will you ask him any thing?

Mr. Aſhton. When I gave you the Half Crown that you ſpeak of, what did I ſay to you?

Fiſher. You bid me when I came to be examin'd, ſay we were going to *Flanders*, and not to *France.*

Mr. Aſhton. What did I ſay elſe?

Fiſher. You bid me take that half Crown for to Night, to help to bear my Charges, and to Morrow you would take farther care of us.

Mr. Aſhton. I told you you were Priſoners now, and I gave you that; and told you I would take farther care of you.

Fiſher. You did not ſay we were Priſoners, but you ſaid you gave me that to help bear Charges for that Night, and on the Morrow you would take farther care of us.

Mr. *Serj. Thompſon.* Then ſet up *James Amonds.*

Sir *W. Williams.* Are you ſworn Friend?

Amonds. Yes, Sir.

Sir *W. Williams.* Then let the Court and the Jury know what you can ſay in this matter.

Amonds. My Lord, they came on Board about 11 or 12 a Clock at Night, I was aſleep in the Cabin, and heard a Boat coming aboard, and I turn'd out, and before I could get out of the Cabin, they were got aboard, and I ſee no Boat, nor nothing. So, ſays the Maſter, go forward and heave up the Anchor; and after we had heaved up the Anchor, I goes into the Ship to tow the Veſſel down, becauſe there was no Wind, and we would not let the Veſſel go foul on the Ships that were in the River, and a little after we came on Board again; and when I came on Board again, they were all on Board, all four. After that comes a Waterman, and I was at the Helm ſteering, and he called out to us: Oh hoe, ſays he; did not I bring a Parcel of Gentlemen on Board this Smack? Not as I know of, ſaid I. Says he, I caaryed a Parcel of Gentlemen on Board ſome Smack, that had a Pendant out, and I know not where it is; they carryed my Cloaths on Board with them. Said I, I know nothing of it, nor I did not; for I ſaw neither Waterman, nor Boat; ſo away the Waterman goes, and we went down the River, and when we came to *Half-way Tree*, we came to Anchor, and my Maſter went and laid himſelf down, the Tide being almoſt done, and there being no Wind, and Mr. *Aſhton* and they lay in the Cabin; and ſays Mr. *Aſhton* to me, take care of us now, and we will take care of you hereafter; ſays he, we ſhall help you to many a Freight, and many a Pound. Ay, ay, ſaid I, you will be taken care of to be ſure at Day break, or when the Day comes on; about 8 a Clock, we hove up the Anchor again, and fell down as low as *Long-Reach*, where the *George* Frigate lay; and when we came there, they went down to hide in the Quarter Hatches. I ſteered it down ſtill; and when we were got paſt that Man of War, the Hatches were taken up, and they came up again out of the Quarters, and ſate in the Cabin again, and we had a freſh Gale of Wind, and run down to *Graveſend* quickly, and when we came near the Block Houſes, ſaid I, we are almoſt at the Block Houſes; then ſaid they we will go down and hide a little; and ſo they did till they were paſt there, then reſolving to go to Dinner.

L. C. J. Holt. What time a day was this?

Amonds. About 11 a Clock, as near as I can gueſs.

Mr. Sol. Gen. Well, they did go down to hide then, did they?

Amonds. Yes, they did go down and hide, and came up again, I am ſure ſome of them; I heard ſome of them in the Cabin.

Mr. Sol. Gen. Well, what followed?

Amonds. After they were gotten up, and paſt *Graveſend*, this Man was ſent for Victuals for them, and ſo he fetch'd them ſome Roaſt Beef, and ſome other things; and juſt as the Roaſt Beef was going into the Cabin, ſaid I, *Here comes a Barge off to preſs.* So when I cried, the Barge was a coming, they took the Victuals down into the Quarters, and there lay they, and the Victuals a top of them. And when the Barge came near us, the Captain waved his Hat to command us to lie by. Said I, *We muſt lie by, for the Barge is coming up to us* And we clapp'd the Helm-a-lee, and lay by; and after we were laid by, the Barge came on Board us. Says the Captain of the Barge, *You have got a couple of likely, good Men, Maſter*, ſaid he. *Ay*, ſays the Maſter; *but I hope you won't preſs them.* Says the Captain, *Have you got any thing to keep you clear? Yes, if it pleaſe you, noble Captain, I have got a Protection. I am ſorry for that*, ſays he, and comes on Board, for he ſtaid all this time in the Barge; and ſmiling upon him, he comes on Board, and ſays he, *Come, let's ſee your Protection.* And the Maſter ſhew'd it him, and he read it. Says the Captain, *I muſt look a little farther.* And he goes into the Cabin, and took up the Hatches, and there lay all theſe Gentlemen. They were ſomething longer a coming up than he would have them; ſo ſays the Captain to his Men in the Barge, *Come on Board, and ſee who is here.* And ſo ſome of his Men did come on Board; and, to the beſt of my remembrance, my Lord was

the

the firſt Man that came up: And when my Lord came up, the Captain run his Hands into his Coat Pockets, to feel for Papers, as I ſuppoſe; and my Lord deſired the Captain to be kind, and take nothing away. Says he, *I'll take nothing but Papers; 'tis Papers I look for*: And he pull'd out a Watch, and gave it him again. After that, *Elliot* came out; and whether he found any thing upon Mr. *Elliot*, or no, I cannot tell. Mr. *Aſhton* was the laſt that came up; and when he came up, a Waterman of the Captain's calls to him, and ſays, *That Gentleman that came up laſt has put ſomething in his Boſom, but what I can't tell.* So the Captain took Mr. *Aſhton* by the Arm, and turn'd him about; and, ſays he, *What did you put in your Boſom?* Says Mr. *Aſhton*, *Nothing but my Handkerchief*; and pull'd out his Handkerchief, and ſhew'd him. Then the Captain put his Hand in, and pull'd out Papers, with a piece of Lead tied to them. And that is all that I ſaw.

Mr. Serj. Tremain. But tell us what happen'd afterwards.

Amonds. When that was done, the Captain commanded us all into his Barge; and I row'd, and ſome of the reſt row'd, it being cold Weather, till we came up to *London*. After we came up to *London*, they did not ſay any thing to me, becauſe I was a rowing till then. It ſeems they did give them ſome Money, but they gave me none, not till I came into *Whitehall*; and then my Lord's Man came to me, and call'd me a one ſide; ſays he, *Here's Half a Crown, will ſerve you to Night; and be ſure, when you come to be examined, that you ſay, you were bound for* Flanders, *and not for* France, *and you will be taken farther care of to Morrow.*

Mr. Serj. Tremain. What manner of place is that Quarter-Hatches?

Amonds. They could neither ſit, nor ſtand upright in it.

Mr. Serj. Thompſon. What did they lie upon?

Amonds. There were three or four ſlit Deals that were laid over the Ballaſt, but it ſeems they had ſhuffl'd 'em on the one ſide when they were taken, for the Ballaſt lay open.

Mr. Serj Tremain. Did the Waterman that brought theſe Men on Board you, leave his Coat there?

Amonds. I did not ſee the Boat, nor the Waterman; and therefore I am not able to ſay any thing about it.

Mr. Sol. Gen. How came the Pendant to be taken down?

Amonds. I can't tell that, I was in the Skiff when it was taken down.

Jury-man. My Lord, I do not well underſtand how the Papers came to be taken away from Mr. *Aſhton*.

L. C. J. Holt. He tells you, Mr. *Aſhton* was ſeen to put his Hand with ſomething into his Boſom; and being tax'd with it, he ſaid it was his Handkerchief; and the Captain put in his Hand, and pull'd out a Bundle of Papers.

Jury-man. Did he ſee *Aſhton* take away the Papers from any other place?

Amonds. No, an't pleaſe your Honour, I did not ſee them till they were taken out of his Boſom.

L. C. J. Holt. Did you ſee Captain *Billop* take the Papers from out Mr. *Aſhton*'s Coat?

Amonds. Yes, I did.

L. C. J. Holt. Where were they before they ſpy'd the Barge a coming?

Amonds. If it pleaſe your Honour, I heard 'em talk; I thought they had been up, but it ſeems there was but one of 'em up when they ſaid, the Barge was coming a-board: I was at the Helm, and heard 'em talk.

L. C. J. Holt. Then you knew nothing of theſe Papers, but when you ſaw 'em taken out of *Aſhton*'s Boſom?

Amonds. No, my Lord.

Sir *Wil. Williams.* If you will ask him any thing, Mr. *Aſhton*, now you may.

Mr. Aſhton. Pray, Friend, had not I been up firſt, and ſearch'd before the Papers were taken?

Amonds. Not as I know of.

Mr. Aſhton. Did not I go down into the Hold to take my Hat, and call to you, and deſired that I might go down for my Hat?

Amonds. I can't tell; for when I ſaw the Papers taken from you, I was in the Stern; I was not down.

Mr. Aſhton. Had not I been ſearch'd firſt?

Amonds. Not that I know of, till you were in the Stern.

Mr. Serj. Thompſon. Then ſwear Captain *Billop*.

Which was done, he ſtanding up by the Sheriff.

Mr. Serj. Tremain. Captain, I ſuppoſe you may be heard from that place.

Mr. Aſhton. My Lord, I deſire the Witneſs may come down, elſe I ſhall not be able to diſtinguiſh what he ſays: It is the proper place for him I think.

L. C. J. Holt. Let him come down.

Mr. Aſhton. I humbly deſire, my Lord, that the Witneſſes may all be obliged to ſtay in Court.

L. C. J. Holt. Let them all ſtay.

Sir *W. Williams.* You are ſworn, Sir: Are you not?

Capt. *Billop.* Yes. I am.

Sir *W. Williams.* Then, pray, will you give an Account where you took theſe Perſons, how you took 'em, what you found, and how you diſpoſed of it.

Capt. *Billop.* Muſt I begin from the Beginning?

Sir *W. Williams.* Yes; Tell your whole Knowledge, in Order of Time, as it fell out.

Capt. *Billop.* What, from the Time I went out?

Mr. Serj. Thompſon. Make it as ſhort as you can.

Sir *W Williams.* Yes, you muſt tell all; for you ſpeak now to a new Jury, and here is another Priſoner at the Bar to be tried.

Capt. *Billop.* The laſt of *December*, about Two a Clock, or between One and Two, my Lord of *Danby* came to me at one of the Doors of the Houſe of Lords, and told me, his Father muſt ſpeak with me; and he carry'd me up to my Lord *Linſey*'s Chamber; and in a little time my Lord Preſident came there, and told me, he heard there were divers Perſons that had Papers of dangerous Conſequence, and were going to *France*, and deſired me to uſe my Skill for my ſeizing and ſecuring of the Papers. I began then to talk of what was proper for ſuch an Undertaking; and I told my Lord, I thought the beſt way, was to go to *Woolwich* or *Deptford*, and to take a Man of War's Pinnace with us: Upon that, my Lord of *Danby* being by, ſaid, he knew of a Boat that he could have, which was my Lord Duke of *Grafton*'s; and my Lady Dutcheſs had

had lent it him, and he would go, and get it ready: Upon this my Lord *Preſident* ſaid, he would give me a Note of the Name of the Veſſel, and where ſhe went out; and likewiſe a Letter to another Perſon, that would inſtruct me farther, and ſhew me the Veſſel; accordingly my Lord Preſident gave me the Letter, and I went away to look for the Perſon, but could not find him. My Lord *Danby* came to *Tower Wharf* himſelf with the Boat; and I left a Man there to bring me word, when the Boat came up at the Place where I was; and Captain *Stringer*, and Sir *Thomas Taylor* came there to me. After my Lord of *Danby* had told me what I had in the Boat, I told him, I thought there were not Arms enough; and therefore it were beſt to go to the Tower, to borrow ſome Arms from thence: When we came to the Tower, my Lord *Lucas* was not come in; and when I had ſtaid a little time, he did come in: And when I had acquainted him with my buſineſs, he ſent for an Officer of the Guard, and there we borrowed ſome Arms, a Blunderbuſs of his and a Carbine, and the like; and about Eleven a Clock, or ſomewhat paſt, we put off from Tower-Wharf. It was calm, and we rowed down towards *Graveſend*; and we went aboard a Veſſel or two, but I was not willing to loſe much time, becauſe I was reſolved to take them before they were gotten too far: So we rowed away for *Graveſend*, where I refreſh'd my Men, and afterwards went down into the *Hope*; and I did judge that no Veſſel that came from *London* that Tide could be a-head of me. I went on board ſeveral Veſſels that lay in the River, in order unto the preſſing of Men; and I went on board all ſorts of Veſſels, becauſe I would give no Suſpicion of what I was about; and having been on board of ſeveral, I preſſed two or three *Barkin* Men; and one particularly, that knew all the Veſſels upon the River; and I made him to row very near to me, that I might talk to him; I had got the Names of a great many Smacks, and gave it out that I would preſs a Smack to carry for a Tender to my Ship, when the Fleet went out; and naming this Smack that I was to go ſearch, I told him, *I heard ſuch a Smack ſailed well, and I had Thoughts of preſſing her*; he told me, *She was old*; but ſaid I, *She will ſerve a Summer well enough; and that is it I intend to preſs, if I can find her.* Says he, *I'll ſhew you her, I know her when I ſee her*; ſo we went on board ſeveral Veſſels as we went along. And as we were rowing along before, we came to the *Neſt* Point by *Tilbury Fort*, we ſaw ſeveral Smacks coming down the River; and when we came about the Point, the headmoſt Smack of all, the Fellow lookt out, and ſaid, *Yonder is the* Thomas *and* Elizabeth. Then I called to one of my Men to wave, and bring them to lie by, which they did, and they lay by till I came on board. When I came on board, I ſaw two luſty Men ſtand by the Maſter; ſaid I, *Maſter, you have got two good luſty Fellows that would ſerve the King; but I'll be kind and civil to you, I'll take but one.* Says the Maſter, *I hope not ſo; for I have a Protection*; with that, I came on board, and took his Protection in my Hand, and read it As ſoon as I had read it, I ask'd him, if he had no more Men upon Deck than what I ſaw. He ſaid, *No. Then*, ſaid I, *I muſt look a little farther* And I went into the Quarters, and took up the Scuttle, and the Hatches, and I ſaw ſome Gentlemen lie. Oh, ſaid I, *What a pretty Poſture is this? Where are we a going? Gentlemen, you muſt turn out* The firſt that came to hand was my Lord *Preſton*; but I did not know him then, nor ſome time after I was in the Boat with him: So I took hold of him, and help'd him up; and when he was up, ſaid I, Sir, *I muſt ſearch you.* Says he, *I hope you will take nothing from me. Nothing*, ſaid I, *but Papers*: So I ſearch'd all his Pockets; and as I found any Papers, I put them into my own Coat Pocket. And I took his Watch, and pull'd it out, and gave it him again: After that I had ſearch'd him, came up Mr. *Elliot* the firſt Man, and the next was Mr. *Aſhton*, who crouded up while *Elliot* came up, in his Night Cap. *I think, Mr.* Aſhton, *you had your Night-Cap on.* So Mr. *Aſhton* goes down again, and puts on a Perriwig, I think; but coming up again, one of my Sea-men ſees him take ſomething and put it into his Boſom: He follows Mr. *Aſhton* quick, and pulls me by the Coat; and, ſays he, *That Gentleman has got ſomething in his Boſom*: So I took hold of him, and turned him round; ſaid I, *Mr.* Aſhton, *what have you got in your Boſom? Nothing*, ſays he *but a Handkerchief*; and immediately he put his Hand into his Boſom, and pluck'd out the Handkerchief, and ſhew'd me. As ſoon as he had pulled out the Handkerchief, I put my Hand into his Boſom, and there I met with the Pacquet that had the Lead affixed to't; and pulling it out, I clapp'd it into my own Pocket; for I thought that was the Matter of Moment that I was to ſecure. So I ordered them to go into the Boat, and the Maſter of the Veſſel to let go his Anchor; and two Men I left in the Veſſel, whom I ordered to ſearch and to ſecure what they found till farther Order; and I left two Muſquets with them. And after we were in the Boat, they deſired to have ſomething handed in, which I gave Order for, a Hamper, and a Night bag; and away we put off from the Veſſel, and rowed up; it was againſt Tide, and very cold Weather. In a little time Mr. *Elliot* called one of the Gentlemen, my Lord; then I whiſpered him, and ask'd him who that Lord was, and he told me, *It was my Lord* Preſton. Then I ſaluted my Lord; and my Lord was pleaſed to ſay, he was very well ſatisfied they were fallen into the Hands of a Civil Gentleman. So rowing up againſt Tide, and it being a Weſterly Wind, which blow'd very freſh, My Lord deſired that I would let them ſtop at *Graveſend*, till the Tide turned, that they might refreſh themſelves. I begged his Pardon, and ſaid, there was a Ship in *Long Reach*, the *George* Frigot, and we would ſtop there; and I did not doubt, but I could command the great Cabin for his Accommodation; and there he might have any thing that he wanted. My Lord ſeemed contented with it; but before we came on Board the Man of War, there happened a great deal of Diſcourſe betwixt us of ſeveral things.

Sir *W. Williams.* Pray repeat it, as well as you can remember, what Diſcourſe happened.

Capt *Billop.* Truly my Lord *Preſton* being cold, and the Hamper ſtanding by, ſays he, *Captain* Billop, *we have not eaten, we will eat if you will.* And there was a piece of Beef at the top of the Hamper, and Bottles of Wine; and I opened the Hamper, fitting faireſt for it, and handed out the Beef, the Bread, and the Bottles; and after we had eaten what we would, my Lord ordered the reſt to be given to the Men that were

were the Boats Crew, and after we had done this, and taken out a Bottle or two, and ſhut up the Hamper again, my Lord *Preſton* drank to me once or twice, and ſeem'd very well ſatisfy'd and pleas'd with his Uſage. He told me he was ſenſible of my Civilities; and if ever it lay in his Power, he would not forget me. So we drank again, and talk'd again; but before we came to the Ship, my Lord *Preſton* told me, that if ever it lay in his Power, he would be ſure to make an acknowledgment of the Civility I had ſhew'd him. And to the beſt of my Memory, he had this Expreſſion, *If there ever was any thing he could ſerve me in, he would do it with all his Heart, if I would but diſpoſe of the Packet.*

Mr. *Serj. Thompſon.* What would Mr. *Aſhton* have had you done? What did he ſay to you?

Captain *Billop.* Mr. *Aſhton* ſaid, it would do me no good to injure ſo many Gentlemen; and deſired me that I would throw the Packet over-board.

Mr. *Serj. Tremain.* What did he mean by ſo many Gentlemen?

Captain *Billop.* My Lord, I cannot tell, but that was his Expreſſion.

Mr. *Serj. Tremain.* Who deſired you to throw the Packet over board?

Captain *Billop.* Mr. *Aſhton* did ſeveral times.

Mr. *Serj. Tremain.* What did he ſay to you? What Arguments did he uſe?

Captain *Billop.* My Lord, it was ſo many times over, and ſo much mixture of Diſcourſe we had, that I am not able to tell the Particulars.

L. C. J. Holt. But what Arguments did he uſe?

Captain *Billop.* I don't know that he uſed any more great Arguments, more than what I have told you already.

L. C. J. Holt. Say that again that you ſaid before.

Captain *Billop.* He ſaid, 'twould do me no good to injure ſo many Gentlemen. *Prethee,* Captain Billop, ſays he, *throw it over board.*

Mr. *Serj. Tremain.* What did he ſay farther?

Captain Billop. I'll tell you, if you'll give me leave. Mr. *Aſhton* did ſay, a little after this, with a great deal of Inſinuation, *Captain* Billop, *What if you ſhould turn about, and go along with us? No, Mr.* Aſhton, ſaid I, *that I cannot do.* Says Mr. *Ellyot, Prethee, throw the Packet over-board.* This they did as we came up the River; and 'tis the moſt that I can remember, till we came on board the *George*; and when we came on board the *George, Ellyot* called me into the Steerage, and deſired me, of all Love, that I would diſpoſe of the Packet: And he ſaid, that now I had an Opportunity to make my ſelf as rich, and as great as I would, and no body could ſee it, if I did throw it away. While I was in the Ship, Mr. *Aſhton,* my Lord, and Mr. *Ellyot,* were with me, in the Steerage. Said I, *I ſhall be taken notice of, to be whiſpering; pray forbear. Aſhton* then ſpoke to me again, to deſire me to throw the Packet over board; by this time the Victuals was handed in, and there we eat and drank, and my Lord ſmoked a Pipe of Tobacco, before the Tide turned; and when the Tide made, we went into the Boat again, and rowed up towards *London,* and they were uſing theſe ſorts of Arguments over and over again. And once Mr. *Ellyot,* I think 'twas, to the beſt of my remembrance, told me, *Now you have it in your Power to make your Fortune, and may be as great a Man, and as rich a Man as you can deſire.* And Mr. *Aſhton* ſaid ſome Words ſomething to the ſame purpoſe; *Prethee,* ſaid he, *throw it over board: What good will it do you?* So I refuſing of it, as I did many times, Mr. *Ellyot* told me, that I might take the Letters that were taken in my Lord *Preſton*'s Pocket, and tye the Lead to them, and throw the Packet over board. No, ſaid I, Mr. *Ellyot, Sure, you would take the King's* Council *to be a very odd ſort of Men, that they cannot find out ſuch a thing as this. Prethee, dear* Billop, ſaid he, *throw it over board.* Many times whiſpering me in the Ear; and ſo did Mr. *Aſhton* many times, ſaying, *You may do us a great Kindneſs in it.* And we drank, and had ſeveral Intermiſſions; and they at me again, and I denied them, and they deſiſted; and then they at it again: And Mr. *Ellyot* then told me, *Prethee, dear* Billop, *throw it over board.* Said I, *Mr.* Ellyot, *If I ſhould be ſo great a Villain to do ſuch a thing, if ever it was your Day would you truſt me again? Put it to be your own Caſe.* Says he, *You have Gentlemen to deal withal. But,* ſaid I, *I will never put it into your Power.* Mr *Ellyot* ſeem'd to be angry at this, and ſaid, *Every Dog had his Day.* Said I, *I hope never to ſee it your day: But I pray, forbear this Diſcourſe; let me beg that of you; for I do not deſire to be provoked to uſe you otherwiſe than as Gentlemen.* And after that, they never urged me more to throw the Packet over-board: But Mr. *Ellyot* was angry, and very much diſturbed, and wiſhed a Thunderbolt might ſtrike the Boat, and ſink it. So I brought them up, through *London-Bridge,* and they ſaid no more about the Packet; but *Ellyot* wiſhed, that *London-Bridge* might have fallen on our Heads. At length, I brought them to *Whitehall*; and I put my Man a-ſhore at *Hungerford* Stairs, that he might get before, and give the Porter notice at *Whitehall-Bridge,* that he might open the Gate. I brought my Lord *Preſton,* and the reſt, to the Bridge; and while I was arming my Men, to guard them up to my Lord *Nottingham*'s Office, I ſuppoſe they then took the Opportunity to give the Men Money, getting near to them; I know nothing of that: But I carried them up to my Lord *Nottingham*'s, and there I delivered them, and the Packet to my Lord. After ſome time, the Packet lay upon the Table, and my Lord *Nottingham* ſends me for my Lord *Preſton.* When my Lord *Preſton* came in, I withdrew without bidding, and the Packet lay upon the Table unopen'd: And when my Lord *Preſton* came out, I went in on my ſelf, and the Packet lay in the ſame Place and Poſture, and not opened. And I ſtay'd while Mr. *Aſhton* was call'd in, and my Lord *Nottingham* ask'd him a great many Queſtions.

Mr. *Aſhton.* Pray repeat thoſe Queſtions, Captain *Billop*; and what Anſwers I made.

Captain *Billop.* Truly, my Memory does not ſerve me to remember all of them, and I was in a very uneaſie Condition at that time, and would much rather have been in my Bed, than any where elſe: For the Night before I went down I had a Plaiſter of *Spaniſh* Flies put to my Back, and they had raiſed a great Bliſter, and it had not been dreſſed ſo long, that the Napkin that was applied ſtuck ſo to it, that the Fleſh was jagged, and I was in a great deal of Pain, ſo that I did not mind ſo much as I ſhould have done at another time, what was ſaid.

Mr. *Aſhton.* But pray, Captain, remember as much as you can what paſs'd.

Captain

Captain *Billop*. But I'll tell you what I remember; I remember my Lord *Nottingham* ask'd, who I took the Packet from? And you owned, I took it from you.

Sir *Will. Williams*. Pray Mr. *Aſhton*, give us leave to have done with him, and then you ſhall ask him what you pleaſe. Pray go on Captain *Billop*.

Captain *Billop*. Then my Lord *Nottingham* ſent for Mr. *Ellyot* in, and ask'd him whither he was going? And he ſaid for *Flanders*. My Lord asked him, what he was going there for? He ſaid, he was going to ſeek his Bread; he was turned out of all at home, and he had rather go abroad to ſeek his Bread, than ſtay at home to ſtarve.

Mr. *Serj. Tremain*. Was this the Lead, that you took fix'd to the Packet?

Captain *Billop*. Yes, Sir; that is the Lead.

Mr. *Serj. Tremain*. Did you take that Lead, with the Packet, out of Mr. *Aſhton*'s Boſom?

Captain *Billop*. This was tied faſt to the Packet that was taken out of Mr. *Aſhton*'s Boſom. Theſe honeſt Men ſaw me take it.

Sir *Will. Williams*. Now, if you have a mind to ask him any Queſtions, you may.

Mr. *Aſhton*. Pray, Captain *Billop*, did not you ſearch me before you took the Packet upon me?

Captain *Billop*. No, not that I remember.

Mr. *Aſhton*. Had not you taken ſome other Papers from me before?

Captain *Billop*. No, Sir; I took none from you but the Packet.

Mr. *Aſhton*. Pray recollect your ſelf, for perhaps my Life may turn upon it: You are as much a Witneſs for me, as for the King; you are to ſwear the Truth, and the whole Truth.

Captain *Billop*. And I will do you all the Juſtice I can, I will aſſure you.

L. C. J. Holt. Anſwer his Queſtion, Captain *Billop*.

Mr. *Aſhton*. Was not I the firſt Man that ſpoke to you after we came up?

Captain *Billop*. No, Mr. *Ellyot* was the firſt Man that ſpoke to me, that I knew.

Mr. *Aſhton*. Did not I ask you to give me leave to go down for my Hat?

Captain *Billop*. Truly, I don't remember that.

Mr. *Aſhton*. Did not you reply, That the Man ſhould go down and fetch my Hat?

Captain *Billop*. 'Tis likely I might, but I don't remember it.

Mr. *Aſhton*. Had not you ſearch'd me then, and taken my Papers from me?

Captain *Billop*. No, Mr. *Aſhton*; for, upon the Oath that I have taken, I took no Papers that I remember, but the Papers that I took out of my Lord *Preſton*'s Pocket, and the Packet that I took out of your Boſom; for my Lord *Nottingham* ask'd me, if that Packet was all the Letters I took? I told him, no; and ſhew'd him the Papers I took out of my Lord *Preſton*'s Pocket, and they prov'd to be of no Conſequence, and my Lord *Nottingham* gave them me again, and I carried them to my Lord *Preſton*.

Mr. *Aſhton*. Did not I go down into the Hole for my Hat?

Captain *Billop*. I believe you might.

Mr. *Aſhton*. And was it not after that, that you took the Papers out of my Breaſt?

Captain *Billop*. Yes, I believe it was.

Mr. *Aſhton*. Where is your Man that call'd to you, and ſaid, I put ſomething in my Breaſt?

Captain *Billop*. Here he is, by me, if you would ask him any thing.

Mr. *Aſhton*. You ſay, I ſpoke to you about diſpoſing of theſe Papers: Pray, from the Time that we came into your Boat, before we came on Board the *George* Man of War, did I ſpeak to you?

Captain *Billop*. Yes, of the Packet you did: You ſaid, *What Good would it do me to injure ſo many Gentlemen?*

Mr. *Aſhton*. There paſs'd no more than general Diſcourſe before we came on Board.

Captain *Billop*. Yes, Mr. *Aſhton*; I'll tell you another thing you put me in mind of. When you ſaw that, though you were ſo eager with me, nothing would prevail, you ſaid, *I know Captain* Billop, *and have known him many Years; and nothing will prevail on him, if he have no mind to it: And I know, if he will ſerve us, he will ſerve us generouſly, and like a Gentleman.*

Sir *W. Williams*. Speak that again.

Captain *Billop*. He ſaid, *I know Captain* Billop; *if he will ſerve us, he will do it generouſly, and like a Gentleman.*

L. C. J. Holt. Who ſaid ſo?

Captain *Billop*. Mr. *Aſhton*.

Mr. *Aſhton*. Did I ſpeak to you to diſpoſe of the Papers after we came from on board the Ship? I ſuppoſe you remember it was cold, and the Tilt was call'd for, to be lay'd over us, and I fell aſleep; and you know I never wak'd, nor ſpoke, till I came to *London-Bridge*.

Captain *Billop*. Yes, yes; we had the Tilt over us.

L. C. J. Holt. Pray ſpeak your Queſtions out, that we may hear 'em, Mr. *Aſhton*.

Captain *Billop*. Mr. *Aſhton* did go to ſleep a while, but he had many times urg'd me, and ſpoke to me to throw the Papers over-board.

L. C. J. Holt. Who was it that told you, *Every Dog had his Day?*

Captain *Billop*. That was *Ellyot*.

Sir *W. Williams*. Was there any Diſcourſe about Turning of the Tide?

Captain Billop. *Mr.* Ellyot ſaid, *You have now an Opportunity to make your own Fortune, and you may be as great, and as rich as you pleaſe; for 'tis impoſſible the Tide can run long this way.*

Mr. *Serj. Tremain*. Did Mr. *Aſhton* ſay any thing about going along with them?

Captain *Billop*. Yes: You may remember, Mr. *Aſhton*, that you ſaid, *Come, go along with us; you may do as well there, or better than you do here.*

Mr. *Serj. Tremain*. Did he tell you, where you were to go with 'em?

Captain *Billop*. No, Sir; nor I did not ask him the Queſtion.

Mr. *Aſhton*. Pray, When did you give my Lord *Nottingham* theſe Papers?

Captain *Billop*. Do you mean that Bundle that I took out of your Boſom?

Mr. *Aſhton*. Yes.

Captain *Billop*. As ſoon as ever I follow'd my Lord *Nottingham* into his Room, I pull'd 'em out, and gave 'em him.

Mr. *Aſhton*. Did not you go out of my Lord *Nottingham*'s Room, and give my Lord *Nottingham* ſome looſe Papers?

Captain *Billop*. Yes.

Mr. *Aſhton*. After this, Was not my Lord *Preſton* call'd in to be examin'd?

Capt. *Billop*. Yes.

Mr. *Aſhton*. How long was my Lord *Preſton* in the Room, while you were out?

Capt. *Billop.* I can't tell very well.

Mr. *Aſhton.* Pray, Sir, anſwer that Queſtion.

Capt. *Billop.* I believe it might be half a quarter of an Hour: I do not think it was much more.

Mr. *Aſhton.* I believe you muſt remember ſome ſort of Diſcourſe that was betwixt you and Captain *Ellyot*, even to a Quarrel almoſt. And did you not ſpeak to my Lord *Nottingham*'s Servants, to fetch your Hat out of my Lord *Nottingham*'s Room.

Captain *Billop.* Yes, I do remember that.

Mr. *Aſhton.* This muſt be a good conſiderable Time: It was all the time that my Lord *Preſton* was within with my Lord *Nottingham*, that you were out?

Captain *Billop.* Yes, it was.

Mr. *Aſhton.* And all that while was not the Bundle of Papers out of your ſight?

Captain *Billop.* It lay upon the Table.

Mr. *Aſhton.* Pray, anſwer my Queſtion: Was it not out of your ſight?

Captain *Billop.* Yes, it was.

L. C. J. Holt. Yes, yes; it muſt be, for he was out of the Room.

Mr. *Serj. Tremain.* When you came into the Room, did you find the Papers in the ſame Condition?

Captain *Billop.* Yes, they were unopen'd, except that my Lord had taken off the Lead and a little Paper fell looſe from the reſt.

Mr. *Aſhton.* Pray, take notice of that, Gentlemen.

L. C. J. Holt. But pray don't infer more from thence than it will bear.

Mr. *Aſhton.* It ſeems ſome of the Papers were taken out.

L. C. J. Holt. He does not ſay any ſuch Thing, that ſome of the Papers were taken out.

Mr. *Aſhton.* He ſays, ſomething was cut, and ſome Papers fell out.

Captain *Billop.* There was a little Paper or two tyed to the great Pacquet.

L. C. J. Holt. What became of them?

Captain *Billop.* They were cut looſe, but not opened.

Mr. *Aſhton.* How can you tell they were not opened?

Captain *Billop.* Becauſe I ſtood by when they were cut.

Mr. *Aſhton.* But how can you tell that; for you ſee the little Papers taken, and they were looſe from the others?

Captain *Billop.* They were taken from the great Bundle before I went out.

Mr. *Aſhton.* Had not my Lord opened thoſe Papers before you came in?

Captain *Billop.* No.

Mr. *Aſhton.* How can you tell that?

Captain *Billop.* I tell you, as near as I can judge, they lay in the ſame Poſture that I left them in.

Mr. *Aſhton.* Was the Pacquet ſealed when you took it?

Captain *Billop.* No; but it was tyed. There were ſeveral Letters in it that were ſealed; it was tyed up very hard.

Mr. *Aſhton.* I do not Queſtion but my Lord *Nottingham* will do me the Juſtice to ſay how long he was in the Room.

L. C. J. Holt. You muſt not Comment, nor make your Obſervations till your proper time.

Jury-man. Pray, my Lord, I deſire he may be asked who was with my Lord *Nottingham* when my Lord *Preſton* was there.

Captain *Billop.* There was no Body elſe then.

Jury-man. Then 'tis not probable they were altered before Captain *Billop* came in.

Mr. *Aſhton.* But I hope Probabilities ſhall not be Evidence to condemn any Man.

Jury man. Thoſe two little Papers you ſpeak of, were they ſevered from the Pacquet?

Captain *Billop.* I cannot tell whether they were or no; they ſeemed looſe upon untying the Bundle.

L. C. J. Holt. Were they cut in your preſence?

Captain *Billop.* Indeed, my Lord, I cannot ſay that I did ſee them cut.

Mr. *Aſhton.* Pray take notice of that, Gentlemen of the Jury.

L. C. J. Holt. They are Twelve honeſt Gentlemen, they will do you right.

L. C. J. Pollexfex. Obſerve what the Witneſs ſays; he ſays, That he does not remember that they were cut in his preſence, but he does not ſay, they were not.

Mr. *Aſhton.* If he does not ſwear they were, it is reaſonable to conclude they were not cut in his preſence.

L. C. J. Holt. He ſays, the great Pacquet was not opened, the two little Papers were looſe from the reſt of the great Bundle.

Captain *Billop.* There might be two or three of them, leſs or more, I cannot tell.

Mr. *Serj. Thompſon.* You will be further ſatisfied in this Matter upon my Lord *Nottingham*'s Evidence, I ſuppoſe.

Mr. *Serj. Tremain.* We have done with Captain *Billop* for the preſent. Pray call *Johnſon.*

(*Who was ſworn.*)

Sir *W. Williams.* Were you at the taking of that Gentleman, and the others in the Smack?

Johnſon. Yes, I was.

Sir *W. Williams.* Then pray give an Account of the Matter how it was.

Johnſon. We went down in a Pleaſure Boat and went to the *Tower*, we ſet through Bridge againſt Tyde, my Lord of *Danby* was with us; and when we came to *Tower Wharf* there they went to the *Tower* for Arms, and we ſtayed till Ebbing Water, and Rowed to *Graveſend*; and when we came to *Graveſend* we went on board ſeveral Ships, and I thought we were going a Preſſing; and we ſtayed at *Graveſend* the time of the writing of a Letter, and then we went both into the Boat again, and rowed after a Smack that had gained of us, but that not being the Smack, we turned back again, and then it was high Water: And when we came to the upper-end of the *Hope* we ſaw ſeveral Smacks coming, and there was a Fiſher-man on board that ſaid, that was the Smack the Captain enquired after, that was coming down there; and when they came on board, the Captain ſaid there were two or three brave Men, and he hoped he could ſpare one of them; and the Maſter ſaid he hoped he would take none of them becauſe they had a Protection, which he ſhewed to the Captain. Then the Captain went in and bid me take ſome ſmall Arms and go on board with him, and told the Maſter he muſt look a little further; and the Boards were taken up, and I ſaw a great piece of Roaſt-Beef, and under that my Lord *Preſton*, and Mr. *Ellyot*, and this Gentleman Mr. *Aſhton*:

My

My Lord *Preſton* came up firſt, and Mr. *Ellyot* next to him; and I ſee this Gentleman take up ſomething and put it into his Boſom, and I told the Captain of it, and he asked him what it was, and he ſaid nothing but his Handkerchief, and plucked out the Handkerchief; but the Captain put his Hand into the Boſom and pulled out ſomething elſe.

L. C. J. Holt. What was it?

Johnſon. It was a parcel of Papers tied up with a piece of Lead tied to it, for I came up cloſe after him and ſee him take it up.

Sir *W. Williams.* What elſe were there found with the Papers, was not there ſome Seals?

Johnſon. That was afterwards; but when the Captain asked him what he had gotten in his Boſom, he pulled out his Handkerchief, and ſaid nothing but his Handkerchief; but the Captain took the other Papers out of his Boſom and ſo I went down and there were the two Seals, and I took them up; and when I came up, *Ellyot* had a pair of black Whiskers on, and he borrowed a pair of Sciſſers and cut them off, and ſaid he ſhould remember me again if ever he lived, he ſhould know me by my Tooth being out. And coming up into *Long-reach*, *Ellyot* was a cold, and got to the Oar and Rowed, and ſaid you row as if you were rowing to Priſon; and he wiſhed that a Thunder-bolt might drop into the Boat, and that *London-Bridge* might drop down upon his Head. And when we came up to *Whitehall* I ſtood a Guard over them.

Jury-man. Did you ſee Captain *Billop* take the Packet of Letters from that Gentleman's Breaſt?

Johnſon. Yes, I did.

Jury man. Did you belong to Captain *Billop*?

Johnſon. Yes, I was one of the Boats Crew.

Mr. *Aſhton.* Had not I been up and ſearched before?

Johnſon. Yes, I think you had been up before.

Mr. *Aſhton.* And then you ſaw me take up the Pacquet off from the Ballaſt?

Johnſon. Yes, I ſaw you take it out of the Ballaſt and put it into your Boſom.

Mr. *Aſhton.* Gentlemen, I hope, you will be pleaſed to take notice of that.

L. C. J. Holt. No doubt of it they will.

Mr. *Aſhton.* Did not that bundle of Papers that was taken out of my Breaſt, did not they lie near to the place where the Seals lay?

Johnſon. Yes, it lay juſt by them.

Mr. *Serj. Thompſon.* Pray ſet up Captain *Billop* again. *(Which was done.)*

When you brought theſe Papers to *Whitehall*, Captain *Billop*, who did you deliver them to?

Captain *Billop.* To my Lord *Nottingham*.

Mr. *Serj. Thompſon.* After he received them, what did he with them?

Captain *Billop.* After he had examined all theſe Gentlemen, he went to opening of the Papers, and he deſired me to ſtay in the Room till they were opened, which I did; and my Lord looking on ſome of the Papers ſaid, if this Pacquet had gone we had quickly been viſited by the *French*. With that I took them up, and lookt into them. My Lord ſaid, I might look into as many Papers as I pleaſed; but I was very uneaſy and full of Pain, and had more mind to be gone, and be a Bed, than a looking into Papers; but ſeveral of the Papers I did look into, and ſeveral I put my Mark upon; and the next day at the Council, what of them I did know, I did put my Mark upon.

Mr. *Serj. Thompſon.* After my Lord *Nottingham* had peruſed them, what did he do with them?

Captain *Billop.* My Lord put them up in a Cover, and tyed them with a Piece of Twine and put his Seal upon them, and gave them me, and deſired me to carry them to my Lord Preſident; which I immediately did, and without ſtopping carried them to my Lord Preſident.

Mr. *Aſhton.* When was this, Sir? Was it that very Night that we were brought to *Whitehall*?

Captain *Billop.* Yes.

Mr. *Serj. Tremain.* Then we muſt deſire my Lord *Nottingham* to be ſworn.

The Earl of Nottingham *Sworn.*

Mr. *Serj. Thompſon.* Will your Lordſhip pleaſe to give the Court an Account how theſe Papers came to your Lordſhip, and how your Lordſhip diſpoſed of them.

Earl of Nottingham. Captain *Billop* came to my Office——

Mr. *Aſhton.* I humbly deſire your Lordſhip would pleaſe to ſpeak louder; for I cannot hear your Lordſhip, and I fear the Jury cannot.

Earl of Nottingham. I ſpeak as loud as ever I can, but I have a great Cold.

L. C. J. Holt. You may hear my Lord very well, if the Court be but ſilent.

E. Nottingham. Captain *Billop* brought to me a Pacquet tyed about with a Packthread, to which there was a Piece of a Leaden Pipe fixed, in which Pacquet there was ſtuck in another Paper, I think there was but that one beſides the Cover but what it was particularly I do not remember, this Pacquet was laid upon the Table while he was by; and I called in my Lord *Preſton*, not being willing to make him ſtay, and after I had ſome Diſcourſe with my Lord to examine him what account he could give of theſe Proceedings; then I called in your ſelf Mr. *Aſhton*, and Captain *Billop* was by alſo, but the Pacquet ſo tyed with the Packthread I cut open in *Billop*'s preſence with a Pair of Sciſſers; the ſame Papers that were in that Pacquet, together with the little Paper that was ſtuck in, I tyed up, I am ſure I ſealed them in a Sheet of Paper, and gave them back again to Captain *Billop* to carry them to my Lord Preſident.

Sir *W. Williams.* Captain *Billop*, you have already declared that all you received from my Lord *Nottingham* you carried to my Lord Preſident.

Captain *Billop.* All the Papers that I received from my Lord *Nottingham*, juſt as I received them ſealed with my Lord's Seal, I went directly to my Lord Preſidents, and gave them him.

Sir *W. Williams.* Pray, my Lord, did your Lordſhip deliver to Captain *Billop* all the Papers that you received from him?

Earl of Nottingham. My Lord, all the Papers that Captain *Billop* brought to me that were in the Pacquet (for he brought ſome Letters that he took out of my Lord *Preſton*'s Pocket that were of no Conſequence) but all the Papers that were in the Pacquet I delivered back to Captain *Billop* ſealed as I received from him, and no more and no others; for the other Letters, they being from my Lord *Preſton*'s Children, and not relating to the Publick, I gave them to him to give my Lord *Preſton* again.

Mr. *Aſhton.* My Lord, I humbly beſeech your Lordſhip to tell the Court how long my Lord *Preſton* was with your Lordſhip in the Room.

E. Nott. Truly I am not able to tell you particularly how long it was, I believe it might be about a quarter of an Hour, or ſcarce ſo much.

Juryman. Was there no body with your Lordſhip, when Capt. *Billop* was out, but only my Lord *Preſton*?

E. Nott. No, not that I know of.

Mr. Aſhton. My Lord, I have one Favour more to beg your Lordſhip, I humbly pray your Lordſhip will pleaſe to tell the Court and Jury what Anſwer I gave to your Lordſhip, when you asked me how I came by thoſe Papers.

E. Nott. As near as I remember the Account that you gave of them was, That you went down again after you were come up, as you ſaid, to fetch your Hat; and that when you did go down into the little Hole to fetch your Hat, you brought up theſe Papers with you.

Mr. Aſhton. My Lord, this was the Account I did give. Now this very well correſponds with that Man's Evidence, that ſays he ſaw me take up the Papers and put them into my Breaſt.

L. C. J. Holt. He does ſay ſo, and this does all very well agree.

Mr. Sol. Gen. Now we deſire my Lord Preſident would be pleaſed to be Sworn.

The Lord Preſident ſworn.

Mr. Serj. Thompſon. Pray, my Lord, will your Lordſhip pleaſe to declare to the Court what Papers Capt. *Billop* brought to your Lordſhip, and how your Lordſhip diſpoſed of them.

L. Preſident. Captain *Billop* did bring me a Pacquet tied with a Packthread, and that was ſealed with my Lord *Nottingham*'s Seal, I knew it to be his Seal; and he told me that my Lord *Nottingham* commanded him to bring the Pacquet to me. I opened the Pacquet, and peruſed all the Papers; it was very late and I locked them up till Morning, and I then carried thoſe very Papers to the King, and in the King's Cloſet, at *Kenſington*, the King read ſome of them, and in my ſight, for I never parted from the King, but was by all the while: The King put up all the Papers again, and commanded me to call a Cabinet Council, and to let them be delivered there to the Council; accordingly I did deliver them Paper by Paper, and they were all marked there by my Lord *Sydney*, who is here preſent; and they were then delivered into the Hands of my Lord *Sydney*.

L. C. J. Pollexfen. Will you pleaſe to ask my Lord any Queſtions, Mr. *Aſhton*?

Mr. Aſhton. My Lord, if your Lordſhip will be pleaſed to pardon me, I would ask your Lordſhip, Did any of your Lordſhip's Servants, or Family read any of theſe Letters?

L. Preſident. No, not one.

Mr. Aſhton. Were they locked up where any of your Lordſhips Secretaries, or Servants could come to them?

L. Preſident. No, I lockt them up in a ſtrong Box in my Cloſet.

Mr. Aſhton. My Lord, I only deſire this Favour further of your Lordſhip. Your Lordſhip at the Committee of the Council was pleaſed to ask me, how I came by thoſe Papers; I preſume you may remember, and I pray your Lordſhip to declare, what anſwer I gave.

L. Preſident. Truly Mr. *Aſhton*, to tell you Truth, I do not remember the Particulars, I remember you denied every Thing; I can only ſay that in the general, but what you ſaid in particular I cannot remember.

L. C. J. Pollexfen. Do you put my Lord in mind, if you can; See whether he does remember it.

Mr. Aſhton. My Lord, I only deſire to ask my Lord Preſident, whether I did not tell him I went down after I had been ſearcht into the Hold, and there I ſee the Papers lye, and brought them up, and put them into my Breaſt; they were no ſooner in my Hands but Capt *Billop* had them in his; for the Man called and ſaid, This Gentleman has ſomething in his Breaſt, and the Captain put in his Hand and pulled it out.

L. Preſident. Truly, Mr. *Aſhton*, I do not remember the Words that you uſed, but remember you ſaid ſomething to which I made anſwer, What makes it matter, They were found upon you, and taken out of your Boſom, do you look to it how you came by them. I do not remember what you ſaid, for I cannot remember particular Words, but I believe you might ſay ſome ſuch Thing.

Mr. Sol. Gen. Then, pray my Lord *Sydney*, will you be pleaſed to be Sworn.

The Lord Sydney *Sworn.*

Mr. Sol. Gen. Will your Lordſhip be pleaſed to declare what Papers you received from my Lord Preſident?

L. Sydney. At the Cabinet Council my Lord Preſident delivered a Pacquet of Papers, I received them every one there, and markt them, and put them into my Pocket.

Mr. Serj. Tremain. Did your Lordſhip deliver them to any Perſon afterwards?

L. Sydney. The next Day, or the Day after, I gave them to Mr. *Bridgman* to Copy out, and he delivered them back to me again.

Mr. Sol Gen. Pray, my Lord, give me leave to ask this Queſtion ——

Mr. Serj. Thompſon. Your Lordſhip had markt them before you delivered them to Mr. *Bridgman* to Copy?

L. Sydney. Yes, I markt them at the Council Table, at my Lord *Nottingham*'s Office.

Mr. Sol. Gen. My Lord, thoſe Papers that you markt were the ſame Papers that my Lord Preſident brought, and delivered in at the Council?

L. Sydney. Yes, the very ſame.

Juryman. My Lord, ſhall we have leave to aks my Lord *Sydney* a Queſtion?

L. C. J. Holt. Ay; What is it?

Juryman. Pray, my Lord, did the Pacquet come to you Sealed? That which was taken from this Gentleman, was it Sealed when it came to you?

Mr. Sol. Gen. No, it had been opened by my Lord *Nottingham*, and my Lord Preſident.

L. C. J. Holt. Sir, you are under a Miſapprehenſion of the Matter. My Lord *Nottingham* after he had opened them ſealed them up again, and delivered them to Capt. *Billop*; Capt. *Billop* carried them ſealed to my Lord Preſident, my Lord Preſident opens them and lays them up, they were never out of his Poſſeſſion, he carries them to the King, the King read ſome of them in his Lordſhip's preſence, he delivers them at the Cabinet Council to my Lord *Sydney*, and my Lord *Sydney* ſwears he read them there, markt them, and, when he had done, put them in his Pocket.

Mr

Mr. Sol. Gen. My Lord *Sydney*, will your Lordſhip be pleaſed to look upon theſe Papers, and ſee if theſe be part of them.

L. Sydney. I know them very well, I have read them Ten times, I markt them at the Council, and that is my Mark.

Mr. Sol. Gen. Pray, my Lord, are thoſe two Papers that you have in your Hand, Two of thoſe Papers that my Lord Preſident delivered at the Cabinet?

L. Sydney. Yes, that they are.

Mr. Sol. Gen. My Lord Preſident, will you pleaſe to look upon them?

(Which his Lordſhip did)

L. Preſident. Theſe are Two of the ſame Papers that Capt. *Billop* brought me.

Mr. Sol. Gen. Now we ſhall deſire to have them read, but give me leave to obſerve to you, That one of them is a Copy of the other; only in the one ſome Words are written ſhort, that are written out at length in the other.

Juryman. Pray, my Lord, I deſire to ask, are they of the ſame Hand?

Mr. Sol. Gen. No, they are of different Hands.

Mr. Serj. Thomſon. Pray, Gentlemen of the Jury, take notice, and obſerve theſe Papers, for there is a great deal of Matter of great Moment in them; for you cannot expect the King's Council ſhould repeat every Thing that is in ſo many Papers as we ſhall read; it is impoſſible we ſhould take notice of all.

L. C. J. Holt. Or I either; therefore pray, Gentlemen, obſerve what is read, for I ſhall be able only juſt to ſtate the Evidence to you.

Mr. Aſhton. My Lord, I hear them ſay one of thoſe Papers is a Copy of the other; I deſire the Original may be read, and not the Copy.

Mr. Serj. Thompſon. Who knows which is the Original?

L. C. J. Holt. Look you, Mr. *Aſhton*, we don't know which is the Original, or which is the Copy, they are both found together, they contain the ſame Matter and the ſame Words: It may be you can tell which is the Original.

Mr. Serj Thompſon. You may look upon them your ſelf, and tell us which is the Original if you pleaſe.

Mr. Aſhton. That is very well obſerved, Sir. That is throwing Water upon a dead Mouſe. Then I deſire both of them may be read.

Mr. Sol. Gen. Indeed, Mr. *Aſhton*, I think there is a particular Reaſon why you ſhould not deſire to have the Copy read, becauſe leaſt it ſhould prove to be your own Hand Writing.

Mr. Aſhton. Pray let both be read.

Cl. of Peace Reads. The reſult of a Conference——

Mr. Serj. Tremain. Pray attend, for this is the Scheme of the whole Work.

Cl. of Peace Reads. The reſult of a Conference, *&c.*

And the other was likewiſe read as before.

L. C. J. Pollexfen. Pray let Mr. *Aſhton* ſee that Paper.

The Paper was handed to Mr. Aſhton, *being one of the Papers before read.*

L. C. J. Pollexfen. Mr. *Aſhton*, look upon that ſame Paper a little, ſatisfy your own Mind a little whoſe Hand that Paper is in. Look upon it well, I would have you be ſatisfied about it. Look particularly upon the latter part of it.

Mr. Aſhton. My Lord, I have look'd upon it, I have ſeen it all.

L. C. J. Pollexfen. Come then, give it me back again, and think of it a little in your own Heart.

Mr. Sol. Gen. My Lord *Sydney*, pray, will your Lordſhip look upon this Paper.

L. Sydney. This is one of the Papers that was among the reſt, delivered by my Lord Preſident at the Cabinet.

Mr. Sol. Gen. Pray ſhew it my Lord Preſident; What ſays your Lordſhip to it?

L. Preſident. This was one of the Papers I gave my Lord *Sydney*, and was brought to me in the Pacquet by Captain *Billop*.

Cl. of Peace reads. That the King would return with a Deſign of making an entire Conqueſt of his People——

Mr. Serj. Thompſon. Pray, my Lord, give me leave, before it be read, to acquaint the Jury what this is, that they may make the better Obſervations upon it. This, Gentlemen, is the Heads of a Declaration that was intended to be Publiſhed when the French came; and you will ſee what it is when it is read. Pray obſerve it.

Cl. of Peace reads. That the King will return, *&c. As before.*

Mr. Serj Tremain. The next Paper is an Account which they had taken with them of the Force of the Kingdom, of the Ships, particularly how many in Number, what Rates, what were in Repair, what out of Repair, and what a Building. Pray ſhew it my Lord *Sydney*.

L. Sydney. This is another of the Papers that I received from my Lord Preſident, and markt at the Cabinet.

Mr. Serj. Thompſon. Then ſhew it my Lord Preſident.

L. Preſident. This is one of the Papers that were in the Pacquet, that Captain *Billop* brought me. *Clerk of the Peace reads.*

Mr. Sol. Gen. Pray, my Lord *Sydney*, look upon theſe Papers, and tell where your Lordſhip had them.

The Papers were Shewn both to the Lord Preſident and the Lord Sydney.

L. C. J. Holt. My Lord Preſident ſays he received them from Captain *Billop*, and gave them to my Lord *Sydney*; and my Lord *Sydney* ſays they are the ſame he received from my Lord Preſident.

Juryman. Are thoſe the Papers that have been read, my Lord?

Mr. J. Eyres. No, but they both ſay the ſame as to thoſe that have been read.

Juryman. Then pray, my Lord, What are thoſe Papers that are going to be read?

Mr. Serj. Tremain. Theſe are Two Letters, Gentlemen, that are written, giving an account how the Affairs in *England* ſtood, with reference to the Perſons Concerns that they are written to; and there is a particular Paſſage in one of them, How their young Maſter prevailed in his Intereſt, and got ground of his Adverſaries. If you obſerve them, you will eaſily underſtand what is meant by them.

Clerk of the Peace reads. This is directed for Mr. *Redding*, New-years Eve. Though the Bearer of this, *&c. As before.*

Clerk of the Peace reads. This is directed for Mrs. *Redding*. As it is impoſſible for me to expreſs, *&c. As before.*

Mr. Sol. Gen. Now we deſire my Lord *Sydney* and my Lord Preſident would look upon theſe Papers.

Jury-

Juryman. My Lord, I deſire the former part of that laſt Letter may be read again.

Which was done.

L. Sydney. Theſe I had from my Lord Preſident.

L. Preſident. And I had them out of the Pacquet that Capt. *Billop* brought me.

Mr. Serj. Tremain. If your Lordſhip pleaſe I will open them to the Jury. Here are two Letters in one of them there is an Account given that they were heartily ſorry they were diſappointed, and that they had not been here already, but hoped they will be here as faſt as they can; that the Match was concluded, the Settlement prepared, and no doubt but the Daughters Portion would be well Secured, if they would come quickly.

Clerk of the Peace reads. Dec. 31. 1690. 'Tis directed for Mrs. *Charlton.* I muſt not let this Bearer depart Madam, *&c. As before.*

Mr. Serj Tremain. That Letter tells you that the Daughters Portion would be well Secured; this that we now produce will tell you, how it ſhall be Raiſed. It ſays, the old Tenants are weary of their Maſter, and a little Matter if he would but appear in *Weſtminſter Hall*, would redeem the Eſtate; and the Cauſe might be brought to a final hearing before the end of *Eaſter* Term, if they made haſte, and it were well Sollicited.

Clerk of the Peace reads. This is directed for Mr. *Jackſon. Dec.* 31. 1690. The Bearer hereof will give you, *&c. As before*

Mr. Sol. Gen. We muſt deſire my Lord Preſident and my Lord *Sydney* would be pleaſed to look upon theſe Papers.

L. Preſident. I received theſe from Capt. *Billop* in the Pacquet, and gave it to my Lord *Sydney*

L. Sydney. Theſe are ſome of the Papers I had from my Lord Preſident.

Mr. Serj. Tremain. The Letters we now produce to be read ſeem to be written by a Man that was involved in a great Trade, that had great Projects in his Head, and drawn many Schemes in his own Brain how to carry on the Trade, he directs what ſort of Wares he would have ſent, what was proper for their Markets, that he had got many a new Cuſtomer, and hoped they ſhould not be diſobliged; that all muſt be ſent before the Firſt of *March*, at leaſt before the Tenth, or the whole Summer Profits would be loſt.

Cl. of the Peace reads. 31 *Dec* ——

L. C. J. Holt. Read the Superſcription firſt.

Cl. of the Peace. There is no Superſcription, my Lord, at all.

L. C. J. Holt. Well, read on.

Clerk of the Peace reads. 31 *Dec.* The Interruption of the former Correſpondence had a very ill Effect many ways, *&c. As before.*

Mr. Serj. *Tremain.* Gentlemen, doubting that that Letter might not be preſſing enough, here is another to the ſame effect.

Cl. of the Peace reads. Dec. 31. It is a Preſumption incident to thoſe that are any ways upon the Spot, *&c. As before.*

Mr. *Serj. Tremain.* One would imagine this Letter were written by ſome Perſon that uſed to talk Cant, that he is ſo ready at it.

Mr. Sol. Gen. Pray, my Lord Preſident, what ſays your Lordſhip to theſe Papers?

L. Preſident. Theſe Two Letters were in the Bundle that Capt. *Billop* delivered to me, and I delivered them to my Lord *Sydney.*

L. Sydney. Theſe are ſome of the Papers I had from my Lord Preſident, at the Cabinet.

Mr. Serj. *Tremain.* That firſt of theſe Papers is a Letter wherein the Party gives an Account of his own Condition here, and how he would venture to bring about what was deſired.

Cl. of the Peace reads. 31 *Dec.* 1690. Was my Condition more deſperate and uneaſie than it is, *&c. As before.*

Mr. *Serj. Tremain.* This little Paper was incloſed in the other.

Clerk of the Peace reads. I beg, *&c. As before.*

Mr. *Serj. Tremain.* Now ſhew this Paper to my Lord Preſident, and my Lord *Sydney.*

Which was done.

L. C. J. Holt. My Lord Preſident, and my Lord *Sydney*, ſwear the ſame for this Paper, as for the reſt.

Mr. *Serj. Tremain.* This Paper ſhews they were going about a Deed that they did not deſire to have known; 'tis a Key how to explain their Meaning.

Cl. of the Peace reads. For Mrs. *Anne Ruſſel, &c. As before.*

Then three other Papers were ſhewn to and ſworn by the Lord Preſident, and the Lord Sydney, *to be part of the ſame Papers.*

Mr. Serj. Tremain. The Papers that we are going to read are theſe. Gentlemen, here is a Letter of Recommendation in behalf of one Mr. *Orbinet*, which is a Name they pretended of ſome Perſon that was at *Paris*, or to go there, and 'tis written by one Mr. *Dellivere* to his Correſpondent there, and he tells him, the Bearer had ſomething to diſcloſe to him, and that he might have an entire Confidence in him: But the Letter of Recommendation alone, without a Sum of Money, they reckoned would meet with a bad Welcome in *France*, and therefore they take 500*l.* with them, and here are Two Bills to pay it.

Then Mr. Humphrey Levermere *was ſworn to interpret them, being in French, (which he did) and read them as in the former Tryal.*

Juryman. Were theſe Bills found in that Pacquet?

Mr. Serj. Tremain. Yes, Yes; they are ſworn to by both thoſe Lords.

Mr. Sol. Gen. Now, pray my Lord, will you pleaſe to look upon theſe Papers.

The Lord Preſident, and Lord Sydney *both teſtified, That thoſe were part of the Papers.*

Mr. Serj. Thompſon. This next Paper that we give in Evidence is very ſhort. It ſeems to be a Table for the Memory of the Perſon that was to carry it; They are ſhort Heads for the Memory, conſiſting of a great many Particulars; You will make your Obſervations upon them, and what Judgment you think fit of them.

Mr. Serj. Tremain. My Lord, I deſire to take Notice of theſe Papers that we are now going to read; you will obſerve theſe Things in them, which are worth your remarking, Gentlemen; becauſe theſe Papers that we now read to you are of themſelves ſufficient to prove every Article in the Indictment: For theſe Papers give an Account of the Ships, their Number and Force, the Forts of the Kingdom, how they are Manned, how they may be Surprized, where the *French* Fleet ſhould Fight, where they ſhould Aſſault us, how they ſhould hinder the *Dutch* and *Engliſh* Fleets from Joyning, what Number of Soldiers would be ſufficient, and what Number of Ships in *Newcaſtle* to plague the City of *London,*

don, how to manage this whole Affair; and it gives Characters of the Clergy of *England*, and particularly of the City of *London*, and ſays, they are the worſt of Men.

Mr. Serj. Thompſon. No Brother, 'tis the worſt of all the Clergy.

L. C. J. Holt. Come read them.

Clerk of the Peace reads. Lady *D.* 2000 *l. &c. As before.*

The Jury deſired to ſee the laſt Papers, and had them delivered to them.

Mr. Sol. Gen. Then we reſt it here, to ſee what the Priſoner will ſay to it.

L. C. J. Holt. Mr. *Aſhton*, the King's Council have done their Evidence for the King, what have you to ſay for your ſelf?

Mr. Aſhton. My Lord, I humbly deſire to know of your Lordſhip, whether all the Letters are read, that were read at the Tryal of my Lord *Preſton*?

L. C. J. Holt. What is that material to you, whether they be or not?

Mr. Aſhton. My Lord, I am informed that there were ſeveral Letters, that particularly name my Lord, implying him to be the Bearer, and I deſire thoſe Letters may be read.

Mr. Serj. Thompſon. With all my heart, if you do deſire it, it ſhall be read, we do not think it material.

Mr. Aſhton. I do deſire it, it will be plain, I believe, from hence, that I could know nothing at all of this matter; and if your Lordſhip pleaſe, my Lord, to obſerve it, three or four of theſe laſt Papers, as *Mr. Serj Tremain* obſerved, were the Ground-work of all this Buſineſs, which refers to *Portſmouth* and *South Sea*, and ſome other Papers; theſe I think, with Submiſſion, were proved to be the Hand of another Gentleman, and I deſire it may be proved again to the Jury, by which I think it will be plain, that they do not affect me.

L. C. J. Holt. Look you, Mr. *Aſhton*, it is not proved to be your Hand, nor pretended to be ſo.

Mr. Aſhton. But poſitively proved to be another's Hand, as I am informed, and 'tis that which Mr. Serj. *Tremain* obſerved was the Ground-work for carrying on the whole Deſign, I preſume the Witneſſes are in Court that proved it then, and I hope your Lordſhip will be ſo kind as to let it be proved now; they did prove it to be another Perſons Hand upon a Tryal not long ago.

L. C. J. Holt. If you have a mind to call any Witneſſes to prove the Papers to be another's Hand, you may call them.

Mr. *Aſhton.* I hope the King's Witneſſes are now in Court that did prove them to be his Hand Writing, and they'll prove it now I ſuppoſe.

L. C. J. Holt. If you have a mind, you may call them, they have not a mind to produce them for the King.

Mr. *Aſhton.* I know not where they are my Lord. Pray Mr. *Aaron Smith*, be you ſo kind as to call them.

L. C. J. Pollexfen. You ſhould have ſent and Subpœna'd them to be here.

Mr. *Aſhton.* Mr. *Warr* is there, my Lord, I deſire he may be ask'd the Queſtion; and I believe Mr. *Blane* is in the Court, pray let him be ask'd.

L. C. J. Holt. Mr. *Warr*, you are called by the Priſoner, as a Witneſs, to prove my Lord *Preſton*'s Hand.

Mr. *Aſhton.* Mr. *Warr*, Mr. *Townſend* and Mr. *Blane*, I deſire may be all ask'd.

L. C. J. Holt. Mr. *Aſhton*, you have inſiſted upon it, that theſe Papers were my Lord *Preſton*'s own Writing.

Mr. *Aſhton.* My Lord, I do inſiſt upon it, to know whether they were not proved to be his Hand.

Mr. *Serj. Tremain.* Yes, they were ſo, 'tis agreed.

Mr. *Serj. Thompſon.* We do grant the King's Witneſſes proved, that they did believe them to be my Lord *Preſton*'s Hand.

L. C. J. Holt. The King's Council do admit, that theſe three laſt Papers were not your Hand, but they admit them to be my Lord *Preſton*'s Hand, and 'tis very well done of them to admit it; ſo that now it is to be taken for granted, that thoſe three laſt Papers were my Lord *Preſton*'s Hand.

Mr. *Aſhton.* Then my Lord, I deſire the Subſtance of thoſe Papers may be the more preſs'd upon the Jury, becauſe Mr. *Serj. Tremain* obſerved that the whole Deſign in the Scheme of it lay in thoſe Papers, and they are not my Hand, but anothers; and for what is in them, I know nothing, nor am concern'd.

L. C. J. Holt. What have you farther to ſay, Sir?

Mr. *Sol. Gen.* You mentioned another Letter which you did deſire ſhould be read.

Mr. *Aſhton.* Ay; two or three where my Lord is nam'd.

Mr. *Sol. Gen.* This is the Letter I ſuppoſe you mean, the Clerk ſhall read it.

Clerk of the Peace reads. *Sir, I vow to you, I do not repine at having loſt all for your ſake,* &c. (as before)

Mr. *Aſhton.* Gentlemen, I hope you will obſerve, in that Letter my Lord is called the Bearer; and it tells that he brings Papers with him, by which it is plain, that you cannot imagine I could know any thing of theſe Papers. And Gentlemen, it has not appeared by any Evidence that has been given, that I knew any thing more, than that they were unfortunately found upon me: But with Submiſſion, I believe there is another Letter, if I am inform'd right, wherein my Lord is named, and called, my Lord the Bearer.

Mr. *Sol. Gen.* Sir, I do aſſure you now, we have to my Obſervation, read every Letter, and every Paper, that was read on *Saturday*.

Mr. *Aſhton.* Mr. Sollicitor, I am ſatisfied, for I am confident you would not affirm it if it were otherwiſe.

L. C. J. Pollexfen. There is not any Letter that ſays my Lord the Bearer, but my Lord will give you an account, ſo and ſo; the Bearer will tell you theſe and theſe things; will you have it read again? You ſhall if you will.

Mr. *Aſhton.* I am unwilling to take up your Lordſhip's time, unleſs the Jury deſire to have it read again.

Jury man. Pray my Lord, when that Letter was read on *Saturday*, how was it conſtrued by the Court? How did they take it then?

L. C. J. Holt. We did take it then, becauſe my Lord was mentioned, that he might poſſibly be the Bearer.

L. C. J. Pollexfen. It is very probable, and ſo it was underſtood then, that the Lord mentioned in the Letters was my Lord *Preſton*, and ſo that my Lord was the Bearer that could give an account of the Counteſſes Condition; and in the beginning of thoſe Papers that are of my Lord's Hand, there is mentioned ſo much Money for the Lady *D*——which is my Lady *Dorſet* I ſuppoſe, that is there meant, and that writ that Letter.

Mr. *Aſhton.* No, my Lady *Dorcheſter.*

L. C. J. Pollexfen. Dorcheſter I cry your mercy; and it is probable the ſame reaſon is a reaſon ſtill to make it believed that my Lord *Preſton* was meant.

Mr. *Aſhton.* I think my Lord Chief Juſtice was pleaſed to obſerve, as I have been informed, in giving his Charge to the Jury, that theſe Papers, ſome of them naming my Lord, muſt be meant of my Lord *Preſton*, there being no other Lord but he; and he likewiſe gave another reaſon, ſays he, they lay by my Lord's Seals that were produced, and therefore it was plain, they could not be *Aſhton*'s nor *Elliot*'s.

L. C. J. Holt. No not ſo, but my Lord might be concern'd, becauſe my Lord's Seals were there where the Papers were found.

Mr. *Aſhton.* I am wrong inform'd if thoſe were not the words my Lord Chief Juſtice *Pollexfen* uſed.

L. C. J. Pollexfen. What do you ſay were the words? if you will repeat them, I'll tell you as near as I can.

Mr. *Aſhton.* Your Lordſhip ſeem'd to infer, that my Lord being nam'd, and the Bearer in the ſame Paper, that of Conſequence that muſt be my Lord *Preſton*, and the Papers muſt be his; and you did give another reaſon for it, to enforce it, that the ſame Man that ſaw me take them up, ſaw them lye by the Seals, which were proved to be my Lord *Preſton*'s, from whence your Lordſhip did ſay, it is plain they were my Lord *Preſton*'s, and that *Aſhton* or *Ellyot* could not be concerned in them.

L. C. J. Holt. You miſtake that matter, ſure there was not any ſuch word ſaid, for that Evidence that tended to convict my Lord *Preſton*, did by no means tend to acquit you; the queſtion then was, how far my Lord *Preſton* was concerned; my Lord inſiſted upon it, ſays he, They were not taken from me but from Mr. *Aſhton*; there the Queſtion was not about you.

Mr. *Aſhton.* I humbly hope, my Lord, you will forgive me for inſiſting upon theſe Matters, becauſe I am for my Life.

L. C. J. Pollexfen. I would do you all the right I can, I aſſure you, Mr. *Aſhton*; but certainly there was no ſuch thing ſaid as you have mentioned.

Mr. *Aſhton.* My Lord, I do not queſtion but you will do me right, and I thought ſo, when I choſe the Jury out of the firſt that appeared, without challenging any.

L. C. J. Holt. Well, Sir, pray go on to your Defence.

Mr. *Aſhton.* My Lord, my own Defence will be very weak upon the whole, for I am very illiterate and unskill'd in the Laws, but where I do fail of taking Advantage, to obſerve what may be for my Advantage, I hope your Lordſhips will be ſo kind to me, as well as juſt (I may call it) to your ſelves, being upon your Oaths, as to take notice of it. My Lord, in the firſt place——

Mr. Serj. Tremain. Before Mr. *Aſhton* proceeds, I would obſerve one word in a Letter that has been read, which is one of theſe Papers, it ſays, *I ſay nothing of another Gentleman that takes opportunity to ſee thoſe parts, but he has ſhewn a Zeal and Sincerity in the affair equal to moſt.*

Mr. *Serj. Thompſon.* You hear, Gentlemen, that there is notice taken of another Perſon beſides the Bearer.

Mr. *Aſhton* Pray, my Lord, is it any Conſequence that I muſt be the Perſon that muſt be meant, or that I muſt know what the Contents of the Letter was? There was another beſides me, and ſo it is not plain who was meant, or if I were the Man meant in this Letter, it muſt not therefore follow that I muſt know of it.

Mr. *Serj. Tremain.* I did not mention it as a Proof that you were the Perſon meant, but only to ſhew that there was another Perſon beſides, my Lord, taken notice of in them.

L. C. J. Holt. I muſt confeſs, I think Mr. *Aſhton* obſerves right, it does not concern him, for as well as he was there, there was another, and it is uncertain whether it relates to him or the other, and ſo it ſignifies nothing at all; that's my mind. Pray go on Mr. *Aſhton.*

Mr. *Aſhton.* My Lord, upon the whole I have this to obſerve, firſt as to my buſineſs of going into *France*, I muſt ingenuouſly own it, though I proteſt to you I never own'd it or named it to the Woman though ſhe had Sworn it, but yet I do now. My deſign was to go to *France*, and I had very great and good Reaſon for it, I think, I had endeavoured all ways I could in the World to procure a Paſs to go to *France*, 'tis very well known, I did buſineſs under Lieutenant General *Worden* that died half a year ago, his Accounts are now depending, and ſuch Accounts as may be prejudicial in ſome points to his Family, to whom I have always own'd and muſt a great Obligation, and would be very glad upon all occaſions to ſerve it, and all the Branches of it; this was not the whole nor the only deſign I had in going thither, but I had likewiſe ſome buſineſs of my own, I have a conſiderable Sum of Money owing me, if it be neceſſary to prove it, I can prove it by a Bond from a Perſon that is there; a great Sum it is, a very conſiderable one to me at leaſt. And, my Lord, I did think if I did not go my ſelf it was impoſſible for me to do any thing in that Affair, and that was the true and only Reaſon of my deſign in going to *France*, having been out of hopes of getting any other Convenience otherways; this was not a Deſign juſt now formed, as if I were juſt now upon ſome Plot concerning the Publick, but it has been my deſign ever ſince Lieutenant General *Worden* died, and he upon his Death-Bed ingaged me to do it; and I once went down, hoping to have gone from *Dover*, and there I was apprehended and taken. And, my Lord, I have uſed all manner of Endeavours to go other ways, but they have always failed me, and this way I hoped would have taken: my Lord, I do own I did hire the Boat, and I did pay the Money, but with Submiſſion, I think that is not any manner of Treaſonable Act, my Lord; perhaps it is an ill Act, but it does not amount in the leaſt to Treaſon going to the King's Enemies, ſuppoſe I went upon that account, that is no manner of Treaſon in

in the World, carrying Papers to the King's Enemies, except it be proved that I was privy to them, and knew the Contents of them, if Lawyers inform me right, is not Treaſon; then what remains? 'Tis true, I muſt own the Papers were found upon me, and I believe there is no body that has heard the Evidence that has been given, but muſt readily conclude that I found them in the place where the Sea-man ſays I took them up; and beſides, my Lord, there is not any manner of proof ſo much as aim'd at by the King's Council in all their Evidence, that I was privy to any one of theſe Papers; ſo that, my Lord, I think there is very little proved upon me at all; I had the misfortune to be taken in this Company that was going where theſe Papers were taken, it's true, but they have not attempted to prove that I was privy to or knew any thing of them at all, nor that I was more concern'd than that they were taken in my Stomach; this is all I have to obſerve upon the whole; as to the buſineſs of the Indictment there are great and grievous Aggravations in it, and ſuch as I am not able to comprehend the meaning of, the Words confound me; and therefore I humbly deſire your Lordſhip to tell me upon what Statute I am Indicted.

L. C. J. Holt. I'll tell you, Mr. *Aſhton*, you are Indicted upon the 25*th* of *Edward* the Third, for conſpiring, compaſſing and imagining the Death of the King and Queen, and for that purpoſe going to *France*, and endeavouring to incite the *French* King to invade the Kingdom, and telling him how he ſhould do it, and letting him know in what State and Condition the Kingdom was, and how fit to be invaded.

Mr. Aſhton. Pray, my Lord, is that at all proved upon me?

L. C. J. Holt. That is the Queſtion that the Jury are to judge of upon the Evidence that has been given.

Mr. Aſhton. As to that of compaſſing the Death of the King and Queen, I am ignorant of dealings in Law; but I conceive there are ſeveral Species of Treaſon mentioned in that Act of the 25 of *Edward* III. and as to the imagining the Death of the King, that's only to be proved by ſome Overt Act: Now I think nothing at all has been proved of any open Act conducing to prove the imagination or compaſſing the Death of the King or Queen, no manner of Conſultation or Treaſonable Act at all, and therefore, my Lord, I do not ſee that there is any great matter that is proved upon me, and I hope you are of that Opinion too.

L. C. J. Holt. Mr. *Aſhton*, that you may not go away with a Miſtake, any that deſign'd the Depoſition of the King and Queen, and the Invaſion of the Kingdom, which is proved by any Overt Act, is ſufficient to prove that they compaſs and imagine the Death of the King and Queen.

Mr. *Aſhton.* I preſume it may be ſo, I believe that may be the Conſtruction of the Law.

L. C. J. Holt. And I make no queſtion but thoſe that you have conſulted with have told you as much.

Mr. Aſhton. Truly as to Council my Tryal has been as hard as ever Man met withal.

L. C. J. Holt. Why do you ſay ſo, Mr. *Aſhton*? the Court has not been hard upon you.

Mr. Aſhton. My Lord, I do not complain of the Court, but as to the matter of time, I had notice by that Gentleman, Mr. *Bale*, to prepare for my Tryal, and that was on *Friday*, and not before.

L. C. J. Pollexfen. *Friday* was Sevennight, you mean, I ſuppoſe.

Mr. Aſhton. Yes, I do mean *Friday* was Sevennight, I was then a cloſe Priſoner, I had not the opportunity or liberty of ſeeing any Chriſtian Soul, I ſpake to him then, and told him, Mr. *Bale*, this is very ſhort notice; pray be ſo kind as to move my Lord that I may have Council; truly he was Civil enough, and ſaid, he would do all he could; ſays he, will you give me the Names of your Council? ſo I gave him the Names of four, and of a Sollicitor; but I never heard more of him in the matter: I did with all my Induſtry and Skill give my Friends notice, but I was under great difficulty, for I had not the liberty of Pen, Ink, nor Paper, nor a Man to ſend upon a Meſſage, on *Saturday*; I gave my Friends notice of it upon *Sunday*, which was no very good Day for buſineſs, they apply'd themſelves to my Lord *Sydney*, whoſe Favour and Kindneſs I ſhall always own as long as I live, he gave me all the diſpatch poſſible, and got me an Order to ſee my Wife that day, though it was *Sunday*; the next day I made Application to have my Council come to me, that was *Monday*; he with the ſame readineſs procured that, but it was *Tueſday* in the Afternoon before I could ſee any living Soul but my Wife; and ſome of the Council that I deſired would not readily come to me, and it was *Wedneſday* before I did ſee any body of them, and ſo I had but *Wedneſday* and *Thurſday* to conſult with them in. On *Friday* I was brought here, and I endeavour'd to procure a Copy of the Pannel, that I might inform my ſelf of the Characters of the Men that were to be my Jury; and my Lord, I would deſire you to give me leave to clear one Point, which through Inadvertency ſlipt from me about the time that I deſir'd to ſend to enquire about the Jury. I did not mean as was apprehended to ſend to them to take them off, but I only meant to enquire after their Characters; this was done upon *Friday*; I had not a Copy of the Pannel till laſt *Friday*, when we were Arraigned in Court, it was Two of the Clock before the Pannel was given us, it was between Three and Four when we came to *Newgate*; we were to come upon our Tryal the next Morning by Eight of the Clock; ſo that before the Copies could be tranſcribed for us, there were left but ſix Hours for us to enquire into the Morals of ſo many Men, of whom ſome liv'd eight, ſome ten, ſome fifteen Miles out of Town; for my part I was not able to enquire after any one, and that your Lordſhip may think by my taking the firſt Twelve that appeared, and believing my ſelf Innocent of this matter, I reſolved to put my ſelf upon my Tryal by any twelve indifferent *Engliſh*-Men; I only beg if I have omitted any thing in reference to my ſelf, or misbehaved my ſelf, with reſpect to the Bench, that you would pleaſe to ſet me right, and conſider that I ſtand here for my Life; and to grant me your Pardon for any thing wherein I have offended your Lordſhips, to whom, and to the Jury, I refer my Cauſe; only I beg leave to call two or three Witneſſes, I know it hath been allowed before in ſuch caſes, to give ſome ſhort account of my Life and Converſation, becauſe it hath been reflected upon me that I was a Papiſt, be-

cauſe I deſigned to go into *France*; but believe there is not any Man, whoſe Devotion to the Proteſtant Religion eſtabliſhed by Law, is greater than mine hath been, or to whom that Religion is Dearer than to my ſelf.

L. C. J. Holt. You are not accuſed of any ſuch thing, no body pretends you are a Papiſt, but call whom you will.

Mr. Aſhton Pray call Dr. *Burſh*, Dr. *Lake* Dr. *Fitz-Williams* and Dr. *Davenant*. There is Dr *Fitz Williams*; I beg the Favour of you Dr. *Fitz-Williams* to give the Court an account of your Acquaintance with me, and particularly about my Religion.

Dr. *Fitz Williams* Will your Lordſhip give me leave, my Lord?

L. C. J. Holt. Aye; Come, what do you know of Mr *Aſhton*?

Dr. *Fitz-Williams.* I ſuppoſe, my Lord, that he calls me in as a Witneſs to his Religion, and to his Morality, I think ſo; with my Lord's Permiſſion I will give the trueſt Teſtimony I can: I have known him for ſome time, he uſed to be frequently at the Service of the Church in the Proteſtant part of the Family, at St *James*'s, where I was Chaplain; during the time I was there, I obſerved him to be a frequent Receiver of the Holy Communion; and as far I could obſerve, lived anſwerable to what he profeſſed to be, a Sincere Member of the Church of *England*, and a Serious Chriſtian. For his Sincerity and Zeal for the Proteſtant Religion, I can give this Inſtance he had an Aunt that had a Relation to that Family, one Mrs. *Du-pee*, who he thought did warp a little towards Popery, and he deſired me, about five Years ago, to have recourſe to her, and deſired to know if ſhe were diſſatisfied with any Point of Religion in the Church of *England*, in Communion with which ſhe lived viſibly, and I would do my endeavour to ſatisfie her; as I do not doubt but I could. She was deſirous to know who was the Perſon that ſent me: I told her I came of my own Head in the greateſt part; but I ſuppreſs'd the Interpoſition of Mr. *Aſhton* for ſeveral Reaſons, and told her, I had great Suſpition of her inclining the other way; and I had great reaſon for it becauſe of her Husband, who was a Papiſt, and the great Reſort of Popiſh Prieſts to their Lodgings. She told me then, ſhe was ſatisfied in every thing, and if ſhe had any Diſſatisfaction ſhe would ſend for me to give me an account. Some Months after I came to St. *James*'s to wait, and obſerving her to be more than uſually before from Prayers in the Chappel, I went to her, and asked her the reaſon: She told me, it was becauſe ſhe was making ſome Linnen for her Maſter King *James*, which was to be made in haſte: But ſhe then deſign'd to go for *Flanders* quickly; and Mr. *Aſhton* about that time, or two or three days after, told me his Aunt was gone to *France*, and ſpoke it with very great concern, and that he believed, under the Pretence of calling over her Younger Son, ſhe was gone to declare her ſelf a Papiſt, and he was very much troubled at it. This I know for his Zeal for the Proteſtant Religion.

L. C. J. Holt. When was this, Doctor?

Dr. *Fitz-Williams.* This was, my Lord, about five Years ago.

Mr. *Aſhton.* That is, as to the buſineſs of my Aunt I ſuppoſe, I know not how he comes to mention it, but as to my Life and Morals, you can give a later account.

Dr. *Fitz-Williams.* My Lord, I have Adminiſtred the Sacrament to him.

L. C. J. Holt. What Queſtions do you farther ask him, Mr. *Aſhton*? or can you ſay any more, Doctor?

Dr. *Fitz-Williams.* No, my Lord, I can ſay no more, but that he received the Sacrament about half a Year ago.

Mr. *Serj. Thompſon.* We have not objected any thing, as to his Religion, at all.

Mr. *Aſhton.* But I know it has been a Reflection that has gone about of me, that I am a Papiſt, therefore I beg leave to prove my Religion and Converſation.

L. C. J. Holt. Nay, call whom you will, you ſhall not be hindered, take what Courſe you pleaſe.

Mr. *Serj. Tremain.* Pray, Doctor, you ſay he has received the Sacrament lately; when was that, and where?

Dr. *Fitz Williams.* It was at *Ely* Chappel within this ſix or ſeven Months.

L. C. J. Pollexfen. Have you been lately converſant with him?

Dr. *Fitz Williams* Truly, my Lord, I have not been very lately.

L. C. J. Pollexfen. Pray what have you heard him ſay, concerning his Affection to King *William* and Queen *Mary*?

Dr. *Fitz-Williams.* I do not remember any thing at all of that.

L. C. J. Pollexfen. Have you heard him ſay any thing to the contrary?

Dr. *Fitz Williams.* No, I cannot remember that.

Mr. Serj. Tremain. What have you heard him ſay about his Affection to K. *James*?

L. C. J. Holt. Do not ask him that, there may be a Snare in that Queſtion.

Juryman. You ſay, Doctor, that he received the Sacrament ſix Months ago in *Ely* Chappel; Did you deliver the Sacrament to him there?

Dr. *Fitz-Williams.* No, I did not.

Juryman. Pray, Doctor, were the Prayers that were uſed at that time altered, as they are now in the Common-Prayer-Book?

Dr. *Fitz-Williams.* I cannot ſay they were.

L. C. J. Pollexfen. Did you ever ſee him Drink King *James*'s Health?

Dr. *Fitz Williams.* I do not uſe to Drink Healths, I came here only to do an Office of Juſtice and Kindneſs to Mr. *Aſhton*, to teſtifie about his Religion and Converſation.

Mr. *Serj. Tremain.* But anſwer the Queſtion, Did you ever ſee him drink King *James*'s Health?

Dr. *Fitz-Williams.* I cannot remember I ever did.

Juryman. Was King *William* and Queen *Mary* Pray'd for in thoſe Prayers?

Dr. *Fitz Williams.* I cannot ſay they were.

Mr. *Juſt. Eyres.* But the *Juryman*'s Queſtion was, whether King *William* and Queen *Mary* were Pray'd for? and whether the Prayers were as they are now altered?

Dr. *Fitz Williams.* My Lord, I ſay I don't remember there was any Names mentioned, as the Prayers are now altered.

Mr. *Serj. Tremain.* That's very well.

Dr. *Fitz Williams.* I did neither read the Prayers, Sir, nor Adminiſter the Communion at that time.

L. C. J.

L. C. J. Pollexfen. But you were not at the Prayers, as they are now altered, I perceive.

Dr. *Fitz. Williams.* Yes, I have, ſeveral times.

Mr. *Serj. Thompſon.* Not with that Gentleman, Mr. *Aſhton.*

Dr. *Fitz. Williams.* But I have been an hundred times at the Prayers as they are now altered.

Mr. *Aſhton.* I deſire Dr. *Lake*, who is there upon the Bench, that he may be asked what he knows of me.

Mr *Serj. Tremain.* But I have one queſtion to ask of Dr. *Fitz-Williams* before he goes.

L. C. J. Holt. What will you ask him?

Mr. *Serj. Tremain.* I would ask you, Sir, one queſtion, Have you taken the Oaths to this King and Queen?

Dr. *Fitz. Williams.* No. I have not, Sir, that's my Unhappineſs, but I know how to ſubmit and live peaceably under them.

Mr. *Aſhton.* But there is one Dr. *Lake* that has taken them, he'll give you an account what he knows of me.

Dr. *Fitz-Williams.* If any one can ſay I have done or acted any thing againſt the Government, I will readily ſubmit to be puniſhed for it.

L. C. J. Holt. Well, Dr. *Lake*, what ſay you?

Dr. *Lake.* My Lord, I have known Mr. *Aſhton* above theſe ſixteen Years, we liv'd together in the ſame Family ſeveral of them; I always obſerved him to be a Perſon of exemplary Piety and ſingular Devotion; he duly came to the Prayers of the Church twice a day, and to the Sacrament once a Month; he has taken occaſion, that I know ſeveral times, both at St. *James's* and at *Edinburgh*, to teſtifie his Zeal againſt Popery; and I am apt to think, that he has ſuffered ſometimes for doing ſo.

Mr. *Aſhton.* Dr. *Burſh*, Pray, as to my Religion, I beg you to give an account what you know of me, particularly ſomething you may remember of me, of my perhaps over-heat againſt Popery.

Dr. *Burſh.* My Lord, I have long known Mr. *Aſhton*, the Priſoner at the Bar, and till within theſe two years frequently converſed with him; and while I did ſo, I believed him a good Proteſtant, and I have ſo many Inſtances of it, and particularly before ſome upon whom his Fortune depended; but as to any thing of late, I can ſay nothing, becauſe our Converſation has ceaſed.

Mr. *Serj. Thompſon.* Dr. *Burſh*, have you known any thing of Mr. *Aſhton's* Converſation for two Years paſt?

Dr. *Burſh.* No, Sir.

L. C. J. Holt. Have you any thing more, Mr. *Aſhton*?

Mr. *Aſhton.* No, my Lord, I have nothing more, unleſs your Lordſhip deſire any thing more of this Nature.

L. C. J. Holt. Call whom you will.

Mr. *Aſhton.* Here is one Mr. *Tomlinſon.*

L. C. J. Holt. Come, what ſay you, Sir?

Mr. *Tomlinſon.* My Lord, I waited upon Major General *Worden* when he was Sick, and there read the Prayers of the Church, and Mr. *Aſhton* was a conſtant Attender upon the Publick Prayers at the Viſitation of the Sick, and was very Devout; that's all I can ſay.

L. C. J. Holt. When was this?

Mr. *Tomlinſon.* It was in the Sickneſs of Major Gen. *Worden.*

L. C. J. Holt. How long ago was that?

Mr. *Tomlinſon.* It was about half a year ago.

L. C. J. Pollexfen. Were thoſe Prayers as they are altered now or not?

Mr. *Tomlinſon.* It was only the Viſitation of the Sick, and the Collect for the Morning and Collect for the Evening, becauſe the General's Sickneſs was ſuch, that he could not bear long Prayers.

L. C. J. Holt. Sir, have you been acquainted with the Priſoner any time?

Mr. *Tomlinſon.* About eight Months.

L. C. J. Holt. Have you any more Witneſſes, Mr. *Aſhton*?

Mr. *Aſhton.* No, my Lord.

L. C. J. Holt. Then I would have you to anſwer me this one thing; why were you ſo deſirous, and uſed ſuch Importunity, that the Papers ſhould be thrown over Board.

Mr. *Aſhton.* My Lord, that is a Point I ought to have ſpoke to, to clear my ſelf.

L. C. J. Holt. It ſeems material, and I would not have it forgot, if you can anſwer it

Mr. *Aſhton.* I humbly thank your Lordſhip, and whatſoever my Fate is, I cannot but own I have had a Fair Tryal for my Life, and I thank your Lordſhip for putting me in mind.

L. C. J. Holt. And take this other thing with it, why did you deſire Captain *Billop* to go along with you where you were going?

Mr. *Aſhton.* He has Sworn it, my Lord, that I did ſo, but as I hope for Salvation, if I were to dye immediately, I do not know that I ſpoke to him of any ſuch thing; how was it poſſible that I ſhould prevail with him? or how was it likely that I ſhould force him to go along with us, when he had about twelve or fourteen Men with him Armed, and we unarm'd?

L. C. J. Holt. Nay, it was not Forcing, it was but Perſwading him to go.

Mr. *Aſhton.* My Lord, I do not know any thing of it, I'll aſſure you; but as for endeavouring to perſwade him to throw the Packet overboard, I muſt own I did endeavour to perſwade him to it; and I do preſume there is no body in Court, that had been engaged with a Perſon ſo Unfortunate, that would not have done the ſame thing for any common Friend, not knowing what the Contents of thoſe Papers were, ſeeing them in that Poſture, eſpecially when I ſaw ſome body elſe ſo near me, ſo uneaſie and concern'd to have them ſeen.

L. C. J. Holt. Then, Mr. *Aſhton*, there's another thing which you open'd, which I would have you prove; you ſay you were to go into *France* upon the Affairs of Col. *Worden's* Family; firſt you ſay Col. *Worden* had a great account to make up; how will you make that out?

Mr. *Aſhton.* My Lord, if your Lordſhip pleaſe, I will prove here in Court, though it is a ſort of ſurpriſe upon me; that there is a great Account depending, I believe I may appeal to Mr. *Sollicitor* himſelf, who knows that there is a Petition in the Houſe of Commons, now depending, from the Queens Tradeſmen and Debtors, whom ſhe owed 68000*l.* ſhe did Aſſign the Arrears of ſome growing Rents for the Satisfaction of this Debt; but the King and Government have not thought fit to let it be applied to her uſe, or to the paying of thoſe Debts ſhe

aſſign'd it to. Nay it has gone farther, I can appeal to ſeveral Perſons, there is one Man by chance in the Court, that I believe does know that I promiſed and engaged, and actually have paid a great part of this Debt; for believing that the Money was good upon the Aſſignment, I have actually paid ſome of theſe Men out of my own Pocket, and perhaps more than became me to venture; I think it may very well call my Diſcretion into queſtion.

L. C. J. Holt. Who will you have called, Mr. *Aſhton*?

Mr. *Aſhton.* My Lord, here is Mr. *Spalding*.

L. C. J. Holt. That the late Queen does own People Mony, that I believe is true.

Mr. *Aſhton.* Pray, Mr. *Spalding*, will you give the Court an account, whether there is any Money due from the Queen to you.

Mr. *Spalding.* My Lords and you Gentlemen of the Jury, I have a Debt due to me from the late Queen, as her Coach Harneſs maker, it is 470*l.* or ſomething thereabouts, and Mr. *Aſhton* has paid me part of this Debt; this I do own.

Mr. *Serj Tremain.* Pray, how long have you been acquainted with Mr. *Aſhton*, Sir?

Mr. *Spalding.* A dozen years, Sir.

Mr. *Serj. Tremain.* Have you any Intimacy with him?

Mr. *Spalding.* He and I have been very well acquainted.

Mr. *Serj. Tremain.* Have you ſeen Mr. *Aſhton* write at any time?

Mr. *Spalding.* Yes I have.

Mr *Serj. Tremain.* Do you know his Hand?

Mr. *Spalding.* Yes I think I do.

L. C. J. Pollexfen. Pray how came Mr. *Aſhton* to pay you that part of your Money?

Mr. *Spalding.* I preſs'd Mr. *Aſhton*, and told him my Neceſſities, and he did advance me this Money.

L. C. J. Holt. How much did he advance?

Mr. *Spalding.* Almoſt 400*l.*

L. C. J. Pollexfen. When was it he paid it you?

Mr. *Spalding.* Almoſt a Year ago.

L. C. J. Holt. Did he pay it out of his own Pocket?

Mr. *Spalding.* I believe ſo.

L. C. J. Holt. I believe ſo; or was it Money that he had returned to him?

Mr. *Spalding.* I believe it was out of his own Pocket, my Lord.

L. C. J. Holt. Why do you believe ſo?

Mr. *Spalding.* Truly I believe it was out of his own Pocket.

L. C. J. Pollexfen. Pray who was to repay him?

Mr. *Spalding.* About that very time we were Petitioning the Houſe of Commons, that we might have our Debts ſecured, and our Money out of the Arrears of Rents due to the late Queen, according to her Aſſignment; and we ſo far preſs'd the matter, that there was a Clauſe inſerted into the Bill for the ſecuring of our Debt; but upon the next day, or the day following, the Parliament was Prorogu'd.

L. C. J. Pollexfen. Which way did he expect to be repaid?

Mr. *Spalding.* I'll tell you which way, I ſuppoſe, my Lord.

L. C. J. Pollexfen. Did he not tell you which way?

Mr. *Spalding.* No, he never told me.

L. C. J. Pollexfen. Mr. *Aſhton*, did you never tell him how you ſhould be repaid?

Mr. *Aſhton.* My Lord, I hoped to be repaid, and concluded I ſhould, out of the Arrears of Rent in the Tenants Hands.

L. C. J. Holt. But you were very kind to pay Money out of your own Pocket upon ſuch Hopes.

Mr. *Serj. Tremain.* Pray Sir will you look upon that Paper; do you know the Hand?

Mr. *Spalding.* No, Sir, I do not.

L. C. J. Holt. I ſuppoſe he did compound with you.

L. C. J. Pollexfen. This does ſhew an extraordinary kindneſs towards ſome ſort of People.

Mr. *Aſhton.* If he Diſcounted the Intereſt to the time that we reckoned it would be paid, you know that Prejudice would be to him, and not to me; it may indeed prove a Prejudice at laſt, if the Debt be not paid, becauſe the Receipt is Conditional: if it be not allowed him, ſhe ſhall Diſcount to me again

L. C. J. Pollexfen. Was there no Money return'd over from the Queen, K. *James*'s Queen that was?

Mr. *Aſhton.* No my Lord directly nor indirectly, not one Penny. I believe they are not in a Condition to return Money.

L. C. J. Holt. Well, Mr. *Aſhton*, what have you more?

Mr. *Aſhton.* I have nothing more to ſay, I ſubmit my Cauſe to your Lordſhip.

L. C. J. Pollexfen. Look you Mr. *Aſhton*, as to ſome things that you have mentioned: Firſt, there's no body queſtions but you are a Proteſtant; nay, as far as I diſcern, ſo they are all that are concern'd in this Matter. The whole deſign ſhows that they are all ſo careful of the Proteſtant Religion, that they deſign to reſtore and eſtabliſh it by the King of *France*; ſo that it appears they are all Proteſtants concern'd in this Project.

Mr. *Aſhton.* Pray, my Lord, who is it that propoſes that?

L. C. J. Pollexfen. The Papers that were carrying to *France*, Mr. *Aſhton*, you have heard them read.

Mr. *Aſhton.* I hope, my Lord, that no doubtful Inſinuations or Suggeſtions are to affect me?

Mr. *Serj. Tremain.* There is a Gentleman that was called to by the Priſoner, it may be, he knows his Hand; pray Dr. *Fitz. Williams* look upon that Paper, you have been acquainted with him many years, do you know his Hand?

Dr. F. Williams. No Sir, I do not know his hand, I never did ſee him write, I cannot ſay I ever received a Letter from him.

Mr. *Aſhton.* I entirely ſubmit my Cauſe to your Lordſhip and the Jury.

L. C. J. Holt. Then you have done, Mr. *Aſhton*?

Mr. *Aſhton.* Yes.

Mr. Juſt. *Eyres.* Mr. *Aſhton*, becauſe you cannot reply again upon my Lord Chief Juſtice, after he has ſummed up the Evidence. There's another thing that I would put you in mind of, that you may give an Anſwer to it. Captain *Billop* ſwears before the Papers were found upon you (and it ſeems to ſtick upon you) when he was informed by the Sea men, that you had put ſomething in your Boſom, and he ask'd you what it was, you ſaid nothing but your Handkerchief? Now, if you knew not what was in the Papers, how came you to deny you had any thing in your Boſom?

Mr.

Mr. *Aſhton.* For the ſame Reaſon that I would have endeavoured to have had them thrown over-board, out of kindneſs to the Perſon with whom I happened to be taken.

L. C. J. Pollexfen. Conſider Mr. *Aſhton*, what a ſtrange many things you run upon: Firſt, you would have it believed, That you had a mind to go into *France* upon your own account.

Mr. *Aſhton.* I do own that.

L. C. J. Pollexfen. Next then, That you hired a Veſſel for you and *Ellyott*. Why would you have *Ellyott* to go with you into *France*?

Mr. *Aſhton.* I would not have him, he deſired the Favour of going.

L. C. J. Holt. Who deſired my Lord *Preſton* to go, or did he deſire to go with you?

Mr. *Aſhton.* I had not ſeen Mr. *Ellyot* of Three Months before I went into the City to hire the Boat.

L. C. J. Pollexfen. Why would you have my Lord *Preſton* go with you?

Mr. *Aſhton.* Why would I have my Lord *Preſton* go with me? My Lord, I hop'd to have got my Paſſage free with a Perſon of my Lord's Quality.

L. C. J. Holt. Then you hired this Veſſel for my Lord *Preſton*?

Mr. *Aſhton.* No my Lord.

L. C. J. Holt. Was it my Lord's Money or your own that you paid?

Mr. *Aſhton.* The Money I paid, but how I ſhould be repaid I cannot tell.

L. C. J. Holt. Would you for your own Convenience pay a Hundred Pounds for a Boat to go to *France*, and yet hope to get your Paſſage free by taking in my Lord *Preſton*.

Mr. *Aſhton.* Truly my Lord, I cannot tell how it would have been; at the utmoſt, we could but have paid our ſhare of it.

L. C. J. Holt. But you can tell me if you will, I ask you, how it was agreed among you?

Mr. *Aſhton.* Truly my Lord, as I hope to be ſaved, I cannot tell.

L. C. J. Holt. Then there is another thing, why did you deſire one of the Sea-men to ſay, That you were to go to *Flanders* and not to *France*, and give him Half a Crown to ſay ſo?

Mr. *Aſhton.* I preſume your Lordſhip knows that it is a Fault, though it be not a Treaſonable Fault to go into *France*.

L. C. J. Pollexfen. But Mr. *Aſhton*, Truth is the thing that we are enquiring after; and, that is the thing we would have prevail, and I hope ſhall in all Caſes: If you are not Guilty, we hope it will prevail of your ſide, if you are Guilty we hope it will prevail on the other ſide. Now how likely is it that you ſhould get into this ſame Company by chance without a Previous Agreement; you ſent ſomething from *Burdet's*, a Hamper and a Trunk, and afterwards ſome other things went from *Rigby's*, who is your Father-in-Law.

Mr. *Aſhton.* No, There was nothing at all carried from Mr. *Rigby's*.

L. C. J. Holt. Yes, the Leather Bag, I believe. but another thing is this, That if it be poſſible you will do well to give an anſwer to, why did you enquire for a hiding Place? Why did you ask the Maſter of the Ship whether there was a convenient Place to hide in?

Mr. *Aſhton.* As to that Matter, my Lord, I had heard of diverſe People, that actually had Paſſes, and were going to *Flanders*, yet were ſtopp'd and brought to Town again. I believe my Lord *Nottingham* has bail'd many a One, and your Lordſhip knows it to be ſo, and has bailed many your ſelf; and therefore I had great reaſon upon that account to endeavour ſecrecy as much as I could

L. C. J. Pollexfen. Mr. *Aſhton*, as I remember, you ſaid your ſelf you were once before a going over, and had the Misfortune to be ſtopt; now to venture a Second time without a Paſs, was ſomething ſtrange. Why had you not gone and applied your ſelf to the Secretary for a Paſs?

Mr. *Aſhton.* I had made all the Application I could to my Lord *Nottingham*, I cannot ſay in my own Name, becauſe I was ſure before hand, I ſhould be denied; but I did by other hands endeavour to have got a Paſs to have gone into *Flanders*, becauſe it was of extraordinary conſequence to me, as I tell your Lordſhip, to go quickly.

L. C. J. Holt. If you had ſuch an occaſion to go, and had made it out to the Secretary, and given Security, you might have got it ſure.

L. C. J. Pollexfen. One word further, Why ſhould you be ſo much concerned to have theſe Papers thrown Over board?

Mr. *Aſhton.* Perfectly out of Friendſhip, and had I been Travelling with your Lordſhip or any Man elſe that had been ſo unfortunate I, would have done the ſame.

L. C. J. Pollexfen. Well, Have you any more to ſay for your ſelf?

Mr. *Serj. Thompſon.* Mr. *Aſhton*, call what Witneſſes you will, and ſpeak as long as you will for your ſelf, you ſhall be heard at large.

Mr. *Aſhton.* Mr. Serjeant, I thank you heartily, I have no more at preſent.

L. C. J. Holt. Then the King's Council deſire to ſpeak a Word to the Jury.

Mr. *Serj. Thompſ.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury: It falls out to be my Duty to Sum up the Evidence that has been given. I opened the Cauſe at the beginning to you, and I opened it at large, and many Particulars there were mentioned, and truly I do not think we have failed in the Proof of any one; I know you are Men of that Obſervation, that I need not, nor ſhall take upon me to repeat all the Particular Circumſtances, but as near as I can, I ſhall touch upon the Heads of the Evidence, and do it with as equal regard to my Duty, and as much tenderneſs to the Priſoner as any one can do.

Gentlemen, In the Firſt place, you ſee what the Indictment is for; 'tis for a High Treaſon of a very Great Nature, no leſs than the Depoſing the King and Queen and Subverting this Government, and that by a *French* Power and Intereſt: If inviting an Invaſion, and giving an Account of the Weakneſs, and where the Strength of the Government lay, carrying Papers to Sollicite the *French* to come and to incite this Nation into Rebellion, that ſo they might depoſe this King, and ſet up the late King *James* again. If theſe be High-Treaſon, as doubtleſs they are, then Gentlemen, how far forth the Priſoner at the Bar had a ſhare in it, I muſt refer to you from what we have proved.

He is the Man, it ſeems, that made the firſt ſtep, for you may remember it was proved that he met this Woman at *Burdett's* in the City, for the hiring of this Ship, and after Two or Three Meetings more, they come to a Concluſion, and 93 Guineas and Six Pence are depoſited to make

up

up 100 *l.* which was the Price agreed upon, and that was actually paid by Mr. *Aſhton*, this is Sworn to be ſo.

The next thing is, to what purpoſe this Money was paid, and the Ship hired, that is directly Sworn, it was to carry Mr. *Aſhton* and Two or Three more of his Friends, not naming of them, and they were to go for *France*, one of the Witneſſes ſays, to any Port in *France*, it was not directly declared to what Part. This I ſay was the purpoſe, for which the Money was paid, and the Veſſel hired, and this was to carry you Mr. *Aſhton* and Two or Three more Friends of his into *France*.

It is true, Mr. *Elliot* afterwards did meet Mr. *Aſhton*, and I think was by at the Bargain making, or at leaſtwiſe, when the Money is paid, I will not be poſitive in that, becauſe I would do him no wrong, he being to make his Defence hereafter.

Mr. *Aſhton*. No, he was not by, I made the Bargain my ſelf.

Mr. *Serj. Thompſon*. Then afterwards I remember one Circumſtance when he hired this Ship, he was to hire a Ship that had a Place to hide in, and ſo he muſt needs know upon what Deſign, I ſay, by that he muſt needs know, that there was a Matter of great Moment which he was to tranſact, for he was to have ſuch a Ship as he might hide in.

After this Ship was hired then they met in *Covent Garden*, and there they take Order with the Man to go down with them to the Stairs, where the Waterman was called, indeed Mr. *Aſhton* did part from them in the Way, but preſently after came to them at the Stairs, and there came my Lord *Preſton* and his Man, who together with *Elliot*, that was there before, I think before, all Embark't in the Boat, and were carried to the Ship, and made all the haſt away they could for *France*.

When they were there, and came to a Place of Danger, near a Ship of War, there was care taken according as they had enquired of the Maſter of the Ship before, that they ſhould be hid, and hid they were.

Afterwards, when they were paſt that Danger, when they came to the Block-Houſe at *Graves end*, there they thought fit to hide again, and did ſo, and there they concealed themſelves, till they were ſurprized in that Place by Captain *Billop*.

My Lord, after ſuch time as Captain *Billop* had ſurprized them, he tells you, how he came down after this Smack, you ſee what happened; my Lord *Preſton* firſt came up, and after he had ſearch'd my Lord *Preſton*, *Elliot* came up and he was ſearcht, and after Mr. *Aſhton* was once come up, he went down to fetch his Hat, and there was ſeen to take up this Bundle of Papers, and there the Papers upon ſearch were found in Mr. *Aſhton*'s Breaſt.

This being ſo found in his Breaſt, you have heard what applications were made by this Gentleman, to get theſe Papers caſt Over-board, and what Promiſes were made to the Captain, and what likelihood there was of making his Fortune, if he would go along with them or throw away the Packet.

You hear, Gentlemen, that after they came to *White-Hall*, one of the Men Swear, that this Gentleman gave them Money, that they ſhould ſay, they were not hired for *France*; but for *Flanders*.

Theſe, Gentlemen, are the ſeveral Circumſtances that do appear in this Caſe, which ſhew the mighty care and diligence that was uſed to get theſe Papers ſuppreſſed that had been thus taken, or to get them again into their own Cuſtody, and that is a Matter that ſhews how far this Gentleman was concerned in this Deſign, and taking all theſe things together, I think there can no greater Evidence be given, that Mr. *Aſhton* was in this contrivance, that he was concerned in the Meſſage, that he was to be ſent, and all this buſineſs that was to be done, was as much Guilty as my Lord *Preſton*, who now ſtands convicted for it.

And the Court will tell you, Gentlemen, there are no Acceſſories, in Treaſon, all are Principals, though it be not actually proved, that this Gentleman did know all theſe Papers what they were, yet in Caſe he hired a Ship for himſelf, and the Lord whoſe Papers they were, to go in, and take ſuch notice of the Papers as to take care of them, to ſuppreſs and conceal them, that is an Evidence of his knowledge of the Importance of them; and if ſo, he will be equally Guilty of the High-Treaſon.

L. C. J. Holt. I doubt that.

Mr. Serj. Thompſon. My Lord, I would not willingly preſs any thing further, than the Nature of the thing will bear.

L. C. J. Holt. Pray go on, Brother, we are only talking among our ſelves.

Mr. Serj. Thompſon. The next thing is this, that is to be conſidered, that after ſuch time as theſe Papers came to be laid open, what is it that appears among them? Truly I ſhall not take upon me to repeat ſo much as the ſubſtance, much leſs the Particulars of the ſeveral Papers; but, I muſt ſay, that there does appear to be a Formed Deſign of Subverting the Government, of Depoſing this King and Queen, and of bringing us all into War Rebellion and Blood-ſhed, all this under a pretence of Eſtabliſhing the Proteſtant Religion, and our Legal Government again (tho I can ſee no means they had to depend upon for it) but by a Popiſh Intereſt and a *French* Power, and how far that is poſſible or probable to promote ſuch an end by ſuch means, I leave to your conſideration.

Gentlemen, you have heard all the particular Papers read, here was the Reſolution of a Conſult and Conference, where this Project was deſigned, here were Heads of a Declaration, that was to be framed to make the Credulous believe, what mighty things ſhould be done upon their New Revolution, you ſee, what Letters have been produced, and cannot but eaſily apprehend what is the Import and Meaning of them. I reſolve, as I ſaid, not to mention the Particulars, but there is ſcarce One Line among them, but what is Treaſon, for it all tends to this Purpoſe and Deſign, to depoſe the King and alter the Preſent Government.

Now upon the whole Matter, Gentlemen, what this Gentleman has ſaid, I confeſs to me ſeems ſtrange, he ſaid indeed at firſt, that he had no defence at all, or that which was very weak, and ſo it ſhould ſeem, the Truth was, for you ſee what his Defence has been.

He ſays, that he went into *France*, that he owns that he was going thither, but what it

was

was it to do, it was to ſettle ſome Accounts with the Family of Colonel *Worden*, and to receive a Sum of Money that was owing to him by a Perſon there.

Gentlemen, if the Deſign had ſo much Innocency in it, certainly he might have had a Paſs, at leaſt, there was no need of hiring a Veſſel at ſuch an extravagant rate, there was no neceſſity of hiding in this ſecret manner, and no neceſſity of impoſſible ſuggeſtions, and proffering Great Rewards for the diſpoſing of, and concealing theſe Papers.

Gentlemen, You will remember many Particulars more, which have not ſlipt your Obſervation, I ſhall not take upon me to repeat them, but leave them to your conſideration.

Only this I muſt ſay, That this is a Treaſon of a very high Nature, a Treaſon to depoſe a King that has ventured all he had, even his Life has been in Danger, and his Blood has been ſpilt to Eſtabliſh this Government, and our Religion and our Laws, and yet it ſeems there are Men that think this may be better done by a Popiſh Intereſt and *French* Power, which I think no body of either Wiſdom or Honeſty can imagine, or will engage in, and therefore I leave it to your determination.

L. C. J. Holt. Gentlemen of the Jury, you underſtand, that Mr. *Aſhton* is now Tryed for High Treaſon, it is mentioned in the Indictment, to be for Conſpiring the Death, and Depoſing of the King and Queen, and for that purpoſe, he did endeavour to go into *France*, and to carry divers Propoſals in Writing, and ſeveral Memorials to ſhew how this Kingdom might be Invaded by the *French*.

To prove this, the Evidence that has been produced and given by the King's Council has been long, and conſiſts of two Parts, Witneſſes *Viva Voce*, they have told how Mr. *Aſhton* deſigned a Voyage to *France*, and that he hired a Ship for that purpoſe, and ſeveral Papers were taken out of his Boſom.

In the firſt place, the Witneſſes tell you, that about the latter end of *December* laſt, Mr. *Aſhton*, and Mr. *Elliot* came to *Burdett*'s Houſe, where they met with Mrs. *Pratt*, and *Burdett* having before that ſpoken to her about a Smack that ſhe called the *Thomas* and *Elizabeth*.

Then there was a Meeting appointed between her and Mr. *Aſhton* at the *Wonder* Tavern, where they did Treat and Debate about the hire of it; afterwards they came back to *Burdett*'s again, and there the Agreement was made betwixt the Woman and Mr. *Aſhton*, the Priſoner at the Bar, to have a Hundred Pounds. Ninety Three Guineas and Six Pence was fetcht down by Mr. *Aſhton* and told out, and depoſited in the Hands of Mrs. *Burdett*, then there was a Six Pence broken, and one part Mrs. *Burdett* had, and the other part Mr. *Aſhton* had, and when either the Maſter or Miſtreſs *Pratt* ſhould bring the part of the Six Pence that Mr. *Aſhton* kept, to Mrs. *Burdett*, the Hundred Pounds was to be paid.

And this Agreement being made, 'tis poſitively Sworn, that they did ask, whether there was a Hiding Place in that Veſſel? an Anſwer was made, There was one, and thereupon a Note was given, that the Maſter and Miſtreſs *Pratt* ſhould go to the Seven-Stars in *Covent-Garden*.

Upon *Wedneſday* Night, they went there according to the Directions, where meets *Aſhton* and *Elliot*, but before that, there was a Boat hired at *Surrey Stairs* to carry them down to the Ship through Bridge, over againſt the *Tower*, but the Tide not ſerving till about Ten a Clock at Night, they had agreed with a Waterman for Half a Crown to carry them, and he was to ſtay till the Tide ſerved. And when they went out from *Rigby's* they parted, *Elliot* and the Maſter went together, Mr. *Aſhton* did not go with them, but came near about the ſame time to *Surrey Stairs*, where they took Water.

Being aboard, it was obſerved that all theſe Gentlemen were very timorous, and ſeemed to be much frighted at the ſight of any Veſſel, from which there was any apprehenſion of their being taken notice of; and, therefore they went down under the Quarter-Hatches, which is a Place very inconvenient for ſuch Perſons, where none could ſtand or ſit upright, but they were forced to lye upon the Boards, or upon the Ballaſt.

It ſeems ſome intimation was given, that ſome Gentlemen had an intention to go into *France* to proſecute ſome Treaſonable Deſign; And Captain *Billop* being employed to purſue them, which he did in a Pinnace, when he came near the Veſſel where they were, he called to the Veſſel, and under pretence of Preſſing Seamen, he went on Board; The Maſter of the Veſſel ſaid he had a Protection from the Admiralty; ſo that there was no cauſe for them to fear preſſing, nor indeed was there any for Gentlemen to fear it, they being not lyable to be preſſed.

When the Captain came near the Ship, and declared his intent of coming on board, theſe Gentlemen were gone under the Quarter Hatches again, Captain *Billop* coming on board, and ſpeaking about preſſing of the Men, and ſaying, there was a Couple that would make good Seamen for the King; the Maſter ſhewed his Protection, and then the Captain ſaid he would ſearch further in the Ship, and ſo he did, and then he pulls up the Boards, and there he finds all theſe Gentlemen, who were called up one after another, and ſearcht by the Captain.

Gentlemen, There is one of the Witneſſes tells you, that when they were come up, he ſaw a Packet that lay in this very place under the Quarter-Hatches, unto which was tyed a piece of Lead, which Mr. *Aſhton* takes up and puts in his Boſom, with which the Captain being acquainted, Enquiry is made by him, what Mr. *Aſhton* had there? Mr. *Aſhton* ſaid it was his Handkerchief, and nothing but that which he pulled out: But Captain *Billop* puts his Hand in his Boſom between his Coat and his Body, and takes out the Packet, and carried theſe Gentlemen on Board the *George* Frigat, where they ſtayed till the Tyde ſerved to bring them to *White-Hall*.

But before they came on board the Frigate, Mr. *Aſhton* was very importunate with him to throw this Packet into the Water; when they were on board the *George* Frigate, and in the Cabin alone, they continue their importunity.

Now, ſay they, we have you here, and you are alone, pray will you throw this Packet overboard; and particularly Mr. *Aſhton* ſaid it would do the Captain no good to injure ſo many Gentlemen, and Mr. *Elliot* would have perſwaded the Captain to take the Lead that was tyed to the Packet, and tye it to ſome Letters that were taken out of my Lord *Preſton*'s Pocket, and throw the Packet over-board; and then have informed the

the King and Council, that thoſe Letters was the Packet taken out of Mr. *Aſhton*'s Boſom: But the Captain very honeſtly rejected all their Motions of that kind.

Truly, Gentlemen, my Memory will not ſerve me to repeat all the Particulars, but I queſtion not your Notes will bring them to your Minds. Mr. *Elliott*, it ſeems was ſo mightily concerned at their being taken with theſe Papers, that when they ſhot *London-Bridge*, he wiſht the Bridge might have fallen upon them and knockt them on the Head; and, when they were got through, he wiſht a Thunder-bolt would fall down into the Boat and ſink them: That, indeed was Mr. *Elliott*, and not Mr. *Aſhton*; but Mr. *Aſhton* was as much concerned about diſpoſing of the Packet as Mr. *Elliott*.

At *White-hall* this Packet is opened, and you have ſeveral Papers produced in Evidence and read to you, you have heard what Evidence has been given, that theſe are the very Papers that were in the Packet thus taken.

Firſt of all Captain *Billop* tells you he carried them to my Lord *Nottingham*, and that they lay there in his Office; he withdrew indeed while my Lord *Nottingham* examined my Lord *Preſton*, but the Packet was not opened in the interim, but there was only a Paper ſtuck on the out-ſide that my Lord had taken off before the Captain returned into the Room, and there the Packet remained intire. He ſays, my Lord *Nottingham* opened the Packet and put up all the Papers that were in the Packet in his preſence into a Cover again, and ſealed them up with his Seal. My Lord *Nottingham* ſays poſitively, he did put up all the Papers that were in the Packet again, all and no more, except the Cover, and that he ſealed up and delivered it to Captain *Billop*.

Captain *Billop* ſays, he took theſe very Papers from my Lord *Nottingham*, and as he received them, carried them without opening to my Lord Preſident.

My Lord Preſident ſays he lockt them up unopen'd in a cloſe Cabinet in his Cloſet-Room, where no body comes; there they were that Night, and the next Day he carried them intire to the King, and ſome of them were read by the King, in the Preſence of my Lord Preſident; and they were all taken away again by his Lordſhip, no more nor no leſs; and, my Lord Preſident brought them all to the Cabinet Council, where they were read, and were delivered to my Lord *Sydney*.

My Lord *Sydney* ſwears, theſe Papers now produced are the ſame Papers he had from my Lord Preſident, and my Lord Preſident ſwears, that they are the ſame he received by *Billop* from my Lord *Nottingham*, and my Lord *Sydney* markt them.

So that there can remain no doubt of theſe being the ſame Papers, that were contained in the Packet, that was taken out of the Boſom of Mr. *Aſhton*.

Then, as to the Matter of the Papers, I think it is plain beyond all contradiction, that the Import of them is Treaſonable: They ſhew a Deſign of invading the Kingdom by a Foreign Force, and of Depoſing the King and Queen from the Government, and of ſetting the late King upon the Throne.

It is agreed, as it is mentioned, at a Conference, between ſeveral Noblemen and Gentlemen, that were of the Whig and Tory Party, as they call them, that the late King was to be reſtored, though by a *French* Power.

It was impoſſible for them to effect it, by going plainly to work, and ſaying in plain Words, the *French* ſhould invade us. It was to be done in this manner.

The *French* King muſt pretend by all means to be our Friend and a Mediator betwixt the late King and the People of *England*, and this was out of deſign plainly to get a Party of the Kingdom, to joyn with them; the moſt credulous and inconſiderate ſort of People; who when they ſhall be ſeduced into a Belief of the *French* King's great Kindneſs, it was not doubted but there would be a Conjunction between them and the *French* Forces, to reſtore the late King.

And to procure ſuch a Perſwaſion in the People; the *French* King was to ſhew himſelf kind to the *Engliſh* Proteſtants, to appear and act another part than he had formerly done; he was to permit them the Exerciſe of the Proteſtant Religion, thereby to perſwade many, that his Perſecution of his own Subjects, the Hugonots, was not out of any Averſion to the Proteſtant Religion, but only to their Antimonarchical and Reſiſting Principles.

Then an Inconvenience is to be removed; for they complain, that they are too full of Bigottry at St. *Germains*, and too bare faced: For they make an open Profeſſion of Popery, and ſpeak truly what they do intend; but ſay they, if they will have the Deſign take effect, they muſt be more Cloſe and Secret: For the Folly and Bigottry at St. *Germains* was a very great Obſtruction. Therefore, they propoſed, that ſome Perſons might be ſubſtituted as Agents to Correſpond here, that underſtood the Temper of the Nation, and what would eaſilieſt prevail with the People: And a Model was to be framed at St. *Germains*, the Proteſtants are to be ſeemingly careſſed, Seven or Nine to be of the late King's Council, that ſo we might believe, that he was ours in Intereſt again, and that we have a Relation to him.

And if things were carried with ſuch cunning and ſubtilty, they hoped to delude a great many People over into the Intereſt of the late King; but, if they went bare-faced, it would cauſe ſuch great Jealouſies, that they muſt totally depair of Succeſs.

Yet they did not hope by theſe Artifices to obtain ſo many Friends here, as might have been ſufficient to accompliſh their Deſign; and therefore they muſt have recourſe to a Foreign Force, particularly a *French* Force. For ſays one of the Papers, *Uſe Foreigners to expel Foreigners*; that is, Uſe *French* to expel *Dutch* Foreigners, who are our Allies, and are falſly accuſed by them to have trampled upon the Rights and Liberties of the Nation.

There is one Argument uſed to encourage People to aſſiſt the *French* in the Invaſion of their own Country, which I cannot omit, namely, *That as ſoon as the* French, *with a conſiderable Expence of Men and Money, had reſtored the Proteſtant Religion, the late King to the Crown, and the People to their Liberties, that he would withdraw all his Forces, and reap no Profit or Advantage by his Succeſs.* I muſt confeſs, this carries ſo little of Perſuaſion in it, that it is ridiculous to think thereby to impoſe upon any number of Men. But notwithſtanding the weakneſs of their Arguments, it is apparent they were in good earneſt; the Papers give an account to the *French*, in what ſtate and condition our Forts were, Portſmouth *not*

Man'd

man'd with above 500, *and* Goſport *how weakly fortifyed.*

It was a happy juncture between this and the firſt of *March*, when Advice is given to make uſe of the Opportunity. For Men cannot give, but Men may uſe Opportunities, and ſomething was to be done forthwith, and the Goods muſt be got in readineſs, particularly Linnen and the Copper are mentioned, which are myſterious and dark Expreſſions, and you may put a Conſtruction upon them as well as I; for they are written in a ſtyle of Trade, as if there were a Correſpondence between two Tradeſmen, and the Linnen and the Copper are ordered to be brought before the 10th of *March*.

But however obſcure ſome of theſe Expreſſions are, there are others that are more plain, *That the* French *Fleet muſt be out in* April *at fartheſt, and are to come before the Conjunction between the* Engliſh *and the* Dutch, *and* Jennings, Strickland, *or* Trevannian *are to come from St.* Mallo's *in one Night, and to fight the* Engliſh *Fleet in the Chops of the Channel, and not to come ſo high as* Beachy, *where they came the laſt Year.*

And there is an account given, in what condition and ſtate our Navy was, how many Ships, what Rates, how Man'd, and who the Officers; and then as the *French* were to be in readineſs to come in *April*, ſo they ſay our Fleet was not to be out till *June*.

Gentlemen, There are a great many other Particulars; but theſe are enough, nay half of them were enough to make any Man Guilty of Treaſon, that was concerned in them, or that had a hand in carrying or making uſe of them.

Beſides, there are other Letters which can import nothing, but the Writer was of the late King's Intereſt; one directed to Mr. *Redding*, the other to Mrs. *Redding*; and theſe were to go to *France* to let them know how zealous he was in his Duty, and how the Intereſt of the young Maſter increaſed. The Letters have theſe Expreſſions: *That though the Family were decreaſed, yet our Intereſt is increaſed, which is yours, and I ſpeak in the Plural Number, becauſe I ſpeak the Sentiments of my elder Brother, and the reſt of our Relations, and deſire them to believe they were zealous and cordial in their Duty to Mr.* Redding. Now what Interpretation you will make of this, I'll leave to you.

Then there is another Letter to Mrs. *Charlton*, and another to Mr. *Jackſon*, and divers other things that have been read, and amongſt the reſt, have been read the Heads of a Declaration at large, ſhewing what ſhould be done, and what Methods ſhould be taken in order to the reſtoring the late King, and depoſing this.

And there is alſo mention made in a Paper, how divers Perſons, who were to be pardoned, as particularly, *all Juſtices of the Peace actually in Commiſſion are not to be excepted; Outlaws are to be pardoned; Chimney Money to be taken away; and all that come in within One and Twenty Days are to be forgiven.*

So that it is plain, theſe Letters import a Deſign to depoſe the King and Queen, and the Kingdom to be invaded by Foreigners, only a little to colour the matter, nor to loſe the pretence of a Proteſtant Intereſt altogether, there was to be 5 or 6000 *Swedes* to be made uſe of in the Invaſion.

Gentlemen, if there was a Deſign of an Invaſion, be it by Papiſts, or by Proteſtants, if any Act was done tending thereunto, it is High Treaſon within the Statute of 25 *E.* 3. For purpoſing and intending to depoſe the King and Queen, manifeſted by any Overt-Act, hath been always held to be High Treaſon.

This, Gentlemen, is the Sum and Subſtance of the Evidence that has been given againſt the Priſoner at the Bar.

Mr. *Aſhton* ſays for himſelf, it is true, ſaith he, my Deſign was to go to *France*, I was ſo unfortunate as to have the Papers taken about me. I did take them up; but, ſays he, it is not at all proved that any one of the Papers that are now produced are my hand: Which is true: There is no ſuch Proof.

The next thing is, that Mr. *Aſhton* being ask'd, what occaſion he had to go to *France*? He ſays, he had formerly a Relation to Col. *Worden*, and did tranſact and had the Management of his Affairs, which were very great. Col. *Worden* died half a year ago, and he enjoin'd him upon his Death Bed to go into *France* about ſetling ſome Accompts of his, and he was deſired by the Family of Col. *Worden* ſo to do.

This Mr. *Aſhton* alledges; but he has not proved it. 'Tis very ſtrange, that if Mr. *Aſhton* was to go to *France* to negotiate that Affair for Col. *Worden*'s Family, none of that Family ſhould be produced to prove, that Col. *Worden* gave him ſuch Directions, or that the Family deſired him to go into *France* upon that account.

Then Mr. *Aſhton* hath endeavoured to give another reaſon for his Voyage into *France*: he affirms, he had ſome Affairs of his own with relation to the late Queen, he was concerned for her, and ſhe did owe Monies here, and he paid ſeveral Debts to Tradeſmen, particularly 400 *l.* ſhe owed to the Coach Harneſs Maker; and he having paid it, went over to reimburſe himſelf: The Tradeſman was produced, and he ſays, Mr. *Aſhton* did pay the Money a Year ago; but whether Mr. *Aſhton* had Effects from the late Queen, or paid it out of his own Pocket, does not appear; Mr. *Aſhton* ſays, he paid it out of his own Pocket, which is very extraordinary, that he ſhould be ſo kind to pay what he was not obliged to pay, and have no ſecurity to reimburſe himſelf.

So that, Gentlemen, you had beſt conſider whether there be any thing at all ſaid or proved, that can juſtifie Mr. *Aſhton*'s going to *France*, or whether there be any good reaſon offered for it.

Then *Aſhton* has called Witneſſes to prove, that he was always a Proteſtant, though he did live in a Popiſh Family, where they did incourage Papiſts and diſcountenance Proteſtants; for which he had the ill will of thoſe he did depend upon.

Gentlemen, all that is agreed, and it is not a queſtion in this Caſe; whether Mr. *Aſhton* be a Proteſtant or a Papiſt; but the Queſtion is, whether he be guilty of High Treaſon, from which the being a Proteſtant does not ſecure a Man.

But Gentlemen, if Mr. *Aſhton* had no Knowledge upon what deſign the other Perſons were to go into *France*, though he had actually gone into *France*, it had been a Crime in this Juncture of Affairs, yet not High Treaſon; but to go into *France*, and carry a Treaſonable Scheme of a Deſign and Project of an Invaſion, that is Treaſon.

Now the Queſtion is, whether Mr. *Aſhton* went with ſuch a Purpoſe or not, you are to con-

conſider; I would not lead you into any ſtrain of the Evidence, but only ſtate it how it ſtands. It is plain he was concerned all along in hiring the Smack, and as the King's Council obſerved to you, the Price was ſomething extraordinary, they were to pay 100*l.* for the Voyage, to which was added ſome Encouragement to the Woman, that if ſhe performed this Voyage well, ſhe might get 1000*l.* before *Lady Day*, and the Money was paid by Mr. *Aſhton*, and he was taken aboard the Veſſel.

Mr. *Aſhton* was much concerned to ſecure the Papers, by taking them out of the place where they lay, upon the Ballaſt under the Quarter-Hatches, and after they were taken out of his Boſom, he was very importunate, and ſo often with Captain *Billop* to throw them overboard.

And why ſhould he be ſo earneſt and concerned, unleſs he very well knew and was acquainted with the contents of thoſe Papers?

And he gave one of the Seamen 2*s.* 6*d.* to ſay they were bound for *Flanders:* Unleſs it was a matter of great Importance he went about, and that was not fit to be known; why ſhould he deny it, or labour to have it concealed? An 100*l.* to be paid for this Voyage, was, upon a joint Account, as well for my Lord *Preſton* as for Mr. *Aſhton* and *Ellyot*; Mr. *Aſhton* did pay the Money, and he does not make it appear whoſe it was.

Gentlemen, it reſts upon you to conſider the Evidence you have heard, whether it is ſufficient to induce you to believe Mr. *Aſhton* was going into *France* with theſe Papers to carry on the Deſign of Depoſing the King and Queen, and invading the Kingdom: If you are not ſatisfied in your Conſciences that he is Guilty, then find him not Guilty: On the other ſide, if you are ſatisfied that he is Guilty, I do not queſtion but you will find him ſo.

L. C. J. Pollexfen. Look you, Gentlemen of the Jury, My Lord has rightly repeated and ſtated the Evidence to you, I ſhall only ſay but a very few Words to it.

Mr. *Aſhton*, as at firſt he did, ſo in his Defence has complained of a very ſpeedy Tryal, and would inſinuate ſomething of Favour that he might find for that Reaſon. It does appear he had notice of his Tryal ſufficient, and had Time enough to prepare for it: But there is one thing extraordinary has happened to his Advantage, which I would deſire may be taken notice of. If he had been tryed on *Saturday*, perhaps he had had more reaſon to complain than now he has; for he has now (and you ſee he uſes it, and wiſely enough too) the Advantage that happened to him upon my Lord *Preſton*'s Tryal; and has had time ſince *Saturday* to prepare for this day's Work, ſo that there is no hard Point upon him as to that Matter, but he has had pretty good Fortune therein.

Next he does inſinuate that he is a Proteſtant: Gentlemen, the Law does not diſtinguiſh between a Proteſtant Traytor and a Papiſt Traytor; if he has committed ſuch an Offence, as by the Law is High Treaſon, the Law does not diſtinguiſh, nor may we. And Proteſtants may ſerve Papiſts Deſigns, though they do not directly intend it. Therefore the Evidence to prove him a Proteſtant is nothing before you; for the Matter is only whether he be guilty of this Crime or not.

In the Tryal of my Lord *Preſton*, then the Labour was, that My Lord was not the Man that was concerned, as the Bearer of this Pacquet of Letters or Writings wherein the Treaſon is contained; but then it was Mr. *Aſhton*, the Pacquets were found about him; but now it is not Mr. *Aſhton*, but my Lord *Preſton*, and this is now the Queſtion before you, that he ſtands upon.

But if ſo be they were all concerned in the Carriage and tranſporting of this Buſineſs, then they are all alike guilty of Treaſon, and therefore they cannot ſhuffle it from one to another.

Now there appears ſome Reaſon why they would not all agree to be tryed together; for now it is but turning it from My Lord *Preſton* upon *Aſhton* and Mr. *Aſhton* upon my Lord *Preſton*, and *Ellyot* upon either of them, and ſo by this means all might eſcape, if this were ſufficient to ſerve their turn.

But the Queſtion before you, is, whether all theſe Perſons are not all in all equally concerned, and 'tis the Evidence that muſt be your Guide and ours; for it is not Mr. *Aſhton*'s Affirmation, that he had Buſineſs to go into *France*, and he happened unluckily to fall into theſe Mens Company, that will be a ſufficient Excuſe, unleſs he prove it.

It had been an eaſie matter for him to have proved, if he had been going into *France* upon Buſineſs for Colonel *Worden*; but at length that is turned off, and then the pretence for going is, to recover ſome Mony he had owing to him there, and that he had payed for another Perſon. Had he Papers of Inſtructions of this kind? Had he any one Witneſs of this thing?

The Merchandize that he carryed out with him is of another import. Where were the Notes or Bonds that he was to recover? Where is the Accompt that he had to make up with any body beyond Sea? There is no manner of Evidence of any ſuch thing.

Next Gentlemen, do but conſider, if the Man were ſo innocent as he would inſinuate, as if he had not gone with the reſt upon this Errand, how came the Man to have ſo heavy a Concern upon him? Why ſhould he go to take up theſe Papers, if they were not his Brats? Why ſhould he clap them into his Boſom, if he knew nothing what was in them? Why was his concern ſo great to have them thrown overboard?

Gentlemen, if you expect that the Hearts of Men ſhould be proved otherwiſe, than as Men gueſs by one anothers meanings by their Actions, 'tis impoſſible to convict any Man of a Crime; for if his own Affirmation ſhall be a Defence, he will never want a Defence to keep himſelf from being convicted: But that is not what the Law gives credit to; it muſt be Proof and Evidence that you are to judg upon. But of all he pretends to, he proves nothing.

How came he acquainted with my Lord *Preſton*? Sure he was a Man ſufficiently known in the World? Why ſhould he go with him and Mr. *Ellyot*? Are they not all known? Are they not Perſons of the ſame Diſpoſition, and much in the ſame Imployment?

He had been taken a little before, he ſays himſelf, and was hindred from going; and he had ſtrange ill luck, if there was nothing elſe in the buſineſs than what he pretends.

Gentlemen, in ſhort, if you do find by the Evidence, that he was going upon a good and an

honeſt

honeſt deſign, and that he knew nothing of the Danger that was in theſe Papers, and that theſe Perſons were in, by reaſon of theſe Papers, and yet would go about to have theſe Papers conceal'd, and endeavour to have them thrown away, without knowing what was in them: Theſe are Evidences that will be good for you to go by, if you have any ſuch; but to take his Affirmation, becauſe he ſays it, when he proves nothing, that is no Evidence to go by.

I leave it to you, as my Lord has done. If you are ſatisfied upon the Evidence that he is guilty; I doubt not you know and will do your Duty, and will find him ſo; and if you have no ſuch Evidence, or any to prove the contrary, that he is not guilty, then you ought to find him ſo too.

Mr. *Aſhton.* I beg you pardon for one word.

L. C. J. Holt. What would you ſay?

Mr. *Aſhton.* My Lord, I ſhall reckon it a particular Favor, if you will pardon me one word, after your Lordſhip has given the Charge.

L. C. J. Holt. Well, what ſay you?

Mr. *Aſhton.* I think, with Submiſſion, that there is no proof I knew or was privy to the Contents of any of theſe Papers.

L. C. J. Pollexfen. Pray Mr. *Aſhton*, ſhew any Man any Reaſon, if you can, why did you go down and catch up theſe Papers, if you did not know what was in them; they might be for your Advantage to be ſhewn, for any thing you pretend to know.

Mr. *Aſhton.* I did it for my L. *Preſton*'s Sake, whoſe Hand was proved, and he ſtands convicted as the Bearer of thoſe Papers.

Mr J. *Eyres.* But you forget one thing that was plainly proved, Mr. *Aſhton*, that when you importun'd Capt. *Billop* to throw away the Papers, you uſed this as an Argument, *It would do him no good to injure three honeſt Gentlemen.*

Mr. *Aſhton.* I did not ſay ſo, my Lord, that I know of, tho indeed he has ſworn it.

L. C. J. Holt. Look you, Mr. *Aſhton*, you have been heard as long as you did deſire to ſpeak, and were askt over and over again, whether you had any more: You are not now ſaying any new Matter; if you could urge any thing that had been omitted, which made for your Advantage, I believe the Court would indulge you, tho it be againſt the Courſe.

Mr. *Aſhton.* My Lord, I ſay there is nothing under my Hand, there is no Privity proved; does Suppoſition condemn a Man? And is there any thing but Suppoſition againſt me? There is not my Hand proved in any of the Papers. I beſeech your Lordſhip and the Jury to obſerve that.

L. C. J. Holt. Your being in the Company, and being ſo concerned, and importunately endeavouring to have them thrown overboard; the hiring the Veſſel to go with theſe Treaſonable Papers to an Enemies Country, and the Papers found about you, is Fact proved, and is left to the Gentlemen of the Jury to conſider of.

Mr. *Aſhton.* But does all this amount to more than Suſpicion?

L. C. J. Holt. Look you, Mr. *Aſhton*, if you ſpeak after we have charged the Jury, you will give us an Occaſion of ſpeaking to anſwer you; the Gentlemen of the Jury are Men of Underſtanding, they have very well obſerved the Evidence, and I perceive they have been very extraordinary intent upon it, they will be able to make a right Judgment, no Queſtion of it.

Mr. *Aſhton.* All that I deſire, is; there is nothing proved upon me, of my knowing what was in theſe Papers.

Mr. *J. Eyres.* And there is that which is very conſiderable too, that 'tis plain, what you ſay about Col. *Worden*'s Account, is but a Pretence, for when you were ſearcht, there was not one Paper, nor one bit of Account found about you, nothing but this Bundle of Treaſonable Papers and Letters.

Mr. *Aſhton.* My Lord, I humbly beg you will obſerve what is for me, as well as what is againſt me.

L. C. J. Holt. Gentlemen of the Jury, do you think you ſhall ſtay out any time, the Court deſires to know it, becauſe they will order themſelves accordingly.

Juryman. My Lord we do not know till we come together.

L. C. J. Holt. Nay, take your own Time, only the Court would comply with your conveniency in the Adjournment.

Then the Jury withdrew, and the Court adjourn'd for half an Hour, and when they were returned, the Jury came in to give their Verdict, and being called over, anſwered to their Names.

Cl. of Arr. Gentlemen, are you all agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who ſhall ſay for you?

Jury. Our Foreman.

Cl. of Arr. John Aſhton hold up thy hand. *Which he did.* Look upon the Priſoner; How ſay you? Is he Guilty of the High Treaſon whereof he ſtands indicted, or not Guilty?

Foreman. Guilty.

Cl. of Arr. What Goods or Chattels? *&c.*

Foreman. None that we know of.

Maj. *Richardſon.* Look to him, he is found guilty of High Treaſon.

Cl. of Arr. Then hearken to your Verdict, as the Court hath recorded it. You ſay that *John Aſhton* is guilty of the High Treaſon whereof he ſtands Indicted, but that he had no Lands nor Tenements, Goods nor Chattels, at the time of the High Treaſon committed, nor at any time ſince to your knowledge, and ſo you ſay all?

Jury. Yes.

L. C. J. Pollexfen. Gentlemen, I think truly you have gone according to your Evidence, which the Law requires you to do, and that it is which will preſerve us all. And tho it be truly a thing that falls hard upon the particular Men that are concerned in ſuch things; yet notwithſtanding, we muſt have more conſideration of the general Good, and Preſervation, and the Support of the Government, and that the Law have its due Courſe, than of any particular Man's Caſe, as to the hard Point of it: We muſt look to theſe things, or there will be no living in the World.

Sir *W. Hedges.* My Lord, we humby deſire of your Lordſhip that we may be diſmiſt from further attendance this Seſſions.

L. C. J. Pollexfen. Ay.

Cl. of Ar. Gentlemen, you are diſmiſt, and the Court thanks you for your Service.

Then the Court adjourned for an Hour, and then the Lord Mayor and Deputy Recorder, with ſeveral of the Juſtices and Aldermen returned into the Court, and after Proclamation for Silence, Order was given to bring the Lord Preſton, *and Mr.* Aſhton *to the Bar.* Which was done.

The Lord Preſton *ſtanding without the Bar, and Mr.* Aſhton *within.*

Cl. of *Arr.* Sir *Richard Grahme*, hold up your hand. *Which he did.*

John Aſhton, hold up your hand. *Which he did.*

My Lord *Preſton*, You ſtand convicted of high Treaſon, for conſpiring the Death of the King and Queens Majeſties, for adhering to the King's Enemies, and endeavouring to ſubvert the Government: What can you ſay for your ſelf, why the Court ſhould not proceed to give Judgment againſt you of Death according to the Law?

Lord *Preſton.* 'Tis true, my Lord, the Jury have found me guilty of the Treaſon aſſigned in the Indictment. My Lord, it is a Treaſon of a very heavy and black Nature, 'tis of ſuch a Nature, that if I had been conſcious to my ſelf to have deſerved, I ſhould be very willing to undergo, that Judgment that is like preſently to paſs upon me. It is to endeavour to bring in the King of *France* to Conquer and Invade this Kingdom; 'tis a thought I always abhorred; I love my Religion, my Family, my Country too well to attempt or endeavour any ſuch thing; I muſt appeal to your Lordſhip, though now perhaps it is too late, whether the Treaſon that is laid againſt me has been perfectly proved; for in the Caſe of proving Hands, and particularly in the Caſe of Colonel *Sydney*, It was diſallowed that compariſon of Hands ſhould be Evidence; there ought to be at leaſt one if not two Evidences to prove the writing of it. My Lord, I know this is too late, I ſhould have offered this to the Jury before, but being in the Crowd and in great diſorder by ſtanding ſo long, I had not ſtrength or ability enough to urge it as I ſhould. I have nothing more to ſay in the Caſe but ſubmit to that Judgment that the Law has aſſigned.

Mr. *D. Recorder.* My Lord *Preſton*, Your Lordſhip knows the proceedings of the Law in ſuch Caſes; there is no averring againſt the Verdict of the Jury, they have found your Lordſhip guilty, and the Law ſays, that Judgment muſt be given upon you according to that Verdict.

Lord *Preſton.* Mr. *Recorder*, I do not aver againſt the Verdict. I own it is too late, I ſhould have offered it before, and I muſt ſubmit to the Judgment of the Law.

Cl. of *Arr.* *John Aſhton*, hold up thy hand. *Which he did.*

You are in the ſame Caſe with the Priſoner laſt before you. What can you ſay for your ſelf, why Judgment ſhould not be given againſt you, to die according to Law?

Mr. *Aſhton.* My Lord, I would humbly deſire I might have a ſight of my Indictment; I have ſome reaſon perhaps to believe that I am found guilty upon an Erroneous Indictment, and if it be ſo, I would deſire to have Council to argue the Errors of the Indictment.

Mr. *D. Recorder.* You have heard it twice read in *Engliſh*, and once in *Latin*, and that is all that is allowed to any one in your Caſe, I never knew the Record of any Indictment ſhewn to any Priſoner at the Bar.

Mr. *Aſhton.* Suppoſe there be any Error in it.

Mr. *D. Recorder.* I am not to ſuppoſe any ſuch thing, if there is any, it has been read to you, aſſign it and the Court will conſider of it.

Mr. *Aſhton.* If I can aſſign the Errors in the Indictment, may I have the advantage of it then?

Mr. *D. Recorder.* If there be Errors, you will have the Advantage of them: If you will aſſign them; if there be none, you can have none.

Mr. *Aſhton.* Then I ſay, if there be words in the Indictment that there are no ſuch Words in Nature, then, Sir, I am told it is a Vicious and Erroneous Indictment, and that is enough to viciate the Indictment.

Mr. *D Recorder.* No ſuch Words in Nature? It is hard to tell what you mean by that; perhaps there are terms of Art in the Law, which though you are not acquainted with, we are.

Mr. *Aſhton.* Then there are ſuch Words in Nature.

Mr. *D. Recorder.* That is an inſenſible Expreſſion, *Words in Nature!*

Mr. *Aſhton.* I am informed that even a Letter in an Indictment is enough to viciate it, or if it be falſe *Latin*, that will make it an Erroneous Indictment.

Mr. *D. Recorder.* No, that is not ſo; but if you will tell me what that Letter is, I'll tell you what I ſay to it; it may, or it may not be material.

Mr. *Aſhton.* We know it was lately diſputed in a Caſe of this Nature at this Place, and I am informed the Court were of Opinion, if it had been in the Body of the Indictment, it had been an Error.

Mr. *D. Recorder.* If you pleaſe to tell me wherein the Error in your Indictment conſiſts, I may be able to give you a good Anſwer to it, or you will have the advantage of it.

Mr. *Aſhton.* I ſay it conſiſts in this, the Word *Cymba* is written with an *S* in the Indictment, whereas it ſhould be with a *C*.

Mr. *D. Recorder.* How do you know it?

Mr. *Aſhton.* It is no matter how I know it, I have ſome reaſon to know it, it may be.

Mr. *D. Recorder.* Mr. *Hardeſty*, look upon the Record.

Mr. *Aſhton.* With Submiſſion, that is an Error, for there is no ſuch word as *Cymba* with an *S*.

Cl. of *Arr.* It is a long Indictment; will you pleaſe to ask him where about it is?

Mr. *D. Recorder.* Mr. *Aſhton*, will you tell me where 'tis written?

Mr. *Aſhton.* In the Indictment when you come to ſpeak of *Cymba* a Boat.

Mr. *D. Recorder.* By the Sound I cannot diſtinguiſh whether it be *S* or *C*.

Mr. *Aſhton.* Sir, I hope you will do me the Juſtice to examine the Indictment it ſelf.

Mr. *D. Recorder.* The Clerk is looking upon it; how is it Mr. *Hardeſty*? Is it with an *S* or a *C*?

Cl. of *Arr.* It is with a *C*.

Mr. *D. Recorder.* The Clerk has read it, and he certifies me it is in both places with a *C*, which is true *Latin*.

Mr. *Aſhton.* Is it in all places with a *C*?

Cl of *Arr.* I have lookt in two places, and 'tis right; I'll look further, if you pleaſe.

Mr. *Aſhton.* Pray do. *Which he did.*

Cl. of *Arr.* It is with a *C* in all places.

Mr. *D. Recorder.* The Clerk tells me it is the ſame, and right in every place, and he has looks over all the Indictment, as to the matter.

Mr. *Aſhton.* Then Sir I ſubmit to it.

Mr. *D. Recorder.* Make Proclamation for Silence; *Which was done.*

Mr.

Mr. *D. Recorder.* My Lord *Preſton*, or rather Sir *Richard Grahme*, and Mr *John Aſhton*, Ye have been Indicted, Arraigned and Convicted of High Treaſon againſt their preſent Majeſties King *William* and Queen *Mary*, whom God preſerve. Ye have had a long, a fair, and favourable Tryal as any Perſons that ever have been tryed at this Bar.

The Jury that has paſſed upon your Lives and Deaths has convicted you; and the Court are now to do their laſt Act, which is to pronounce that Sentence that the Law does inflict upon ſuch Crimes as ye ſtand Convicted of.

It is a great trouble to me to pronounce a Judgment that is ſo heavy upon you; but I muſt ſay, the Evidence that has been given againſt you, was ſo clear, and I ſuppoſe not only convincing to the Twelve Men that tryed you, but to all By-ſtanders, that I can do it with that ſatisfaction that becomes one who is intruſted with the King's Juſtice, that the Law may obtain, and that there ſhould be no Interruption of Juſtice. And the Sentence that the Law has declared ſhould be pronounced in this Caſe, is this:

That Ye do reſpectively go to the place from whence Ye came; from thence to be drawn upon a Sledge to the place of Execution, to be there hang'd up by the Neck, to be cut down while Ye are yet alive, to have your Hearts and Bowels taken out before your Faces, and your Members cut off and Burnt, Your Heads ſevered from your Bodies, Your Bodies divided into four Quarters, Your Heads and Bodies reſpectively to be diſpoſed of according to the King's Will and Pleaſure; and the Lord have mercy upon your Souls.

Then the Priſoners were conveyed away to *Newgate*, the Place from whence they came.

The Tryal of Henry Harriſon, *Gent.*

Die Mercurii Sexto die Aprilis, Anno Regni Domini Gulielmi & Dominæ Mariæ Regis & Reginæ Angliæ, &c. Quarto.

Judges preſent { Lord Chief-Juſtice *Holt.* / Lord Chief-Baron *Atkins.* / Mr Juſtice *Nevil.*

THe Keeper of the Priſon of *Newgate* did, according to Order of the Court being then ſate, bring up the Body of *Henry Harriſon*, Gent. to the Seſſions-Houſe in the *Old-Baily*, *London*, who being at the Bar, was Arraigned upon an Indictment of Felony and Murther, found that Day by the Grand-Jury for the City of *London*, in manner following:

Cl. of *Arr.* HEnry Harriſon, hold up thy Hand. *Which he did.* You ſtand Indicted by the Name of *Henry Harriſon*, late of *London*, Gent. for that you not having the fear of God before your Eyes, but being moved and ſeduced by the Inſtigation of the Devil, the Fourth Day of *January*, in the Third Year of the Reign of our Sovereign Lord and Lady, King *William* and Queen *Mary*, of *England*, &c. about Eleven of the Clock in the Night of the ſame Day, with Force and Arms, &c. at *London*, *viz.* in the Pariſh of St *Peter Cornhil*, in the Ward of *Limeſtreet* in *London* aforeſaid, being in a certain Coach with one *Andrew Clenche* Doctor of Phyſick, and a certain Man yet unknown, in and upon the ſaid *Andrew Clenche* in the Peace of God, and of our Sovereign Lord and Lady the King and Queen, then and there being, Violently, Feloniouſly and of your Malice forethought, did make an Aſſault. And that you the ſaid *Henry Harriſon*, with the Help and Aſſiſtance of the ſaid Man unknown, with a Pocket Handkerchief with a Coal in the ſame, being put, of the value of Two Pence, about the Neck of him the ſaid *Andrew Clenche*, then and there Feloniouſly, Voluntarily and of your Malice before-thought did put, faſten and bind; and that you the ſaid *Henry Harriſon* with the ſaid Handkerchief with the Coal aforeſaid in it, by you the ſaid *Henry Harriſon* with the Help and Aſſiſtance of the aforeſaid Man unknown about the Neck of the ſaid *Andrew Clenche* then as aforeſaid, put faſtened and bound, him the ſaid *Andrew Clenche* then and there with Force of Arms, &c. Feloniouſly, Voluntarily and of your Malice before-thought did choak and ſtrangle, by Reaſon of which choaking and ſtrangling of the ſaid *Andrew Clenche* by you the ſaid *Henry Harriſon*, with the Handkerchief aforeſaid, with the Coal as aforeſaid put in it, he the ſaid *Andrew Clenche* inſtantly died: So that you the ſaid *Henry Harriſon* with the Help and Aſſiſtance of the ſaid Man unknown, him the ſaid *Andrew Clenche* the ſaid Fourth Day of *January* in the Year aforeſaid at the Pariſh and Ward aforeſaid in manner and form aforeſaid, Feloniouſly, Voluntarily and of your Malice before-thought, did Kill and Murther againſt the Peace of our Sovereign Lord and Lady the King and Queen now, their Crown and Dignity.

How ſay you, *Henry Harriſon*, are you Guilty of this Felony and Murther whereof you ſtand Indicted, or not Guilty?

Mr. *Harriſon.* Not Guilty in Thought, Word nor Deed.

Cl. of *Ar. Culpreiſt*, How will you be Tryed?

Mr. *Harriſon.* By God and my Country.

Cl. of *Ar.* God ſend you a good Deliverance.

Then

Then the ſaid Mr Harriſon *was taken away from the Bar by the Keeper of* Newgate.

And afterwards the ſame Day, about Eleven of the Clock in the Morning, the ſaid Henry Harriſon *was brought to the Bar, and he deſired the Court that he might then be Tryed, which was granted, and thoſe Perſons who were return'd upon the Jury were called over twice, and their Appearances recorded.*

Cl. of Ar. You *Henry Harriſon*, Theſe Men that you ſhall hear call'd, and perſonally do appear, are to paſs between our Sovereign Lord and Lady the King and Queen, and you upon Tryal of your Life and Death; if therefore you will challenge them, or any of them, your time is to challenge them as they come to the Book to be Sworn, and before they be Sworn.

L. C. J. Holt. Mr. *Harriſon*, you may challenge ſuch of the Jury as you ſhall think fit before they be Sworn.

Then the Jury was called and ſworn, and then were counted; and the Twelve ſworn were theſe whoſe Names follow:

JURORS.

John Roll	*John Lawford*
Nathaniel Houlton	*Nicholas Wildeboare*
Michael Pindar	*Robert Williamſon*
James Hulbert	*William Merriden*
Joſeph Howe	*Thomas Simpſon*
Richard Chewne	*Thomas Pakeman*

Then Proclamation for Information and Evidence was made as is uſual.

Mr. *Harriſon.* My Lord, I have made no Challenges, becauſe I do believe the Jury to be honeſt Men.

Cl. of Arr.——*Henry Harriſon*, Hold up thy Hand.

(*Which he did.*)

Gentlemen, you that are ſworn, look upon the Priſoner, and hearken to his Cauſe. He ſtands indicted by the Name of *Henry Harriſon*, late of *London*, Gent. *&c.* [he reads the Indictment.] Upon this Indictment he hath been Arraigned, and thereunto hath pleaded not Guilty; and for his Tryal hath put himſelf upon God and his Country, which Country you are. Your Charge is to inquire whether he be Guilty of this Felony and Murder whereof he ſtands Indicted, or not Guilty. If you find that he is Guilty, you are to enquire what Goods or Chattels, Lands or Tenements he had at the time of the Felony and Murder committed, or at any time ſince. If you find him not Guilty, you are to enquire whether he fled for it. If you find that he fled for it, you are to enquire of his Goods and Chattels, as if you found him Guilty. If you find him not Guilty, nor that he did fly for it, you are to ſay ſo, and no more; and hear your Evidence.

Mr. *Darnell*,—My Lord, Mr. *Harriſon*'s Agents or Friends have, ſince the laſt Seſſions, made or conveyed away a young Man that was a Principal Evidence againſt him.

L. C. J. That is a very ill thing, and if it be prov'd, it will no way conduce to Mr *Harriſon*'s Advantage.

Mr. *Harriſon.* My Lord, I know nothing of it. But my Lord, one of my Witneſſes that would have been material for me, is lately dead, Sir *Edward Hungerford*'s Son.

Mr. *Darnell.* May it pleaſe your Lordſhips, and you Gentlemen that are ſworn. I am of Council for the King and Queen againſt the Priſoner at the Bar, who ſtands Indicted for the Murther of Dr *Andrew Clenche*, which was as barbarous a Murder as any that hath been committed in this Age. And conſidering it was done in the Dark, I think there will be given as clear an Evidence of it againſt Mr. *Harriſon* the Priſoner, as can be expected. And that is, was upon this occaſion; one Mrs *Vanwicke* a Widow (between whom and Mr. *Harriſon* there was a great Kindneſs) prevailed with Dr *Clenche*, to whom ſhe was indebted twenty Pounds, to lend her ſo much more as would make it up one hundred and twenty Pounds, and to take a Mortgage of a Houſe of hers in *Buckingham Court* near *Charing-Croſs* for his Security; and Mr. *Harriſon* was preſent with Mrs *Vanwicke* at the lending of the reſt of the Money, and executing of the Mortgage, as he was wont to be at the Management of her Affairs; but when the time came that it was to be repaid, the Dr could not get his Money, and Mrs *Vanwicke* having but an Eſtate for Life in the Houſe, and having long delayed the Doctor, he brought an Ejectment for the recovering of the Houſe, upon which the Priſoner came to Dr *Clenche*, and abuſed him with very ſcurrilous Language, and his Paſſion growing higher, he laid his hand upon his Sword, and would have drawn it, and if it had not been for one Mr. *Johnſon*, 'twas thought he would have kill'd the Doctor at that time; ſo that the Doctor deſired Mr. *Johnſon* to take the buſineſs upon himſelf, and to act in his own Name, he was ſo much afraid of him. And it will be proved further to you, that at another time the Priſoner ſaid, That Dr *Clenche* was a Rogue and a Villain, and deſerved to have his Throat cut. And ſometime after this, Mrs *Vanwicke* would have borrowed ſome more Money of the Doctor, but he refuſed to lend it her, whereupon ſhe acquainting the Priſoner with it, he ſaid, leave him to me (Madam) I'll warrant you, I'll manage him, he is a Rogue, and deſerves to have his Throat cut. And afterwards about St. *Thomas*'s day laſt, the Priſoner went to Mrs *Weſt* the Tennant, who dwelt in the Houſe mortgaged to Dr *Clenche*, and deſired of Mrs *Weſt* to have ſome Money for Mrs *Vanwicke*, and it ſhould be diſcounted in part of the then next *Chriſtmas* Rent. But the ſaid Mrs *Weſt* refuſed to pay him any, telling him that ſhe and her Husband were forbid by Dr *Clenche* and the Ground Land Lord, to pay any more to Mrs *Vanwicke*, and thereupon the Priſoner expreſſed his further Malice againſt the Doctor, and ſaid he is a great Rogue, and a Villain, and deſerves to have his Throat cut, and will not dye in his Bed. And, Gentlemen, ſoon after the Priſoner began to put his malicious Deſign againſt the Doctor in Execution, and the Method he took was firſt to change his Lodgings, for on the day before *Chriſtmas Eve* laſt, he took new Lodgings at one Mr. *Garways* in *Thread-Needle-ſtreet*, near the *Old Exchange*, attended by a Foot-boy, pretending himſelf to be a Parliament Man, and that he was juſt then come out of the Country, and lay in his Lodging there every Night, until the firſt day of *January* following, but lay out that Night, and the two next Nights following. And whilſt he lodged at this Mr. *Garways* this matter hapned, which does conduce ſomewhat towards the diſcovery of this Murther. One

Even-

Evening the Priſoner being in his Chamber there, and one Mrs *Jackſon*, the Daughter of Mrs *Garway*, making a Fire for him, he did take out his Handkerchief, and held it before the Fire to dry it, which ſhe took great notice of, becauſe it was coarſe and dirty, and not fit for his Quality (as ſhe thought) it being made of ordinary *Indian* ſtuff, like her Mothers Maids Apron. And, Gentlemen, this very Handkerchief was the ſame with which the Murder was committed, and this Mrs *Jackſon* will ſwear it to be the ſame, for it is a very remarkable one, and it will be produced to you. And we ſhall ſhew you further, that on the Third Day of *January* (being the Day before this Murder was committed) he cauſed a ſham Letter to be left for him at his Lodgings at this Mr. *Garway's*, as written from a Friend of his that was Sick in the Country, earneſtly preſſing him to come quickly down to him: And we ſhall prove that the ſame Evening he being with Mrs *Vanwick* in *Woodſtreet*-Counter, did again threaten Dr. *Clenche*, and ſaid that he was a Rogue, and he would have his Blood. And upon the Fourth Day of *January* laſt he again changed his Lodgings, and took new ones at one Mr *Jones's* a Cane Chair-maker in St *Paul's* Churchyard, and there he pretended himſelf to be a Country Gentleman, juſt then come out of *Cumberland*, and brought in a Portmanteau Trunk thither. And the ſame Day he ſent a Letter to Mrs *Garway* where he had lodged before, acquainting her that he was gone out of Town for a Week or ten Days. And, to give you farther Satisfaction, we ſhall prove that upon the ſame Fourth Day of *January* in the Night of which this unfortunate Gentleman was Murder'd, the Priſoner was at one Mr. *Robert Humſton's* Lodgings at the *Golden Key* in *Fleetſtreet* over againſt *Fetter-lane* End, at near Nine of the Clock at Night, and being ask'd by Mr. *Humſton* to ſtay and Sup with him, he ſaid he could not, for he had been about earneſt Buſineſs that Day, which was to be done that Night, and that a Gentleman ſtayed for him in the Street to go with him about it, and ſo he went away. And ſoon after, about Nine of the Clock the ſame Night, two Men ſtanding in *Fleetſtreet* at *Fetter lane* End, call'd for a Coach, and ask'd the Coachman if he knew Dr. *Clenche* who dwelt in *Brownlow-ſtreet* in *Holborn*; and the Coachman reply'd, he did know the Street, but not the Doctor, whereupon they went into the Coach, and ordered him to drive to the End of *Brownlowſtreet*, and when they came thither, one of them called to the Coachman and bad him go to Dr. *Clench's* and tell him, that two Gentlemen in a Coach at the End of the Street deſired him to go with them to a Patient that was very Sick, which the Coachman did. And he found the Doctor in his Night-Gown and Slippers, and juſt a going to Bed; but he immediately dreſſed himſelf, and went to them into the Coach. And it fell out very happily for the further Diſcovery of this Murther, that while this Coach ſtood at the End of *Brownlowſtreet*, a Young Gentlewoman ſtanding at her own Door near it, and fancying that while the Coachman went on the Errand, the Gentlemen would ſlip out of the Coach(I think they call it Bilking) ſhe watch'd them. And a Lamp that lighted croſs *Holborn* over againſt *Brownlowſtreet* End, and another about the middle of *Brownlowſtreet*, gave ſuch a light into the Coach that ſhe plainly ſaw one of the Men that ſat in it, and ſee him look out of the Coach after the Coachman, and heard him ſwear at the Coachman, becauſe he made no more haſte in going to the Doctor's Houſe, and ſhe is very certain that the Priſoner at the Bar is the ſame Perſon that look'd out of the Coach, and that did ſwear at the Coachman, and is more confident of it from the remarkableneſs of his Voice. For ſhe hearing of this Murther and remembering theſe Circumſtances, ſhe went to *Newgate* to ſee the Priſoner, and hearing his Voice in another Room, before ſhe ſaw him, ſhe declar'd to the Perſons that were then with her, that the Voice ſhe then heard was the Perſons Voice that ſhe ſaw look out of the Coach, and that did ſwear at the Coach-man; and afterwards when ſhe came into the Room where the Priſoner was, though with ſeveral other Men, ſhe pointed to him as the Perſon, and ſhe hearing him then ſpeak again, declared to the Perſons with her, that both by his Voice and by his Countenance ſhe knew him to be the ſame Man. And, my Lord, after thoſe Gentlemen had gotten the Doctor into the Coach, one of them called to the Coachman, and bad him make haſte and drive them to *Leaden Hall-Market*, and when they were come within *Holbourn-Bars*, one of them called to the Coachman, and bad him drive faſter; whereupon the Coachman drove them very faſt through *Holbourn* to *Leaden-Hall-Market-Gate*, and when he came there, one of them bad him drive to the *Pye* without *Aldgate* (before which time, without doubt, the Murther was committed upon the Doctor, for his Hat was found next Morning in *Holborn* near *Fetter-lane* End, but the driving ſo long about after is ſuppoſed to be done leaſt the Doctor might recover) and when they were come without *Aldgate*, one of them ordered the Coachman to ask there for one *Hunt* a *Chyrurgeon*; which he did, and being anſwered that no ſuch Perſon was there, he ordered the Coachman to drive back again to *Leaden-Hall*, and when they came there, one of them called the Coachman and gave him three Shillings and Six Pence, and bad him go into the Market there to one *Hunt's* a Poulterer, and buy them a couple of Fowls, but the Coachman could not find any *Hunt* a Poulterer, but however he bought a couple of Fowls for three Shillings, and when he came with them to his Coach, the two Gentlemen were gone and the Doctor left in the Coach murther'd with a Handkerchief tied faſt about his Neck with a Coal in it (which will be proved to be the Priſoner's Handkerchief.) Beſides, there was a Boy in the Street there who took notice of the Coachman's being ſent of an Errand, and ſaw the two Perſons come out of the Coach in great haſte, and he going towards the Coach before they went out of it, one of them did ſwear at him to be gone, and of him the Boy took moſt notice, and was as poſitive as any Man can be to the Perſon of one that he never ſaw before, that the Priſoner now at the Bar was one of them, and was the Perſon that did then ſwear at him. But this Witneſs is ſpirited away, and cannot be heard of, although he hath been deſcribed in the *Gazette*, and diligent ſearch and inquiry has been made after him. But we have his Examination upon Oath before the Coroner; and we muſt ſubmit to the Court how far that ſhall be admitted as Evidence.

Gentlemen, We will call our Witneſſes, and if they prove all this matter, I believe every Man here will be ſatisfied that the Priſoner at the Bar is guilty of this baſe murther.

Mr.

Mr. *Darnell.* Pray call and ſwear Mr. *George Wigmore.* (*Who was ſworn with others.*)

Mr. *Darnell.* Pray Mr. *Wigmore* tell my Lord and the Jury what you know of any Money that was lent by Dr. *Clenche*, and to whom.

Mr. *George Wigmore.* May it pleaſe your Lordſhip, there was a Draught of a Mortgage from Mrs. *Vanwicke* to Dr. *Clenche*, made by a Gentleman of *Grays-Inn* for the Sum of one hundred and twenty Pounds, and I ingroſs'd it; and I paid by the Doctor's Order above threeſcore Pounds of the Money, and the reſt of it was ſatisfied before; and upon ſealing of the Mortgage for the Money, Mr. *Harriſon*, and one Mr. *Rowe* fell out about their Dividend of the Money, and called one another ill Names; and Mr. *Rowe* produced a Bill of what he had done and laid out for Coach-hire and other things for Mrs. *Vanwicke*, and Mr. *Harriſon* and he had high words about it, and called one another Rogues; ſo I told them if they could not agree, I would put the Money up again, and carry it home; but Mrs. *Vanwicke* and they did agree at laſt, and ſealed the Mortgage, and I paid the Money; and Mrs. *Vanwicke* and Mr. *Harriſon* took out twenty Pounds of the Money, and paid it to Mr. *Rowe*; and after Mr. *Rowe* was gone, they deſired me to go with them to the *Young Devil Tavern*, and they both uſed hard Expreſſions there againſt Mr. *Rowe.*

L. C. J. Who was the Mortgage made to?

Mr. *Wigmore.* My Lord, it was made to Dr. *Clenche* for one hundred and twenty Pounds.

Mr. *Harriſon.* Pray, Sir will you tell the Jury how much Money the Gentlewoman had, and if Mr. *Rowe* had not ſtept between me and her, I had not been in Queſtion.

Mr. *Wigmore.* Mrs. *Vanwicke* acknowledged that the Money I paid her, made up one hundred and twenty Pounds.

L. C. J. What did you hear the Priſoner ſay againſt Dr. *Clenche*?

Mr. *Wigmore.* My Lord, I do ſay that he was very troubleſome to the Doctor.

L. C. J. Were there any Reproaches caſt upon the Doctor at that time?

Mr. *Wigmore.* No my Lord, only upon *Rowe*, becauſe he was a Truſtee.

Mr. *Darnell* Did you hear him ſay any thing againſt the Doctor?

Mr. *Wigmore.* Indeed I cannot particularly ſay.

L. C. J. He is upon his Oath, and he is ſenſible and underſtands the Queſtion.

Mr. *Wigmore.* He did ſay very ugly Words, and when I met him afterwards in the High-way, he was very huffy, and I thought he would have drawn his Sword upon me.

L. C. J. What did he ſay of the Doctor?

Mr. *Wigmore.* I cannot ſay particularly what he ſaid.

L. C. J. Stand down.

Mr. *Darnell.* Call Mr. *Thomas Johnſon.* (*Who was ſworn and ſtood up.*)

Mr. *Darnell.* Sir, Pray give the Court an account what you know concerning this Matter.

Mr. *Johnſon.* My Lord, I believe I ſhall ſay nothing that Mr. *Harriſon* will contradict, I was Attorny for Dr. *Clenche* between him and Mrs. *Vanwicke*, and I ſued Mr. *Rowe* that was bound with Mrs. *Vanwicke* in a Bond to perform Covenants for re-payment of the Money lent her by Dr. *Clenche* upon *Mortgage*; and I adviſed the Dr. and told him, don't let us trouble the Tenant, but let us take *Rowe* firſt; and I ſued *Rowe*, and had him arreſted, and after ſome time, I ſaw that the *Mortgage* muſt do our buſineſs, for *Rowe* could not pay the *Money*, whereupon I cauſed a Declaration in Ejectment to be delivered againſt Mrs. *Vanwick*'s Tenant of the Houſe *Mortgaged* by her to Dr. *Clenche* and then Mr. *Harriſon* came to me, and he expreſſed himſelf againſt the Doctor after a ſtrange rate, and laid his Hand upon his Sword; ſo my Lord I ſaid to him, what a Fool do you make of your ſelf? muſt none go to Law, but they muſt ask you leave, I ſuppoſe Mr. *Harriſon* cannot deny this. Then Mr. *Harriſon* preferred a Petition to the Lords Commiſſioners of the Great Seal for Mrs. *Vanwicke*, and thereby ſuggeſted to their Lordſhips that ſhe was wronged in the Purchaſe and in the *Mortgage Money*, and that twenty Pounds of it was a former debt of her Husbands; and he finding ſhe could have no Relief before them without payment of the *Mortgage Money*, he grew troubleſome; yet ſays I, Mr. *Harriſon*, What ſhe hath done, I cannot help, but if ſhe would pay the reſt, I told him I would abate her twenty Pounds, and the Intereſt *Money* alſo.

Mr. *Darnell.* Pray, Sir, did the Doctor deſire you to act for him in your own Name, becauſe he had no mind to meet with Mrs. *Vanwicke* and the Priſoner?

Mr. *Johnſon.* The Doctor did find himſelf too deeply concerned with them, and he did not care to have to do with them, whether it was that he was afraid of his Life, I cannot ſay; but he ſaid to me, Pray, Sir, go on, I will put all into your Hands, and I will truſt you with all the Affair, and let them come to you, and not trouble me, own it to be your own; and I told him, I feared none of them, and the Doctor gave out that he had made over all to me, although he had not, and upon this I fear, comes this unfortunate Buſineſs, and the Doctor's Lady muſt look after it her ſelf.

L. C. J. What did he ſay when he had laid his Hand upon his Sword in your Study?

Mr. *Johnſon.* He ſaid the Dr. had cheated the Widow, and he ſaid that he would be revenged on him, as near as my *Memory* will ſerve me, I ſuppoſe he will not deny it; whether he did this in a Paſſion, or to affright the Doctor or no, I cannot tell.

L. C. J. Was that before you offered to abate the twenty Pounds?

Mr. *Johnſon.* It was before I offered to abate it.

Mr. *Harriſon.* How long was it before Dr. *Clenche* was murdered?

Mr. *Johnſon.* I think it was about a Fortnight or three Weeks, or a little more.

Mr. *Harriſon.* I never threatned the Doctor in my Life, but I ſaid *Rowe* had been a Villain and a Cheat, and he and *Rowe* were the *Men*, and I ſhall make it appear that the Dr. never wrong'd the Widow.

L. C. J. How came *Rowe* to be intruſted or concerned with the *Money*?

Mr. *Johnſon.* My Lord, Mr. *Cornelius Vandinanker*, a *Merchant*, gave a Legacy of five hundred Pounds to the Widow *Vanwicke* and her Children, and Mr. *Row* was a Truſtee on the Purchaſe, and had by that the management of the Affair.

Mr. *Darnell.* Call Mr. *George Howard.*

(*Who being Sworn ſtood up.*)

Mr.

Mr. *Darnell.* Mr. *Howard,* Give the Court an account of what you know concerning the Priſoner's threatning Dr. *Clenche.*

Mr. *Howard.* My Lord, I was at *Joe*'s Coffee-houſe near *Warwick-Houſe* in *Holbourn,* ſome conſiderable time before Dr. *Clenche* was murdered, where Mr. *Harriſon* uſed ſeveral very virulent Expreſſions againſt Dr. *Clenche;* amongſt others, one was, That he was a Rogue and a Raſcal, and deſerved to have his Throat cut. Mrs. *Vanwick* was then in Company, and they both ſaid, That they then came from Dr. *Clenche*'s.

Mr. *Darnell.* You are ſure he ſaid that Dr. *Clenche* deſerved to have his Throat cut.

Mr. *Howard.* Yes: He ſaid, That Dr. *Clenche* deſerved to have his Throat cut.

Mr. *Harriſon.* Who was I talking to?

Mr. *Howard.* You were talking to Mrs. *Mary Sheriff.*

Mr. *Darnell.* Call Mrs. *Mary Sheriff.*

(Who was ſworn and ſtood up)

Mrs. *Sheriff.* My Lord, Mrs. *Vanwick* came to my Houſe with Mr. *Harriſon,* and deſired me to go with her to Dr. *Clenche*'s Houſe; and when we came there, ſhe deſired him to let her have Twenty Pounds more; and he ſaid, no. If his Houſe were full of Money, he would not lend her any more, ſo long as ſhe kept Mr. *Harriſon* Company, for he would ſpend it; and he adviſed her to be a Gentleman's Houſe-keeper, and he would help her to a Place; and told her withal, That ſhe owed him one hundred and twenty Pounds, for which he would take one hundred Pounds; and we left Mr. *Harriſon* behind us at my Houſe, and did not take him with us, becauſe we were afraid he might anger the Doctor, and fall out with him; ſo when we came back, Mr. *Harriſon* asked Mrs. *Vanwick,* what Dr. *Clenche* ſaid; Why, ſays ſhe, he ſaith, That he will not lend me any more Money while I keep you Company, for you will ſpend it, and that I muſt go to Service. To Service! ſaid Mr. *Harriſon.* God damn him, have a Perſon of your Quality go to Service! he deſerves to have his Throat cut; let me alone, I'll manage him as never any Man was managed, and ſo away they went together.

Mr. *Harriſon.* Did not you ſay, that as you hop'd to be ſav'd, that I was innocent of the Thing?

L. C. J. She does not accuſe you of doing the Fact, but gives an account of ſome Expreſſions that paſſed from you.

Mrs. *Sheriff.* You were always talking againſt Dr. *Clenche,* and you ſaid, God damn him, he was an old Rogue, and that Mrs. *Vanwick* was almoſt ſtarved to Death.

Mr. *Harriſon.* *Rowe, Rowe,* I meant, my Lord.

(The Priſoner being then in a Paſſion.)

L. C. J. Mr. *Harriſon,* do not fall into a Paſſion, it may be more to your advantage, in the making your Defence, if you keep your Temper.

L. C. J. Witneſs, What were the Words that he ſaid againſt Doctor *Clenche?*

Mrs. *Sheriff.* Why, he ſpeaking of Doctor *Clenche,* ſaid to Mrs. *Vanwick,* God damn him, would he have a Perſon of your Quality go to Service! he deſerves to have his Throat cut; well, Madam, ſays he, be contented, I'll manage him as never any Man was managed.

Mr. *Harriſon.* What had you for your Swearing?

Coroner for the *King* and *Queen.* Witneſs, he asketh you, if you had any thing for your ſwearing againſt him.

Mrs. *Sheriff.* No, I had nothing, neither have I need of any thing; I had not ſo much as my Coach-hire.

Mr. *Darnell.* Call Mrs. *Elizabeth Weſt.*

(Who was ſworn.)

Mr. *Darnell.* Miſtreſs, give an account to the Court, what you know about the Priſoner's coming to demand Rent of you, and what paſſed.

Mrs *Weſt.* May it pleaſe your Lordſhip, this Gentleman, the Priſoner, came to me two or three Days before St. *Thomas*'s Day laſt, and deſired me to give him ſome Rent for Mrs. *Vanwick,* and I told him, I had no Power to pay him, becauſe I was warned by Dr. *Clenche,* to pay no more; ſays he to me again, Dr. *Clenche* and *Rowe,* are great Rogues and great Villains. Sir, ſays I to him again, I believe that the Doctor is a very honeſt Man: No, ſays Mr. *Harriſon,* he is a great Villain, and he will never die in his Bed; which of them he meant, Mr. *Rowe* or Dr. *Clenche,* I cannot tell. And Mrs. *Vanwick,* and Mr. *Harriſon,* a little time before that, preſſed me, to let them have ſome Shop Goods in part of her Rent, to grow due, and ſhe made great Complaint, that her Children were ready to ſtarve, and I then told them, that Mr. *Johnſon* had fore-warned me to pay any more Rent to Mrs. *Vanwick,* and if I did, I ſhould pay it again; and therefore I would not pay any more Rent to her, or deliver her any Goods, until ſhe had agreed with Mr. *Johnſon,* and then Mr. *Harriſon* ſaid, that Mr. *Johnſon* was a great Villain, and a great Rogue, and that they had all combined together to cheat the Widdow. And Mr. *Johnſon* being at my Houſe, Mrs. *Vanwick* fell upon him in a great Rage, and ſaid ſhe would tear his Throat out, and laid hold on him, and Mr. *Johnſon* got from her, and went away in great haſte. And the laſt time I ſaw Dr. *Clenche,* I preſſed very hard upon him, to let Mrs. *Vanwick* have more Money; and the Doctor ſaid, that ſhe would never do any good with it, for ſhe ſpent it all upon Mr. *Harriſon;* and I wiſhed him to let her have twenty Pounds more and he ſaid, that he adviſed her to go to Service, and that he had wiſhed her to a Service of Twenty Pounds a Year, and ſhe abuſed him for it.

L. C. J. What Cloaths had the Priſoner on?

Mrs. *Weſt.* My Lord, he had an old Thread-bare black Cloth Suit of Cloaths on, which looked very ſhabby.

Mr. *Harriſon.* What Religion are you of, Miſtreſs?

Mrs. *Weſt.* I was born and bred a Proteſtant.

Mr. *Harriſon.* I believe you are a Papiſt, and will Swear any thing, you keep Roman Catholicks in your Houſe, they have murdered Dr. *Clenche,* for ought I know.

L. C. J. Did Mr. *Harriſon* ever lodge in your Houſe?

Mrs. *Weſt.* No, my Lord, I have none but Perſons of Quality lodge in my Houſe, and they belong to the preſent Government.

Mr. *Darnell.* Call *Ann Watſon.*

(Who was ſworn.)

Mr. *Darnell.* Pray, tell my Lord and the Jury, what you know of Mr. *Harriſon*'s taking of Lodgings at Mr. *Garway*'s Houſe, and when it was?

Anne Watſon. He came about ſix a Clock at Night, the Day before *Chriſtmas-Eve* laſt, to my Maſter's, Mr. *Garway*'s Houſe, and told us, that he was newly come out of the Country; and lodged there that Night, and ſo he did until, and upon the laſt Night of *December*; and on the firſt Day of *January*, he went out, and ſtaid out that Night; and on the *Sunday*, the third of *January* laſt, at Night, he came again with a Perſon with him, and fetch'd away his Portmanteau-Trunk and things, and paid for his Lodging; and in his abſence, there was a Letter left for him, which I gave him, and he ſaid, it came out of the Country, and that he had a Friend ſick in the Country, and did intend to go down to ſee him, being one from whom he expected a Legacy, and he left that Letter on the Kitchin Window, and on the *Monday* after, being the fourth Day of *January* laſt, he ſent a Letter, ſignifying he was gone out of Town.

(*Then the Letter was produced, Marked with the Penny-Poſt Mark.*)

Mr. *Darnell.* Who knows Mr. *Harriſon*'s Hand? Mr. *Johnſon*, take that Letter and look upon it, and tell the Court if you think it to be Mr. *Harriſon*'s Hand.

(*Mr.* Johnſon *takes the Letter and looks upon it.*)

Mr. *Johnſon.* My Lord, I believe it to be Mr. *Harriſon*'s Hand.

Mr. *Darnell.* My Lord, I deſire that the Letter may be read.

L. C. J. Mr. *Clerk* of the Peace, read the Letter; and the Subſcription firſt.

(Clerk *of the Peace reads.*

To Mrs. Garraway, *at the* Hand *and* Apple *in* Thread-Needle-Street, *near the* Royal-Exchange, *Preſent.*

Mrs. Garraway,

I *Am ſorry it ſhould be ſuch an inconvenience to you, as it is. I have left with your Maid, Three Half Crowns, and if it is not enough, I will give you more. I am gone out of Town, for a Week or Ten Days, and as ſoon as I come again, I will wait on you, which is all till I ſee you, from*

Your Friend,

4*th* of *Jan.* 1691. and Servant,

H. Harriſon.

Mr. *Darnell.* Call Mr. *Henry Garway* and his Wife. (*Who were called and ſworn.*)

Mr. *Darnell.* Mrs. *Garway*, take that Letter, and look upon it, and tell the Court, when you received it.

Then ſhe takes the Letter, which was produced and read as before, and looked upon it.

Mrs. *Garway.* My Lord, I received this Letter on *Monday* the 4th Day of *January* laſt.

L. C. J. Watſon, when did he leave the Lodgings, ſay you?

Anne Watſon. He went away the firſt of *January* laſt, about nine a Clock in the Morning, and returned not that Night, but on the ſecond of *January* laſt, he was at my Miſtreſs's Shop again (as my Miſtreſs told me) and he came about five a Clock on the next *Sunday* Night (being the third of *January* laſt) with a Perſon with him, to my Maſter's Houſe, and fetch'd away his Portmanteau-Trunk and things, and left three Half Crowns with me for his Lodgings, which I gave to my Miſtreſs.

Mr. *Darnell.* Call Mrs. *Catharine Jackſon.*

(*Who was ſworn.*)

Mr. *Darnell.* Pray, tell my Lord and the Jury, what you know concerning Mr. *Harriſon*'s coming to lodge at Mr. *Garway*'s, and when he went away, and what you know of any Handkerchief he had.

Mrs. *Jackſon.* He came on the Day before *Chriſtmas-Eve*, to lodge at my Father's, Mr. *Garway*'s Houſe, and lodged there ſeveral Nights, and went away the third of *January* at Night, with his things, but was abſent ſome Nights between his coming and going away, and whilſt he lodged there, I obſerved a Handkerchief in his Hand, as I was making a Fire for him in his Chamber, and the more, becauſe he had ſaid, he was a Parliament Man, and I thought it more like a Sea-man's Handkerchief, than a Parliament-man's, and our Maid had an Apron of the ſame kind of Stuff.

(*Then the Handkerchief was produced in Court, by the* Coroner, *and the Coal in it, wherewith Dr.* Clenche *was ſtrangled.*)

Mr. *Darnell.* Mrs. *Jackſon*, I deſire that you would look upon that Handkerchief, and tell the Court what you know of it.

Mrs. *Jackſon.* This is the Handkerchief that I ſaw Mr. *Harriſon* hold to the Fire, when I was making of it in his Chamber, or very like that Handkerchief, for I obſerved it to be very like my Mother's Maid's Apron.

(*Then a piece of the Maid's Apron was produced, and they being compared, were very like.*)

Mr. *Harriſon.* Did you hear me ſay, I was a Parliament Man.

Mrs. *Jackſon.* Yes, I heard you ſay ſo.

Mr. *Harriſon.* Perhaps, you might hear my Boy ſay ſo.

Mrs. *Jackſon.* Your Foot-Boy ſaid, you were a Parliament Man: And you ſaid ſo your ſelf.

Mr. *Darnell.* Call Mr. *Garway* again.

(*He appeared.*)

Mr. *Darnell.* Where is the Letter you receiv'd from Mr. *Harriſon*, ſince he was a Priſoner?

L. C. J. What do you ſay about a Letter that came to your Houſe from the Priſoner?

Mr. *Garway.* My Lord, I had this Letter from him laſt *Saturday*, directed to my Wife, and I believe it to be his Hand.

(*He produceth the Letter.*)

Mr. *Darnell.* My Lord, I deſire that the Letter may be read.

L. C. J. Read the Letter, Mr. *Tanner.*

(*Clerk Peace reads.*)

To Mrs. Garway, *at the* Hand *and* Apple *in* Thread-Needle-ſtreet, *behind the* Royal Exchange, *Preſent.*

Mrs. Garway,

I *Was informed Yeſterday, that you are to appear againſt me, at next Seſſions. I am ſure, you never heard me mention Dr.* Clenche, *in all your Life; and if you do, it will look like Malice. My Lord Chief Juſtice is ſenſible of the Wrong done me. This is all from*

Your Servant,

Henry Harriſon.

L. C. J.

L. C. J. Mr. *Harriſon*, Did I ever tell you, That I was ſenſible of it?

(*To which he made no Reply.*)

Mr. *Darnell.* Call Mr. *John Cartwright.*

(*Who was ſworn.*)

Mr. *Darnell.* I would have you declare, what you heard Mr. *Harriſon* ſay, concerning Doctor *Clenche.*

Mr. *Cartwright.* My Lord, upon the Third of *January* laſt, Mr. *Harriſon* came to *Woodſtreet Compter*; it was on a *Sunday* in the Evening, about Five or Six a Clock, I was ſtanding in the Gate, and I let him in. Aſſoon as he came in, he asked, how poor Mrs. *Vanwick* did; ſays he, ſhe hath been wronged of Five Hundred Pounds within this 12 Months: Then I let him into the Court, and he went into her Chamber; and about half an hour after, I was ſent by my Maſter, to require ſome Chamber-rent of Mrs. *Vanwick*, and I heard Mr. *Harriſon* and ſhe at high Words, and in a great Paſſion, and I heard Mr. *Harriſon* ſwear, God damn his Blood, he would be reveng'd of that Rogue, and named *Clenche* or *Winch*, I cannot tell which, and he would have his Blood, e're it were long.

Mr. *Harriſon.* Where were you?

J. Cartwright. My Lord, I was at the Chamber-door, and there was no Body on that ſide of the Houſe, but Mr. *Harriſon*, Mrs. *Vanwick*, and my ſelf.

Mr. *Darnell.* Call Mrs. *Mary Jones.*

(*Who was ſworn.*)

Mr. *Darnell.* Now, my Lord, I will call one to prove, where he took a new Lodging, the very Day the Murther was done.

L. C. J. Cartwright, was that in Mrs. *Vanwick*'s Chamber that you heard him ſwear ſo?

Mr. *Cartwright.* Yes, my Lord, in her Chamber, and none was with her, but he only.

Mr. *Darnell.* You, the laſt Witneſs Mrs. *Jones*, when did Mr. *Harriſon* come to Lodge at your Houſe?

Mrs. *Jones.* He came on a *Monday.*

Mr. *Darnell.* What Day of the Month was it?

Mrs. *Jones.* I can't tell what Day of the Month, for I did not ſet it down.

Mr. *Darnell.* Was it the *Monday* before he was taken?

Mrs. *Jones.* Yes, it was the *Monday* before.

Mr. *Darnell.* Whence did he pretend to come?

Mrs. *Jones.* He ſaid, that he was come out of the Country, and had formerly lodged in *Fleet-ſtreet*, and that where he had lodged formerly, they had left off Houſe-keeping, and were gone into the Country.

L. C. J. Where is your Houſe?

Mrs. *Jones.* In St. *Paul*'s Church-Yard, at the Sign of the *Golden Ball.*

Mr. *Darnell.* Call *James Howſeman.*

(*Who was ſworn.*)

Mr. *Darnell.* Do you tell what you know, about Mr. *Harriſon*'s being at Mr. *Jones*'s Houſe.

Howſeman. My Lord, he came in about Eight a Clock at Night, and brought a Porter with him, and a Portmanteau Trunk; and after that, the Porter went out a little before him, and then he followed him, and went out after.

Mr. *Darnell.* Did you hear him ſay, from whence he came?

Howſeman. No, I did not.

Mr. *Darnell.* Call *Anne Evans.*

(*Who did not appear.*)

Mr. *Darnell.* Then Call Mr. *Robert Humſton.*

(*Who was ſworn*)

Mr. *Darnell.* Mr. *Humſton*, I deſire you will give the Court an Account of Mr. *Harriſon*'s being at your Houſe, that Night Dr. *Clenche* was murdered.

Mr. *Humſton.* My Lord, I met Mr. *Harriſon* on *Monday* the 4th of *January* laſt, and he told me, he was going to the *Compter*, to a Gentlewoman that was much oppreſſed, and that he wanted Money to get her releaſed; upon which, I gave him ſome Money, and after ſome Diſcourſe, I deſired him to bring home my Gown, that I formerly lent him, and ſeemed angry with him, for that he had ſeveral times promiſed me to bring it home, but had failed therein; and thereupon he promiſed, that I ſhould have it that Night: And that Evening about Nine of the Clock, he came to my Lodgings, and brought home my Gown, and when he came, I asked him, if he had gotten Mrs. *Vanwick* Releaſed: And Mr. *Harriſon* anſwered, No. Upon which, I blamed him for neglecting an old Friend, and Mr. *Harriſon* excuſed it; telling me, that he had met with ſome Perſons upon earneſt Buſineſs which prevented him. And then I asked Mr. *Harriſon* to ſtay and Sup with me, but he refuſed it, ſaying, that he had been about extraordinary Buſineſs that Day, which muſt be done that Night, and that a Gentleman ſtayed in the Street for him, and they two were going to do it.

L. C. J. Where do you live? And how long ſtayed he at your Houſe?

Mr. *Humſton.* I lodged then at the *Golden Key* in *Fleet-ſtreet*, over againſt *Fetter-lane* End: He came to my Lodgings about Nine of the Clock at Night, and ſtayed there but a little time.

L. C. J. What manner of Cloaths had he on?

Mr. *Humſton.* My Lord, he had a Cloak on, but I cannot tell what Cloaths he had under it, he brought my Gown up under his Cloak.

Mr. *Darnell.* Swear *Eſther King.*

(*Who was ſworn.*)

Mr. *Darnell.* Do you know what time Mr. *Harriſon* was at Mr. *Humſton*'s Lodgings.

Eſther King. It was on *Monday* the Fourth day of *January* laſt, about Nine of the Clock at Night, as near as I can gueſs, the Shop was ſhut up, and I let him out.

Mr. *Darnell.* Where was it?

Eſther King. At the *Golden Key* in *Fleet-ſtreet* over againſt *Fetter lane* End.

Mr. *Darnell.* What Cloaths had he on?

Eſther King. I cannot tell well, but he had a Cloak on, I do not know what Cloaths he had on beſides.

Mr. *Harriſon.* Was it Eight or Nine a Clock.

Eſther King. It was near Nine, as near as I can gueſs.

Mr. *Darnell.* Swear *John Sikes* the Coachman. (*Which was done.*)

Mr. *Darnell.* Give an Account to the Court, what you know about carrying two Men in your Coach, and how you found Dr. *Clenche* murdered.

John Sikes. My Lord, on the 4th of *January* laſt, being *Monday*, I was at the *Play-Houſe*, and there I took up a Man and a Woman, and carried them into the City; ſo I brought the Gentleman back again, to the *Green Dragon* Tavern in *Fleet-ſtreet*; and then he ſaid, he would pay me by the hour; he ſaid, that it was but much about nine a Clock. Then I left him, and was driving up the Street towards the

Temple, and two Men ſtood in *Fleet-ſtreet* about *Fetter-lane* End, and they asked me, if I knew Dr. *Clenche*, who dwelt in *Brownlow-ſtreet* in *Holbourne*: I told them, that I did not know Dr. *Clenche*, but I knew the Street. So they went into my Coach, and one of them bad me drive thither, and I did, and ſtopt at the Streets End; becauſe the Gate at the other End was ſhut, ſo that I could not turn my Coach: And one of them bid me go and tell the Dr. That there were two Gentlemen in a Coach at the Streets End, that would deſire him, to go with them, to ſee one that was not well. The Doctor asked me, if I could tell, Who they were? Or, who it was, that he was to go to? I told him, that I could not tell. The Doctor was in his Night Gown and Slippers, and he dreſſed himſelf: And when he came to the Coach, one of them removed from his Place, and gave him the hinder part of the Coach, and told him, That they had a Friend, that was not Well: And one of them bad me Drive to *Leaden Hall Market*; and when I came about *Holbourn Bars*, one of them called to me, and asked me, Why I drove ſo ſlowly? And bid me drive faſter; ſo I drove faſt, and came to *Leaden Hall*. And then one of them, bid me drive to the *Pye* Tavern without *Aldgate*, and there Ordered me to ſtop. And when I had ſtopped there, one of them called to me, and told me, that I need not ſtir out of my Coach Box; but call to the Boy at the Tavern, and ask for one *Hunt* a Chyrurgeon, which I did do: And when the Boy came to me again, he ſaid, there was no ſuch Man. Then one of them bad me drive back again to *Leaden-hall*; and in the time I ſtayed there, and turned my Coach, *Aldgate* was ſhut; and when I came to the Gate, one of them gave Six Pence to the Watch, and the Gate was opened, and I drove to *Leaden-hall* Gate. And when I came there, I ſtopped again, and one of them gave me Half a Crown, and bad me go and buy a Fowl of one *Hunt* a Poulterer; but after I had gone a little way from the Coach, he called me again, and ſaid, here Coachman, you had as good take another Shilling, and buy a Couple: ſo I went, and bought a couple of Fowls, but could find no ſuch Poulterer as *Hunt*, ſo I bought them of another, and I gave three Shillings for them. And when I came back to the Coach ſide, I found Dr. *Clenche*, (as I thought) ſitting againſt the Fore-ſeat, with his Head againſt the Cuſhion: I pull'd him and cried, Maſter, Maſter, for I thought he had been in Drink, but I could not get one word from him; and then I went to the Watch, who were near; and when they came, we found him Strangled with a Handkerchief about his Neck, and a Coal in it, plac'd juſt upon his Wind Pipe, but the other two Men were gone.

L. C. J. Had one of the two Men a Cloak on?

J. Sikes. I cannot remember that.

L. C. J. What kind of Habit had he? Had he black Cloaths on?

J. Sikes. My Lord, I cannot tell juſtly, what Cloaths he had.

L. C. J. You have heard him ſpeak. What ſaid he?

J. Sikes. My Lord, he never ſpoke to me; it was the other Man.

Mr. Harriſon. What kind of Man was the other? Was he leſs than I, or taller?

J. Sykes. He was taller than you, with his own Hair.

Mr. Darnell. Can you be poſitive, that the Priſoner at the Bar is one of thoſe two Perſons?

J. Sykes. My Lord, one of thoſe two Perſons, had a Perriwig on, of a Light-coloured Hair: And I do verily believe, that the Priſoner at the Bar, is the ſame Perſon; I cannot be poſitive he is one of them, but as near as I can judge of a Man, whom I have ſeen but once, he is one of them.

Mr Harriſon. My Lord, I deſire your Lordſhip to obſerve the time, that he took the two Men up, and what time it was they ran out of the Coach.

L. C. J. Coachman, what time was it, that they left your Coach?

J. Sykes. About half an hour paſt Ten, and it was about a quarter of an hour paſt Nine, when I took them up.

Mr. Darnell. Pray let's ask the Coachman one thing more. Coachman, Look upon that Handkerchief, do you know it, and where did you ſee it?

The Handkerchief was produced by the Coroner.

J. Sykes. I do believe that it is the ſame Handkerchief, that was about Dr. *Clenche*'s Neck, when he was found Murdered.

L. C. J. Call the Coachman again. Hark you, In what Poſture did you find Dr. *Clenche*, when you came back to your Coach?

J. Sykes. My Lord, he was ſat in the Bottom of the Coach, leaning on one ſide, with his head againſt the Cuſhion.

L. C. J. Was a Handkerchief then about his Neck?

J. Sykes. Yes, my Lord, I untied this Handkerchief, and this is the ſame; and here is the Coal that was lapt in it: it was lapt in the middle of it, and it laid juſt againſt the Doctor's Wind Pipe.

Mr. Darnell. Call Mr. *Rebone* and Mr. *Marriot*.

Who were Sworn.

Mr. *Darnell.* Mr. *Rebone*, tell what you know, concerning the Handkerchief, and how you found the Doctor.

He takes the Hankerchief, and looks on it.

Mr. Rebone. This Handkerchief was about the Doctor's Neck, and the Coal in it, and it lay juſt upon his Wind Pipe, when I ſaw him Dead in the Coach. The Coachman came to Mr. *Marriot*'s Houſe, and ask'd for a Conſtable, and we went to the Coach ſide, and there we found him laying along; and we took him, and carried him to the *Bull* Inn, and there he was let Blood on the Arms, and the Chyrurgeon took about half a Spoonful of Blood out of his Right Arm; and he was let Blood on the other Arm, but that did but juſt trickle down, and we could not get him to life again; and we found a Silver Ink horn in his Pocket, and that, and the reſt of his things, were ſecured. That is all I can ſay to the Matter.

Mr. Darnell. Call Mrs. *Elianor Aſhbolt*.

Who was Sworn.

Mr. Darnell. Pray tell my Lord, and the Court, what you know of any Perſons you ſaw in a Coach at *Brown low-ſtreet* End, that Night Dr. *Clenche* was Murdered.

Mrs. Aſhbolt. May it pleaſe your Lordſhip, I went out of an Errand for one Madam *Anwell*, a Gentlewoman who Lodges at my Mothers houſe,

houſe; and coming home again, I ſaw a Coach ſtop at *Brownlowe-ſtreet* End, between Nine and Ten a Clock at Night, and the Coachman went to the ſide of the Coach: And one in the Coach bad him go to Dr. *Clenche's*, and tell him, That there were two Gentlemen ſtayed for him in a Coach; and as he went up the Street, he went ſlowly, and looked back two or three times: Whereupon, one of the Perſons leaned out of the Coach, and did Swear at the Coachman to make haſt, and I went round the Coach, and could diſcern Mr. *Harriſon's* Face; and I ſtayed, and ſaw Dr. *Clenche* go into the Coach, and one of them gave his Place to the Doctor.

Mr. Darnell. Why were you ſo curious, Miſtreſs, and what did you obſerve further?

Mrs. Aſhbolt. I thought they might give the Coachman a ſlip. I well obſerved Mr. *Harriſon*, but do not know the other Man; there were two Lamps burning; one in *Brownlow-ſtreet*, and the other in *Holbourn*, over againſt the End of *Brownlow-ſtreet*; and they lighted quite through the Coach, and the Men pulled themſelves backwards, when they ſaw me look on them; it was that Night that the Doctor was Murdered. I went to *Newgate* afterwards, Madam *Clenche* deſired me to go and ſee Mr. *Harriſon*; and when I came to *Newgate*, it ſeems, he was writing Letters, ſo I ſtaid before I went into the Room; and there were two Men with me, and Mr. *Harriſon* was talking very loud, ſaid they to me, Who is that ſpeaks now? Why, ſays I, it is one of the Perſons that was in the Coach when Dr. *Clenche* was Murdered.

L. C. J. Who are thoſe two Men that were with you?

Mrs. Aſhbolt. One of them was one Mr. *Jones*, a Coachmaker in *Holbourn*, and the other was Madam *Clenche's* Coachman.

L. C. J. Did you know the Priſoner, when you ſaw him in *Newgate*, to be one of them that were in the Coach?

Mrs. Aſhbolt. Yes, I did, I knew him to be the ſame Man, as ſoon as I ſaw him, and he changed Countenance as ſoon as he ſaw me.

Mr. Harriſon. My Lord, this Woman is certainly hired by the Villains that are againſt me. Pray, ask her, my Lord, Why ſhe did not make a Diſcovery ſooner?

L. C. J. Miſtreſs, What ſay you to that?

Mrs. Aſhbolt. I acquainted Madam *Anwell*, what I had ſeen and obſerved, and ſhe told Madam *Clenche*, after laſt Seſſions, and then ſhe deſired me to go to *Newgate*, to ſee Mr. *Harriſon*, and I went accordingly; and I would have told it to Madam *Clenche* ſooner, but my Mother was loath I ſhould be concerned about ſuch a thing.

Mr. Darnell. My Lord, we have ſome Witneſſes who can give your Lordſhip an Account, that one of our Witneſſes, whom I mentioned to your Lordſhip before, is ſpirited, or withdrawn from us, by a Gentleman that ſaid he came to him from the Priſoner, and deſired him to be kind to the Priſoner, which Witneſs is ſince abſent, and not be found; his Name was *Andrew Bowſell*, a Youth, and an Apprentice to one Mr. *Tims*, a Shoo-maker.

L. C. J. You muſt prove upon him, that he made him keep away.

Mr. Darnell. Call *Barnabas Smith*.

Who was Sworn.

Mr. Darnell. Give my Lord, and the Court an Account, what you know of this matter.

Mr. Smith. My Lord, this *Andrew Bowſell*, which the Council for the King ſpeaks of, was ſent to *Leaden-Hall-Street*, of an Errand, to the *Bull-head* Ale-houſe there, and as he was going along, a Gentleman met him, and asked him, if he was not an Evidence againſt Mr. *Harriſon*, and being told by the Boy that he was, he deſired him to be kind to him, and pull'd out a piece of Money, and offered it him, deſiring him to be kind to Mr. *Harriſon*, upon which the Youth replied, That he owed him nothing, and nothing he would take; then the Gentleman told him, That he would come again another time, and ſend for him near to his Maſter's; ſo the Boy ſaid, and told me: And ſaid further, That if he could have gotten him to have gone to the *Bull-head* Ale houſe, he would have ſeized him.

Mr. Darnell. What is become of the Boy?

Mr. Smith. Truly, we do not know what is become of him, we never heard of him ſince the Sixth Day of *March* laſt.

Mr. Darnell. Call his Maſter, Mr. *Richard Tims*.

Who was Sworn.

Mr. Darnell. Tell my Lord, and the Court, what you know of this matter, and what is become of your Apprentice, *Andrew Bowſell*.

Mr. Tims. My Lord, he went away from me on the Sixth Day of *March* laſt, he was enticed away by three Soldiers that Night, and on the morrow Morning, one of them came and demanded his Coats, Shirts and Neckcloths; ſays I to him, who ſent you, and who is your Captain? and he anſwered, why, Captain *Harris*; he huffed and ſaid, That if I would not give him the Cloaths, he would ſend his Officer; and then I told the Soldier, I would have him before a Juſtice of the Peace; ſo he went away, and never came to me again; and I could never hear of my Apprentice ſince, tho' I have made great Inquiry after him.

L. C. J. Did your Servant tell you of any Money that had been offered him by the before mentioned Gentleman?

Mr. Tims. No, my Lord; he did not tell me, but he told Mr. *Smith*, the Witneſs that was laſt Examined, as he told me.

Mr. Darnell. My Lord, I deſire that *Andrew Bowſell's* Examinations before Mr. *John Brown*, the *Coroner* of *London*, upon Oath, may be read.

Which being proved by the Coroner, *were directed to be read.*

Clerk of the Peace Reads. 12. Januarii, 1691.

Andrew Bowſell, Servant to *Richard Tims* Shooemaker, Sworn and Examined touching the Death of *Andrew Clenche* Doctor in Phyſick, deceaſed; ſaith, that he, this Informant being ſent to Mr. *Parker's* at the *Bull-head* Ale-houſe in *Leaden-hall-ſtreet*, on *Monday* laſt was Seven night, being the fourth of this inſtant *January*, between the hours of Ten and Eleven of the Clock in the Evening, ſaw a Coach ſtanding againſt *Leaden-hall Market*, and heard ſome Perſon that was in the Coach ſay, make haſt. And this Informant ſays, that according to the beſt of his remembrance he heard him talk of a Poulterers; and this Informant ſays, that ſoon after the Coachman was gone into the *Market*, this Informant ſaw two Perſons go out of the Coach, one whereof had, as this Informant believes, a black Coat on; and that this Informant ſaw the ſame Perſon as ſoon as he came out of the Coach fling a Cloak over him, and then both the Perſons went through the

the *Market* on the Weſt part. And this Informant ſaith, that this Informant going to look into the Coach, the Perſon that had the Cloak on him, cry'd Dam him; and this Informant ſaith, that he, this Informant, thereupon going away, went to Mr. *Parker's*, and told them that two Perſons had cheated a Coachman, or to that effect.

And. Bowſell being further Examined the 23d day of *January*, 1691. touching the Death of *Andrew Clenche*, ſaith, that he hath ſeen *Hen. Harriſon*, now a Priſoner in Their Majeſties Goal of *Newgate*, and belives he was one of the Perſons that came out of the Coach at *Leaden-hall*, a little after ten of the Clock at Night, on *Monday* the 4th of this Inſtant *January*; and believes he knows him by his Voice. And ſoon after, this Informant underſtood that the ſaid *Andrew Clenche* was murther'd in a Coach, being the ſame Coach which the ſaid *Harriſon*, and another Perſon unknown a little before went out of.

L. C. J. Mr *Harriſon*, What have you to ſay againſt that which hath been proved againſt you, what defence can you make?

Mr. Harriſon. My Lord, I did attend Dr. *Clenche* about a Mortgage that was made him by Mrs. *Vanwick*, and Dr. *Clenche* did pay one Hundred Pounds, but this Gentlewoman would pay or allow *Rowe* but Fifteen Pounds, and we did not know how to get the Money from *Rowe*, ſo we Petition'd the Lords Commiſſioners about it, which was above Six Months before Doctor *Clenche* was Murther'd; and Mr. *Fairbeard* wonder'd that I would put Doctor *Clenche's* Name into a Petition with ſuch a Rogue as *Rowe*; and I do poſitively ſay, that I had not ſeen Doctor *Clenche* in a Month before, and if Doctor *Clenche* had died in his Bed, it had been the ſame thing to me; and, my Lord, Mr. *Johnſon* and I had never any angry words between us; and I have the Report in Chancery which I had from Sir *John Hoskins*, which I will read, if your Lordſhip pleaſes.

L. C. J. Let's ſee it.

Which was handed to the Lord Chief Juſtice ſitting on the Bench.

Mr. Harriſon. My Lord, that is the Original, which if your Lordſhip pleaſes to remember, I had *Rowe* before you twice about it, and it is *Rowe* that hath been the Rogue, and therefore what occaſion had we to be angry with Doctor *Clenche*?

Then the Report was perus'd by the Lord Chief Juſtice, and return'd to him.

L. C. J. Mr. *Harriſon*, this will do you no good, not being to the preſent purpoſe, therefore proceed in your defence.

Mr. Harriſon. Now, my Lord, I have ſome Witneſſes to prove where I was at the time that the Coachman ſays the Murther was done. *Cryer, call* Thomas Turner *a Porter, and Mr.* Maccaffee.

Who appeared, but were not Sworn, and Examined apart, at the Requeſt of Mr. Darnell, *the Kings and Queens Council.*

Mr. Harriſon. My Lord, I ſhall prove by theſe Witneſſes, that I was elſewhere when the Coachman ſaid he took up thoſe two Men, a little after Nine a Clock. Pray Mr. *Turner*, give an Account to the Court, what time it was I called you to carry my Trunk.

Tho. Turner. My Lord, I was, about Seven of the Clock in the Evening, the 4th Day of *January* laſt, at the *Two Kings* and *Key* in *Fleet-ſtreet*, over againſt *Salisbury-Court*; and I was told, that a Gentleman at *Joe's Coffee-houſe* in *Salisbury-Court* wanted a Porter; and I preſently went to him thither, and it was this Mr. *Harriſon*: and he bad me take up his Trunk, which I did, and carried it to the *Two Kings* and *Key*, and he went with me: And he aſk'd me to get ſome Linnen waſh'd for him againſt the next Day at Noon: and he gave me ſome Linnen, which I carried to my Wife to Waſh for him, and return'd to him again preſently; and I went with him from thence, and carry'd his Trunk to his Lodgings in *Paul's Church Yard*; and when I had deliver'd his Trunk, I left him there; and then it was about Eight of the Clock at Night.

L. C. J. At whoſe Houſe was it you deliver'd the Trunk?

Thomas Turner. My Lord, it was at Mr. *Jones's* Houſe in *Paul's Church Yard.*

L. C. J. And did he ſtay within?

Thomas Turner. No, my Lord, he went out preſently after me.

L. C. J. Were you any where elſe with him that Night, beſides at the places you have mentioned?

Tho. Turner. No, my Lord.

Mr. Harriſon. My Lord, I will prove that Mr. *Humſton* miſtakes an Hour.

Mr. Humſton. I cannot miſtake an Hour, becauſe the Shop is ſhut up about Nine a Clock, and it was ſhut when you came firſt to my Lodgings.

Mr. Harriſon. My Lord, there ſtands in Court one *Thomas Johnſon*, Apprentice to Mr. *Pemmel*; he can tell what time a-night it was I came to Mr. *Humſton's*, he let me in; I deſire he may be call'd.

Mr. Darnell. Swear *Thomas Johnſon.*

Who was Sworn.

L. C. J. What time of the Night was it that Mr. *Harriſon* came to ſpeak with Mr. *Humſton*, on that Night Dr. *Clenche* was murder'd?

Tho. Johnſon. My Lord, on the 4th of *January* laſt at Night, Mr. *Harriſon* came to my Maſter's Houſe, and knock'd at the Door; and I went to the Door, and open'd it, for I had ſhut up the Shop; and he aſk'd me if Mr. *Humſton* was within? And I told him, he was: And he came in, and went up to Mr. *Humſton's* Chamber; and it was then about Nine of the Clock, as near as I can gueſs.

L. C. J. Where is your Maſter's Houſe?

Tho. Johnſon. My Lord, it is the *Golden Key* in *Fleet ſtreet*, over againſt *Fetter-lane* end.

Mr. Harriſon. Pray call *Adam Maccaffee*, Mr. *White*, Mr. *Carden*, and *John Allen*.

Who appear'd. And Mr. Maccaffee *ſtood up.*

Mr. Maccaffee. Upon *Monday* the 4th Day of *January* laſt, the Priſoner was at my Houſe, and ſtay'd from Nine a Clock till paſt Eleven, and play'd at Cards with one Mr. *Baker*, and one Mr. *White* and his Wife; and he ſtay'd till it had ſtruck Eleven a Clock.

L. C. J. Where is your Houſe, Sir?

Mr. Macaffee. My Houſe is in *Chancery Lane*, over againſt *Serjeants-Inn*.

L. C. J. Did he tell you where he had been before?

Mr. Maccaffee. He ſaid, that he had been towards the City, and was very cold.

L. C. J. Did he ſay any thing of Mr. *Humſton*?

Mr. Maccaffee. No, my Lord.

Mr.

Mr. Darnell. Pray, what Room were you in? Did you play at Cards in the Kitchen?

Mr. Macaffee. Yes.

Mr. Darnell. Where they up Stairs?

Mr. Maccaffee. No, my Lord.

Lord Mayor. At what time a night did they come in?

Mr. Maccaffee. Betwixt Nine and Ten a Clock, my Lord.

L. C. J. What made you take notice of the Day of the Month, and Hour of the Day?

Mr. Maccaffee. My Lord, I heard that Doctor *Clenche* was murder'd, and that Mr. *Harriſon* was taxed with it; and that made me take notice of the Day.

L. C. J. Call Mrs. *Maccaffee. Who ſtood up.*

L. C. J. Miſtreſs what time did Mr. *Harriſon* come to your Houſe on the 4th of *January* laſt at Night?

Mrs. Maccaffee. My Lord, it was near Nine a Clock as any thing can be, when he came in firſt.

L. C. J. How long did he ſtay there?

Mrs. Maccaffee. I cannot tell how long he ſtay'd, but there were two Accidents happen'd; one was, our Playing at Cards; and the other was, that there was a Pick-Pocket carried by to be pump'd at *Lincolns Inn*; it was from Nine to Eleven before he went away, and there were Mrs. *White*, Mr. *Baker*, and one Mrs *Faireleſſe*.

L. C. J. Did any one come with the Priſoner, to your Houſe; in what Humour did he ſeem to be?

Mrs. Maccaffee. No, my Lord, there was no one came with him, and he never ſtirr'd out, neither did he ſeem to be diſorder'd; he was neither too merry, nor too melancholy.

L. C. J. Where did he ſay he had been?

Mrs Maccaffee. He ſaid, that he had been in the City.

L. C. J. Did he uſe to frequent your Houſe?

Mrs. Maccaffee. Formerly he did; but I had not ſeen him in half a Year before.

Mr. Darnell. How many were there, do you ſay?

Mrs. Maccaffee. There was one Mrs. *Faireleſſe*, and one Mrs. *White*, and my ſelf, and my Husband was upon the Bed, and Mr. *White* came for his Wife about Ten a Clock, to come home.

Mr. Darnell. Do you remember that Mr. *Baker* was there?

Mr. Maccaffee. Yes, he was there.

L.C. J. Pray, Miſtreſs, did Mr. *Harriſon* come in, and find them at Cards?

Mrs Maccaffee. No, we went to Cards, afterwards.

L. C. J. Where was your Husband?

Mrs Maccaffee. He was upon the Bed in the Kitchen.

L. C. J. Call Mr. *Baker.* [*Who ſtood up.*]

Mr. Baker. This Gentleman the Priſoner, is a Stranger to me; but here is a Letter that he ſent me two or three Days afterwards. I came into Mrs. *Maccaffee's* Houſe about half an Hour after Nine a Clock, with two Women more: Mrs *Maccaffee* owed me Money, and I had been in *Lincolns Inn*, for I do ſome Work there for Sir *Thomas Cook*, and the Women ask'd me to play at Cards; and I ſaid, that I did not care to Play, becauſe I had been abroad, and could not get any Money, which made me out of humour. My Lord, I never ſaw the Man in my Life before.

L. C. J. Who were they that play'd at Cards?

Mr. Baker. It was one Mrs. *Faireleſſe*, the Woman of the Houſe, and *Mr. Harriſon*, and my ſelf.

L. C. J. Who were together?

Mr. Baker. Mrs. *Fairleſſe* and I, and the Woman of the Houſe and *Mr. Harriſon* the Priſoner, and we play'd for a Penny a Corner, I cannot ſay any more to it, my Lord.

L. C. J. How long did he ſtay?

Mr. Baker. I left him there after Ten a Clock, and as I hope for mercy, I never ſaw him but once before, and I had not known him again, but by a particular Token.

Mr. Harriſon. Were there not ſome Accidents happen'd at that time?

Mr. Baker. Yes, there came a Vintner's Boy to ask for a Woman, one *Mrs. Frances*, and he was in great haſte, and a Pick-pocket was carried up the Lane to be Pump'd at *Lincolns-Inn* Pump.

Mr. Harriſon. Call *Mrs. Fairleſſe*, call *Mrs. Whipple.* [*neither of which appear'd.*]
Call *Mr. Sutton.* [*Who appeared.*]

L. C. J. Where do you live, and what is your Name?

Mr. Sutton. My Lord, my Name is *Sutton*, and I live in *Stone cutter ſtreet.*

Mr. Harriſon. Mr. Sutton, what time was it that I was coming by, when one *Mr. Ruſſel* and you were Drinking?

Mr. Sutton. My Lord, it was about Eleven a Clock at Night, at the *King's Head-Tavern* at *Chancery-Lane* end.

Mr. Harriſon. What had I on, a Cloak and a Muff?

Mr. Sutton. Yes, I think you had a Cloak on.

Mr. Darnell. What time was it before or after Eleven a Clock?

Mr. Sutton. It was about a quarter before Eleven.

Lord Mayor. What day of the Month was it?

Mr. Sutton. It was the fourth of *January.*

L. C. J. Where was he going, which way went he?

Mr. Sutton. He was going towards *Fleet-Bridge*, my Lord, and I called after him, but could not make him hear me at firſt, but afterwards he came to us.

Mr. Harriſon. Pray call Mr. *Ruſſel.*
[*who appeared.*]

Mr. Ruſſel. I can't hear, my Lord, but if you pleaſe to permit Mr. *Sutton* to ſpeak to me, I can hear his Voice better than any Man's.

L. C. J. Speak as loud as you can, Sir, and we will let you hear us, Mr. *Sutton* muſt not ſpeak for you.

Mr. Harriſon. Pray Mr. *Ruſſel* what time of Night was that you ſaw me go by you, when you were drinking at the *King's-Head*-Tavern?

Mr. Ruſſell. I can't tell, my Lord, I have not heard a Clock theſe three years.

L. C. J. Where were you going at that time of Night?

Mr. Ruſſel. I was going to *Wild ſtreet*, to the *Chyrurgeon's-Arms*, to Receive ſome money.

L. C. J. How came *Mr. Sutton* to go with you?

Mr. Ruſſel. He had been with me all that day, and I deſired him to go with me; and, my Lord, I did expect that the money would have been brought to me, but it was not, ſo I went for it.

L. C. J. Well, and what then?

Mr. Ruſſel. While we ſtaid at the *King's-Head*-Tavern

Tavern door to drink Wine, *Mr. Sutton* ſent the Drawer to call *Mr. Harriſon.*

L. C. J. What had you been doing before that time?

Mr. Ruſſel. We had (I ſuppoſe) been drinking together.

L. C. J. Where had you been before you came to the *King's Head* Tavern.

Mr. Ruſſel. We had been at the *Horſeſhoe Tavern* in *Chancery-Lane.*

L. C. J. Did you requeſt *Mr. Sutton* to go with you?

Mr. Ruſſel. Yes, I did, my Lord.

L. C. J. You ſay your buſineſs was to go to *Wild-ſtreet*, to receive ſome money?

Mr. Ruſſel. Yes, it was, my Lord, and I did receive it.

L. C. J. When was it that you met *Mr. Harriſon*, the Priſoner?

Mr. Ruſſel. My Lord, I can't poſitively ſay, but by computation of the Night, I believe it was about Eleven a Clock.

L. C. J. Did you meet *Mr. Harriſon* before you went to the *Horſeſhoo-Tavern*, or after?

Mr. *Ruſſel.* Afterwards, my Lord, I ſaw Mr. *Harriſon* turn at the Corner of *Fleet-ſtreet*, towards *Fleet-Bridge.*

L. C. J. At the time when Mr. *Sutton* and you went firſt out, did you agree of your going to the *Horſeſhoe Tavern?*

Mr. *Ruſſel.* We went thither to ſend for the Gentleman out of *Wild-Street.*

L. C. J. When you had been Drinking all the Afternoon, how came you to ſtop your Coach at the *King's Head?*

Mr. *Ruſſel.* We ſtopt there, whilſt Mr. *Sutton* ſent for ſome body to come to him.

L. C. J. You ſaid juſt now that Mr. *Sutton* ſent for Mr. *Harriſon.*

Mr. *Ruſſel.* No, my Lord, I do not remember that, but Mr. *Sutton* ſaid *Harry*, or *Harriſon*, where art thou going, when he went by us.

Mr. *Harriſon.* My Lord, this Man is a ſtranger to me. Call *John Allen*, Drawer at the *King's-Head* Tavern. [*Who apperared.*

Mr. *Harriſon. John Allen*, what time of Night was it that Mr. *Sutton* and Mr. *Ruſſel* came to your Houſe in a Coach?

J. Allen. I believe it was about Eleven a Clock.

L. C. J. How much Wine had they?

J. Allen. Two Half Pints of Canary.

L. C. J. What Night was it? what Day of the Month was it?

J. Allen. My Lord, I can't remember what Day of the Month, but it was that Night that Doctor *Clench* was murther'd.

L. C. J. Did you ſee Mr. *Harriſon* there?

J Allen. I can't tell that, I never ſaw him, 'till I ſaw him in Priſon.

Mr. *Harriſon.* Did not you go to Mr. *Maccaffee's* Houſe?

J. Allen. Yes, I did.

Mr. *Harriſon.* Did not one ſtrike you with a Muff?

J. Allen. Yes, but I can't remember who it was.

Lord Mayor. Look upon that Man, do you know him to be the Perſon?

J. Allen. No, my Lord, I do not know him to be the Perſon.

Mr. *Darnell.* Who ſent you to *Crown-Court?*

J. Allen. Mr. *Ruſſell.*

Mr. *Darnell.* For what?

J. Allen. For a Servant Maid, and he bid me tell her that he had a deſire to ſpeak with her.

Mr. *Darnell.* How long did you tarry at the Houſe?

J. Allen. I did not ſtay at all.

Mr. *Harriſon.* Call Mr. *Carden*, Drawer at the *King's-Head* Tavern. [*Who appeared.*]

Mr. *Harriſon.* What time did Mr. *Sutton* come to your Houſe, did you ſee any one ſtand at the Coach ſide? and what Cloaths had he on?

Carden. I ſaw one ſtand at the Coach ſide, and he had a Hanging-Coat or a Cloak on, it was about the Hour of Eleven, to the beſt of my knowledge, and I ſaw a Man go into the Coach, and come out again.

Mr. *Coroner.* What time of Night do you ſhut your Doors, eſpecially on *Monday* Nights; and were they ſhut when Mr. *Sutton* called in the Coach?

Carden. We ſhut them commonly about Eleven a Clock at Night, but on *Monday* Nights uſually later; they were ſhut when Mr. *Sutton* called, and I opened them for him.

L. C. J. Can you ſay that the Priſoner was the Man that drank with Mr. *Sutton?*

Carden. To the beſt of my knowledge (*looking on the Priſoner*) that is the Man, I can't be poſitive, my Lord.

L. C. J. Well, have you any more Witneſſes?

Mr. *Harriſon.* No, my Lord, unleſs Mr. *Eſſington* be here, he promiſed to be here to give an account of me. My Lord, there is a Gentleman that is in the *Preſs-Yard*, one Mr. *Butler*, I deſire he may be ſent for, if your Lordſhip pleaſe.

L. C. J. Let him be fetch'd down.

[*Which was done.*]

L. C. J. But, in the mean time, it behoves you to give an account of theſe things. Firſt, why did you ſay that you were a Parliament Man. Secondly, why did you leave your Lodgings and take other Lodgings in *Paul's-Church-Yard?* Thirdly, why did you ſay that you had extraordinary buſineſs? Give ſome account what your buſineſs was, and who that Gentleman was, that ſtaid for you in the Street, when Mr. *Humſton* deſired you to ſtay and Sup with him, what hinder'd you from accepting his Invitation? Now we would have you to Conſider of theſe things, and give an anſwer to them, for it much concerns you ſo to do.

Mr. *Harriſon.* My Lord, firſt as to the firſt, I do declare that I never went for a Parliament Man, nor never ſaid ſo: Secondly, that Night I was to go out of Town, I had left word at ſeveral Coffee-Houſes that I was going out of Town upon earneſt Buſineſs, and with above twenty People beſides, that I was going out of Town, and I was about to go to *Baſing-Stoke*, to a Gentleman that owed me Money, one Mr. *Bulling*, but I could not get money to go.

L. C. J. Prove that you were to go into the Country.

Mr. *Harriſon.* My Lord, I can't prove that now, except I could have ſent to *Baſing-Stoke.*

L. C. J. That you ſhould have done before now; why did you not ſtay with Mr. *Humſton*, when he Invited you to Sup with him? You might have been better entertained there, than by going among ſtrangers to Play at Cards for a Penny a Corner, at an Ale-houſe.

Mr. *Harriſon.* My Lord, I was unwilling to ſtay, becauſe he had Strangers with him.

L. C. J.

L. C. J. What if he had, you are not ſuch a baſhful man, that you could not Sup with Strangers.

Mr. *Harriſon.* My Lord, *Mr. Rowe* was accuſed with me.

L. C. J. What if he was? he was under ſome Suſpicion, and he hath made it appear where he was at the time the Fact was Committed, and now he is Diſcharged.

Then Mr. Butler *was brought into Court from* Newgate, *attended by a Keeper.*

M. *Harriſon.* Mr. *Butler*, Pray tell the Court what Mr. *Fairbeard* ſaid to you about me?

Mr. *Butler.* My Lord, Mr. *Fairbeard* asked me what I could ſay about what Mr. *Harriſon* had ſaid to me concerning the Murder of Doctor *Clench*? I told him I could not tell what to make of his broken and rambling Speeches and Diſcourſes, they being moſt of them ſpoken when he was in his Drink. This is all that I know, my Lord.

L. C. J. This is not a Witneſs for your turn.

Mr. *Darnell.* Call Mrs *Anwell.*

Who was ſent for from her Lodgings in Brownlow-Street *in* Holborn, *and appeared, and was Sworn.*

Mr. *Darnell.* Madam, pray give an account what Mrs. *Aſhbolt* told you concerning any Man's being in a Coach at *Brownlow-ſtreet* end?

Mrs. *Anwell.* I know nothing of my own Knowledge, but the Night that Doctor *Clench* was Murthered, I ſent Mrs *Aſhbolt* of an Errand, and at her return, I blam'd her for ſtaying ſo long; and ſhe told me, that as ſhe was returning home, a Coach ſtop'd at *Brownlow-Street* end, with two Men with Cloaks on in it, and that one of them bad the Coachman go for Doctor *Clenche*, and deſire him to come to them, and in his going ſeveral times look'd back as if he ſuſpected the men would leave the Coach, and ſo ſhe ſtayed until Doctor *Clenche* came and went into the Coach, and that one of the men gave the Doctor his Place; and that one of them had a fair Perriwig and a ſanguine Complexion.

Mr. Darnell. What diſcourſe had you with her when you heard that thoſe men had murdered Doctor *Clench*?

Mrs. Anwell. She told me that one of thoſe men had a fair Perriwig and a ſanguin Complexion, and that one of them had a Cloak on.

L. C. J. Did ſhe ſay that ſhe obſerved either of their Faces?

Mrs. Anwell. Yes, my Lord, ſhe ſaid that one of them had a round Face, and a big Voice.

L. C. J. Did ſhe ſay, ſhe could know him again?

Mrs. Anwell. No, my Lord, ſhe did not ſay ſo, but ſhe ſaid that ſhe could know his Voice again. And after the laſt Seſſions I told Mrs. *Clenche* of it, and that if ſhe would ſend for the young Woman, ſhe would inform her further of it.

L. C. J. Madam, Pray what was the reaſon, that ſhe did not diſcover it ſooner to Mrs. *Clenche*?

Mrs. Anwell. Why truly becauſe Mrs. *Aſhbolt*, her Mother, was unwilling ſhe ſhould concern her ſelf in ſuch a matter.

Mr. Darnell. Call another Witneſs, Mr. *Jones*, Coach-maker. *(Who was ſworn.)*

Mr. Harriſon. Pray, my Lord, take notice, that now ſhe ſays that thoſe Gentlemen had Cloaks on, that came in the Coach to *Brownlow-ſtreet-end.*

L. C. J. Yes, we heard her what ſhe ſaid.

Mr. Darnell. My Lord, I will ask this Witneſs, Mr. *Jones*, a Queſtion.

Mr. Darnell. Prav Sir, tell my Lord and the Jury, what Mrs. *Aſhbolt* did at *Newgate*?

Mr. Jones. My Lord, I went with her to *Newgate*, together with Doctor *Clenche* his Coachman, and when ſhe came to *Newgate*, before ſhe ſaw Mr. *Harriſon* (only ſtood at the Chamber Door and heard him ſpeak) ſhe ſaid, that to the beſt of her Thoughts, he was the Man that put his Head out of the Coach to look after the Coachman, and ſwore at him, for ſhe knew his Voice. And when ſhe came to ſee him, ſhe ſaid that ſhe knew his Face, and declared that was the Man that put his Head out of the Coach.

L. C. J. Did he look out of the Coach, Mrs. *Aſhbolt*?

Mrs. Aſhbolt. Yes, my Lord, he put his head out of the Coach, and look'd after the Coachman, to ſee if he went right to Doctor *Clench*'s Door, and did ſwear at him, becauſe he went no faſter.

L. C. J. How could you diſcern his Face?

Mrs. Aſhbolt. By the Light of two Lamps, that were near, which did ſhine into the Coach.

L. C. J. Can you take it upon your Oath that the Priſoner is the ſame Perſon?

Mrs. Aſhbolt. Yes, my Lord, I can both by his Voice and Face.

Mr. Darnell. Now, my Lord, we ſhall ſhew your Lordſhip ſomewhat in Relation to the Credit of thoſe Witneſſes, that the Priſoner hath brought here; particularly, as to Mr. *Baker*, we ſhall prove that he hath been convicted for a Cheat. And as for *Maccaffee*, he keeps a very diſorderly Houſe, where ill People commonly reſort.

Mr. Darnell. Cryer, call Mrs. *Martha Whelſtead*, and Mr. *Thomas Cole.*

L. C. J. Mrs. Jones, what time did Mr. *Harriſon* come to your Houſe, to his Lodging that Night that the murder was committed?

Mrs. Jones. I think it was about eleven a Clock, or a little before eleven.

L. C. J. What time on the *Monday* did he hire the Lodging of you?

Mrs. Jones. It was ſometime after Dinner.

L. C. J. It was before Night, was it not?

Mrs. Jones. Yes, my Lord, it was before Night.

Mr. Darnell. My Lord, I deſire that Mr. *Tanner* may read the Record againſt Mr. *Baker*, whereby it will appear that he was indicted and convicted at *Hicks's-Hall*, for cheating the Pariſh of St. *Giles* in *Middleſex*, when he was Scavenger there, by altering the Figures in the Book, and rateing the Sums of Money higher upon divers of the Pariſhioners, than they were in the Pariſh Book, and then collecting and extorting the Money, ſo by him increaſed, from them.

Mr. *Tanner* reads the Indictment aforeſaid, by which it did appear to the Court, and to the Jury, that the ſaid Mr. *Baker* was indicted for the Offence aforeſaid, and confeſſed the Indictment, and was fined for it twenty Shillings.

Mr. Baker. My Lord, I was wrongfully indicted, and traverſed the Indictment, and was acquitted.

L. C. J. Mr Tanner, give me the Record.

(*Lord Chief Juſtice* peruſes the Record.

Mr. Baker, I have read the material parts of the Record, and do find that you were indicted for that Offence, and that you confeſſed the Indictment, and were fined for it.

Mr. Baker. My Lord, I was acquitted of it, and can prove it by Captain *Cannon*, who knows me, and my Reputation, and he is in Court.

L. C. J. Mr. Baker, the Record teſtifieth the Truth, and cannot err, therefore you have great Confidence to aver againſt it, yet I will hear what Captain *Cannon* ſaith.

Mr. Baker. Call Captain *Cannon*.

(*Who appeared.*)

L. C. J. Captain *Cannon*, do you know this Mr. *Baker*?

Captain *Cannon.* Yes, my Lord, very well.

Mr. Darnell. My Lord, I deſire that Captain *Cannon* may be ſworn.

L. C. J. Mr. *Tanner*, ſwear Captain *Cannon*.

(*Who was ſworn.*)

L. C. J. Sir, do you know that Mr. *Baker* was indicted for falſifying of the Scavenger's Book when he was Scavenger, and acquitted or convicted, and what do you know about it?

Captain *Cannon.* My Lord, I am an Inhabitant of the Pariſh of St. *Giles* in the Fields, and ſo I was when Mr. *Baker* was Scavenger, and do well remember that ſome of the Inhabitants of that Diviſion where he was Scavenger, were troubled and complained, that they were charged more than uſually they had been to the Scavenger's Rate; and it was diſcover'd that ſeveral Figures of the Book by which Mr. *Baker* collected the Money to the Scavenger's Rate, were blotted and altered, and did not agree with the Pariſh Leadger-Book, but the Sums in his Book ſo blotted and altered were raſed; whereupon it was ordered that he ſhould be indicted for it, and it was done accordingly, and he was fined for it, and to the beſt of my Remembrance he confeſſed that Indictment.

L. C. J. Captain *Cannon*, Pray tell the Court and the Jury, of what Reputation Mr. *Baker* is now.

Captain *Cannon.* My Lord, he is now of none of the cleareſt Reputations.

Captain *James Partrich*, of the ſame Pariſh, being in Court, offered himſelf, and gave the ſame account of Mr. *Baker* that Captain *Cannon* did.

Mr. *Darnell.* Cryer, call Mr. *Francis Brampton*, Mrs. *Martha Whelſtead*, and Mr. *Thomas Cole*.

(*And Mrs. Whelſtead and Mr. Cole appeared, and were ſworn.*)

Mr. Darnell. Mrs. *Whelſtead*, pray give the Court and Jury an account what diſorderly Houſe Mr. *Maccaffee* keeps?

Mrs. *Whelſtead.* My Lord, I dwell in *Crown-Court* in *Chancery-lane*, over againſt Mr. *Maccaffee*'s Houſe; and he and ſhe are very ill People; and keep a very evil and ſcandalous Houſe, and ſuch as are reputed to be Houſe-breakers, Pick-Pockets, and Lewd Women, do uſe and frequent the Houſe; and there is commonly at late hours in the Night, Perſons calling out murder, and Whore and Rogue, and ſuch ſort of Language, diſturbing their Neighbours; and their Houſe hath been ſeveral times ſearched by ſeveral Conſtables for ſtollen Goods, and for the Perſons that have ſtollen them; and upon ſuch Searches, there have been ſtolen Goods found there: And I have ſeen great Lewdneſs there between Men and Women; and the Neighbours do account it a Houſe of an ill Fame, and do avoid going thither.

Mr. *Tho. Cole.* My Lord, I do know Mr. *Maccaffee* and his Wife; I do dwell over againſt his Houſe, and they are reputed to keep an ill Houſe, and moſt Perſons that frequent it, are reputed to be Perſons of lewd and evil Lives and Converſations; and it is amongſt the Neighbourhood noted for a ſcandalous Houſe, and ſeveral Conſtables have ſeveral times ſearched there for ſtolen Goods.

L. C. J. What have you more to ſay, Mr. *Harriſon*?

Mr. *Harriſon.* I cannot ſay any thing more; you may deal with me according to my Deſerts in this matter.

L. C. J. You may aſſure your ſelf, that we will do you no wrong; have you any more to ſay? (*He made no Reply.*)

Mr. *Darnell.* My Lord, we have another Witneſs come now, who was not here before. Cryer, call Mr. *Charles Whitfield*.

(*Who was ſworn.*)

Mr. *Darnell.* My Lord, this Gentleman can give your Lordſhip an account what the Priſoner ſaid of his being juſt come out of the Country, upon the fifth of *January* laſt. Pray tell my Lord what you know, Sir.

Mr. *Charles Whitfield.* My Lord, upon the fifth day of *January* laſt, being the Day day after Dr. *Clenche* was murdered, I went to *Joe*'s Coffee-houſe in *Salisbury-Court*, and there Mr. *Harriſon*, ſitting by the Fireſide, ſays I to Mr. *Harriſon*, where have you been for a long time that I have not ſeen you? Says he, I have been in the Country: Where ſays I? Says he, about twenty Miles off, in *Kent*; and I want a Landreſs, and a Lodging. Says I, do you hear the News, Sir? What News, ſays he? Why, ſaid I, of Dr. *Clench*'s being murdered: I cannot tell the Occaſion, ſaid I, but he was found dead in a Coach laſt night in *Leadenhall-ſtreet*. Then, ſays he, I did love him very well once, but of late he hath been a barbarous Rogue to a Gentlewoman, a Friend of mine, and ſhe is in the Compter now: And Mr. *Harriſon* ſaid it was a juſt Judgment of God upon the Doctor for being ſo great a Villain to the Gentlewoman; therefore I will write to her preſently, and give her an account of his Death. And my Lord, the Contents of his Letter were theſe, as near as I can remember.

Madam,

'I Am juſt now going to *Lambeth*, but hearing of Dr. *Clench*'s murder, I do hereby 'give you an account of it, and can impute it 'to no leſs than a juſt Judgment of God upon 'him for his Baſeneſs ſhewed to you. And if 'you think fit to ſend to Madam *Clenche*, it may 'be ſhe may ſend ſomewhat towards your Relief, ſhe now being a Widow as well as you.

Madam,

I am yours to command,

Henry Harriſon.

My

My Lord, after this came into the ſame Coffee-Houſe another Perſon one Mr. *Ravenſcroft*, of whom Mr. *Harriſon* asked ſome Queſtion about Dr. *Clenche*; who reply'd, That he heard that Dr. *Clenche* was murdered, and that it was committed by a Bully of the Town that belonged to a Gentlewoman in the Compter who was laid in there upon Dr. *Clench*'s account; at which, he was much ſtartled: Says he again, There is no Perſon familiar with that Gentlewoman but my ſelf; for I know, and am concerned in all her Affairs: Perhaps then I may be taken up about it: Or, my Lord, he uſed Words to that effect.

Mr. *Harriſon*. My Lord, this Woman was not in the Compter upon Dr. *Clench*'s account.

L. C. J. No, the Witneſs don't ſay ſo; but that it was the Diſcourſe of the Town that ſhe was, and the Town did ſuppoſe her ſo to be. What did he ſay further, Sir?

Mr. *Whitfield*. My Lord, he ſaid that he had been in *Kent* about twenty Miles off; and he ſaid, that he wanted a Landreſs, becauſe he had ſome foul Linnen to waſh; which he produced. This was on the *Tueſday*, and the Murder was committed on the *Monday*-night before: And, my Lord, there were two more Gentlemen that heard him as well as I, that he ſaid, That he had been about twenty Miles off in *Kent*, and that he was newly come to Town. Now, my Lord, I could not imagine for what Reaſon this Man ſhould ſay, that he had been out of Town about a Fortnight or three Weeks, when he was in that Houſe but the *Monday* night before; that is, the Night the Murder was committed.

Mr. *Darnell*. Cryer, call Mr. *Biſhop*.

(Who appeared and was ſworn.)

Mr. *Biſhop*. About three Years ago the Priſoner came to my Maſter's Shop to cheapen ſome Linnen, and when ——

L. C. J. Hold, what are you doing now? Are you going to arraign his whole Life? Away, away, that ought not to be; that is nothing to the matter. Have you done, Priſoner?

Mr. *Harriſon*. Yes, my Lord, I have done, I refer my Cauſe to your Lordſhip.

L. C. J. Gentlemen of the Jury; The Priſoner at the Bar, *Henry Harriſon*, ſtands indicted for the wilful murder of Dr. *Andrew Clenche*, who was barbarouſly murdered on the fourth day of *January* laſt: You have heard the Witneſſes that have been ſworn; and upon their Teſtimony, it doth appear that two Perſons came to *Brownlow-ſtreet* End in a Coach after nine a Clock at Night, and ſent the Coachman to the Doctor's Houſe, under pretence to get him to a Patient, a Friend of theirs, that was ſick. By this Contrivance, they got him into their Coach, which they had brought for that purpoſe, and then they ordered the Coachman to drive to *Leadenhall ſtreet*; and when they came about *Holbourn-Bars*, one of them ask'd the Coachman why he drove ſo ſlow, and bad him drive faſter. When they came to *Leadenhall-ſtreet*, then they bad him drive to the *Pye-Tavern* without *Aldgate*; where one of them bad the Coach-man ask for one *Hunt*; but he not being there, one of them bad the Coachman return back, and gave ſix Pence to the Watch to come through the Gate, which was ſhut in the mean time; and when they came to *Leadenhall-Market*, one of them gave the Coachman three Shillings and ſix Pence, and ſent him to buy a couple of Fowls; which the Coachman did buy, and brought them to the Coach; but when he came back, he found the Doctor in the body of the Coach leaning againſt the fore Seat of the Coach, a Handkerchief being tied about his Neck with a Coal in it, placed upon his Wind-pipe; which Handkerchief and Coal have been produced in Court.

The Queſtion is, Gentlemen, Whether the Priſoner at the Bar be guilty of this baſe and barbarous Murder? To prove which, there hath been a very long Evidence given, ſome Poſitive, ſome Circumſtantial. It has been proved that Dr. *Clenche* had ſome Dealings with a Woman named *Vanwicke*, and had lent her one hundred and twenty Pounds, and had taken a Mortgage for it. This Priſoner, Mr. *Harriſon*, was a great Acquaintance, and very intimate with this Woman; and did concern himſelf in the Management of her Affairs: and becauſe Dr. *Clenche* did refuſe to lend the Woman more Money, therefore he had an Animoſity againſt Dr. *Clenche*. The Money not being paid to the Doctor as he did expect, he did call it in; and therefore this Gentlewoman did oftentimes repair to Dr *Clenche* to deſire farther Time or Forbearance, becauſe ſhe could not raiſe or procure the Money elſewhere. That about *Michaelmas* laſt it ſeems ſhe came to a Coffee-houſe near *Warwick*-houſe in *Holborn*, and there was Mr. *Harriſon*; where they conſulted what to do. And it was agreed, that the Miſtreſs of the Houſe and Mrs. *Vanwicke* ſhould go to Dr. *Clench*'s; but Mr. *Harriſon* ſhould ſtay behind, for it was not thought convenient that he ſhould go, leſt he ſhould provoke the Doctor. When they came to the Doctor, Mrs. *Vanwicke* was very importunate to have more Money; but the Doctor would lend her no more. And when they returned to the Coffee-Houſe again, Mr. *Harriſon* enquired what paſſed between the Doctor and Mrs. *Vanwicke*. She told him, that the Doctor would not furniſh her with any more Money, although ſhe had preſſed him to do it, and urged her great Neceſſities, but adviſed her to go to Service. Damn him, ſays *Harriſon*, does he ſay that a Woman of your Quality ſhould go to Service? He is a great Rogue, and deſerves to have his Throat cut, but let me alone, I will manage him.

At another place there was a Diſcourſe betwixt Mr. *Harriſon* and one Mr. *Johnſon*; and that the Priſoner did then ſpeak very hard and ill Words of Dr. *Clenche*: And that Mr. *Harriſon* came frequently to him; and one time laid his hand upon his Sword, uſing ſome menacing Words, but what they were he cannot tell: But he likewiſe ſays, that at ſeveral times he did expoſtulate with him, and told him, That he would not do any good with ſuch Diſcourſes as theſe are, *&c.* That the Mortgage money not being paid, it was thought fit, That there ſhould be a Proſecution made to get Poſſeſſion of the mortgaged Eſtate, and that the Tenants ſhould be forbid to pay their Rents. And Mr. *Harriſon* went to Mrs. *Weſt* the Tenant, ſome few days before St. *Thomas*'s Day laſt, and demanded the Rent of her. To which ſhe made anſwer, That Dr. *Clenche* had forbid the Payment of the Rent to Mrs. *Vanwicke*. Thereupon Mr. *Harriſon* grew very angry, and anſwered, That Dr. *Clenche* was a Rogue and a Villain, and bid her

that ſhe ſhould not pay him any Rent. And the Witneſs ſaith further, That the Doctor being preſt to let her have ſome more Money, refuſed to do it, becauſe ſhe would ſpend it all upon *Harriſon*.

Then the Council for the King called ſome Witneſſes, who gave you account of the Priſoner's ſhifting his Lodgings the day before the murder was done. He takes a Lodging at Mr. *Garway*'s in *Threadneedle ſtreet*, on the twenty third day of *December*, and there he continued till about the firſt of *January*. The ſecond of *January* he was at *Garway*'s Shop; and on the *Sunday* night he came and fetcht away his Things. The *Monday* after, being the day that this barbarous Fact was committed, he ſent a Letter to Mrs. *Garway*, to acquaint her that he was gone out of Town; but he left three Half Crowns with her Maid to pay for his Lodging. But as to his going out of Town, it was falſe, for he never went into the Country, but took a Lodging at Mr. *Jones*'s in St. *Paul*'s Church yard. It's obſervable alſo, that he went for a Parliament-man when he lodged at Mr. *Garway*'s, and had his Footman to attend upon him, *&c.* There it was that he was ſeen to have an ordinary Handkerchief, and to hold it to the Fire; which was taken notice of by Mrs. *Jackſon*, the Daughter of Mrs. *Garway*, which was not ſuitable, as ſhe thought, to a Parliament-man's Quality, but rather fit for a Seaman, for it was like the Apron of the Maid in the Houſe: which hath been ſhewed in Court, and compared with the Handkerchief that was tied about Dr. *Clenche*'s Neck. She ſaith it is the ſame, or very like that which ſhe did ſee Mr. *Harriſon* hold in his hand.

Cartwright the Officer at the Compter, he tells you, that the *Sunday* night, the day before the murder, Mr. *Harriſon* came to *Woodſtreet* Compter, and enquired for Mrs. *Vanwicke*, and that he only was in her Chamber, and no other Body on that ſide of the Houſe but Mrs. *Vanwicke*, the Priſoner, and this *Cartwright* the Keeper, who ſtood at the Door, and heard *Harriſon* ſay, That he would have the Blood of that Rogue, and named *Clenche* or *Winch*.

Mr. *Harriſon*. My Lord, he was not in the Room.

L. C. J. No, he was not; but there were none on that ſide the Houſe but you, *Cartwright*, and Mrs. *Vanwicke*.

Now, on the *Monday* on which this Fact was committed, he having taken a Lodging at *Jones* his Houſe, he came thither with a Porter, who brought his Portmantua-Trunk about eight a Clock at night; and after he had been there a little while, he went away.

And you are told, by a Gentleman that lodges at the *Golden-Key* againſt *Fetter-lane* end; That he had ſome Acquaintance with the Priſoner, that he had lent him a Morning-Gown; and that about nine a Clock that very night, he came to his Lodging in a Cloak; and then the Gentleman asked him for his Gown; and he told him, that he had brought it with him. Thereupon the Gentleman invites Mr. *Harriſon* to ſtay and ſup with him. Mr. *Harriſon* ſaid, he could not ſtay, for he was engaged; he muſt be gone, for that a Gentleman ſtaid in the Street for him to go about extraordinary Buſineſs.

The Coachman tells you, That near about that time two Men in *Fleet-ſtreet*, near *Fetter-lane* end, hired his Coach of him to go to *Brownlow-ſtreet* to Dr. *Clench*'s; but he can't poſitively ſay, that the Priſoner at the Bar was one of them, but he ſwears, he does verily believe that he was one of them.

Mr. *Harriſon*. He ſaid before your Lordſhip, That he could not remember what I had on.

L. C. J. Well, well, he doth not remember it now; but being hired to go to Dr. *Clench*'s, he drove to the Street end and no further, becauſe the Gate at the lower end was ſhut up, and he could not turn his Coach in the Street; but he was ſent by them to the Doctor's, to deſire the Doctor to come out to them, and they ſat in the Coach in the mean time. The Doctor made haſte, and went to them immediately, and they drove away to *Leaden hall*, and then to *Aldgate*; and they called at the *Py-Tavern*, and enquired for one Mr. *Hunt* a Chirurgeon, as I mentioned to you before: He not being there, they returned to drive through *Aldgate*, gave the Watch ſixpence, and paſſed through the Gate without any manner of notice taken: but if the Watch had done their Duty, it might have been better diſcovered. But further, the Coachman tells you, that when he came to *Leaden hall* Street, they called to him, and directed him to buy one Fowl; and after that he had been gone a little way from the Coach, they called him back, and bad him take ſome more Money and buy two Fowls. So he went and bought the Fowls; but when he came back, the two Gentlemen were gone, and he found the Doctor ſtill in the Coach; and he not ſtirring, he thought he had been in Drink: but upon further Examination, and calling the Watchman with his Candle, it appeared that the Doctor was ſtrangled with a Handkerchief and a Coal.

There is one Mrs. *Elianor Aſhbolt*, who lives in *Brownlow-ſtreet* with her Mother, and had been ſent of an Errand; and between nine and ten of the Clock at Night, ſhe ſaw the Coachman in *Brownlow-ſtreet*, and thought that thoſe men in the Coach might have put a Trick upon him, by going away without paying him his Fare. And ſhe ſays further, That by the help of the Lamps ſhe did diſcern the Face of this *Harriſon* in the Coach; he had a Cloak on, with a light Perriwig, and looked out of the Coach, and did ſwear at the Coachman; and by this means ſhe knew him when ſhe ſaw him again, to be the ſame Man, both by his Face and Voice. This Woman indeed was not before the Coroner, and ſhe gives you this reaſon for it, becauſe her Mother was not willing ſhe ſhould be concerned in ſuch a matter as this was; and what ſhe could ſay, was not known to Mrs. *Clenche* until after the ſecond Seſſions: And when he was in *Newgate*, ſhe ſaw him there, and declared he was the ſame Man.

There was another piece of Evidence. *viz.* That of the Boy's, who does not appear, he was examined before the Coroner. There has been Evidence given of ill practice to take him out of the way, and therefore his Affidavit is read for Evidence: He ſwears he ſaw two Gentlemen come out of the Coach when it ſtood in *Leaden hall-ſtreet*, and that having ſeen the Priſoner in *Newgate* ſince, doth believe him to be one. This, Gentlemen, is the ſum and ſubſtance of the Evidence for the King, to prove that the Priſoner was one of thoſe that committed the Murder.

You

You have heard likewiſe what the Priſoner ſays for himſelf; he does undertake to prove that he was in another place, (that is) that he ſhould come into *Maccaffee's* Houſe in *Crown-Court* over againſt *Serjeants-Inn* in *Chancery-lane:* and *Maccaffee*, he tells you, that there were ſome other Company there, and that *Harriſon* came in very cold, and that they went to Cards, and plaid for one Penny a Corner at Whisk; and that he did continue there from nine till eleven a Clock; and if he was there then, it is impoſſible he ſhould be guilty of this Fact, for the Fact was done between the ſame Hours.

Maccaffee's Wife tells you the ſame, and they both tell you who were there beſides, and who plaid together, and are poſitive that the Priſoner was there.

Baker ſays, That he went away about half an hour after ten at Night, and left *Harriſon* behind him. To confirm this Evidence, they have called two other Witneſſes beſides the Drawers at the *King's-Head Tavern*, *viz.* Mr. *Sutton* the Surgeon, who lives in *Stone-Cutter's ſtreet*, and Mr. *Ruſſel*: Mr. *Sutton* ſays, they had been at the *Horſe-Shoe-Tavern* in *Chancery-lane*, and called for half a Pint of Sack at the *King's-Head-Tavern* when they came by: and as they ſat in the Coach, Mr. *Harriſon* came by accidentally, and one of them looking out of the Coach, cries *Harry*, or *Harriſon*; and he went to them, and they drank together another half Pint of Sack.

As to their meeting with *Harriſon*, and as to other Paſſages there, *Ruſſel* ſays the ſame; but as to the time of night he is not poſitive. And they ſent one of the Drawers to a Houſe in *Crown Court* to enquire for ſome body there.

The Drawers of the *King's-Head-Tavern*, ſay, That Mr. *Sutton* and Mr. *Ruſſel* did call there about that time; and that they drank two half Pints of Wine: and that when they were drinking, a Man came by with a Hanging-Coat or Cloak on, and drank with them. And one of the Drawers went to call ſome Body in *Crown-Court*; and one of the Company up with his Muff and gave him a ſlap in the Face.

Now this is the Sum and Subſtance of the Evidence that you have heard on the behalf of the Priſoner, to induce you to believe that he was not the Perſon that was concerned in the Murder of Doctor *Clenche*.

To which Evidence an anſwer hath been offered;

Firſt, As to thoſe Witneſſes, *Maccaffee* and his Wife, divers Witneſſes have been produced to prove, that they are People of doubtful Credit; it ſeems they keep an Houſe of ill Fame.

Mr. *Harriſon*. I am glad, my Lord, that I was there.

L. C. J. Well, well. Gentlemen, the People of the Houſe are not of very good Reputation, they keep a naughty and a diſorderly Houſe, (if you believe the Witneſſes) you may conſider of their Credit.

And as to Mr. *Baker*; about nine Years ſince he was convicted of an arrant Cheat, which is no leſs than Forgery, for altering the Scavenger's Rate for St. *Giles's* Pariſh, and therefore the leſs Credit is to be given to his Evidence; for now it appears that he is a Knave upon Record: and the very Record it ſelf was produced againſt him, which is true without doubt, notwithſtanding his pretence of Innocency. What is ſaid by Mr. *Ruſſel* and Mr. *Sutton*, I muſt leave to your Conſideration; they had been a drinking, and the Drawer ſays they were at the *King's-Head* Tavern at eleven of the Clock at Night. Mr. *Harriſon* the next day after the Murder, met a Gentleman at *Joe's* Coffee-Houſe in *Salisbury-Court*; and though he had taken a Lodging in *Paul's* Church-Yard, yet he ſaid that he was newly come to Town, and had been in *Kent*, and had remained there about three Weeks; and that he wanted a Laundreſs and a Lodging, although he had not been out of Town, and had taken a Lodging but the day before: And then he told the Witneſs who diſcourſed with him about the Death of Dr. *Clenche*, That he had formerly loved him, but he ſaid he had been of late a barbarous Rogue to a poor Gentlewoman a Friend of his; and that the juſt Judgment of God had fallen upon him for ſo doing, and that he would write to her to give her an account of it; and adviſe her to write to Mrs. *Clenche*, and to tell her that ſhe was a Widow now as well as Mrs. *Vanwicke*; and he thought by that means to move Mrs. *Clenche* to pity her, being a Widow as well as her ſelf: And that whilſt they were talking thus, one Mr. *Ravenſcroft* tells him, that Dr. *Clenche* was murdered, and that a Bully of the Town, that belonged to a Gentlewoman in the Compter, one Mrs. *Vanwicke*, was ſuſpected. At which Mr. *Harriſon* was much ſtartled, and ſaid, That no one was concerned with that Gentlewoman but himſelf; and for ought he knew, he might be taken up for it. This is that which he ſaid.

Now what ſaid Mr. *Harriſon* farther for himſelf? Why, ſays he, this Gentlewoman is not in Priſon at the Proſecution of Dr. *Clenche*, and was not ſo affirmed, but ſo reported; and whether it were ſo or no is no great matter. Gentlemen, you ought to conſider of the Evidence that you have heard againſt him, and alſo to weigh well the Evidence he hath brought for himſelf.

It is moſt plain, if you believe the Witneſſes, that Mr. *Harriſon* was concerned for this Woman *Vanwick*, and hath threatned Dr. *Clenche*, called him Rogue and Raſcal, and ſaid, that he deſerved to have his Throat cut; that *Harriſon* went under a Diſguiſe for ſome time before the Murder. You have had an Account of the Handkerchief, what kind of Handkerchief *Harriſon* had, and what Handkerchief was taken about Dr. *Clench's* Neck, you have ſeen: And you heard what Evidence was given by Mr. *Humſton*; how the Priſoner was with him about nine a Clock that Night; and how he refuſed to ſtay and ſup with Mr. *Humſton*. If Mr. *Harriſon* had no earneſt buſineſs, one would have thought he might have ſtaid with Mr. *Humſton* better than to have gone to an Ale-Houſe in *Crown-Court*, and plaid at Cards at one Penny a piece a Corner; he might have had better Fare no doubt.

The Witneſſes for the Priſoner ſay for him, That he came to *Maccaffee's* Houſe about 9 a Clock at night, and ſtaid till eleven: That is contrary to that Evidence given for the King, *viz.* That he was in the Coach at *Brownlow-ſtreet* End; for if he was at *Maccaffee's* Houſe all the time they mention, it is impoſſible he ſhould be guilty. All theſe things are under your ſerious Conſideration. You had beſt go together, and if you are not ſatisfied upon the Evidence you have heard, that he is guilty, then you ought

to

to acquit him; but if you are ſatisfied that he did not commit this Murder, then you ought not to find him guilty.

Then the Jury withdrew, and the Court adjourned for half an hour; and when they were returned, the Jury came to give their Verdict; and being called over, anſwered to their Names; and Mr. *Harriſon* was brought to the Bar.

Cl. of Arraign. Gentlemen, Are you all agreed of your Verdict?

Jury.—— Yes.

Cl. of Arraign. Who ſhall ſay for you?

Jury.—— Our Foreman.

Cl. of Arraign. *Henry Harriſon*, Hold up thy Hand.

[*Which he did.*]

Look upon the Priſoner; How ſay you? Is he guilty of the Felony and Murder whereof he ſtands indicted, or not guilty?

Foreman. Guilty of wilful Murder.

Cl. of Arraign. What Goods or Chattels? *&c.*

Foreman. None that we know of.

Major *Richardſon* Look to him, he is found guilty of wilful Murder.

Cl. of Arraign. Then hearken to your Verdict as the Court hath recorded it.

You ſay that *Henry Harriſon* is guilty of the Felony and Murder, whereof he ſtands indicted, but that he had no Lands, nor Tenements, Goods nor Chattels, at the time of the Felony and Murder committed, nor at any time ſince to your Knowledg: and ſo you ſay all?

Jury.——Yes.

Then the Priſoner was remanded to *Newgate* untill the laſt Day of the Seſſions, and then he was brought to the Bar to receive Sentence of Death.

Cl. of Arraign. *Henry Harriſon*, Hold up thy Hand.

[*Which he did.*]

Henry Harriſon, You ſtand convicted of Felony and Murder, for the Murder of Dr. *Andrew Clench:* What can you ſay for your ſelf why Judgment ſhould not be given againſt you, to die according to Law?

Mr. D. *Recorder.* Mr. *Harriſon*, You have been Indicted, Arraign'd and Convicted of Felony and Murder, for the Murder of Dr *Andrew Clenche.* You have had a long, and a fair and favourable Tryal, as any Perſon that ever hath been Tryed at this Bar.

The Jury that has paſſed upon your Life and Death hath Convicted you, and the Court are now ready to do their laſt Act, which is to pronounce that Sentence that the Law does inflict upon ſuch Crimes as you ſtand Convicted of.

Mr. *Harriſon.* I expect no Mercy here, therefore I humbly deſire you would interceed to the Queen, that I may have twelve Days allowed me, in order to my better Preparation for Death.

Mr. D. *Recorder.*—— Well.

Mr. *Harriſon.* I muſt needs acknowledg, that I was Tryed before the beſt of Judges, my Lord-Chief-Juſtice *Holt,* but one thing I think ſtrange, that my Witneſſes ſhould be examin'd ſingly, and not the King's.

Mr. D. *Recorder.* That is no more than what is uſual, the Council for the King and Queen requeſted it, and you did not.

Mr. *Harriſon.* I beg'd that I might have timely notice of my Tryal, and I had not; there were ſeven People in my Company at that time when this black and bloody Murder was done, and I could not get them to be here.

Mr. *D. Recorder.* You have had a long time to get them ready, and you preſſed on your own Tryal, which you ſhould not have done if you had not been ready.

Mr. *Harriſon.* I humbly ſubmit.

Then the uſual Sentence of Death was pronounc'd againſt him, and he was Remanded to Newgate.

The Examination of Henry Harriſon *this 6th. Day of* January, 1691.

THIS Examinant being ask'd where his Lodgings are, anſwereth, That he Lodgeth at the *Golden-Ball* in *Paul's* Church-Yard, and came to Lodge there on *Monday* Night about Eleven of the Clock or half an hour after, but took the Lodgings in the Morning, the Maſter of the Houſe being one Mr. *Jones* a Cane-Chair-Seller; and before that time this Examinant lodged at the *Hand* and *Apple* near the *Exchange,* which ſaid Lodging he left on *Saturday* laſt in the Morning, and paid for them on *Sunday* Afternoon. And this Examinant ſaith, That on *Saturday* Night laſt he lodg'd at the *White Balcony* in Old *Southampton-Buildings,* the Miſtreſs of the Houſe being one Miſtreſs *Pitts*: And this Examinant Lodged there on *Sunday* Night alſo. And this Examinant ſaith, That he was at the *King's Head* in *Crown-Court* in *Chancery-Lane* upon *Monday* laſt, from between Seven and Eight of the Clock at Night, and ſtayed there until Eleven, playing at Cards with the Man and Woman of the Houſe, and other Perſons unknown. And being ask'd where he Dined on *Monday*, and how he ſpent his Time on *Monday* in the Afternoon, he ſaith, he cannot give an Account. And this Examinant ſaith, that on *Tueſday* laſt Mr. *Hartly* of *Old Southampton-Buildings,* diſcourſing concerning the Murder of Doctor *Clench,* ſaid, That this Examinant was ſuſpected to be guilty of that Murder. And this Examinant further ſaith, That he wore the ſame Cloaths he hath now on upon *Munday* laſt, and hath worn them a great while having no other Clothes to wear.

Capt. & Cognit. 6. die Jan. 1691. Coram J. Holt. *Hen. Harriſon,*

The Tryal of John Cole, 4 W. & M.

At the Seſſions of Goal-Delivery of Newgate, *holden for the City of* London, *at Juſtice-Hall in the* Old-Bayly, *on the* 31ſt *day of* Auguſt, *and on the firſt and ſecond days of* September, *in the Fourth Year of their Majeſties Reign.*

Judges preſent { Mr. Juſtice *Dolben*, and Mr Juſtice *Powel*.

THE Keeper of *Newgate* did, according to Order of the Court being ſate, on *Friday* the 2d day of *September*, bring up the Body of *John Cole* to the Seſſions Houſe in the *Old-Baily*, *London*; who being at the Bar, was Arraigned upon an Indictment of Felony and Murther, found againſt him by the Grand Jury of the City of *London*, for the Murther of Dr. *Andrew Clenche*.

Cl of Arraignment. JOhn *Cole*, hold up thy Hand. (*Which he did.*) You ſtand indicted by the Name of *John Cole*, of *London*, Labourer, for the Murther of Dr. *Andrew Clenche*, &c. and the Indictment is in ſuch manner as that againſt Mr. *Henry Harriſon*.

How ſay you, *John Cole*, are you guilty of the Felony and Murther whereof you ſtand indicted, or not guilty?

John Cole. Not Guilty.

Cl. of Ar. Culpriſt. How will you be tryed?

John Cole. By God and my Country.

Cl. of Ar. God ſend you a good Deliverance.

And afterwards the ſaid John Cole *was brought to the Bar upon his Tryal; and thoſe Perſons who were returned upon the Jury, were called over twice, and their Appearances recorded.*

Cl. of Ar. You, *John Cole*, Theſe Men that you ſhall hear call'd, and perſonally do appear, are to paſs between our Sovereign Lord and Lady the King and Queen, and you upon Tryal of your Life and Death; if therefore you will challenge them, or any of them, your time is to challenge them as they come to the Book to be Sworn, and before they be Sworn.

Then the Jury were call'd and Sworn, and then were counted; and the Twelve Sworn were theſe whoſe names follow.

John Clay	*Cuthbert Lee*
Edward Sherlock	*Thomas Watſon*
John Ruddyer	*Thomas Milburne*
Benj. Evans	*Thomas Applebury*
George Beſtow	*Nicholas Harris*
Archibauld Wilſon	*Ralph Cates.*

Then Proclamation was made for Information and Evidence as uſual.

Cl. of Ar. John Cole, Hold up thy Hand. (*Which he did.*)

Gentlemen, You that are ſworn, look upon the Priſoner, and hearken to his Cauſe. He ſtands indicted by the Name of *John Cole*, late of *London*, Labourer, *&c.* as in the Indictment. Upon this Indictment he hath been arraigned, and thereunto hath pleaded not guilty; and for his Tryal hath put himſelf upon God and his Country, which Country you are. Your Charge is to enquire whether he be guilty of this Felony and Murther whereof he ſtands indicted, or not guilty. If you find that he is guilty, you are to enquire what Goods or Chattels, Lands or Tenements he had at the time of the Felony and Murther committed, or at any time ſince. If you find him not guilty, you are to enquire whether he fled for it; if you find that he fled for it, you are to enquire of his Goods and Chattels as if you found him guilty; if you find him not guilty, nor that he did fly for it, you are to ſay ſo, and no more; and hear your Evidence.

Cl. of Ar. Cryer, Call *Mary Milward*, *Joſeph Dudley*, *John Dudley*, *Jane Warren*, *Sarah Dueley*, *Anne Gunn*, *Anne Geſſon*, *Anne Warren*, *Elizabeth Harper*, *Mary Edwards*, *John Gamble*, *John Sykes*, *Robert Rebone*, *Richard Eades*, *Richard Marryot*, *Samuel Revet*, *Henry Milward*, *Squire Dalley*, *William Brown*, *Francis Hobbs*. Who were all ſworn.

Cl. of Ar. Set *Mary Milward* up.

Mr. Juſtice *Dolben*. What have you to ſay, Woman, againſt *Cole* the Priſoner, concerning the Murther of Dr. *Clenche*?

Mrs. *Milward*. My Lord, my Husband declar'd to me, that he and Mr. *Cole* were in the Coach with Dr. *Clenche*, and that they two kill'd Dr. *Clenche*.

Mr. Juſtice *Dolben*. That's no Evidence at all what your Husband told you; that won't be good Evidence if you don't know ſomewhat of your own Knowledge.

Mrs. *Milward*. My Lord, I have a great deal more that my Husband told me, to declare.

Mr. Juſtice *Dolben*. That won't do: what if your Husband had told you that I kill'd Dr. *Clenche*, what then? That will ſtand for no Evidence in Law: We ought by the Law to have no Man call'd in queſtion, but upon very good Grounds and good Evidence, upon Oath, and that upon the Verdict of Twelve good Men.

Have

Have you any body that can prove any thing againſt *Cole*, or does it all ariſe barely from your Husband's Report?

Mrs. *Milward*. My Husband declared that he and Mr. *Cole* were to go under a pretence to rob the Doctor, and ſo to take their Opportunity to kill him; and the firſt time they call'd at Doctor *Clenche*'s, he was not within, but the ſecond time they went he was within, and then they did the Murther.

Mr. Juſt. *Powel*. When dy'd your Husband Miſtriſs?

Mrs. *Milward*. The 23d of *May* laſt, Sir,

Mr. Juſt. *Dolben*. Here hath been two or three Seſſions ſince that time, why did not you take up *Cole* about it before now?

Mrs. *Milward*. I did not know where to find him.

Mr. Juſt. *Dolben*. Why, then you ſhould have gone to a Magiſtrate, and told him of it, and taken ſome advice about it.

Mrs. *Milward*. I did as ſoon as I had found Mr. *Cole*

Mr. Juſt. *Dolben*. Your buſineſs had been to have diſcover'd this to Mrs. *Clenche*, and ſhe ſhould have look'd after *Cole*; is Mrs. *Clenche* here?

Sir *William Hurſt*. Here is her Brother-in-Law.

Mr. Juſt. *Dolben*. Do you proſecute *Cole* upon this Indictment?

Mr. *Wiſe*. No, my Lord, I do not. Mrs. *Milward* is the Proſecutor, and ſhe charged Mr. *Cole* with the Murther of my Brother Dr. *Clenche*; and ſhe told my Siſter *Clenche*, that Mr. *Milward* her Husband confeſſed and ſaid ſometime before his Death, that he and Mr. *Cole* murther'd Dr. *Clenche* in a Coach; and Mrs. *Milward* ſaid, That ſhe had ſufficient Evidence againſt Mr. *Cole* for it, and my Siſter *Clenche* told Mrs. *Milward* that Mr. *Harriſon* murther'd Doctor *Clenche* in a Coach, together with another Perſon, which my Siſter *Clenche* ſaid, ſhe believed was the ſaid Mr. *Milward*, Husband of the ſaid Mrs. *Milward*; and that ſhe had a Warrant againſt him, the ſaid Mr. *Milward*, upon Suſpicion for it, but could not take him, and that ſhe ſuſpected that there were other Perſons contrivers or concerned in it; who were ſet down at the *Blue-Boars-Head* Ale-Houſe near *Clements Inn*, by Mr. *Gamble* a Coach-man out of his Coach, together with the ſaid Mr. *Milward* in their return from Dr. *Clenche*'s Houſe that Night he was murder'd; and my Lord, by my Siſter *Clenche*'s Order, I went with Mrs. *Milward* to all her Witneſſes, and took Notes of their Evidence, and I went with ſeveral of them to my Lord Chief Juſtice *Holt*'s Chamber, before whom they gave in their Informations upon Oath about it, and when I had done it, I told Mrs. *Milward* I could find no Evidence that ſhe had againſt Mr. *Cole*, more than that he was at Dr. *Clenche*'s Houſe, and at the ſaid *Blue-Boars-Head* Ale-houſe with Mr. *Milward*, and another Perſon, that night Dr. *Clenche* was murdered, and ſo he might be concern'd in the contrivance of it; whereupon Mrs. *Milward* was diſſatisfied, and ſaid, ſhe was not able to Proſecute him for it; ſo my Siſter ſaid to Mrs. *Milward*, that ſhe might if ſhe would prefer an Indictment againſt him for it, and that ſhe would pay for it, and other Charges about it, which ſhe did; and Mrs. *Milward* hath a Note of the Names of all her Witneſſes, and may call them.

Sir *Rob. Clayton*. Did not you lie at *Cole*'s Houſe, Miſtreſs?

Mrs. *Milward*. Yes, Sir, I did.

Mr. Juſt. *Dolben*. Why did not you take him then?

Mrs. *Milward*. Becauſe he abſconded himſelf, and gave out that he was gone to Sea.

Mr. Juſt. *Dolben*. Was there no Quarrel betwixt *Cole* and you about your Goods?

Mrs. *Milward*. No, my Lord, I had no Quarrel with him.

Mr. Juſt. *Dolben*. Becauſe you did not do it ſooner, have you not been troubled with your Husbands Ghoſt? Tell the Jury the Story; we have heard on't, but I am afraid they will Laugh at you.

Mrs. *Milward*. That was very true, my Lord.

Mr. Juſt. *Dolben*. Well if you have any thing elſe to ſay, that is material, ſpeak: otherwiſe my Brother and I are of Opinion, that what you have already offer'd is no Evidence.

Mrs. *Milward*. My Lord, here is a Coachman or two, that can acquaint your Lordſhip of the matter of Fact, better than I can.

Cl. of Ar. Cryer, call *John Gamble* the Coachman. (*Who ſtood up.*)

Mr. Juſt. *Dolben*. You, Coachman, do you know the Priſoner?

Mr. *Gamble*. No, my Lord, I do not know him.

Mr. Juſt. *Dolben*. Look upon him, do you know him or no?

Mr. *Gamble*. No truly, my Lord, I do not know him.

Mr. Juſt. *Dolben*. Why! Look you, Woman, he does not know him; you Coachman, the Story is well known, therefore I ask you again upon your Oath, if that Priſoner at the Bar be one of the three Perſons, that you carried to the *Blue-Boar's Head* on the back-ſide of St. *Clements*, that Night Dr. *Clenche* was murder'd.

Mr. *Gamble*. Indeed, my Lord, I cannot be poſitive whether he be one of them or no. I took up in *Cheapſide* three Men into my Coach, and ſet one of them down at *Grays-Inn*, and drove the other two to Dr. *Clenche*'s Houſe that Night he was murder'd, and he was not at home, and afterwards the Man I had ſet down, came in again, and I ſet them all down at the *Blue-Boar's-Head* Ale houſe near *Clement's-Inn-Gate*, about Eight a Clock at Night.

Cl. of Ar. Set up *William Brown*, Servant at the *Blue Boars Head*.

Mr. J. *Dolben*. Hark you, is this one of the three Men that the Coachman ſet down at your Maſter's Houſe that night Dr. *Clenche* was murder'd?

Will. Brown. Yes, my Lord, it is.

Mr. Juſt. *Dolben*. What time did they come to your Houſe?

Will. Brown. They came about Eight a Clock at Night, and this Man and the other ſtayed till after a Eleven a Clock; only *Milward* went out and returned preſently, and then immediately he went out again, which was before Nine a Clock, and return'd not until Eleven a Clock after.

Mr. Juſt. *Dolben*. What time was Dr. *Clenche* kill'd?

Will. Brown. About Ten a Clock, or betwixt Ten and Eleven as I think.

Mr. Juſt. *Dolben*. Who went out firſt, only *Milward*?

Will. Brown. Only Mr. *Milward*, my Lord, but this Man ſtayed all the time, till Eleven a Clock at Night, and another who went by the Name of *Harper*, as I am ſince informed.

Mr.

Mr. *J. Dolben.* Why then this Man could not be in the Coach when Dr. *Clenche* was Murdred, ſo *Harriſon* and *Milward* kill'd the Doctor in all probability, for he ſays, this Man at the Bar, and another, ſtay'd at his Maſters Houſe till after Eleven a Clock.

Will. Brown. My Lord, when *Milward* came back he brought a Couple of Men with him in Soldiers Habit about Eleven of the Clock at Night.

Mrs. *Milward.* My Husband told me, that Mr. *Cole* and he went out of the Houſe, and left Mr. *Harper* behind.

Mr. *J. Dolben.* But this Man Swears, that the Priſoner did not go out of the Houſe till Eleven a Clock at Night, and they were ſet down about Eight of the Clock, and Dr. *Clenche* was found kill'd a little after Ten at Night, and that *Milward* went out, and then came in again about Eleven a Clock, and brought two men with him; 'tis to be fear'd he had been killing Dr. *Clenche* in that time; have you any more to ſay? If this man ſays true, nothing can be ſaid more.

Mrs. *Milward.* Speak what was done, when they came to drink the Pot of Ale, Mr. *Brown.*

Mr. J. Dolben. I would fain know, Miſtreſs, who ſet you upon this buſineſs? Is there not ſome Money promis'd you? It was not the fear of your Husband's Ghoſt that put you upon it, I am afraid.

Mrs. Milward. I am much wronged, my Lord, I know nothing of any Money offer'd me.

Mr. J. Dolben. What ſay you more?

Will. Brown. My Lord. Mr. *Milward* being at my Maſter's Houſe that Night Dr. *Clenche* was kill'd, deſired me to make a Fire in the ſame Room the next morning, and that he would come again then; and I made a Fire accordingly, but he came not then, nor afterwards at any time to my knowledge, but on a Sunday Night about a Fortnight after came the Two Perſons, that came with Mr. *Milward* in the Coach to my Maſters Houſe that Night Dr. *Clenche* was Murdred, and my Maſter being above ſtairs, I ſent him word, that the Two men were there who were there that Night that the Doctor was Murdered, and they Inquired for Mr. *Milward*, ſaying he promiſed to meet them there, and he not being there, before my Maſter could come down, they paid for the Pot of Drink and went away.

Mr. J. Dolben. When they came together to the Blue-Boar's-head they had ſome evil deſign, no doubt, but if it be true that thoſe Two men ſtaid from Eight a Clock till Eleven, then it could not be this Man that Murder'd Dr. *Clenche*; but hark ye, Fellow, you ſay, there were Three Perſons, whereof *Cole* was one, and *Milward* the other, who was the Third?

Will. Brown. I do not know his Name, my Lord, otherwiſe than as I have ſince heard.

Mrs. Milward. The other Man's Name was *Harper.*

Mr. J. Dolben. You know nothing but what your Husband told you, and 'tis moſt probable that *Harriſon* and he did the Murder, for that it appears that the Priſoner at the Bar is not the Man that Kill'd the Doctor, that's plain. Have you any more?

Mrs. Milward. About a Fortnight after the Murder was done, they came to inquire for my Husband at the *Blue Boar's-head*, and whilſt the Tapſter went to tell his Maſter, they left their Money for the Drink and went away, and would not be ſeen.

Mr. J. Dolben. What if they had run away, what then? If they were at the *Blue Boar* when Dr. *Clenche* was Kill'd, they could not Kill him.

Mrs. Milward. His Maſter ſays, that they were in the Houſe, and out of the Houſe, very often. Call Mr. *Dalley* the Maſter. Who appear'd and ſtood up.

Mr. Dalley. My Lord, Two of them were not out of the Houſe all the Night, I am not poſitive that this is the Man that came in with *Milward*, but thoſe Two Men that came in with him, never went out at all until after Eleven a Clock at Night, but only *Milward* went out between Eight and Nine, and returned about Eleven a Clock.

Mr. J. Dolben. What do you ſay to this, Woman? your Husband told you that the Priſoner was one of the Two, this Witneſs cannot ſay he was one, but ſays poſitively thoſe Two men never went out till Eleven a Clock, and from St. *Clement Danes* to *Leaden hall ſtreet* is not to go in and out, they muſt take a great deal of time to go thither and back again. Hark you, Mr *Dalley*, you ſay that thoſe Two men that *Milward* left, never went out of your Houſe till after Eleven a Clock, you are ſure on't.

Mr. Dalley. No, my Lord, they did not go out.

Mr. Wiſe. Mrs *Milward* hath two Witneſſes that can tell ſomewhat more of the matter, concerning her Husband's being concern'd in the Murder.

Mrs. Milward. My Husband told me, that the Coach-man took them up not far from *Chancery Lane* end, and that *Mr. Cole* laid hands upon the Dr. in the middle of *Holbourn.*

Cl. of Ar. Cryer, Call *John Sykes* the Coach-man; who ſtood up.

Mr. Sykes. My Lord, I took up Two men in *Fleet Street*, about *Fetter Lane* end.

Mr. J. Dolben. What manner of men were they? What Cloths had they on?

Mr. Sykes. My Lord, one of them had a Light Coloured Periwig on, and the other was in Sad Colour'd Cloths, and Lank Hair, but I cannot be poſitive that this is one of them: They Asked me if I knew Dr. *Clenche* of *Bartholomew ſtreet*? I told them, that I did not know the Dr. but I knew the Street; and they bid me Drive thither; and when I came to the Street's end, they ſent me to the Doctor's Houſe and bid me tell him that Two Gentlemen were at the Street's end in a Coach, who deſired him to go with them to one that was not well, ſo the Doctor came preſently after me, and when he was in the Coach, they bid me Drive to *Leaden hall-ſtreet*, and when I came about *Holbourn-Bars* they bid me Drive faſter, and when I came to *Leaden-hall-market*, they bid me Drive to *Aldgate*, and I drove through the Gate to the *Pye Tavern* and when I had turned my Coach, they bid me ask for one *Hunt* a Chyrurgeon, but he was not there; and then I told them the Gate was ſhut, and one of them put his Hand out of the Coach and gave the Watch man Six Pence to open the Gate, and then I drove back again to *Leaden hall-market*, and there they bid me ſtop again, and one of them gave me Half a Crown to Buy a Fowl, and I went a little way from the Coach, and one of them call'd me back again, and gave me a Shilling more, and bid me bring a Couple, and he bid me Ask for one *Hunt* a Poulterer; I went all

over the Market, but I could find no ſuch man, ſo at length I bought the Fowls of another man, and would have had the man gone with me to my Coach, but he would not; then I came to my Coach ſide, and found the Door open, and I found the Doctor ſitting at the bottom of the Coach with his Head againſt the Cuſhion, and the Two men gone, and one of them ſeemed to be in drink when I took them up, and I thought him to be that man fallen aſleep, and that the Doctor and the ſober man were gone to the Perſon that was not well, ſo then I call'd the Watch, and found the Doctor dead, and then it was about half an Hour after Ten a Clock at Night.

Mr. J. Dolben. Then I Ask you, was that one of the men?

Mr. Sykes. I cannot ſay it, my Lord, I don't know him.

Mr. J. Dolben. What time of Night was it that you took them up at *Fetter-Lane* end?

Mr. Sykes. It was about Nine a Clock, ſomewhat after.

Mr. *J. Dolben.* Why then, they ſay, that this man never ſtir'd out of the Houſe from Eight a Clock till Eleven, this man can't be concern'd.

Cl. of Ar. Set up *John Dudley*, which was done.

Mrs. *Milward* *Mr. Dudley*, What did my Husband ſay concerning the Doctor to you in the Country?

Mr. *Dudley.* He came into the Country preſently after the death of the Doctor, and he ſent for me, and was very much concerned, I Ask'd him what was the matter with him, and he told me, that he was come out of Town about the Murder of Dr. *Clenche*; I told him, that I hoped he was not concerned in it; he told me, No, but there was a Warrant out againſt him upon account that he Quarrell'd with the Coach-man that Night that he carried him to Dr. *Clenche*'s; and he ſaid, that Mr. *Harriſon* had ſent to him from *Newgate*, and told him, that he would give him Twenty Pounds, if he could make his Tryal eaſie.

Mr. *J. Dolben.* Miſtreſs, this makes it out, that he told you one Story, and to this Witneſs another, which contradicts your Story fully; he told him, that he came away for fear, and that he was Innocent of the Murder; and ſince that he told you, that he was Guilty. Well, what elſe did he ſay to you, Mr. *Dudley*?

Mr. *Dudley.* He was much concerned to enquire after the *Gazettes*, and Letters, if he were in them, about the Doctor's Murther, and to enquire if Mr. *Cole* and Mr. *Harper* were taken up about it.

Mr. *J. Dolben.* You hear what is ſaid againſt you; what do you ſay to it Mr. *Cole*?

Mr. *Cole.* My Lord I know nothing of it.

Mr. *J. Dolben.* No, I doubt you do, you were one of the Three that was ſet down on the back-ſide of St. *Clement*'s Church, at the *Blue-Boar's-head*, where all things were Conſulted.

Mr. *Cole.* My Lord, there was not one word ſpoke about Killing of Dr. *Clenche* in my Company.

Mr. *J. Dolben.* Were not you Acquainted with *Milward*?

Mr. *Cole.* Yes, my Lord.

Mr. *J. Dolben.* Were you not with *Harriſon*?

Mr. *Cole.* No, my Lord, I never ſaw him with my Eyes.

Mr. *J. Dolben.* Well, have you any more to ſay?

Mrs. *Milward.* Call Mr. *Hobbs*, who ſtood up.

Mr. *Hobbs.* I met Mr. *Milward* in *York Buildings*, and he Asked me how I did, and he went from me a little way, and then came to me again, and ask'd me if I would drink. So we went to the *George* in *York-Buildings* and there we drank a Pot or Two; and he ask'd me if I heard that he was accuſed about the Murder of Dr. *Clenche*; I told him, No, but he never told me any thing of this Man at the Barr.

Mr. *J. Dolben.* What was *Milward*?

Mr. *Hobbs.* I do not know how he got his Living.

Mr. *J. Dolben.* Have you any Body elſe, Miſtreſs?

Mrs. *Milward.* No, my Lord, I know no more.

Mr. *J. Dolben.* Gentlemen of the Jury, *Cole* the Priſoner at the Bar ſtands Indicted for Murthering Dr. *Clenche*, who, as it now appears, was Murther'd in a Coach by two Perſons that were therein together with the Doctor. The queſtion now before you is, whether *Cole* was one of theſe two?

Gamble, the Coachman, ſwears, That the Night Doctor *Clenche* was killed, he took up Three Men in *Cheapſide*, ſet one of them down at *Gray's*-Inn, and drove on to Doctor *Clenche*'s Houſe, the Doctor was not at home, then the third Man came in again to the Coach and he drove to the *Blew-Boar*'s-Head an Alehouſe by *Clement*'s-Inn, and ſet thoſe Three Men down there, and 'twas then about Eight of the Clock.

Sykes the Coachman, ſwears, he took up Two Men at *Fetter-lane* End in *Fleetſtreet*, and by their directions drove to *Brownlow-ſtreet*, where the Doctor lived, whom they got into the Coach, and he drove as far as *Aldgate*, and through the Gate, and then came back to *Leaden-Hall*, was ſent by the Two Men in the Coach to buy a Fowl, when he returned they were gone, but the Doctor found Dead in the Coach; and 'twas now half an hour paſt Ten.

The Queſtion now, as I ſaid before, is whether *Cole* the Priſoner at the Bar, was one of theſe two men.

The Woman tells you, *Milward* her Husband told her, that he and *Cole* were in the Coach with Doctor *Clenche*, and that they Two Kill'd Doctor *Clenche*.

She likewiſe tells you, her Husband told her, that *Cole* and her Husband went out from the *Blew Boars*-Head near *Clement*'s Inn, and left only *Harper* behind.

The Court hath already declar'd to you, that her Evidence, being only what her Husband told her, is no Evidence in Law to take away a Man's Life, eſpecially when it is ſingle without any Circumſtance to confirm it, as here 'tis. But that is not all, there is a very great Evidence, that what ſhe ſays her Husband told her, is falſe.

He told her, ſhe ſays, that he and *Cole* went from the *Blew-Boars*-Head and Kill'd the Doctor, leaving only *Harper* behind.

The Maſter of the Houſe and his Servant (Witneſſes which ſhe produceth) both ſwear, That her Husband went out alone, and left Two Men behind, who both ſtaid in the Houſe till *Milward* return'd, which was about Eleven of

the

the Clock. The Master, 'tis true, cannot say that *Cole* is one of the two, but the Servant is very positive he is, and both are positive, that two Men, that *Milward* left behind, continued in the House till *Milward* returned at Eleven of the Clock. These Two Mens Depositions do plainly contradict her Story, and if they swear true, *Cole* the Prisoner was not one of the Persons that Kill'd the Doctor.

You have all heard, I am sure, that one *Harrison* hath been Convicted by a Jury in this Place for the Murther of Doctor *Clenche*: If he was one of the two, then *Milward* by his own Confession (if his Wife swear true) was the other; but this you cannot take notice of, the Record is not produced, neither hath the Prisoner taken notice of it. The Question is only whether *Cole* be Guilty of the Murther? which I leave to you upon the Evidence you have heard.

The Jury having consider'd their Verdict, returned, That the Prisoner was not Guilty.

The Tryal of Charles *Lord* Mohun *for the Murder of* William Mountford, 1692. 4 W. & M. Published by Authority.

Die Martis 31. Januarii, 1692.

IN the Court Erected in *Westminster-Hall*, for the Tryal of the Lord *Mohun*, for the Murder of *William Mountford*.

About 12 a Clock this Day, the Lords came from their own House in their Robes, in Procession in this manner into the Court.

First, the Lord High Stewards Gentlemen Attendants, two and two.

Then the Clerks of the House of Lords, with the two Clerks of the Crown in the *King's-Bench* and *Chancery*, two and two.

Then the Masters in Chancery, two and two.

Then the Judges Eight of them, two and two.

Then the Peers Eldest Sons, and Peers Minors, two and two.

Then four Serjeants at Arms with their Maces, two and two.

Then the Yeoman Usher of the House.

Then the Peers according to their Seniority, beginning with the youngest Baron, two and two.

Then four Serjeants at Arms with their Maces, two and two.

Then *Garter* King at Arms, and the Gentleman Usher of the Black Rod: *Garter* on the Right Hand, and Black-Rod on the Left, carrying the white Staff before the Lord High Steward.

Then his Grace the Marques of *Carmarthen*, Lord High Steward, alone.

When the Lords were Seated on their proper Benches, and the Lord High Steward upon the Wooll-Pack, the two Clerks of the Crown standing before the Clerks Table, and the Clerk of the Crown in Chancery, having their Majesties Commission to his Grace the Lord High Steward in his Hand, they both made three Reverences to his Grace, and at the third coming up before the Wooll-Pack, they did both kneel down, and the Clerk of the Crown in Chancery on his Knee, presented the Commission to his Grace, who deliver'd it to the Clerk of the Crown in the Kings Bench; and then with three Reverences, they returned to the Clerks Table, where the Clerk of the Crown in the Kings Bench opening the Commission, Commanded Proclamation of Silence to be made in this manner.

Clerk of Crown. Serjeant at Arms; make Proclamation.

Serjeant. Oyez.

Clerk of Crown. Again.

Serjeant. Oyez.

Clerk of the Crown. Again.

Serjeant. Oyez.

Clerk of the Crown. My Lord High Steward of *England* his Grace, does straitly Charge and Command all manner of Persons to keep Silence, and to hear the King and Queens Majesties Commission to his Grace my Lord High Steward of *England* directed, openly Read upon pain of Imprisonment.

Which words the Serjeant at Arms repeated aloud.

Lord High Steward. My Lords, pray be pleased to stand up, and be uncovered whilst their Majesties Commission is Reading.

Which his Grace himself did, and all the Peers.

Clerk of the Crown Reads.

WILLIAM *R.*

GUlielmus & Maria, Dei Gratia Anglie, Scotie, Francie & Hibernie Rex & Regina, Fidei Defensores, &c. *Charissimo Consanguineo & Consiliario nostro Thome Marchioni Carmarthen Presidenti Consilii nostri, Salutem. Sciatis quod cum Carolus Dominus Mohun nuper de Paroch' St. Clement Dacor. in Comitat' nostro Middlesex coram dilectis & fidelibus nostris Lanceloto Johnson Arm' Carolo Lee Milit. Samuele Buck, Andrea Lawrence, Willielmo Allystrey, Thoma Harriott, Theophilo Eyton, Nich Grice, Arm's, & aliis Sociis suis Justiciariis nostris ad inquirend. per Sacrament' probor' & legalium hominum de Comitat. nostro*

Middleſex predict. ac aliis viis modis & mediis quibus melius ſciverint aut poterint tam infra Libertates quam extra per quos rei Veritas melius ſciri poterit & inquiri de quibuſcunque Proditionibus Miſpriſionibus Proditionum Inſurrectionibus Rebellionibus Contrafacturis Tonſuris loturis falſis fabricationibus & aliis falſitat. Monetæ hujus Regni noſtr. Angl. & aliorum Regnorum ſive Dominiorum quorumcumque ac de quibuſcunque Murdris Feloniis homicid' Interfectionibus Burglariis Raptibus Mulierum Congregationibus & Conventiculis illicitis verborum Prolationibus Coadunationibus Miſpriſionibus Confederationibus falſis Allegantiis Tranſgreſſionibus Riotis Routis Retentionibus Eſcapiis Contempt. falſitat. negligentiis Concelamentis manutenent. Oppreſſionibus Cambiparciis Deceptionibus & aliis Malefactis Offenſis & Injuriis quibuſcunque Necnon acceſſariis eorundem infra Comitat. predict. (tam infra Libertates quam extra) per quoſcunque & qualitercunque habit. fact. perpetrat. ſive Comiſſ. & per quos vel per quem cui vel quibus quand. qualiter & quomodo & de aliis Articulis & Circumſtantiis præmiſſ. ſeu eorum aliquod vel aliquem qualitercunque concernend. plenius veritat. & ad eaſdem Proditiones & al. premiſſ. audiend. & terminand. ſecundum Legem & Conſuetudinem Regni noſtri Angl. nuper aſſignat. de Felonia & Murdro per ipſum Carolum Dominum Mohun Commiſſ. & perpetrat. per ſacrum proborum & legalium hominum Comitat. noſtri Middleſex predict. indictat. exiſtit. Nos Conſiderantes quod Juſtitia eſt Virtus excellens & Altiſſimo complacens Volenteſque quod predict. Carolus Dominus Mohun de & pro Felonia & Murdro unde Ipſe ut prefertur indictat. exiſtit coram Nobis in preſenti Parliamento noſtro ſecundum Leges & Conſuetudines hujus Regni noſtri Angl. Audiatur, Examinetur Sententietur & Adjudicetur, Ceteraque omnia que in hac parte pertinent debito modo exerceantur & exequantur. Ac pro eo quod Officium Seneſchall. Angl. (cujus præſentia in hac parte requiritur) ut accepimus jam vacat. Nos de Fidelitate Prudentia provida Circumſpectione & Induſtria voſtris plurimum Confidentes Ordinavimus & Conſtituimus Vos ex hac Cauſa Seneſchall. Angl. ad Officium illud cum omnibus eidem Officio in hac parte debit. & pertinend'. (hac vice) gerend. occupand. & exercend. & ideo Vobis Mandamus quod circa premiſſa diligenter intendatis & omnia que in hac parte ad Officium Seneſchall. Angl. pertinent & requiruntur (hac vice) faciatis Exerceatis & Exequamini cum effectu In cujus rei Teſtimonium has Literas noſtras fieri fecimus Patentes. Teſtibus Nobis ipſis apud Weſtm. triceſimo primo die Januarii Anno Regni noſtr. Quarto.

Per ipſum Regem propria Manu Signat.

CHUTE.

GOD Save King William *and Queen* Mary.

Then Proclamation was made for all Perſons but the Peers to be uncovered.

After which, their Majeſties Writ of *Certiorari*, directed to the Commiſſioners of *Oyer* and *Terminer* for the County of *Middleſex*, to remove the Indictment found before them againſt the Lord *Mohun*, with the return thereof, and the Record of the Indictment, were Read by the Clerk of the Crown in the *Kings-Bench*: Thus,

Clerk of the Crown. *GUlielmus & Maria, Dei Gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Rex & Regina, Fidei Defenſores, &c. Dilectis & Fidelibus noſtris Lanceloto Johnſon Armigero, Carolo Lee Militi, Samueli Buck, Andreæ Lawrence, Willielmo Alleſtree, Thomæ Harriot, Theophilo Eyton & Nicholao Grice Armigeris, Salutem: Vobis Mandamus quod Indictamentum de Felonia & Murdro unde Carolus Dominus Mohun nuper de Parochia Sancti Clementis Dacorum in Comitatu noſtro Middleſex coram Vobis in Comitatu noſtro Middleſex predict. & penes vos jam remanen. indictatus exiſtit ut dicitur, cum omnibus illud tangentibus nobis in preſenti Parliamento noſtro ſub ſigillis veſtris vel unius veſtrum deliberetis indilate una cum hoc brevi. Teſtibus nobis ipſis apud Weſtmonaſterium viceſimo Octavo die Januarii Anno Regni noſtri Quarto.*

CHUTE.

Virtute iſtius brevis mihi & aliis directi Indictamentum in eodem brevi mentionatum cum omnibus ea tangentibus Domino Regi & Dominæ Reginæ in preſenti Parliamento ſub ſigillo meo in iſto brevi contenta in quadam Schedula huic brevi annexa mitto prout interim mihi precipitur.

Reſponſ.

Lanceloti Johnſon Armigeri unius Juſticiariorum dictorum Domini Regis & Domine Regine ad inquirendum, &c. infra ſcripti.

LA. JOHNSON.

Middleſex ſſ. Memorandum quod per quandam Inquiſitionem captam pro Domino Rege & Dominâ Reginâ apud Hicks Hall in St John ſtreet in Comitatu Middleſex Die Martis (ſcilicet) decimo ſeptimo die Januarii Anno Regni Domini & Domine noſtrorum Gulielmi & Mariæ Dei Gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Regis & Regine Fidei Defenſorum, &c. Quarto, coram Lanceloto Johnſon Armigero, Carolo Lee Milite, Samuele Buck, Andrea Lawrence, Willielmo Alleſtree, Thoma Harriott, Theophilo Eyton & Nicholao Grice Armigeris, & aliis Sociis ſuis Juſticiariis Dictorum Domini Regis & Domine Regine ad inquirendum per Sacramentum proborum & legalium Hominum Comitatus Middleſex predicti ac aliis viis modis & mediis quibus melius ſciverint aut poterint, tam infra libertates quam extra per quos rei veritas melius ſciri poterit & inquiri de quibuſcunque Proditionibus Miſpriſionibus Proditionum Inſurrectionibus Rebellionibus contrafacturis tonſuris falſis Fabricationibus & aliis falſitatibus monetæ hujus Regni Angliæ & aliorum Regnorum ſive Dominiorum quorumcunque ac de quibuſcunque Murdris Feloniis Homicidiis & interfectionibus & aliis Articulis & offenſis in Literis patentibus Dictorum Domini Regis & Domine Reginæ eis & quibuſcunque quatuor vel pluribus eorum inde directis ſpecificatis, necnon acceſſariis eorundem infra Comitatum predictum tam infra libertates quam extra per quoſcunque & qualitercunque habitis factis perpetratis ſive commiſſis ac de aliis Articulis & circumſtantiis premiſſa & eorum aliquod vel aliquem qualitercumque concernentibus plenius veritatem & ad eaſdem proditiones & alia premiſſa audiendum & terminandum ſecundum legem & conſuetudinem hujus Regni Angliæ aſſignatis per Sacramentum Samuelis Philipps, Thomæ Head, Georgii Sparkes, Thomæ Lunn, Johannis Waterman, Willielmi Keyte, Johannis Uſher, Willielmi Pangborne, Arthuri Alliborne, Willielmi Deverell, Jacobi Garriſon, Anthonii Hartley, Roberti Rogers, Thomæ Knight & Thomæ Long proborum & legalium hominum Comitatus predicti ad tunc & ibidem juratorum & oneratorum ad inquirendum pro dicto Domino Rege & Domina Regina & pro corpore Comitatus præd. preſentatum exiſtit modo & formâ prout patet in quodam indictamento huic Schedule annexo.

LA. JOHNSON.

Middleſex ſſ. Juratores pro Domino Rege & Domina Regina ſuper Sacramentum ſuum preſentant quod Richardus Hill nuper de Parochia Sancti Clementis Dacorum in Comitatu Middleſex Generoſus & Carolus Dominus Mohun nuper de Parochiâ predictâ in Comitatu predicto

predicto Deum præ oculis ſuis non habentes ſed inſtigatione Diabolica moti & ſeducti nono die Decembris Anno Regni Domini & Dominæ noſtrorum Gulielmi & Mariæ Dei Gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Regis & Reginæ, Fidei Defenſorum, &c. Quarto vi & armis, &c. apud Parochiam predictam in Comitatu predicto in & ſuper quendam Willielmum Mountford Generoſum in pace Dei & dictorum Domini Regis & Domine Regine nunc ad tunc & ibidem exiſtentem Felonice voluntarie & ex malitiis ſuis precogitatis inſultum fecerunt. Et quod predictus Richardus Hill cum quodam Gladio Anglice (a Rapier) *de ferro & chalybe confecto valoris quinque Solidorum quem ipſe idem Richardus Hill in manu ſua dextra ad tunc & ibidem extractum habuit & tenuit præfatum Willielmum Mountford in & ſuper dextram partem corporis Anglice* (the right ſide of the Body) *ipſius Willielmi Mountford prope dextram Mammillam Anglice* (the right Pap) *ejuſdem Willielmi ad tunc & ibidem Felonice voluntarie & ex malitia ſua precogitata percuſſit & pupugit* (*Anglice* did ſtrike and thruſt) *dans eidem Willielmo Mountford ad tunc & ibidem cum Gladio extracto predicto in & ſuper predictam dextram partem corporis ipſius Willielmi Mountford prope dictam dextram Mammillam ejuſdem Willielmi unum Vulnus mortale latitudinis unius pollicis & profunditatis viginti pollicum, de quo quidem vulnere mortali predictus Willielmus Mountford à predicto nono die Decembris Anno ſupradicto uſque decimum diem ejuſdem Menſis Decembris Anno ſupra dicto apud Parochiam prædictam in Comitatu predicto languebat & languidus vixit, quo quidem decimo die Decembris Anno ſupra dicto predictus Willielmus Mountford de vulnere mortali prædicto apud Parochiam predictam in Comitatu predicto obiit. Et quod predictus Carolus Dominus Mohun tempore Feloniæ & Murdri predict. per prefatum Richardum Hill Modo & formâ predictis Felonice voluntarie & ex malicia ſua precogitata factorum & perpetratorum ad tunc & ibidem Felonice voluntarie & ex malitia ſua precogitata fuit preſens auxilians abettans confortans aſſiſtens & manutenens prefatum Richardum Hill ad predictum Willielmum Mountford in formâ predictâ Felonice voluntarie & ex malitia ſua precogitata interficiendum & murdrandum. Et ſic Juratores predicti ſuper Sacramentum ſuum predictum dicunt quod predictus Richardus Hill & Carolus Dominus Mohun prefatum Willielmum Mountford modo & formâ predictis Felonice voluntarie & ex malitiis ſuis precogitatis interfecerunt & murdraverunt contra pacem dictorum Domini Regis & Dominæ Regine nunc, coronam & dignitates ſuas, &c.*

Then his Grace remov'd from the Wooll-Pack to the Chair, which was placed upon an Aſcent juſt before the uppermoſt ſtep of the Throne, and Seated himſelf in the Chair.

Cl. of Cr. Serjeant at Arms, make Proclamation.

Serjeant. Oyez.

Cl. of Cr. Chief Governor of the *Tower* of *London*, return the Precept to you directed, together with the Body of *Charles* Lord *Mohun* your Priſoner forthwith into the Court, upon Pain and Peril will fall thereon.

Then the Deputy Governor of the *Tower*, brought the Lord *Mohun* to the Bar, having the Ax carried before him by the Gentleman Jaylor of the *Tower*, who ſtood with it at the Bar, on the Right Hand of the Priſoner, turning the Edge from him.

The Priſoner at his Approach to the Bar, made three Bows, one to his Grace the Lord High Steward, the other to the Peers on each Hand, and his Grace and all the Peers returned the Salute to him.

Lord High Steward. My Lords, my Voice will not ſerve to ſpeak at ſuch a Diſtance, ſo as to be heard, and therefore I muſt beg leave of your Lordſhips to come down to the Wooll-Pack again.

Lords. Ay, Ay.

Then his Grace came down, and Seated himſelf on the Wooll-Pack.

Lord High Steward. My Lord *Mohun*, I am to let your Lordſhip know, you are not to hold up your Hand upon your Arraignment; and I am to let you that are Council at the Bar likewiſe know, that both you and the Witneſſes, are to Direct your ſelves to the Court, in the Style of my Lords, ſpeaking to the Court.

Then there was a little Pauſe, after which his Grace Addreſſed himſelf to the Priſoner thus.

Lord High Steward. My Lord, you are brought here before this Supream Court in Order to your Tryal.

The Charge againſt you is, for the Murther of one of the Kings Subjects, which is a Crime the King will at no time paſs over in the meaneſt Mans Caſe, without making a ſtrict inquiry into the Offence, and cauſing due Puniſhment to be inflicted on the Offender.

This my Lord is charged upon you, not by any ſlight Information; but by the Grand Inqueſt of this County, made up of Gentlemen of good Worth and Conſideration. It is true, that this Inqueſt does not amount to much more than a bare Accuſation; and therefore it ought not to be made any uſe of, ſo as to prejudice your Lordſhips Tryal; but it is that which is the Ground of preſenting this Black Crime before my Lords your Peers, who cannot receive it without ſome trouble, to find any one of their Body ſuſpected to be Guilty of an Action ſo Diſhonourable as this is repreſented to their Lordſhips.

My Lord, you are a very young Man, and therefore it is to be hoped, you cannot ſo early have had your Hands in Blood. And the ſame Reaſon, becauſe you are ſo young, may perhaps make you conceive, that you are under ſome greater Diſadvantage in making your Defence, than you would be if your Experience had been longer.

But to remove any Miſapprehenſion you can have of that kind, it is very proper to put your Lordſhip in mind, that you have the good Fortune now, to be Tryed for this Fact in full Parliament, where no Evidence will be received, but ſuch as muſt be manifeſt and plain, beyond all Contradiction; ſo that you have nothing to fear here, but your own Guilt.

In the next place, My Lord, you need not be diſcourag'd for the want of Council, for the Honour of this Court is ſuch, as will take Care to inform you of any Advantage that the Law can give you. And you may be farther aſſured, that no Art or Skill in Arguing, can take any place here, either againſt your Innocency, or to Divert my Lords from doing you exact Juſtice. Nay, I dare preſume to ſay on the part of my Lords, that if there be room for any Abatement of Severity, you may reaſonably expect to find it from their Lordſhips.

Theſe Conſiderations, my Lord, cannot but give you great Conſolation under your unhappy Circumſtances, it being moſt certain, that nothing but your own Crimes can hurt you.

But

But at the same time I must tell you, that your Lordship is not to flatter your self with an Expectation or Hope, that any Favour will be shewed you beyond what Honour and Justice can allow: And I hope you have well considered, that it is no less than your Life, your Honour, and your Estate, that you are now to Defend, insomuch, that I cannot doubt but your Lordship has recollected and prepar'd your self, for the Defence of what so very much concerns you.

I will not therefore detain you any longer than to give you some Directions in the Order and Method of your Tryal; and those are, that your Lordship do give Attention carefully to the Reading of your Indictment. That you give no Interruption to the Council or Witnesses when they speak against you; and when the proper time shall come for your Witnesses to be Examined, and that you are to be heard in your own Defence, I will give you due notice of it.

Your Lordship may also be certain that when it shall come to your turn to speak, you shall be heard with all the Patience and Favour that the Matter will bear; and at last, when all hath been heard that can be said on both sides, your Lordship needs not doubt, but that My Lords will give such a Judgment as will be Suitable to the Honour, Justice and Equity of this great Court. Clerk Read the Indictment to my Lord.

'Clerk of the Crown' 'CHarles Lord *Mohun*, You stand Indicted by the Name of *Charles* Lord *Mohun*, of the Parish of St. *Clement Danes* in the County of *Middlesex*, For that you together with one *Richard Hill* of the same Parish and County Gentleman, who is fled, and withdrawn from Justice, not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil, the 9th Day of *December*, in the 4th Year of the Reign of our Sovereign Lord and Lady *William* and *Mary*, by the Grace of God of *England*, *Scotland*, *France* and *Ireland*, King and Queen, Defenders of the Faith, *&c.* with Force and Arms, *&c.* at the Parish aforesaid, in the County aforesaid, in and upon one *William Mountford* Gent. in the Peace of God, and our said Sovereign Lord and Lady the King and Queen, then and there being, feloniously, wilfully, and of your Malice aforethought, did make an Assault. And that he the said *Richard Hill*, with a certain Rapier made of Iron and Steel, of the Value of 5s. which he the said *Richard Hill*, in his Right Hand then and there had and held drawn, the said *William Mountford*, in and upon the Right side of the Body of him the said *William Mountford*, near the Right Pap of him the said *William*, then and there feloniously, wilfully, and of his Malice aforethought, did strike and thrust, giving unto him the said *William Mountford* then and there, with the Sword drawn aforesaid, in and upon the aforesaid Right side of the Body of him the said *William Mountford*, near the said Right Pap of the said *William*, one Mortal Wound of the breadth of one Inch, and of the depth of twenty Inches, of which said Mortal Wound the aforesaid *William Mountford*, from the aforesaid ninth Day of *December*, in the Year aforesaid, unto the tenth Day of the same Month of *December*, in the Year aforesaid, at the Parish aforesaid in the County aforesaid, did languish, and languishing did live, on which said tenth Day of *December* in the Year aforesaid, the aforesaid *William Mountford* of the Mortal Wound aforesaid, at the Parish aforesaid, in the County aforesaid, died. And that you the said *Charles* Lord *Mohun*, at the time of the Felony and Murder aforesaid, by the aforesaid *Richard Hill*, in manner and form aforesaid, feloniously, wilfully, and of his Malice afore-thought done and committed, then and there feloniously, willfully, and of your Malice afore-thought, were present, aiding, abetting, comforting, assisting and maintaining the aforesaid *Richard Hill*, the said *William Mountford* in form aforesaid, feloniously, willfully, and of his Malice afore-thought to kill and murder. And so that you the said *Charles* Lord *Mohun*, and the said *Richard Hill*, the said *William Mountford* in manner and form aforesaid, feloniously, wilfully, and of your Malice afore-thought, did Kill and Murder, against the Peace of our said Sovereign Lord and Lady the King and Queen, their Crown and Dignity.

How say you *Charles* Lord *Mohun*, Are you Guilty of this Felony and Murder, or not Guilty?

Lord Mohun. Not Guilty, my Lords.

Clerk of the Crown. How will your Lordship be Tryed?

Lord Mohun. By God and my Peers.

Clerk of the Crown. God send your Lordship a good Deliverance.

Lord High Steward. Will your Lordships please, that the Judges may be Covered?

Lord Ay, Ay.

Then the Judges put on their Caps.

Clerk of the Crown. Serjeant at Arms make Proclamation.

Serj. O Yes.

Clerk of the Crown. If any one will give Evidence on the behalf of our Sovereign Lord and Lady the King and Queens Majesties, against *Charles* Lord *Mohun* the Prisoner at the Bar, let them come forth, and they shall be heard, for now he stands at the Bar upon his Deliverance.

Lord High Steward. You Gentlemen that are of the Kings Council, will you begin.

Mr. *Serj.* Thompson. May it please your Lordships, I am of Council for the King and Queen, against my Lord *Mohun* the Prisoner at the Bar, who stands Indicted for the Murther of one *William Mountford*.

Lord Mohun. My Lords.

Lord High Steward. My Lord *Mohun*, what does your Lordship say?

Lord Mohun. Do not your Lordships think it proper, that I should have Pen, Ink and Paper?

Lords. Ay, by all means.

Lord High Steward. Yes, give my Lord Pen, Ink and Paper?

Which was carryed to him by one of the Clerks.

Lord High Steward. Go on Sir now.

Mr. *Serj.* Thomson. My Lord *Mohun* stands Indicted here before your Lordships, for the Murder of one *William Mountford*, and the Indictment sets forth, that one *Richard Hill*, who is since fled from Justice, did upon the 9*th.* of *December* last, make an Assault upon this same *William Mountford*, and that the said Lord *Mohun*, did likewise make that Assault. The Indictment particularly sets forth, that this *Hill* by a Sword or Rapier which he had in his Hand, did give this *William Mountford* a Wound on his Right Side, and that *Mountford* did Languish of that Wound till the next Day, which was the 10*th.* of *December*, when he Dyed; and that at the time of the giving the Wound,

Wound, My Lord *Mohun* was preſent, and was Aiding, Abetting, Aſſiſting and Comforting of *Hill*; and thereupon we do ſay, he is Guilty of this Murder, and for this he ſtands Indicted. It is my Duty to open the Indictment to your Lordſhips, we ſhall call our Proofs, and give you the Evidence, and then leave it to your Lordſhips Judgment.

Mr. *Attorney General.* My Lords, the Indictment has been opened, and by that your Lordſhips ſee, the Noble Lord at the Bar ſtands Charged with the High Crime of Murder.

My Lords, his Peerage gives him a Right to be Tryed in this Great and Noble Court; and as my Lord has Juſt Reaſon to put a High Value upon this Priviledge, ſo on the other Hand, their Majeſties who are making Inquiſition for the Blood of one of their Subjects have a full Aſſurance, that no Compaſſion for my Lords Youth, no Conſideration of his Quality, or Regard for one of your own Order, will make your Lordſhips unmindful of the Heinous Nature of the Crime, or cauſe any Variation in the Steadineſs of your Juſtice.

It is true, my Lords the difference between the Tryal of a Peer and a Commoner is very great, but there is no difference in the Crime, whether committed by one or the other: It is the ſame Law by which they muſt be Tryed and Judged; and that Fact which would be Murder in the meaneſt Subject, is no leſs than Murder if committed by the greateſt Peer.

My Lords, it is not inſiſted upon, that the Noble Lord at the Bar gave the Mortal Stroak with his own Hand; Nor is it ſo alledged in the Indictment: The Indictment findeth the Wound to have been given by the Hand of *Richard Hill*; but if my Lord the Priſoner was of his Party, if he Concurr'd with him in the Thing, if he was Preſent and Abetting to the Fact, though he did not ſtrike a ſtroke, though he was no more than a looker on, when the thing was done, the Law ſaith, he is a Principal in the Murder.

Whether my Lords Caſe will fall within this Rule, is the Point for your Lordſhips to Determine, when the Witneſſes are heard.

My Lords, it is my part to give an Account of the Nature of the Evidence, to the end, that your Lordſhips may more eaſily go along with the Witneſſes, as they are Examined, and more readily make your Obſervations upon what they ſay.

This I ſhall do as ſhortly, and as exactly as I can without pretending to Aggravate any thing, which I could never think did become any one in my Station; and I am ſure, would be to very little purpoſe before ſuch a Judicature as this; for after all, your Lordſhips will found your Judgments upon the Fact, not as it is Repreſented by us, but as it appears upon the Oaths of the Witneſſes.

The time when the Fact for which my Lord is to be Tryed was Committed, was the *9th.* Day of *December* laſt.

The Occaſion of it, was this.

Captain Hill, the Perſon mentioned in the Indictment, had for ſome time before made Addreſſes of Courtſhip in the way of Marriage, to one Mrs *Bracegirdle*, an Actreſs in the Play-Houſe; But theſe Propoſals were totally Rejected. This put Mr. *Hill* in a very great Rage, and he Declared, that Mr. *Mountford* (the Perſon Slain) was the only Man that ſtood in his way, and with many Execrations, expreſſed his Reſolution to be Revenged upon him: This he did at ſeveral times, and before ſeveral Perſons.

The ſame Day the Fact was Committed, in the Morning; My Lord who is now at the Bar, and Captain *Hill* went together to Hire a Coach to go to *Totteridge*, and Directed the Coach-man to have ſix Horſes Ready, but to be waiting for them in *Drury-Lane* near the *Play-Houſe*, with only two Horſes in his Coach, about nine a Clock the ſame Night. My Lord and Captain *Hill* Dined together that Day, at a Tavern in *Covent Garden*; and there much of their Diſcourſe was about Mrs. *Bracegirdle*; and both of them did freely declare their Opinion, that Mr. *Mountford* lay with her. But the Principal of their Diſcourſe, was in Relation to a Deſign which they had formed for the Seizing upon Mrs *Bracegirdle*, and forcing her into a Coach, and carrying her away ſome where into the Country.

This was to be executed that Night; and accordingly they were then providing Arms for that purpoſe, Mr. *Hill* did acquaint my Lord, that the Soldiers would be ready by the time; and my Lord took notice, that the carrying her off, would ſtand Mr. *Hill* in 50*l.* at leaſt. Thereupon (as your Lordſhips will hear from the Evidence) Mr. *Hill* uſed this Expreſſion, If the Villain Reſiſt, I will Stab him; and then my Lord was pleaſed to ſay, That he would ſtand by his Friend.

After they had Continued there ſome time, being about to part, Mr. *Hill* told my Lord, that unleſs he was at the Play-Houſe by ſix a Clock, the thing could not be Effected, and he ſhould be undone: But my Lord promiſed to be there at the time.

Accordingly they both met at the Play-Houſe, and after they had been behind the Scenes, and informed themſelves that Mrs. *Bracegirdle* would not be there that Night, they left the Play-Houſe.

But it ſeems they had got Intelligence, that ſhe was to Sup that Night at one Mr. *Page*'s Houſe in *Drury-Lane*; and therefore they planted themſelves with their Soldiers near that place, over againſt my Lord *Cravens* Houſe.

Lord High Steward. They; who do you mean?

Mr. *Attorney General.* My Lord the Priſoner at the Bar and Mr. *Hill.* After they had continued there for a Conſiderable time (I think till towards Nine a Clock) they began to have a Jealouſie, that they might be under ſome miſinformation; and therefore ordered the Coachman to Drive them into *Howard-Street*, the place where Mrs. *Bracegirdle* lodged, and obſerving ſome Perſons Walking near her Lodging, they ſaid, they doubted they were deceived, and had been betrayed.

But they ſoon came back again to *Drury Lane*, and fixed themſelves in their former Station. About Ten a Clock, Mrs. *Bracegirdle* accompanied with Mr. *Page* (at whoſe Houſe ſhe had been) and with her Mother, and (I think) her Brother going Home; when they came to the Place where the Coach ſtood, with the Door open, and my Lord at the Bar placed in the Coach; and ſeveral Caſes of Piſtols by him, the Soldiers together with Captain *Hill*, came up to Mrs. *Bracegirdle*, Seized upon her, and would have forced her into the Coach: Mr. *Hill* endeavoured with Violence, to force away Mr. *Page*, who was then leading her, and ſtruck him; but Mrs.

Brace-

Bracegirdle's Mother holding her about the middle, they could not readily get her into the Coach, and during this ſtruggle, there was an Opportunity given to Mr. *Page* to call for help, and ſeveral Perſons coming preſently from the Houſes near, and the People in the ſtreet beginning to riſe upon them, they found it impracticable to effect their Deſign at that time.

Thereupon the Soldiers were Diſmiſſed; but my Lord and Mr. *Hill*, would not be denyed the Liberty to wait upon Mrs. *Bracegirdle* to her Lodging, and accordingly together with Mr. *Page* and her Mother and other Perſons, they went together to Mrs. *Bracegirdles* Lodging, at one Mrs. *Brownes* Houſe in *Howard Street*. Mr. *Mountford's* Houſe was in *Norfolk Street* below *Howard Street*. *Howard Street* is a Croſs Street, which leads from *Arundel Street*, and through *Norfolk Street* to *Surry-Street*; and ſo it was not poſſible for *Mountford* to come to his own Houſe, but whoever ſhould fix themſelves in *Howard Street* muſt have the Opportunity of ſeeing him.

As they were going along, *Hill* ſwore he would be Reveng'd; but nam'd no Body.

After that Mrs *Bracegirdle* and the Company were come to her Lodging, ſhe and her Mother, and *Page* went into the Houſe: My Lord *Mohun* and Mr. *Hill* ſtaid in *Howard ſtreet*, and there continued for near two Hours together, and for the moſt part of that Time, with their Swords drawn.

Mr. *Mountford*, as it hapned, did not come Home till late that Night; ſo that their Stay being long, my Lord and Mr. *Hill* thought fit to ſend for Wine, and had one or two Bottles, which they drank in the Street, near Mrs. *Bracegirdles* Lodgings.

During this Time, they were heard to ſay (that is, one of them was; but which of them, by reaſon of the Darkneſs, we cannot tell) that if he could not be revenged that Night, he would the next Morning; upon which, a Boy, who was there with them; (but who the Boy was we cannot diſcover) ſaid, good my Lord, do not do it, alter your Reſolution. I did obſerve before, that Mrs. *Bracegirdle* Supped that Night at Mr. *Pages* Houſe, and Mrs. *Page* having heard of the great Outrage and Tumult in the Street, and that her Husband was gone home with Mrs. *Bracegirdle*, and being under a great Concern for his Safety, thought fit to follow him thither. As ſhe entred into the Houſe, ſhe ſaw my Lord *Mohun* and Captain *Hill* near the Door; and preſently after, before ſhe could have a full Relation of what had happened in *Drury Lane*, Mrs. *Brown*, the Owner of the Houſe where Mrs. *Bracegirdle* lodged, came into the Room, and told them, that my Lord *Mohun* and *Hill* were waiting for Mr. *Mountford*, and that ſhe was apprehenſive it was with no good intention. Thereupon Mrs. *Page* thought it requiſite to go to Mrs. *Mountfords* Houſe, to give her Notice of it, and to deſire her to find out where her Husband was, and to caution him not to come Home, unleſs he brought a good Guard with him.

As ſhe went out, ſhe ſaw them both with their Swords drawn, and ſhe acquainted Mrs. *Mountford* with it, who ſent to ſeveral Places in ſearch of her Husband, but ſhe was ſo unfortunate, that the Meſſengers could not find him.

Whilſt this was doing, the Watch came into *Howard-Street*, being allarm'd at the Report that two Gentlemen were Drinking in the Street, and walking there with their naked Swords. The Watch demanded of my Lord *Mohun*, why he had his Sword drawn. My Lord was pleaſed to return them this Anſwer, That he was a Peer of the Realm, and bid them touch him if they durſt. They then asked *Hill* why his Sword was out, and my Lord made the Excuſe for him, That *Hill* had loſt his Scabbord.

The Watch obſerving the Drawer who attended upon them, and knowing that he lived at a Tavern in *Surry-Street*, went to inform themſelves, who theſe Perſons ſhould be, that were walking in ſuch a Manner at that time of Night. But they were hardly got into the Houſe before they heard the Cry of Murder.

The Witneſſes will inform your Lordſhips, that as Mr. *Mountford*, about 12 a Clock, was coming Home, my Lord *Mohun* met him, and ſaluted him. Mr. *Mountford* ſaid, My Lord *Mohun*, What does your Lordſhip do here at this time of Night? And my Lord made anſwer, He ſuppoſed Mr. *Mountford* had been ſent for. No, No, ſays *Mountford*, I came by chance. My Lord ſaid to him again, I ſuppoſe you have heard about the Lady. Mr. *Mountford* anſwered, I hope my Wife has given your Lordſhip no Offence. No, ſays my Lord *Mohun*, It's Mrs. *Bracegirdle* I mean. To this, the Reply of Mr. *Mountford* was, Mrs. *Bracegirdle* is no concern of mine, but I hope your Lordſhip does not countenance any ill Action of Mr. *Hill*.

Upon this *Hill* came up to them, and ſaid to my Lord, it was not a time to diſcourſe of thoſe Matters; and as my Lord continued to talk with *Mountford*, *Hill* ſtruck *Mountford* firſt, and in a manner, at the ſame inſtant made a Paſs at him, and run him clean through the Body, and this before Mr. *Mountford's* Sword was drawn Immediately upon this there was a Cry of Murder, and the Watch came with what haſte they could, and took my Lord *Mohun*, but *Hill* was fled; when my Lord was taken, his Sword was not drawn.

As ſoon as my Lord *Mohun* was taken, the firſt Queſtion he asked was, if *Hill* was apprehended; and when he was told he was not, he ſaid he was glad of it, and he did not care if he were hang'd for him. And he ſaid, adding at the ſame time, That he was ſorry that Mr *Hill* had ſo little Money about him, and wiſhed him all that he had in his own Pocket; and he did then alſo own to the Watch, that he had changed Coats with Mr. *Hill*, and had *Hill's* Coat on him at that time.

My Lords, this is the Subſtance of the Evidence, and in this Order, with your Lordſhips Leave, we ſhall offer the Proofs to your Lordſhips; I do not doubt, but your Lordſhips will attend to the Evidence with all Care, and will determine upon it according to Juſtice and Honour. I will detain your Lordſhips no longer, but proceed to call the Witneſſes to prove what I have opened.

L. H. Steward. Pray call your Witneſſes together, and let me know who you begin with.

Mr. *Att. Gen.* My Lords, We do not know what Place is deſigned for the Witneſſes; but if they are to be on the other ſide, and this Croud do interpoſe between us and them, it will be impoſſible for us, who are the King's Council, to hear what they ſay, or know how to proceed.

L. H. Steward. There muſt be Room made there

there for the Witneſſes, where are your Witneſſes Mr. *Attorney?*

Clerk of the Crown. If you pleaſe to name them Sir, we will call them.

Mr. *Att. Gen.* Call Mr. *John Hudſon*, and Mr. *George Powel.*

Lord High Steward. I know not how this is ordered, but way muſt be made there by the Bar, that the Priſoner may ſee the Witneſſes, and they him.

Mr. *Att. Gen.* Yes my Lord, by all means.

Mr. *Serj Tremain.* If your Lordſhips pleaſe, the Witneſſes will be moſt conveniently heard, if they come and ſtand by us.

Mr. *Att. Gen.* If your Lordſhips pleaſe, it will not be poſſible either for my Lord at the Bar, or for us to hear what the Witneſſes ſay, unleſs they be brought into this place to ſtand between us.

L. H. Stew. My Lord Great Chamberlain, be pleaſed to give order for them to be brought in thither.

Then the Lord Great Chamberlain went down to the Bar.

L. Gr. Cham. The Witneſſes muſt be brought to this place.

And accordingly, way was made for the Witneſſes, as called to ſtand at the Bar between the Priſoner and the Kings Council.

L. H. Stew. Give me the Name of him that you begin with.

Mr. *Att. G.* We begin my Lords, with Mr. *John Hudſon. Who came to the Bar, and one of the Clerks held the Book to him, upon which he laid his Hand.*

Cl. of the Cr. Hearken to your Oath Sir, the Evidence that you ſhall give on the behalf of our Sovereign Lord and Lady the King and Queens Majeſties, againſt *Charles* Lord *Mohun* the Priſoner at the Bar, ſhall be the Truth, the whole Truth, and nothing but the Truth: So help you God.

Then he kiſſed the Book.

Mr. *Att. Gen.* Mr. *Hudſon*, Do you give my Lords an account what you know of any Applications of Courtſhip made to Mrs *Bracegirdle* by Mr. *Hill*, and what became of it; and what you heard *Hill* ſay about her, or about any one elſe relating to that mattter.

Hudſon. My Lord, I had the Honour to be invited to Supper with my Lord *Mohun*, at the *Roſe-Tavern* in *Covent-Garden*, where I found Captain *Hill* with his Lordſhip.

Mr. *Att. Gen.* When was this Sir? tell the time.

Hud. This was three Nights before this unfortunate Accident happen'd, there I found Captain *Hill*, and we ſupped together; and after Supper, Captain *Hill* raiſed a Diſcourſe of Mrs. *Bracegirdle* and Mr. *Mountford*, ſays He, I ſhould not doubt the Succeſs of my Amour with Mrs. *Bracegirdle*, if I were not obſtructed by *Mountford* whom I deſign to be the Death of: This is Truth upon my Oath. My Lord *Mohun* was in the Company; but I cannot ſay that my Lord made any Reply to the thing, or took any notice of it: But this Captain *Hill* did ſay, not only then, but ſeveral times before.

Mr. *Att. Gen.* Did he ſay it at any other time in your Hearing?

Hud. Yes, ſeveral times before.

Mr. *Att. G.* Do you know any thing more of this matter?

Hud. No more, than that my Lord *Mohun* that very Night that Mr. *Mountford* was killed, and Captain *Hill* came into the Scene Room of the Play-Houſe, and my Lord *Mohun* had Captain *Hill*'s Coat on, and Captain *Hill* had my Lord *Mohun*'s Coat on, and they changed their Cloaths in the Play-Houſe. I ſaw them change their Cloaths; but what their Deſign was, I cannot tell.

Mr. *Att. G.* When was that Sir?

Hud. That very Night that the Gentleman that is Dead, Mr. *Mountford*, was killed.

Mr. *Att. G.* You ſay, that my Lord *Mohun* was preſent, when that Diſcouſe of *Hill* was, about *Mountford* at the Tavern.

Hud. Yes, but I cannot ſay my Lord took any notice of it, for he made no Reply that I heard.

L. H. Stew. Have you done with this Witneſs?

Mr. *Att. G.* Yes, my Lord,

Hud. This is all that I know of the matter.

L. H. Stew. My Lord *Mohun*, have you any thing to ſay to this Witneſs?

L. Mob. No my Lord.

Mr. *Att. G.* Then our next Witneſſes Name is *George Powell.*

Who was Sworn in like manner.

Mr. *Att. G.* *Mr. Powell*, you have heard the Queſtions that have been ask'd *Mr. Hudſon.* Pray will you make Anſwers to them; and give my Lords an Account what you know of this matter.

Powell. May it pleaſe Your Lordſhips, about 5 or 6 days before Mr. *Mountford* was Wounded, I was in Company with Captain *Hill*, and he began Mrs *Bracegirdles* Health. I told him I would pledge it. Says he, I am ſure there is no Bar between me and Mrs. *Bracegirdle*, but *Mountford*; and I am Reſolved to be Revenged on him, one way or another. About 3 Days afterwards I was at Supper with my Lord *Mohun* and Captain *Hill*, and another Gentleman, and the ſame Diſcourſe aroſe again, and Captain *Hill* whiſpered me in the Ear, ſays he, I am reſolved to have the Blood of *Mountford.* I told him I did not think it fit for him to ſpeak ſo behind a Gentleman's back, and to me who was his Friend. I ſaid I would acquaint Mr. *Mountford* what he ſaid, and I did not doubt but he would give him the ſatisfaction of a Gentleman for any Injury he did him. I heard no farther Diſcourſe at that time, nor do I know more of that matter, till the Night that Mr. *Mountford* was Wounded, when I ſaw him lying upon the Parlor Floor, and afterward ſaw him laid to Bed, and ſate up all Night with him, and about four a Clock in the Morning I asked Mr. *Mountford* how the thing happened. He told me Captain *Hill* killed him baſely; I asked him if his Sword was drawn; Yes, ſays he, but it was after I had received my Wound, for whilſt my Lord *Mohun* talked to me, *Hill* run me through.

Mr. *Att. G.* At that time, when thoſe Words were ſpoke at Supper, that he deſigned to be the Death of *Mountford*, was my Lord preſent?

Powell. Yes my Lord *Mohun* was preſent, but he was talking to Colonel *Tredenham.*

Mr. *Att. G.* Did my Lord *Mohun* ſay any thing to what *Hill* ſaid?

Powell. I did not hear him make any Anſwer to it at all.

Mr. *Att. G.* Do you know any thing elſe in relation to this Fact?

Powell. Nothing elſe but that Captain *Hill* did give a Letter to be delivered to Mrs. *Bracegirdle*, but I know not whether it was delivered or not, and he often told me he would marry her with all his Heart.

Mr. *Att. G.* You ſay you had that Diſcourſe with *Mountford*, when he lay a Dying.

Powell. It was about four a Clock, and he died about One.

Mr. *Att. G.* Was there any thing ſaid about my Lord *Mohun* at that time?

Powell. Nothing but that my Lord *Mohun* was talking to him, whilſt the other ran him through.

L. H. Stew. If I underſtand you aright, you ſay nothing againſt my Lord *Mohun*, but his being by one time at Supper when *Hill* ſaid ſome Words about *Mountford*; and then the other thing you ſay is what *Mountford* told you after he was Wounded: that my Lord was Talking to him, when *Hill* gave him the Wound.

Powell. Yes, My Lord, That is all that I heard.

L. H. Stew. Has your Lordſhip any thing to ſay to this Witneſs?

L. Mohun. No, my Lord.

Mr. *Att. G.* The next Witneſs that we ſhall deſire to call is Mrs. *Knight*.

Who was S W O R N.

Mrs. *Knight.* I have nothing to ſay to my Lord *Mohun*; but what I have to ſay, is to Mr. *Hill*. About 4 days before Mr. *Mountford* was Killed, Mr. *Hill* came to me, and ſpoke to me about Mrs. *Bracegirdle*: He told me he was ſatisfied ſhe hated him. I told him I did not believe ſhe hated any body, or loved any Body: Yes, he ſaid, ſhe did love ſome body, but he had thought of a way to be even with that Body. Upon the *Wedneſday* Night before Mr. *Mountford* was killed, he came to me as I was coming out of the Dreſſing Room; ſaith he, Mrs. *Knight* let me ſpeak a Word with you, ſays he, you are very great with Mrs. *Bracegirdle*, and I deſire you to be ſo kind, as to ſpeak to her for me, and I would beg of you if you would give me leave to give her this Letter from me: No, ſaid I, Mr. *Hill*, I beg your Pardon; you ſay ſhe hateth you, and if ſhe hateth you, ſhe will not love any body that ſpeaketh for you; and I am not fond of creating my ſelf Enemies in the Houſe, knowing I have ſome already. What Enemies, ſaith Mr. *Hill*, *Mountford* do you mean? And then repeating a great Oath, I ſhall find a way with him ſpeedily.

L. H. Stew. A way, with what?

Mrs. *Knight.* A way with him ſpeedily, *Hill* ſaid it of Mr. *Mountford*.

L. H. Stew. What do you call this Witneſs for, Mr. *Attorney*, what uſe do you make of her Evidence againſt my Lord *Mohun*?

Mr. *Att. G.* My Lord, the uſe that we would make of theſe Witneſſes is to give an Account of the whole Fact from the Beginning to the End, *Hill*'s Malice, and what was the Occaſion of it, his Deſign in coming there that Night, and what he did, and to leave it to your Lordſhips, to judge what influence this will have, how far it will affect my Lord *Mohun*. The next Witneſs is Mrs. *Sandys*.

L. H. Stew. What is this Womans Name?

Mr. *Att. G.* Mrs. *Elizabeth Sandys*.

She was S W O R N.

Mr. *Att. G.* Mrs. *Sandys*, give my Lords an Account, whether you were preſent with my Lord *Mohun* and Mr *Hill* at the Tavern that day that Mr. *Mountford* was killed, and what paſſed there.

Sandys. I Dined with my Lord *Mohun* and Captain *Hill*, at the *Three Tuns* in *Shandois-ſtreet*, and there aroſe a Diſcourſe about Mrs. *Bracegirdle* and *Hill*, and my Lord *Mohun* asked me, if I thought *Mountford* had lay with her or no. I ſaid I could not tell; preſently after ſays my Lord *Mohun*, it will coſt *Hill* 50 Guineas this Deſign. Saith Mr. *Hill*, if the Villain offers to reſiſt I will Stab him; ſaith my Lord *Mohun*, I will ſtand by my Friend. When this was done, Mr. *Hill* deſired Mr. *Brough* to borrow a Caſe of Piſtols of Captain *Leiſter*, and he ſaid he would not borrow them himſelf, for he doubted, if he knew of the Deſign he would not lend them. When that was done, Captain *Hill* told me had a Coach and Six Horſes in *Witch Street*, to ſeize Mrs. *Bracegirdle*, and carry her away into the Country; and my Lord *Mohun* ſaid, he would ſtand by his Friend: And when my Lord *Mohun* went away, *Hill* ſaid to him; my Lord, if you be not there by Six a Clock, I am ruined. Saith my Lord *Mohun*, upon my Word and Honour I will be at the Play-Houſe by Six.

L. H. Stew. My Lord *Mohun*, have you any thing to ſay to that Witneſs?

L. Mohun. Yes, my Lord, I deſire to have her asked, whether ſhe is a Maid or a married Woman.

L. H. Stew. You hear the Queſtion, but I do not know what uſe my Lord will make of it.

Mr. *Att. Gen.* You can eaſily anſwer, whether you are married or unmarried.

L. H. Stew. That Queſtion is very fair; are you a married Woman, or a ſingle Woman?

Sandys. I am a ſingle Woman, my Lord.

Mr. *Att. Gen.* Pray Mrs. *Sandys* repeat the Words that my Lord *Mohun* ſaid, when *Hill* ſaid if the Villain reſiſted he would Stab him.

Sandys. My Lord *Mohun* ſaid nothing in the World, but that he would ſtand by his Friend.

L. H. Stew. Have you any further Queſtions, Mr. Attorny, to ask this Witneſs?

Mr. *Att. Gen.* I have nothing more to ask her my Lord.

L. H. Stew. What ſay you my Lord *Mohun*; would you ask her any thing elſe?

L. Mohun. No, my Lord.

L. H. Stew. Then withdraw.

(Which ſhe did.)

Mr. *Att. Gen.* The next Witneſs we call is Mr. *Rogers*.

(Who was ſworn.)

L. H. Stew. What is this Witneſſes Name?

Mr. *Att. Gen.* *Rogers*, my Lord.

L. H. Stew. What is his Chriſtian Name?

Mr. *Att. Gen.* *John.* If your Lordſhips pleaſe to remember, that the laſt Witneſs Mrs. *Sandys* ſaid, That Mr. *Hill* deſired my Lord *Mohun*, not to fail of being at the Play-Houſe by Six a Clock, and that he was undone if he did not come; and my Lord promiſed upon his Word and Honour that he would come: Now we call this Witneſs to prove, that they met at the Play-Houſe according to the Appointment on the 9th of *December*.

Rogers. My Lord, all that I know of this matter was, That my Lord *Mohun* and Captain *Hill* were at the Play-Houſe that Night, and that which made me take particular Notice of their being then at the Play-Houſe, tho' they had

been

been frequently there before together, was, that Captain *Hill* had my Lord *Mohun*'s Coat on, and my Lord *Mohun* had Captain *Hill*'s Coat on.

Mr. *Att. Gen.* Did you obſerve any thing elſe, when they were at the Play-Houſe?

Rogers. Nothing but only ſome Words that paſſed between Captain *Hill* and my Lord *Mohun*, when I went to ask them for the overplus of the Money for coming in, becauſe they came out of the Pit upon the Stage; he ſaid he would not give it me, but if I brought any of our Maſters, he would ſlit their Noſes, or ſomething to that Effect.

Rogers. I asked them for Money, that they ought to pay more than the reſt that were in the Pit, becauſe they came upon the Stage, and they would not give it me, but he ſaid if I brought any of our Maſters, he would ſlit their Noſes, or cut their Faces, or to that Effect.

L. H. Stew. My Lord, will your Lordſhip ask him any Queſtions?

L. Mohun. No my Lord.

L. H. Stew. Call another Witneſs then.

Mr. *Att. Gen.* My Lords, with your Lordſhips Favour, the next Witneſs that we ſhall call, is the Coach-man, *William Dixon.*

(Who was ſworn.)

Mr. *Att. Gen.* Mr. *Dixon*, do you remember the Day when Mr. *Mountford* was killed?

Dixon. Yes, Sir.

Mr. *Att. Gen.* Pray acquaint my Lords, what Perſons you carryed in your Coach that Day, whether you carryed my Lord *Mohun* and Mr. *Hill*, and to what place, and where you waited for them.

Dixon. If it pleaſe your Lordſhips, Captain *Hill* and my Lord *Mohun* came in a Hackney Coach to my Gate, where I live, and I was juſt a going to ſet my Coaches into the Street for Hyre: They Bargained with me for Six Horſes, and I was to have Thirty Shillings to ſet them down at *Totteridge* on this ſide *Barnet*. I ask'd them whether they would have me bring all the Six Horſes with the Coach. No they ſaid, a pair would ſerve to the Play-Houſe, and the other four ſhould ſtand at the Pounds end. So I went accordingly to the place appointed, over againſt the *Horſhoo-Tavern* in *Drury Lane*, and a Foot-man came, and Mr. *Hill* and he bid me drive down lower. So I drove to my Lord of *Clare*'s Door, or thereabouts; and there was ſome Soldiers that would have had me go in, and Smoak and Drink with them: I told them, I did never Smoak, and I did not care for drinking any thing at that time. With that, my Lord *Mohun* and Mr. *Hill* came into the Coach, and as they bid me, I carry'd them into *Norfolk-ſtreet*, below the Watch houſe that ſtood there; they bid me turn about, and ſtand there; and then they went to the *White-Horſe*-Taven, ſo I did turn about, and ſtay'd as they bid me, and they tarryed a pretty while before they came again, and then they bid me drive back to the place from whence I came, ſo I drove into *Drury lane*, and they bid me ſtop next to my Lord *Craven*'s Houſe, this was about Ten a Clock, and it being ſo late, I went Home, and ſent a Poſtillion down, to take care of the Coach, ſo that what paſſed afterwards, I cannot tell.

L. H. Stew. What Day or Night, was all this you ſpeak of?

Dixon. Truly my Lord, I cannot tell what Day it was, it was in *December*, as I take it, the 9th, and it was *Friday* I believe, I do not know juſtly.

L. H. Stew. Did you hear of the Death of Mr. *Mountford*?

Dixon. Yes, I did.

L. H. Stew. Was it the ſame Day that you heard Mr. *Mountford* was killed.

Dixon. No, I did not hear it till the next Morning.

Mr. *Att. G.* You ſay, you went with my Lord *Mohun* and Mr. *Hill* into *Norfolk-ſtreet*, and there you ſtayed for them, whilſt they went elſewhere.

Dixon. Yes, I did ſo.

Mr. *Att. G.* Do you know to what Houſes they went?

Dixon. They went to the *White-Horſe-Tavern*, to the hithermoſt Houſe on this ſide the *Strand*, and they went below to a Door on this ſide of a Houſe that is not finiſhed yet.

Mr. *Att. G.* Did you hear them uſe any Expreſſions there?

Dixon. I heard *Hill* ſay to my Lord *Mohun*, I think there is a Man and a Maid talking, it was at the Corner Houſe; ſaith *Hill*, we are Betrayed, Damn me ſaith he, my Lord, let us go and threſh him.

Mr. *Att. Gen.* What did they do then?

Dixon. I did ſee them do nothing.

Mr. *Att. G.* Whither did you carry them from thence?

Dixon. To the place from whence they came, in *Drury-lane*.

L. H. Stew. Will your Lordſhip ſay any thing to this Man?

L. Mohun. I deſire he may be asked, whether he had not Orders to go out of Town with us, as ſoon as Mrs. *Bracegirdle* was put into the Coach.

Dixon. If it pleaſe you, Sir, I had Order thus, that when we were to go out of Town, I muſt drive down into the *Strand*, and then round about any way that was readieſt and cleareſt to get to the Pound, that Order I had, and no other Order I had.

L. H. Stew. Who is your next Witneſs?

Mr. *Att. Gen.* My Lords, the next Witneſs we ſhall call, will give you an Account what was done in *Drury-lane*, upon their endeavouring to carry her away, and for that we have here Mrs. *Bracegirdle* her ſelf.

L. H. Stew. What is this Gentlewoman's Name?

Mr. *Att. G.* Mrs. *Ann Bracegirdle.*

(*Then ſhe was ſworn.*)

Mr. *Att. Gen.* Mrs. *Bracegirdle*, Pray give my Lords an account of the whole of your Knowledge of the Attempt that was made upon you in *Drury-lane*, and what followed upon it.

Mrs. *Bracegirdle.* My Lord, I was in *Prince's-ſtreet* at Supper at Mr. *Page's*, and at ten a Clock at Night, Mr. *Page* went Home with me; and coming down *Drury-lane*, there ſtood a Coach by my Lord *Craven*'s Door, and the Boot of the Coach was down, and a great many Men ſtood by it; and juſt as I came to the Place where the Coach ſtood, two Soldiers came and pulled me from Mr. *Page*, and four or five more came up to them, and they knocked my Mother down almoſt, for my Mother and my Brother were with me. My Mother recovered, and came and hung about my Neck, ſo that they could not get me into the Coach, and Mr. *Page* went to call Company to reſcue me. Then Mr. *Hill* came with his Sword drawn, and ſtruck at Mr.

Page and my Mother; and when they could not get me into the Coach, becauſe Company came in, he ſaid he would ſee me Home, and he led me by one Hand, and my Mother by the other. And when we came Home, he pulled Mr. *Page* by the Sleeve, and ſaid, Sir, I would ſpeak with you.

Mr. *Att. G.* Pray Mrs. *Bracegirdle*, did you ſee any Body in the Coach when they pulled you to it?

Mrs. *Bracegirdle.* Yes, my Lord *Mohun* was in the Coach; when they pulled me to the Coach, I ſaw my Lord *Mohun* in the Coach. And when we came Home, *Hill* pulled Mr. *Page* by the Sleeve, and he ſaid he would ſpeak with him. As they led me along *Drury-lane*, my Lord *Mohun* came out of the Coach, and followed us, and all the Soldiers followed them, but they were diſmiſſed, and, as I ſaid, when we came to our Lodging, then *Hill* pulled Mr. *Page* by the Sleeve, and ſaid, he would ſpeak with him. Saith Mr. *Page*, Mr. *Hill*, another time will do, to Morrow will ſerve; with that, when I was within Doors, Mr. *Page* was pulled into the Houſe, and Mr. *Hill* walked up and down in the Street with his Sword drawn. He had his Sword drawn when he came along with me.

Mr. *Att. Gen.* Did you obſerve him to ſay any thing whilſt he was with you?

Mrs. *Bracegirdle.* As I was going down the Hill he ſaid, as he led me, he would be revenged.

Mr. *Att. Gen.* Did he name of whom he would be revenged?

Mrs *Bracegirdle.* He did not name of whom then, but when I was in the Houſe, ſeveral Perſons went to the Door, and afterwards Mrs. *Brown* went to the Door, and ſpoke to them, and asked them what they ſtaid and walked there for; at laſt, they ſaid, they ſtaid to be revenged of Mr. *Mountford*, and then Mrs. *Brown* came in to me, and told me of it.

L. H. Stew. Who ſaid that?

Mrs. *Bracegirdle.* Mr. *Hill.*

Mr. *Att. Gen.* Were my Lord *Mohun* and Mr *Hill* both together when that was ſaid, that they ſtaid to be revenged of Mr. *Mountford*?

Mrs. *Bracegirdle.* Yes they were. And when Mrs. *Brown* came in and told me, I ſent my Brother and the Maid, and all the People we could, out of the Houſe to Mrs. *Mountford*, to deſire her to ſend, if ſhe knew where her Husband was, to tell him of it, and ſhe did. And when they came in a Doors again, I went to the Door, and the Doors were ſhut, and I liſtened to hear if they were there ſtill, and my Lord *Mohun* and Mr. *Hill* were walking up and down the Street; and by and by, the Watch came up to them, and when the Watch came, they ſaid, Gentlemen, Why do you walk with your Swords drawn? Says my Lord *Mohun*, I am a Peer of *England*, touch me if you dare.

L. H. Stew. Repeat that again, for I could not well hear you: Do you ſpeak of what you heard from Mrs. *Brown*, or what you obſerved your ſelf?

Mrs. *Bracegirdle.* My Lord, I was within Doors, but I was liſtening at the Door, and heard this my ſelf; they came up to them, and ſaid, Gentlemen, Why do you walk with your Swords drawn?

L. H. Stew. Who asked that Queſtion?

Mrs. *Bracegirdle.* The Watch, and ſays my Lord *Mohun*, I am a Peer of *England*, touch me if you dare. Then the Watch left them, and they went away, and a little after there was a Cry of Murder, and that is all that I know, my Lord.

L. Mohun. My Lord, I deſire this Witneſs may be asked, how long after this Paſſage that ſhe ſpeaketh of, was it that ſhe heard Murder cryed in the Street.

L. H. Stew. You hear the Queſtion, Mrs. *Bracegirdle*, What ſay you to it?

Mrs. *Bracegirdle.* My Lord, I believe it was about a quarter of an Hour after, to the beſt of my Memory.

L. H. Stew. What do you mean, a quarter of an Hour after, the Watch asked the Queſtion?

Mrs. *Bracegirdle.* Yes, my Lord.

Then the Earl of Mulgrave *ſtood up.*

L. H. Stew. My Lord *Mulgrave.*

E. of Mulgrave. My Lord, I deſire to ask this Witneſs a Queſtion. If I heard her aright, I think ſhe ſaid, they threaten'd to be revenged of Mr. *Mountford*, I deſire to know of her, whether my Lord *Mohun* did threaten him.

Mrs. *Bracegirdle.* I do not know indeed; but when Mrs. *Brown* asked them what they ſtaid there for? They ſaid to be revenged of Mr. *Mountford.* I did not hear them my ſelf, but Mrs. *Browne* came in and told me ſo.

Mr. *Att. Gen.* Mrs. *Bracegirdle*, I think, if I did not miſtake, you ſaid, when the Watch came came up, they asked them, why their Swords were drawn?

Mrs. *Bracegirdle.* Yes, and my Lord *Mohun* made anſwer, he was a Peer of *England*, and bid them touch him if they durſt, and they went away.

Mr. *Att. Gen.* My Lord, the next Witneſs that we call, ſhall be Mr. *Gawen Page*, at whoſe Houſe Mrs. *Bracegirdle* ſupped that Night.

(*He was ſworn.*)

Mr. *Att. Gen.* Mr. *Page*, I ſuppoſe you remember the Night, when Mrs. *Bracegirdle* ſupped at your Houſe.

Mr. *Page.* Yes, my Lord.

Mr. *Att. Gen.* I pray give an account of your whole Knowledge about this Matter, what happen'd that Night.

Mr. *Page.* About Ten a Clock at Night, on *Friday* the Ninth of *December* laſt, going down *Drury-lane*, with Mrs. *Bracegirdle*, whom I led juſt againſt my Lord *Craven's* Houſe.

L. H. Stew. Pray, Sir, ſpeak out, and tell us what time it was.

Mr. *Page.* About Ten a Clock at Night, on *Friday* the ninth of *December* laſt, going down *Drury-lane*, and leading Mrs. *Bracegirdle*, right againſt my Lord *Craven's* Door, ſtood a Coach, where two Soldiers preſſed in between me and Mrs. *Bracegirdle*, and parted us: I asked what that was for? But they took hold of Mrs. *Bracegirdle*, and immediately they would have forced her into the Coach; Captain *Hill*, whom I ſaw there with his Sword drawn, made ſeveral Blows at me.

L. H. Stew. Who would have forced her into the Coach?

Mr. *Page.* The Soldiers would.

Mr. *Att. Gen.* Pray go on, Sir, what follow'd after that?

Mr. *Page.* I ſay, Captain *Hill* made ſeveral Blows at me, and cry'd, you Villain, Stand. I received ſeveral of them upon my Cane, but there was none that hurt me; then I got help, and they were prevented of carrying Mrs. *Bracegirdle* away. My Lord *Mohun* was in the Coach; I ſaw him in the Coach.

Mr. *Att. Gen.* Did you ſee any Arms in the Coach?

Mr. *Page.* I ſaw no Arms, but I ſaw a Bundle in the Coach, tho' I could not tell what it was; and there was one in the Coach, that I ſaw was my Lord *Mohun*. So when we had got Help, we went down the Lane to Convey her Home, and Captain *Hill* was with us, and my Lord *Mohun* followed at a diſtance. Captain *Hill* ſaid to the Soldiers, *Be gone, I have nothing more to do with you now.* When we came to the Houſe, and Mrs. *Bracegirdle* was entring in, Captain *Hill* pull'd me by the Sleeve, and ſaid he would ſpeak with me. Said I, to Night is not a fit time, to morrow is better, therefore pray ſtay till to morrow Morning. But ſaid he, *God Damn me, you will not go home to Night.*

L. H. Stew. You ſpeak ſo low, that I cannot tell what you ſay; I did not hear that laſt that you ſaid.

Mr. *Page.* My Lord, I ſay, when Captain *Hill* pull'd me by the Sleeve, and ſaid he would ſpeak with me, I told him, that Night was not a fit time, to morrow would do better: Well, ſaith he, *To Morrow then; but, God Damn me, you will not go out to Night*: I went in a Doors, and there my Lord *Mohun* and he ſtaid for an Hour and a half, as I was told; I ſaw them not my ſelf: But Mrs. *Browne* came in and ſaid, that they ſaid, they waited to be revenged.

Mr. *Att. Gen.* Whom did they mean, your ſelf that they would be revenged of?

Mr. *Page.* Mrs. *Browne* ſaid, they waited for Mr. *Mountford.*

Mr. *Att. Gen.* Did you continue in that Houſe till after the Murder was committed?

Mr. *Page.* Yes, Sir, I did.

L. H. Stew. How long after you came into the Houſe was the Fact done?

Mr. *Page.* About an Hour and an half.

L. H. Stew. Did you your ſelf hear or obſerve any thing to be ſaid or done, from the time you came into the Houſe, to the time the Fact was committed?

Mr. *Page.* No, my Lord, I was in the Back-Room of the Houſe.

Mr. *Att. Gen.* Pray, Mr. *Page*, did you ſee Mr. *Mountford* after he was wounded?

Mr. *Page.* Yes, I did.

Mr. *Att. Gen.* Then give my Lords an account what paſſed at that Viſit.

Mr. *Page.* Upon the Out-cry of Murder, I came into the Street, where I found my Lord *Mohun* juſt ſurrendring himſelf to the Conſtable; and immediately I went to Mr. *Mountford*'s Houſe, and I found him lying all along in his Blood upon the Floor; he ſeeing me, deſired me to lift him up, which I did, and thinking he had been dying, I ask'd him whether he knew me. He ſaid Yes. Said I to him, Had you time to draw your Sword in your Defence? He ſaid, *He was barbarouſly run through before he could draw it.*

Mr. *Att. Gen.* Is this all you have to ſay, Sir?

Mr. *Page.* Yes.

L. H. Stew. Will your Lordſhip ask this Witneſs any Queſtions?

L. Mohun. My Lord, I deſire he may be ask'd whether my Sword was drawn when I ſurrendred my ſelf to the Conſtable.

Mr. *Page.* No my Lord, your Sword was in the Scabbard when you ſurrendred your ſelf, but I cannot ſay that your Sword was drawn before, or not.

Mr. *Att. Gen.* The next Witneſs that we deſire to call, is Mrs. *Page.*

(*She was ſworn.*)

L. H. Stew. What is the Name of this Witneſs?

Mr. *Att. Gen.* Mrs. *Mary Page.* Pray Mrs. *Page*, do you remember the night when Mrs. *Bracegirdle* ſupped at your Houſe, and Mr. *Mountford* was killed? Acquaint my Lords with all you did obſerve that night.

Mrs. *Page.* Mrs. *Bracegirdle* ſupped at my Lodging, and my Husband went home with her, and ſtaying ſomething longer than ordinary, I ſent my Servant to know what was the reaſon of it: He brought me word back, that my Husband had like to have been murdered, and Mrs. *Bracegirdle* carried away. With that I went down my ſelf towards Mrs. *Bracegirdle*'s Lodgings, and there I found my Lord *Mohun* and Mr. *Hill* walking, Mr. *Hill* with his Sword drawn before Mrs. *Bracegirdle*'s Door; my Lord *Mohun*'s not. So I went in, into the Houſe; and after I had ſtaid a while there, Mrs. *Browne* came out to them, and asked them why they ſtaid there? They made anſwer, they ſtaid for Mr. *Mountford.*

Mr. *Att. Gen.* Who made that Anſwer?

Mrs. *Page.* Mr. *Hill.*

Mr. *Att. Gen.* Who was with Mr. *Hill* at that time?

Mrs. *Page.* My Lord *Mohun.*

Mr. *Att. Gen.* Was there any body beſides thoſe two, that you obſerv'd?

Mrs. *Page.* No, there was no body elſe that I ſaw.

Mr. *Att. Gen.* Were their Swords drawn?

Mrs. *Page.* Mr. *Hill*'s then was, my Lord *Mohun*'s at that preſent was not: But Mrs. *Bracegirdle* hearing that they waited for Mr. *Mountford*, deſired me to go over to Mrs. *Mountford*'s Houſe, and ſpeak to her to ſend to her Husband, and deſire him to keep where he was, or come home with a good Guard. Whilſt I was telling Mrs. *Mountford* what I was deſired to tell her——But I ſhould have told your Lordſhips, that when I came out to go to Mrs. *Mountford*, my Lord *Mohun* had then his Sword drawn.

Mr. *Att. Gen.* Were they there when you went out of Mrs. *Bracegirdle*'s Lodgings?

Mrs. *Page.* Yes, they were.

Mr. *Att. Gen.* And are you ſure, that at that time when you went out of Mrs. *Bracegirdle*'s Houſe, my Lord *Mohun* had his Sword drawn?

Mrs. *Page.* I am ſure of it, that when I went out, my Lord *Mohun* had then his Sword drawn; that was the ſecond time.

L. H. Stew. Out of whoſe Houſe was that you went?

Mrs. *Page.* Out of Mrs. *Bracegirdle*'s Lodgings.

L. H. Stew. Where were they when you ſaw his Sword drawn?

Mrs. *Page.* They were walking before Mrs. *Bracegirdle*'s Door, from one end of the Street to the other.

Mr. *Att. Gen.* What Street is that?

Mrs. *Page. Howard-Street.*

Mr. *Att. Gen.* Pray deſcribe to my Lords that Street.

Mrs. *Page.* They that ſtand in that Street, can ſee who goeth down to Mr. *Mountford*'s Houſe, and who goeth up *Surry-Street.*

Mr. *Att. Gen.* Well now go on.

Mrs.

Mrs. *Page.* Whilſt I was deſiring Mrs. *Mountford* to ſend away to her Husband, I heard Murder cry'd out; immediately I open'd Mr. *Mountford*'s Door, and he came in, and fell with his Arms round about my Neck to ſupport himſelf, I ſuppoſe, and he ſaid, *Hill* had Murder'd him. I helped him as far as the Parlor Door, and there down he fell. I went up the Street and called out *Murder*, and my Lord *Mohun* came to me, and bid me take notice, he had no hand in the Murder, for his Sword was not Drawn. I told him, I could not tell that, for to my knowledge he had been in Mr. *Hill*'s Company with his naked Sword juſt before.

Mr. *Att. Gen.* Call Mrs. *Brown.*

L. H. Steward. You have nothing to ſay to that Witneſs my Lord, have you?

L. Mohun. No, my Lord.

Mr. *Att. Gen.* Is this all you have to ſay, Mrs. *Page*?

Mrs. *Page.* After this, my Lord *Mohun* reſign'd himſelf up to the Conſtable, the Conſtable ſtanding by me, I bid him ſecure my Lord *Mohun*, which he did.

L. Mohun. My Lord, I deſire to ask this Witneſs, whether I Surrendred my ſelf, or made Oppoſition, or offered to run away?

Mrs. *Page.* No my Lord, the Conſtable laid hold on you.

L. H. Steward. What Anſwer do you make to my Lord's Queſtion?

Mrs. *Page.* I ſay, my Lord, the Conſtable laid hold upon my Lord *Mohun.*

L. Mohun. I deſire to ask her, whether I did not Surrender my ſelf?

Mrs. *Page.* Not till I had deſir'd the Conſtable to ſecure your Lordſhip.

L Mohun. Did I make any Oppoſition, or offer to run away?

Mrs. *Page.* No, for the Conſtable preſently took hold of your Lordſhip.

L. Mohun. I deſire ſhe may be asked whether *Hill* run away.

Mrs. *Page.* That I know not; I ſuppoſe he was gone away out of the Street before I came forth.

Mr. *Att. Gen.* Swear Mrs. *Browne.*

Which was done.

Mr. *Att Gen.* Mrs. *Browne*, you are upon your Oath, pray declare to my Lords what you know happen'd upon that Night that Mr. *Mountford* was Killed.

Mrs. *Browne.* If it pleaſe your Lordſhips, when Mrs. *Bracegirdle* came Home, I found her Crying; I asked her what was the matter? She ſaid, my Lord *Mohun* and Mr. *Hill*, had run her into a Coach, with ſix or ſeven Soldiers, and lifted her into the Coach, and ſhe ſaid they were at the Door. Upon which, I went to the Door, and ſaw my Lord *Mohun* and Mr. *Hill* walking along. Said I, are you the Gentlemen that have uſed Mrs. *Bracegirdle* in this manner? my Lord *Mohun* anſwered, Madam, ſaid he, *I protected her; if it had not been for me, the Rabble would have torn her a pieces; for if we had a mind to carry her away, we had ſix or ſeven Piſtols Charged in the Coach, and could eaſily have ſuppreſſed the Tumult.*

L. H. Steward. I do not hear what the Witneſs ſaith, ſhe ſpeaketh ſo low.

Mrs. *Browne.* My Lord *Mohun* ſaid, they had Six or Seven Piſtols in the Coach, and could eaſily have ſuppreſſed the Rabble, if they would have carried her away; but he had no Deſign upon her for his own part, but only to ſerve his Friend; and that Mr. *Hill*'s deſign was to take her out of Town, and keep her a Week, and ſee if he could perſwade her to marry him; and ſaith Mr. *Hill*, *I ſhall light on this* Mountford. Why ſaid I to him, What hurt hath Mr. *Mountford* done you? Saith he, *I have been Abuſed, and I will be Revenged.*

L. H. Steward. That was *Hill* that ſaid ſo.

Mrs. *Browne.* Yes. So I went and told Mrs. *Mountford* of it.

Mr. *Att. Gen.* Pray acquaint my Lords what my Lord *Mohun* ſaid to you about this Matter.

Mrs. *Browne.* My Lord *Mohun* ſaid, he protected her, for if it had not been for him, the Mob had torn her in pieces; but if they had a mind to carry her off, they could eaſily have ſuppreſſed the Mob, for they had ſix or ſeven Piſtols in the Coach: But ſaith my Lord, *I had no deſign upon her my ſelf, but only to ſerve my Friend.* So ſaith Mr. *Hill*, *I ſhall light upon this* Mountford. Why, ſaid I, what hurt hath Mr. *Mountford* done you? Saith he, *I have been Abuſed, and I will have my Revenge.* So I went and told Mrs. *Mountford* of it. About half an Hour after, or more, Mr. *Mountford* came down, and when he came down, I ſaw him a little before he came to them, and went to him, and would have fain have ſpoke to him, but he would not ſtay to let me ſpeak what I had to ſay to him but going on, preſently he met my Lord *Mohun.* Saith he *Your Humble Servant, my Lord.* Saith my Lord again, *Your Servant Mr.* Mountford. Saith my Lord, *I have a great Reſpect for you, Mr.* Mountford, *and would have no Difference between us; but there is a thing fallen out between Mr.* Hill *and Mrs* Bracegirdle. Saith Mr. *Mountford*, *My Lord, has my Wife diſobliged your Lordſhip? if ſhe has, ſhe ſhall ask your Pardon; but as for Mrs.* Bracegirdle, *ſhe is no concern of mine; and I hope your Lordſhip will not vindicate ſuch an ill Man as Mr.* Hill *in ſuch a matter as this. Upon that I heard Mr.* Hill *bid Mr.* Mountford *draw, Mr* Mountford *ſaid, that I will;* and drew his Sword; but whether he received his Wound before he drew his Sword, or after, I cannot tell.

L. H. Steward. Speak that laſt again.

Mrs. *Browne.* Mr. *Mountford* and my Lord met, ſaith Mr. *Mountford*, your Servant, my Lord; ſaith my Lord, Your Servant Mr. *Mountford*, I have a great reſpect for you, and would have no difference be between us; but here has been a thing fallen out between Mrs. *Bracegirdle* and Mr. *Hill*; ſaith Mr. *Mountford* preſently again, Has my Wife diſobliged your Lordſhip? If ſhe has, ſhe ſhall ask your Pardon. But Mrs. *Bracegirdle* is no concern of mine: I know nothing of this matter, I come here by accident.

Mr. *Att. Gen.* Who ſaid they came there by accident?

Mrs. *Browne.* Mr. *Mountford* ſaid, I know nothing of this matter, I come here by accident. But, I hope your Lordſhip will not vindicate *Hill* in ſuch Actions as theſe are: Upon that, I heard Mr. *Hill* bid Mr. *Mountford* draw, Mr. *Mountford* ſaid he would, and drew his Sword; but whether he received his Wound before or after, I cannot tell; it was in the Night.

Then the Lord *Godolphin* ſtood up.

L. H. Steward. My Lord *Godolphin.*

L. Godolphin. My Lord *Steward*, I deſire this Witneſs may be asked, whether my Lord *Mohun*'s Sword was drawn when he talked with *Mountford*, becauſe the Council opened it before, that the

Watch

Watch came to them, and saw them with their Swords drawn when they were walking in the Street.

L. H. Steward. Mrs. you heard my Lord's Question: Was my Lord *Mohun*'s Sword drawn whilst he talked with *Mountford*, or no?

Mrs. *Browne.* I do not remember I did see my Lord *Mohun*'s Sword drawn.

Mr. *Att. Gen.* Were they near together?

Mrs. *Browne.* They were near together.

L. Mohun. I desire she may be asked whether I went up the Street to meet Mr. *Mountford*, or he came down to me?

L. H. Steward. You heard the Question, Mistress, what say you?

Mrs. *Browne.* Mr. *Mountford* came down to him.

L. Mohun. I desire she may be asked whether she did not go to hinder Mr. *Mountford* from coming that way?

Mrs *Browne.* Yes, I did go to speak to him, but he did not hear me speak, or did not hearken to me; I took him by the Hand, and told him I would speak with him, but he did not hear me, but went on.

Mr. *Att. Gen.* You did not tell him upon what account you would have spoke with him?

Mrs. *Browne.* No, I had no time.

L. Mohun. I desire she may be asked, whether Mr. *Mountford*'s Sword was within his Arm, or by his Side.

Mrs. *Browne.* I believe it was by his Side.

L. Mohun. I desire she may be asked one Question more, whether he could not have went home, without coming to Mr. *Hill* and me?

Mrs. *Browne.* He did come out of his way, his way was not by my House; he did come down the Street towards them.

L. Mohun. I desire your Lordships to take notice, that he came out of his way to me. I desire to ask her: Did he come as if he was going to his own House or yours?

Mrs. *Browne.* As if he was coming to mine.

L. Mohun. I desire to ask her, whether I had any hand in killing Mr. *Mountford*, or went to hold him, or meddled with him?

Mrs. *Browne.* Not that I did see.

L. H. Steward. Have you any more to say to is Witness?

Mr. *Att. Gen.* No, my Lord.

L. H. Steward. Nor your Lordship?

L. Mohun. No, my Lord.

Mr. *Att. Gen.* Then the next Witness we desire to call, is *Richard Row.*

Who was sworn.

Mr. *Att. Gen. Richard Row*, where do you live?

Row. In *Surry-street.*

L. H. Steward. Where doth he Live, saith he?

Mr. *Att. Gen.* In *Surrey-Street*, my Lord. Pray how near is that to the Place where Mr. *Mountford* was kill'd?

Row. About ten or twelve Pole.

Mr. *Att. Gen.* Did you observe my Lord *Mohun* and Mr. *Hill* that Night, and where were they?

Row. All that I can say to the matter in that Case is, I was in my own House about a quarter after Ten a Clock, and I heard a noise in the Street, and I went out, and saw two Gentlemen and two Lads about the middle of the Channel; one of the Lads had one of the Gentlemen by the Arm, just by the Channel, and said, *Pray my Lord, good my Lord, don't do it, alter your Resolution.* There was an Answer made, that they would be revenged that Night, or to Morrow.

Mr. *Att. Gen.* Do you know who the Boy was that used that Expression?

Row. No, my Lord, it was very dark.

Mr. *Att. Gen.* Do you not know neither who returned the Answer?

Row. No indeed.

Mr. *Att. Gen.* But you are sure you heard those words pass?

Row. Yes indeed, and I went to the Door afterwards, whilst they went to the upper end of the Street and returned again; and I saw Captain *Hill*'s Boy following him. My Lord, I knew Capt. *Hill*, though he was not in the Cloaths he formerly used to come to my House in, and the Boy I knew to be his Boy.

Mr. *Att. Gen.* Were those Persons together that you heard speaking so?

Row. Yes, all four together, in a Confusion they seemed to be, for they were Pushing to and again, and the Boy had hold of one of the Gentleman's Arms when he bid him alter his Resolution.

Mr. *Att. Gen.* Repeat those Words again that you heard him say.

Row. Pray my Lord, good my Lord, do not do it, alter your Resolution.

L. H. Steward. Has your Lordship any thing to ask this Witness?

L. Mohun. No, my Lord.

Row. I spoke of this same afterwards, and so they have brought me here to give Evidence: That is all that I can say. I cannot Swear to my Lord *Mohun*, that he was one, I do not know that ever I saw him to my knowledge in my Life.

E. of Mulgrave. My Lord Steward, I desire he may be asked, whether he knoweth who that Boy was that made that Answer.

Row. There was no answer made by any Boy, but begging and praying, *That my Lord would not do it.*

E. of Mulgrave. Do you know who that Boy was?

Row. No, I do not know what Boy it was. But when I heard Mr. *Mountford* was Killed, and my Lord *Mohun* was concerned, I told what I had heard and seen, and so they bring me here to Evidence it. That is all I can say to the matter.

Mr. *Att. Gen.* My Lord, we desire next to call some of the Watch, and shall begin with *Merry.*

Who was Sworn.

L. H. Steward. What is his Name?

Mr. *Att. Gen. William Merry.* Mr. *Merry*, I think you are Beadle of the Parish.

Merry. Yes, I am.

Mr. *Att. Gen.* Pray acquaint my Lords what you observed that Night Mr. *Mountford* was killed, when you saw my Lord *Mohun* and Mr. *Hill*, the first time and the second time, when my Lord *Mohun* was Taken.

Merry. When I first came down the Street, walking the Rounds between Eleven and Twelve a Clock, as I turned at the Corner out of *Surrey-street* into *Howard-Street*, I saw my Lord *Mohun* and Capt. *Hill* Walking, that is, upon the Paved Stones; my Lord was walking towards me, and I asked, Who comes there? Saith my Lord, a Friend. Said I, What is the meaning of your Swords being Drawn? Return your Swords, and stand off. With that, he returned his Sword immediately. Saith he, *I am a Peer of the Land; here, will you have my Sword?* and he profferred me

me his Sword; but the Constable was not there then, and I did not take his Sword; but, said I, God Bless your Honour my Lord, I know not what you are, but I hope you are doing no harm; No, faith he. With that, the Constable came immediately, and he proferred the same to him; there were two Candles in some Maids, or Womens hands at a Door hard by, and I went to ask them if they knew the meaning of it; and there being a Neighbours Man leaning with a Bottle and a Glass against the Wall, whom I knew. I think they told me one of them had a Sweet-heart there; and my Lord said, he was drinking a Lady's Health, and as soon as his Bottle was out, he would be gone. That is all I heard of the matter.

Mr. *Att. Gen.* Was Mr. *Hill* there?

Merry. Yes, he was.

Mr. *Att. Gen.* Was his Sword Drawn?

Merry. Yes, his Sword was drawn, and I asked what made that Gentleman with his Sword Drawn? and my Lord *Mohun* said, he had lost his Scabbard; but seeing this Neighbour's Man stand there, I went to the House.

Mr. *Att. Gen.* Were both their Swords drawn at first?

Merry. Both their Swords were Drawn when I came first into the Street; but my Lord put up his Sword, and the other continued Drawn, by reason as they said, he had lost his Scabbard. And so seeing, as I said, my Neighbour's Man standing there, we went to that House to enquire if they knew what their Business was; we were not got into the House, I am sure not a Stone's cast within the House, but Murder was cry'd out, and we came back again, and my Master being nimbler of Foot than I, because he was a younger Man, came first into the Place, and seized my Lord before I came; how the Seizing was I do not know.

Mr. *Att. Gen.* Our next Witness is *Thomas Fennell.*

Who was Sworn.

Mr. *Att. Gen.* *Fennell*, you was one of the Watch that night when Mr. *Mountford* was Killed.

Fennell. Yes, Sir.

Mr. *Att. Gen.* Give my Lords an account what you observed that Night, in relation to my Lord *Mohun* and Mr. *Hill.*

Fennell. The Constable and his Watch going the Rounds, divided themselves into two parts; I went down *Surrey-Street* with one Party; the Constable he went down *Strand-Lane* with the other Party. We were four or five that came down *Surrey-Street*, and when we came down, my Lord *Mohun* and Capt. *Hill*'s Swords were both Drawn; my Lord *Mohun* put up his Sword just as we came down.

L. H. Steward. Speak out Man, that my Lords may all hear you.

Fennell. I say, the Constable and his Party went down *Strand-Lane*, and another Party down *Surrey-Street*, four or five of us, and my Lord *Mohun* and Capt. *Hill* had both their Swords Drawn: When we came down, my Lord put up his Sword just as we came down, but the Constable not being come, I went and called him.

Mr. *Att. Gen.* You say both their Swords were Drawn when you came down.

Fennell. Yes, but my Lord put up his Sword just as we came down.

Mr. *Att. Gen.* What time of Night was that?

Fennell. It was between Eleven and Twelve.

Mr. *Att Gen.* How long before the Murder was committed?

Fennell. A quarter of an Hour.

L. H. Steward. Do you not say, they put up their Swords as soon as you came down?

Fennell. My Lord *Mohun* put up his Sword, but *Hill* said he had never a Scabbard.

Mr. *Att. Gen.* Did you ask them why they had their Swords drawn at that time of Night?

Fennell. No, I went to call the Constable.

L. H Steward. Have you any more to ask of this Witness?

Mr. *Att. Gen.* I have not my Lord.

L. H. Steward. Nor you my Lord?

L. Mohun. No, my Lord.

L. H. Steward. Pray go on then; whom do you produce next?

Mr. *Att. Gen.* Our next Witness is *James Bassit.* *Who was Sworn.*

Mr. *Att. Gen.* Were you one of the Watch that Night Mr. *Mountford* was Killed?

Bassit. Yes.

Mr. *Att. Gen.* Did you see my Lord *Mohun* and Capt. *Hill* that Night?

Bassit. Yes.

Mr. *Att. Gen.* Acquaint my Lords where it was, and in what manner you found them.

Bassit. In *Howard-street*; I came along with the Constable, and I walked before them that went down *Surry-street* with my Lanthorn, and there was my Lord *Mohun* with his Sword Drawn, and Captain *Hill* with his the like: We asked them, what they did there? They said they were drinking of a Bottle of Wine: *Hill* said to me, you may knock me down if you please: Nay, said I, we never use to knock any Gentlemen down, unless there be occasion; and then we went into *Norfolk-street* to the Tavern to examine what they were, and what they were doing; and in the mean time the Murder was done.

Mr. *Att. Gen.* Did you not ask them why their Swords were drawn?

Bassit. Yes, I did.

Mr. *Att. Gen.* What did they say?

Bassit. *Hill* made answer that he had lost his Scabbard.

Mr. *Att. Gen.* What said my Lord *Mohun*?

Bassit. My Lord *Mohun* had put up his Sword by that time we came up to him: That is all I can say to it.

L H. Steward. If you have nothing more to ask him, call another.

L. Mohun. My Lord I desire he may be asked whether he came with the Constable when I surrendred my self?

Bassit. Yes, and I took hold of your Sleeve, and you shook and quak'd and trembled, as if you would tear it to pieces.

L. Mohun. I desire he may be asked whether my Sword was in the Scabbard when I surrendred my self.

Bassit. Yes, it was, he surrendred it.

L. H. Steward. That was after the Murder was done.

Mr. *Att. Gen.* With your Lordship's Favour, I desire he may answer my Lord *Mohun*'s first Question again, so as to be heard by your Lordships; What was that you were saying when my Lord surrendred himself?

Bassit. I took him by the Arm when he surrendred himself up.

Mr. *Att. Gen.* What then?

Bassit. Then he quaked, and I had him to the *Round-House.*

L. H. Steward.

L. H Steward. Hear my Queſtion, you ſay you took him by the Sleeve, when he ſurrendred himſelf; what do you mean by that? is it that he had ſurrendred himſelf before you laid hold on him, or afterwards?

Baſſit. I took hold of his Arm, when he ſurrendred himſelf.

L. H. Steward. But was it before he ſurrendred himſelf to the Conſtable?

Baſſit. No, it was afterwards, my Lord; to have him away.

L. H. Steward. Then you did ſee him ſurrender himſelf to the Conſtable?

Baſſit. Yes, my Lord.

Mr. *Att. Gen.* Then call Mr. *Charles Knowles*; But he did not appear.

L. H. Steward. Whom do you call next, Sir?

Mr. *Att. Gen.* My Lords, we call'd Mr *Charles Knowles*; but they ſay, he is not come, therefore with your Lordſhips favour, we will call Mrs. *Brewer.*

[*Who was ſworn.*]

Mr. *Att. Gen.* Mrs. *Brewer*, I think, you live at the next Door to Mrs. *Bracegirdle*'s Lodging?

Mrs. *Brewer.* Yes, I do ſo.

Mr. *Att. Gen.* Pray give my Lords an account what you ſaw and heard that Night Mr. *Mountford* was kill'd.

Mrs. *Brewer.* I was at Mrs. *Bracegirdle*'s Houſe, and I went to the door with them; and juſt as I went to the Door, my Lord *Mohun* came up to me; juſt as he came to the Door, Mr. *Mountford* came down the Street, and my Lord went to him, and imbraced him, and ſaid Mr. *Mountford*, Your humble Servant, I am glad to ſee you. Who is this ſaid Mr. *Mountford*, My Lord *Mohun*? Yes ſaid my Lord. What makes your Lordſhip here at this time a night, ſaith Mr. *Mountford*? Saith my Lord again, I ſuppoſe Mr. *Mountford* you was ſent for. Sent for, for what ſaith he? You have heard of the buſineſs of Mrs. *Bracegirdle*, I ſuppoſe, ſaith my Lord: No my Lord, ſaith he, I come by chance.

Mrs. *Att. Gen.* Who ſaid that?

Mrs. *Brewer.* Mr. *Mountford*, Sir.

Mr. *Att. Gen.* Well, go on and ſpeak aloud.

Mrs. *Brewer.* My Lord, Mr. *Mountford.*— And there ſhe heſitated, and ſeemed to be in a Confuſion.

Mr. *Att. Gen.* She is not uſed to ſuch publick Examinations: If your Lordſhips will pleaſe to allow her to begin, becauſe ſhe is in ſome Confuſion, ſhe will be the better able to give you what account ſhe can of this matter.

L. H. S. Let her recollect her ſelf, and begin again.

Mrs. *Brewer.* When Mr. *Mountford* came down the Street, I ſtood at the Door, and my Lord *Mohun* was come to the Door, and my Lord *Mohun* went to him and ſaid, Mr *Mountford, your Humble Servant, I am glad to ſee you,* and Embraced him. Saith Mr. *Mountford, Who is this, my Lord* Mohun? *Yes,* ſaith he, *it is. What maketh your Lordſhip here at this time of night?* ſaith my Lord *Mohun, I ſuppoſe you are ſent for* Mr. Mountford. *No indeed,* ſaid he, *I came by chance.* Saith my Lord, *You have heard of the Buſineſs of Mrs.* Bracegirdle. With that, after he had ſaid this, Mr. *Hill* cometh up, and ſaith, *Pray my Lord hold your Tongue, this is not a convenient time to diſcourſe this Buſineſs,* and would have drawn my Lord away. Saith Mr. *Mountford, I am very ſorry my Lord, to ſee that your Lordſhip ſhould aſſiſt Capt. Hill in ſo ill an Action as this; pray let me deſire your Lordſhip to forbear.* Upon this, as ſoon as he had ſaid ſo, Mr. *Hill* came up and ſtruck Mr. *Mountford* a Box on the Ear. Saith Mr. *Mountford, Damme, what's that for?* And with that, he whipped out his Sword and made a Paſs at him, and I turned about and cry'd out *Murder, Murder.*

Mr. *Att. Gen.* But you ſay, you ſaw *Hill* draw his Sword, and make a Paſs at him.

Mrs. *Brewer.* No, his Sword was drawn before; but he immediately after the Box on the Ear, made a Paſs at him, and I turned about and cry'd *Murder.*

Mr. *Att. Gen.* Had Mr. *Mountford* his Sword drawn at that time?

Mrs. *Brewer.* No, he had not.

Mr. *Att. Gen.* Are you ſure he had not?

Mrs. *Brewer.* Yes, I am ſure he had not, for as ſoon as he ſtruck the Blow, he made a Paſs at him.

Mr. *Att. Gen.* Was my Lord preſent at that time?

Mrs. *Brewer.* He ſtood juſt by on the Right-hand.

Mr. *Att. Gen.* How near to them?

Mrs. *Brewer.* They were all cloſe together as well as I could diſcern.

L. H. Stew. My Lord, have you any mind to ask this Witneſs any Queſtions?

L. Mohun. No, my Lord.

L. H. Stew. Have you done with her?

Mr. *Att. Gen.* Yes, my Lord. The next Witneſs we deſire to call is Mr. *Davenport*, the Conſtable.

Who was Sworn.

L. H. Stew. Well, what ſaith this Man?

Davenport. The Ninth of *December* laſt at Night, as I was walking my Rounds between Eleven and Twelve a Clock, I divided my Watch into two Parts, one was to go down one Street, and the other another, and coming into *Howard ſtreet*, my Beadle happened to be there before me, and he had ſpied them as he told me, with their Swords drawn: As ſoon as I came up, my Lord *Mohun* very Civilly (his Sword not being then drawn) proffered to Surrender his Sword to me, and ſaid, he was a Peer of the Realm. I asked the other Man what he did with his Sword drawn? and he made anſwer, he had loſt his Scabbard in *Drury-lane.* With that I found them very Civil, and I heard ſome Women at the Door, and they ſaid they were Serenading them with a Bottle of Wine. There was a Drawer there that I knew, who formerly lived overagainſt me, and then lived at the *White-Horſe* Tavern; ſo I left them, (finding them Civil) and went to the *White-Horſe* Tavern to examin what the Buſineſs was; they told me they were there a Drinking, and before I had ſpoken three words almoſt to the Man of the Houſe, the Watch was called, and when we came, Mr. *Hill* had made his Eſcape, and ſo I Secured my Lord *Mohun.*

Mr. *Att. Gen.* What was the occaſion of calling the Watch?

Davenport. They cried out Murder in the Street; So I took my Lord *Mohun* and carried him to the *Round-Houſe*, where we kept him all Night.

Mr. *Att. Gen.* I think you ſay, when you firſt came, my Lord *Mohun*'s Sword was not Drawn.

Mr. *Davenport.* It was put up then, but the

the Beadle ſaid they were both drawn before.

Mr. *Att. Gen.* You did not ſee them ſo ſoon as your Beadle.

Davenport. No, he was there before me.

Mr. *Att. Gen.* Then acquaint my Lord what was done, after you had ſecured my Lord *Mohun.*

Davenport. After I had taken him, I carried him to the *Round-Houſe* and when we came there, he asked me if *Hill* was taken? I ſaid no; and ſaid I, my Lord, this is a bad Misfortune you are happen'd into; and he ſaid, *God Damn me, I am glad he is not taken, but I am ſorry he has no more Money about him; I wiſh he had ſome of mine; and, I do not care a Farthing if I am hang'd for him.*

L. Mohun. My Lord, I deſire he may be asked whether I offered to Fly?

Davenport. No, my Lord, I do not ſay you did, but you know my Lord, you ſaid this to me.

L. H. Steward. But Mr. *Davenport*, did not my Lord Surrender himſelf to you?

Davenport. Yes my Lord, mighty Civilly.

Mr. *Att. Gen.* Did my Lord ſay any thing to you about changing of Coats?

Davenport. He ſaid, they had changed Coats three or four ſeveral times that day, and at the ſame time he had *Hill's* Coat upon his Back; and I asked him if he knew where *Hills* Lodging was, and he told me; and I went to his Lodging with my Watch; and when we came there, we ſearched the Houſe, but did not find him there; but Captain *Hill's* Boy came in whilſt we were there; ſo with that, I ſecured the Boy and ſearched him, and found Gunpowder and Ball about him; and I have *Hill's* Sword in the Court, and Mr. *Mountford's* and my Lord's.

L. Mohun. I deſire he may be asked, whether *Mountford's* Sword was not broke in the Street, or whether he carried it away.

Davenport. I took up a piece my ſelf, and a Servant Maid took up another in the Street.

L. Mohun. I deſire he may be asked, whether Mr. *Mountford's* Sword when it was found, was in the Scabbord or not?

Davenport. No, it was not, I ſaw no Scabbord.

L. H. Steward. My Lord, you ask the Queſtions ſo faſt, that we do not hear the Anſwers. Was not your firſt Queſtion, whether *Mountford's* Sword was not Broken?

L. Mohun. Yes, my Lord.

L. H. Steward. What Anſwer giveth he to that?

Davenport. I do not know when it was Broken; but by the report of People that were there by, it was ſaid, Mr. *Mountford* made a Paſs, and at the firſt Paſs, his Sword was Broken; and I went with a Lanthorn, and according as they ſaid, I found a piece of a Sword, and I took it up my ſelf.

L. H. Steward. What is your next Queſtion, my Lord?

L. Mohun. I would ask him in what part of the Street he found the piece of the broken Sword.

L. H. Steward. You heard the Queſtion, what ſay you?

Davenport. It was in the High-way in the Street.

L. H. Steward. My Lord *Mohun*, what do you mean by that Queſtion?

L. Mohun. Whether it was in the middle of the Street towards *Surry-ſtreet*, or *Norfolk-ſtreet*, or near Mrs. *Bracegirdle's* Lodging, or upon the Pavement?

Davenport. It was over againſt the Door where you ſtood.

L. Mohun. How far might it be from where I ſtood? I deſire he may be asked that.

L. H. Steward. You hear my Lord's Queſtion, anſwer it.

Davenport. He was walking up and down when I came to Take him; and I took the piece of the Sword up in the Highway; he was walking on the Pavement, the Broad-Stones.

L. H. Steward. Have you done with that Witneſs?

Mr. *Att. Gen.* Yes, my Lord. Is Mr. *Charles Knowles* come? *He did not appear.*

Mr. *Att. Gen.* Then we deſire to call Mr. *Bancroft* the Chirurgion, and Mr. *Hunt.*

L. H. Stew. Who do you examin firſt?

Mr. *Att. Gen.* We begin with Mr. *Bancroft.*

(*Who was ſworn.*)

Mr. *Att. Gen.* You attended upon Mr. *Mountford*, Mr. *Bancroft*, when he was wounded.

Bancroft. Yes, my Lord.

Mr. *Att. Gen.* Pray acquaint my Lords what you know of this matter.

Bancroft. My Lord, upon the ninth of *December* laſt at Night, between the Hours of twelve and one, I was knocked up to go to Mr. *Mountford*, whoſe Servant came for me, and told me he was a dying of a Wound he had received. So I came to his Houſe, and found him very deſperately wounded; it went in and out by his back-Bone, behind his left Side. I told him what he muſt expect, that he was a dead Man. I attended him that Night, till about four a Clock in the Morning, and then I took my leave of him, and went home: About eight a Clock in the Morning I came thither again, and met Mr. *Hobbs* there, and he was of the ſame Opinion. He lived till about one, and then he died.

Mr. *Att. Gen.* What Diſcourſe had you with Mr. *Mountford?*

Mr. *Bancroft.* About ten a Clock I was ſent for by the Conſtable to come to *Hick's*-Hall, to be examined there before the Juſtices; and being then with Mr. *Mountford*, and ſome Company being there, Mr. *Powell* (as I take it) was one; I ſaid to Mr. *Mountford*, I ſuppoſe where I am going, I ſhall be asked ſome Queſtions about what you may have ſaid to me, you are now upon the brink of Eternity, and pray anſwer me truly, who gave you this Wound, was it Mr. *Hill*, or my Lord *Mohun?* Said he, *My Lord* Mohun *offered me no Violence, but whilſt I was talking with my Lord* Mohun, Hill *ſtruck me with his Left-Hand, and with his Right Hand run me through before I could put my Hand to my Sword.*

Mr. *Att. Gen.* Did he tell you his Sword was drawn?

Bancroft. He did not ſay, it was or not, but that *Hill* ſtruck him with his Left-Hand, and at the ſame time run him through with his Right, before he could put his Hand to his Sword.

Mr. *Att. Gen.* Did he tell you my Lord *Mohun's* Sword was drawn?

Bancroft. The words were theſe as near as I remember, my Lord *Mohun* offer'd me no Violence, but whilſt I was talking with him, *Hill* with his Left-Hand ſtruck me, and with his Right run me through, before I had time to put my Hand to my Sword.

Mr. *Att. Gen.* Did he tell you he had his Sword drawn at all afterwards?

Bancroft. No, not a word of that, that I heard.

L. H. Stew. My Lord *Mohun*, have you any thing to ſay to him?

L. Mohun. No, my Lord.

(*Then Mr.* William Hunt *was ſworn.*)

Mr. *Att. Gen.* Mr. *Hunt*, you have heard what Mr. *Bancroft* was examined to, do you give an account what you know in relation to this Buſineſs.

Hunt. I was ſent for to Mr. *Mountford* when he lay very ill; and I then asked him the manner of his being hurt, he ſaid, *My Lord* Mohun *ſpoke to me, but* Hill *run me through before my Sword was drawn.* I asked him, whether he had time to draw his Sword? And he ſaid, Hill *was in me and was through me, before my Sword was out*; and this he repeated again, about twelve a Clock, about half an Hour before he died the next day.

L. H. Stew. Will you ask him any thing elſe, Mr. Attorney?

Mr. *Att. Gen.* We ſhall ask him no more Queſtions, my Lord.

L. H. Stew. Will you ask him any, my Lord *Mohun*?

L. Mohun. No, my Lord.

L. H. Stew. Then have you any more Witneſſes?

Mr. *Att. Gen.* My Lord, I do not hear that Mr. *Knowles* is come yet; and if he be not come, we have no more Witneſſes to examin; if he does come, we muſt beg leave that we may examin him.

L. H. Stew. You know that the Court cannot ſtay, for after you have done on both Sides, my Lords are to withdraw, and we are not to ſit here in Expectation of your Witneſſes.

Mr. *Att. Gen.* My Lord, we do not expect that; if my Lord *Mohun* pleaſe to examin any Witneſſes on his part, and it happen that the Witneſs ſhould come before my Lord has made an end, we hope your Lordſhips will favour us ſo far, as that we may examin him.

L. H. Stew. My Lord *Mohun*, if you have any Witneſſes to be examined, now is your time to call them.

L. Mohun. I deſire firſt, Mr. *Hill*'s Foot-Boy may be called.

L. H. Stew. Name him. (*He came to the Bar.*)

L. Mohun. My Lords, if you pleaſe, I deſire Mr. *Brereton* may be called firſt, becauſe I would prove to your Lordſhips and ſhew you I had no Malice to Mr. *Mountford.*

L. H. Stew. I thought you had called that Boy firſt.

L. Mohun. That was a Miſtake, my Lord, this Gentleman Mr. *Brereton*, I deſire may be firſt examined.

Mr. *Brereton.* My Lord, I know nothing as to this matter of Fact, for I had not ſeen my Lord *Mohun* of two or three days before.

L. H. Stew. What do you examin this Witneſs to, my Lord?

L. Mohun. To ſhew that I had no Malice againſt Mr. *Mountford*, but ſpoke kindly of him ſeveral times.

Mr. *Brereton.* I had not ſeen my Lord *Mohun* for two or three days before this Fact was committed, and therefore can give no account of what happened then; but the *Friday* before, the Play of *Alexander* the Great was acted, and my Lord *Mohun* and I were at the *Play-houſe*, and he and I went to Supper together, and we were talking of the Play, and he ſaid it was a good Play, and commended ſeveral Parts in it, and particularly the acting; and he commended Mr. *Mountford*'s acting extreamly: I ſaid, I thought he never acted ſo well in his Life before; but my Lord ſpoke particularly very kind things of Mr. *Mountford*, that he thought him a very good Actor. I anſwered, as to Comedy he did uſe to act very well, but I thought he would never make ſo good a Tragedian as Mr. *Betterton*, or ſome others. But my Lord before this, had uſed to commend Mr. *Mountford* and ſpeak kindly of him: And he ſaid, that ſeveral of the Players had been very rude to him, more than their Buſineſs did require of them; but Mr. *Mountford* had been more civil than any of the reſt. Upon this my Lord *Mohun* was pleaſed to ask me, whether I was acquainted with Mr. *Mountford*; I told him I never was in his Company but once with Mr. *Bludworth*. Saith my Lord, I have a great mind to drink a Bottle of Wine with him. Said I, I do not think him worth your Acquaintance, but you may do what you will. Several things more my Lord ſaid, and ſpoke more kindly of him than of any of the reſt of the Players; but there was no time fixt for drinking with him. Upon *Tueſday* after, my Lord *Mohun* came to my Lodgings, and told me Mr. *Mountford* had been very civil to him the Night before at the *Play-houſe*, when the reſt were very rude to him; and he had a mind to drink a Bottle of Wine with him. Saith he, I am going about ſome Buſineſs to *Kenſington*, but within a day or two you ſhall certainly hear of me, and we will fix a time for it, and if I do not like his Company, I will never trouble you nor my ſelf more with it.

L. H. Stew. When was this Sir?

Mr. *Brereton.* This was the *Tueſday* before, the firſt Diſcourſe was upon the *Friday* before.

(*Then the Boy was Examined*).

L. Mohun. Was you along with me and Mr. *Hill*, that Night Mr. *Mountford* was killed?

L. H. Stew. My Lord, you muſt propoſe your Queſtions to me, and I will ask them.

Mr. *Att. Gen.* I deſire to know what the Boy's Name is, and who he is.

L. Mohun. His Name is *Thomas Lake*, and he was Mr. *Hill*'s Foot-Boy.

L. H. Stew. What do you ask him, my Lord?

L. Mohun. Pray, my Lord, ask him, if he was with Mr. *Hill* and me that Night that Mr. *Mountford* was killed.

L. H. Stew. You hear the Queſtion; what ſay you to it?

Boy. Yes, my Lord.

L. H. Stew. I do not hear you what you ſay.

Boy. I was with them my Lord, and all I heard was, they had a Deſign to take away the Woman, Mrs. *Bracegirdle*, and they had provided Night-Cloaths and a Coach for her; to go to *Totteridge*, which was the Place where they deſign'd to carry her.

L. H. Stew. I do not hear one word this Boy ſaith.

L. Mohun. My Lord, ſhall I repeat to your Lordſhip what the Boy ſaith?

Lords. No, no, no.

L. H. Stew. No, my Lord, you are not to repeat what your own Witneſs ſaith.

Boy. They had a Deſign to carry away the Woman, Mrs *Bracegirdle.*

L. H. Stew. I do not hear one Word. That Boy can ſpeak out if he pleaſeth; I warrant him, he would make Noiſe enough if he was in

another Place. Speak out, that my Lords may all hear you.

Boy. I cannot ſpeak any louder than I do; I ſay, they had a Deſign to carry away the Woman.

L. H. Stew. I may as well be at the other end of the Town as in this Place, as for hearing what he ſaith. Some body ſhould repeat what he ſaith.

L. Mohun. If your Lordſhip pleaſe to allow it, that one of the Officers of the Court may come down to the Bar, and repeat from his Mouth to the Court what he ſaith.

Lords. Ay, ay.

L. H. Stew. Mr. *Walker*, Then do you go and ſtand by him, and tell us what he ſaith.

Mr. Walker, *the Clerk went and ſtood by the Boy at the Bar, and repeated his Evidence aloud.*

Mr. *Walker.* My Lord, he ſaith, they had a Deſign to take away the Woman, and they had Night-Cloaths in the Coach for the Woman to put on, and they enquired at the Woman's Lodging where ſhe was, and there they were told that ſhe was at Mr. *Page*'s at Supper, and her Brother came to the *Horſhoe*-Tavern and drank with them, and he was to go to tell them when ſhe came out, and which way ſhe was to go Home; and there was a Man that was to give Notice, and they went down before her, and the Coach ſtood almoſt at the lower end of *Drury-lane*, where there were ſome Soldiers to put her in, and the Soldiers went and took hold of her.

L. H. Stew. Is this my Lord *Mohun*'s Witneſs?

Mr. *Walker.* Yes, my Lord; and he ſaith, when they went to take hold of her to put her in, Mr. *Page* ſtruggled with them, and would not let them, and ſhe cry'd out, and was very much troubled at it.

L. Mohun. My Lord, I deſire he may be asked whether he was in *Howard-ſtreet* when Mr. *Mountford* was wounded, and what paſſed in *Howard-ſtreet* before Mr. *Mountford* was wounded?

Mr. *Walker.* He ſaith, he was in *Howard ſtreet*, and ſaw Mr. *Mountford* come down in *Norfolk-ſtreet* towards them, and turn into *Howard-ſtreet*, but out of his way to his own Houſe; he ſaith, he came down, and there met my Lord *Mohun* and his Maſter, Mr. *Mountford* did; and he came to my Lord *Mohun*, and bowed to him, and ſaid, *He had a Kindneſs for his Lordſhip.* And my Lord *Mohun* replied, *He had a Kindneſs for him.* My Lord *Mohun* ſaid to him, *He hoped he was not come to vindicate any thing of Mrs.* Bracegirdle. Mr. *Mountford* ſaid *Not*, and asked if his Wife had done any thing to him, and ſaid, *He was very ſorry his Lordſhip ſhould have any thing to do to vindicate Mr.* Hill *in ſuch Rudeneſs.* He ſaith, Captain *Hill* was at the lower end of the Street, and Captain *Hill* heard him ſay ſo, and came up and ſaid to him, Mr. *Mountford, if you have any thing to ſay to me, I can vindicate my ſelf, and pray now draw*; and he went into the Street, and Mr. *Mountford* drew and met him, and made three or four Paſſes, and in the Paſſes, the Sword was broke. He cannot tell which Sword it was that was broke, he ſuppoſeth it hit againſt the Hilt, and ſnapped in two.

L. Mohun. I deſire he may be asked, where I was when they fought?

Mr. *Walker.* My Lord ſtood upon the flat Stones, he ſaith, by the Houſe ſide all the while, and they were in the middle of the Street.

L. Mohun. My Lord, I deſire he may asked, whether Mr. *Mountford* had his Sword by his ſide, and where it was, and whether I meddled with him?

Mr. *Walker.* He ſaith my Lord *Mohun* did not meddle with him, but ſtood upon the flat Stones, nor did offer to draw his Sword, and when Mr. *Mountford* came down, he carried his Sword in his Hand.

L. Mohun. My Lord, I deſire he may be ask'd, whether Mr. *Hill* did not ſtay in the Street to ask Mrs *Bracegirdle*'s Pardon.

Mr. *Walker* He ſaith, he defired to ſee Mrs. *Bracegirdle*, and to beg her Pardon, and as ſoon as he had ſeen her, he would be gone?

L. H. Stew. How can he tell that? Where was he?

Mr. *Walker.* He was juſt by my Lord *Mohun* and Mr. *Hill* in the Street, and Mr. *Hill* ſaid, he would but ſtay and beg Mrs. *Bracegirdle*'s Pardon for what he had done, and he would go Home.

L. Mohun. I deſire he may be asked, whether I offer'd to fly when his Maſter went away?

L. H. Stew. What is it you ask my Lord?

L. Mohun. Whether I offer'd to run away, or make my Eſcape?

Mr. *Walker.* He ſaith, my Lord did not offer to run away, but ſtood ſtill and ſaid he had done no hurt, nor drawn his Sword.

L. Mohun. I deſire to ask him, whether I could not have run away as well as Mr. *Hill*, if I had had a mind?

Mr. *Walker.* He ſaith, he might have run away as well as his Maſter Mr. *Hill*, but he ſtood ſtill a great while, till the Watch came and took him, and he gave himſelf up.

Mr. *Att. Gen.* My Lord, before the Boy goeth away, I deſire to know of him whether he has not been already Examined upon his Oath elſewhere?

Mr. *Walker.* Yes, my Lord, he was examined at *Hick*'s-Hall, and was kept in Priſon two Days.

Mr. *Att. Gen.* Were you examined before the Coroner?

Mr. *Walker.* He ſaith, he was examined before the Coroner.

Mr. *Att. Gen.* Which was the firſt Place he was examined at?

Mr. *Walker.* He ſaith he was examined at *Hick*'s-*Hall* firſt.

Mr. *Att. Gen.* When he was examined before the Coroner, did he give the ſame Evidence as he does now?

Mr. *Walker.* He gave the ſame Evidence before the Coroner that he doth now, as near as he can remember.

Mr. *Att. Gen.* When you did make Oath before the Coroner, was it read to you what you ſwore?

Mr. *Walker.* He ſaith, his Evidence was not read to him.

Mr. *Att. Gen.* Did you ſubſcribe the Evidence you gave before the Coroner your ſelf?

Mr. *Walker.* Yes, he did.

Mr. *Att. Gen.* Did not you write your Name your ſelf?

Mr. *Walker.* Yes, he ſaith.

Mr. *Att. Gen.* Did you not know what it was you ſubſcribed your Name to?

Mr. *Walker.* He ſaith, it was not read to him afterwards, he knoweth what it was he gave in.

Mr.

Mr. *Att. Gen.* Are you ſure it was not read to you?

Mr. *Walker.* He ſaith, he is ſure it was not read to him.

L. H. Stew. Was it not read to him before he ſubſcribed it?

Mr. *Att. Gen.* That I did ask him, my Lord.

Mr. *Walker.* He doth not remember that it was read to him at all.

L. H. Stew. Can he read himſelf?

Mr. *Att. Gen.* He writes a very good Hand my Lord.

Mr. *Walker.* He ſaith, they bid him put his Hand to it; and as ſoon as he had put his Hand to it, they put him out, and bid him call another Woman.

Mr. *Att. Gen.* I would have him conſider of it, before he makes anſwer; becauſe there are ſeveral Perſons preſent here, who were preſent when it was read to him before he ſubſcribed it.

Mr. *Walker.* He cannot remember that it was read to him.

Mr. *Att. Gen.* Do you remember you ſwore at that time, that when Mr. *Mountford* and Mr. *Hill* were puſhing at one another, my Lord *Mohun* ſaid, he would ſtand by his Friend, and Mr. *Hill* was his Friend?

Mr. *Walker.* He ſaith, my Lord ſaid, he would not go, he would ſtay by his Friend, for Mr. *Hill* was his Friend.

E. of Carliſle. My Lord Steward.

L. H. Stew. My Lord of *Carliſle.*

E. of Carliſle. I deſire that he may be asked, whether he was the Boy that ſaid to my Lord *Mohun,* Pray my Lord, good my Lord, do not do it, alter your Reſolution.

L. H. Stew. Call the Boy agen *(which was done)* was you by when thoſe Words were ſpoken; Pray my Lord, will you repeat your own Queſtion?

E. of Carliſle. Whether he was the Boy that ſaid to my Lord *Mohun,* Pray my Lord, good my Lord, do not do it, alter your Reſolution, or defer it to another Day.

Boy. No my Lord, I did not hear him.

L. H. Stew. Did not you ſay ſo your ſelf?

Boy. I ſaid no ſuch thing, nor heard no ſuch thing ſaid by any body.

L. H. Stew. Do you bring any more Witneſſes my Lord.

L. Mohun. Yes my Lord, Mrs. *Elizabeth Walker,* Mrs. *Bracegirdle*'s Maid.

Elizabeth Walker. Here my Lord, I am ſhe.

Mr. *Att. Gen.* My Lord, before my Lord *Mohun* proceedeth to examine any other Witneſs, I have one thing humbly to offer to your Lordſhips.

(Then Proclamation was made for Silence.)

Mr. *Att. Gen.* Of what Conſequence it will be to my Lord *Mohun,* I muſt ſubmit to your Lordſhips; when you have heard it, that is, whether it may not be proper now, ſince this Boy has given an Evidence, ſo very different from what he gave upon his Oath before the Coroner, to have his Depoſition that he made before the Coroner, read in his Preſence.

L. Mohun. My Lord, I think I ought to conclude, and give all my own Evidence before Mr. Attorney maketh his Remarks.

L. H. Stew. Then reſerve that till the laſt, Mr. Attorney.

Mr. *Att. Gen.* My Lord is certainly in the right of it, there ought to be no Obſervations made upon his Evidence, and we ſhall be ſure to keep exactly to the uſual method in this matter; but I take it to be the Courſe of Evidence, where there is an Objection to what the Witneſs delivers now, which does ariſe from what the ſame Witneſs has ſworn before, it is proper to make the Objection, as ſoon as he has delivered ſuch Evidence, whilſt the matter is freſh in your Lordſhips Memories.

L. H. Stew. Mr. Attorney, let the Boy ſtay, he ſhall be called upon afterwards; but let my Lord go on now with the reſt of his Witneſſes.

L. Mohun. Here is *Elizabeth Walker,* my Lord.

H. H. Stew. What is that Woman's Name?

L. Mohun. Elizabeth Walker, did you live with Mrs. *Bracegirdle.*

Elizabeth Walker. Yes, I did my Lord.

Mr. *Att. Gen.* This Perſon has conceal'd her ſelf, we have been endeavouring to find her out all this while, but could not.

L. H. Steward. What do you ask her my Lord?

L. Mohun. I deſire ſhe may be asked, whether ſhe lived with Mrs. *Bracegirdle,* and what ſhe ſaw and obſerved that Night Mr. *Mountford* was killed.

El. Walker. If it pleaſe you, I lived then with her.

L. H. Stew. I cannot hear what ſhe ſaid, Mr. *Walker,* I think you muſt go thither agen, ſpeak out Woman.

El. Walker. I was her Servant at that time, when Mr. *Mountford* was killed. And may it pleaſe you my Lord, that Night, old Mrs. *Bracegirdle* and her Daughter, were invited to Supper at one Mr. *Pages* in *Drury-lane,* and coming home about Ten or Eleven a Clock out of *Drury-lane,* my Miſtriſs deſired me to go to Mr. *Mountford*s, to ſee if Mr. *Mountford* was come home. I went, and they ſaid, he was not come home: She deſired me then to go again, and tell Mrs. *Mountford,* that if he was not come Home, ſhe ſhould ſend to ſee where he was, and deſire he would not come Home without a good Guard, for my Lord *Mohun* and Captain *Hill* were walking about the Street, and ſhe did not know their Deſign, by reaſon Mr. *Hill* had his Sword drawn in his Hand, out of the Scabbord. I asked the Reaſon why he had his Sword drawn, and the Anſwer was made; he had loſt the Scabbord in a Skirmiſh in *Drury-lane;* but that I know nothing of. Mrs. *Mountford* ſaid, ſhe would ſend her Maid to ſee where her Husband was, and I told her, if my Miſtreſs would give me leave, I would go along with her, to bear her Company. And when I returned to my Miſtriſs, ſhe did give me leave, and I went along with her to ſeveral places; but we could not find Mr. *Mountford*; ſo coming home, I went to my Miſtriſs, and I ſaw them two ſtand at the Door, and they ſtaid there above an Hour, and in the mean time our Landlady Mrs. *Brown,* heard the Watch come into the Street, and ſhe ſaid, ſhe would go to the Door, and bid the Watch ſeize them; and ſhe did go out, and I was kept within Doors, and heard her talk to the Watch, but what ſhe ſaid, I cannot tell; but preſently the Watch went away and left them. And I ſtood at the Door, and heard Mrs. *Brown* ſay, there cometh Mr. *Mountford,* and ſhe would go ſpeak with him; and with that, ſhe went as faſt as ſhe could to meet

meet him, and came to him a good way before he came down to them, and took him by the Arm thus to ſtay him, and ſhe ſaid, Captain *Hill* and my Lord *Mohun* was walking in the Street, and Captain *Hill* had his Sword in his Hand drawn, and ſhe did not know what their Deſign was.

L. H. Stew. Indeed ſhe muſt ſpeak louder, or I cannot tell what ſhe ſayeth.

El. Walker. My Lord, I ſay Mrs. *Brown* when I was at the Door, ſaid, yonder cometh Mr. *Mountford*, and ſhe ſaid, ſhe would go and meet him, and away ſhe went as faſt as ſhe could towards him; and when ſhe came up to him, ſhe took him by the Arm thus, and deſired him, that he would not come down that Street, but go to his own Houſe, for there were Captain *Hill* and my Lord *Mohun* walking in the Street, and ſhe did not know what their Deſign was, but Captain *Hill* had his Sword drawn in his Hand. If it pleaſe you my Lord, Mr. *Mountford* did not anſwer her a Word; but preſſed forward to meet my Lord *Mohun* and Captain *Hill*. If it pleaſe you my Lord, they met one another, and my Lord *Mohun* and Mr. *Mountford* Complimented one another very lovingly, and ſaid, they were glad to ſee one another; and Mr. *Mountford* ſaid to my Lord, he had a great Reſpect for his Lordſhip, and my Lord replyed to him again, by my Honour, I have the like for you Mr. *Mountford*, and with that, they embraced one another. I am ſure this is the Truth, for I followed Mrs. *Brown* out, and ſtood by when it was done. Mr. *Mountford* told my Lord, it was a Diſhonour to him to keep Company with Captain *Hill*. I will not take my Oath that Captain *Hill* did hear him ſay ſo, but he might have heard him, and it may be he did too; and that might occaſion the Quarrel; but I will not take my Oath of that: It came juſt in my Head after this was ſaid, that our Door was open, and I turned my Back to hear and look who was at our Door, and I heard Mrs. *Brown* ſay, that Captain *Hill* and Mr. *Mountford* were going to Fight: I ſaw them Fighting, making Paſſes at one another, I ſaw them engaged, I never ſaw men naked Fighting ſo in my Life.

At which there was a great Laughter.

El. Walker. My Lord, I do not underſtand theſe matters, I tell you as well as I can, they were fighting with naked Swords, Mr. *Mountfords* Sword was upon Mr. *Hill* hereabouts, and Mr. *Hill's* Sword was upon Mr. *Mountford* hereabouts; and after they had made two or three Puſhes at one another, Mr. *Mountford* ſaid he was kill'd, and threw down his Sword thus, and I took it up, and there was a good piece of the Sword broken off. I turned me about thus, towards our own Hatch at our Door, and there ſtood two or three People, I cannot ſay who they were, but I gave them the Sword, and I turned my Face towards *Surry Street*, and ſaw Captain *Hill* making his eſcape, running up *Surry-Street*; and if it pleaſe you my Lord, Mr. *Mountford* was the Friend I had moſt Reſpect for; and I ſaw him as faſt as he could, going towards his own Houſe, and my Lord *Mohun* ſtood in the ſame place that he was in, when he and Mr. *Mountford* were embracing one another, and I did not ſee my Lord *Mohun* ſtir from that place; but when they fought, they were engaged in the middle of the pitched Stones, where there was a place made for the Water to run along the Street like a Channel; and to my Knowledge, I did never ſee my Lord *Mohun* off of the Paved Stones, on the ſide. I cannot ſay he was never off, when my Eye was turned another way; but to my Knowledge, I never ſaw him off of thoſe Stones. If it pleaſe you my Lord, the next thing that I ſaw, was this, after Captain *Hill* run up *Surry-Street*, and Mr. *Mountford* did go Home, I ſaw my Lord *Mohun* walking up to the end of the Street, where the Watch were coming, and when the Watch came, I ſee him deliver himſelf up to the Watch; but I think one of the Watch ſaid he muſt have his Sword, and he did deliver up himſelf and his Sword to the Watch. And he bid me take notice, bear Witneſs, ſaid he, I have no hand in the Death of Mr. *Mountford*. Said I, no, my Lord, I think you have not. The next thing I remember, was Mrs. *Page* came and ſaid, Mr. *Mountford* was killed, upon which, ſaid my Lord *Mohun* to her, bear Witneſs, I had no hand in his Death. Said ſhe, you were in his Company, therefore ſeize him, and carry him to the *Round-Houſe*; and the Watch did ſecure him; and my Lord anſwered, as he was a Gentleman, he deſired to be uſed like a Gentleman; and they did carry him away to the *Round-houſe*. This is the thing that I did ſay, as near as I can remember, to the Juſtices; but I have been very much abuſed and diſtracted amongſt them, and therefore to a Word I cannot ſay; but as near as I can remember, being abuſed at the rate I have been, This I did then ſay, and it is the Truth.

L. Mohun. I deſire ſhe may be asked whether ſhe was not examined before the Juſtices at *Hick's-Hall*, and whether ſhe was not then Mrs. *Bracegirdle's* Maid.

L. H. Steward. Truly, my Lord, I have heard very little of what ſhe has ſaid, but I hope my Lords that have been nearer have obſerved it.

El. Walker. If it pleaſe you, if you ask what was done at *Hick's-Hall*, I will tell you juſt as it was, what happened there, and ſo proceed on to tell you how I have been abuſed.

L. H. Stew. My Lord, What would you have her asked more?

L. Mohun. I deſire to ask her whether ſhe was not Mrs. *Bracegirdles* Servant when ſhe was examined at *Hick's Hall*, and whether ſhe ſwore the ſame there as ſhe ſaith here, and what was done to her ſince, or what they would have done, and whether they did not try to make her ſpeak what they would, and to put her out.

El. Walker. If it pleaſe you my Lord, that next Morning, there came ſeveral of the Players to me, to ask me what I knew of the Death of Mr. *Mountford*, and I told them; but they did not like what I ſaid, and they ſeemed diſcontented at me. And when they were to go to *Hick's-Hall*, they ſaid they had no need of my Evidence, they could do without me. So Mrs. *Brown* and her Maid they went away, and left me at Home; what they did, or where they ſtaid, I do not know; but about two or three Hours after, a Meſſenger came and ſaid, my Miſtreſs and I muſt go to *Hick's-Hall* to be examined before the Juſtices; and we went, and when we came there, all were examined, and I was examined in the laſt Place; where, my Lord, I gave in the ſame Evidence that I do now, as near as I can ſpeak. I do verily believe it to be the ſame, but I have had ſo much Trouble with their abuſing me, that I cannot ſpeak to every Word or particular Thing. For my

Miſtreſs,

Miſtreſs ſtood before me, and ſaid, they brought Evidences that confounded themſelves, and another ſaid, hang her Jade, pull her by the Coat. I turned me to the Juſtices, and ſaid, I hoped I might ſpeak now I was there; but it may be for fear of my Miſtreſs, I did not then ſpeak all that I have done now, becauſe I have called more ſince to my Remembrance. And there is one particular thing that I call to mind now, I remember, that in our Parlor, as ſoon as they came home out of *Drury-lane*, there was a Diſcourſe between my old Miſtreſs and my young, that Captain *Hill* waited at the Door to ſee my Miſtreſs, and that if he might but have leave to ſee her, and to beg her Pardon, they would be gone thence to their own Lodging; and I ſaid to my Miſtreſs, if ſhe would give me leave, I would go out to them, and demand Captain *Hill*'s Sword, and then he might come in.

L. Mohun. I deſire ſhe may be asked whether ſhe was not turned away and threatned.

Eliz. Walker. I am going on to tell my Lord what happened in our Houſe that Night. I told my Miſtreſs, if ſhe would give me leave, I would undertake to get Captain *Hill*'s Sword from him, and then ſhe might let him come in and ſee her, and beg her Pardon, and I thought it would prevent a great deal of Danger that might follow elſe. And my Miſtreſs ſaid I was a prating Slut, and my young Miſtreſs ſaid, if he begged her Pardon upon his Knees never ſo, ſhe would never forgive him, nor ſee him more. My Lord, there was another Diſcourſe in the Street, that Captain *Hill* had made a Vow that he would kill himſelf that Night, and that my Lord *Mohun*, having a Reſpect for him, watched to prevent him from doing himſelf a Miſchief. That was diſcourſed in the Street, but I cannot ſay it was ſo of my own Knowledge.

Then another Proclamation for Silence was made.

L. Mohun. I deſire ſhe may be asked whether ſhe was not turned away, and whether ſhe was never threatned.

Eliz. Walker. If it pleaſe you, my Lord, that Night that I gave in my Evidence at *Hick*'s-Hall, by their talking, I knew before I went from Home, what a Life I ſhould have with my Miſtreſs, for I knew they did not like my Evidence, and I was afraid of coming Home, and went and ſtaid with my Siſter; but notwithſtanding I went Home about nine a Clock, and they were very inveterate againſt me, and I told one of them, I had witneſſed the Truth, and nothing but the Truth, and that I would ſtand by. If it pleaſe you, my Lord, the next Morning there was this *Ann Jones* that lay with me that Night, and ſhe told me that in the Morning they threatned, and intended to fetch me to Mrs. *Mountford* to rattle me for what Account I had given in, and ſhe giving me this Item, I got up and went to dreſſing my Dinner, and Mrs. *Mountford* ſent a Man, that I know by ſight, I think it was one *Roberts*, I believe that was his Name; whereupon he came and asked me where was Mrs. *Bracegirdle*'s Maid; I ſaid, I was ſhe, and then he ſaid Mrs. *Mountford* deſired me to come to her. I ſaid, I had given in my Evidence where I ought to do it, and I had nothing to do with her; but it was upon this account, not that I had any Antipathy againſt Mrs. *Mountford*, but only as *Ann Jones* had given me that Item of a Deſign to ſend me to her, to rattle me for the Evidence I had given in, and I did not know what might come of it, or what their Deſign might be.

Mr. *Att. Gen.* My Lord, I would not interrupt any Witneſs, but becauſe ſhe ſpeaks of what was ſaid by *Jones*, and Mrs. *Bracegirdle*, I deſire they may be by to hear what ſhe ſaith.

L. Mohun. My Lord, I deſire my Witneſſes may not be hared.

L. H. Steward. This is not haring of Evidence, my Lord.

L. Mohun. My Lord, I deſire I may go on with my Evidence without Interruption.

L. H. Steward. My Lord, this is no Interruption.

Mr. *Att. Gen.* Pray my Lord let Mrs. *Mountford* be called in to hear what ſhe ſaith of her, I deſire ſhe may be by.

L. Mohun. My Lord, I have no more to ſay to her.

Mr. *Att. Gen.* But then my Lord, before ſhe goeth away, I have two or three Queſtions to ask her.

L. H. Stew. What do ask her Mr. Attorny?

Mr. *Att. Gen.* She ſaith ſhe was examined at *Hick*'s-Hall, I deſire to know if ever ſhe was examined before the Coroner.

Eliz. Walker. If it pleaſe you, my Lord, I was not, and I will give you the reaſon.

Mr. *Att. Gen.* Ay, pray let us hear it.

Eliz. Walker. Why you have not heard how badly they uſed me after this.

Mr. *Att. Gen.* But pray Miſtreſs anſwer my Queſtion.

Eliz. Walker. But, my Lord, if it pleaſe you, I went to my Siſter, and ſtaid with her till eight or nine, and my Aunt told me there had been a Porter to enquire for me, to go to the Jury; I was ſorry I was not at Home, but I took a Neighbour with me to go to Mrs. *Mountfords*, to ſee if the Jury were not gone, and I knowing how they had threatned me, I deſired him to leave me at a Victualling-houſe by *Temple-Bar*, and go and tell them, if the Jury were not gone I was ready to wait upon them; he went, and I remained at the Victualling-Houſe, and he came again, and told me, Mrs. *Mountford* ſaid they had done without me; but he was a little ſurprized.

Mr. *Att. Gen.* My Lord, ſhe maketh a long Anſwer to a ſhort Queſtion. I would ask her another Queſtion preſently; but by the way, as to this Examination at *Hick*'s-Hall, I would obſerve that it is a very unuſual, and I think, under Favour, a very unwarrantable thing for Juſtices of the Peace, to take upon them, under a Pretence of conſidering, in order to Bail a Perſon charged with Murder, to enter into a particular Examination of every one of the King's Witneſſes, as if they were either a Grand Inqueſt, charged upon Oath for finding a Bill of Indictment, or Coroners to take an Inquiſition of the Murder, both the Grand Jury and the Coroner are upon their Oaths to keep the King's Evidence ſecret; but this is to make it publick by an indirect way by a Juſtice of Peace's examining, in order to the bailing of an Offender. But I would obſerve this Woman goeth away from her Miſtreſs, and continueth away, and concealeth her ſelf; ſhe was not to be found to be examined before the Coroner, the proper Officer, nor are we able to tell where ſhe has been; I deſire ſome account may be given, in whoſe hands ſhe has been all this time.

Lord

L. Mohun. My Lord, I desire your Lordship's Opinion, whether this may be permitted, that he should talk thus.

L. H. Stew. What do you say, my Lord?

L. Mohun. My Lord, I desire to know whether he may interrupt me in my Evidence thus: All this matter is foreign to the Business before your Lordships.

Mr. *Att. Gen.* If you please, I would ask her this one Question.

Lord ——— Under Mr. Attorney's Pardon, I think the Prisoner, or his Witnesses, ought not to be interrupted; but if he have any Remarks upon the Evidence, when they have gone thro' he may call them again, and ask them any Questions, or make any Remarks upon them.

Mr. *Att. Gen.* My Lord, I would ask her but one Question.

L. H. Stew. What is it, Mr. Attorney?

Mr. *Att. Gen.* If she heard Mrs. *Brown* say to Mr. *Mountford* that she would not have him come forward, because my Lord *Mohun* and Mr. *Hill* were there, and she did not know what their Design was.

Eliz. Walker. If it please you my Lord, I did hear them, and I was just by them; and there was none but she and I.

Mr. *Att. Gen.* She upon her Oath saith, she did not tell him any thing more, than that she would speak with him; but he did not hear her, or hearken to her: But my Lord, I have no more Questions to ask her.

L. H. Stew. Have you any more to ask this Witness, my Lord?

L. Mohun. No, my Lord.

L. H. Stew. Who is your Lordships next? Pray call your next Witness.

L. Mohun. I desire *Ann Jones* may be examined. (*She came to the Bar.*)

L. H. Stew. What doth your Lordship examine her to?

L. Mohun. I desire she may be asked what she knoweth of what passed that Night Mr. *Mountford* was hurt, and tell the whole Story.

Jones. First, I saw Mrs. *Bracegirdle* coming home with her Mother and Mr. *Page*, about ten a Clock at Night, and there were Captain *Hill* and my Lord *Mohun* with them when they came Home, but they did not come in with them, but walked in the Street about an hour and an half; and after they came in, Mrs. *Brown* sent to Mrs. *Mountford*, for she said Captain *Hill* had some Design, and my Lord *Mohun* upon Mr. *Mountford*, but Mr. *Mountford* not being at Home, they sent to all the Taverns thereabouts, but could not find him; they came Home again, and told Mrs. *Mountford* and Mrs. *Bracegirdle* they could not find him, and there my Lord *Mohun* and Captain *Hill* walked to and fro about the Street for an hour and half in all; about an hour after they had been to look for Mr. *Mountford*, or about three quarters of an hour Mr. *Mountford* came down, and I saw my Lord *Mohun* and Captain *Hill* at this Door.

L. Mohun. At whose Door I desire she may be asked.

Jones. At this Mrs. *Brown*'s Door, and Mr. *Mountford* coming down, my Lord *Mohun* met him, and embraced him, and said he had a great Honour and Friendship for him, and Mr. *Mountford* said he had a great Honour and Respect for his Lordship. Saith my Lord *Mohun*, Mr. *Mountford*, I suppose you are sent for. No not I, upon my Honour, said he. Upon that he up and told him how they had like to have got Mrs. *Bracegirdle* into a Coach, and carried her away, but were prevented. Saith Mr. *Mountford*, as to Mrs. *Bracegirdle*, I have nothing to do, she is no Concern of mine, if my Wife have offended your Lordship, she shall beg your Pardon. Said Mr. *Mountford* again, I hope your Lordship will not vindicate Mr. *Hill* in any such Action as this. With that Captain *Hill* came up and hit Mr. *Mountford* a Box on the Ear, and bid him draw. And said Mr. *Mountford*, Damn ye, What is that for? And thereupon he drew; and I tell you what I saw, they both came off from the paved Stones into the middle of the Highway, and made two or three Passes at one another; at the second Pass Mr. *Mountford*'s Sword broke, and he flung down his Sword, and run away, and said he was a dead Man; Mr. *Mountford* went one way, and Mr. *Hill* another.

L. Mohun. I desire she may be asked if I did meddle with Mr. *Mountford* at all, or helped Mr. *Hill* whilst they fought, and where I stood all the while.

L. H Stew. What say you? Answer all those Questions my Lord asked you.

Jones. If it please your Lordship, he stood upon the Causey, the paved Stones, in the same Place where he was all the time.

L. H. Stew. Did my Lord meddle at all?

Jones. No, I did not see my Lord *Mohun* meddle.

L. H. Stew. Was my Lords Sword drawn?

Jones. I did not see it drawn.

L. Mohun. I desire she may be asked whether I run away, or whether I did not surrender my self to the Watch.

Jones. If it please your Lordship, I did not see my Lord run away. But I did see him surrender himself.

L. Mohun. I desire she may be asked if she was not examined at *Hick*'s-Hall.

Jones. Yes, my Lord, I was.

L. Mohun. And whether she did not there declare the same upon Oath that she doth now.

Jones. Yes, my Lord, I did.

L H. Stew. Have you any thing to say to this Witness, Mr. Attorny?

Mr. *Att. Gen.* My Lord, I would only ask her this Question: She saith my Lord *Mohun* was upon the Pavement, or Causey, as she calleth it, all the while; I desire to know whether the Scuffle did not begin upon the Pavement.

Jones. Yes, it did upon the Causey.

Mr. *Att. Gen.* I desire to know whether she saw any Blood upon that Causey the next day.

Jones. No, I saw none.

L. Mohun. I desire she may be asked whether they did not fight in the middle of the Street.

Jones. Yes, and please your Lordship, I did see them make Passes at one another in the Street.

L. Mohun. I desire she may be asked whether the Sword was not broken there in the middle of the Street, and whether Mr. *Mountford* did not then cry out, I am killed.

Jones. His Sword was broken in the middle of the Street; but I did not hear Mr. *Mountford* say he was killed, but he flung down his Sword, and run away, and said, I am a dead Man.

L. H. Stew.

L. H. Stew. Have you done with this Witneſs my Lord?

L. Mohun. Yes, my Lord.

L. H. Stew. Have you any more to ſay to her, Mr. Attorny?

Mr. *Att. Gen.* No, my Lord.

L. H Stew. Then who is your next Witneſs, my Lord *Mohun*?

L. Mohun. *Edward Warrington*, my Lord. *(Who came to the Bar.)*

L. H Stew. What ſay you to him, my Lord?

L. Mohun. I deſire to ask him where he liveth, whether he be not a Neighbour to Mrs. *Bracegirdle*? And what he ſaw that Night Mr. *Mountford* was killed? I deſire he would give his whole Evidence?

Warrington. I live if it pleaſe your Honour, over againſt Mrs. *Bracegirdle*'s Houſe, at the *White-Swan*, on the other ſide of the way.

L. Mohun. I deſire he would tell all that he ſaw that Night.

Warrington. All that I can ſay, is about nine or ten a Clock, as near as I can gueſs: I heard a Diſturbance at Mrs. *Browne*'s Door, where Mrs. *Bracegirdle* lodgeth, and looking out, I ſaw there were two Gentlemen talking to old Mrs. *Bracegirdle*, and Mrs. *Bracegirdle* and ſome People went into the Houſe, and when they were gone into the Houſe, I ſaw the two Gentlemen walk about the Street, one's Sword I ſaw was drawn.

L. H. Stew. Whoſe Sword was that was drawn?

Warrington. Captain *Hill*'s, as they ſay, for my part, I did not know either of them, they walked there for the ſpace of an Hour and a half, I ſaw them oppoſe no Body. But as they came along I heard them ask a Gentleman that came towards them, whether he would drink a Glaſs of Wine or not.

L. Mohun. My Lord, I deſire he may be asked, what he ſaw afterwards of Fighting.

Warrington. For Fighting, I ſaw Mr. *Mountford* come down *Norfolk-ſtreet*, and I ſaw him turn at the Corner with his Sword in his Hand in the Scabbord, to the beſt of my Knowledge, and ſeeing ſome People there, as I ſuppoſe, went towards them, and came up to them; and I ſaw my Lord *Mohun* to the beſt of my Knowledge, lay his Hand upon his Shoulder, and embraced him, and complimented him; but I cannot be certain what the words were that paſſed between them.

L. H. Stew. Did you ſee them Fight?

Warrington. If it pleaſe your Honour, I did ſee their Swords both drawn, Mr. *Mountford* and he that they ſaid was Captain *Hill*; there were ſome Women about them, ſo that I could not ſo well diſcern when they drew their Swords, or who begun the Quarrel. *Hill* they ſaid, had no Scabbord to put his Sword in, my Lord *Mohun* ſtood by, and laid his Hand upon *Mountford*'s Shoulder.

L. H. Stew. Was that before the Fighting, or at the time of the Fighting?

Warrington. It was before their Fighting, at their firſt meeting.

L. Mohun. I deſire your Lordſhip would pleaſe to ask him, in what part of the Street they fought, and whether I was near them then.

Warrington. When firſt I ſaw their Swords drawn, it was upon the flat Stones of the Pavement; and I ſaw Mr. *Hill* come off of the Stones, and Mr. *Mountford* with him. Mr. *Hill* was, I think the firſt, and they came both up together with their Swords drawn in their Hands, they were not a Swords length off from one another; and they paſſed at one another, and I run into our Houſe to fetch a Paring-Shovel, with an Intention to part them; but before I could get out of Doors with the Paring-Shovel in my Hands, the one was gone one way, and the other the other way; and I ſaw no body in the Street to ask any Queſtions of, but my Lord *Mohun* at the Corner, three or four Doors above this place. And I came out, and asked which way they were gone, my Lord *Mohun* turned about, and I was a little afraid of him at firſt; but ſaid he, here am I, I did not offer to oppoſe or draw my Sword, you all know it; and immediately if it pleaſe your Honour, the Watch came in, that is all I know.

L. Mohun. I deſire he may be asked, whether I did not go towards the Watch, and ſurrender my ſelf.

Warrington. I cannot ſay that, but the Watch came in a Minute. My Lord turned about, and ſaid, here am I, I did not oppoſe or draw my Sword, you all know.

L. Mohun. Pray my Lord, let him be asked whether I did offer to fly. And whether I had not as much time to fly, as Mr. *Hill*.

Warrington. I cannot ſay that my Lord. I ſuppoſe he might have gone away as well as Mr. *Hill*, for they were both together.

L Mohun. My Lord, I deſire he may be asked another Queſtion, whether when Mr. *Mountford* came into *Howard ſtreet*, he did not come out of his way to his own Houſe, to come towards us.

Warrington. My Lord, if it pleaſe your Honour, it was out of his way; but whether he did it on purpoſe, or becauſe he ſaw People there, I cannot tell.

L. Mohun. I deſire he may tell you where Mr. *Mountford*'s Houſe is.

Warrington. Mr. *Mountford*'s Houſe is in *Norfolk-Street*, two Doors in the Corner out of the Croſs Street; and this was done in *Howard ſtreet*.

L. H. Stew. I would ask you a ſhort Queſtion, whether that was the way to his Houſe that he went.

Warrington. No, it was not the way my Lord; for he turned on the Right-Hand, and he ſhould have kept ſtrait along.

L. Mohun. I deſire he may be asked, whether he was not ſworn at *Hick*'s-Hall, and whether he gave not the ſame Evidence there, that he doth now.

Warrington. I was ſworn there, and did to the beſt of my Knowledge, give the ſame Evidence I do now.

L. H. Stew. If I underſtand you aright, you ſay both the Swords were drawn of *Mountford* and *Hill*?

Warrington. Yes, my Lord, I did.

L. H. Stew. Can you ſay whether *Mountford*'s Sword was drawn before he was hurt, or not?

Warrington. If it pleaſe you my Lord, I cannot tell that, I cannot be poſitive whether it was or no; for there were Women about them, I ſay, at firſt, and I could not diſcern the Beginning; and I did not ſtand to ſee them puſh, for as ſoon as I ſaw their Swords drawn, and they come off the Pavement to Fight, I run into the Houſe to fetch a Paring-Shovel.

L. Mohun. Now my Lord, I will call another Witneſs.

L. H. Stew. Mr. Attorney, have you any Queſtions to ask this Witneſs?

Mr. *Att. Gen.* No, my Lord.

L. Mohun. Then my Lord, I will call another Witneſs to ſhew you the reaſon why Mr. *Hill* and I ſtayed in the Street, and what was the Buſineſs we ſtay'd for. I deſire *Ann Knevitt* may be examined. (*She came to the Bar.*)

L. H. Stew. What do you ask her my Lord?

L. Mohun. I would ask her where ſhe liveth, and what ſhe knoweth of this Buſineſs.

Knevit. My Lord, I live in *Howard ſtreet*, exactly againſt Mrs. *Bracegirdle* s Lodging, and my Lord *Mohun*, as he gave his own Name to be, to the Watchmen, and another Man that they called Captain *Hill*, for ſo he gave his Name to be; they came down with Mrs. *Bracegirdle*, both the Mrs. *Bracegirdles* into the Street, and came to their Door, and old Mrs. *Bracegirdle* put her Daughter in at the Door, and then ſhe ſtood ſtill and talked with the Gentlemen, and asked them their Buſineſs. They ſaid, they wanted to beg the young Woman's Pardon for what they had done, and then they would be gone. She ſaid, ſhe thought they came to rob her. They ſaid no, they came upon a very Honourable Deſign, ſhe ſaid, then they might have come at a more ſeaſonable time; but ſhe believed they came to rob her.

L. Mohun. What time of Night was it?

Knevit. It wanted a quarter of Ten I believe, or it was about ten, a quarter over or under; I cannot exactly tell. They ſaid, if ſhe would give them leave but to ſpeak to her, and beg her Pardon for what they had done, they would go home immediately. She ſaid ſhe would not, they ſhould not ſee her any more that Night: Then one of the Gentlemen I know not which of them it was, ſaid, they would walk a little while in the Street, ſhe did ſee them walk very quietly, but ſhe made a great Noiſe her ſelf; and at laſt ſhe went in, and ſhut the Door, and the Gentlemen walked quietly up and down; and by and by, they went to the Door again, and deſired to be admitted to ſpeak with young Mrs. *Bracegirdle*, that they might beg her Pardon for ſome Affront that they had put upon her, I ſuppoſe, and ſhe ſtill refuſed them, and would not let them ſpeak with her; and ſeveral times they called and knocked at the Door, and ſtill deſired but to ſpeak with her, and beg her Pardon, and they would be gone home, but ſhe every time refuſed it.

L. H. Stew. Woman, I do not hear you, you muſt ſpeak louder.

L. Mohun. My Lord, I deſire your Lordſhips will let one of the Clerks come, and take the Evidence, and report it to you.

L. H. Stew. If it be material, another muſt report it; for I have not heard one quarter of it.

L. Mohun. It is very material my Lord, to ſhew the Reaſon why we ſtayed there.

Knevit. My Lord, I will repeat it over again if you pleaſe.

L. H. Stew. Then pray ſpeak ſo loud that I may hear.

Knevit. My Lord *Mohun* is a perfect Stranger to me, I only tell you what I ſaw and heard. At the firſt beginning of all, two Gentlemen and two Women came to a Door over againſt our Door, and at that Houſe Mrs. *Bracegirdle* and her Daughter lodged, the Gentlemen gave their Names to the Watch afterwards to be my Lord *Mohun* and Captain *Hill*: So when they came there, the old Woman put her Daughter in at the Door, and when ſhe had pulled off her Hood and Scarf, ſhe came to the Door, and asked them their Buſineſs; and they told her, they wanted to beg her Daughter's Pardon for what they had done; but ſhe abuſed the Gentlemen mightily, and gave them very ill words, and ſaid, ſhe believed they came to rob her Daughter, they ſaid no, they came upon a very honourable Deſign, then ſhe ſaid, they ſhould have come honourably at a ſeaſonable time; they ſaid it was not an unſeaſonable time, for ſhe was out of Doors her ſelf at that time. So ſhe ſtood there a little, and then at laſt ſhe went in a Doors, and ſhut the Door, and ſome of them opened the Door again, and they were walking upon the Cauſey, and came up to the Door, and ſtill deſired the ſame thing, to ſpeak with the young Gentlewoman to beg her Pardon for what they had done, and they would go home for that Night. One of them, I think it was Mr. *Hill*, ſaid he had given her an Affront, and he deſired to beg her Pardon; but ſtill they ſaid, he ſhould not be admitted to ſpeak with her. Then one of them, I think it was Mr. *Hill*, deſired ſhe would be pleaſed to come but to the Hatch, that he might ſee her, and beg her Pardon, and he would not deſire to come in, but that would not be permitted. So one of them made anſwer, that they would not ſtir till they did ſee her, and they would walk there all night.

L. H. Stew. Cryer, call for Silence, and pray my Lord Great Chamberlain, take ſome Order with thoſe People behind there, for they cannot hear themſelves what the Witneſſes ſay, and therefore they are reſolved we ſhall not hear them neither.

(*Proclamation was made for Silence.*)

L. H. Stew. Now go on Woman.

Knevit. They ſaid they would ſtay in the Street all Night, unleſs they did ſpeak with her: But if ſhe would give them leave to ſpeak with her, they would depart to their own Lodgings immediately: but they were denyed to be admitted to ſpeak with her. Whereupon one of them called unto his Boy, to bring him his Cloak; but then he ſaid, he would not have his Cloak, he would walk without it, becauſe they had not both of them Cloaks; by and by they ſent for a Bottle of Wine, and there they drunk her Health, and took ſeveral Turns, and after they had drunk off the Bottle, or ſome part of it, they went to the Door again, and knocked at the Door, and ſome body anſwered from within, for they were not at the Door, what they would have; They ſaid the ſame thing as before, that they deſired only to ſee her, and beg her Pardon, and they would go home; for it was a very cold Night, and it was not convenient to walk there, but they ſtill refuſed to let them in: By and by, the Watch came down, and asked who was there, and what was their Buſineſs, and one of the Gentlemen made anſwer, and ſaid, He was a Peer, and his Name was *Mohun*, the other ſaid, his Name was *Hill*. So the Watch went by, and ſaid no more; but ſome Body made anſwer, and ſaid, there was a Gentleman had a Sweet-Heart in that Street, and he wanted to ſpeak with her. Juſt at that time, I went up ſtairs to warm a Bed in our Houſe, and whilſt I was warming the Bed, I heard a little buſtle in the Street, and running to the Window there I ſaw a Sword in

a Man's Body, I could not tell who the Man was, nor who put the Sword there, but the Man that drew out the Sword, run away as hard as he could, and the Man in whoſe Body the Sword was, went as faſt as he could the other way. And my Lord that gave his Name to the Watch to be *Mohun*, ſtood on the farther ſide of the Street, and ſaid, I have done no hurt to any Body, and I will not ſtir. And there was a Woman that called out to the Watch to ſeize him; but who the Woman was, I cannot tell, but he ſtood ſtill between Mrs. *Bracegirdle*'s Door, and the next Neighbours, one that is called *Nuttall* I think, and never ſtirred till the Watch came to him, and the reſt went to Mr. *Mountford*, he ſaid, there was no occaſion to lay Hands upon him, for he would not ſtir from them.

L. Mohun. I deſire to ask her if Mr. *Mountford* did not ſay I am killed after the Sword was broke.

Knevit. Yes, he did ſay he was a dead Man.

L. H. Stew. What, after his Sword was broke?

Knevitt. After the Sword was drawn out of his Body, his Sword was in his own Hand, I ſqualled out when I ſaw the Sword in his Body, and had like to have gone out of the Window, and ſome body ſaid to me, when I told them why I cry'd out, Will you break your Neck for that Reaſon? it may be it is one of the Watchmen. No, ſaid I, it is not a Watchman.

L. Mohun. I deſire ſhe may be asked where Mr. *Mountford* and Mr. *Hill* fought, whether it was not in the middle of the Street.

Knevitt. My Lord, it was exactly in the middle, as near as I can gueſs, rather on our ſide of the way, with his Arms ſpread, and his Sword in the Scabbard.

L. H. Stew. Have you any more to ask this Witneſs?

L. Mohun. No, my Lord.

L. H. Stew. Have you any thing to ſay to her, Mr. Attorny?

Mr. *Att. Gen.* I would ask her where ſhe liveth.

Knevitt. I live in *Howard-Street.*

Mr. *Att. Gen.* With whom there?

Knevitt. At one Mrs. *Brewers.*

Mr. *Att. Gen.* What Employment is your Miſtreſs?

Knevitt. My Miſtreſs keepeth a Coffee houſe.

Mr. *Att. Gen.* Do you live near Mrs. *Brown*'s?

Knevitt. I know not any of that Name there; but I live over againſt Mrs. *Bracegirdle*'s Lodgings.

Mr. *Att. Gen.* Do not you know the People of that Houſe?

Knevitt. No, upon my Word, I do not know their Names that keep the Houſe.

Mr. *Att. Gen.* Let me ask you another Queſtion: You ſpeak of many Meſſages ſent backward and forward, and that they ſaid Mrs. *Bracegirdle* ſhould not be ſpoken with while my Lord ſtaid there; I deſire to know if you can tell who any of the Perſons were that brought thoſe Meſſages.

Knevitt. It was the Man that called himſelf my Lord *Mohun*, and the other that called himſelf *Hill*, they ſpoke themſelves.

Mr. *Att. Gen.* But who was it that came to them ſo often, to tell them they ſhould not ſpeak with her?

Knevitt. It was old Mrs. *Bracegirdle.*

Mr. *Att. Gen.* You are ſure of that.

Knevitt. Yes, Sir.

Mr. *Att. Gen.* I would ask you one Queſtion more: When the Watch came up to them, did my Lord tell the Watch his Name was *Mohun*, or only that he was a Peer of *England*?

Knevitt. He ſaid firſt he was a Peer of the Land, and then he ſaid his Name was *Mohun*, and the other ſaid his Name was Captain *Hill.*

Mr. *Att. Gen.* You are ſure both of them told their Names to the Watch.

Knevitt. Yes, I am ſure I heard them ſay ſo.

L. H. Stew. Have you any more Witneſſes to call, my Lord?

L. Mohun. No, my Lord, I could call ſome as to *Sandys*'s Reputation, but I do not think it at all material.

L. H. Stew. Have you any thing, Mr. Attorney, to ſay to the Boy that was ſet by? Will you have him called again?

Mr. *Att. Gen.* My Lord, I did propoſe that the Boy ſhould hear the Information read which he gave in to the Coroner.

L. H. Stew. Will you have him called again?

Mr. *Att. Gen.* Yes, if your Lordſhips pleaſe.

L. H. Stew. Well then, call him again.

(The Boy came to the Bar, and his Depoſition before the Coroner was ſhewed to him.)

Mr. *Att. Gen.* Look upon that Paper, is that your Name, and of your Writing?

Boy. Yes.

Mr. *Att. Gen.* Was it true you then ſwore before the Coroner?

Boy. Yes, it was true.

L. H. Stew. Read it.

(It was taken by the Clerk, and read at the Table.)

Clerk of Crown. Reads.

Middleſex. The Information of *Thomas Leake*, Servant to *Richard Hill*, Gent. taken upon Oath this 12th Day of *December*, 1692. before me.

HE ſaith, that on Friday *Morning laſt, about nine of the Clock, 'twas agreed betwixt my Lord* Mohun *and Captain* Hill, *to ſeize Mrs.* Bracegirdle *with ſome Soldiers, and carry her away in a Coach about nine Miles off, and about ten of the Clock at Night my Lord* Mohun *and Captain* Hill, *with about ſix Soldiers, did ſeize her, and endeavour to put her into a Coach; but ſhe refuſed to go, and they led her down into* Howard-ſtreet *to her Lodging, and then ſaid they would walk an hour under Mrs.* Bracegirdle's *Window, and another under Mrs.* Barry's; *and about an hour and an half after, Mr.* Mountford *came down the Street, and Mr.* Mountford *and my Lord* Mohun *ſaluted each other, and my Lord* Mohun *ſaid, he hoped Mr.* Mountford *was not come to vindicate Mrs.* Bracegirdle; *and Mr.* Mountford *hoped my Lord did not come to vindicate the Rudeneſs done to Mrs.* Bracegirdle *by Mr.* Hill; *and then Mr.* Hill *ſaid, he was able to vindicate himſelf, and bid Mr.* Mountford *to draw, and they both puſhed at each other with their Swords, and my Lord ſaid he would ſtand by his Friend, and Mr.* Hill *was his Friend: and during the time that Mr.* Hill *and Mr.* Mountford *fought, my Lord* Mohun *did not endeavour to part them.*

Jo. Cowper, *Coroner.*

Thomas Leake.

Mr. *Att. Gen.* My Lords, as to this laſt Witneſs. I would deſire ſome of the Watch may be asked, becauſe ſhe ſaith my Lord told them his Name was *Mohun*, and *Hill* told them his Name was *Hill*, whether it was ſo or not.

L. H. Stew. Who would you call?

Mr. *Att. Gen. Merry*, my Lord, if you pleaſe.

L. H. Stew Call him.

Lord *Mohun.* I deſire the Conſtable may be called.

Merry *did not preſently come in.*

Mr. *Att. Gen.* My Lord, I think it is not ſo material, as to deſire your Lordſhips ſhould ſtay for him But as to that one Witneſs that entertained your Lordſhip ſo long, Mrs. *Bracegirdle*'s Servant, I deſire, that ſhe being here, may give your Lordſhips an account what became of this Servant of hers.

Mrs. *Bracegirdle.* My Lord, ſhe went away from me on the *Sunday.*

L. H. Stew. Who did?

Mrs. *Bracegirdle.* My Maid that was then, and I ſent to her Aunts the Week after to ſeek for her, but ſhe could not be found, where ſhe was I cannot tell, nor could not hear of her from that time to this.

Lord *Mohun.* I deſire ſhe may be asked whether ſhe did not diſcharge her, or pay her her Wages.

Mrs. *Bracegirdle.* I did not.

Lord *Mohun.* Did not you or your Mother?

Mrs. *Bracegirdle.* My Mother, my Lord, did, ſhe was not my Servant, my Mother hired her, my Lord.

L. H. Stew. What doth ſhe ſay? were her Wages paid, and ſhe diſcharged?

Mrs. *Bracegirdle.* They were paid becauſe ſhe would not ſtay with me, my Lord. I deſired her to ſtay, and ſhe would not, and then ſhe demanded her Wages, and my Mother paid her.

L. Mohun. My Lord, I deſire you would ask the Maid the reaſon why ſhe would not ſtay.

El. Walker. If it pleaſe you, my Lord, the reaſon was this. When I came from *Hick's-Hall* Mrs. *Mountford* the next day ſent for me, and I lying with this *Ann Jones* that was here, ſhe told me that I ſhould be ſent for, and they would rattle me off for my Evidence that I had given at *Hick's-Hall* for the King; my Lord, I having ſuch an Item from *Ann Jones*, and they being all Players; I was afraid, becauſe Players have a worſe Reputation than other People.

Mr. *Att. Gen.* My Lord, we ſhall not trouble your Lordſhips with any more Witneſſes.

L. Mohun. My Lord, I deſire ſhe may be asked if there were not Bailiffs ſent to take her, and ſhe threatned to be arreſted.

L. H. Stew. What ſay you to that?

El. Walker. If it pleaſe you, my Lord, I cannot ſwear it, but I will tell you, as near as I can, how it was; I had not time to look over my Cloaths, being in haſte when I went, and for fear I ſhould have miſtaken any thing, the next day I went to look over my Cloaths, whereupon I found I had miſtook, and taken one of my Miſtreſſes Aprons, and left one of my own for it, and knowing their great Suſpicion and Inveteracy againſt me, I went the next day to my Uncles, a Porter's, and deſired him to carry it to them; but when I had delivered it to him, he would not let me ſtay to ſpeak much, for he ſaid there had been three Bailiffs to take me, and I having no Friends, was much affrighted, and run crying up and down, and did not know where to fly; for fear they might lay me in a Priſon; and having no Friends, therefore I was forced to fly, and ſo I went to a Juſtice of Peace, and there I gave him an Account of the Buſineſs. But he ſaid he muſt have nothing to do with it, I muſt go again to proffer my Service to my Miſtreſs; but I was not willing to proffer my Service again to her, ſo I kept away ever ſince.

L. H. Stew. If you have done with the Evidence on both Sides; What have you more to ſay, my Lord?

L. Mohun. My Lords, I hope it will be no Diſadvantage to me, my not ſumming up my Evidence like a Lawyer, being a young man; I think I have made it plainly appear that there never was any former Quarrel or Malice between Mr. *Mountford* and me; I have alſo made appear the reaſon why we ſtaid ſo long in the Street, which was for Mr. *Hill* to ſpeak with Mrs. *Bracegirdle*, and ask her Pardon, and I ſtaid with him as my Friend, ſo it plainly appeareth I had no hand in the Killing of Mr. *Mountford*, and upon the Conſidence of my own Innocency, I ſurrendred my ſelf, aud I commit my ſelf to this Honorable Houſe, where I know I ſhall have all the Juſtice in the World.

L. H. Stew. Has your Lordſhip no more to ſay?

L. Mohun. No, my Lord, but I am innocent of the Fact, and leave my ſelf wholly to your Lordſhips.

Mr. *Sol. Gen.* May it pleaſe your Lordſhips, according to my Duty, I am to repeat the Evidence to your Lordſhips on the behalf of the King.

My Lord, the Evidence hath been very long, both that on the Part of the King, and that on the Part of the Priſoner, and I know your Lordſhips have given Attention to it with very great Diligence. I cannot pretend that my Memory will ſerve me ſo well, as to repeat the Circumſtances of this ſo long Evidence, but that which has been material, I ſhall crave leave ſhortly to mention to your Lordſhips.

My Lords, I know a great many things may ſlip my Notice and Repetition, but nothing can ſlip your Lordſhips Obſervation: So that though I ſhould not lay a due weight upon the Evidence for the King, yet your Lordſhips will let nothing paſs without giving it its juſt Conſideration, and will give Judgment according to the exacteſt Juſtice.

My Lords, the Evidence for the King doth conſiſt firſt of Facts precedent to the Killing of Mr. *Mountford*, and next what happened at that time.

As to what preceeded this Fact thus committed, there were two or three Witneſſes called, and the firſt of them is Mr. *Hudſon*, the next is Mr. *Powel*, and they give you an Account that Mr. *Hill* had made his Applications in the way of Courtſhip to Mrs. *Bracegirdle*, but that he had an Apprehenſion that Mr. *Mountford* was an Obſtruction to him in that matter, and therefore he did declare ſeveral times, that he would be revenged of him. And one time (which I think was two or three Days before the Fact was done) my Lord *Mohun*, the Priſoner at the Bar, was at Dinner with *Hill*, when *Hill* had this Diſcourſe

courſe concerning *Mountford*, and ſaid he would be revenged of him. My Lord *Mohun* was by, they both ſay, when ſuch Diſcourſe was uſed by *Hill*, but they cannot tell what Notice he took of it.

My Lords, after this, the Day that this Fact was committed, your Lordſhips have heard how my Lord *Mohun* and *Hill* hired a Coach and ſix Horſes in order to ſeize Mrs. *Bracegirdle* and carry her away by Force, and that is proved moſt fully, both upon my Lord *Mohun* and *Hill*, that they were both concerned in that Deſign, and actually ingaged in it; there can be no Diſpute of that. Accordingly they dined together that Day, and at Dinner there aroſe a Diſcourſe in relation to Mrs. *Bracegirdle*. And at that time my Lord *Mohun* ſaid it would coſt *Hill* 50 *l.* to carry her off. And *Hill* ſaid, if the Villain reſiſted he would ſtabb him. And my Lord *Mohun* ſaid, He would ſtand by his Friend. This Declaration was made at Dinner, on the Day this Fact was committed; and then they appointed to meet at the Play houſe at ſix a Clock in the Evening, expecting Mrs. *Bracegirdle* would be there; and accordingly the Coach was ordered to be ready at that time in *Drury-Lane*.

My Lords, in purſuance of this Deſign, they both came to the Play-houſe at ſix a Clock; this is proved by two or three Witneſſes. When they came there they inquired for Mrs. *Bracegirdle*, but ſhe was not there at that time. And then not finding Mrs. *Bracegirdle* there, your Lordſhips have an Account from the Coach-man, to what Places he carried them from thence. Firſt to *Drury-Lane*, there they ſtaid ſome time; and not finding her there, he drove them into *Norfolk-ſtreet*, near the Place where ſhe lodged, and there a Man and a Woman being diſcourſing together, gave them occaſion to ſay, they thought they were betray'd. And *Hill* ſaid, my Lord, let us go and cut that Fellows Throat, or Words to that effect.

Then, my Lords, they drove back from that Place, into *Drury-Lane* again, and ordered the Coach to ſtop over againſt my Lord of *Clare*'s Houſe. There it happened that Mrs. *Bracegirdle* came from Mr. *Page*'s houſe, where ſhe had ſupped. At that time there were preſent her Mother, her Brother, and Mr. *Page*, and Mr. *Page* led her along. *Hill* came up with ſeven or eight Soldiers, and forced her out of Mr. *Page*'s Hand, and endeavoured to thruſt her into the Coach. In that Coach my Lord *Mohun* was, that is agreed upon on all hands, the Coach Door was open, and my Lord *Mohun* was there in it with ſeven or eight Piſtols.

It happening they could not carry her off, but the matter taking Air, People came in to their Aſſiſtance, and the Deſign being prevented, *Hill* would needs go home with her to her Lodging in *Howard-ſtreet*, and my Lord came out of the Coach and went along with him. When they were come to the Lodging, the Witneſſes tell your Lordſhips, that at that time, when Mr. *Page* was going into the Houſe, *Hill* would have had ſome Diſcourſe with Mr. *Page*, and deſired to ſpeak with him, but Mr. *Page* ſaid it was not a convenient time, but to Morrow would do better, and ſo went into the Houſe, and the Door was locked.

My Lord *Mohun* and *Hill* continued walking about the Streets for about two hours before Mr. *Mountford* was killed, and now your Lordſhips will obſerve what Tranſactions there were during the time that they continued walking in the Streets.

Then there was an Interruption for about a quarter of an hour, occaſion'd by a Lady's falling into Fits in one of the Galleries; but ſhe being removed, and Proclamation made for Silence, the Court proceeded.

L. H. Stew. Pray, go on Sir.

Mr. Sol. Gen. My Lords, I was obſerving to your Lordſhips, that part of the Evidence which related to what happened after the time that Mrs. *Bracegirdle* was in her Lodging. And, my Lord, your Lordſhips hear from the Witneſſes, that my Lord *Mohun*, and this *Hill* continued in the Street, where Mrs. *Bracegirdle* lodged, and walked up and down for near two hours before Mr. *Mountford* came.

During that time, the Conſtable and the Watch-men have told your Lordſhip upon their Oaths, that my Lord *Mohun*'s and Mr. *Hill*'s Swords were both drawn. And the Conſtable ſwears expreſly, That he asked my Lord *Mohun* what he did with his Sword drawn, and that my Lord anſwer'd, he was ready to put it up, and told him withal, he was a Peer of the Realm; the Conſtable then asked, Why the other Gentleman's Sword was drawn, and my Lord *Mohun* made anſwer that his Scabbord was loſt.

But your Lordſhips obſerve, that before the Watch came, Mrs. *Brown* (as ſhe her ſelf hath ſworn) came out of the Houſe where Mrs. *Bracegirdle* lodged, and deſired to know what they did there, and then *Hill* ſaid, he ſhould light upon *Mountford* one time or another; ſaith Mrs. *Brown* to him, why, what hath he done to you, to which he Replyed, he hath affronted me, and I will be Revenged upon him; and this was ſaid in the Preſence of my Lord *Mohun*, he being juſt by.

My Lords, after this, in a very ſhort time, Mr. *Mountford* came down, and Mrs. *Brown* telleth your Lordſhips, that they were ſo much aware of this matter, that my Lord *Mohun* and *Hill* ſtaid to do *Mountford* a Miſchief, that there were Perſons ſent to Mrs. *Mountford* to give her Notice of it, and ſhe ſent Meſſengers to find out her Husband, to prevent his coming in their Way, but they could not find him.

Upon Mr. *Mountford*'s coming down, Mrs. *Brown* ſeeing him, ſteps up towards him, to tell him that my Lord *Mohun* and *Hill* were in the Streets with their Swords drawn, and ſhe was afraid they had ſome ill Deſign againſt him; but ſhe ſweareth ſhe did not, nor could not tell him this, he was in ſuch haſte; but one of the Witneſſes for my Lord contradicts her in this, and ſays, that ſhe did tell him, but whether the one Witneſs ſweareth true, or the other Witneſs ſaith true, muſt be left to your Lordſhips Judgment.

But Mr. *Mountford* came down immediately, and as he came down, he met my Lord *Mohun*, and they did Salute one another (for I would not injure my Lord in miſtaking the Evidence, as near as I can) but your Lordſhips will obſerve the Witneſſes ſay, that preſently my Lord *Mohun* asked Mr. *Mountford*, whether he was not ſent for, and ſaid, I ſuppoſe you have heard what happened to the Lady this Night, and I hope you do not come to Vindicate Mrs. *Bracegirdle*. And Mr. *Mountford* Replyed, I hope your Lordſhip doth not come to Vindicate Mr. *Hill* in ſuch an Action.

Thereupon *Hill* ſtepped up, and ſtruck Mr.

Mountford

Mountford a box on the Ear, and at the ſame time, with his Right Hand, paſſed at him, and run him through, before his Sword was drawn. This two of the Witneſſes for the King ſay Mr. *Mountford* told them upon his Death-Bed, and it was very probable ſo; becauſe your Lordſhips obſerve by all the Evidence, *Hill*'s Sword was ready drawn in his Hand.

There being ſome Noiſe, Proclamation was made for Silence.

Mr. Soll. Gen. My Lords, I was obſerving that it was immediately, and at the ſame time that he ſtruck him, and run him through, and it is very likely it was ſo, as Mr. *Mountford* ſaid when dying; for ſeveral of the Witneſſes for the King do Swear, that the Box on the Ear, was before his Sword was drawn, and *Hill*'s Sword was ready in his Hand. So Mr. *Mountford* ſaid when he was Expiring, and what regard your Lordſhips will have to the Declaration of a Dying Man, we muſt ſubmit to your Lordſhips Judgment; and Mrs. *Brown* who was there and ſaw the Fact, ſweareth the ſame thing, that it was done before Mr. *Mountford* could have time to draw his Sword.

If that be ſo, it is very plain it was Murder in Mr. *Hill*, and your Lordſhips will pleaſe to obſerve another piece of Evidence that came from the Mouth of a Witneſs, Examined for the Noble Lord the Priſoner at the Bar, and that is *Leake* the Boy, he was Examined before the Coroner, indeed he was not called now for the King, and your Lordſhips may ſee ſome Reaſon why he was not, but your Lordſhips have had his Depoſition before the Coroner read, and by that your Lordſhips may obſerve, how different his Teſtimony then was, from what he now giveth. And whether your Lordſhips will believe what he then ſaid upon his Oath, or what he now ſaith, is left to your Lordſhips Conſideration. He ſaith, when he was Examined upon his Oath, ſoon after the Fact, that my Lord *Mohun* was by, when *Hill* did wound *Mountford*, and that my Lord *Mohun* ſaid, that he would ſtand by his Friend, and that *Hill* was his Friend, and that my Lord *Mohun* did ſtand by, and did not offer to part them. Though he hath ſomething varyed from this in his Teſtimony now, yet he ſtill affirms what he there Swore, to be true.

But further my Lords, your Lordſhips will Conſider what the Conſtable Swore, my Lord *Mohun* ſaid after he was taken, and when he was in Cuſtody at the *Round houſe*. Whether he did Surrender himſelf or no, we muſt leave to your Lordſhips, upon the Evidence that hath been given on the one ſide, and on the other. But when he was in Cuſtody (as I ſaid) my Lord *Mohun* asked whether *Hill* was taken, and being anſwered No, he ſaid he was glad of that; but he was ſorry he had no more Money about him, and wiſhed that he had that Money which he himſelf had, and that he would be willing to be hanged for him. So great a kindneſs he expreſſed for *Hill*, and ſaid, he had changed Coats with him, and then had *Hill*'s Coat on his Back.

This, my Lords, is the Subſtance of the Evidence on the King's part, and upon the whole of it, it is plain, with Humble Submiſſion to your Lordſhips, that here was a premeditated Malice in *Hill*, by his own Declarations preceeding, by what was done at the time of the Fact committed, and by ſtabbing him before his Sword was drawn.

The Queſtion will be, whether, my Lord *Mohun* the Priſoner at the Bar, was Privy to this Deſign of *Hill*'s, and did ſo far agree in it, as to keep him Company to Aſſiſt and Incourage him. For if he was Privy, and knew of *Hill*'s Deſign, and ſtayed there for that purpoſe, to give him Aſſiſtance in it, with Humble Submiſſion to your Lordſhips Judgment, he will be as much Guilty of the Murther, as *Hill* that actually killed him: That therefore will be the Queſtion before your Lordſhips, for your Judgment upon the Conſideration of what has been proved in this Caſe.

My Lords, The Priſoner my Lord *Mohun*, has called and produced ſeveral Witneſſes to your Lordſhips, in Defence of himſelf. The firſt Witneſs was called to this purpoſe, to ſhew that my Lord hath no Malice to *Mountford*, but that they were very good Friends, but two or three Days before, that he ſpoke of him with a great deal of Kindneſs, and deſired to Drink a Bottle of Wine with him.

Now for this, I would obſerve to your Lordſhips, that it is not the Queſtion, whether my Lord *Mohun* had any direct or expreſs Malice againſt *Mountford*, but if *Hill* who was ſo great a Friend of my Lord *Mohun*'s, had a Malice againſt *Mountford*, and my Lord *Mohun* had ſo great a Kindneſs for *Hill*, as to Accompany and Aſſiſt him in taking his intended Revenge. (Whether it was ſo or no, your Lordſhips are to Judge) it it will be as much Murder in Law, as if my Lord had himſelf had a Hand in it.

For the other Witneſſes that have been called for the Priſoner, I muſt leave the Conſideration of what they ſay, to your Lordſhips. They are not upon their Oaths, but yet they are to be believed ſo far, as your Lordſhips ſhall Judge what they ſay Credible, upon Conſideration of all that you have heard. But for the Boy, who hath Contradicted his own Evidence, which he gave upon Oath before the proper Officer; but acknowledgeth what he Swore then, was true, what Credit is to be given to him, will deſerve your Lordſhips particular Conſideration. How he has been prevail'd upon to change his Evidence, I cannot tell, nor what weight it will have with you.

My Lords, I will not ſpend more of your Lordſhips time, I know you very well remember, and will carefully Recollect all the Evidence, both for the King and for the Priſoner, and your Lordſhips will conſider that it is a Caſe of Blood, and if your Lordſhips think him Guilty, tho' he be one of your own Body, you will adjudge him ſo, if not you will acquit him; and therefore I leave the Matter to your Lordſhips juſt Determination.

L. H. Stew. My Lords, I think now, having heard the Evidence on all ſides, your Lordſhips will think fit to Adjourn to the Houſe of Lords. Is it your Pleaſure to Adjourn?

Lords. Ay, Ay.

L. H. Stew., This Houſe is Adjourned to the Houſe of Lords.

Then the Lords returned to their own Houſe, in the ſame Order as they came into the Court.

After ſome Debate amongſt themſelves in their own Houſe, they Adjourned till the next Day, and ordered the Priſoner, Council, and Witneſſes to attend then in the Court.

Die

Die Mercurii Primo Februarii 1692.

The Lords ſate all Day in their own Houſe, debating amongſt themſelves in the Abſence of the Judges, who were in the Court, and about eight a Clock in the Evening, the Houſe of Lords Adjourn'd till the Friday *following, the* Thurſday *being* Candlemas-day, *and no Law-day.*

And the Priſoner, Council, and Witneſſes were ordered to attend in the Court on Friday *morning.*

Die Veneris Tertio Februarii 1692.

ABout the Hour of Four in the Afternoon, the Lords (who had till then been Debating amongſt themſelves in their own Houſe) came in the ſame Order as the firſt Day into the Court in *Weſtminſter-Hall*, except only that the Judges were a great part of the Day waiting for them in the Court.

The Lords being ſeated on their proper Benches, and his Grace the Lord High Steward in the Chair before the Throne, Proclamations were made for Silence, and for the bringing the Priſoner to the Bar in uſual manner; and the Priſoner coming to the Bar, and having ſaluted his Grace the Lord High Steward, and the Peers, and being reſaluted by them, the Court proceeded in this manner:

L. H. Steward. My Lord *Mohun*, My Lords have heard the Evidence on both ſides, for and againſt you; and upon that Evidence ſome Queſtions have ariſen in point of Law, in which ſome of my Lords are doubtful. I am therefore by their Lordſhips Command to propoſe to your Lordſhips, my Lords Chief Juſtices and the reſt of the Judges here, to have your Opinions upon a Caſe ſtated by their Lordſhips; and it is this:

In a Caſe where a Man ſhall murder another, Whether all thoſe that are in his Company at the time of the Murder, are ſo neceſſarily involved in the ſaid Crime, that they may not be ſeparated from the Crime of the ſaid Perſon, ſo as in ſome Caſes to be found guilty of Manſlaughter?

To this, my Lords expect you the Judges ſhould give your Reſolutions ſeverally one after another, and therefore it is to begin with you, my Lord Chief Juſtice.

L. C. J. Holt. My Lord, the Queſtion is pretty long; and I deſire, that I may not be miſtaken in the Opinion I ſhall give, that I may have it in Writing, and that I may have a little time to conſider of it, becauſe it hath been a Queſtion framed upon very great Conſideration and Deliberation: Therefore I would be very well adviſed before I give an Anſwer to ſuch a Queſtion, becauſe it is of ſo great Importance.

L. H. Stew. You muſt ſpeak out, my Lords; for elſe I am at ſuch a diſtance that I cannot hear a word you ſay.

L. C. J. Treby. My Lords, I make the ſame humble Requeſt: The Queſtion propounded is long, and the Fruit of great Deliberation among your Lordſhips; I deſire therefore my Anſwer may be ſuch as becometh me to it, and to that purpoſe that I may have a Copy of it, and ſome time to conſider of it.

L. H. Stew. I have it here in Writing, and will give it you, if that will ſerve the turn.

The Paper was brought by the Black Rod from his Grace to the Judges.

L C. J. Holt. My Lord, we deſire your Lordſhips will give us time to withdraw, and conſider of it among our ſelves.

L. H. Stew. Your Lordſhips hear the Motion of my Lord Chief Juſtice; the Judges deſire your leave to withdraw, and conſider of the Queſtion among themſelves.

Lords. No, no, no.

Then the Judges ſitting upon the Wool-Packs, conferred for a little time privately with one another; and then the Earl of *Rocheſter* ſtood up.

E. of Rocheſter. My Lords.

L. H. Stew. My Lord of *Rocheſter*, What ſay you?

E. of Rocheſter. My Lords, the Priſoner doth deſire to have a Copy of this Queſtion, it being a Queſtion in Point of Law, that his Council may ſee it.

Lords. Ay, ay, he ought to have it.

A Copy was carried by one of the Clerks to the Bar, and delivered to the Priſoner, and he gave it to Sir *Thomas Powys*, who with Mr. *Hawles* and Mr. *Price*, before aſſigned of Council for my Lord *Mohun* in Matters of Law, ſtood by him at the Bar.

L. Mohun. My Lords, I deſire to know whether my Council may ſpeak to this Caſe before the Judges give their Opinions, it being a Matter of Law, and the Judges ſuperiour to my Council.

L. H. Stew. My Lord, they may be heard to any Matter of Law that is Law ſingly, the Council on either ſide may be heard to any thing that is a Point of Law only.

L. Mohun. My Lord, I conceive this to be ſo.

L. H. Stew. My Lord, it is agreed to be ſo: But, my Lords, I muſt deſire your Lordſhips leave to go down to the Wool-Pack, or I ſhall not be able to hear what is ſaid.

Lords. Ay, ay.

Then his Grace came down and ſeated himſelf on the Wool-Pack.

Sir *T. Powys.* May it pleaſe your Lordſhips, I am of Council—

E. of Devonſhire. My Lords.

L. H. Stew. My Lord Steward.

E. of Devonſhire. I think your Lordſhips have not yet reſolved that the Priſoner's Council ſhall be heard before the Judges; therefore I deſire they may not begin.

Lords. Yes, yes, it was agreed above.

L. H. Stew. My Lord, it muſt be either then, or not at all; and I underſtand the Reſolution of the Houſe to be ſo.

Lords. Ay, ay.

L. H. Stew. Go on, Sir.

Sir *T. Powys.* May it pleaſe your Lordſhips, I am of Council aſſigned by your Lordſhips for this Noble Peer that is now a Priſoner at the Bar: The Queſtion your Lordſhips are pleas'd to propound is this:

In

In a Case where a Man shall murder another, Whether all those who are in his Company at the time of the Murder, are so necessarily involved in the same Crime, that they may not be separated from the Crime of the said Person, so as in some Cases to be found guilty only of Manslaughter?

My Lords, with humble Submission to your Lordships, I take it there are many Cases where a Person that is present when a Murder is committed by another Man, shall be equally Guilty of that Murder; and there are many Cases where a Person that is present when a Murder is committed by another Man, shall be Guilty only of Manslaughter: And there are many Cases where a Person that is present when a Murder is committed by another Man, shall not (with humble submission) be Guilty of any Crime at all.

For the first, there is no Question but if two Persons or more do meet together with Malice prepensed to kill another, and one of them killeth him, and the rest do aid and assist him in doing of it, though the Mortal Wound is only given by one, there is no question but they are all equally Guilty of the Murder with him that gave the Mortal Wound: And it is also as clear, if two Persons meet together to commit an unlawful Act, and during the execution of that unlawful Act, one of them doth kill another Man, the other will be involved in the Guilt of it.

But, my Lords, if several Persons do meet together to commit an unlawful Act, and the Design of the Act is totally over, so that the Prosecution of it is quite left off. ——

There being some Noise and Disorder about the Court, Proclamation was commanded to be made, and was made again for Silence.

Sir *T. Powys.* My Lords, I say in the second Instance that I was offering to your Lordships. If two Persons or more meet together to do an unlawful Act, but are either disappointed in it, or have totally desisted from it; and afterwards these same Persons having quitted their Design, are together, and a third Person coming into their Company, though there were Malice between one of those Persons, and that third Person, and upon words, or some other occasion or accident, there should be quarrelling and fighting between those two Persons that bore Malice to one another, and one of them is killed, and he that before had joyned in the Design of committing an unlawful Act, be only there in the Company, if he doth neither aid nor abet, nor any ways agree to the doing of the thing, the Authorities are it will neither be Murder nor Manslaughter; and of this I would, with your Lordships Favour, put some Instances.

If two Persons agree together, (as the Case is put in that which goeth by the Name of my Lord *Dacre's* Case) to enter into another Man's Park and steal his Deer, this is an unlawful Design; and if one of them kill the Keeper, and the other no way at all act in the doing of it, yet it will be Murder in the Person that did go along with that other in that unlawful Act: But the Lord *Dacre's* Case was accompanied with further Circumstances, for there it did appear that the Lord *Dacres* had agreed before-hand to kill any Person that should oppose them; there was that particular Circumstance in that Case.

But, my Lords, I take it, with submission, to be very clear, that if two such Persons who made such an attempt to rob or steal Deer in a Park, should be disappointed, and should leave the Park, and afterwards go to a Tavern, or an Ale-house, or any place to drink, having quitted that Design, and some Hours afterwards, a Person cometh in that was not expected, or thought of, and a Quarrel ariseth between one of those two Persons who were before together, and the Man that so came in, and he shall be killed, I take it that the other Person who was present will not be guilty of the Murder, unless he aided, or assisted, or acted in it.

My Lords, I would speak to your Lordships in a Case of this Nature with as good Authority as I could, besides my own poor Reason to prove to your Lordships that there may be many Cases where a Person may be present at the time when another is murthered, and yet he shall be guilty only of Manslaughter, and in some Cases shall be guilty of no Crime at all.

The Case that I shall cite is out of a Treatise of a very great and very Learned Man, it is the Book that goeth under the Name of Sir *Matthew Hales's Pleas of the Crown*; the Case is this, you will find in that Book under the Title of *Murder*, Fol. 51. If *A.* and *B.* having Malice prepense, meet and fight, and *C.* the Servant of *A.* not acquainted therewith, take part with *A.* his Master, and kill *B.* this is Murder in *A.* but only Manslaughter in *C.* So here is an Instance where one is guilty of Murder, and the other only guilty of Manslaughter, when both are present at the time of the Fact committed. The same Law, saith he, it is, if *C.* came in suddenly, and took part with *A.* and killed *B.* In this Case it is Murder in *A.* if there was Malice prepensed between him and *B.* but only Manslaughter in *C.* who came in suddenly, and actually killed *B.*

My Lords, He goeth further, and saith, If one come by chance where one is killed, and doth not abet, he is neither Principal nor Accessory to that Murder or Manslaughter; so that here are Cases where it is Murder in one, and Manslaughter only in the other; and here are Cases where it is Murder in one, and not so much as Manslaughter, or any Crime at all in the other.

These that I have cited are Cases where one has Malice against another, and he that joyneth in the Quarrel doth not know it. But I will put the Case now, That a Person hath Malice against another, and one happeneth to be in his Company that knoweth he hath Malice against that other Person; if those two that had Malice against one another, do fight, and the one kill the other, yet he that is present will not be guilty of Murder or Manslaughter. For if the Law should be, that Men are involved in the guilt of Murder whenever they are present at a time when one that beareth Malice against another killeth his Enemy, Conversation in the World would be very dangerous: For, my Lords, we know the World is too full of Malice, and there are few Men but have Acquaintance with such as bear Malice to others; but if so be that no Man that is acquainted with one that bears Malice to another, may be in his Company but at the peril of his Life; if his Enemy come in his

his way, and he happen to kill him in his Preſence, then no Man that is ever ſo innocent can be ſafe.

For I would put this Caſe to your Lordſhips: I am walking with a Friend or an Acquaintance that I know hath Malice againſt another, and that other Man cometh in the way, and they fight, and my Friend killeth that other Man, and I am no way aiding or aſſiſting in it, if that ſhould involve me in the Crime, ſurely the Law of *England* would be the moſt unreaſonable and dangerous Law to live under in the World. No doubt but in ſuch a Caſe the Perſon that is ſo preſent is unfortunate, but he is innocent, is not guilty.

For to make one guilty of Murder where Murder is committed, it muſt be either that he doth aid or abet, or ſome way aſſiſt in the killing of the Man, or he muſt have before that time agreed and confederated with the Perſon that killed him that he would joyn therein at that time, and he muſt be there for that end and purpoſe: For if he never engaged or agreed to the killing of him, nor was there for that purpoſe, nor at the time did any way act, or joyn, or aſſiſt, in the doing of it; in thoſe Caſes he is certainly not guilty.

My Lords, I dare not apply any of theſe things to the preſent Caſe, becauſe I ſuppoſe your Lordſhips only propounded this as a Queſtion of Law, and not of Fact; your Lordſhips are the great Judges both of the one and the other: But what in the Argument or Reſolution of this Caſe, your Lordſhips will find agreeable to the preſent Caſe of my Lord now before you, I ſubmit to your Lordſhips Judgment.

Mr. *Hawles.* My Lords, I will not repeat what has been offered, the Diſtinction is certainly true that has been made, that there are Caſes and Inſtances in Law where a Man may be guilty of Murder, when he is preſent where Murder is committed, and he may be guilty of Manſlaughter only where another is guilty of Murder; and a Man may be preſent where Murder is committed, and be innocent both of the one and the other. But this I do venture to ſay, That there is no Authority in our Law that ſaith a Perſon preſent, when a Murder is committed, muſt be guilty either of Murder or Manſlaughter, it muſt be according to the Circumſtances of the thing, either that he intended to aid or aſſiſt in the killing when he was there by Agreement before-hand, or muſt actually aid or aſſiſt by ſome Action or Encouragement.

But, with Submiſſion, the Authority of Law is very plain upon this Queſtion propoſed by your Lordſhips, that one Perſon may be guilty of Manſlaughter, and another of Murder at the ſame time. The Caſe that hath been put out of my Lord *Hales* was upon his account Authority ſufficient to quote, if we would only rely on him: But, my Lords, with Submiſſion, the Authority goeth a little higher; yet *Stampford* putteth the Queſtion before the Juſtices; *A.* that is, the Maſter, fighteth with *B.* and *C.* the Servant taketh part with his Maſter, and killeth *B. A.* is guilty of Murder, and *C.* only of Manſlaughter.

And that Authority is followed afterwards in the Caſe of *Salisbury*, in *Plowd. Com.* Fol. 100. *B.* with the Reſolution of all the Judges in that Caſe, That one Man may be found guilty of Murder, and another of Manſlaughter, as to the ſame Fact; and *Stampford* doth expreſly ſay, as my Lord Chief Juſtice *Hales* quotes it out of him, That if a Man be preſent, but do not abet or aſſiſt, or contribute to the thing, he is totally innocent, and neither Principal nor Acceſſory to the Murder or Manſlaughter.

My Lords, We do not find that our Law hath any way prohibited a Man to keep Company with one that oweth another a Spleen; ſure there ſhould be ſome warning given about it, if that was the Law in ſuch a Caſe. The Law goeth no farther than to caution a Man that he take care he doth not break the Law himſelf, that he doth not tranſgreſs the Bounds ſet him by the Law.

And it were a very hard Caſe upon a private Perſon if it ſhould be otherwiſe; for no Law compelleth a private Perſon to part two that are fighting; if he doth attempt it, he doth it at his own Peril, as in that Caſe of *A.* the Maſter fighting with *B.* and *C.* the Servant taking part with his Maſter to part them, if *B.* be killed, *C.* is guilty of Manſlaughter, though his Deſign was only to part them, becauſe the Law putteth it not upon a private Perſon to do it; if it did, the Law would protect him for what he did in Obedience to it.

The Law is otherwiſe in the Caſe of a Magiſtrate or a Conſtable, who endeavoureth to part any Perſons fighting, and to keep the Peace; if he happen ſo to kill a Man, he is totally innocent; but a private Perſon ſhall anſwer for it.

My Lords, I will not trouble your Lordſhips further; I hope it is plain that Malice is abſolutely neceſſary to make a Man guilty of Murder, and there is no ſuch thing in this Caſe ſtated by your Lordſhips; and therefore I ſubmit the Matter to your Judgment.

Mr. *Price.* My Lords, I am of Council for this noble and young Lord the Priſoner at the Bar: I ſhall not trouble your Lordſhips ſo far as to make any Repetition of what has been ſaid by thoſe Gentlemen that went before me.

But there was a Caſe in *Plowden* that was cited by Mr. *Hawles* by the Name of *Salisbury*'s Caſe; and I would crave leave to cite the Caſe that is next precedent; it is in that Book, *Fol.* 98. There, my Lords, was an Indictment for Murder againſt ſeveral, and among the reſt againſt two, one for giving the Wound and the Stroke, and the other for being preſent and aiding the other; and they tell you how he was an Aider and an Abetter becauſe he was preſent, and put the Man upon whom the Aſſault was made in terror, which terror was the occaſion that he could not defend his Life; and made him full as much a Principal as the other that gave him his Deaths Wound. And there, my Lords, he citeth another ancient Record, which is *Quarto Libro Aſſiſarum Placito* 25. of an Appeal of Murder by a Woman for the Death of her Husband againſt Sixteen; four whereof were Principals, and the others Acceſſories, where the words are *Preſence, Force* and *Aid.*

How that will come up to this Caſe now before your Lordſhips, I am not to trouble you with the Conſideration of, you who have heard the Evidence are beſt able to judge of it.

My Lords, By the ſame Reaſon and Rule that one Man may be found guilty of Murder, and another of Manſlaughter; one may be found

guilty, and the other not guilty. As for Example, if *A.* commandeth *B.* to kill *C.* and afterwards it repenteth him of this Command, and he countermandeth it: yet notwithstanding *B.* doth kill *C.* now *B.* that killed *C* is guilty of Murder, but *A.* that countermanded it is not guilty as Accessory; for his malicious Intent did not continue till the murdering Stroke was given, and to make Murder there must be a continuing Malice till the mortal Wound given. Cases to this purpose many might be cited; but for a full Authority there is my Lord *Coke* in his Pleas of the Crown, *Fol.* 51.

My Lords, I have no more to say, but that by the same Rule, that one may be found guilty of Murder, and another of Manslaughter for the same Fact, by the same Rule, (as Circumstances may be,) the one may be found guilty of Murder, and the other not guilty at all.

L. H. Stew. Have you any more to say that are of Council for the Prisoner?

Sir *Tho. Powys.* No, my Lord, I have nothing further to offer to your Lordships.

L. H. Stew. Have those who are of Council for the King any thing to reply to this that is said by the Council for the Prisoner?

Mr. *Att. Gen.* May it please your Lordships, the Question that is proposed, is this,

> *In a Case where a Man shall murder another, Whether those who are in his Company at the time of the Murder, are so necessarily involved in the said Crime, that they may not be separated from the Crime of the said Person, so as in some Cases to be found guilty only of Manslaughter.*

My Lords, that which with all Submission we would offer to your Lordships is this; We are intrusted by their Majesties to prosecute for the Death of one of their Subjects; there hath been a Case stated to your Lordships by the Evidence which hath been given before you; That which is mentioned in this Paper has nothing certain in it, we are to imagine a Case, and suppose Facts, and then to argue what will be the Law upon those Facts supposed. When your Lordships are pleased to let us know what it is which your Lordships take to be the Fact of the Case before you, we shall be ready to speak to the Law upon that Case, as it becomes us, and as it is our Duty to do; but till the Fact be so stated by your Lordships, and declared to be that which your Lordships take to be the Fact of my Lord *Mohun*'s Case, we think it not consistent with our Duty to enter into a Debate upon Supposals, or upon other Cases than that which is in Judgment before your Lordships.

L. H. Stew. Will your Lordships then please that the Judges give their Opinion?

Mr. *Sol Gen.* My Lords, not to trouble your Lordships with any Repetition of what hath been said, it is my Opinion, as Mr. Attorny General has declared his, That, as this Case is stated, we are bound not to give any Answer to it, unless your Lordships will please to tell us what the Case is upon the Evidence that hath been given before you.

Mr. *Serj. Thomp.* My Lords, I desire to be heard one Word in this Case. I take it for granted, that your Lordships here are Judges both of Fact and Law in this Case, and you are so entirely Judges of it, that no Body can interpose in giving their Opinions in relation to your Judgments, what the Fact is and from the Fact the Law ariseth. We, that are of Council for the King, must needs prejudice him as to the Evidence of the Fact that we have given, except we argue that which is the Fact of this particular Case, and the Law arising thereupon together; which is not necessary here, where your Lordships are Judges of both; and since you are better Judges of them, than any one else can be. Therefore we do not think it our Duty to argue upon a Case put *ad extra*, and *obiter*; and hope your Lordships will excuse us from answering what hath been said by the Council for the Prisoner; tho' I think it might be easily answered in every Point; but I shall not enter upon the debating of it. For your Lordships see what Caution we ought to have in relation to our Duty to the Government, which your Lordships will always expect we should perform as exactly as we can. When the Fact that hath been proved in this Case is stated, your Lordships then are the proper Judges what it amounteth to in point of Law, or if your Lordships desire that Council should argue it, we shall be ready to do it.

L. H. Stew. Then, my Lords the Judges, what say you to it? my Lords here expect your Opinion in this Case.

L. C. J. Holt. If your Lordships please, I will repeat the Question, which is this:

> *In a Case, where a Man shall murder another, Whether those who are in his Company are so necessarily involved in the said Crime, that they may not be separated from the Crime of the said Person, so as in some Cases to be found guilty only of Manslaughter?*

My Lords, I shall not inlarge upon the Matter, but humbly offer my Opinion to your Lordships as generally as the Question. I am of Opinion, that the Crime of those who are in the Company at the time of the murder committed, may be so separated from the Crime of the Person that committeth the murder, as in some Cases they are only to be found guilty of Manslaughter. I suppose your Lordships do not expect that I should argue the Case, or explain my Opinion upon so general a Question, by particular Instances, or run into a Consideration of the different Cases that may be put upon it, therefore I only deliver this as my Opinion.

L. C. J. Treby. May it please your Lordships I am of the same Opinion; I think the Import of your Lordships Question is, Whether there may be a Case in which it is possible that one Person, who is in the Company of another at the time that he committed murder, may be guilty of Manslaughter; and my Lords, I think a Case may fall out, and may be so circumstanced, as that it may be possible, that he who did accompany the Murderer, may be guilty only of Manslaughter. Your Lordships only expect our Opinion, and therefore I will not go about to argue it.

Mr. *J. Nevill.* My Lords, I shall not spend your time to repeat the Question, it hath been so

ſo often repeated; but I am of the ſame Opinion with my Lords Chief Juſtices, I muſt concur with them in it, that there may poſſibly be ſuch a Caſe, as that when Murder is committed where others are in Company, he that doth the thing will be guilty of Murder, and thoſe that were in Company guilty but of Manſlaughter. There may be ſuch a Caſe.

Earl of Carliſle. My Lords, to ſave your Lordſhips time, unleſs the reſt of the Judges differ from thoſe that have ſpoken their Opinion, I think you need not trouble them to ſpeak to it ſeverally.

Mr. *B. Turton.* We are all of the ſame Opinion, my Lords, we cannot differ in Opinion upon ſuch a Caſe.

Earl of Monmouth. My Lords, I humbly beg your Lordſhips leave to propoſe a Queſtion to my Lords the Judges for their Opinions.

Lords. Ay, ay.

L. H. Stew. What is your Queſtion, my Lord of *Monmouth*?

Earl of Monmouth. My Lords, the Queſtion is this,

> A. *Conſcious of an Animoſity between* B *and* C, A *accompanieth* B *where* C *happeneth to come, and* B *killeth him, whether* A, *without any Malice to* C, *or any actual Hand in his Death, be guilty of Murder*?

L. H. Stew. Pray, my Lord, be pleaſed to hand up your Paper, that my Lords the Judges may ſee it.

Earl of Mulgrave. My Lords.

L. H Stew. What ſaith your Lordſhip, my Lord of *Mulgrave*?

Earl of Mulgrave. I only deſire, that the Priſoner at the Bar, if he hath a mind to it, may have his Council ſpeak to this Queſtion, before the Judges anſwer it, as was done in the other Caſe.

L. Mohun. I deſire, my Lords, my Council may have the Queſtion in writing.

L. H. Stew. Make my Lord a Copy of it. One Copy was delivered by the Clerk to the Priſoner, and by him to his Council, and another to the King's Council; and the Original was delivered to the Judges.

L. Mohun. Is it your Lordſhips pleaſure that my Council may be heard to this Queſtion?

Lords. Ay, ay.

Sir *T. Powys.* My Lords, the Queſtion that this noble Peer hath been pleaſed to propoſe, is this:

> A *Conſcious of an Animoſity between* B *and* C, A *accompanieth* B *where* C *happeneth to come, and* B *killeth him, Whether* A, *without any Malice to* C, *or any actual hand in his Death, be guilty of Murder.*

My Lords, with humble Submiſſion to your Lordſhips, I take it in this Caſe the Law is very clear, That as this Caſe is put, he that was in Company when the Murder was committed, under theſe Circumſtances, is not guilty of any Crime: But without queſtion he is not guilty of Murder.

My Lords, Malice is ſo abſolutely neceſſary to Murder, either expreſs, or that which the Law calleth Malice implied, that there can be no Caſe where Murder can be committed without it; no Indictment can ever be good, unleſs *Ex malitia ſua precogitata* be alledged in it; becauſe this is abſolutely eſſential to Murder.

But, my Lord, if ſo be a Man that is preſent, not deſigning, or foreſeeing that unhappy Accident that doth fall out between his Friend with whom he is in company, and another Perſon that came accidentally to them, tho' Malice was between thoſe two, God forbid he ſhould be guilty, if he did neither foreſee it, nor any way acted in it.

He that is preſent muſt be involved in the Crime, either by ſome way aiding, abetting, or contributing to the death of the Man, or there muſt be ſome precedent Combination and Agreement to do that Act which at that time was done; and that muſt be plainly and clearly proved: For his acting, his ſtanding by innocently and harmleſly, is ſo great an Evidence of his not concurring, that it muſt be a mighty Proof of Malice that muſt convict that Man of a preceding Agreement to do the Fact; and if it doth not appear plainly and manifeſtly, that he agreed before hand, or acted then, and abetted and contributed to the thing, I ſay, unleſs this be clear and manifeſt, it is no Queſtion, but in Law, he is innocent of the Murder.

For in ſuch a Caſe it is plain he never had prepenſed Malice expreſs, nor is there any Evidence of that which the Law calleth Malice implied; which is when a Man killeth another without Provocation, that is, when he that doth the Act had no Provocation, or killeth an Officer in the Proſecution of his Office, That the Law calleth Malice implied. But then that is never but in the Perſon that did the Act, and not in the Perſons who were preſent at that time, unleſs before hand they had agreed to do that Act; and therefore they cannot be guilty of Murder.

And this, my Lords, is what I humbly offer to your Lordſhips Conſideration, in relation to the Caſe put by that Noble Lord.

Mr. *Hawles.* Will your Lordſhips pleaſe to favour me with a Word on the ſame ſide with Sir *Tho. Powys*, and I ſhall be very ſhort in the matter.

The King's Council did complain that the laſt Caſe was not fully ſtated, and therefore they could not ſpeak to it; my Lords, with Submiſſion, this Caſe is fully ſtated, there was nothing in the other Caſe ſaid of Malice between him that was murdered, and him that killed him; but here it is ſaid, That the Perſon preſent was not conſcious of any Malice, nor had any manner of hand in the doing of it: And then with Submiſſion, my Lords, upon the Queſtion, Whether he was not guilty of Murder? If this was a Special Verdict, found by 12 Men, and referred to the Judges, I do not at all doubt but their Judgment would be, That he was not guilty. For tho' in a Special Verdict, where Malice is not found, the Priſoner would be acquitted; yet if it be expreſly found in the Verdict that he did not know of any Malice between them, then, with Submiſſion, there would be no Colour to find him guilty of any thing.

A Lord interrupted him, and ſaid, The Caſe was put of one conſcious of the Malice.

Mr. *Hawles.* My Lords, I beg your Pardon, I confeſs it is ſo, I did miſtake it; but with Submiſſion, that will not much alter the matter. If he was conſcious, that will not make him guilty; for that Conſciouſneſs of his is no matter of Crime, if he did not act any thing, or agree to do any thing before hand, but only was in Company with the Perſon that had Malice againſt another, that will not make him guilty of any Crime whatſoever.

Mr. *Price.* My Lords, I ſhall ſpeak but one word to it; I obſerve the great ſtreſs of the Caſe lieth upon the Word being conſcious of the Malice between *B* and *C*. Now as to that with Submiſſion, I conceive, and am of Opinion, that as this Caſe is, *A* is not guilty of Murder; and for Authority, I ſhall rely upon the Caſes in *Stampford's Pleas of the Crown, Fol.* 40. And my Lord *Coke's Pleas of the Crown, Fol.* 51: The Caſe is this, If a Man happen to be in Company where Murder is committed, or Felony, and he cometh not there on purpoſe, or by confederacy to do it, In that Caſe, tho' Murder be committed, and he doth not endeavour to part them, this is no Murder in him, for he is puniſhable by Fine and Impriſonment, if not an Infant; but if he was an Infant, he is not puniſhable at all, for he is not Conuſant of the Law in ſuch a Caſe. But in this Caſe, except Malice prepenſed, expreſs, or implied, be proved, without doing any thing, or abetting, he is not guilty of Murder.

L. H. Stew. Gentlemen, you that are of the King's Council, have you any thing to ſay to this Queſtion?

Mr. *Att. Gen.* My Lords, here is a Caſe put, which I hear from the Council on the other ſide, is certainly enough ſtated. My Lords, if this be ſtated to us, as that which is agreed to be the Fact of the preſent Caſe, we are ready to ſpeak to it; but if this be not taken by your Lordſhips, to be my Lord *Mohun's* Caſe, and as ſuch ſtated to us, then we muſt humbly beg to be excuſed. I know your Lordſhips will be tender in this matter, and as well pleaſed that we hold to that which we conceive to be our Duty in reference to that Station in which we ſerve the King, as with any forwardneſs in us to anſwer Queſtions: And therefore we beg your Lordſhips Excuſe for ſaying nothing more to it.

Earl of Monmouth. My Lords, I did not propoſe it as a Caſe ſtated and agreed by your Lordſhips, it is only a Caſe particularly ſtated for my own Satisfaction.

Earl of Mulgrave. My Lords.

L. H. Stew. My Lord of *Mulgrave.*

Earl of Mulgrave. If your Grace pleaſe, let the King's Council know, that they are not to ask you the Queſtion, Whether the Lords are agreed what the Caſe is? They are to anſwer ſuch Queſtions as are propoſed, and not to ask any ſuch Queſtion.

Mr. *Att. Gen.* My Lords, with that noble Lord's Pardon I did not ask any Queſtion; all that I ſaid was, That when a Caſe is agreed to, and ſtated by your Lordſhips to be the preſent Caſe, we would be ready to ſpeak to it, and till we receive that Intimation from your Grace, we ſhall think our ſelves excuſed from giving any Anſwer to other Queſtions.

L. H. Stew. My Lords, I think we muſt go on, and if any Lord has any more Queſtions to propoſe, he may propoſe them.

Earl of Nottingham. My Lords.

L. H. Stew. My Lord of *Nottingham.*

Earl of Nottingham. Your Lordſhips will not certainly require of the King's Council to anſwer any Queſtions that they think improper for them to ſpeak to, but when a Queſtion hath been propoſed by any noble Lord, to which the Council for the Priſoner hath been heard, and the King's Council think not fit to ſpeak to it, there is nothing more requiſite, but that in the preſence of the Priſoner (as the Law requireth it ſhould be) you do demand the Opinion of the Judges.

L. H. St. What ſay to it my Lord Chief-Juſtice?

L. C. J. Holt. If your Lordſhips pleaſe, I will repeat the Queſtion.

> A *conſcious of an Animoſity between* B. *and* C. A. *accompanieth* B. *where* C. *happeneth to come, and* B. *killeth him; Whether* A. *without any Malice to* C. *or any actual hand in his death, be guilty of Murder?*

And my Lords, as this Caſe is ſtated I do conceive, that *A* is not guilty of the Murder, for it appeareth the meeting was caſual, and there was no Deſign in *A.* againſt *C.* and therefore though *A.* did know of the Malice between *B.* and *C.* yet it was not unlawful for *A.* to keep Company with *B.* but he might go with him any where, if it was not upon a Deſign againſt *C.*

Therefore I take it as this Caſe is put, that *C.* came accidentally into the Company where *A.* and *B.* were, and then without any Deſign in *A. B.* killeth *C.* This is not Murder, indeed no Offence in *A.*

L. C. J. Treby. If it pleaſe your Lordſhips, as this Caſe is put, I think it is not an Offence of Murder or Manſlaughter in *A.* it dependeth upon the Words as the laſt Queſtion did. For the former Queſtion was put generally, Whether there might not be a Caſe found or framed, wherein one might be guilty of Murder, and the other of Manſlaughter. So here it dependeth upon the Word [*Happeneth*], which I take to ſignifie, (as my Lord doth) a caſual coming into, or being in the Company.

Now my Lords, when *B.* had communicated to *A.* this malicious purpoſe to kill *C.* it ſtood uncertain, whether he to whom *B.* had communicated it did conſent; if he had any way declared his Conſent, that he would go to ſuch a place, and ſtay there with *B.* for ſuch a Purpoſe, then it had been Murder in both; but if he meerly was ſilent, and only kept *B.* Company, perhaps with an intent to diſſwade him from it, or poſſibly without any Conſideration at all, and then the Perſon intended to be killed accidentally came by, and is killed by *B. A.* doing nothing towards it. In that Caſe, it is neither Murder nor Manſlaughter in *A.*

Mr. *J. Nevill.* My Lords, as this Caſe is, it ſeemeth to be meer accidental the coming of *C.* into their Company, for it is ſaid, *Happeneth to come;* and ſo though *A.* did know that there was an Animoſity between *B.* and *C.* yet declaring no intent of going with *B.* to that Purpoſe, but coming with *B.* into a place where *C.* accidentally came or happened to be, between whom and *B.* there is a Quarrel, and *C.* is killed;

I do

I do not take it at all that *A.* is concerned, but meerly as any other Person that accidentally was there, and in that Case he cannot be guilty of Murder or Manslaughter, or any other Crime.

Earl of Devon. My Lords.

L. H. Stew. My Lord Steward.

Earl of Devon. If the rest are of the same Opinion, you need not give them any further trouble I think.

Judges. We are of the same Opinion.

Earl of Scarborough. My Lords.

L. H. Stew. My Lord of *Scarborough.*

Earl of Scarborough. I humbly beg your Lordships Leave, that I may offer a Question to your Lordships, to be proposed to the Judges, and the Question is this:

Whether if A. *heard* B. *threaten to kill* C. *and some days after* A. *shall be with* B. *upon some other Design, where* C. *shall pass by, or come in the place where* A. *and* B. *are, and* C. *shall be killed by* B. A. *standing by without contributing to the Fact, his Sword not then being drawn, or any Malice ever appearing on* A's *part against* C. *whether* A. *will be guilty of the Murder of* C?

L. H. Stew. Pray, my Lord, give your Paper to the Clerk. (*Which was done.*)

L. H. Stew. My Lord *Mohun*, doth your Lordship desire that your Council may have a Copy of this Question, and be heard to it?

L. Mohun. Yes, my Lord, if you please.

Then a Copy was given to him for his Council, and another to the King's Council, and a third the Judges had.

Sir *Tho. Powys.* Will your Lordships please to favour me with a few Words, and I shall trouble your Lordships very little, because I have said that already to your Lordships which will be an Answer to a good part of this Case? The Case is this:

Whether if A. *heard* B. *threaten to kill* C. *and some Days after* A. *shall be with* B. *upon some other Design, where* C. *shall pass by, or come in the place where* A. *and* B. *are, and* C. *shall be killed by* B. A. *standing by without contributing to the Fact, his Sword not then being drawn, or any Malice ever appearing on* A's *part against* C. *Whether* A. *will be guilty of the Murder of* C?

My Lord, with humble Submission we do take it, that the Law in this Case is likewise very clear, that *A.* is not guilty of Murder: For as this Case is put, there doth not appear (nay, the contrary doth appear) that he had any manner of Malice to this Man that was killed, nor any Hand in the killing of him: And as I said before to your Lordships, (and I hope the Judges will verifie us in that, and your Lordships will be of the same Opinion) there can be no Case wherein a Man shall be guilty of Murder, but where there is Malice against the Person so murdered, or some way abetting and assisting in the killing of him, or what the Law calleth *Implyed Malice.*

But in this Case that is now put, there is neither express Malice, but the contrary appearing, nor any implyed Malice, which is by Construction of Law; the Person that was by, and heard *B.* threaten *C.* before, yet doth no way aid or assist to the killing of him; and therefore I think, with Submission, the Law, and all our Law-Books, and Reason it self, are clear for the acquitting of *A.* in this Case.

Mr. *Hawles.* My Lords, I think the Resolutions that have been given in the Cases before, will warrant us in our Opinions in this, that *A.* is not guilty of Murder in this Case: For I think it was said by the Judges, That notwithstanding a Man knew another had a Design upon a third Person, yet it was lawful to keep Company with him, if he did not joyn with him in the Design. Now here it doth appear, that *A.* keepeth *B.* Company, but not upon that Design, for he had no Malice to *C.* nor had any Hand in his Death, and *C.* cometh in by accident into the Company or Place where they are: With Submission, my Lords, *A.* is totally not guilty, for there was no Malice in him; and though he was there, he was there upon his lawful Occasions; and if they two fight, the best course he can take is to stand still, and do nothing; and therefore he cannot be guilty of Murder or Manslaughter.

Mr. *Price.* My Lords, I have but this Word to say, His being there was lawful, *C.* cometh there but by accident, and when they two do fight, his not parting of them doth not make him guilty of the others Death; here is no Malice, therefore he is not guilty of Murder, and he hath done nothing towards the Fact, therefore he is not guilty of Manslaughter.

L. H. Stew. Will you say any thing to this Question, you that are of the King's Council?

Mr. *Att. Gen.* My Lords, we are ready to speak to the present Case, when we receive Intimation from your Lordships that what is put is the present Case.

Mr. *Serj. Thomp.* My Lords, if they put a Case of Fact to be argued as a Case of Law, and from time to time alledge Facts which are not in the Case before us, we cannot speak to them.

Mr. *Att. Gen.* My Lords, we are ready to argue the Case of the Prisoner at the Bar when it is stated; but till then, we humbly beg your Pardon: We think we are not bound to speak to other Cases.

L. H. Stew. My Lord Chief Justice, What say you to it?

L. C. J. Holt. If your Lordships please, I will put the Question:

Whether if A. *heard* B. *threaten to kill* C. *and some Days after* A. *shall be with* B. *upon some other Design where* C. *shall pass by, or come in the place where* A. *and* B. *are, and* C. *shall be killed by* B. A. *standing by without contributing to the Fact, his Sword not then being drawn, or any Malice ever appearing on* A's *part against* C. *Whether* A. *will be guilty of the Murder of* C?

My Lords, I am of Opinion that *A.* in this Case will not be guilty of Murder or Manslaughter:

ſlaughter. For it doth not appear by the ſtating of the Caſe, that *A.* did conſent to the Deſign, or in any wiſe contribute to the Fact.

L. H. Stew. My Lord Chief-Juſtice *Treby.*

L. C. J. Treby. My Lords, I take this Queſtion to be the ſame in Subſtance as to the Point in Law with the laſt; and am of Opinion that *A.* is not guilty of Murder or Manſlaughter.

Mr. *J. Nevill.* I am of the ſame Opinion.

L. H. Stew. If all the reſt of you are of the ſame Opinion, you may ſpare your ſelves the trouble of delivering it particularly.

Judges. We are all of the ſame Opinion.

[*Then there was a little pauſe; and afterwards the Earl of* Kingſton *ſtood up.*

Earl of Kingſton. My Lords, I deſire for my own private Satisfaction to know;

Whether a Perſon knowing of the Deſign of another to lie in wait to aſſault a third Man, who happeneth to be killed, (when the Perſon who knew of that Deſign is preſent) be guilty in Law of the ſame Crime with the Party who had the Deſign and killed him, though he had no actual Hand in his Death?

L. H. Stew. My Lord, I muſt crave your Excuſe, there is another Queſtion to precede this.

Earl of Devon. My Lords, I had a Queſtion to ask; but it being much to the ſame Purpoſe with the two laſt, I think it better to wave it, for there hath been given an Anſwer to it already.

L. H. Stew. Then, my Lord of *Kingſton*, will you be pleaſed to deliver up your Paper to the Table? [*Which was done.*]

L. H. Stew. My Lord *Mohun*, Do you deſire your Council may have a Copy of this Queſtion?

Earl of Mulgrave. My Lords.

L. H. Stew. My Lord of *Mulgrave.*

Earl of Mulgrave. I deſire your Grace will hear the Queſtion. Pray let it be read, that we may know what it is.

L. H. Stew. Read it.

Cl. of Crown. Readeth.

Whether a Perſon knowing of the Deſign of another to lie in wait to aſſault a third Man who happeneth to be killed, (when the Perſon who knew of the Deſign is preſent) be guilty in Law of the ſame Crime with the Party who had the Deſign, and killed him, though he had no actual hand in his Death?

Earl of Mulgrave. My Lords.

L. H. Stew. My Lord of *Mulgrave.*

Earl of Mulgrave. I think, my Lords, in a Caſe of this Nature we cannot be too exact: I humbly conceive that is not a proper Queſtion to be put, therefore I move that we may adjourn to conſider of it, whether it ſhall be put or not, if that Lord do inſiſt upon it.

L. H. Stew. My Lord of *Kingſton*, Doth your Lordſhip inſiſt of this Queſtion being put?

Earl of Kingſton. Yes, my Lords, I do, and I muſt inſiſt upon it; for I think I cannot give my private Opinion in this Caſe without Satisfaction in it.

Lords. Then Adjourn, Adjourn.

L. H. Stew. This Court is Adjourned into the Houſe of Lords.

Then the Lords went back to their own Houſe in the ſame Order, and debated this Matter amongſt themſelves for about an Hour.

Between ſix and ſeven in the Evening the Lords returned into the Court in the ſame Order, and being ſeated on their Benches, and his Grace in the Chair before the Throne, they proceeded thus:

Firſt, Proclamation was made for Silence.

L. H. Stew. My Lord Chief-Juſtice, and you the Judges——

L. Cornwallis. My Lords.

L. H. Stew. My Lord *Cornwallis.*

L. Cornwallis. My Lord, Before your Grace giveth any Directions, I think you ſhould call the Priſoner.

L. H. Stew. Is not the Priſoner at the Bar?

L. Cornwallis. No, my Lord.

L. H. Stew. Call for the Priſoner.

Then Proclamation was made for the Governour of the Tower *to bring forth the Priſoner, and he was brought as before.*

L. H. Stew. I am to let you that are of Council for the King, and the Priſoner know, That if any Queſtion be put by any of my Lords, which any of you ſhall not think fit to give an Anſwer to, my Lords will take it for granted either on the one part or on the other, that the Reaſon is, becauſe it is not neceſſary to give any Anſwer; and then they will proceed to have the Anſwer of you, my Lords the Judges. And now for my ſelf, I muſt deſire your Lordſhips will give me leave to come down again to the Wool-Pack.

Lords. Ay, Ay.

Then his Grace came down, and ſeated himſelf on the Wool-Pack.

L. H. Stew. My Lord of *Kingſton*, Will you pleaſe to propoſe your Queſtion?

Earl of Kingſton. My Lord, my Queſtion is this, which I deſire the Judges Opinion in for my own Satisfaction:

Whether a Perſon knowing of the Deſign of another to lie in wait to aſſault a third Man, who happeneth to be killed, (when the Perſon who knew of the Deſign is preſent) be guilty in Law of the ſame Crime with the Party who had the Deſign, and killed him, though he had no actual hand in his Death?

L. H. Stew. My Lord *Mohun*, Do you deſire your Council may have a Copy of that Queſtion?

L. Mohun. Yes, if your Lordſhips pleaſe.

L. H. Stew. Read it aloud, and deliver a Copy to my Lord.

The Queſtion was read by the Clerk of the Crown, and one Copy of it delivered to the Priſoner's Council, and another to the King's Council, and a third to the Judges.

L. Mohun. Is it your Lordſhip's Pleaſure, That my Council be heard to this Caſe?

Lords.

Lords. Ay, Ay.

Sir *Tho. Powys.* The Caſe that is put my Lords is this:

> *Whether a Perſon knowing of the Deſign of another to lye in wait to aſſault a third Man, who happeneth to be killed, (when the Perſon who knew of the Deſign is preſent) be guilty in Law of the ſame Crime with the Party who had the Deſign and killed him, though he had no actual hand in his Death?*

My Lords, I ſhall not inſiſt upon the ſame Privilege that the King's Council did even now do, to decline ſpeaking to any Caſe that your Lordſhips ſhall put. But I hope your Lordſhips will permit me to ſay, That I do not admit this to be the Caſe of my Lord *Mohun*, and I hope that my ſpeaking to it ſhall not be taken as any Admiſſion that this is his Caſe. But as this Caſe is put with that allowance, that I ſpeak to it not as his Caſe, I do take it, that this Perſon thus preſent at the killing of the third Man is not guilty of Murder.

My Lords, there are but two Circumſtances in the Caſe that can draw him into any danger: The *Firſt* is, That he knew another Perſon had a Deſign to make an Aſſault upon a third Man. And,

The *Second* is, That he who had the Knowledge of this Deſign, was alſo preſent when upon that Aſſault that third Perſon happened to be killed.

But my Lords, I do take it, that in this Caſe neither of theſe Ingredients will make this Man guilty of Murder.

As to the *Firſt*, The knowing that a Man has a Deſign to make an Aſſault upon a third Perſon, that taken by it ſelf is no Crime. It frequently happeneth, that a Man heareth what others threaten, that they will aſſault and beat ſuch an one, I may know that another doth ſo deſign, and that he will watch his Opportunity for the doing of it, and yet my meer Knowledge, my meer knowing of it, doth not make me guilty of any Crime, tho' I do not endeavour to prevent it.

I confeſs, it doth become a good Man upon ſuch Knowledge to do all that he can to prevent ſuch beginning of Miſchief, but if he doth not prevent it, that is no Crime.

The *Second Matter* is, That tho' he did know of this Deſign, he was alſo ſo unfortunate as not to prevent it; nay more, he was preſent when the Aſſault was made, and that Aſſault is attended with the Death of the Party aſſaulted, but he never acted in it, never abetted it. Take all this together, and yet he is not guilty of Murder, nay, perhaps not of any Crime, at moſt only of a Miſdemeanour.

For it is no more than this: I knew another Perſon did intend to aſſault a third Man, I was preſent when he did aſſault him, but did not prevent it either before he made it, tho' I knew he deſigned it, nor whilſt he was making the Aſſault upon which the Man is killed. That is all that this thing doth amount to, and no Man can ſay with humble Submiſſion, That this can involve me in the Crime of Murder.

It is true, if I command *A.* to beat *C.* and he according to my Command doth fall upon him, and ſo beat him, that he dieth; this maketh me guilty of his Death, becauſe what is done by that Command of mine is my doing; therefore tho' I only commanded him to beat him, yet he dying upon that beating, which was made purſuant to my Command, I that gave the Command muſt anſwer for it, and am guilty of all that followeth thereupon.

But if I only know, that another Perſon deſigneth to do ſuch a thing, and am neither commanding, aiding nor aſſiſting in the doing of it, but only preſent at the time, but did not interpoſe to prevent it; that doth not make me ſuch an Agent in this matter, as that I ſhould be any ways guilty of his Death if it doth enſue. I take it this Caſe cometh to no more than this, there is no Malice precedent, no ſort of abetting, aiding or aſſiſting, but a bare declining to prevent the Aſſault, and that will not amount to any thing that is Capital; if it be any Offence, it can only be conſtrued as a Miſdemeanour, but neither Murder, nor Manſlaughter.

Mr. *Hawles.* If your Lordſhips pleaſe to ſpare me one word on the ſame ſide: It is no manner of Crime for a Man to know, that another doth deſign to lie in wait to know, that another doth deſign to lie in wait to murder a third Perſon, much leſs to aſſault him.

There is but one Caſe that I know of in Law, where the Knowledge of an ill Deſign without diſcovery and endeavour to prevent it, is an Offence, and that is in the Caſe of High-Treaſon; and yet even there the bare Knowledge doth not make a Man guilty of Treaſon: And it was a hard Caſe if it ſhould, for it is not in the Power of any innocent Man to ſay, that he ſhall not know of an ill Deſign, either of Murder, or High-Treaſon.

It is true, in the Caſe of Treaſon, if I conceal it, it is a Crime, but it is not Treaſon, but only miſpriſion of Treaſon; which is forfeiture of Lands, and perpetual Confinement in Priſon during my Life: But it doth not extend to any other matter; for tho' I know, and do conceal it, that is no manner of Crime at all, tho that is further than this Caſe putteth it; for it only goeth to the knowing, and not to the concealing.

And my Lords, with Submiſſion, this would be likewiſe a hard Caſe if the Law was otherwiſe; For ſometimes a Man may apprehend he knoweth of a Deſign, when there is no ſuch thing deſigned. Your Lordſhips know where a certain Gentleman ſaid he would kill any Man that did oppoſe him, when he neither deſigned it, nor executed any ſuch purpoſe: And in ſuch a Caſe, tho' it had been well done of the Perſon that heard of the Deſign, to have gone and informed the third Perſon (and if he had, I believe your Lordſhips would have had no occaſion of a Tryal at this time, for it might have been determined another way) yet his not doing it is not a Crime.

Then further my Lords, a Perſon's being preſent at ſuch a time is his misfortune, but not at all his fault; he can no more help the Action, than he could the ill Deſign, or his own Knowledge of that Deſign. It is a complicated misfortune, both to know it, and be preſent at the Execution of it; but without having any hand in it, it can be no Offence: For indeed, it is as to him no more than a Man's being preſent that did not know of ſuch a Deſign. And if this was a Special Verdict, upon an Indictment for Murder, I doubt not but my Lords the Judges would

give

give their Judgment, that the Defendant was not guilty.

Mr. *Price.* I have only this word to add, my Lords; I do take it, That the bare privity of this design, with the bare personal Presence of him that was so privy when this Act is committed by another Man, will not amount to make him principal; and so he will not be guilty of Murder: For we find, that to make a Man principal in Murder, there must be aiding and abetting, and only being present will not do it. Now the aiding and abetting must be, either by commanding or assisting, or putting the Person assaulted in Terror and Fear, or he must be there ready, and designing to assist in case of Opposition. These are Facts that the Law requireth to the making a Man principal in Murder; and bare privity, with a mind to Assault, and bare Presence, when upon the Assault the Man is killed, will not amount to make a Man Principal, and consequently guilty of Murder.

L. H. Stew. Mr. Attorny, Do you think fit to say any thing to what the Council for the Prisoner have alledged?

Mr. *Att. Gen.* No, my Lord.

L. H. Stew. Nor no other of the King's Council?

Mr. *Sol. Gen.* No, my Lord.

L. H. Stew. Are ye all of that mind?

Mr. *Serj. Tremain.* I am of that mind, my Lord.

Mr. *Serj. Thompson.* And so am I.

L. H. Stew. Then my Lord Chief-Justice, what say you to it?

L. C. J. Holt. If your Lordships please, I will repeat the Question:

> *Whether a person knowing of the design of another to lye in wait to assault a third Man who happeneth to be killed (when the person who knew of the Design is present) be guilty in Law of the same Crime, with the party who had the Design and killed him, tho' he had no actual hand in his Death?*

My Lords, I am of Opinion this is no Murder nor Manslaughter, he that knew of the Design of assaulting, only happened to be present when the Assault was made, and the Party killed; but if he did not contribute to his Death, he is not guilty of Murder. This Question is much to the same effect with the Question that was put before: But if the Person that knew of this Design did advise it, or agree to it, or lay in wait for it, or resolv'd to meet the third Person that was killed, with him that killed him, it would be Murder: But as this Case is put, it is neither Murder nor Manslaughter.

L. C. J. Treby. My Lords, I am humbly of the same Opinion as this Case is put. The Person to whom this matter of the Design to lye in wait to assault another is communicated, is only passive; he only receiveth the notice of it, and doth nothing towards the Fact. But if by going to the place, directing, perswading, promising Assistance, or encouraging, he had discovered his Consent, or had layen in wait himself, then he had been guilty: But if he did nothing, but only receive this notice, and then the Person assaulted happened to come by, and is killed in his Presence, this is but an Accident, and doth not involve him in the Murder. And I think in Effect, it is the same with the second Question that was proposed. There it was put, of one that had an Animosity against another, here it is put, of one that lay in wait to assault him; There it was put, of accompanying him to the place where the Party was killed; here it is, of his being killed in his Presence: So that the Resolution must be the same in this Case that was given in that.

Mr. *J. Nevill.* My Lords, I shall not spend any of your Lordships time. I am of the same Opinion with my Lords that spoke before, and for the Reasons that they have given.

L. H. Stew. If they are all of the same Opinion, I suppose your Lordships will not require their particular delivering it.

Lords. No, no.

Judges. We are all of the same Opinion.

L. H. Stew. I am now to know of your Lordships, whether there be any of you that have any more Questions to ask?

Earl of Nottingham. My Lord.

L. H. Stew. My Lord of *Nottingham*?

Earl of Nottingham. The Question that I have to propose to your Lordship is the same that hath been already offered to you, but with some little Variation; for I do find, my Lords, the Judges do interpret this Persons being killed in the Presence of another, to be upon an accidental meeting. I would propose to your Lordships, that the Judges may answer what the Law would be, when a Person, knowing of the Design of another to lye in wait to assault a third Man, accompanieth him at that time that that Design is to be executed, Whether it be the same Crime in the one as the other?

L. H. Stew. If your Lordship have your Question in Writing, pray deliver it in.

Earl of Nottingham. I will immediately, my Lord.

(*Then he did put it in Writing.*)

L. H. Stew. Will your Lordship please that it may be handed to the Table.

(*Which was done.*)

L. H. Stew. Read it.

Cl of Crown. Readeth.

> *Whether a Person knowing of the Design of another to lie in wait to assault a third Man, and accompanying him in that Design, if it shall happen that the third Person be killed at that time in the presence of him who knew of that Design, and accompanied the other in it, be guilty in Law of the same Crime with the Party who had that Design and killed him, though he had no actual hand in his Death?*

L. H. Stew. My Lord *Mohun*, Do you desire a Copy of this?

L. Mohun. Yes, if your Lordships please.

L. H. Stew. Carry my Lord one.

(*Then Copies were deliverd as before.*)

L. H. Stew. Well, Sir, What say you to that Question?

Sir *Tho. Powys.* The Case that is now propounded is this:

Whether

Whether a Perſon knowing of the Deſign of another to lie in wait to Aſſault a third Man, and accompanying him in that Deſign, if it ſhall happen that the third Perſon be killed at that time in the preſence of him who knew of that Deſign, and accompanied the other in it, be Guilty in Law of the ſame Crime with the Party who had the Deſign, and killed him, though he had no actual Hand in his Death?

My Lords, I ſhall not, (though I am of Council for this Noble Lord) decline or refuſe Speaking to this Queſtion; ſtill, my Lords, with that ſaving which I know your Lordſhips will allow me, that I am very far from admitting that this which goeth much further than the laſt Caſe, is the Caſe of my Lord *Mohun*. Whether your Lordſhips will permit the King's Council who have declined Speaking to any of the Caſes hitherto, as not being, as they pretend, my Lord's Caſe; now to ſpeak to this which we do much leſs admit to be ſo, than they did the others, will be in your Lordſhips Pleaſure to determine, but I ſhall not decline to ſpeak to it with that Saving.

And truly, my Lords, with humble Submiſſion, I do take it, that as this Caſe is put, the Party who accompanied the other in ſuch manner as in this Caſe it is ſtated, is not Guilty of Murder. I know it was intended by that Noble Lord who propoſed the Queſtion, that it ſhould be admitted that beyond all doubt the Fact was ſo as here it is ſtated; and then the Queſtion is, What the Law will be where the Fact is thus admitted and agreed to on all ſides: And if there was ſuch a Caſe, (for my Lords I ſpeak to this as a Caſe at large) if there was ſuch a Caſe where the Fact is beyond all Queſtion made out to be ſo as it is here Stated; yet I take it that in a Caſe of Life, which is the Caſe now before your Lordſhips, the Party will not be Guilty of Murder.

My Lords, here is a further Circumſtance added in this Caſe than what hath as yet been inſerted into any of the other Caſes, that is, That the Party knoweth of the deſign of him that he accompanieth to Aſſault a third Man, and doth accompany him in this Deſign, and then is preſent when the Deſign is executed; yet all theſe together, will not, as I humbly conceive, with Submiſſion to your Lordſhips Judgment, make this to be Murder, becauſe it doth not appear in this Caſe that he did accompany him with an Intention to execute this matter, or to aid and aſſiſt him in the doing of it: There is no ſuch Circumſtance in the Caſe, and 'tis that which muſt be the thing that will draw him in to be guilty of Murder.

For if two Men (to put a Caſe which I hope I may do with your Lordſhips Pardon to explain my ſelf) ſhould be Travelling upon the way, and one of the Perſons ſhould acquaint the other, that at ſuch an Inn, there is a Servant that he is reſolved to Beat, and this Perſon that has this matter imparted to him doth accompany the other in the Journey, (which I take it anſwereth the knowing the Deſign and accompanying him in the Deſign) and when they come to the Inn the thing is executed in the preſence of the Party that knew of ſuch a Deſign, and it doth fall out that Death doth enſue upon it, unleſs he that did accompany him did ſome way or other act, contribute, or aſſiſt in the doing of it, it doth ſtill remain a thing whereof he had only Privity and Knowledge, which he had done well, (eſpecially in regard of the Conſequence of it) to have prevented. And he is highly blameable, that he would accompany a Man who had ſuch a Deſign to do an unlawful Act, and did not prevent him from executing of it.

All this is blameable in him, but it will not, as I conceive, be Murder in him; for I muſt inſiſt upon that in point of Law, that to make any thing Murder, there muſt be prepenſed Malice in the Perſon that is to be found Guilty of it, or ſome precedent Agreement to do it, or ſome Act of Aiding or Aſſiſting of the Perſon who doth it; but as this Caſe is, here is nothing of Malice doth appear, or that the Perſon who accompanied the other in his Deſign had any ſort of Malice againſt the Perſon Aſſaulted And it doth not appear, that he did any way aſſiſt in the doing of it. He was preſent at the time when the other Executed the Deſign he had imparted to him, but he never joyned in it, nor had any Malice precedent, nor did aſſiſt or do any Act at that time; and therefore I take it in this Caſe (which, as I ſaid,) I am very far from admitting to be my Lord *Mohun*'s Caſe, that the Party who accompanied the other is not Guilty.

Mr. *Hawles*. My Lords, Though who are of Council for this Noble Lord, the Priſoner, do not think this Caſe that is put to be his Caſe, for with Submiſſion, if the Indictment be looked upon, your Lordſhip will find ——

L. H. Stew. Sir I muſt ſtop you there, you you are not to tell my Lords what your Opinion is as to the Fact, for of that my Lords are the Judges, you are to take the Caſe fairly, as a Caſe put, and you are to inform my Lords what the Law, in your Opinion, would be upon ſuch Caſe. It is not before you, but before my Lords only, to conſider whether this be applicable to my Lord *Mohun*'s Caſe or not.

Mr. *Hawles*. If your Lordſhip pleaſe, I ſhall obſerve your Directions in that Matter, and with humble Submiſſion this is not Murder in him who accompanieth the other, as this Caſe is put; for in every Caſe of Murder the Indictment muſt be either that he actually killed him, or aided and aſſiſted him that did kill him. But, with Submiſſion, there is neither of theſe in this Caſe.

He did know of the Deſign, there is no Crime: he did accompany him in it, that is, he bore him Company at that time, he went with him to the place where he Executed his Deſign but he did nothing when he came there to further, promote, or encourage the Execution of it; and therefore it can never make him Principal, nor Acceſſory to the Murder.

Mr. *Price*. I ſhall only ſay this, my Words, that I take it, that the bare going with him in this Deſign without doing any Act, doth not involve him in the Confederacy, as Aiding and Abetting. Something muſt be done or ſaid, either he muſt aſſiſt or adviſe, or otherwiſe he cannot be Principal, and conſequently cannot be guilty of this Murder.

L. H. Stew. Mr. Attorney, have you any thing to ſay to this?

Mr. *Att. Gen.* My Lords, we that are of the King's Council do not deſire to be heard to this Caſe neither.

L. H. Steward. I do not hear you, Sir, what you ſay?

Mr. *Att. Gen.* My Lord, we do not deſire to ſpeak to it.

L. H. Stew. Then my Lord Chief Juſtice.

L. C. J. Holt. This is the Queſtion:

Whether a Perſon knowing of the Deſign of another to lie in wait to Aſſault a third Man, and accompanying him in that Deſign, if it ſhall happen, that the Third Perſon be Killed at that time in the Preſence of him who knew that Deſign, and accompanied the other in it, be Guilty in Law of the ſame Crime with the Party who had that Deſign, and Killed him though he had no actual Hand in his Death?

My Lords, as for this laſt, I deſire to make ſome Obſervations upon the Words, *Had no actual Hand.* By theſe Words, I ſuppoſe, is meant he did not draw his Sword, or lay any Hand upon the Perſon ſlain, or give any actual Aſſiſtance to the other Perſon at that time when the Third Perſon is ſlain, but was only in Company, and a Looker on.

E. of *Nottingham.* My meaning in thoſe Words is, That with his Hand he gave no Stroke.

L. C. J. Holt. That my Lords, I take to be the meaning, he did not give an actual Stroke, nor held the Perſon whilſt the other Killed him, nor uſed any Violence.

Now, I am of Opinion, my Lords, that this is Murder in the Perſon that did accompany the other in the Deſign. For he being acquainted with the Deſign, and knowing of the Intention of the Party to Commit Murder, or do an unlawful Act, upon which Death might enſue, accompanying him in that Deſign, he ſhews an Approbation of it, and gives him greater Courage to put it in Execution. Which is an Aiding, Abetting, Aſſiſting and Comforting, which are the Words uſed in ſuch Indictments, and ſo my Humble Opinion is, it is Murder in that Perſon that accompanied the other, as well as in him that did the Fact.

L. C. J. Treby. My Lords, as this Caſe is, I think the accompanying of him in that Deſign (which are the effectual Words upon which the Queſtion turneth) is Murder.

Here is firſt of all the Party that deſigneth the Aſſault, and he doth, purſuant to that Deſign, make this Aſſault, and thereupon doth Kill the Third Man, this undoubtedly is Murder in him, for here was Malice prepenſed, and intent of Bodily Hurt to the Party, and in purſuance of this Intent, Death enſueth, this is unqueſtionably Murder in him.

Then the Queſtion is, What Crime it is in him to whom this is made known, and who accompanied the other in that Deſign, knowing of it. I take this to be a Conſent to the Deſign, and to the Execution of it. It is more than knowing and not revealing of it, though that was his Duty to have done, (and ſo the Council for the noble Lord did admit, that it was a Miſdemeanor in him not to hinder ſuch a breach of the Peace.)

But here I ſay is more than that: He goeth with him to the place, and accompanieth him in order to the executing the Deſign, and this is an Aiding and Abetting of it. If a Man ſay to another, I intend to aſſault and beat ſuch a one, come along with me, ſtand by me, and ſee it done; and the other conſenteth, and accordingly goeth along with him, and accompanieth him whilſt he beats and kills the Man. This is an Approving, Encouraging, and Emboldening of him in his miſchievous Purpoſe, and ſhews ſuch concurring Malice in that other Perſon, as renders him guilty of the ſame Crime with him that with his Hand and Weapon beat and killed the Man.

Mr. J. *Nevil.* My Lords, as this Caſe is, and as I take the Law to be, this is murder. It is a Caſe of one's lying in wait, and another Perſon doth accompany him in the Deſign, he that did deſign the lying in wait having told it to him, and then he is preſent at the Execution. I take it as Law, if the Party is killed, he that is preſent, and cometh with the other upon that Deſign, ſhall be taken to come to aſſiſt or abet the other, or defend him if any thing of oppoſition ſhould happen, and that I take to be Murder.

L. H. S. Are you all of the ſame Opinion?

Judges. We are all of that Opinion, it is Murder in both in that Caſe.

E. of Devon. My Lords.

L. H. Stew. My Lord Steward.

E. of Devon. My Lords, I deſire they may all give their Reaſons, as well as their Opinions, as this Caſe is.

Mr. *J. Gregory:* My Lords, I am humbly of the ſame Opinion with my Lords Chief Juſtices that ſpoke before me, that this is Murder, and my Reaſon is this: Firſt, He knew of the Deſign, which was an unlawful Deſign; then he accompanied him as this Caſe is put, not only to the Place, but in the Deſign, which differs the Caſe from his being preſent by Accident; for by his going along with him he doth encourage him to do that, which perhaps ſingly the other would not venture upon, and going and being preſent when the Deſign is executed, upon which the Man is ſlain; I take it he is as much guilty as the Perſon that ſtrook the Stroke in point of Law.

Mr. *J. Eyres.* My Lords, I am humbly of the ſame Opinion, I take it to be murder in him that knew the Deſign, and did accompany the other in it, though he did nothing at all towards the killing of the Man.

For, my Lords, it is the Intention of the Party that diverſifieth the Act. If he came there with an ill Intention, and to aſſiſt him if need did require, as it is plain he did if he did accompany him in the Deſign, which is a ſtrong Evidence of the Intention: And my Lords, Nature hath allowed no Man a Caſement into anothers Heart, and therefore we can judge of no Man's Intention, but by Circumſtances of the Fact appearing without; and then I ſay, if the Fact be ſo apparently from the Circumſtances of it, that he knew of the Deſign, and accompanied him in it, it is a ſtrong Evidence that he came to aſſiſt him; and though he doth nothing actually in the Matter, yet being preſent to aſſiſt him if Occaſion did require, it is plain he did aid and abet him in the Action, and ſo it is as much murder

murder in him, as in the other that gave the Stroke.

Mr. *B. Turton.* My Lords, I am humbly of the ſame Opinion; the thing that differeth this from the former Caſe is, That this Perſon was in the Deſign with the other, for that, my Lords, I take to be accompanying him in the Deſign in order to the Execution of it, for bare Privity and Knowledge of the Deſign would not do it; but if he be with him at the time, and accompany in order to the Execution, that maketh him as much Criminal, as he that did actually occaſion the Death of the Perſon, for he was preſent in the Company, and ready to aſſiſt him in the Evil Deſign, which I conceive is as much murder as the other.

Mr. *B. Powel.* My Lords, I am of Opinion, as this Caſe is now put, That this is murder in both, and my Reaſon is this: Where one Perſon is privy to a Deſign of Felony, or committing ſome Perſonal Violence as this Caſe is, and is not only privy to it, but goeth along with him, and accompanieth him in putting this Deſign in Execution, though he may not think it will extend ſo far as Death, but doth only intend Beating, and hath no Perſonal Hand, or doth otherwiſe contribute; but by his being with the other Perſon when he executeth his Deſign of Aſſaulting, and the Party beaten dieth, they are both guilty of murder.

L. Mohun. My Lords, Will your Lordſhips give leave, that my Council may anſwer ſome things that the Judges have ſaid?

L. H. Stew. No my Lord, you muſt not Reply after the Judges have given their Opinions. Have any of your Lordſhips any more Queſtions to propoſe?

L. Cornwallis. My Lords, I have one.

L. H. Stew. My Lord *Cornwallis.*

L. Cornwallis. My Lords, I am very ſorry to have occaſion to ask any Queſtions in this Caſe, but I humbly deſire a Queſtion may be anſwered by the Judges, which is this:

> *If a Perſon be by, named* William, *when* Thomas *ſaid, He would ſtab* John, *upon which* William *ſaid, He would ſtand by his Friend, and afterwards* Thomas *doth actually murder* John, *and* William *is preſent at the ſame Murder: Whether the Law will make* William *equally guilty with* Thomas, *or what Crime* William *is guilty of?*

L. H. Stew. Pray deliver in your Paper, my Lord.

It was deliver'd in, and read by the Clerk of the Crown, and Copies given of it as before.

L. H. Stew. What ſay you to this Queſtion, Gentlemen?

Sir *T. Powys.* May it pleaſe your Lordſhips, this Queſtion runneth thus:

> *If a Perſon be by, named* William, *when* Thomas *ſaid he would ſtab* John; *upon which* William *ſaid, he would ſtand by his Friend; and afterwards* Thomas *doth actually murder* John, *and* William *is preſent at the Murder; Whether the Law will make* William *equally guilty with* Thomas, *or what Crime* William *is guilty of?*

My Lords, I do not queſtion but many Caſes may be put which will be plainly Murder, and if this Caſe ſhould be attended with Fact equal to the ſtate of this Caſe, I believe it will amount to Murder. But upon this difference the Reſolution of it will depend, and every Caſe muſt ſtand upon its own Circumſtances.

If a Perſon do generally ſay, I am fully reſolved, I will ſtab ſuch a Man, and ſay ſo without condition or limitation, that he will do it; and another doth declare his Intention to aſſiſt and aid him, by ſaying, I will ſtand by you in it, and afterwards the thing is executed in his Preſence, who ſo concurred; I do take it, that that is an Evidence that he is equally guilty with the other.

But on the other hand, if a Man ſay, I will ſtab ſuch a one if he oppoſe me in ſuch a Deſign, and ſo maketh his Reſolution conditional, and the Perſon that is preſent doth ſay, I will ſtand by you in it, that is in your doing it, if you are oppoſed in ſuch a particular matter; My Lords, with ſubmiſſion, if he is not oppoſed in that particular Thing or Deſign upon which he did ſay he would ſtab him, but if he doth afterwards, upon ſome other occaſion different from the former, and not relating to what he was talking of before; or upon ſome other Provocation, ſtab him, and the other Perſon happeneth only to be preſent, I take it, that the Words which he ſpoke with a limitation to a particular matter, will not make him liable to the Guilt of the Murder that is committed upon quite another account.

The Words, *Standing by him,* are capable of two Senſes; but I would not, in ſo ſerious a matter as this, offer to put a Jocular Senſe upon them, as if it was meant he would ſtand by and not meddle; but I take it, that ſuch a Caſe as this will turn upon the manner of the Man's engaging himſelf; if he engaged to ſtand by him in a particular matter, and the other doth ſtab the threatned Perſon afterwards, not upon that particular occaſion, but upon another account, and he happeneth only to be by, theſe words will not draw him in, though they ſhould be well proved to be ſpoken, ſo as to involve him in the guilt of that Murder.

For the Law is favourable to a Man in the Caſe of Life, and will judge according to the Intention of the Party; and he having not abetted or contributed to the Fact, his Words ſhall not be carried to his Prejudice, further than his Intention, or farther than the concomitant Circumſtances of the Matter will make them plainly import.

This Caſe is put generally, and without reſtraint; and there is no queſtion but many Caſes may be put that will undoubtedly be Murder; but every Caſe muſt, as I ſaid, ſtand and fall by its own Circumſtances.

Mr. *Hawles.* My Lords, I think the Caſe as it is put ſingle, and upon theſe Circumſtances, would be Murder; and my reaſon is this, The Perſon that ſaith he will ſtand by a Man, who ſaith he will kill or ſtab another, is as much guilty as that Man himſelf, and will be thought as malicious; but if it ſhould happen that be-

tween the Words pronounced, and the Murder committed, that the Perſon that ſaith he will ſtand by his Friend, cometh to have a friendſhip and kindneſs for the Party that is threatned to be killed, and upon meeting him careſſes him extreamly, and there being no Malice continuing (as there muſt be to the time of the ſtroke given, to make Murder) but he happeneth to be killed by that other, ſuddenly in his preſence, thoſe words will not make him guilty of Murder; but as the Caſe is put, I think it is Murder.

Mr. *Price.* My Lords, I ſhall not take upon me to trouble your Lordſhips with making a Caſe, but as this Caſe is put without any Condition, or other Circumſtance annexed to it, I think it will be Murder.

L. H. Stew. There will be no need to ask the King's Council upon this Queſtion whether they will ſpeak to it, becauſe the Council for the Priſoner agree it to be Murder; Therefore if your Lordſhips pleaſe, we may now proceed to ask the Judges Opinions; And firſt, What ſay you, my Lord Chief Juſtice?

L. C. J. Holt. My Lords, the Queſtion is this.

> *If a Perſon be by, named* William, *when* Thomas *ſaid he would ſtab* John, *upon which* William *ſaid he would ſtand by his Friend, and afterwards* Thomas *doth actually Murder* John, *and* William *is preſent at the ſame Murder, Whether the Law will make* William *Guilty with* Thomas; *or what Crime* William *is Guilty of?*

My Lords, I am of Opinion that this is a great evidence of Murder in *William*, that was thus actually by. I cannot ſay it is Murder, as the Caſe is put; but upon ſuch an Evidence, Fact is to be left to the Conſcience of a Jury in the Caſe of a Commoner, or the Conſcience of the Peers in the Caſe of a Peer.

For when *William* ſaid he would ſtand by his Friend, who ſaid he would Stab *John*, That is plainly a Conſent, or at leaſt ſuch an Expreſſion, from which, a Conſent to the Stabbing of him may be inferred.

Then afterwards it ſeemeth *Thomas* actually murdereth *John*, and *William* was preſent. Now if *William* was deſignedly preſent with the other that committed the Murder, then it is plain it will be Murder in *William*, but if there be no Evidence to prove upon what account he was preſent, it may be preſumed he was preſent in purſuance of his former Agreement, ſo that it may be Murder, or not Murder, as Circumſtances may happen upon the Evidence; if he was preſent in purſuance of his Promiſe, then no doubt it is Murder; But if he did not meet in purſuance of that Agreement, it may not be Murder. But this is all Matter of Evidence, and that reſts upon the Conſciences of thoſe that are to Try the Priſoner.

L. C. J. Treby. My Lords, I am of Opinion that this is Evidence, and great Evidence of Murder, the Fact conſiſteth of Two Parts.

Firſt, Here was a deliberate Expreſſion of his Intention, that he would ſtand by his Friend *Thomas*, when his Friend *Thomas* had ſaid before he would Stab *John*, and this I take properly to be Interpreted, and underſtood as a Promiſe of Abetting him in the Murder he would commit; for, I preſume, ſtanding by him in this Caſe to be meant in a grave Senſe, ſignifying that he would befriend, and if there ſhould be occaſion, defend and ſupport *Thomas* in what he reſolv'd to do.

Secondly, He was preſent at the Stabbing, which was before Deſigned and Spoken of: Now I think, his being preſent when that Reſolution of his Friend was executed, coupled with his preceeding Declaration of his Intention, is a ſtrong Evidence of Murder.

Mr. *J. Nevill.* My Lords, the Queſtion I take to be, Whether the Law of *England* ſaith *William* is Guilty of this Murder? Truly, my Lords, I muſt ſay as my Lords have ſaid before, that as this Caſe is, This is a very ſtrong Evidence of Murder: For when he doth ſay, That he will Murder ſuch a Man, and the other ſaith, he will ſtand by him, in the common acceptation of thoſe Words, it is taken, that he doth then agree with him in that Deſign, which he declareth to be to Stab *John*.

But then it ſeemeth to me truly, that this Caſe is not put full, how long it was afterwards that the Fact was done, and what Circumſtances attended it; for if any Circumſtance happened afterwards that did amount to a Countermand of this Promiſe, or any thing thing interpoſed to interrupt it, that this Agreement was not performed, perhaps the Caſe might not be Murder, but ſtill it is Evidence, ſo far as your Lordſhips may judge upon the Circumſtances that attend it, whether it be Murder or no. But to declare a further Opinion, as this Caſe is put, truly I cannot.

Mr. *J. Gregory.* My Lords, I do upon this Caſe humbly conceive, there is a little difference from the former, only there it is put poſitively but here as Evidence. Now, my Lords, I do humbly conceive that in common Diſcourſe, I will ſtand by my Friend, is, I will aſſiſt my Friend. If my Friend ſhould ſay, I will Kill ſuch a Man, or I will do any other Act, and I ſay I will ſtand by him, I think the import of the Words is, I will aſſiſt him in it.

My Lords, As to the latter part, as this Caſe is put, for I can go no further, it doth not appear, whether when the Man was killed, he came by accident, or in purſuance of his Agreement, knowing of the Deſign. Now that is but matter of Evidence, if he came by Accident it will not be Murder, but if he came with Deſign, no doubt it is Murder in one as well as in the other.

E. of Mulgrave. My Lords.

L. H. Stew. My Lord of *Mulgrave*.

E. of Mulgrave. If any of my Lords deſire that the reſt of the Judges ſhould give their Opinion, it is fit they ſhould be heard; but if no Lord doth deſire it, and they ſay they are of the ſame Opinion without any more to do, becauſe it may ſave a great deal of time; I deſire your Grace may only ask them, Whether they agree in their Opinions with thoſe that went before?

L. Cornwallis. My Lords, I humbly deſire the Judges may all ſpeak.

Lords. Go on then.

Mr. *J. Eyres.* My Lords, I humbly conceive this is a Queſtion of Fact, and not of Law, and it is a very ſtrong Evidence, if a Man hear another ſay he will Stab ſuch a Man, and he ſaith he will ſtand by his Friend, and accompanieth him

him at the time when the Fact is done, it is a ſtrong Evidence, that he came with a murderous intent with his Friend; and doth as much manifeſt his Intention to commit Murder, as if he had actually given the Wound, and a great Evidence to involve him in the Crime, as much as the Perſon that gave the Stroke.

Mr. *B. Turton.* My Lords, I am of the ſame Opinion with my Lords and my Brothers that have ſpoke before me; my Lords, I confeſs I do not think it cometh up ſo cloſe to the matter as the Queſtion that was put laſt before; for this, as my Brother *Eyres* ſaith, is rather a Queſtion of Fact and Evidence, than Law. But certainly a very ſtrong Evidence it is of the Intenrion of that Party that was preſent when the other ſaid he would Stab the third Perſon, and his going away preſently, and accompanying him when the Stab was given, and Murder done, I ſay his Preſence after this Determination is a very great Evidence, that it was done in purſuance of that Agreement: It is a matter of Fact which your Lordſhips will determine, according as the Circumſtances appear before you, which may vary the Reſolution one way or other.

Mr. *B. Powell.* My Lords, I am of Opinion as this Caſe is put, that it may be Murder or not Murder, according to the Concomitant Circumſtances. If a Man ſay, I will Stab ſuch a one, and another ſay he will ſtand by him, and afterwards when he is with his Friend, the Man is ſtabbed, if that is at ſome diſtance of time from the Words ſpeaking, and the meeting be accidental, or other Facts happen that may alter the Caſe, it may receive another Determination. But if after this is ſaid there be any immediate going to look after this Man, or they be near the way where this Man is to come, and then he is killed; this is a mighty ſtrong Evidence that ſomething was done in purſuance of this Reſolution, and that the one went along with the other to countenance him in the Action.

L. H. Stew. Have any of my Lords any other Queſtions to propoſe?

Lords. No.

Earl of Mulgrave. My Lords, If there had been any other Queſtions propoſed by any other Lords, I would have ſtaid till they had all been over; but I ſee their Lordſhips are at an end with their Queſtions: I have one which I think is nearer the Caſe than any has been yet, and of more Importance to the Matter in Hand, and more fit for the Council to inform you in, and for your Lordſhips to ask, and the Judges to anſwer. The Queſtion is this:

> *If* A. *accompanieth* B. *in an unlawful Action, in which* C. *is not concerned, and* C. *happeneth to come in the way of* B. *after the firſt Action is fully over, and happeneth to be killed by* B. *without the Aſſiſtance of* A. *Whether* A. *is guilty of that Man's Murder?*

This Queſtion was handed to the Table, read by the Clerk, and Copies given as before.

L. H. Stew. What ſay you to it Gentlemen, who are of Council for the Priſoner?

Sir *Tho. Powys.* May it pleaſe your Lordſhips, I will not trouble your Lordſhips with the repeating of the Caſe again, becauſe my Copy is agreeable with what was read at the Table: Nor ſhall I trouble your Lordſhips with many Words upon this Caſe, becauſe I take it, the Law is very plain.

If two Perſons accompany each other to do an unlawful Act, and in the Execution of that unlawful Act, one of them doth go beyond what was firſt deſigned, and a third Man is killed whilſt they are in Execution of that Act, though the one did the Fact, and the other did not immediately contribute thereto, yet he being joyned with him in the unlawful Action, upon which this doth enſue, he is anſwerable for all the ill Conſequences of it; the Law herein is clear according to the Caſe that was put at firſt of two Perſons going together to rob a Park and ſteal Deer.

But if that unlawful Action be executed, or the two Perſons who joyned in the Deſign have totally deſiſted from it, or are diſappointed in it, if afterwards when they are together upon ſome other Occaſion, it happeneth that one of them killeth another Man, but his Friend no way aided him or aſſiſted him in the doing of it, your Lordſhips and the Law will ſeparate theſe Perſons who were at firſt joyned together for another Purpoſe; and will diſtinguiſh between them in this new Matter that is ſubſequent to the former Agreement, though they were in Company together.

Becauſe in the firſt Caſe, he that joyned in an ill Action muſt look to himſelf, and be anſwerable for all that followeth thereon: In the ſecond Caſe, he is in no fault at all, it is only his Misfortune to be in ill Company if he had no Hand in the Fact. This the Law is very plain in, and therefore I ſhall not trouble your Lordſhips further with ſpeaking to it.

Mr. *Hawles.* My Lords, I would only add one ſhort Word; There is but this one Difference between an Acceſſory and a Principal; The Principal is always preſent, the Acceſſory is always abſent. And I would only put you one Caſe of an Acceſſory in Felony out of my Lord *Coke*; he ſaith, It muſt be the ſame Numerical thing in which they are joyned, and therefore if *A.* bid *B.* rob the Vintner's Boy of Plate as he cometh to a Gentleman's Chamber to bring Wine, but *B.* doth not purſue the Inſtructions, but breaketh into the Vintner's Houſe, and ſtealeth the Plate there; this is a different matter, it is not the ſame thing wherein *A.* and *B.* agreed at firſt, and *A.* is no way concerned in it.

The ſame Law is, if *A.* and *B.* agree to kill *C.* and *B.* killeth *D.* tho' *A.* be preſent, it will not be Murder in *A*; for the Agreement was for the killing of *C.* and not of *D.*

My Lords, as this Caſe is put, they did agree in the unlawful Act, but that Matter was over, and there is no Agreement as to the other Matter, nor is that purſuant to the Matter agreed upon; and therefore the Preſence of the Party that agreed to the unlawful Act doth not make him guilty of Murder, unleſs he agree to that too.

Mr. *Price.* My Lords, I have but one Word on the ſame ſide. I take it, that when a Man is doing an unlawful Act, there is an inſeparable Incident that doth attend it, which is Malice implyed. And this is ſo inſeparable, that when his

his ill Deſign is at an end, his Malice is at an end too, and hath no being, and therefore if he entereth upon an ill Deſign afterwards, tho' another be preſent that was joined with him in the ill former Deſign, yet his Malice who was ſo joined, being coupled with the ill Deſign that is over, muſt be gone too; and there is no Malice in his being barely preſent. And therefore for that Reaſon, he that was aiding and aſſiſting before cannot be principal in ſuch a ſudden Act as this new one is, and conſequently cannot be guilty of Murder, or of Manſlaughter.

L. H. Stew. Mr. Attorny, Do you, or any of the King's Council think fit to ſay any thing to this Queſtion?

Mr. *Att. Gen.* My Lords, we that are of the King's Council do not think we have any occaſion to be heard to this Queſtion.

L. H. Stew. Then my Lords the Judges, what ſay you to it?

L. C. J. Holt. If your Lordſhips pleaſe, I will again repeat the Queſtion, it is this:

If A. *accompanieth* B. *in an unlawful Action, in which* C. *is not concerned, and* C. *happeneth to come in the way of* B. *after the firſt Action (that is the unlawful Action, I ſuppoſe) is fully over, and happeneth to be killed by* B. *without the Aſſiſtance of* A. *Whether* A. *is guilty of that Man's Murder?*

And I do humbly conceive with great clearneſs, That *A.* is not guilty at all. For here is no Relation to the firſt unlawful Act that he was engaged in, but that is all over and determined; and then *C.* cometh in the preſence of *B.* who killeth him, and of *A.* who had no knowledge of any Malice between them, or any Deſign of his Death. This is meerly accidental, and doth not depend upon the firſt unlawful Action; and therefore *A.* is not guilty.

L. C. J. Treby. My Lords, I think there can be no difference of Opinions in this Caſe: For it is plain there was an unlawful Action in which they did agree, (as a Riot or Aſſault to beat or wound a Man or the like) and if Death had enſued, they both had been guilty of Murder, as well he that looked on, as he that gave the mortal Wound. But then the Queſtion addeth further, That the Action to which they agreed was fully over, and there only happeneth to be a continuance of their Preſence together; and there being an old Grudge between one of the Parties and a third Man, and the Party who had that old Grudge, meeting with his Enemy, executeth it then upon him, and murdereth him; this doth in no ſort affect the other that was preſent, and had joined in the former unlawful Action that was over. In the former, he did joyn and concur, and therefore if Death had enſued, they had been both guilty: In the latter, he did not joyn and concur; and therefore though Murder did happen in his Preſence and Company, he is not guilty, but only the Party that actually killed is.

Mr. *J. Nevill.* My Lords, I am of the ſame Opinion.

L. H. Stew. If you are all of the ſame Opinion, I think you need ſay no more.

Judges. We are all of the ſame Opinion, my Lords.

L. H. Stew. My Lords, all the Judges are of the ſame Opinion; and now I think it is your Lordſhips Reſolution to adjourn to the Houſe.

Lords. Ay, Ay.

L. H. Stew. This Court is Adjourned to the Houſe of Lords.

And then the Lords returned to their Houſe in the ſame Order, and there preſently Adjourned till the next Morning.

Die Sabbati Quarto Februarii 1692.

ABout four of the Clock in the Afternoon, the Lords came from their Houſe in the former Order into the Court in *Weſtminſter-Hall*; and being ſeated on their Benches, and his Grace the Lord High-Steward in the Chair before the Throne, Proclamation was made for Silence; and the Judgment of the Peers was demanded, and delivered in this manner.

L. H. Stew. My Lords, Your Lordſhips have now heard all the Evidence both againſt the Priſoner and for him: The next thing is your Lordſhips Judgment, and for that the Method is this, Your Lordſhips Opinions are to be delivered in the abſence of the Priſoner. The Queſtion that your Lordſhips are to deliver your Opinion about will be this:

Whether my Lord Mohun *be guilty of the Murder of* William Mountford, *whereof he ſtands indicted, or not guilty?*

The Order of delivering your Opinions muſt be, to begin with the youngeſt Baron, and ſo upwards; and therefore I muſt deſire your Lordſhips to allow me to take your Judgments diſtinctly, and that I may write them down.

Lords. Ay, Ay.

L. H. Stew. My Lord *Lemſter*, is my Lord *Mohun* guilty of the Murder whereof he ſtandeth indicted, or not guilty?

The Lord Lemſter *ſtood up in his Place uncovered, and laying his Right-hand on his Breaſt, pronounced his Judgment thus:*

L. Lemſter. Not guilty upon my Honour.

The ſame Queſtion was ſeverally asked of all the Lords, who in the ſame Form delivered their Opinions as followeth:

L. Capell. Guilty upon my Honour.
L. Aſhburnham. Not guilty upon my Honour.
L. Cholmondley. Not guilty upon my Honour.
L. Godolphin. Not guilty upon my Honour.
L. Osborne. Not guilty upon my Honour.
L. Arundel of Treriſe. Not guilty upon my Honour.
L. Crew. Not guilty upon my Honour.
L. Cornwallis. Not guilty upon my Honour.
L. Granville. Not guilty upon my Honour.
L. Berkley of Stratton. Not guilty upon my Honour.
L. Lexington. Not guilty upon my Honour.
L. Lucas. Not guilty upon my Honour.
L. Clifford of Lansborough. Guilty upon my Honour.
L. Co'peper. Guilty upon my Honour.
L. Vaughan. Not guilty upon my Honour.
L. Jermyn. Not guilty upon my Honour.
L. Leigh. Not guilty upon my Honour.
L. Lovelace. Not guilty upon my Honour.

L. Brooke,

L. Brooke. Not guilty upon my Honour.
L. Hunſdon. Not guilty upon my Honour.
L. Chandois. Not guilty upon my Honour.
L. Willoughby of Parham. Not guilty upon my Honour.
L. Evers. Not guilty upon my Honour.
L. Fitzwalter. Not guilty upon my Honour.
L. Morley. Not guilty upon my Honour.
L. Berkeley of Berkeley. Not guilty upon my Honour.
L. De-la-Ware. Not guilty upon my Honour.
L. Willoughby of Eresby. Not guilty upon my Honour.
L. H. Stew. My Lord Viſcount *Villiers, &c.*
Viſc. Villiers. Not guilty upon my Honour.
Viſc. Longueville. Not guilty upon my Honour.
Viſc. Weymouth. Guilty upon my Honour.
Viſc. Newport. Not guilty upon my Honour.
L. H. Stew. Earl of *Warrington, &c.*
Earl of Warrington. Guilty upon my Honour.
Earl of Scarborough. Not guilty upon my Honour.
Earl of Marlborough. Not guilty upon my Honour.
Earl of Montague. Not guilty upon my Honour.
Earl of Monmouth. Guilty upon my Honour.
Earl of Falconberg. Not guilty upon my Honour.
Earl of Portland. Guilty upon my Honour.
Earl of Abington. Not guilty upon my Honour.
Earl of Rocheſter. Guilty upon my Honour.
Earl of Nottingham. Guilty upon my Honour.
Earl of Radnor. Not guilty upon my Honour.
Earl of Macclesfield. Not guilty upon my Honour.
Earl of Feverſham. Not guilty upon my Honour.
Earl of Craven. Not guilty upon my Honour.
Earl of Carliſle. Not guilty upon my Honour.
Earl of Bath. Not guilty upon my Honour.
Earl of Eſſex. Not guilty upon my Honour.
Earl of Sandwich. Guilty upon my Honour.
Earl of Scarſdale. Not guilty upon my Honour.
Earl of Sunderland. Not guilty upon my Honour.
Earl of Thanet. Not guilty upon my Honour.
Earl of Cheſterfeild. Not guilty upon my Honour.
Earl of Carnarvan. Not guilty upon my Honour.
Earl of Kingſton. Guilty upon my Honour.
Earl of Stamford. Not guilty upon my Honour.
Earl of Rivers. Not guilty upon my Honour.
Earl of Mulgrave. Not guilty upon my Honour.
Earl of Mancheſter. Not guilty upon my Honour.
Earl of Weſtmoreland. Guilty upon my Honour.
Earl of Bullingbrork. Not guilty upon my Honour.
Earl of Clare. Not guilty upon my Honour.
Earl of Denbigh. Not guilty upon my Honour.
Earl of Northampton. Not guilty upon my Honour.
Earl of Bridgewater. Guilty upon my Honour.
Earl of Bedford. Not guilty upon my Honour.
Earl of Huntington. Not guilty upon my Honour.
Earl of Kent. Not guilty upon my Honour.
Earl of Shrewsbury. Not guilty upon my Honour.
Earl of Oxford. Guilty upon my Honour.
L. H. Stew. My Lord Chamberlain, *&c.*
Earl of Dorſet. Not guilty upon my Honour.
L. H. Stew. My Lord Steward, *&c.*
Earl of Devon. Not guilty upon my Honour.
L. H. Stew. My Lord Great Chamberlain, *&c.*
Earl of Lindſey. Not guilty upon my Honour.
L. H. Stew. My Lord Marquiſs of *Hallifax*, &c.
L. Marquiſs of Hallifax. Not guilty upon my Honour.
L. H. Stew. My Lord Duke of St. *Albans.*&c.
Duke of St. Albans. Not guilty upon my Honour.
Duke of Northumberland. Not guilty upon my Honour.
Duke of Ormond. Not guilty upon my Honour.
Duke of Somerſet. Not guilty upon my Honour.
Duke of Norfolk. Not guilty upon my Honour.
L. H. Stew. My Lord Privy Seal, *&c.*
Earl of Pembroke. Not Guilty upon my Honour.

Then his Grace the Lord High Steward ſtood up uncovered, and laying his Right-Hand upon his Breaſt, pronounced his Grace's own Judgment thus:

L. H. Stew. My Opinion is, That my Lord *Mohun* is not guilty, upon my Honour.

Then his Grace ſeated himſelf again in the Chair, and numbred up the Opinions of the Peers.

L. H. Stew. My Lords, I have carefully taken your Lordſhips Opinions, and find the Numbers to be thus: My Lords that have found my Lord *Mohun* to be guilty are Fourteen; my Lords that have found him not guilty are ſixty Nine. Call for the Priſoner.

Proclamation was made for the Chief Governour of the Tower *to bring forth the Body of the Priſoner, and he was brought to the Bar as before: And Proclamation for Silence was made.*

L. H. Stew. My Lord *Mohun*, you have been indicted for the Murder of *William Mountford*; upon your Arraignment you have pleaded not guilty, and have put your ſelf upon the Judgment of your Peers; and your Peers have conſidered what hath been ſaid both for and againſt you, and the Judgment of my Lords is this, That your Lordſhip is not guilty: Your Lordſhip is therefore diſcharged. Make Proclamation for diſſolving the Commiſſion.

Cl. of Crown. Serjeant at Arms make Proclamation.

Serjeant. O Yes.
Cl. of Crown. Again.
Serjeant. O Yes.
Cl. of Crown. Again.
Serjeant. O Yes.

Cl. of Crown. My Lord High Steward of *England* his Grace, doth ſtraightly Charge and Command all manner of Perſons who have given their Attendance here, to depart hence in the Peace of God, and of our Sovereign Lord and Lady the King and Queen; for his Grace the Lord High Steward of *England* intendeth to diſſolve his Commiſſion.

Which the Serjeant at Arms repeated, and at the end of it, his Grace ſtanding up, and holding the White-Staff in both his Hands, broke it in two, by which his Commiſſion was diſſolved.

Marq. of Carmarthen. Is it your Lordſhips Pleaſure to adjourn to your own Houſe?

Lords. Ay, Ay.

Marq. of Carmarthen. This Houſe is Adjourned into the Houſe of Lords.

And then the Peers returned to their own Houſe in the ſame Order.

The Tryal of Thomas Roſewell, *for High-Treaſon; in the Months of* October *and* November, 1684. 36. Car. II.

N. B. *This Tryal, in point of time, ſhould come between that of* Titus Otes *for* Scandalum Magnatum, *and that of* Robert Bailie *of* Jerviſwoode.

Die Jovis 23. *Oct. An. Dom.* 1684. *Term. St.* Mich *An. Reg. Regis* Car. II. 36. B. Regis.

THIS Day, being the firſt Day of the Term, Mr. Attorney General moved the Court of King's-Bench for an *Habeas Corpus*, directed to the Keeper of the *Gate-houſe*, to bring up the Body of *Thomas Roſewell*, Clerk, to be arraigned upon an Indictment of High-Treaſon, found againſt him at a late Seſſions of *Oyer* and *Terminer*, held at *Kingſton* in the County of *Surrey*; and it was deſired returnable to Morrow, but was not taken out till that Day, returnable *immediate*, and upon *Saturday* it was returned.

Die Sabbati 25. *Oct.* 1684. *B. Regis.*
Dominus Rex verſ. Roſewell.

THIS Day Mr. *Roſewell* was brought upon the Writ of *Habeas Corpus*, to the Bar of the Court of *King's-Bench*, and was thus Arraigned:

Clerk of the Crown. Thomas Roſewell, Hold up thy Hand, (*which he did*) 'Thou ſtandeſt indict-'ed by the Name of *Thomas Roſewell*, late of the 'Pariſh of *Rotherhith*, in the County of *Surrey*, 'Clerk; For that thou, as a falſe Traytor, a-'gainſt the moſt Serene, and moſt excellent 'Prince our Sovereign Lord *Charles* the Second, 'by the Grace of God, King of *England*, *Scot-'land*, *France* and *Ireland*, Defender of the Faith, '*&c.* thy Supreme and Natural Lord; not 'having the Fear of God in thy Heart, nor 'weighing the Duty of thy Allegiance; but 'being moved and ſeduced by the Inſtigation of 'the Devil; the cordial Love, and true, due 'and natural Obedience, which a true and faith-'ful Subject of our ſaid Sovereign Lord the 'King doth, and of right ought to bear towards 'him, altogether withdrawing: and contriving 'and intending to diſturb the Peace and com-'mon Tranquillity of this his Kingdom of *Eng-'land*, and to ſow Sedition and Rebellion with-'in the Kingdom, and to depoſe our ſaid So-'vereign Lord the King from the Stile, Honour 'and Regal Name of the Imperial Crown of 'this Realm, and to bring our ſaid Sovereign 'Lord the King to Death, and final Deſtruction, 'the 14th Day of *September*, in the 36th Year of 'the Reign of our ſaid Sovereign Lord the King 'that now is, at the Pariſh of *Rotherhith* afore-'ſaid, in the County of *Surrey* aforeſaid; didſt 'propoſe, compaſs and imagine to ſow Sediti-'on, and raiſe Rebellion againſt our ſaid Sove-'reign Lord the King, within this Kingdom of '*England*, and to make a miſerable Slaughter 'among the Subjects of our ſaid Sovereign Lord 'the King, and to cauſe our ſaid Sovereign 'Lord the King to be depoſed from the Regal 'State, Title, and Honour of the Imperial 'Crown of this Realm; and to put to Death, 'and final Deſtruction, our ſaid Sovereign Lord 'the King; and the Government of this his 'Kingdom of *England*, at thine own Will and 'Pleaſure to change and alter; and the State 'of this Kingdom of *England*, in all its Parts 'well order'd and conſtituted, to overthrow 'and ſubvert; and to levy War againſt our ſaid 'Sovereign Lord the King, within this King-'dom: And to compleat thy ſaid moſt wicked 'Treaſons, and traiterous Purpoſes, and Ima-'ginations; and to raiſe Diſcord between our 'ſaid Sovereign Lord the King and his People, 'Thou the ſaid *Thomas Roſewell*, the aforeſaid '14th Day of *September*, in the 36th Year afore-'ſaid, at the Pariſh aforeſaid, in the County 'aforeſaid; falſly, unlawfully, ſeditiouſly, ma-'liciouſly and traiterouſly, in a certain unlaw-'ful Aſſembly, and in the Preſence and Hear-'ing of divers Subjects of our ſaid Sovereign 'Lord the King, then and there unlawfully 'and ſeditiouſly, and againſt the Laws of this 'Land, aſſembled and gathered together; didſt 'ſpeak, aſſert and declare, *That the People* (mean-'ing the Subjects of our ſaid Sovereign Lord 'the King) *made a flocking to our ſaid Sovereign 'Lord the King, upon pretence of healing the King's-'Evil, which he* (meaning our ſaid Sovereign 'Lord the King) *could not do; but that we* (mean-'ing thy ſelf, and other traiterous Perſons, Sub-'jects of our ſaid Lord the King) *are they to whom 'they* (meaning the Subjects of our ſaid Lord 'the King) *ought to flock, becauſe we* (meaning 'thy ſelf, and the ſaid other traiterous Perſons) '*are Prieſts and Prophets, that by our Prayers can 'heal the Dolours and Griefs of the People. We* (mean-'ing the Subjects of our ſaid Sovereign Lord 'the King) *have had two wicked Kings*, (the 'moſt Serene *Charles* the Firſt, late King of '*England*; and our ſaid Sovereign Lord the 'King that now is, meaning) *together, who have 'permitted Popery to enter in under their Noſes; 'whom* (meaning the ſaid *Charles* the Firſt, late 'King of *England*, and our ſaid Sovereign Lord 'the King that now is) *We can reſemble to no other*

'*no other Perſon but to moſt wicked* Jeroboam: *And* '*that if they*, (meaning the ſaid evil-diſpoſed Per-'ſons then and there, ſo as aforeſaid with thee 'unlawfully aſſembled, and gathered together) '*would ſtand to their Principles thou* (meaning thy 'Self) *didſt not fear, but they* (meaning thy Self, and 'the ſaid evil-diſpoſed Perſons) *would overcome* '*their Enemies*, (meaning our ſaid Sovereign Lord 'the King and his Subjects) *as in former Times* '*with Rams horns, broken Platters, and a Stone in* '*Sling*; againſt the Duty of thy Allegiance, a-'gainſt the Peace of our Sovereign Lord the 'King, his Crown and Dignity, and againſt the 'Form of the Statute in that Caſe made and 'provided. How ſay'ſt thou *Thomas Roſewell*; Art thou guilty of this High Treaſon whereof thou ſtandeſt Indicted, and haſt been now Arraigned, or not Guilty?

Mr. *Roſewell.* My Lord, I humbly crave the Favour to ſpeak a Word.

Mr. Juſt. Holloway. What is it you would ſay, Sir,? You muſt Plead.

Mr. *Roſewell.* My Lord, my Charge is very high; and I bleſs my God, I am not conſcious to my ſelf of any Guilt as to thoſe Things, that you have heard read, and charged upon me——

Mr. *Juſt. Holloway.* If you will Plead, Sir, to this Indictment, ſo; that is all you have to do now.

Mr. *Roſewell.* My Innocence is my great Comfort under the God of Heaven; who knows they have lay'd to my Charge Things that I know not. I do proteſt my Abhorrence of theſe Things alledged to be ſaid by me againſt my Sovereign, whom I honour in my Heart, and daily pray for; I bleſs my God for it.

Mr. *J. Holloway.* I hope then your Innocence will clear you. But we have nothing to do now but to take your Anſwer to this Queſtion, Whether you are Guilty, or not Guilty, of what you ſtand Indicted for.

Mr. *Roſewell.* I humbly crave your Lordſhips Patience a little. Pray, my Lord, give me Leave——

Mr. *Juſt. Holloway.* Sir, you will be heard whatever you have to ſay, at the time of your Trial.

Mr. *Roſewell.* Pray hear me a few Words, my Lord; I would not treſpaſs upon your Patience: I have but a few Words to ſay.

Mr. Juſt. Walcot. You muſt plead, Guilty, or not Guilty, firſt.

Mr. *Roſewell.* My Lord, I beſeech you——

Mr. J. Holloway. Sir, We cannot hear you in a Caſe of ſo great weight and moment as this, 'till you have Pleaded. You will have time enough at your Tryal to make your Defence; and all we can do now is to take your Plea of Guilty, or not Guilty.

Mr. *Roſewell.* May it pleaſe your Honours, You are ſenſible of my great Weakneſs and Ignorance in Matter of Law, and Things of this Nature; I therefore humbly beg I may have Council to aſſiſt me in this Buſineſs.

Mr. J. Walcot. If there be any thing of Matter of Law doth ariſe upon your Tryal, the Court will aſſign you Council.

Mr. J. Holloway. We cannot aſſign you Council at preſent, for we have nothing to aſſign it upon. If there do any Queſtion of Law ariſe in your Caſe, then the Court will, (as they are bound to do,) take Care of you, that you ſuffer no Prejudice for want of the Aſſiſtance of Council; and in Matters of Fact upon your Tryal, the Court are of Council for you.

Mr. *Roſewell.* I humbly thank you, my Lord: I hope you will pardon my Weakneſs and Ignorance. I crave the Favour to have a Copy of my Indictment.

Mr. J. Holloway. We cannot allow it. You cannot be ignorant of that, it has been denied in many Caſes of late.

Mr. J. Walcot. We cannot grant it, except *Mr. Attorney* will conſent to it.

Mr. J. Holloway. You muſt poſitively ſay Guilty, or not Guilty. Sir *Samuel Aſtry*, call him to his Plea.

Clerk of Crown. How ſay'ſt thou, Art thou Guilty, or not Guilty?

Mr. J. Holloway. Look you Sir, you ſhall not be ſtraitned, you ſhall have convenient Time to conſider what Defence you have to make. In the mean time, we have nothing to ſay, but to know of you what you Plead; Guilty, or Not Guilty.

Sir *Robert Sawyer.* *Mr. Att. Gen.* If you deſire to have the words read again to you, you ſhall.

Mr. J. Holloway, Ay, with all our Hearts.

Mr. Roſewell. I thank you, Sir, and my good Lords. I deſire, if you pleaſe, to have it read in Latin.

Mr. J. Holloway. Read them in Latin.

Surry *ſſ. Juratores pro Domino Rege ſuper Sacramentum ſuum præſentant, quod Thomas Roſewell, nuper de Parochia de Redriffe in Com' Surr' Clericus, ut falſus proditor Illuſtriſſimi, Sereniſſimi & Excellentiſſimi Principis Domini noſtri Caroli Secundi, Dei Gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Regis, Fidei Defenſoris, &c. Supremi & naturalis Domini ſui, timorem Dei in corde ſuo non habens, nec debitum ligeanciæ ſuæ ponderans, ſed inſtigatione diabolica motus & ſeductus, cordialem dilectionem & veram, debitam & naturalem obedientiam quas veri & fideles ſubditi dicti Domini Regis erga ipſum Dominum Regem gererent & de jure gerere tenentur, penitus ſubtrahens; & machinans & totis viribus ſuis intendens pacem & communem tranquillitatem dicti Domini Regis hujus Regni Angliæ inquietare, moleſtare & perturbare; & ſeditionem & rebellionem contra dictum Dominum Regem infra hoc Regnum Angliæ movere, ſuſcitare & procurare; & cordialem dilectionem, & veram & debitam obedientiam quas veri & fideles ſubditi dicti Domini Regis erga ipſum Dominum Regem gererent, & de jure gerere tenentur penitus ſubtrahere, delere & extinguere; & ipſum Dominum Regem a ſtylo, honore & regali nomine imperialis Coronæ hujus Regni Angliæ deprivare & deponere; & Subditos dicti Domini Regis contra dictum Dominum Regem ſuſcitare & movere; decimo quarto die Septembris, anno regni dicti Domini noſtri Caroli ſecundi, Dei Gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Regis, Fidei Defenſor', &c. triceſimo Sexto apud Paroch. de Redriffe in Com' Surr' prædicto, falſo, malitioſe, ſubdole & proditorie propoſuit, compaſſavit, imaginatus fuit, & intendebat ſeditionem & rebellionem infra hoc regnum Angliæ movere, ſuſcitare & procurare; & ſtragem miſerabilem inter Subditos dicti Domini Regis procurare & cauſare; & dictum Dominum Regem a regali ſtatu, titulo, poteſtate & regimine regni ſui Angliæ penitus deprivare, deponere, dejicere & exhæreditare; ac ipſum dictum Dominum Regem ad mortem & finalem deſtructionem adducere & ponere; ac gubernationem ejuſdem regni pro voluntate & libito ſuis mutare & alterare; & ſtatum to-*

totius hujus regni per univerſas ejus partes bene inſtitut' & ordinat' totalit' ſubvertere & deſtruere; & guerram contra dictum Dominum Regem infra hoc regnum Angliæ levare: & ad eaſdem nefandiſſimas proditiones & proditor' imaginat' & propoſita ſua prædict' perimplend' & perficiend', & diſcord' int' dictum Dominum Regem & populum ſuum movere, cauſare, & procurare; ipſe idem Thomas Roſewell, dicto decimo quarto die Septemb. anno regni dicti Domini regis nunc triceſimo ſexto ſupra prædict', apud Paroch' de Redriffe prædict', in Com' Surr' prædicto, falſo, malitioſe, ſubdole, adviſate, diabolice & proditorie in quadam illicita aſſemblat', in præſentia & auditu diverſorum ſubdit' dicti Domini Regis, adtunc & ibidem illicitè & ſeditioſe aſſemblat' & congregat', dixit, aſſeruit & declaravit quod populus (ſubdit' dicti Domini Regis nunc inuendo) coadunationem fecere (Anglice made a Flocking) *dicto Domino Regi nunc, ſub prætextu ſanandi morbum regni (Anglice* the Kings Evil) *quod ipſe (dictum Dominum regem nunc iterum inuendo) facere non poteſt; ſed nos ſumus illi (ſeipſum Thomam Roſewell & al' ſeditioſas & proditor' perſon' inuendo) ad quos illi (ligeos ſubdit' dict' Domini regis nunc inuendo) debent accedere (Anglice* Flock to) *quia nos (ſeipſum predict. Thomam Roſewell & al' ſedit' & proditor' perſon' iterum inuendo) ſumus Sacerdotes & Prophetæ qui precibus, dolores ipſorum (ligeos ſubdit' dicti Domini regis nunc iterum inuendo) ſanaremus. Nos (ſubdit' & ligeos hujus regni Angliæ inuendo) habuimus nunc duos iniquos reges (Sereniſſimum Carolum primum nuper regem Angliæ & dict' Dominum regem nunc inuendo) inſtmul, qui permiſerunt Romanam ſuperſtitionem (Anglice* Popery) *ingredi (infra hoc regnum Angliæ inuendo) in eorum conſpectu (Anglice* under their Noſes) *qui (predictum Carolum primum nuper regem Angliæ & dictum Dominum regem nunc inuendo) aſſimulari poſſunt ad nullam perſonam niſi ad nequiſſimum Jeroboam. Et ſi ipſi (divers' maledispoſit' & ſedit' perſon' adtunc & ibidem cum prefat' Thoma Roſewell illicite & ſeditioſe aſſemblat' & congregat' exiſten' inuendo) ad fundamental' ipſorum permanerent (Anglice* would ſtand to their Principles) *ipſe (ſeipſum Thomam Roſewell inuendo) non timebat quin ipſi (ſeipſum Thomam Roſewell & prædict' maledispos' & ſedit' perſon' ſic ut præfertur aſſemblat' inuendo) inimicos ſuos (dictum Dominum regem nunc & ligeos ſubdit' ipſius Domini regis nunc inuendo) vincerent ſic ut in priſtino tempore cum Cornubus ariet', patinis fractis (Anglice* broken Platters) *& lapide in funda (Anglice* Sling) *contra debit' ligeant' ſuæ, contra pacem dicti Domini regis nunc, Coron' & dignitat' ſuas, &c. Necnon contra formam Statut' in hujuſmodi Caſu nuper edit' & provis', &c.*

Cl. of Crown. How ſay'ſt thou, Art thou Guilty, or not Guilty?

Mr. J. Holloway. Now what do you ſay to it, Are you Guilty, or not Guilty? for indeed we cannot ſpend our Time impertinently, we have other Buſineſs. Here is a Queſtion you ought to make a direct Anſwer to, one way or other.

Mr. *Roſewell.* My Lord, I humbly crave the Favour it may be read once more in Engliſh.

Mr. Att. Gen. Sir *Samuel Aſtry*, Read the Words without the Inuendo's.

[*Clerk of Crown reads*] *That the People made a flocking to the King, upon pretence of healing the King's Evil, which he could not do; but we are they to whom they ought to flock, becauſe we are Prieſts and Prophets, who can heal their Griefs. We have now had two wicked Kings together, who have permitted Popery to enter under their Noſes, whom we can reſemble to no other Perſon, but to the moſt wicked* Jeroboam: *And if you will ſtand to your Principles, I do not fear but we ſhall be able to overcome our Enemies, as in former Times, with Rams Horns, broken Platters, and a Stone in a Sling.*

Mr. *Juſt. Holloway.* Now you hear your Charge, both in Latin and Engliſh; Pray, therefore, let the Court know what you do Plead; Guilty, or not Guilty to it.

Mr. *Roſewel.* Not Guilty, my Lord; and I bleſs my God for it.

Clerk of Crown. Culprit, How wilt thou be Tried?

Mr. *Roſewell.* By God, and my Country.

Clerk of Crown. God ſend thee a good Deliverance.

Mr. *Roſewell.* Theſe are Things that my Soul abhors, I thank my God.

Mr. *Att. Gen.* Mr. Juſtice *Holloway*, will you pleaſe to appoint ſome time for his Tryal?

Mr. *J. Holloway.* What time would you have, Mr. *Attorney*? When can you be ready, Mr. *Roſewell*?

Mr. *Roſewell.* I deſire, my Lord, it may be on the 19th of *November.*

Mr. *J. Holloway.* What Day of the Week is that?

Mr. *Clerk.* Upon *Wedneſday.*

Mr. *J Holloway.* Are there no Arguments appointed for that Day?

Mr *Clerk.* There is a Jury of *Northamptonſhire*, for that Day.

Mr. *J. Holloway.* Then it cannot be that Day.

Mr. *Roſewell.* Then, if it pleaſe your Honours, I deſire it may be the next Day; upon *Thurſday.*

Mr. *Att. Gen.* When it is moſt convenient for the Buſineſs of the Court.

Mr. *J. Holloway.* Sir *Samuel*, you will ſee when it will be moſt convenient at the Return of the *Venire.*

Cl. of Crown. Muſt I return it?

Mr. *Att. Gen.* No; The Sheriff muſt: And the Courſe is to make it returnable the ſame Day the Cauſe is tryed.

Mr. *Roſewell.* My Lord, I humbly deſire I may have Council allowed to come to me.

Mr. Att. Gen. You can have no Council allowed you.

Mr. *Roſewell.* My Lord, I requeſt that my Friends may be allowed to come to me in the mean time; I have been a Priſoner above this Month, and not permitted to ſee my Friends, nor they to ſee me.

Mr J. Holloway. What Friends would you have?

Mr. *Roſewell.* My Relations.

Mr. J. Walcot. That Relations is a large Word.

Mr. Att. Gen. Truly, Sir, I think he may have liberty to diſcourſe with any Perſon in the preſence of the Keeper. I ſhall not oppoſe that.

Mr. Roſewell. Yes, my Lord, I deſire no otherwiſe.

Mr. J. Walcot. Who do you name to come to you?

Mr. Roſewell I have poor Children, that deſire and long to ſee me.

Mr.

Mr. J. Holloway. Who do you ſay, you would have come to you?

Mr. Roſewell. My Wife and Children, my Lord, that are my Bowels.

Mr. Att. Gen. In the preſence of the Keeper I cannot oppoſe it.

Mr. Roſewell. Will your Lordſhip pleaſe to allow Council to come to me?

M. J. Holloway. We cannot do it by Law. The Court is to be of Council for you when you come to your Tryal. The Court will not ſuffer any thing to be done to your Prejudice againſt Law.

Mr. Roſewell. Is there any Statute, my Lord, that forbids the giving of Council?

Mr. J. Holloway. The Law forbids the allowing of Council in Capital Cauſes; unleſs where Matter of Law doth ariſe.

Mr. Roſewell. My Lord, as I remember, *Fitzharris* had Council allowed him.

Mr. J. Holloway. That was in a different Caſe, in a Matter where there were Special Pleadings; this is a General Iſſue.

Mr. Att. Gen. That was in a Matter of Law, that was inſiſted upon, but it is not ſo here: If this Gentleman had any matter of Law to Plead, he ſhould have Council aſſign'd him too. But, Sir, I think *Tueſday* the Eighteenth of *November* will be the freeſt and moſt convenient Day.

Mr. J. Holloway. Let it be that Day then.

Cl. of Crown. The Eighteenth of *November* is the Day of your Tryal.

Mr. Roſewell. But, my Lord, was not Council allowed him before his Tryal came on?

Mr. J. Holloway. Yes; but that was upon a Special Plea, of a Matter in Law.

Mr. Roſewell. I hope you will conſider my Caſe as of one that knows not the Law.

Cl. of Crown. Tueſday the Eighteenth of *November* is the Day.

Mr. Roſewell. My Lord, I humbly requeſt the Favour that any Perſon that can ſpeak of my Integrity, may come and Teſtify for me.

Mr. *Att. Gen.* Ay, Ay; you may have *Subpœna's* out of the Office for any body, who you will, that are to be Witneſſes for you.

Mr. J. Walcot. The Officers of the Court will do all things that are requiſite and legal for you.

Mr. J. Holloway. Then take back your Priſoner, Keeper.

Mr. Att. Gen. I do not know truly, whether the Practice of the Court is not to commit to the *Marſhalſea*, being the Priſon of the County of *Surrey*.

Cl. of Crown. Sir, it may be one or th'other way, as the Court thinks fit. As long as the *King's Bench* ſits in *Middleſex*, he may be Priſoner ſtill in the *Gate-houſe*.

Keeper. Then the Rule of the Court is that he ſhall come agen *then*.

Cl of Crown. Yes, he is, by Rule, to appear here the 18th of *November* next.

Whereupon he was carried back to the Gate-houſe.

Die Martis 18. Nov. *Anno Dom.* 1684. *R. Regis.*

Dominus Rex verſ. Roſewell.

THIS Day the Priſoner was brought, by Rule, from the *Gate-houſe* to the Bar of the *King's-Bench* Court to his Tryal, at which all the Judges of the ſaid Court were preſent.

Cl. of Crown. Thomas Roſewell, Hold up thy Hand. (*Which he did.*) Thoſe Men that thou ſhalt hear called, and do perſonally appear, are to paſs between our Sovereign Lord, and thee, upon the Tryal of thy Life and thy Death: If therefore thou wilt challenge them, or any of them, thou art to ſpeak unto them as they come to the Book to be Sworn. Sir *George Sheers*, Baronet.

Mr. *Roſewell.* My Lord, I would humbly crave the Favour of your Lordſhip, that I may have the Uſe of Pen, and Ink.

* Sir *George Jeffreys.* **Lord Ch. Juſt.* Ay in God's Name, let him have Pen and Ink.

Cl. of Crown. Swear Sir *George Sheers*, Baronet.

Mr. *Roſewell.* I beg I may have Pen, Ink and Paper, before he be Sworn.

L. Ch. Juſt. Ay, let him.

Cryer. Look upon the Priſoner. Sir, You ſhall well and truly try, and true deliverance make between our Sovereign Lord the King, and the Priſoner at the Bar, whom you ſhall have in Charge; and a true Verdict give according to your Evidence. *So help you God.*

Jurat' Sir *George Sheers.*

Mr. *Roſewell.* My Lord, I challenge him.

Lord Ch. Juſt. That you cannot do now he is Sworn.

Mr. *Roſewell.* I was ſurprized, my Lord; I did not know it.

Lord Ch. Juſt. I cannot help it, Mr. *Roſewell*, you muſt mind your Buſineſs. We cannot unſwear him agen. Go on.

Cl. of Crown. Sir *St. John Broderick.*

Cryer. Look upon the Priſoner, Sir; You ſhall well, *&c.* Jurat' Sir *St. John Broderick.*

Mr. *Roſewell.* I challenge him.

L. Ch. Juſt. You cannot Sir; he is Sworn now.

Mr. *Roſewell.* I beg your Lordſhips Pardon, I was ſurprized.

L. C. Juſt. Let us not ſpend time in ſuch Talk as is to no Purpoſe; I tell you we cannot unſwear him.

Mr. *Roſewell.* I deſire, my Lord, my Challenge may be received, I was going to ſpeak——

L. C. Juſt. It cannot be after he is Sworn; we cannot make a new Law for you. Mind what was ſaid to you; if you have a Mind to challenge any body, you muſt challenge them before they come to be Sworn.

Cl. of Crown. Sir *Robert Knightley.*

L. C. Juſt. Mind the thing you are about, Man: Speak now, if you have a Mind to challenge him.

Mr. *Roſewell.* I do not challenge him.

Cl. of Crown. Then Swear him.

Cryer. Look upon the Priſoner, *&c.*

Jurat' Sir *Robert Knightley.*

L C. J. Pray now mind the Thing you are about; you are looking about you for ſome

private Mark, or hint to be given you by some body, and so lose your time of Challenging. You must challenge them as they come to the Book to be Sworn, and before they are Sworn.

Mr. *Rosewell.* I beg your Lordships Pardon; I was minding to set down the Names in my Paper, because I am to take notice of those I challenge for their Number.

L. C. J. You shall have all the fair Advantages that the Law will allow; you shall have your full Number to challenge, which you may do peremptorily, and without Cause as to 35; and as many more as you can with Cause.

Mr. *Rosewell.* Is there any one to note the Number?

L. C. J. There shall be sure to be notice taken that you be not surprized that way. You shall have all fair Advantages, I tell you.

Mr. *Rosewell.* I humbly thank your Lordship.

Cl. of Crown. Sir *William Elliot.*

Cryer. Look upon the Prisoner.

Mr. *Rosewell.* I challenge him.

Cl. of Crown. Sir *George Woodroffe.*

Mr. *Rosewell.* I challenge him.

Cl. of Crown. Sir *Cornwall Bradshaw.*

Mr. *Rosewell.* I challenge him.

Cl. of Crown. Sir *Thomas Bludworth.*

Mr. *Rosewell.* I challenge him.

Cl. of Crown. *Anthony Thomas*, Esq;

Cryer. Look upon the Prisoner.

Mr. *Rosewell.* I do not challenge him.

Cryer. You shall well and truly, *&c.*

(Jurat' *Anthony Thomas.*)

Cl. of Crown. *Francis Brend*, Esq;

Mr. *Rosewell.* I challenge him.

Cl. of Crown. *John Weston*, Esq;

Mr. *Rosewell.* I challenge him.

Cl. of Crown. *James Reading*, Esq;

Mr. *Rosewell.* Is it Mr. *Justice Reading* of *Southwark?*

L. C. J. Do you challenge him or not? you may if you will.

Mr. *Rosewell.* My Lord, my Reason is, I have heard much of him, but never had any Opportunity to know him till now. I have no Exception against him.

L. C. J. Then Swear him.

[*Which was done.*]

Cl. of Crown. *Thomas Newton*, Esq;

Mr. *Rosewell.* I challenge him.

Cl. of Crown. *Thomas Vincent*, Esq;

Mr. *Rosewell.* I challenge him.

Cl. of Crown. *Ambrose Muschamp*, Esq;

Mr. *Rosewell.* I challenge him.

Cl. of Crown. *Ralph Freeman*, Esq;

Mr. *Rosewell.* I challenge him.

Cl. of Crown. *Joseph Reeves*, Esq;

Mr. *Rosewell.* I challenge him.

Cl. of Crown. *Anthony Rawlins*, Esq;

Mr. *Rosewell.* I do not challenge him.

[*He was sworn.*]

Cl. of Crown. *Thomas Overman*, Esq;

Mr. *Rosewell.* I have no Exception against him.

[*He was sworn.*]

Cl. of Crown. *George Meggot*, Esq;

Mr. *Rosewell.* I challenge him.

L. C. J. *Cryer*, Besure you bid them look upon the Prisoner; and the Prisoner look upon them, that he may see what he does.

Cryer. I do so, my Lord.

Cl. of Crown. *Samuel Lewin*, Esq;

Mr. *Rosewell.* I have nothing to say against him.

[*He was sworn.*]

Cl. of Crown. *Lawrence Marsh*, Esq;

Mr. *Rosewell.* My Lord, I desire to know how many I have challenged.

L. C. J. He shall tell you. Count them.

Cl. of Crown. Twelve. What say you to Mr. *Marsh?*

Mr. *Rosewell.* I challenge him.

Cl. of Crown. *Ambrose Brown*, Esq;

Mr. *Rosewell.* I challenge him.

Cl. of Crown. *John Halsey*, Esq;

Mr. *Rosewell.* I challenge him.

Cl. of Crown. *John Awburn*, Esq;

Mr. *Rosewell.* I challenge him.

Cl. of Crown. *Henry Flood*, Esq;

Mr. *Rosewell.* I challenge him.

Cl. of Crown. *John Parsons*, Esq;

Mr. *Rosewell.* I challenge him.

Cl. of Crown. *John Pettyward*, Esq;

Mr. *Rosewell.* I do not challenge him.

[*He was sworn.*]

Cl. of Crown. *Richard Coldham*, Esq;

Mr. *Rosewell.* I do not challenge him.

[*He was sworn.*]

Cl. of Crown. *Robert Sanders*, Esq;

Mr. *Rosewell.* I challenge him.

Cl. of Crown. *John Heather*, Esq;

Mr. *Rosewell.* I do not challenge him.

[*He was sworn.*]

Cl. of Crown. *John Austin*, Esq;

Mr. *Rosewell.* Pray, Sir, doth this make Twelve if he be sworn?

Cl. of Crown. Yes, Sir.

Mr. *Rosewell.* Then I do not challenge him.

[*He was sworn.*]

Cl. of Crown. Cryer, count these. Sir *George Sheeres.*

Cryer. One, *&c.*

Cl. of Crown. *John Austin.*

Cryer. Twelve, good Men and true, stand together and hear your Evidence.

The Twelve Sworn were These,

Sir *George Sheeres.*	Jury.	*Thomas Overman.*
Sir *St. John Broderick.*		*Samuel Lewin.*
Sir *Robert Knightley.*		*John Pettyward.*
Anthony Thomas.		*Richard Coldham.*
James Reading.		*John Heather*, and
Anthony Rawlins.		*John Austin.*

Clerk of Crown. *Thomas Rosewell*, Hold up thy Hand, (*which he did.*) Gentlemen, you of the Jury, look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of *Thomas Rosewell*, &c. (*Prout* in the Indictment, *mutatis mutandis*)——Upon this Indictment he hath been Arraigned, and thereunto hath pleaded not Guilty; and for his Tryal hath put himself upon God, and his Country, which Country you are. Your Charge is to enquire whether he be guilty of this High-Treason, in manner and form as he stands Indicted, or not guilty. If you find him guilty, you are to enquire what Goods or Chattels, Lands or Tenements, he had at the time of the High-Treason committed, or at any time since to your Knowledge. If you find him not guilty, you are to enquire whether he fled for it; if you find that he fled for it, you are to enquire of his Goods and Chattels as if you had found him guilty. If you

you find him not guilty, and that he did not fly for it, you are to ſay ſo, and no more, and hear your Evidence. Cryer, make Proclamation.

Cryer. Oyez, Oyez, Oyez; If any one can inform my Lords the King's Juſtices, the King's Serjeant, the King's Attorny-General, or this Inqueſt now taken, of the High-Treaſon whereof the Priſoner at the Bar ſtands indicted; let them come forth, and they ſhall be heard: And all manner of Perſons, that are bound to give Evidence on the behalf of our Sovereign Lord the King againſt the Priſoner at the Bar, let them come forth and give their Evidence; for now the Priſoner ſtands at the Bar upon his Deliverance: Or they forfeit their Recognizance.

Mr. *Phipps.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury——

Mr. *Roſewell.* Hold! Hold! I crave the Favour that the Indictment may be read in *Latin.*

L. C. J. Ay, with all my Heart, let it be read in *Latin.*

(*Which was done.*)

Mr. *Roſewell.* My Lord, I humbly crave leave to ſpeak a Word or two.

L. C. J. What would you have?

Mr. *Roſewell.* I beg your Patience for a Word or two. I find, my Lord, as I told my Lords upon the Day of my Arraignment, that my Charge is very black, and high: And truly if I were guilty of thoſe Things that are laid to my Charge——

L. C. J. You are now going to be tried for them. I hope you are innocent.

Mr. *Roſewell.* I humbly thank your Lordſhip: I beg you would hear me but a Word or two.

L. C. J. You muſt keep up to the Method of Proceedings, your time is not yet come. What is it you would have?

Mr. *Roſewell.* My Lord, my Soul abhors theſe Things, I thank my God for it. I was going to ſpeak to your Lordſhip, to know whether the Words of a Natural, or a Mad-man be Treaſon in Law.

L. C. J. No.

Mr. *Roſewell.* Then, my Lord, the Ground of the Queſtion is this, I find by Recollection and Conſideration of the Words lay'd to my Charge, that my malicious Enemies have accuſed me of what any Man in his Senſes,——

L. C. J. This is not proper, Mr. *Roſewell,* at this time; for this is but an Anticipation. You muſt hear what is firſt proved againſt you. We muſt keep up to the Forms of Law, you ſhall have your full time to be heard whatſoever you will ſay for your ſelf; but you muſt not anticipate the Cauſe with previous Diſcourſes.

Mr. *Roſewell.* I would only aſſert my own Innocency.

L. C. J. Not yet; you muſt not do it, nor you ſhall not do it. When it comes to your turn to ſpeak, you ſhall have liberty enough to make your Defence as long as you will. Go on, Sir.

Mr. *Phipps.* May it pleaſe your Lordſhip, and you Gentlemen that are ſworn: The Priſoner at the Bar, *Thomas Roſewell,* ſtands indicted, That he, as a falſe Traytor, not having the Fear of God before his Eyes, but being moved and ſeduced by the Inſtigation of the Devil, and endeavouring to diſturb the Peace and Tranquillity of the Kingdom, and to depoſe the King, the 14th of *Sept.* in the 36th Year of this King, at the Pariſh of *Rotherhith,* in your County; did falſly, maliciouſly, and traiterouſly, purpoſe and imagine to raiſe a Rebellion within the Kingdom, and to deprive the King, and depoſe, and put him to death and Deſtruction, and the Government to change and alter, and to levy War againſt the King within the Kingdom: And theſe wicked Purpoſes to bring to paſs, he the ſaid *Thomas Roſewell,* the ſaid 14th of *September* in the thirty ſixth Year aforeſaid, at the Place aforeſaid, falſly, unlawfully, maliciouſly, ſeditiouſly and traiterouſly, in a certain unlawful Aſſembly, then and there congregated, did ſay and declare, *The People make a flocking to the King, upon pretence of Healing the King's-Evil, which he cannot do; but we are they to whom they ought to flock: for we are Prieſts, and Prophets, that can heal their Grievances. We have now had two wicked Kings together, who have permitted Popery to come in under their Noſes; and whom we can compare to none, but the moſt wicked* Jeroboam. *But if they would ſtand to their Principles, he did not doubt, but they ſhould overcome their Enemies, as in former Times with Rams-horns, broken Platters, and a Stone in a Sling.* And this is laid to be againſt the Duty of his Allegiance, againſt the Peace of the King, his Crown and Dignity; and againſt the Form of the Statute in that Caſe made and provided. To this Indictment he has pleaded not guilty; If we prove him guilty of this Matter, you are to find him guilty.

Mr. *Att. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury; theſe traiterous Words, that the Priſoner at the Bar is accuſed of, were ſpoken in a Sermon, or Preachment at a Conventicle. And tho' the Gentleman does pretend to much Innocency; yet you will find that in open Defiance of the Law, he takes upon him to Preach againſt the Law, not only of the Land, but even againſt the Laws of Almighty God: For he takes upon him to be a Preacher againſt a Rule, than which nothing is more plain in all the Word of God, viz. *That he ſhould not ſpeak Evil of Dignities, nor revile the Prince of his People.* He knows this to be the Rule of the Scripture; and yet in his conſtant Diſcourſes, (as we ſhall prove) he makes it his Practice to revile the Government on all Sides. And by theſe doings at this Day, Gentlemen, you will eaſily underſtand what the Deſigns of theſe Conventicles are; only to nurſe up People in Sedition, and train them up to Rebellion; that they may be ready to break out into it when their Teachers adviſe them to it. We ſhall call our Witneſſes, and prove to you, that this is, and has been the conſtant Tenor of his Diſcourſe; *viz.* Reviling of the Government; and there is almoſt no Text of Scripture, but, in his way of perverting it, he has turned againſt the Government. We ſhall ſhew this to be the habitual Courſe and Practice of him who pretends to be ſo honeſt, and ſo innocent a Man. Cryer, call *Elizabeth Smith,*——*Hilton* and *Farrar.*

Then ſome of the Council at the Bar, being talking among themſelves, the Lord Chief Juſtice reproved them for it.

L. C. J. Look you, Gentlemen, you muſt not have Interlocutions among your ſelves. And you, Gentlemen of the Jury, I muſt tell you, If any one whiſper any of you, you ought to acquaint the Court with it. It is your Du y

to

to be directed by the Court, and the Evidence. Here is a Man's Life in Queſtion, and that is a very weighty Thing: and you muſt not take any private Inſinuations, but only hearken to your Evidence, and mind what is ſpoken publickly, that the Priſoner may be able to give anſwer to it.

Mr. *Roſewell.* I humbly thank your Lordſhip.

Mr. *Att. Gen.* Where are Mrs. *Hilton* and Mrs. *Smith?*

(They were all ſworn.)

Mr. *Roſewell.* I do humbly requeſt one Favour of the Court.

L. C. J. What would you have?

Mr. *Roſewell.* I humbly beg they may be examined *ſeparatim.*

L. C. J. They ſhall.

Mr. *Roſewell.* I humbly thank your Lordſhip.

L. C. J. Who do you begin withal, Mr. Attorny?

Mr. *Jones.* My Lord, we ſhall begin with Mrs. *Smith.*

L. C. J. Then you muſt make way, that the other Witneſſes may go out of hearing. You Cryer, make way for them; and ſee that they be ſet where they may not hear.

[*Which was done.*]

Mr. *Att. Gen.* Come, Mrs. *Smith,* pray give my Lord and the Jury an account whether you have been at any Meeting, where this Gentleman has been. Whether you know him; and what you heard of him.

Smith. I heard him ſay this——

L. C. J. Hold a little. What is this Woman's Name, *Elizabeth Smith?*

Mr. *Att. Gen.* Yes, my Lord. Were you by at any of his Conventicles?

Smith. Sir, I have been ever ſince the 20th of *July,* till that Day for which he was taken, but one *Sunday.*

Mr. *Att. Gen.* Give my Lord an account of what you heard.

Smith. Yes, Sir.

L. C. J. Where was it that his Meeting-Houſe was?

Smith. He had ſeveral Houſes, private Houſes and a publick Houſe of his own.

L. C. J. Where? In what Place?

Smith. In *Salisbury-ſtreet,* near his own Dwelling.

L. C. J. Where is that?

Smith. In *Rotherhith.*

L. C. J. You were frequently there, you ſay?

Smith. Yes, my Lord.

L. C. J. What number of People might be there, as you gueſs?

Smith. I believe there might be 400 People or 300 commonly.

L. C. J. What ſort of People were they?

Smith. Men and Women, Houſe-keepers.

L. C. J. Well, what did you hear him ſay?

Smith. I can give you an Account of his Sermons ſeveral Days.

L. C. J. Do ſo.

Smith. The firſt Notice that I took of any thing concerning the Government, was upon the 17th of *Auguſt,* and that was concerning His Majeſty; and then in his Prayer after Sermon, he wiſhed he might not offend God in not praying for the King; but that it might pleaſe God to open his Eyes, and the Times might turn.

Mr. *Att. Gen.* What other Things have you heard him ſay?

Smith. The next time that I heard him was the next *Sunday* again, and that was in *Weſt-lane,* in a Houſe there, and then he was ſpeaking of *Sodom* and *Gomorrah,* and he brought in this Proof, not doubting but if there had been ten righteous Perſons, the City had not been deſtroyed: But he did not mean Recorders, nor Lord Mayors.

Mr. *Roſewell.* What Day was that Miſtriſs?

Smith. The 22th of *Auguſt.*

Mr. *Att. Gen.* Well, what did you hear him ſpeak, upon the Day in the Indictment, the 14th of *September?*

Smith. He ſaid, *The People made a flocking to the King, to cure the King's Evil which he could not do; but,* ſays he, *we are they they ſhould flock unto, for we are Prieſts and Prophets, that by our Prayers can cure their Grievances.* He ſaid, *We have now had two wicked Kings together, which have permitted Popery to come in under their Noſes, and could be compared to nothing but to moſt wicked* Jeroboam. And then, after he had preached a good while, agen he ſaid, *If they would ſtand to their Principles, he did not fear, but they ſhould overcome their Enemies, as in former Times, with broken Platters, Ram's Horns, and a Stone in a Sling.*

L. C. J. When was this?

Smith. This was upon the 14th of *September.*

L. C. J. Where was it?

Smith. At one Captain *Daniel Weldy's* Houſe.

L. C. J. What is he? a Seaman?

Smith. Yes, and he pray'd for him, being then at Sea and his Son both, who was ill.

L. C. J. How many do you think might be preſent there at that time?

Smith. There was a low Parlour full, and a little Room up ſix Steps; and where he preached was up one pair of Stairs, there was a large Room and a Garret.

L. C. J. Where did he ſtand?

Smith. In the Door-Caſe of that Room, that the ſound might go up and down.

L. C. J. How many People in number might there be think you?

Smith. I cannot tell, my Lord; a great many.

L. C. J. How many, as nigh as you can gueſs, or think?

Smith. Several Hundreds of them.

L. C. J. Do you know any of them? Were they People of any Quality?

Smith. Yes, I know a great many of them; ſeveral of them are in the Court, and about the Hall now.

L. C. J. Who ſtood at the Door and let you in?

Smith. One Mr. *Paul Shed;* and he was angry at my coming with Pattens, for they made an Impreſſion in the Ground, and gave notice to others, that there was Company there: and I promiſed him I would come no more with them.

Mr. *J. Walcot.* Was he Door keeper? What is he?

Smith. A Braſier, I think.

Mr. *J. Holloway.* Had you any notice of a Conventicle that was to be there?

L. C. J. Ay; Tell us how you came thither.

* Sir *Thomas Jenner.* * Mr. *Recorder.* How came you to find it out that there was a Meeting at ſuch a Place?

Smith. At firſt I found it by dogging of People as they went along; and afterwards, there were

were People ſet commonly at a Place called *Cherry-garden Stairs* to give notice; and ſometimes I asked there, and ſometimes I went to Mr. *Shed*'s Houſe to enquire.

L. C. J. *Shed*, you ſay, was preſent there then?

Smith. Yes, he let me in.

L. C. J. What; he was the Man that managed the Conventicle. He was Clerk, I ſuppoſe; was he not?

Smith. I never heard him ſay Amen; but I have heard him expound in the Conventicle ſometimes.

L. C. J. Oh, he was a Journeyman Preacher it ſeems.

Mr. *Recorder.* Pray was there any ſtore of Watermen and Seamen there?

Smith. Yes, abundance from *Rotherhith*, or thereabouts.

L. C. J. Which way came all the People that were there?

Smith. From *Deptford* and *Rotherhith*, and all thereabouts.

L. C. J. Was it near the Water-ſide?

Smith. Yes, not far from it.

L. C. J. Well, Mr. Attorny, have you any more Queſtions to ask her?

Mr. *Att. Gen.* No, I think not. Mrs. *Smith*, you have heard him, you ſay, at other Days; how did he uſe to treat the Government in his preaching at other times?

Mr. *Roſewell.* My Lord, I beſeech your Lordſhips to tell me whether theſe Queſtions are proper to be put, it not relating to the Matter that I am accuſed of?

L. C. J. Yes, yes, to give an account of the Diſpoſition of your Mind; very proper as can be.

Mr. *Roſewell.* Becauſe it is not part of my Charge, and I cannot be prepared to anſwer it.

L. C. J. When the King's Council have done with her, you may ask her any Queſtions; but you muſt let them go on firſt.

Mr. *Att. Gen.* My Lord, it is charged that he ſpoke theſe words with a traiterous, malicious Mind; and what better Evidence of ſuch a Mind than his uſual Diſcourſes?

Smith. The 31ſt of *Auguſt*, I heard him preach at *Paul Shed*'s Houſe; and there he preached that there was a certain great Man, that lived at the Upper-end of *Grace-church-ſtreet* about this time eighteen Years agone; I name no body, ſays he, you all know him whom I mean: and there came a certain poor Man to him; he was not a poor Man neither, but a Carpenter by Trade, one that wrought for his Living, a labouring Man; and told that great Man, if he would take his Advice, he would tell him how to quench the Fire; but he Piſh'd at it, and made light of it and would not take his Advice. Which if it had not been for that great Man, and the Lord Mayors and Sheriffs that have been ſince, neither that Fire in *London*, nor the Fire at *Wapping*, nor the Fire at *Southwark*, had gone ſo far, or come to what they did.

L. C. J. There was a great Man that lived at the Upper-end of *Grace-church ſtreet*!—— Who did he mean by that?

Mr. *Recorder.* He meant, we ſuppoſe, Sir *Thomas Bloodworth*, that was Lord Mayor at the Fire-Time.

L. C. J. He did not live there then.

Mr. *Recorder.* It ſeems he ſaid ſo.

Mr. *Att. Gen.* Pray Mrs. *Smith*, let me ask you one Queſtion. How far were you off from him; and where did you ſit this 14th Day of *September*, when you heard him ſay thoſe Words you ſpeak of?

Smith. I ſat upon the Bed, and he was ſtanding at the Door.

Mr. *Att. Gen.* My Lord, we have done with this Witneſs at the preſent.

L. C. J. Now, Mr. *Roſewell*, if you will, you may ask her what Queſtions you pleaſe.

Mr. *Roſewell.* My Lord, I was before going to beg your Pardon for my Weakneſs, being altogether unacquainted with theſe Things; and that you would look upon me as one that is *inops conſilii*, and pardon any thing that comes from me impertinently. I cannot ſpeak to her as a Lawyer to ſift her, and ſearch out the Truth; will your Lordſhip give me leave to ſpeak to her as a Divine?

L. C. J. Ask her what Queſtions you will, but we will not have any of your Preachments here. You muſt conſider where you are, you are not now in your Pulpit, but at the Bar; I aſſure you we do not intend to make a Conventicle of the *King's Bench* Court.

Mr. *Roſewell.* My Lord, I meant only to endeavour to convince her, by putting ſome Queſtions, like a Divine, to her. For I pity them, tho' they envy me; and I bleſs my God, have pray'd for them many times ſince my Impriſonment.

L. C. J. Well, well; do not ſtand to commend your ſelf now, this is not your time of making your Defence: Only, if you will ask this Witneſs any Queſtions, you may.

Mr. *Roſewell.* You are under an Oath, Mrs. *Smith*.

Smith. I am ſo, Mr. *Roſewell*.

Mr. *Roſewell.* Are you ſenſible what an Oath is, and the great Obligation you are under by it to teſtify nothing but the Truth? as you will anſwer it to the great God——

L. C. J. Look you, Mr. *Roſewell*, ask her any Queſtions to the Buſineſs that ſhe has here teſtified; but do not preach to her. It is not your Work to Catechiſe the Witneſſes, that is the Duty of the Court, and we ſhall, no doubt, take care to do our Duty. And I will tell her, to ſave your Preachment, ſhe is in the Preſence of the Great God of Heaven and Earth, before whom we muſt appear at the great Day of Judgment, to give an account of every Word we ſpeak. And you are under an Oath, and if in Caſe you tell one Tittle of a Lie in your Teſtimony againſt the Priſoner at the Bar, who ſtands now to be tried for his Life, it will be juſt with the Great God to ſink you down into Hell Fire immediately. Therefore, I require you, upon your Oath, not to ſpeak one Word but what is Truth.

Smith. My Lord, I aſſure you, I will rather ſay leſs, than add any one Tittle.

L. C. J. Mr. *Roſewell*, ask her what you will, but do not give your ſelf, or us, the trouble of a Preachment to teach her the Obligation of an Oath; for ſhe very well knows it ſeems what it is, and ſays ſhe will rather ſpeak leſs than more than the Truth.

Mr. *Roſewell.* I humbly thank your Lordſhip for what you have ſaid to her. Mrs. *Smith*, Pray

was you at *Rotherhith* the 14th Day of *September*?

Smith. Yes, that I was.

Mr. *Roſewell.* Did you come alone? or, who came with you?

Smith. Mrs. *Hilton* came along with me, and another Gentlewoman, and Mr. *Shed* let us in all together.

Mr. *Roſewell.* Who is that Mrs. *Hilton*?

Mr. *Att. Gen.* You will ſee her by and by Mr. *Roſewell.*

Mr. *Roſewell.* Where did you meet together?

Smith. Mrs. *Hilton* lay with me all Night, and we were together the Day before.

Mr. *Roſewell.* What time did you come thither, pray Miſtriſs?

Smith. I came thither before Seven of the Clock, before you came, Sir.

Mr. *Roſewell.* And I pray whoſe Houſe came you to at *Rotherhith*?

Smith. We were informed it was Captain *Weldy*'s Houſe.

Mr. *Roſewell.* Are you ſure it was his Houſe?

Smith. As they did tell us it was Captain *Daniel Weldy*'s.

Mr. *Roſewell.* I pray Miſtriſs what Room were you in there?

Smith. We were up one pair of Stairs. There is a little Room we come at ſooner; but we were in the Room with the Bed; and there was one Mr. *Atkinſon* there that was in Mourning, and there were two or three Boys of his with him that ſate upon the Bed, and their Shoes were plucked off, that they might not dirt the Bed; and I gave him his Boys Shoes from under the Bed.

Mr. *Roſewell.* Pray where did I ſtand, Miſtriſs, do you ſay?

Smith. In the Door-Caſe.

L. C. J. What Boy is that you ſpeak of?

Smith. Two Boys that came in with one Mr. *Atkinſon*; his Relations, I ſuppoſe they were.

Mr. *Roſewell.* Pray how did the Service begin?

Smith. You took your Text out of the 21ſt of *Geneſis*; that was the Chapter to the beſt of my Remembrance.

Mr. *Roſewell.* But I ask you Mrs. how did the Worſhip, the Service begin?

L. C. J. You mean your Prayer, you do not uſe to call it Service.

Smith. You made a Prayer.

Mr. *Roſewell.* Was it begun with a Chapter, or a Pſalm, or how?

Smith. There was no Pſalm; a long Prayer you made, as you uſed to do formerly.

Mr. *Roſewell.* How long was that?

Smith. It was always uſed to be about three quarters of an Hour long.

Mr. *Roſewell.* Was there any Chapter read?

Smith. There was no Chapter before you took your Text, as I heard, and I was there before you.

Mr. *Roſewell.* Upon what Occaſion then were theſe Words ſpoke, if there was no Chapter read?

Smith. I ſay there was none till you took your Text, and then you ſpoke thoſe Words.

Mr. *Roſewell.* But how came thoſe Words in?

Smith. You always took a whole Chapter, and expounded all along.

Mr. *Roſewell.* A long Text for one Sermon, Miſtreſs.

L. C. J. Yes, yes, We know you have a fine way of Preaching.

Mr. *Roſewell.* Well, Miſtreſs. Upon what Verſe of the Chapter were theſe Words ſpoke, about flocking to the King to cure the King's Evil?

Smith. I cannot be punctual to the particular Verſe.

L. C. J. Nay, I ſuppoſe you ſeldom keep to your Text. I am ſure there was never a Verſe in any Chapter that warranted the ſpeaking of any ſuch Words as theſe.

Smith. My Lord, I cannot be punctual to the particular Verſe. It was within five or ſix Verſes of the beginning, I believe.

Mr. *Roſewell.* Then upon what Occaſion came in the Words about the two wicked Kings?

Smith. In Preaching you brought it in by other Proofs.

L. C. J. Why, Man, there can be no Occaſion for ſpeaking of thoſe Words. You ſpoke them without any Occaſion at all. No body can tell what Occaſion you had to ſpeak them.

Mr. *Roſewell.* But, my Lord, I ſuppoſe there may be ſome coherence in my Diſcourſe. I would know how they were brought in?

L. C. J. Who can tell the Occaſion? Do you ask me what Reaſon any Man has to ſpeak Treaſon? I tell you there is none at all to be given for it.

Smith. One of your Proofs in your Preaching was concerning *Dalilah* and *Sampſon*, and you brought in that Proof concerning the King's uſing of Women, it was out of the *Judges*. And he ſaid he did not Queſtion, but that in the end the Whores would ſerve the King, as that Whore *Dalilah* did *Sampſon*.

L. C. J. Was this at the ſame time, upon the ſame Day?

Smith. Yes, it was upon the 14th of *September*.

Mr. *Roſewell.* If it pleaſe you, my Lord, theſe are not Words that are charged in the Information——

L. C. J. You draw it upon your ſelf by your Queſtions.

Mr. *Roſewell.* If they were ſpoken, (upon that *Hypotheſis*, I ſay *if* they were ſpoken; but I deny the *Theſis*, I abhor the thoughts of them.) I would know how they were brought in, under what Verſe?

L. C. J. Ay, I take you right as to that, you do deny it; and they are not in the Indictment.

Smith. I cannot be punctual as to the Verſe.

Mr. *Roſewell.* Pray upon what account did come in the two wicked Kings?

Smith. I cannot tell the Verſe, truly.

Mr. *Roſewell.* How came in that about *Jeroboam*?

L. C. J. How can ſhe tell how you bring in Treaſon?

Mr *Roſewell.* My Lord——

L. C. J. Nay, pray, Sir, hear me a little. You ſhall have all the Liberty to defend your ſelf that the Law can allow of. We are accountable to the Law upon our Oaths to do Juſtice, and are as much accountable to Heaven for our Actions,

ons, as you or any Priſoner that comes to this Bar is to the Law for your Actions. But do you ask what Reaſon you ſpoke Treaſon for? I tell you no Reaſon can be given for it.

Mr. J. Holloway. Do you think any of your Auditors can give an account of the Connexion of your whole Sermon?

L. C. J. When you talk beſides the Cuſhion, do you think any Man alive is able to give an account how you come to ramble and talk Treaſon?

Mr. Roſewell. Can you tell, Miſtreſs, when that was ſpoken, of ſtanding to their Principles, and the Rams-horns, *&c.*?

Smith. That was at the latter end of your Sermon.

L. C. J. When you had ſaid there were two wicked Kings, then preſently you were for ſtanding to your Principles, and over coming your Enemies.

Mr. J. Holloway. It ſeems ſhe was very intent upon your Sermon.

L. C. J. For my part, I wonder ſhe can remember ſo much as ſhe does. It is much ſhe can remember ſuch Stuff as this.

Mr. Roſewell. The God of Truth, my Lord, I hope will manifeſt the Truth. Pray, Miſtreſs, were theſe Words ſpoken one juſt after another in my Diſcourſe?

Smith. No, they were not; but they were all ſpoken at that time.

Mr. J. Holloway. Have you done with her?

Mr. Roſewell. No, my Lord, I humbly beſeech your Favour and Patience a little. Pray Miſtreſs *Smith* did you write?

Smith. I did not write till I came home, and after I came home I did write it down. Several that were there did write down your Sermon.

Mr. Roſewell. Several of whom do you mean?

Mr. Smith. Several of your Congregation, Sir.

Mr. Roſewell. Did your Companions write? and pray where did you firſt write down theſe Words?

Smith. After I came Home I ſet them down, Word for Word to a Tittle, as they were ſpoken, as near as I could remember, what you ſpoke.

Mr. Roſewell. Was any body with you when you ſet them down?

Smith. Yes, my own Family ſaw me write them down: and the other Witneſs was with me; and afterwards we went to the *Bull* and *Mouth*, the Quakers Meeting-Houſe.

Mr. Roſewell. What other Witneſſes were by when you ſet them down?

Smith. There was my Husband, my Apprentice, and my Child.

Mr. Roſewell. And did you ſet them down juſt exactly, as you have ſworn them upon this Indictment?

Smith. Yes, to the beſt of my Knowledge:

Mr. Roſewell. Upon your Oath in the preſence of the great God, did you ſet them down as they were ſpoken?

Smith. Yes, I tell you.

L. C. J. Ay, I would ask you that Queſtion; Did you, (I ſpeak to you as in the Preſence of the great God, and upon your Oath) ſet down his Words juſt as he ſpoke them in Subſtance?

Smith. Yes, I did to the ſame Subſtance as near as I could remember.

Mr. Roſewell. Pray what other Words were ſpoken between theſe Words in the Indictment, if they were not all ſpoken together?

Smith. One thing I do remember more, that you ſaid that Day. You ſaid there was a Word they called Canting; but for your Part you did not underſtand what it meant, unleſs it were this; You ſaid, you chanced to go by one of the great Churches; where peeping in, you ſaw a Man with a white Surplice, and the Organs were going, and they were canting, and ſinging the *Litany*, the *Creed*, and the *Ten Commandments* with a Ha-ha-ha-ha-ha. For your part, you were aſhamed to hear it: and this you ſaid was all the Canting you knew.

Mr. Att. Gen. You will draw this upon your ſelf.

Mr. Roſewell. I am ſorry to hear this indeed, my Lord.

L. C. J. So am I too, with all my Heart, I'll aſſure you.

Mr. Roſewell. You ſay you ſet down the Words the ſame Day, when you came Home?

Smith. Yes, I reſolved ſo to do, when I came away from the Meeting, to write them down as ſoon as I came home.

Mr. Roſewell. Did you confer with any body about theſe Words?

Smith. Not till I came to a Juſtice of Peace, and diſcovered it.

Mr. Roſewell. What Juſtice of Peace was that whom you diſcover'd it to?

Smith. The *Recorder* of *London*.

Mr. Roſewell. And you ſwear theſe were the Words that I ſpoke?

Smith. Yes, as near as I can remember.

L. C. J. If ſhe ſwear the ſubſtantial part of them it is enough, tho' the very exact Words ſhe doth not ſwear: For the Words are laid in this Indictment in *Latin*, and by way of Aſſertion.

Mr. Roſewell. Your Lordſhip will pardon my Weakneſs, I am ignorant of the Law.

L. C. J. And we will take care you ſhall have nothing done to your Prejudice that is againſt Law.

Mr. Roſewell. I humbly thank your Lordſhip. Miſtreſs *Smith*, upon your Oath you ſay Mr. *Shed* was at that Conventicle?

Smith. Yes, he let me in at the Door, and was angry with me that I would come ſo near the Place with my Pattens; he ſaid it might give occaſion of Suſpicion.

Mr. Roſewell. You were ſaying you heard him expound. Where was that, pray?

Smith. Yes, that I did, at Mr. *Crookſhank*'s Houſe; and I heard him another time.——

Mr. Roſewell. What was the Day in *Auguſt* that you ſay you came firſt to hear me?

Smith. I do not ſay it was in *Auguſt*, but in *July* that I came firſt to hear you, the 20th of *July*.

Mr. Roſewell. You ſay I preached in the publick Meeting-Place; What Day was that pray?

Smith. The 10th of *Auguſt*, to the beſt of my Remembrance; it was the fourth Sunday, as I remember that I heard you there.

Mr. Roſewell. Have you not ſworn againſt Conventicles in other Places?

Smith. Yes.

Mr. Rosewell. What Conventicles?

Smith. If my Lords please to ask me, I shall give an account.

Mr. Rosewell. Have you, or have you not?

Smith. Yes, several; tho' I never heard any thing spoken in any of them against the King, but at yours.

Mr. Rosewell. Did you swear a Conventicle against one Mr. *Hales*?

Smith. I swore it by Confession.

Mr. Rosewell. Were you at that Conventicle?

Smith. No, I was not, but I swore it by Confession.

Mr. Rosewell. What day was that Conventicle?

Smith. As they told us, it was the 13th of *July*.

Mr. Rosewell. Was there any thing done upon that Conviction?

Smith. Yes, he paid his Money that was set upon him, and never made any Appeal; his Wife confessed it.

Mr. Rosewell. What other Conventicles have you been at?

Smith. Concerning you, do you mean?

Mr. Rosewell. No, any other Conventicles of the *Fanaticks* that you have sworn against.

Smith. I do not know whether that be a proper Question.

Mr. Rosewell. What say you, Mistress *Smith*?

L. C. J. No, no; that you must not ask her, that is to accuse her self.

Mr. J. Holloway. You must not ask her to any thing but that you stand here charged with.

L. C. J. You must not ask her any thing that may make her obnoxious to any Penalty.

Mr. J. Walcot. Do you ask her any other Questions?

Mr. Rosewell. I will presently, my Lord, I beg your Patience.

L. C. J. Ay, ay, take your own time.

Mr. Rosewell. Pray, Mistress *Smith*, were you a Witness against a Conventicle at one Mistress *Batho*'s?

Smith. Yes, that I had by Confession of her own Mouth.

Mr. Rosewell. Was there not some Money offer'd her——

L. C. J. That is not to be asked, you must not ask her any Question that may make her accuse her self criminally.

Smith. Never by me, Mr. *Rosewell*.

Mr. Rosewell. I beg your Lordships Pardon.—

L. C. J. I'll tell you the Reason for it, and it is that which ought to be satisfactory to you or any body. They are not bound to answer any Questions that you ask the Witnesses, whereby they charge themselves with any Crime, or by answering may subject themselves to any Penalty. Whether it be so or no, you must not ask them, but prove it.

Smith. I never did offer any, my Lord.

Rosewell. I thought I might offer any thing against what she had sworn.

L. C. J. Prove what you can in your Time; but do not ask her any such Questions. The Law is so, and the same for you as it is for every body else.

Mr. Rosewell. Mistress *Smith*, you swear these Words were spoken in the Forenoon upon that place, the 21st of *Genesis*, one after another.

Smith. Yes; those Words, as near as I can speak them, were spoken then.

L. C. J. Are those the Words you heard at that time?

Smith. In Substance they are, my Lord; as near as I can discover.

Mr. Rosewell. I have no more Questions to ask her at present my Lord.

Mr. Att. Gen. Pray, Mistress *Smith*, since he has started such a Question; Have you been tamper'd with, and been offer'd any Money; and what, and for what?

Smith. There came one *Cartwright*, and one *Norton* to me one Day, I cannot give an account exactly what Day it was; and first they spake to me about Mistress *Batho*'s Business, and afterwards they fell into Discourse about Mr. *Rosewell*, and they told me, They wonder'd I would have my hand in any Man's Blood. Said I to them, Suppose you had heard what I did, what would you have done? Says Mr. *Norton*, you had better take 20 Guineas, and not appear against him, said he; not that any body, that I know of, that he is concerned with, will give you that sum of Money, but you had better take it. Says I, what is the Truth no Money nor Gold shall buy me off from telling. What was Truth I would speak, and no more; and I had already given Evidence of it, and would not retract it. Said Mr. *Cartwright* then to me, But if you had not discovered it, no body else would. Said I, yes, others heard it as well as I.

Mr. Att. Gen. Has any body else tamper'd with you? have you had any Letter sent to you?

Smith. Nothing till Yesterday Morning: A Letter came then.

Mr. Att. Gen. What was that?

Smith. I suppose my Lord saw it.

Mr. Att. Gen. Ay, but you must tell the Jury what it was.

Smith. One came to my Brothers, and brought a Letter thither, which I read over; and he said to my Brother, if I could be any ways Assistant to Mr. *Rosewell* in not coming in against him I might have 200 *l.* paid down to Morrow, not that Mr. *Rosewell* knew of it, or would give it me, but it was a Wager that was lay'd. Some laid he would be hang'd, and some lay'd he would not; and so he said he would come and give me an account who it was that spoke to him.

Mr. Att. Gen. My Lord, we have done with her now. Call Mistress *Hilton*.

Mr. Rosewell. Will your Lordship please to indulge me so far that I may ask her another Question or two?

L. C. Just. What is it you would have, Sir?

Mr. Rosewell. I desire her before she goes out to recollect one thing.

L. C. J. Nay, nay, she shall not go away; If you have a Mind to ask her any thing before she goes away, do so; or she shall come again if you have any Questions to put to her.

Mr. Att. Gen. My Lord, she is big with Child, and cannot well crowd in and out.

L. C. J. If she be with Child, then let her sit upon the Stool there.

Mr. Rosewell. With your Lordships Indulgence, I would ask Mistress *Smith* this Question; The Gentlewoman that was with you, Mistress *Hilton*, I think you call'd her, did she agree with you as to the same Words, and as to Time and Place? *Smith.*

Smith. If you pleaſe to examine her, I ſuppoſe ſhe will give you an account.

Mr. Roſewell. Then I would ask her this Queſtion, with your Leave, my Lord; whether was that other Gentlewoman with you in the ſame Room?

Smith. Yes, ſhe was, and ſate upon the Bed with me, and I pulled her by the Sleeve when the Words were ſpoken, to take notice of them.

Mr. Att. Gen. Come, Miſtreſs *Hilton*, give my Lord and the Jury an account; have you been at this Conventicle at any time, and what have you heard there?

Hilton. I came to Miſtreſs *Smith*'s on *Saturday* Night, and on *Sunday* Morning I went with her to this Place; I was never there before in my Life, they ſaid it was one *Daniel*'s Houſe, one Captain *Daniel*'s; it was near *Weſt-Lane* in *Rotherhith*. And when we came there, there was one that Miſtreſs *Smith* knew, that ſtood at the Door, they call him *Paul Shed*, a little Man: And when we came to the Door, he ſaid to us, Pull off your Pattens, ſays he; for they will give too much Occaſion of Diſtruſt of Peoples coming: So we pulled off our Pattens, and ſaid we would take care the next time. When we came in, we went through a kind of a Hall, and when we came there into the Hall, there was a little Parlour againſt it: We went up the Stairs, and when we came up Stairs, there were two more Rooms; that Room we came into was hung with ſad-colour'd Paper, and upon the Left-hand there ſtood a Sweetwood kind of Cheſt, a little Cabinet, and a little Glaſs over that. Mr. *Roſewell* came, and ſtood at the Entrance in of the Door; ſo there was a little Child in bed when we came up, and we ſate down on the other ſide of the Bed; and the Child was taken out of the Bed preſently afterwards. Mr. *Roſewell* preached upon the 20th or 21ſt Chapter of *Geneſis*, I cannot be poſitive which of them, but one of them it was.——

Mr. Roſewell. But upon your Oath cannot you tell which it was?

L. C. J. You muſt not interrupt her, Sir; you ſhall have your time to aſk her what you will.

Hilton. It was the 20th or 21ſt of *Geneſis*, I will not be poſitive which of them it was. But the thing was as to *Abraham* and *Sarah*; that was the Contents of the Chapter that Mr. *Roſewell* was then pleaſed to preach upon. After he had took his Text, and preached a little while, he ſaid, *the People went flocking to the King to cure the King's Evil, which he could not do; for they ought to flock to them, that were Prieſts and Prophets, who by their Prayers could cure their Grievances.* Then he preached a great while of the Chapter following agen; and then ſays he, *We have had two wicked Kings that have ſuffered Popery to come in under their Noſes, which I can compare to nothing but the moſt wicked* Jeroboam. There was another King named, and I think it was *Rehoboam*. I cannot be poſitive as to that, but *Jeroboam* I am ſure was named. Then he ſaid, *If the People would ſtand to their Principles, he did not queſtion but to overcome all their Enemies with broken Platters, Rams Horns, and a Stone in a Sling.* Theſe were the Words Mr. *Roſewell* was pleaſed to ſay.

L. C. J. Can you remember what day of the Month this was?

Hilton. It was the 14th of *September*, my Lord.

L. C. J. Do you remember what number of People were there?

Hilton. I believe there were four or five hundred People; there was a Garret full, and two Rooms below, the Parlour full, and the Hall full; and one *Paul Shed*, (as Mrs. *Smith* told me his Name was,) let us in. I did not know any of them; nor ever had Convicted any of them; that was the firſt time I ever was at a Meeting in my Life, and I had enough of it then.

L. C. J. You ſay you came on *Saturday* Night to Miſtreſs *Smith*'s Houſe.

Hilton. Yes, my Lord.

L. C. J. What time that Night?

Hilton. About eight or nine a Clock.

L. C. J. What time in the Morning did you go along with her to this place?

Hilton. We went by ſeven a Clock in the Morning.

L. C. J. Did Mr. *Roſewell* come before you, or after you?

Hilton. No, he came preſently after we were there.

L. C. J. Do you remember any other Words he utter'd there that Day?

Hilton. He was pleaſed to talk of ſeveral things between whiles in his Sermon; among the reſt, I heard him ſpeak about Canting. He ſaid there was a Word they called Canting, but he did not underſtand what that Word meant, except it were the Fellows in their white Gowns. For he was going by one of their Churches, where he heard them ſing the *Lord*'s-*Prayer*, the *Creed*, and the *Ten Commandments*, with a Ha-ha-ha-ha-ha; for my part, ſays he, I was aſhamed to hear it.

L. C. J. Do you remember any other part of the Diſcourſe?

Hilton. He had a great many other of thoſe things, that I cannot now remember; it affrighted me to hear it, out of my Wits.

L. C. J. Where did you go from thence?

Hilton. We went Home to Mrs. *Smith*'s. It was two a Clock, and we had not eat a bit of Bread all the while; and as ſoon as ſhe came Home, Miſtreſs *Smith* took her Pen and Ink preſently, and writ down thoſe Words; her Husband and I, and ſhe, were together; and when we had done this, we went to the *Quaker*'s Meeting.

L. C. J. What *Quaker*'s Meeting is that?

Hilton. It is that by *Cheapſide*; I do not well remember the Name, I think it was called the *Bull* and *Mouth*.

Mr. J. Holloway. What time of the Day was it that the meeting was done at Mr. *Roſewell*'s?

Hilton. We came from Mr. *Roſewell*'s a little after two a Clock.

L. C. J. From Seven to Two did he hold? that is pretty long winded.

Hilton. No, he went into Dinner, and left us there, and abundance in the Congregation eat Sweet-Meats, or Biskets, or ſuch things as they had. But I am ſure we had nothing there. I was never among you before, nor ever Convicted any of you.

Mr. *Roſewell.* I humbly beſeech your Lordſhip to make her ſenſible of the Obligation ſhe is under by her Oath.

L. C. J. Ay, Ay; I will. Look you Miſtreſs, you muſt take notice, here is the Life of a Man in queſtion, which is a thing of great

Conſideration. And for you to have any concern in taking away the Life of a Man, if it be upon falſe Grounds, is a very diſmal thing; beſides, that there is a thing which is yet of greater weight and moment to you your ſelf, it concerns your own immortal Soul. You muſt conſider, what Guilt you contract upon your ſelf, if you tell a Lie; but there is a much greater Guilt contracted, if you offer to ſwear a Lie in a Court of Juſtice, upon a Cauſe of this Concernment. Conſider, I tell you, you are in the Preſence of Almighty God, that ſeeth into the Hearts of all Mankind; that is the Avenger of all Lying and Perjury; that may juſtly ſink you into Hell if you offer to ſwear a Falſhood. Therefore, I charge you, in the Name and Preſence of that great God, the Judge of Heaven and Earth, to anſwer me truly to this Queſtion: Are theſe things that you have ſworn here true?

Hilton. My Lord, they are every Word true. There is a Gentlewoman here, one *Mrs. Collingwood*, that ſhall witneſs, I ſet them down that Day; and went away to the Recorder, and gave him an Account of them.

Mr. Att. Gen. Well, if you have done, go over.

L. Ch. Juſt. No, hold Sir, will the Priſoner ask her any Queſtions?

Mr. Roſewell. Yes my Lord with your Leave.

Lord Ch. Juſt. Ay, in God's Name, what you will, that is fitting to ask.

Mr. Roſewell. Miſtriſs, what is your Name?

Hilton. My Name is *Hilton*.

Mr. Roſewell. Was your Name ever *Shaftoe*?

Hilton. Yes, but my Name now is *Hilton*.

Mr. Roſewell. Or otherwiſe *Smith*, I ſuppoſe: for I have heard ſo.

Hilton. No Sir.

Mr. *Roſewell.* Then *Mrs. Hilton*, upon the Oath you have taken, (for I hope you have obſerved what my Lord has ſaid to you about the Sin, and Danger of Falſe-ſwearing.) ——

Hilton. Mr. *Roſewell*, God forbid I ſhould ſtand here to tell ſuch a Lie as this; if it were not all Truth to my Knowledge, I would rather ſpeak leſs than more.

Mr. Roſewell. Were you at *Rotherhith* that 14th Day of *September*?

Hilton. Yes, I was. I was with *Mrs. Smith* at her Houſe over Night, and went with her to *Rotherhith* at Seven a Clock next Morning.

Mr. Roſewell. Whoſe Houſe were you at there?

Hilton. I cannot ſay whoſe Houſe it was of my own Knowledge, for I was never there before in all my Life; but they ſaid it was one Captain *Daniel*'s Houſe.

Mr. Roſewell. What Street was it in?

Hilton. I do not know what Street it was in, it was near *Weſt-Lane*.

Mr. Roſewell. What kind of Buildings were there in the Street?

Hilton. Over againſt it, a little way from the Houſe, is a Bridge, that we went over; I believe it may be ſome ten or twelve Doors from the Houſe.

Mr. Roſewell. In the Street, you ſay, over againſt the Houſe?

Hilton. A little way from it. *Mr. Roſewell*, if you do remember, (I can remember theſe things very well,) there were Shutters in the Windows, and the Sun came in, and you were afraid leaſt the People that went by ſhould hear you. *Firſt*, There was not light enough, and you deſired that one part of the Shutters might be opened; which was done: And then you deſired that half might be ſhut again, for fear the People ſhould over hear you.

Mr. Roſewell. What kind of Entrance is there into the Houſe?

Hilton. There is an Entry, and from the Entry we went into a little Hall, the Rooms were but of a low Height.

Mr. Roſewell. Was it in an upper Room, or a lower Room that I preached?

Hilton. It was in an upper Room, you were up two pair of Stairs, the Chamber was hung with ſad coloured Paper, and a ſad coloured Bed was in the Room; upon the Left hand, as you ſtood, there was a Cheſt of Sweet Wood ſtood, and a little Cabinet upon it, and a Glaſs over that; and upon the Right hand, on the ſide of the Chimney, was a Cloſet. I took very good Notice of all theſe things.

Mr. Roſewell. Two pair of Stairs, upon your Oath, you ſay it was?

Hilton. Yes, It was two Pair of Stairs, upon my Oath, Sir.

Mr. *Roſewell.* How many Steps, *Mrs. Hilton*, were there?

Hilton. They were low Stairs, eight or nine to a Pair, I think; I did not number them, Mr. *Roſewell*.

Mr. Roſewell. The other ſays, there was a little Room up ſix Steps; and that I was but one Pair of Stairs high.

Hilton. And there was a Garret, my Lord; which I am ſure there was above four Hundred People there at that Meeting.

Mr. Roſewell. Did you ſee that Number of People there?

Hilton. Yes, I did.

Mr. Roſewell. If you were within in the Room, how could you ſee them all there that were below, and in the Garret, as you ſay?

Hilton. When you went down to refreſh your ſelf, to Dinner, as I ſuppoſe; ſaid I to *Mrs. Smith*, for the Lord's ſake let me go out, for I am affrighted out of my Wits to hear ſuch Stuff as this.

L. C. Juſt. Frightful Stuff indeed.

Hilton. Says ſhe, you cannot go out till they all go; there is no Body to let you out; but I would fain have been gone out thence.

Mr. Roſewell. What time did you come thither, ſay you?

Hilton. We came by Seven a Clock in the Morning.

Mr. Roſewell. How did the Exerciſe begin?

Hilton. Between Seven and Eight.

Mr. *Roſewell.* I do not ask you what time, but how it began.

Hilton. You made a kind of a Prayer, I do not underſtand your way, for I never was uſed to your Meetings, I never was at any before in my Life. You took your Text, (I cannot be poſitive which, but it was) either out of the 20th or 21ſt Chapter of *Geneſis*.

Mr. Roſewell. But can you remember theſe Words, and not the Chapter?

Hilton. I can tell you more that you ſaid, if you pleaſe.

Mr. Roſewell. *Mrs. Hilton* ——

L. C. Juſt. Let her go on; you ask her a Queſtion, and will not ſtay for an Anſwer, but

go

go to another thing. She is telling you what was done.

Hilton. This I am poſitive in, it was the 20th or 21 Chapter of *Geneſis*: the Story was about *Abraham* and *Sarah*, how he bid her call her ſelf his Siſter.

Mr. Roſewell. That is the 20th Chapter.

L. C. Juſt. Nay, I ſuppoſe you can remember the Text better than this Woman.

Hilton. I believe it was the 20th, that you did moſt expound upon that Day; for you ſaid at laſt *Abimelech* made *Abraham* a Preſent, which you did think might be about 20 Guineas.

Mr. Reſewell. I ſee you are thorough paced.

L. Ch. Juſt. Methinks ſhe brought away much of your precious Stuff for one time upon my word.

Mr. Roſewell. How long did you ſtay there, Mrs. *Hilton?*

Hilton. I ſtay'd there from the time you came in till the end of all; about eleven or Twelve a Clock you went down to Dinner; They that were there ſtay'd till you came up agen, which was in the Afternoon; and then you began upon a Text which you took in the *Pſalms*, I think; I cannot poſitively ſay where; but a new Text you did take, that you did.

Mr. Roſewell. In the *Pſalms* did you ſay?

Hilton. And if it pleaſe you Sir, I never ſaw you but then, and now, in my Life.

Mr. Roſewell. What Habit was I in?

Hilton. You had a Camlet Cloak on that had an Eye of blew in it, and a mourning Hatband about your Hat; and upon the Bed-ſide by me ſate Mr. *Atkinſon* in a mourning Cloak, and his two Boys.

Mr. Roſewell. There was ſome Stop or Pauſe you ſay; you call it a Dinner?

Hilton. You went to Dinner, I ſuppoſe; I know not where you were.

Mr. Roſewell. Pray how did the Exerciſe begin in the Afternoon?

Hilton. I cannot very well tell.

Mr. Roſewell. Was you there to the End of it?

Hilton. To the very End of all.

Mr. Roſewell. What *Pſalm* was read, or what Chapter that I preached upon?

Hilton. Sir, I cannot remember what your *Pſalm* is. Theſe are the Words that you ſaid, and that you Preached. Sir, I cannot remember how all theſe came in, nor all the Stuff that was ſaid.

L. C. Juſt. She ſays ſhe cannot remember all your Stuff.

Hilton. I was never uſed to a Conventicle in my Life; and I would I had not been there then.

Mr. Roſewell. What was the Text I preached upon?

Hilton. In the Morning it was, I tell you the 20th or 21ſt Chapter of *Geneſis*. But the Heads of your Sermon, and after you had talked about the King, and all thoſe things, was about *Abraham* and *Sarah* ——

Mr. Roſewell. But what was the Text in the Afternoon?

Hilton. I cannot tell that truly.

Mr. Roſewell. Then upon what Occaſion were thoſe Words in the Morning about flocking to the King to cure the Evil?

Hilton. Sir, you ſaid——

L. C. Juſt. How can any Body tell what occaſion you could have. You had no Occaſion from that Text, nor any other Text that I know of to talk of the King, or the King's Evil.

Mr. Roſewell. But I ſpeak of the Coherence of the Diſcourſe, my Lord.

L. C. Juſt. You Preach without any Coherence, or you never had been brought here. When you give your ſelf the Liberty to talk of theſe things, you ramble from your Text.

Mr. *Roſewell.* I mean by it, my Lord, what part of the Chapter it was that did lead to it.

L. C. J. No Man living can tell; it was the Devil led you to talk Treaſon; The Indictment tells you ſo, that you had not the Fear of God before your Eyes, but were moved and ſeduced by the Inſtigation of the Devil to do it. Who leads People to do all ſorts of Wickedneſs but the Devil? you can give no reaſon for it your ſelf, nor no one elſe.

Mr. *Roſewell.* Were theſe Words delivered all in the Forenoon Diſcourſe?

Hilton. I do not know what you call Forenoon, or Afternoon: I am ſure we had no Dinner.

Mr. *Roſewell.* But was it all before or after I broke off, and went down?

Hilton. Before, Sir.

L. C. Juſt. She ſays it was before you went to Dinner; but for her part ſhe had no Dinner at all ſhe ſays. If you have done with her, then go on *Mr. Attorney.*

Mr. *Att. Gen.* Where is *Mrs. Joan Farrar?*

Farrar. Here I am, Sir.

Mr. *Att. Gen.* Pray, will you tell my Lord, and the Jury; were you preſent at this Houſe when Mr. *Roſewell* preached there?

Farrar. Yes, Sir, I was.

Mr. *Att. Gen.* What did you hear him ſay?

Farrar. Do you ask me of the 14th of *September* firſt, Sir?

Mr. *Att. Gen.* Yes.

L. C. Juſt. Why? were you there at any other time?

Farrar. Yes, ſeveral times.

Mr. *Att. Gen.* Well, take your own way of delivering your Evidence, and give an Account what you know of the Priſoner.

L. C. Juſt. But hark you, be ſure you tell nothing but what is Truth. You muſt conſider, here is the Life of a Man at the Stake, and your own immortal Soul is at ſtake too. You are in the Preſence of the great God of Heaven and Earth, that ſeeth into all your Actions and Thoughts, and ſearcheth the Hearts of all Mankind, and therefore have a Care of contracting any Guilt upon your ſelf by telling any Lie; be ſure to ſay nothing but what is Truth.

Farrar. Sir, I was not in the Room with him; I was in a Parlour or Hall, what do you call it, a low Room; and he was up Stairs above it.

Mr. *Att. Gen.* But were you in the Congregation? Were there any other of the Hearers in that Room among whom you were?

Farrar. Yes, Sir; there were a great many of them there, Sir.

Mr. *Att. Gen.* Well, what did you hear him ſay?

Farrar. Sir, concerning the Evil was the firſt thing I heard him ſay; and he made it ſo, that it was not the King that cured it, but it was they, they ſhould Flock to. It is we they ſhould Flock to, ſays he; for we are they

which

which are the Prieſts and the Prophets, that by our Prayers do cure the Grievances of the People.

Mr. *Att. Gen.* What did you hear him ſay more in that Diſcourſe?

Farrar. The next that I obſerved was, he ſaid, we had had now two wicked Kings together; but I could not tell who he compared them two wicked Kings to; but he bid the People ſtand to their Principles, and in time they ſhould overcome their Enemies.

Mr. *Recorder.* Pray have you heard him at any other time?

Farrar. Yes, I have heard him at other times.

Mr. *Recorder.* Did you take Notice of any thing he ſaid againſt the Government?

Mr. *Roſewell.* I beſeech your Lordſhip, may theſe leading Queſtions be asked?

L. C. J. Yes, I have told you already to ſhew your Practice. It is not at all a leading Queſtion. What did you hear him ſay at any other time about the Government?

Farrar. In a Mill, it was by *Rotherhith Wall*, at one *Hudſon's*, he prayed that he might not offend the Lord in not praying for the King; but the Lord might pleaſe to open his Eyes, or turn the Times.

L. C. J. Can you remember when that was?

Farrar. It was the 17th Day of *July*, —— no, of *Auguſt* to my beſt Remembrance; and upon the 17th Chapter of *Geneſis*.

L. C. J. That he preached upon there, did he?

Farrar. Yes, Sir.

L. C. J. Did you hear him ſay any thing at any other time?

Farrar. Yes, Sir.

Mr. *Recorder.* What do you remember about People in Scarlet?

L. C. J. Tell us what you have heard him ſay elſe?

Farrar. At *Weſt-lane* end, at one *Paul Shed's*, I heard him preach concerning the Fire of *London* about eighteen Years ago. That there was a certain great rich Man, that lived in *Gracechurch-ſtreet*; he ſaid, he needed not name him, he ſuppoſed they all knew who he was; and he ſaid there went a poor Man to him, not a poor Man neither, but a *Carpenter*, an Houſe-keeper, a labouring Man, and told him how to quench the Fire; and then he preached, that if it had not been for that great Man, that Fire had not been, nor the Fires in *Southwark* or *Wapping*, if it had not been for the Lord Mayors and Sheriffs ſince.

L. C. J. Have you any more to ask her?

Mr. *Recorder.* What have you heard him ſay elſe?

Mr. *Att. Gen.* No, my Lord, we have done, I think.

L. C. J. Anſwer my Brother *Jenner's* Queſtion.

Mr. *Recorder.* What about People in Scarlet?

Farrar. Then after he had preached concerning the Fire, he ſaid it was a fine Sight to ſee Fools in Scarlet Gowns; and he heard the *Recorder* was to be made a Judge.

L. C. J. He hears ſtrange Stories it ſeems. What do you make of this Brother *Jenner*?

Mr. *Roſewell.* God forbid, my Lord, this ſhould be true.

L. C. J. You ſee ſhe ſwears it.

Mr. *J. Withins.* Mr. *Roſewell*, will you ask her any Queſtions?

Mr. *Roſewell.* Miſtreſs, you ſay you were at the Meeting on the 14th of *September*; pray in whoſe Houſe was it?

Farrar. It was at a Houſe at the end of *Weſt-lane*; there are a Row of Houſes that face to the Fields.

Mr. *Roſewell.* But whoſe Houſe was it?

Farrar. They ſaid it was one *Daniel's* Houſe.

Mr. *Roſewell.* In what Room of the Houſe were you?

Farrar. In the lower Room.

Mr. *Roſewell.* Did you ſee me there?

Farrar. Sir, you were gone up Stairs before I came in.

Mr. *Roſewell.* You did not ſee me there upon your Oath?

Farrar. No, my Lord, I did not ſee him.

L. C. J. She ſaid at firſt, you were gone up before ſhe came, and ſhe was in a lower Room.

Farrar But I knew his Voice.

L. C. J. Did you know his Voice?

Farrar. Yes, Sir; I had heard him ſeveral times.

Mr. *Roſewell.* Did not you tell ſome Body that you heard none of theſe Words?

L. C. J. Were you aſleep all the while?

Farrar. No, Sir, I was not aſleep, I did not Sleep while I was in the Room. I never ſlept in your Preſence in my Life.

Mr. *Roſewell.* Were you there at the beginning? What time came you in?

Farrar. Sir, I believe you had read half your Prayer; I was at the beginning of the Sermon.

Mr. *Roſewell.* Who came along with you?

Farrar. I came alone; my Child was not well, and ſo I came late.

Mr. *Roſewell.* What was the Chapter I was upon?

Farrar. It was upon the 21ſt of *Geneſis*, Sir.

Mr. *Roſewell.* Upon what Verſe of the 21ſt of *Geneſis*, was it that you heard theſe Words?

Farrar. I cannot tell what Verſe it was.

Mr. *Roſewell.* I ask my Lord, becauſe I went diſtinctly upon Verſes.

L. C. J. Prithee Man, I care not how thou went'ſt on.

Mr. *Roſewell.* Cannot you tell how they came in?

Farrar. No, Sir.

L. C. J. Nor any one elſe, I dare ſay; how ſuch Words can come in.

Mr. *Roſewell.* Were the Words ſpoken together in that Exerciſe that you have ſworn?

Farrar. Yes, in that Exerciſe.

Mr. *Roſewell.* How long did you ſtay there?

Farrar. Till you had done, I believe it was two a Clock.

Mr. *Roſew.* Was it in the Forenoon?

Farrar. We had no Dinner at all; I cannot tell what you call Forenoon, or Afternoon.

Mr. *Roſew.* Was it all ſpoken upon that Chapter, upon your Oath?

Farrar. Truly, Sir, I think it was upon your firſt Text.

L. C. J. If you have done with her, let her go over.

Mr. *Att. Gen.* We ſhall call one or two more of his Auditors at other times, that will give ſome account of his Way. Where is your Man, Mr. *Atterbury*? What is his Name?

Mr.

Mr. *Atterbury*. *Peter*. But here is one of the Witneſſes.

Mr. *Att. Gen.* Swear him then. What is his Name?

(*He was ſworn.*)

Mr. *Atterbury*. *Robert Cook*, he ſays.

Mr. *Recorder*. Were you an Officer in this place?

Cook. Yes, in St. *Mary Maudlin*'s I was; Saint *Mary Magdalen Bermondſey* Pariſh.

Mr. *Recorder*. Were you at the executing of any Proceſs againſt *Roſewell*'s Conventicle?

Cook. If it pleaſe you, my Lord, I had a Warrant from Sir *Thomas Jenner*, to ſerve at one *Weldy*'s Houſe a Brick-layer in *Rotherhith*; and when I came to the Houſe to ſerve it, there was abundance of People, and a great Riot was made, but no Blows I confeſs; but a great Tumult of People, that had not I, and the Beadle, one *Samuel Bennet* by Name, cauſed the People to ſtand clear, I do not know but there might have been miſchief done. Of which, we upon that gave an account to Sir *Thomas Jenner*, and he hath bound ſome of the People over to the Seſſions.

L. C. J. What do you mean by this, Gentlemen?

Mr. *Att. Gen.* My Lord, we have done; this is only about ſome Diſturbances that the King's Officers meet with, in executing Proceſs againſt theſe Conventicles.

L. C. J. But what is this to the Priſoner?

Mr. *Att. Gen.* Here are ſome would have him called; but I confeſs we cannot make any uſe of his Evidence againſt the Priſoner, only as to what is hinted in the Indictment, that he did it to diſturb the Peace.——

L. C. J. Piſh, that is nothing, the Officer did his Duty; but what is that to this Buſineſs? Have you done, Gentlemen, for the King?

Mr. *Att. Gen.* Yes, my Lord, we have done.

L. C. J. Then Mr. *Roſewell*, now is your time to make your Defence; and you ſhall have time to make it as full as you will.

Mr. *Roſewell*. My Lord, may I have the Favour to have the Indictment read agen in *Latin*?

L. C. J. Yes, yes, if you will. Read it agen.

Mr. *Roſewell*. I humbly thank your Lordſhip, only the Words, my Lord.

Cl. of Crown. (reads.) *In quadam illicita aſſemblat', in præſentia & auditu diverſorum ſubdit' dicti Domini Regis, adtunc & ibidem illicitè & ſeditioſè aſſemblat' & congregat', aſſeruit & declaravit quod* populus (ſubdit' dicti Domini Regis nunc, innuendo) coadunationem fecere (*Anglice* made a flocking) dicto Domino Regi nunc, *ſub prætextu ſanandi morbum regni* (*Anglice* the King's Evil) *quod ipſe* (dictum Dominum regem nunc, iterum inuendo) *facere non poteſt; ſed nos ſumus illi* (ſeipſum Thomam Roſewell & al' ſeditioſas & proditor' perſon' inuendo) *ad quos illi* (ligeos ſubdit' dict' Domini regis nunc, inuendo) *debent accedere* (*Anglice* flock to) *quia nos* (ſeipſum predict' Thomam Roſewell & al' ſedit' & proditor' perſon' iterum inuendo) *ſumus Sacerdotes & Prophetæ qui precibus, dolores ipſorum* (ligeos ſubdit' dicti Domini regis nunc, iterum inuendo) *ſanaremus. Nos* (ſubdit' & ligeos hujus regni Angliæ inuendo) *habuimus nunc duos iniquos reges* (Sereniſſimum Carolum primum nuper regem Angliæ, & dict' Dominum regem nunc, inuendo) *inſimul, qui permiſerunt Romanam ſuperſtitionem* (*Anglice* Popery) *ingredi* (infra hoc regnum Angliæ inuendo) *in eorum conſpectu* (*Anglice* under their Noſes) *qui* (prædictum Carolum primum nuper regem Angliæ & dictum Dominum regem nunc, inuendo) *aſſimulari poſſunt ad nullam perſonam niſi ad nequiſſimum Jeroboam. Et ſi ipſi* (divers' malediſpoſit' & ſedit' perſon' adtunc & ibidem cum prefat' Thoma Roſewell illicite & ſeditioſe aſſemblat' & congregat' exiſten' inuendo) *ad fundamental' ipſorum permanerent* (*Anglice* would ſtand to their Principles) *ipſe* (ſeipſum Thomam Roſewell inuendo) *non timebat quin ipſi* (ſeipſum Thomam Roſewell & prædict' malediſpoſ' & ſedit' perſon' ſic ut prefertur aſſemblat' inuendo) *inimicos ſuos* (dictum Dominum regem nunc, & ligeos ſubdit' ipſius Domini regis nunc, inuendo) *vincerent, ſic ut in priſtino tempore cum Cornubus ariet', patinis fractis,* (*Anglice* broken Platters) *& lapide in funda* (*Anglice* Sling, *&c.*

Mr. *Roſewell*. If it pleaſe you, my Lord, that which I object againſt, and deſire to be ſatisfied in by your Lordſhip, is this; I am charged with ſpeaking words about flocking to the King to cure the King's Evil; and it is in the Indictment called *Morbus Regni Anglici*, that is, the Diſeaſe of the *Engliſh* Kingdom——

L. C. J. No, no; It is *Morbus Regni*, *Anglicè* the King's Evil.

Mr. *Roſewell*. I do not underſtand how *Morbus Regni* can be the King's Evil.

L. C. J. Therefore becauſe there is no apt Word in the Law for that Diſtemper, they help it up by the Word *Anglicè* to ſhew what they meant.

Mr. *Roſewell*. But my Lord, I underſtand there are proper Words for the Diſeaſe; as *Struma*, and *Scrofula*, thoſe are proper Words for it, not *Morbus Regni*.

L. C. J. Not at all in Law, thoſe may be the Words uſed among Phyſicians; but in legal Proceedings we are to keep up exactly to the legal Names and Phraſes; and where we have not an uſual Word, then we help it up by *Anglices*: And ſo here we expreſs that very Diſtemper, which is called by the Name of the King's Evil, by a Word framed as near to a Law Phraſe as we can; and to ſhew our meaning in it we add, *Anglicè* the King's Evil.

Mr. *Roſewell*. My Lord, is that the Phraſe that is proper for it in Law?

L. C. J. Yes, yes, it is very well expreſſed to ſhew what is meant.

Mr. *Roſewell*. But my Lord, *Morbus Regni* is in *Engliſh* properly the Diſeaſe of the Kingdom.

L. C. J. It is ſo, the Diſeaſe of the Kingdom; if they had gone no further, but left it there, it might have had ſuch an Interpretation put upon it. But becauſe the words are ſo ambiguous in *Latin*, they are reduced to a Certainty, by putting an *Anglicè* to them.

Mr. *Roſewell*. I thought it had been *Anglici*. My Lord, there is another Phraſe that I object againſt, it ſays *Nos habuimus nunc duos iniquos Reges inſimul*. My Lord, this cannot be underſtood of two Kings one after another; but *inſimul* makes it to be both at once.

L. C. J. No, we have had now together two wicked Kings.

Mr. *Roſewell*. That we do not uſe to expreſs ſo in *Latin*.

L. C. J.

L. C. J. The Words do thus ſound in *Engliſh.*

Mr. *Roſewell.* Here are two Words *Inſimul* and *nunc* that do ſignify the preſent time. My Lord, I am now only ſpeaking all this while upon the *Hypotheſis* that theſe Words were ſpoken by me; for I ſtill do and always muſt deny the *Theſis.*

L. C. J. We take it ſo.

Mr. *Roſewell.* It ſhould have been *Succeſſivè.*

L. C. J. Then it had not agreed with your Words. For the Witneſſes ſwear that you ſaid we have now had two wicked Kings together, and not ſucceſſively.

Mr. *Roſewell.* If that be an Angliciſm, this cannot be true *Latin.*

L. C. J. Nay, if it be a Blunder in the *Latin,* it was a Blunder of your making; for you ſpoke it ſo in *Engliſh,* and the Indictment in *Latin* muſt exactly purſue your *Engliſh.*

Mr. *Roſew.* Then, my Lord, here is another Expreſſion, that they ſuffered *Romanam ſuperſtitionem,* Popery to come in.

L. C. J. Ay, is not that well expreſſed?

Mr. *Roſew.* My Lord, there may be Superſtition in the Worſhip of the Church of *Rome,* and yet that not be the thing we call Popery.

L. C. J. There may ſo, you ſay right; but then this comes under the ſame reaſon, as the former Phraſe you objected againſt about *Morbus Regni.* Becauſe *Romana ſuperſtitio* is ſuch a general Word, and becauſe there are ſeveral Superſtitions in the Romiſh Church, abundance of them; and this may make it uncertain; and becauſe we have no other Word to expreſs what we call Popery by, therefore there is an *Anglicè* put in, to ſhew what is meant.

Mr. *Roſewell.* Then my Lord, it is ſaid *in eorum conſpectu:* is that right, my Lord?

L. C. J. Yes, *Anglicè* under their Noſes.

Mr. *Roſew.* That is in their Sight.

L. C. J. Pray how would you put that into Latin, under their Noſes?

Mr. *Roſew.* My Lord, if I ſhould ſpeak according to the other parts of the Latin of this Indictment, which your Lordſhips ſays muſt exactly purſue the Engliſh, I would render it *Sub naribus illorum.*

L. C. J. Such People ſuffer Conventicles under their Noſes, *in eorum Conſpectu.*

Mr. *J. Holloway.* 'Tis not your Noſe that ſees.

L. C. J. Suffer Rebellion under your Noſes; are theſe things *Sub naribus,* or *in Conſpectu?*

Mr. *Roſew.* My Lord, this could not poſſibly be ſpoken of the late King, and this King; when the Precedent King died a profeſſed zealous Proteſtant; and his preſent Majeſty has ſo often, and earneſtly declared againſt it.

L. C. J. We know that very well; but yet withal we know 'twas the Pretence of Popery and Arbitrary Power, and thoſe things that brought that bleſſed Martyr to the Scaffold; and the great Cry now at this Day by all Factious, and ſeditious buſy Fellows, is againſt Popery; as if it were juſt breaking in upon us, and the Government abetted it; when it is all falſe, nothing more untrue; the Indictment calls it ſo, ſays theſe Words are ſpoken *falsò, & malitiosè;* and all Treaſons are ſo.

Mr. *Roſew.* Then, my Lord, there is another thing, *Si ipſi ſtarent ad Fundamentalia eorum, Anglicè* if they would ſtand to their Principles, or Principals; for I know not how it is in the Indictment. Pray, my Lord, How comes *Fundamentalia* to ſignifie Principles?

L. C. J. Their Principles, that is their Foundations, or Fundamentals. *If the Foundations be deſtroyed, what can the righteous do?* Says the Pſalmiſt. The Latin Bible expreſſeth it by *Fundamentalia.*

Mr. *Roſew.* Then it is *ſi ipſi* in the third Perſon; now my Lord, in common Senſe that muſt needs refer to the two wicked Kings, that were ſpoken of juſt before; or to the King, and his Subjects ſpoken of afterwards; and then ſure it cannot be Treaſon.

L. C. J. No, *they;* that is, I and you that are here. 'Twas ſpoken to your Congregation. If they would ſtand to their Principles, then come the broken Platters, *&c.*

Mr. *Roſew.* If it were ſpoken to them, and of them, it muſt have been *you,* or *we.* Then it is added in the end, my Lord, *Fractis Patinis,* broken Platters: Your Lordſhip has remembred me of that Word. My Lord, I did hear that Miſtreſs *Smith* did ſwear at *Kingſton* Aſſizes, it was *Pewter* Platters.

L. C. J. I do not know what ſhe ſwore there; now I am ſure ſhe ſwears as it is in the Indictment.

Mr. *Roſew.* Miſtreſs *Smith,* Pray did not you ſwear it was Pewter Platters at *Kingſton?*

Smith. No, I never ſaid otherwiſe than I do now; and that is, broken Platters.

Mr. *Roſewell.* I did hear ſhe ſwore *Pewter* then. But, my Lord, I conceive, if it refers to me, and the People that were there, it ſhould have been as the former Sentence is in the firſt Perſon; *We* have had, *&c.* but here it is changed into the third Perſon, and therefore cannot be ſo meant.

L. C. Juſt. But it plainly ſpeaks its own meaning, that it is meant of the People there.

Mr. *Roſewell.* My Lord, then as to theſe *Inuendo's,* I ſee there are Eight or Ten of them. Whether are theſe to make ſuch a Conſtruction of a Man's meaning, which doth not otherwiſe ſufficiently appear, as to bring a Man under the guilt of Treaſon?

L. C. Juſt. I tell you, the meaning is plain; if you and we, ſuch falſe Traytors as are ſaid to be there aſſembled with you, will but ſtand to our Principles, we ſhall overthrow and deſtroy our Enemies with broken Platters and Ramshorns.

Mr. *Roſewell.* It is ſaid here *ipſe non timebat quin*——Of whom ſhould I ſpeak that *ipſe?*——

L. C. J. You were ſpeaking of your ſelf and your Congregation.

Mr. *Roſewell.* But that is in the third Perſon, and the ſingular Number.

* Mr. *Sol. Gen.* No, the Jurors that find this Indictment ſay, that he ſaid ſo, and that muſt be in the third Perſon. * Mr. *Finch.*

Mr. *Roſewell.* That is not according to the reſt.

Mr. *Juſt. Withins. They,* is the People with him; and *he,* is he himſelf; that is plain, and can have no other Conſtruction.

Mr. *Roſewell.* Now, my Lord, will your Lordſhip pleaſe to accept a free Declaration of the Truth of this matter?

L. C. Juſt. Ay, ay, go now to the Fact; now we are got over the Exceptions to the Indictment. To anſwer the Fact is moſt proper at this time.

Mr. *Roſew.*

Mr. *Roſewell.* Then here in the Preſence of the great God of Heaven, the righteous Judge of all the Earth; before whom you and I, and all that are here, muſt one Day appear, at that terrible Bar of impartial Juſtice, (and a glorious Tribunal it will be) to give an account of all things that we have done in the Body, whether they be good or evil; and I am told by my bleſſed Redeemer, (who ſhall alſo be my Judge that Day,) that an account muſt be given of every idle Word that I ſhall utter, how much more for Lying and Perjury, and Falſe-witneſs bearing, as your Lordſhip, (I humbly thank you for it,) did very ſeaſonably ſuggeſt to thoſe that have witneſſed theſe things againſt me; I ſay, in the Preſence of that great God, and this Honourable Bench of Reverend Judges, and you Gentlemen of the Jury and my dear Countrymen, that have been now ſworn, as well as returned by the Proceſs of Law for that end; I do here moſt ſolemnly declare the Truth unto you, as in the Preſence of this God I ſhall anſwer it hereafter. And I ſhall begin with the latter part of theſe Words firſt; where this Indictment ends; for that ſeems to refer to ſome things of the late Times, and alſo to my Treaſonable Intentions now. My Lord, and dear Countrymen, becauſe I heard ſomething mentioned as to the late unhappy Civil Wars in theſe Nations; I can declare, my Father was no ways concerned in thoſe Wars, for he was dead before they began; and I was then but a Child, and did not underſtand the thing. But for the Death of the King, (Death did I ſay? that is too ſoft a Word; the Murther, the barbarous Murther of His Majeſty King *Charles* the Firſt, whom I had once the Happineſs to ſee the Face of; or rather the Unhappineſs to ſee in reſpect of his Condition at that time; being at Dinner under a Tree, with ſome few Perſons about him, which very much affected my Heart, tho' then but young. So far was I from being one that would compare him to *Jeroboam*, &c. as your Lordſhip will hear, that) I always bewailed and abhorred that Act. For my preſent Sovereign, I declare in the Preſence of God, I honour him with my Soul, and daily pray for him; and if I could do him any real good, I would Sacrifice my Life moſt chearfully to do it; I would die at his Foot to do him any real good. My Lord, I was once threatned with the loſs of my Life for declaring for His Majeſty in his Exile; when, it is well known, few durſt appear in thoſe Days on the behalf of an injured Prince. It was objected againſt me, that I never prayed for *Oliver Cromwell*, that had Uſurped the Government. My Lord, I knew he ſtood upon a falſe Bottom; he was an Uſurper. And for declaring, that the Kingdom would never be at Peace till the Right Heir, our Sovereign that now is, were reſtored to his Right, I was threatned that a Gibbet ſhould be ſet at my Church Porch, and I hanged upon it, or at my own Door. I preached upon that place of Scripture, *Ezek.* 21. and the 27th Verſe, *I will overturn, overturn, overturn; and it ſhall be no more, until he come whoſe Right it is, and I will give it him.* And I declared in my Sermon the ſeveral overturnings, that God hath given them then in Power. And tho' they threatned me, yet God preſerved me then here at Home, as he did my dear Sovereign abroad; for whom I have prayed many hundreds and thouſands of times. And it is well known, immediately after his Majeſty's happy Reſtoration, I did upon one of His Majeſty's Days preached upon that Subject: *For the Tranſgreſſions of a Land, many ſhall be the Princes thereof.* I preached concerning the Excellency of Monarchy, which I ſhewed to be the chiefeſt and beſt of Governments, practiced almoſt every where: And I proved it from the Example of the great God of Heaven, the Monarch of all the World, down to ſome of the meaneſt Species of Creatures. I ſhewed it was the Government God had ſet up in his Church; appointing the Lord Chriſt to be the King there: Among the Angels there was the Prince of them: Among the Celeſtial Bodies, the Sun in the Firmament——

L. C. J. Mr. *Roſewell*, I am very unwilling to give you any Interruption, becauſe of the Condition you ſtand in, being a Priſoner pleading for your Life, upon an Accuſation of High-Treaſon. But I tell you, theſe things that you have now inſiſted upon are not at all to the purpoſe, as to what you are brought here for. You are not here Arraigned for your good Works, but for your evil Works. If you commend your ſelf for two Hours together; it ſignifies not one Farthing; and the Gentlemen of the Jury muſt let it go for nothing. It only ſerves to pleaſe your Humour of talking, and captivate the Auditory; but it is not at all to the purpoſe. Keep cloſe to the matter, that it is incumbent upon you to anſwer; to the Buſineſs you are upon here. It is our Duty who are upon our Oaths, and who are accountable to the Government and the Law for what we do, to ſee that things be done according to Law. You are not here called in Queſtion for your good Works or Actions; but for Treaſonable and Seditious Words. I would to God, you had never done worſe than what you have ſaid of your ſelf. But here is an Indictment for Traiterous Preaching at one particular Place, and one particular Time; anſwer to that, The Jury muſt go, not according to your way of Speaking; but according to the Evidence, relating to the Matters laid in this Indictment. Do not talk of your Preaching for Monarchy; and your Overturn, Overturn, Overturn; for if this be true, that the Witneſſes have Sworn againſt you, you have at once overturned all the good you ever did, or ſaid in your Life before.

Mr. *Roſew.* My Lord, I know very well, one ſuch evil Action is enough to marr a Life of former good ones. But this that I have ſaid was to ſhew, how inconſiſtent thoſe things that they have Sworn, are with my conſtantly declared Judgment and former Practice.

L. C. Juſt. There are abundance of People, to whom the King has formerly extended Mercy, not only his Pardon, but even all the Promotions their ambitious Fancies could make them pretend to: But 'tis well known, the Devil has not had more ready Inſtruments to carry on bloody Deſigns for the Murthering this Gracious King, their Princely Benefactor, than theſe very Men that were thus gratified and advanced by him. Therefore, we can ſay nothing to what is alledged of former Loyalty; the Devil ſurprizes Men into theſe things; they do them as the Indictment ſays, by the Inſtigation of the Devil. Keep to the Matter before you.

Mr. *Roſew.* Well then, my Lord, to cut ſhort. As to the Buſineſs ſince his Majeſty's Return: I have been a conſtant Obſerver of his Days; and particularly the 30th of *January* I have always obſerved as a Day of Humiliation: And I did upon one of thoſe Days preach upon that Text——

L. C. Juſt. And all this ſignifies juſt nothing; and upon that Day you went to a *Conventicle* againſt the Law, and Preached there; which ſhews, what a conformable Man to the Government and the Law you are. You can have your Congregation of Hundreds of People, and I know not what; now I tell you all this makes nothing againſt you, nor doth all your Commendation make any thing for you.

Mr. *Roſew.* My Lord, I do not know any Law of the Land that is againſt Preaching the Goſpel.

L. C. Juſt. Yes, in *Conventicles* to preach, is againſt the Law of the Land.

Mr. *Roſew.* My Lord, I humbly conceive it is the Circumſtance of Number that makes the Tranſgreſſion.

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Mr. *Roſew.* If you call that a Tranſgreſſion to preach the Goſpel, I humbly acknowledge my ſelf a Tranſgreſſor.

L. C. Juſt. I tell you it is a Tranſgreſſion; but it is not ſuch a Tranſgreſſion as that for which you are here Indicted: But becauſe you commend your ſelf ſo much; a Man, I muſt tell you, that every Day doth notoriouſly tranſgreſs the Laws of the Land, need not be ſo fond of giving himſelf Commendations for his Obedience to the Government and the Laws.

Mr. *Roſew.* My Lord, I was only ſaying that upon the 30th of *January* I preached upon that Text; 1 *Tim.* ii. 1, 2. *I exhort therefore, that firſt of all Supplications, Prayers, Interceſſions and giving of Thanks be made for all Men; for Kings and all that are in Authority; that under them we may lead quiet, and peaceable Lives, in all Godlineſs and Honeſty.*

L. C. Juſt. Amen! I ſay to that Petition.

Mr. *Roſew.* Amen! I am ſure I ſay to it, with all my Soul; and it is my daily Prayer to my God for my Sovereign. And here I ſhewed, that it was the Duty of Subjects to pray for their Prince——

L. C. Juſt. I tell thee, I care not a Farthing what thy Text was, nor thy Doctrine; I wiſh you had been at Church tho', and been conformable to the Laws. But this is nothing to our Buſineſs.

Mr. *Roſew.* I had therein a ſharp Reproof and Invective againſt thoſe that inſtead of praying for their Civil Head, cut it off; and thoſe that deſign and plot againſt the Government.

L. C. Juſt. You did abundance of good by your Sermon, no doubt; I ſhall not now ſtand to examine that.

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L. C. Juſt. Come, Come; All this is beſides the Cuſhion; come to the Matter that is here before us Man. I would not reſtrain you of any part of your Defence, either in Time, or any thing elſe; but let us not have the time taken up with that which no way concerns our Queſtion. Our Buſineſs relates to what was ſaid at your Meeting, at that Time the Witneſſes ſpeak of.

Mr. *Roſew.* Then, my Lord, as to the Truth of this particular Caſe, I ſhall now declare all that paſt then; as in the Preſence of that God who ſearcheth the Heart, and trieth the Reins, and who ſhall judge us all. Upon the 14th Day of *September* laſt, I did preach to ſome People that were met at a Friend's Houſe, one Capt. *Daniel* in *Rotherhith:* and as my Courſe hath been to expound the Scriptures, (to make them underſtand them) I was, my Lord, that Day upon the 20th *Chapter* of *Geneſis.* The Chapter is about *Abraham* and *Abimelech* King of *Gerar.* Now, my Lord, will you pleaſe that I ſhall deliver to you what was ſaid, by repeating it by Word of Mouth, or read it.——

L. C. Juſt. No, no; I do not deſire any of your Expoſitions, or Preachments; Anſwer to the Indictment, and what is charged upon you there.

Mr. *Roſew.* My Lord, I am about it, in telling you what was really ſaid; and I ask the favour of delivering in Court what I then delivered to them. My Lord, it was thus: In the 2d Verſe it is ſaid, *And Abraham ſaid of Sarah his Wife, ſhe is my Siſter;* From whence I obſerved, that he had been guilty of this once before, in the 12th Chapter, when he told the very ſame Lie to *Pharaoh* King of *Egypt.* And thence I raiſed this Note, *That a Good Man, or a Friend of God might fall into the ſame Sin once and agen.* And in proof of it, I brought three, or four Inſtances. That of *Lot* in the foregoing Chapter, his falling twice into the ſame Sins of Drunkenneſs and Inceſt with his own Daughters. That of *Samſon,* in the 16th of *Judges,* (and there came in the mention of *Dalilah,* that ſhe ſpoke of, which ſhe only remembers the Name of, and not the Truth of the Quotation.) That of *Peter's* denying his Maſter, Once, twice, and agen; firſt, with a Lie; ſecondly, with an Oath; and thirdly, with an Imprecation. But the Proof which they in this Point have moſt diſtorted, is that of *Jehoſaphat,* who ſinfully joyned with two wicked Kings: Firſt, with a wicked Father, *Ahab* in his Expedition into the Land of the *Syrians* againſt *Ramoth Gilead,* 2 *Chro.* 18th Chapter; for which he is reproved as a great Tranſgreſſor, and threatned by the Prophet in the 19th Chapter, and the beginning: And yet he afterwards joyned with another wicked King, *Ahaziah, Ahab's* wicked Son, to go to *Tarſhiſh;* as we may ſee in the 20th Chapter, and the latter end. And here, my Lord, is the whole of the Buſineſs concerning the two wicked Kings. In the Preſence of the Holy and great God there was not one word ſpoken of the Kings of *England,* either King *Charles* the Firſt, or his preſent Majeſty. This was as to the two wicked Kings. And then, my Lord, I came to the 7th Verſe, which has theſe Words, *He is a Prophet, and he ſhall pray for thee, and thou ſhalt Live.* Upon this I obſerved, That *the Prayers of God's Prophets have been very prevalent for the Healing, and helping of others in a time of need.* And three Proofs I brought of this: The laſt of which, was that of the Prophet *Iſaiah's* praying for King *Hezekiah* in the time of his great and dangerous Sickneſs. But that which has reference to this Buſineſs, was that out of the 1 *Kings* 13. and the beginning; *When the Prophet came to* Bethel, *and there rebuked* Jeroboam, *and propheſied againſt the Alter there;* Jeroboam *put forth his hand, and ſhook it at him, and ſaid, Lay hold of*

him

him; upon which the King's hand was dried up. Thereupon the King intreated the Prophet, that he would pray unto the Lord his God for him, that his hand might be reſtored, which the Prophet did; and the King's hand was reſtored again, and became as it was before. And here is the Buſineſs of *Jeroboam*. In the Preſence of God, I ſpeak it, there was not any the leaſt Compariſon of my Dear Sovereign to that accurſed wicked Prince *Jeroboam, who made Iſrael to Sin*: No, my very Soul trembled at the Thoughts of it when I heard it. Upon this Head I had this Sentence, or Obſervation (which I will give you to a Word.) If I were to die the next Moment, and appear before the glorious Tribunal of the Heavenly Majeſty, I tell not the leaſt Lie, or Equivocation, or Prevarication) *That a Godly Man's Prayer is a ſovereign Cure of the King's Evil; whereby the meaneſt, or the pooreſt Chriſtian may gratify, and ſerve the greateſt Monarch.* And this is not my Saying neither, but the Saying of an Expoſitor upon that very place of Scripture, out of whom I did quote it. Nor did I ſpeak of it, or he write of it, with reſpect to that particular Diſeaſe, that the Indictment calls *Morbus Regni*, but the King's Evil as the King's own Diſeaſe, in reference to *Abimelech*; who was King of *Gerah*. For it followeth in the Cloſe of the Chapter, *God heard* Abraham's *Prayer, and healed* Abimelech *and all his Houſe*. But as for that Word they ſpeak of; *of the People's flocking to his Majeſty to cure the King's Evil, which he could not do; and that we were Prieſts and Prophets to whom they muſt come for Cure*; in the Preſence of the Eternal God there was not a Word of it. Then, my Lord, for that of the Ram's-horns; I ſhall obſerve how that came in by and by; but firſt I will premiſe, That all this that has been how ſpoken of, was upon the Expoſition of that Chapter in the Morning. In the Afternoon I preached upon a particular Text; I began with the reading of a Pſalm, and a Chapter; and ſo far I conceive it was after the manner and Uſage of the Church of *England*, which enjoyns the reading of the Scriptures as Part of its Worſhip. I Preach'd upon the 11th of the Epiſtle to the *Hebrews*, and the 12th Verſe, (tho one of the Witneſſes ſaid it was a Pſalm)——

L. C. J. She would not be poſitive, but ſhe thought a Pſalm, ſhe could not tell.

Mr. Roſew. My Lord, it was the 11th of *Heb.* v. 12. the Words are theſe, *Therefore ſprang there of one, and him as good as Dead, ſo many as the Stars of the Sky in multitude, and as the Sand which is by the Sea-ſhore innumerable.* Upon which I had this Note, *That the great God can effect great Matters by very ſmall and unlikely Means*: As here, (*of one*) what was leſs than one? none at all: And *this one too as good as Dead*; and yet from him to raiſe as many as the Stars in the Sky, and the Sands on the Sea-ſhore. What great things did God effect by the Rod of *Moſes*? which was but a little Wand in his Hand, and yet a Sign and Symbol of Authority; *as our Sheriffs white Staves are.* Never was there any great Plague to be ſent upon the Enemy of God, and his Church, *Pharaoh* and his *Ægyptians*; but upon the ſtretching forth that little Rod, it came. And ſo, at the Siege of *Jericho*; What dreadful Dilapidations in that great City, did the Sound of the Rams-horns make? What a Terrible Army of the Enemies of the *Iſraelites* did *Gideon*'s ſmall Hoſt deſtroy, with a few broken Pots or Pitchers? (much leſs did I mention Platters, or Pewter Diſhes; as I have been informed they firſt Swore.) And what a tremendous Champion did *David* ſtrike down with a Stone in a Sling? And what a glorious Work did our Lord *Chriſt*, the Son of *David*, do, in his curing the Blind Man with a little Clay and Spittle; more likely to dam up the Eyes of one that could well ſee, than to open the Eyes of one that was born Blind. Now here, my Lord, is the whole truth in the Preſence of the Eternal God. Here your Lordſhip ſees is mention made upon the ſecond Verſe of the Twentieth of *Geneſis* of two wicked Kings; but how? not (as they have repreſented it) with any Reflection upon the Kings of *England*: Nor were they ſpoken in that order as they have Sworn them; but as I have now repeated them. Here is mention of healing the King's Evil, and of *Jeroboam*; but no way in that manner as they ſay. And here is likewiſe mention of Rams-horns, broken Pitchers, and a Stone in a Sling; but not with the leaſt application to the Government, or reference to it, or Reflection upon it or the King: and this is the Truth. I have made an ingenuous Confeſſion of the whole as it paſſed, that your Lordſhip may ſee how much I am abuſed by theſe falſe Wretches. And if they have ſo good Memories as really, and indeed to remember what was then ſaid, their Memories and their Conſciences cannot but go along with me, and confirm what I have ſaid; that all that was ſpoken by me that Day, was as I have related it, without the leaſt Reflection upon, or Application to his former Majeſty and our preſent Sovereign, or either of them, or any thing relating to the Government. And if you be not convinced here, I am ſure there will be a Day come wherein you will find and ſee, that theſe are none of the King's Friends, but his Enemies, that thus have falſly accuſed an innocent, faithful Loyal Subject of Treaſon; a Crime which my very Soul abhors the thoughts of. In Proof whereof, if your Lordſhip will give me leave, I will now call my Witneſſes to Teſtify the Truth of all this Matter. And after this free and ingenuous Confeſſion of the Truth, and what the Witneſſes I ſhall call will teſtify about it, I hope, and truſt in my Good God, that he will let you my Dear Countrymen, ſee the Truth and Sincerity of my Heart in whatever Words were ſpoken by me. Had I been guilty of thoſe Things that are laid to my Charge, I were not worthy to live. Pray Mr. *Cryer*, Call Mr. *Thomas Hudſon*.

L. C. J. Ay; Come call your Witneſſes.

Mr. Roſew. My Lord, One thing I would deſire to ſpeak to your Lordſhip. Your Lordſhip was ſpeaking, that what I declared of my former Loyalty was nothing to what the Witneſſes have depoſed; My Lord, I have read in a true Hiſtory, (I think the Scriptures will be owned by all Perſons that are here to be ſuch,) of two falſe Witneſſes, they were ſuch; they are called Sons of *Belial*; (I pray God theſe be not accounted Daughters of *Belial*) that Swore *Naboth did blaſpheme God and the King*. Doth your Lordſhip believe it?

L. C. J. What would you have of us, Man, by that Queſtion?

Mr. *Roſew.* I am confident, my Lord, your Lordſhip, and the Court, do not believe he did ſo.

L. C. J. The Scriptures tell us it was not true; Do you think we do not believe the Scrip-

Mr. *Roſew.* Well then, my Lord, to cut ſhort. As to the Buſineſs ſince his Majeſty's Return: I have been a conſtant Obſerver of his Days; and particularly the 30th of *January* I have always obſerved as a Day of Humiliation: And I did upon one of thoſe Days preach upon that Text——

L. C. Juſt. And all this ſignifies juſt nothing; and upon that Day you went to a *Conventicle* againſt the Law, and Preached there; which ſhews, what a conformable Man to the Government and the Law you are. You can have your Congregation of Hundreds of People, and I know not what; now I tell you all this makes nothing againſt you, nor doth all your Commendation make any thing for you.

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Mr. *Roſew.* Then, my Lord, as to the Truth of this particular Caſe, I ſhall now declare all that paſt then; as in the Preſence of that God who ſearcheth the Heart, and trieth the Reins, and who ſhall judge us all. Upon the 14th Day of *September* laſt, I did preach to ſome People that were met at a Friend's Houſe, one Capt. *Daniel* in *Rotherhith*: and as my Courſe hath been to expound the Scriptures, (to make them underſtand them) I was, my Lord, that Day upon the 20th *Chapter* of *Geneſis*. The Chapter is about *Abraham* and *Abimelech* King of *Gerar*. Now, my Lord, will you pleaſe that I ſhall deliver to you what was ſaid, by repeating it by Word of Mouth, or read it.——

L. C. Juſt. No, no; I do not deſire any of your Expoſitions, or Preachments; Anſwer to the Indictment, and what is charged upon you there.

Mr. *Roſew.* My Lord, I am about it, in telling you what was really ſaid; and I ask the favour of delivering in Court what I then delivered to them. My Lord, it was thus: In the 2d Verſe it is ſaid, *And Abraham ſaid of Sarah his Wife, ſhe is my Siſter*; From whence I obſerved, that he had been guilty of this once before, in the 12th Chapter, when he told the very ſame Lie to *Pharaoh* King of *Egypt*. And thence I raiſed this Note, *That a Good Man, or a Friend of God might fall into the ſame Sin once and agen.* And in proof of it, I brought three, or four Inſtances. That of *Lot* in the foregoing Chapter, his falling twice into the ſame Sins of Drunkenneſs and Inceſt with his own Daughters. That of *Samſon*, in the 16th of *Judges*, (and there came in the mention of *Dalilah*, that ſhe ſpoke of, which ſhe only remembers the Name of, and not the Truth of the Quotation.) That of *Peter's* denying his Maſter, Once, twice, and agen; firſt, with a Lie; ſecondly, with an Oath; and thirdly, with an Imprecation. But the Proof which they in this Point have moſt diſtorted, is that of *Jehoſaphat*, who ſinfully joyned with two wicked Kings: Firſt, with a wicked Father, *Ahab* in his Expedition into the Land of the *Syrians* againſt *Ramoth Gilead*, 2 *Chro.* 18th Chapter; for which he is reproved as a great Tranſgreſſor, and threatned by the Prophet in the 19th Chapter, and the beginning: And yet he afterwards joyned with another wicked King, *Ahaziah*, *Ahab's* wicked Son, to go to *Tarſhiſh*; as we may ſee in the 20th Chapter, and the latter end. And here, my Lord, is the whole of the Buſineſs concerning the two wicked Kings. In the Preſence of the Holy and great God there was not one word ſpoken of the Kings of *England*, either King *Charles* the Firſt, or his preſent Majeſty. This was as to the two wicked Kings. And then, my Lord, I came to the 7th Verſe, which has theſe Words, *He is a Prophet, and he ſhall pray for thee, and thou ſhalt Live.* Upon this I obſerved, That *the Prayers of God's Prophets have been very prevalent for the Healing, and helping of others in a time of need.* And three Proofs I brought of this: The laſt of which, was that of the Prophet *Iſaiah's* praying for King *Hezekiah* in the time of his great and dangerous Sickneſs. But that which has reference to this Buſineſs, was that out of the 1 *Kings* 13. and the beginning; *When the Prophet came to* Bethel, *and there rebuked* Jeroboam, *and propheſied againſt the Alter there*; Jeroboam *put forth his hand, and ſhook it at him, and ſaid, Lay hold of him*

him; upon which the King's hand was dried up. Thereupon the King intreated the Prophet, that he would pray unto the Lord his God for him, that his hand might be reſtored, which the Prophet did; and the King's hand was reſtored again, and became as it was before. And here is the Buſineſs of *Jeroboam*. In the Preſence of God, I ſpeak it, there was not any the leaſt Compariſon of my Dear Sovereign to that accurſed wicked Prince *Jeroboam, who made Iſrael to Sin*: No, my very Soul trembled at the Thoughts of it when I heard it. Upon this Head I had this Sentence, or Obſervation (which I will give you to a Word.) If I were to die the next Moment, and appear before the glorious Tribunal of the Heavenly Majeſty, I tell not the leaſt Lie, or Equivocation, or Prevarication) *That a Godly Man's Prayer is a ſovereign Cure of the King's Evil; whereby the meaneſt, or the pooreſt Chriſtian may gratify, and ſerve the greateſt Monarch.* And this is not my Saying neither, but the Saying of an Expoſitor upon that very place of Scripture, out of whom I did quote it. Nor did I ſpeak of it, or he write of it, with reſpect to that particular Diſeaſe, that the Indictment calls *Morbus Regni*, but the King's Evil as the King's own Diſeaſe, in reference to *Abimelech*; who was King of *Gerah*. For it followeth in the Cloſe of the Chapter, *God heard* Abraham's *Prayer, and healed* Abimelech *and all his Houſe*. But as for that Word they ſpeak of; *of the People's flocking to his Majeſty to cure the King's Evil, which he could not do; and that we were Prieſts and Prophets to whom they muſt come for Cure*; in the Preſence of the Eternal God there was not a Word of it. Then, my Lord, for that of the Ram's-horns; I ſhall obſerve how that came in by and by; but firſt I will premiſe, That all this that has been now ſpoken of, was upon the Expoſition of that Chapter in the Morning. In the Afternoon I preached upon a particular Text; I began with the reading of a Pſalm, and a Chapter; and ſo far I conceive it was after the manner and Uſage of the Church of *England*, which enjoyns the reading of the Scriptures as Part of its Worſhip. I Preach'd upon the 11th of the Epiſtle to the *Hebrews*, and the 12th Verſe, (tho one of the Witneſſes ſaid it was a Pſalm)——

L. C. J. She would not be poſitive, but ſhe thought a Pſalm, ſhe could not tell.

Mr. Roſew. My Lord, it was the 11th of *Heb.* v. 12. the Words are theſe, *Therefore ſprang there of one, and him as good as Dead, ſo many as the Stars of the Sky in multitude, and as the Sand which is by the Sea-ſhore innumerable.* Upon which I had this Note, *That the great God can effect great Matters by very ſmall and unlikely Means*: As here, *(of one)* what was leſs than one? none at all: And *this one too as good as Dead*; and yet from him to raiſe as many as the Stars in the Sky, and the Sands on the Sea-ſhore. What great things did God effect by the Rod of *Moſes*? which was but a little Wand in his Hand, and yet a Sign and Symbol of Authority; *as our Sheriffs white Staves are.* Never was there any great Plague to be ſent upon the Enemy of God, and his Church, *Pharaoh* and his *Ægyptians*; but upon the ſtretching forth that little Rod, it came. And ſo, at the Siege of *Jericho*; What dreadful Diſapidations in that great City, did the Sound of the Rams-horns make? What a Terrible Army of the Enemies of the *Iſraelites* did *Gideon*'s ſmall Hoſt deſtroy, with a few broken Pots or Pitchers? (much leſs did I mention Platters, or Pewter Diſhes; as I have been informed they firſt Swore.) And what a tremendous Champion did *David* ſtrike down with a Stone in a Sling? And what a glorious Work did our Lord *Chriſt*, the Son of *David*, do, in his curing the Blind Man with a little Clay and Spittle; more likely to dam up the Eyes of one that could well ſee, than to open the Eyes of one that was born Blind. Now here, my Lord, is the whole truth in the Preſence of the Eternal God. Here your Lordſhip ſees is mention made upon the ſecond Verſe of the Twentieth of *Geneſis* of two wicked Kings; but how? not (as they have repreſented it) with any Reflection upon the Kings of *England*: Nor were they ſpoken in that order as they have Sworn them; but as I have now repeated them. Here is mention of healing the King's Evil, and of *Jeroboam*; but no way in that manner as they ſay. And here is likewiſe mention of Rams-horns, broken Pitchers, and a Stone in a Sling; but not with the leaſt application to the Government, or reference to it, or Reflection upon it or the King: and this is the Truth. I have made an ingenuous Confeſſion of the whole as it paſſed, that your Lordſhip may ſee how much I am abuſed by theſe falſe Wretches. And if they have ſo good Memories as really, and indeed to remember what was then ſaid, their Memories and their Conſciences cannot but go along with me, and confirm what I have ſaid; that all that was ſpoken by me that Day, was as I have related it, without the leaſt Reflection upon, or Application to his former Majeſty and our preſent Sovereign, or either of them, or any thing relating to the Government. And if you be not convinced here, I am ſure there will be a Day come wherein you will find and ſee, that theſe are none of the King's Friends, but his Enemies, that thus have falſly accuſed an innocent, faithful Loyal Subject of Treaſon; a Crime which my very Soul abhors the thoughts of. In Proof whereof, if your Lordſhip will give me leave, I will now call my Witneſſes to Teſtify the Truth of all this Matter. And after this free and ingenuous Confeſſion of the Truth, and what the Witneſſes I ſhall call will teſtify about it, I hope, and truſt in my Good God, that he will let you my Dear Countrymen, ſee the Truth and Sincerity of my Heart in whatever Words were ſpoken by me. Had I been guilty of thoſe Things that are laid to my Charge, I were not worthy to live. Pray Mr. *Cryer*, Call Mr. *Thomas Hudſon*.

L. C. J. Ay; Come call your Witneſſes.

Mr. Roſew. My Lord, One thing I would deſire to ſpeak to your Lordſhip. Your Lordſhip was ſpeaking, that what I declared of my former Loyalty was nothing to what the Witneſſes have depoſed; My Lord, I have read in a true Hiſtory, (I think the Scriptures will be owned by all Perſons that are here to be ſuch,) of two falſe Witneſſes, they were ſuch; they are called Sons of *Belial*; (I pray God theſe be not accounted Daughters of *Belial*) that Swore *Naboth did blaſpheme God and the King*. Doth your Lordſhip believe it?

L. C. J. What would you have of us, Man, by that Queſtion?

Mr. *Roſew.* I am confident, my Lord, your Lordſhip, and the Court, do not believe he did ſo.

L. C. J. The Scriptures tell us it was not true; Do you think we do not believe the Scrip-

tures, becauſe we do not hear you Preach in your Conventicles? We do believe the Scriptures, Man; and we believe too they have been perverted by you, and other People, to very ill Purpoſes. Yes, I do remember the Story of *Naboth*; and to ſhew you that I can remember ſome Holy Hiſtory as well as you; I can tell you of another Story, and that is the Story of *Suſanna*, and the Elders, and there was Circumſtance of Time and Place teſtified to; but it ſeems they were defective in their Proof, and thereby diſcovered. You would do well to detect the Witneſſes if you can, in ſome Contradiction, or Falſhood; that will do you more Service, than all your Harangues and Speeches.

Mr. *Roſew.* The God of Heaven will do it this Day, I truſt; for to him I have open'd my Cauſe.

L. C. J. Well, well, Call your Witneſſes, and prove what you can.

Mr. *Roſew.* My dear Redeemer himſelf was ſerved ſo; nay condemned by the Teſtimony of falſe Witneſſes. (*Mr.* Hudſon *came in.*)

L. C. J. Come, here is your Witneſs; What ſay you to him?

Mr. *Roſew.* Mr. *Hudſon*, were you preſent at the Meeting at *Rotherhith* on Lord's-Day the 14*th* of *September* laſt?

Mr. *Hudſon.* Yes Sir, I was ſo.

Mr. *Roſew.* Here is Mrs. *Smith* hath ſworn that ſince the beginning of *Auguſt*, we had a meeting in our Publick Meeting-Houſe; Was there any, pray Sir?

Mr. *Hudſon.* There was none ſuch, that I know of.

Mr. *Roſew.* She ſwears, that we were at the Houſe of Captain *Daniel Weldy*'s the 14th of *September*. Was it ſo?

Mr. *Hudſon.* No, Sir.

Mr. *Roſew.* What place was it then?

Mr. *Hudſon.* It was one Capt. *Daniel*'s.

L. C. J. That is the ſame, as they ſay.

Mr. *Roſew.* The firſt Witneſs, Mrs. *Smith* ſaid Capt. *Weldy*'s; indeed, the other ſaid Capt. *Daniel*'s.

L. C. J. She ſaid ſhe was told ſo, but ſhe could not tell; but ſhe remembers you pray'd for him, and his Child too who was then ill.

Mr. *Roſew.* Pray Sir, as to the Truth of the Buſineſs; Did you hear me ſpeak of two wicked Kings? That, my Lord, came in, I ſay upon the ſecond Verſe of the 20th of *Geneſis*, which I then was expounding.

L. C. J. Nay, ask him in general what he heard you ſay? and whether he heard you ſay any thing of two wicked Kings, and what it was?

Mr. *Roſew.* Ay, about *Ahab*, and *Ahaziah* his Son——

L. C. J. Nay, nay, I muſt have none of thoſe Things, we muſt have fair Queſtions put; for, as you ſee we will not admit the King's Council to put any Queſtions to the Witneſſes, nor produce any Witneſſes againſt you, that are leading, or not proper, ſo nor muſt you: But if you have a mind to ask him any Queſtions, what he heard concerning two wicked Kings generally; do ſo.

Mr. *Hudſon.* Upon the 2d Verſe he was then.

L. C. J. Of what Chapter?

Mr. *Hudſon.* Of the 20th of *Geneſis*. I was then in the Place, and writ. He was upon the ſecond Verſe, and concerning *Abraham*'s denying of *Sarah* his Wife. Says Mr. *Roſewell*, doth *Abraham* here fall again into Lying? I thought he had ſmarted enough in the 12th Chapter, for the ſame he told to *Pharaoh*: And doth he fall again, and not take warning by it? From that you may take notice, that *the beſt of God's Children may fall agen and agen into the ſame Sin.* And there you quoted what Miſchief good *Jehoſaphat* had like to have brought upon himſelf, by joyning with two wicked Kings: Firſt, with wicked *Ahab* King of *Iſrael*; and, after he was reproved for it by the Prophet, yet he fell into the ſame Sin agen, by joying with *Ahab*'s wicked Son King *Ahaziah*. And ſo he quoted *Sampſon*, who got Miſchief by taking a Wife among the Daughters of the *Philiſtines*; and yet after he had felt ſome ſmart and hurt by it, yet like good *Jehoſaphat*, and good *Abraham*, he falls into the ſame Sin agen, by going to *Timnah* and taking *Dalilah*.

Mr. *Roſew.* What ſaid I, pray, upon the Seventh Verſe?

Mr. *Hudſon.* The Seventh Verſe was, concerning God's appearing to *Abimelech* in a Dream; where God ſays, *He ſhall pray for thee, for he is a Prophet, and thou ſhalt be healed.* And there Mr. *Roſewell* ſpoke concerning the Worth and Value of the Prayers of God's Prophets; wherein he inſtanced in one thing, that they were good to cure the King's Evil. And he quoted ſeveral Texts of Scripture of the Worth and Value of them; and among the reſt was that in the Firſt Book of *Kings*, the 13th Chapter, and the 6th Verſe, wherein the Prophet came to reprove *Jeroboam* at the Altar at *Bethel*; and the King ſtretched forth his Arm, and bid lay hold on him, and the King's Hand was dried up: Upon which, the King ſaid to the Prophet, *Intreat now the Face of thy God for me*, and he did ſo; the Prophet prayed unto the Lord, and the King's Arm was reſtored whole as the other. And he did quote that of *Hezekiah* too.

Mr. *Roſew.* My Lord, this Man did take Notes; and therefore may be the more exact.

Mr. *Hudſon.* Yes, my Lord, I have my Notes, and can read them at large; and I did generally write, my Lord.

Mr. *Roſew.* Then pray Mr. *Hudſon*, will you declare, whether you heard any thing in that Expoſition or Diſcourſe, concerning Rams-horns, broken Platters, and a Stone in a Sling?

Mr. *Hudſon.* That was in the Sermon, Sir; in the Afternoon.

Mr. *Roſew.* She ſwears it was all in the Morning Diſcourſe.

Mr. *Hudſon.* There was not ſuch a Word in that, as I know of. The Sermon was not in the Morning; you did only Expound, as you uſed to do, in the Morning.

L. C. J. If you have done with him, I would ask him a Queſtion or two. Hark you, Sir, Pray what time did this Exerciſe begin?

Mr. *Hudſon.* It begun about Eight a-Clock.

L. C. J. What number of People do you think there were there?

Mr. *Hudſon.* I cannot judge how many they were.

L. C. J. How many do you think?

Mr. *Hudſon.* I believe there were a matter of Forty or Fifty there.

L. C. J. No more than Forty or Fifty?

Mr. *Hudſon.* Alaſs, we could ſee but in one Room.

L. C. J.

L. C. J. What Room were you in?

Mr. *Hudſon.* I was in one of the Chambers.

L. C. J. How many Pair of Stairs high?

Mr. *Hudſon.* Two Pair of Stairs high.

L. C. J. Did you ſee Mr. *Roſewell*?

Mr. *Hudſon.* No, I could not ſee him at all.

L. C. J. Was there ever a Bed in the Room where you were?

Mr. *Hudſon.* No, my Lord, there was not.

L. C. J. Was there a Dinner-time between?

Mr. *Hudſon.* There was at Noon a Reſting a little while.

L. C. J. Did Mr. *Roſewell* go down?

Mr. *Hudſon.* Yes, my Lord, he did, I believe, go down Stairs.

L. C. J. Do you remember any thing that was ſpoken of *Sampſon* and *Dalilah*?

Mr. *Hudſon.* Yes, as I ſaid before, there was about *Sampſon*'s going down to *Timnah* to take *Dalilah*; ſhewing his failing, how he fell twice into the ſame Sin.

L. C. J. Did you hear any Diſcourſe about Canting? Did you obſerve he uſed that Word Canting?

Mr. *Hudſon.* No, not that Day, as I know of.

L. C. J. Did you ever hear him uſe that Word?

Mr. *Hudſon.* Yes, I did one Day.

L. C. J. Ay; What did he ſay that Day aboout Canting?

Mr. *Hudſon.* I am not able to tell you very exactly.

L. C. J. You muſt, you muſt indeed.

Mr. *Hudſon.* I do aſſure your Lordſhip, I know not how to repeat his Expreſſions about it.

L. C. J. For look you, Sir; Tho' you are not upon your Oath, becauſe the Law doth not allow it; yet the ſame thing that I told thoſe Witneſſes before, the ſame I muſt tell you; you muſt conſider, Friend, you come here to ſerve no turn, nor Party; you are in the Preſence of the great God of Heaven and Earth, who will call you to Account for every thing you Teſtify here; and therefore without any Subterfuges tell us the Truth, and the whole plain Truth without Welt or Guard.

Mr. *Hudſon.* My Lord, I will not deny one Tittle of the Truth, nor tell any thing that is untrue. I know I am in the preſence of a great Court of Juſtice, and in the Preſence of the God of Heaven.

L. C. J. Tell us then, what the Priſoner ſaid about Canting.

Mr. *Hudſon.* He was ſpeaking of the wicked Men of the World, that when they ſpoke concerning ſerious Religion called it Canting, and ſays he, what is Canting? Canting, ſays he, is a whining Tone.

L. C. J. Did you hear him ſpeak any thing concerning Organs, and Surplices, and white Gowns?

Mr. *Hudſon.* No, my Lord; nothing of Surplices nor white Gowns?

L. C. J. Nor any thing concerning Organs?

Mr. *Hudſon.* No; but ſomething he had concerning the Cathedrals, and their canting Tone there.

Mr. *Roſew.* Will your Lordſhip accept an ingenuous Confeſſion from me my ſelf about this Matter?

L. C. J. No, no, Mr. *Roſewell*, that will not be Evidence; you can neither acquit, nor condemn your ſelf by theſe Things either confeſſed or denied. It is your Witneſſes that I muſt ask, and that I expect an Account from. Therefore I ask you Friend, and pray recollect your ſelf, How was it that he talked concerning the Canting in Cathedrals?

Mr. *Hudſon.* Truly, my Lord, I cannot give a better Deſcription of it than I have done. For I neither do particularly remember what time it was that I heard him uſe that Expreſſion, nor can I tell you where it was; neither where, nor when.

Mr. *Roſew.* Shall I tell your Lordſhip the Occaſion——

L. C. J. Why do you think I believe any Word you ſay, notwithſtanding any Imprecations or Aſſeverations you make about your ſelf? It muſt neither weigh with the Court nor the Jury; we muſt go according to the Evidence. St. *Peter* himſelf, that you ſay you talked of, denied all with a great many Aſſeverations; but that Denial did not make him Innocent, no it was his Sin. So all your Imprecations, and Aſſeverations and Affirmations of your own Innocence, do not ſignify one Farthing to this Cauſe.

Mr. *Att. Gen.* Hark you, Mr. *Hudſon*; Let me ask you one Queſtion. Pray when Mr. *Roſewell* had explained thoſe Texts of Scripture, did he not uſe frequently to make Application of his Quotations?

Mr. *Hudſon.* Yes, my Lord.

Mr. *Att. Gen.* Then, pray Sir, after he had ſpoken of the two wicked Kings, how did he apply that?

Mr. *Hudſon.* My Lord, I will tell you how he applied it. After he had made thoſe Quotations, ſays he, take notice, if *Abraham* fell, and good *Jehoſaphat* fell, and *Sampſon* fell, and *Peter* fell, then what are we? *Let him that ſtandeth take heed leſt he fall*: and that was the Application he made of it.

Mr. *Att. Gen.* Do you ſpeak to all that Mr. *Roſewell* ſpoke in that Diſcourſe at that time touching theſe Matters?

Mr. *Hudſon.* No, Sir, not all; I cannot remember all: But the Subſtance of the diſtinct Heads I do remember.

Mr. *Roſewell.* Then about the King's Evil; how did you apprehend it was meant?

Mr. *Hudſon.* My Lord, I do not believe he ſpoke it with reſpect to that Diſeaſe which we call the King's Evil; becauſe he ſpoke it with reference to the Diſeaſe that the King was under.

Mr. *Roſew.* Did you hear any thing about Twenty Guineas?

Mr. *Hudſon.* No, I did not hear a Word of any Guineas that Day.

Mr *Sol. Gen.* Did you hear him ſay any thing about the Peoples flocking to the King?

Mr. *Hudſon.* No indeed, Sir; not I.

Mr. *Roſew.* Pray Mr. *Hudſon*, Did I name the Word *Prieſts*?

Mr. Hudſon. No, Sir, I did not hear you name Prieſts, but Miniſters and Prophets; and what a Judgment it was to have the Prophets taken away.

Mr. Att. Gen. Pray recollect your ſelf, Is that a Phraſe they uſe, Miniſters and Prophets; or do not they call themſelves Prieſts?

Mr. Hudſon. Miniſters and Prophets, my Lord, are the uſual Words.

Mr.

Mr. Att. Gen. Prieſts is the Word I am told they have.

Mr. Roſew. Then Sir, Pray will you give an Account how that about the Rams-horns came in?

Mr. Hudſon. That my Lord was upon that Text, 11 *Heb.* 12.——

Mr. Roſew. Do you remember what time it was; Forenoon or Afternoon?

Mr. Hudſon. I do remember it was in your Sermon in the Afternoon. The Words are theſe, *Therefore ſprang there even of one, and him as good as Dead, ſo many as the Stars in the Sky in multitude, and as the Sand by the Sea-ſhore innumerable.* From whence he *raiſed this Note, or Doctrine; That the great God could by very ſmall Means bring great things to paſs.* And then he came to prove his Doctrine, by ſeveral Inſtances. Says he, What Works did God do by *Moſes*'s Rod? And by *Gideon*'s broken Pitchers, routing a whole Army? What great Works has God done by ſmall Means? That by the ſounding of Rams-horns the Walls of *Jericho* ſhould fall down? And what great Wonders he wrought when *David* ſlew the tremendous Giant *Goliah* with a Stone out of a Sling! And what great Works and Wonders did the Son of *David* our Lord Jeſus Chriſt do, in opening the Eyes of him that was born Blind, with a little Clay and Spittle? The Application of that was, *A little Grace*——

L. C. J. We do not deſire to hear your Applications.

Smith. My Lord, if your Lordſhip pleaſe, Mr. *Hudſon* uſed to Expound himſelf.

Mr. Hudſon. My Lord, I uſed to repeat what I write in my own Family, that is all.

L. C. J. Yes, no doubt he is a moſt excellent Expoſitor; there are ſeveral People take upon them to Expound that can neither read, nor write. But pray Friend, let me ask you one Queſtion more; Was the Captain, at whoſe Houſe you were the 14th of *September*, at Home or at Sea?

Mr. Hudſon. My Lord, he was not at Home, but at Sea; and is ſtill at Sea.

L. C. J. Do you remember that he pray'd for him at that time?

Mr. Hudſon. Yes, my Lord, 'twas his common Practice to pray for the Family whereever he came.

L. C. J. And did he pray for his Son that was Sick?

Mr. Hudſon. I cannot tell whether he were Sick or no, I do not remember that; but he prayed for the Father and all his Children, the whole Family.

Mr. Roſew. Pray did you hear any one Word mentioned of the Kings of *England*, or of his preſent Majeſty, but only in Praying for him; as I bleſs God I daily do, that God would give him Grace and all good Things here, and his Glory hereafter?

Mr. Hudſon. Not one Word did I hear named of the Kings of *England*; nor of any Kings, but thoſe mentioned in the Scriptures, that were quoted; The Kings of *Iſrael*, and the like.

Mr. Roſew. Was there any Word ſpoken about Popery being permitted to come in under their Noſes?

Mr. Hudſon. Not one Word of that was ſpoken, that I know of.

L. C. J. Did you hear the King of *England* mentioned at all that Day?

Mr. Hudſon. Yes, in his Prayer. It was his conſtant courſe to pray for the King.

L. C. J. Ay; what did he pray for?

Mr. Hudſon. He uſed to expreſs himſelf very heartily in Prayer, that God would enable him to Rule and Govern the People under his Charge; and bleſs him. And he uſed to ſay, God forbid that he ſhould Sin againſt God in neglecting to Pray for the King.

Mr. *Roſewell.* It was *Samuel*'s Speech to *Saul.* Pray Sir, did you hear that?——

L. C. J. Nay, nay, ask him what he did hear you pray.

Mr. Roſew. Did I pray about opening the Eyes——

L. C. J. But you muſt not open your Witneſſes Eyes: Do not lead him.

Mr. Hudſon. It was his Common Practice to pray for the King, that God would preſerve him from all his Enemies.

L. C. J. And we ſay the ſame thing too.

Mr. Hudſon. And that God would remove all Evil Councellors from him.

L. C. J. Ay, no Queſtion.

Mr. Hudſon. And eſtabliſh his Throne in Righteouſneſs, and lengthen his Life, and proſper his Reign; and he uſed to pray as heartily, and as favourly for the King, as ever I heard any Man in my Life.

L. C. J. So there was praying in this Hall, I remember, for his late Majeſty; for the doing of him Juſtice: We all know what that meant, and where it ended.

Mr. Roſew. Mr. Cryer, prav call *Mr. George Hall. (who came in) Mr. Hall*, Were you preſent this 14th Day of *September* at *Rotherhith*?

Mr. Hall. Yes Sir, I was.

Mr. Roſew. When I expounded upon the 20th of *Geneſis*?

Mr. Hall. Yes, you did ſo, Sir.

Mr. Roſew. Pray will you inform my Lords what you heard me ſay.

Mr. Hall. I will inform them to the beſt of my Memory.

L. C. J. What Trade are you, Friend?

Mr. Hall. I am a Mealman my Lord.

L. C. J. Well, what ſay you?

Mr. Hall. The 14th of *September* laſt it was my Lot to hear Mr. *Roſewell* expound the 20th Chapter of *Geneſis*; as it was his uſual Courſe to expound a Chapter.

Mr. Roſew. It was not of Choice, but taken in Courſe. And pray what do you remember was ſaid by me about two wicked Kings?

Mr. Hall. Sir, I remember you brought a Scripture concerning *Jehoſaphat* joining with two; firſt of all with wicked *Ahab*, and afterwards with wicked *Ahaziah* his Son; and you proved it out of 2 *Chron.* 18th Chap. and 19th and 20th Verſes.

Mr. Roſew. Do you remember there was any one Word ſpoken of the Kings of *England*?

Mr. Hall. There was not one Word of his preſent Majeſty, nor his Father, nor any of the Kings of *England*; but of the Kings of *Iſrael*, *Ahab* and his Son.

Mr. Roſew. Well then, concerning *Jeroboam*, what do you remember of that?

Mr. Hall. As to *Jeroboam*——* You were expounding from the 7th Verſe of the 20th Chapter of *Geneſis*——And in the opening of that 7th Verſe among ſeveral Texts of Scripture,

* *This Witneſs was wont to ſay that ſome Perſon or Perſons pinch'd his Legs as he was*

giving his Evidence, which occaſioned thoſe frequent breaks.

ture, Mr. *Roſewell* had this Note, —Hold—*Jeroboam.*——

L. C. J. Ay, about *Jeroboam.*

Mr. Hall. My Memory fails me——

L. C. J. Ay, ſo I perceive it doth wonderfully.

Mr. *Hall.* As to *Jeroboam*, he brought a Text from the 2d Book of *Kings*, the 13th, and the former part of the Chapter. There was a Man of God that came to *Bethel*, and propheſied againſt *Dan* and *Bethel*, and there were theſe Words, that *Jeroboam*——

Mr. Roſew. He had his Hand dried up——

L. C. J. What do you mean by that? If your Witneſs be out in his Story, muſt you prompt him? Go on, Friend.

Mr. Hall. He propheſied, that the Bones of the Prieſts ſhould be laid upon the Altar and burnt, as we read in that Text of Scripture, 2 *Kings* 13. and the beginning. And *Jeroboam* was there, and put forth his Hand——and bid ſome body take hold of him——whereat the Hand of *Jeroboam* dried up.

Mr. Roſew. If it pleaſe your Lordſhip, I will call another.

L. C. J. Ay, ay, you may ſet him going, for he is out.

Mr. Hall. If it pleaſe you, I can go a little further. I have ſomething to ſay as to that——

L. C. J. You had beſt go out, and recollect your ſelf; you have forgot your Cue at preſent.

Mr. Roſew. Mr. Cryer, pray call Mr. *James Atkinſon.*

(*Who came in.*)

L. C. J. You Mrs. *Smith*, I will ask you, (I will not ask him himſelf, becauſe he may accuſe himſelf by it.) Is this the Miller at whoſe Houſe one of the Meetings was?

Smith. No, my Lord, the former Witneſs *Hudſon* is the Miller where he preached.

L. C J. Well, what do you ask this Witneſs?

Mr. Roſew. Mr. Atkinſon, were you at our Meeting the 14th of *September* laſt?

Mr. Atkinſon. Yes, I was there the 14th of *September.*

Mr. Roſew. Were you there at the Beginning?

Mr. Atkinſon. I was there from the Beginning to the End.

L. C. J. Pray, what Trade are you, Sir?

Mr. Atkinſon My Lord, I am a Mathematical Inſtrument-Maker.

Mr. Roſew. What Chapter was I upon?

Mr. Atkinſon. The 20th of *Geneſis* in courſe, and not out of Choice. His uſual Cuſtom was to expound a Chapter before he preached.

Mr. Roſew. Pray, what do you remember was ſaid by me of two wicked Kings?

Mr. Atkinſon. Of two wicked Kings! I remember that was upon the ſecond Verſe; how *Abraham* ſaid of *Sarah* his Wife, *She is my Siſter*: And upon that *Mr. Roſewell* had this Note, That *a Child of God may fall into the Commiſſion of the ſame Sin again and again, after he had been reproved and ſmarted for it.* And he quoted ſeveral Inſtances: As that of *Lot*, committing Inceſt over and over again; that of *Peter*, denying his Lord three Times; that of *Sampſon* out of *Judges*, taking two Wives among the *Philiſtines*, one after another; and then quoted that of *Jehoſaphat* joining with two wicked Kings; *Ahab*, in the 2d of *Chron.* 18. Chap. and afterwards, tho' reproved by the Prophet *Jehu*, he joined with *Ahab*'s wicked Son *Ahaziah.*

Mr. Roſew. Pray, what did you hear of the King of *England?*

Mr. Atkinſon. Not a Word, unleſs it were in his Prayer; in which he always uſed to pray earneſtly for the King.

Mr. Roſew. What do you remember was ſpoken about the King's Evil?

Mr. Atkinſon. There was an Expreſſion concerning the Evil, upon the 7th Verſe; *He is a Prophet, and he ſhall pray for thee, and thou ſhalt be healed.* And he had this Expreſſion, or to this ſame Effect, for I hope you cannot expect I ſhould ſpeak every Word exactly; but I ſhall endeavour to ſpeak the Senſe, and the Truth, as near as I can, and nothing elſe. He ſaid, the Prayers of God's Prophets were very prevalent for the healing and helping others in time of need. And he quoted ſeveral Inſtances; as that out of the Prophet *Jeremy*, 27th Chap. and 18th Verſe, to the beſt of my Remembrance. And he alſo quoted that of the 1 *Kings* 13. concerning *Jeroboam.* The Prophet came to reprove him, and *Jeroboam* ſtretched out his Hand againſt him, and it dried up; and then he deſired of the Prophet to pray for him; which he did, and his Hand was healed.

L. C. J. Look you, what you ſay may be true, and ſo may what they ſay too; for he might ſay both. You uſed to ſay abundance of good things, as well as ſome bad ones; therefore I would ask him this Queſtion, whether he heard any thing of the King's Evil, or that had any Reference to the King of *England?*

Mr. Atkinſon. This is all that I heard that comes to my Memory concerning the King's Evil. *That a godly Man by his Prayers may help to cure the King's Evil, and thereby the pooreſt Chriſtian may gratify the greateſt King*, as ſays our *Engliſh* Annotator upon that 7th Verſe; but I never underſtood him to mean it of the Diſeaſe of the King's Evil.

Mr. Roſewell. Do you remember that I preached in this Diſcourſe about Rams-horns or broken Platters?

Mr. Atkinſon. I did not hear of any ſuch thing upon all that Chapter.

L. C. Juſt. But did you hear him ſpeak of any ſuch thing at all that Day?

Mr. Atkinſon. Yes, my Lord I did.

L. C. Juſt. Come then let us have it. What was it?

Mr. Atkinſon. His Courſe was after the Expoſition, to preach a Sermon.

Mr. Roſewell. Was it in the Forenoon, or in the Afternoon?

Mr. Atkinſon. It was after the Expoſition; he prayed, and then ceaſed for a quarter of an Hour.

Mr. Roſew. Was it diſtinct in the Afternoon?

Mr. Atkinſon. It was another diſtinct Diſcourſe after the People had received ſome Refection in the Afternoon; I cannot tell exactly the time. But the Diſcourſe was preached from *Heb.* 11. 12. I ſuppoſe that I need not repeat the Words.

L. C. J. No, no, I care not for that.

Mr. Atkinſon. But he thence raiſed this Doctrine, *That the great God can effect great Matters by very unlikely means*; and he inſtanced in ſeveral

ral Particulars to prove it. As the Miracles God wrought by *Moſes*'s Rod; and the Walls of *Jericho* falling down at the ſound of Rams-horns, in the 6th of *Joſhua*; and then he quoted that of *Gideon*, a dreadful Rout of a great Army, by a few Earthen Pots and Pitchers; and what a tremendous Champion did *David* ſmite down with a Sling and a Stone?

Mr. *Roſew.* I have this one Queſtion more to ask you; did you hear me ſpeak any thing of ſtanding to their Principles?

Mr. *Atkinſon.* Not one Word; and I was there all that live long Day, from beginning to end.

L. C. J. Then, Sir, I would ask you a Queſtion or two, if Mr. *Roſewell* have done with you.

Mr. *Roſew.* I have, my Lord.

L. C. J. Pray, what Room were you in?

Mr. *Atkinſon.* I was in the ſame Room that Mr. *Roſewell* was, he ſtood at the Door.

L. C. J. What, one Pair of Stairs?

Mr. *Atkinſon.* Yes.

L. C. J. Is there not another Room between the Floor or the ground Room, and that you were in?

Mr. *Atkinſon.* Yes, Sir; there is another little Room, a little lower than that.

L. C. J. Was there a Bed in that Room you were in?

Mr. *Atkinſon* Yes, Sir.

L. C. J. Did you ſit upon the Bed?

Mr. *Atkinſon.* I did ſit upon the Bed ſometimes.

L. C. J. Had you a mourning Cloak on that Day?

Mr. *Atkinſon.* Yes, I had.

L. C. J. Had you a mourning Hatband?

Mr. *Atkinſon.* Yes, I had.

L. C. J. Do you remember who ſate by you?

Mr. *Atkinſon.* No, my Lord, I do not know.

L. C. J. Do you remember any Body gave you your Boy's Shoes from under the Bed?

Mr. *Atkinſon.* Yes, my Lord; but I cannot tell who.

L. C. J. Well then, I ask you, did you hear any mention made that Day about *Dalilah* and *Sampſon*?

Mr. *Atkinſon.* Yes, my Lord.

L. C. J. You did?

Mr. *Atkinſon.* Yes, my Lord, as an Inſtance of a good Man's falling twice into the ſame Sin.

L. C. J. Did you hear any mention made at that time concerning any other matter that you remember?

Mr. *Atkinſon.* My Lord, that of *Sampſon* and *Dalilah*, was one of the Inſtances that I repeated before.

L. C. J. Mrs. *Smith*, was it the ſame Day that he ſpoke about Canting?

Smith. Yes, it was.

L. C. J. Do you remember, Friend, any thing that was ſpoken by him that Day concerning Church-muſick?

Mr. *Atkinſon.* No, my Lord, not a Word that Day that I know of.

L. C. J. Did you hear any thing about Canting that Day?

Mr. *Atkinſon.* No, not a Word.

L. C. J. Did you hear him talk any thing of Surplices or white Gowns?

Mr. *Atkinſon.* No, my Lord, not one Word all that Day; but that of *Sampſon* and *Dalilah*, my Lord——

L. C. J. You remember that?

Mr. *Atkinſon.* Yes, it was one Inſtance of a good Man's committing the ſame Crime once and agen.

Mr. Roſew. Yes, I own it, it was ſo; but not as the other Witneſſes ſwear.

Mr. *Atkinſon.* Truly, my Lord, I would not tell one tittle of a Lie; to the beſt of my Remembrance——

Mr. *Sol. Gen.* Pray, Sir, let me ask you one Queſtion: I ſee you are very perfect in the Proofs of the Sermon, did you take Notes that Day?

Mr. *Atkinſon.* No, I did not, Sir.

Mr. *Sol. Gen.* Can you remember then any one Obſervation that he made upon any other Verſe? Pray what Obſervation did he make upon the eighth Verſe?

Mr. *Atkinſon.* None at all.

Mr. *Sol. Gen.* What upon the 12th or 13th Verſes?

Mr. *Atkinſon.* I cannot tell; I can upon the 5th.

Mr. *Roſew.* Will your Lordſhip give me leave to acquaint you with that?

Mr. *Atkinſon.* He only explained that which was difficult; but when it was a little Hiſtorical, he only read it. But what he obſerved upon the ſecond and the ſeventh Verſes, was the ſubſtance of the whole Expoſition almoſt.

Mr. *Att. Gen.* Has no body read the Notes of that Sermon to you ſince?

Mr. *Atkinſon.* I endeavour'd to recollect my ſelf, after I heard Mr. *Roſewell* was accuſed; and writ, what I could remember, down.

Mr. *Att. Gen.* But did any body read their Notes to you ſince?

Mr. *Atkinſon.* No, indeed, there has no body read any Notes to me.

Mr. *Att. Gen.* Upon your Oath how came you to remember the word *Tremendous*?

L. C. J. He is not upon his Oath, Mr. Attorny.

Mr. *Atkinſon.* Becauſe when he made ſuch ſhort Notes, I endeavour'd to remember them; I thank God I have a pretty good Memory.

Mr. *Att. Gen.* Ay, upon my Word, a very ſtrong one.

Mr. *Atkinſon.* He did uſe the Word tremendous Champion.

Mr. *Recorder.* Had you and Mr. *Hudſon* any Diſcourſe about this Matter ſince?

Mr. *Atkinſon.* Yes, Sir, we might talk what we did remember to one another.

Mr. *Sol. Gen.* Did he write down the Sermon?

Mr. *Atkinſon.* Yes, I ſuppoſe he did; but I did not ſit by him.

Mr. *Roſew.* Mr. Cryer, Pray call Mr. *William Smith.*

(*Who came in.*)

Mr. *Smith*, Were you at this Meeting the 14th of *September* laſt?

Smith. Yes, I was, Sir.

Mr. *Roſew.* Pray will you acquaint my Lords, what you heard me ſay there? What Chapter did I expound?

Mr. *Smith.* The 20th Chapter of *Geneſis.*

Mr. *Roſew.* What do you remember of it?

Smith. I remember the Chapter concerned *Abraham* and *Abimelech.*

Mr. *Roſew.* What did you hear of the People's flocking to the King to cure the King's Evil?

Mr. *Smith.* I heard no ſuch Word.

Mr. *Roſew.* Or that His Majeſty could not cure the King's Evil?

Smith:

Mr. *Smith.* No, Sir, not a Word of it.

Mr. *Roſew.* Did you hear any thing at all concerning the King's Evil?

Mr. *Smith.* Sir, you did quote ſomething out of the Annotator about the King's Evil.

Mr. *Roſew.* Do you remember what that was?

Mr. *Smith.* I cannot remember it fully at length, Sir.

Mr. *Roſew.* Pray did you underſtand it as meant of the King's Evil; or of the Evil of *Abimelech*, King of *Gerar*?

Mr. *Smith.* I did not underſtand it of the Diſeaſe ſo called; but of the Evil of *Abimelech*.

Mr. *Roſew.* What did you hear concerning Prieſts and Prophets?

Mr. *Smith.* You ſaid it was the Function of the Prophets to pray for the People.

Mr. *Roſew.* What do you remember was ſaid of two wicked Kings?

Mr. *Smith.* You did make mention of two wicked Kings, *Ahab* and *Ahaziah*; that *Jehoſaphat* ſinned, in joyning with them one after another.

Mr. *Roſew.* Was there any thing of the Kings of *England*, or of my Sovereign?

Mr. *Smith.* No, not at all, Sir.

L. C. J. Did you hear any thing concerning *Jeroboam*?

Mr. *Smith.* Yes, that *Jeroboam* ſtretched forth his Hand, and his Hand withered; and the Prophet prayed for him, and his Hand was reſtored.

L. C. J. Did you hear any thing in the Expoſition of broken Pitchers; I mean in the Forenoon?

Mr. *Smith.* No, I think not.

L. C. J. What did you hear of them? and when?

Mr. *Smith.* To the beſt of my Remembrance it was in the Afternoon; That God could do great matters by ſmall means; and you quoted ſeveral things. I did not ſtand well, ſo that I could not hear all the Particulars.

L. C. J. But what did you hear?

Mr. *Roſew.* Pray did you hear any Word of ſtanding to their Principles; or of overcoming, that Day?

Mr. *Smith.* No, I did not.

Mr. *J. Holloway.* It ſeems you did not ſtand in a good Place to hear.

Mr. Roſew. Mr. Cryer, Pray call Mr. *William Bates.*

(Which he did, but he did not appear.)

Cryer. He is not here, Sir.

Mr. *Roſew.* Pray Sir, call Mr. *George Hales* then.

(Who came in.)

Were you this 14th Day of *September* at this Meeting, Sir?

Mr. *Hales.* Yes, I was, Sir.

Mr. *Roſew.* Were you there from the Beginning to the End?

Mr. *Hales.* Yes, I was, Sir.

Mr. *Roſew.* Pray then will you tell my Lord what you heard me ſay, with reference to flocking to the King, or curing the King's Evil.

Mr. *Hales.* I heard nothing that you ſhould ſay of Peoples flocking to the King; but you were ſpeaking of the King's Evil, and that was thus: my Lord. It was from the 7th Verſe of the 20th Chapter of *Geneſis*, *He is a Prophet, and ſhall pray for thee, and thou ſhalt be healed.* God is ſpeaking to *Abimelech* in a Dream; and after a little Paraphraſe upon the Words, Mr. *Roſewell* ſaid, That *a godly Man's Prayer was a Sovereign Cure for the King's Evil*; and quoted ſome Scripture Inſtances, as in 1 *Kings*, where God having ſent a Man of God to reprove *Jeroboam* for his Idolatry, he ſtretched out his Hand, and his Hand withered; and he deſired the Prophet to pray to the Lord his God, that his Hand might be reſtored; and accordingly it was accompliſhed.

Mr. *Roſew.* Did you hear any thing of the Kings of *England*?

Mr. *Hales.* No, not one Word all that Day; only you Prayed for His Majeſty as you uſed to do.

Mr. *Roſew.* What do you remember was ſaid about Rams-horns?

Mr. *Hales.* I remember you were preaching out of the 11 *Heb.* 12. and the Words were theſe, *Therefore ſprang there of one, and him as good as Dead, as many as the Stars in the Sky for Multitude, and as the Sand upon the Sea-ſhore innumerable.* From whence he had this Obſervation, *That God is able to bring great Matters to paſs by ſmall Means.* And ſo accordingly Mr. *Roſewell* inſtanced how the Walls of *Jericho* were ſhook down by the ſounding of Rams-horns; or ſomething to that purpoſe.

Mr. Roſew. What do you remember of broken Platters?

Mr. *Hales.* I remember you brought in an Inſtance concerning *Gideon*: and I think it was thus, that by breaking a few earthen Pitchers he routed a great Army.

Mr. Roſew. And ſo of a Stone and a Sling. But was there any thing of ſtanding to Principles?

Mr. *Hales.* Not a Word.

L. C. J. As you heard?

Mr. *Hales.* That I heard.

L. C. J. Or that you remember?

Mr. *Hales.* Yes, my Lord. But you ſaid what a tremendous Champion did *David* ſlay with a Sling and a Stone.

L. C. J. Did you take Notes?

Mr. *Hales.* No, my Lord.

L. C. J. Then pray how came you to remember that Word tremendous?

Mr. *Hales.* I do remember he did uſe that Word.

L. C. J. Have you had any Diſcourſe about this matter ſince?

Mr. *Hales.* Yes, I have.

L. C. J. With whom?

Mr. *Hales.* With ſeveral Friends.

L. C. J. Did you diſcourſe with *Atkinſon* about it?

Mr. *Hales.* Yes, I did.

L. C. J. Did you with *William Smith*?

Mr. *Hales.* No; I do not remember I did.

L. C. J. Did you diſcourſe with *Hudſon*?

Mr. *Hales.* I cannot ſay I did.

Mr. Att. Gen. Nor you cannot ſay you did not.

L. C. J. Did you hear any Notes read?

Mr. *Hales.* I think I did.

L. C. J. Whoſe Notes were they you heard?

Mr. *Hales.* *Thomas Hudſon*'s Notes, I think; I am not ſure of it.

L. C. J. It is ſo hard and difficult to get out the Truth from this ſort of People; they do ſo turn and wind. How long after the Sermon was preached was it that you heard the Notes read?

Mr. Hales. I was in the Country when *Mr. Roſewell* was taken; and when I came home agen, I heard of it.

L. C. J. But you did not remember it till after he was taken?

Mr. Hales. No, my Lord; and I read the Chapter my ſelf, and remember'd theſe things.

Mr. Sol. Gen. Pray is the Word tremendous in *Hudſon*'s Notes, or no?

Mr. Hales. I cannot tell whether it be or no.

Mr. Att. Gen. Pray when was the next Day after this?

Mr. Hales. I cannot tell, I was in the Country.

L. C. J. Did he take Notes in Long-Hand, or Short?

A Stranger that ſtood by. In Characters, my Lord.

Mr. Att. Gen. Have you not heard him preach ſince that time?

Mr. Hales. Sir, I went into the Country ſoon after.

Mr. Att. Gen. Where was his Text at any other time? can you tell?

Mr. Hales. No, I cannot readily.

Mr. Att. Gen. Nor what he diſcourſed upon?

Mr. Hales. As to any particular time I cannot.

Mr. Att. Gen. Do not you remember his Text at any other time?

L. C. J. When was the time before this 14th of *September*, that you did hear him preach? You have heard him before?

Mr. Hales. Yes, my Lord, I have.

L. C. J. Was that upon a *Sunday*?

Mr. Hales. Yes, it was.

L. C. J. Did you hear him the *Sunday* before?

Mr. Hales. Yes, I did.

L. C. J. Well, what did he preach upon then?

Mr. Hales. This I know, that in his Courſe of Reading and Expoſition, he was upon the 19th of *Geneſis*.

L. C. J. What was his Diſcourſe upon that Chapter?

Mr. Hales. That I cannot tell.

L. C. J. Nor the Day afterward?

Mr. Hales. No my Lord.

L. C. J. Upon my Word you have a lucky Memory for this Purpoſe; to ſerve a turn, it can juſt hit to this very Day. You are very punctually inſtructed.

Mr. Sol. Gen. Do you remember any other part of the Sermon of this Day than what you have related?

Mr. Hales. Yes.

L. C. Juſt. Ay; tell us what you remember beſides.

Mr. Hales. I muſt conſider a little; I am not ſo ready at it.

L. C. J. Ay, Come let us hear it.

Mr. Roſew. Theſe Things he might have more occaſion to recollect by reaſon of my Charge.

L. C. J. You ſay right, juſt occaſion for this Purpoſe. But I thought theſe Men that have ſuch ſtupendious Memories, as to tell you they remember the Chapter, and the Verſe, and particular Words when it ſerves a Turn, might remember ſomething before or after, at leaſt in the ſame Sermon. Why do you think they were enlightned to underſtand, and remember that one Day more than any other? They can remember particularly as to ſuch things, and can Clan it together to anſwer ſuch particular Queſtions; but as to any thing before or after, they are not prepared.

Mr. J. Withins. Have you any more Witneſſes, *Mr. Roſewell*?

Mr. Roſew. Mr. Cryer, pray call *Mr. John Wharton.* (*Who came in.*)

Mr. *Juſt. Holloway.* Where do you dwell, *Wharton*?

Mr. *Wharton.* At *Rotherhith.*

Mr. *J. Holloway.* What Calling are you of?

Mr. *Wharton.* A Gardiner.

Mr. *Roſew.* Were you at the Meeting the 14th of *September*?

Mr. *Wharton.* Yes, I was, Sir.

Mr. *Roſew.* What do you remember pray of the Expoſition then concerning Flocking of the People to the King to be cured of the King's Evil?

Mr. *Wharton.* Sir, I do remember upon your Expoſition of the 20th of *Geneſis*, you were ſpeaking concerning *Abimelech* King of *Gerar*; and you took your Expoſition thus, That *Abimelech* had taken away the Wife of Faithful *Abraham*, that I do remember very well; and that you did ſay in your Expoſition, That the Prayers of the Prophet were prevalent for the curing of the King's Evil. And then you brought your Proof to the beſt of my remembrance concerning King *Jeroboam*; that *Jeroboam* ſtretched out his Hand againſt the Prophet of the Lord, and that the King cryed, Lay hold of him, when he came to cry againſt the Altar at *Bethel*, and his Hand dried up; whereupon the King deſired the Prophet to pray to the Lord, that his Hand might be reſtored; and he did ſo. This was the Expoſition that you made upon that Verſe in Part.

Mr. *Roſew.* Do you remember any thing of comparing the King of *England* to *Jeroboam*?

Mr. *Wharton.* I do not remember any ſuch Paſſage.

Mr. *Roſew.* Do you remember any thing about two wicked Kings?

Mr. *Wharton.* I do remember this Paſſage, concerning *Jehoſaphat*, that he had fallen twice into the ſame Sin, by taking part firſt with wicked *Ahab*, and then with his wicked Son *Ahaziah*.

Mr. *Roſewell.* Was there any thing of the Kings of *England* mentioned in this Diſcourſe?

Mr. *Wharton.* No, nothing Sir. It was but an accidental thing that I heard you then. I heard nothing of the King of *England* in your Expoſition or Sermon, but only in your Prayer; when you pray'd for his long Life and happy Reign.

L. C. Juſt. Did you ever hear him before that time?

Mr. *Wharton.* Yes, my Lord.

L. C. Juſt. Did you ever hear him ſince?

Mr. *Wharton.* Yes, once ſince.

L. C. Juſt. Now let us know his Text, and the ſubject Matter he was upon ſince.

Mr. *Wharton.* Truly, as to the time ſince I did not take much Account; for I did not write.

L. C. Juſt. Canſt thou tell us of what paſt at any time before?

Mr. *Wharton.* Once before, I heard him upon the 19 of *Geneſis*, where he made his Expoſition—Truly, I have not any Notes—

L. C. J.

L. C. J. Then hark you Friend, have you ſpoken with any Body ſince that 14th of *September* that did take Notes?

Mr. *Wharton.* I am not acquainted much with them that were his conſtant Hearers that did take Notes.

L. C. Juſt. But anſwer my Queſtion that I ask you; did you ever diſcourſe at all about this Matter? and with whom?

Mr. *Wharton.* I came thither by my ſelf, I ſay; I had not much Acquaintance with them.

L. C. Juſt. Nay, do not prevaricate, Friend, with the Court, but ſpeak the Truth out plainly. I ask you in the Preſence of Almighty God, did you ever ſpeak with any Body ſince the 14th of *September* about this Buſineſs?

Mr. *Wharton.* Mr. *Hudſon* did ſpeak with me about it.

L. C. Juſt. Did he read his Notes to you?

Mr. *Wharton.* Yes, he did.

L. C. Juſt. It is a ſtrange thing, Truth will not come out without this Wire-drawing. You cannot help this Canting for your Life; this is Canting, if you would know what Canting is. Did you ever ſpeak with *Hales*, or *Atkinſon*, or *Smith* about it?

Mr. *Wharton.* I do not know *Atkinſon*, or *Hales*. I know Mr. *Smith*; but I never ſpoke with him about it? nor he with me.

L. C. Juſt. When was it that *Hudſon* and you ſpoke together of this thing?

Mr. *Wharton.* It was laſt *Thurſday*.

L. C. J. Did he come to you, or you to him?

Mr. *Wharton.* I met him.

L. C. Juſt. Where did you meet him?

Mr. *Wharton.* At *Rotherhith*.

L. C. Juſt. Did he ſpeak to you of it firſt, or you to him?

Mr. *Wharton.* He ſpoke to me.

L. C. Juſt. Then I ask you, (and remember, though you are not upon your Oath, yet you are to teſtify the Truth, as if you were upon your Oath,) did he mention any thing of *Jeroboam*?

Mr. *Wharton.* Yes, he did.

L. C. Juſt. Of *Jehoſaphat*? and of *Abimelech*?

Mr. *Wharton.* Yes, he did.

L. C. Juſt. Did you mention any of theſe things to him?

Mr. *Wharton.* Yes, Sir, I repeated more then, than I have done now.

Mr. *Att. Gen.* Was your Meeting accidental, or appointed?

Mr. *Wharton.* It was accidental in the Street; I dwell below him a great deal.

Mr. *Att. Gen.* And where was it?

Mr. *Wharton.* We were talking in the Street.

Mr. *Juſt. Withins.* Did not you go into ſome Houſe?

Mr. *Sol. Gen.* Had you any Diſcourſe at that time of being preſent at the Tryal of Mr. *Roſewell*?

Mr. *Wharton.* No, I did not know any thing of it till I ſaw the *Subpœna*.

Mr. *Sol. Gen.* Before you diſcourſed with him, did you remember all theſe things?

Mr. *Wharton.* Yes I could remember them as well as he; and a great deal more then.

Mr. *Att. Gen.* Then, cannot you remember what was done the next Day?

Mr. *Wharton.* No, I cannot.

Mr. *Att. Gen.* How come you then to remember ſo well what was ſaid that Day?

Mr. *Wharton.* Becauſe there was a remarkable Paſſage, that I had never heard before expounded. I had not ſtaid at that time, but that he was expounding of a very remarkable thing, which I had never heard expounded before.

L. C. Juſt. Have you any more Witneſſes Mr. *Roſewell*?

Mr. *Roſew.* I have ſome Witneſſes to call more, if your Lordſhip pleaſes, to teſtify concerning my Life, and that I always prayed for the King, that God would Crown him with Grace here, and Glory hereafter; and that he would remove all his Enemies from him.

L. C. Juſt. Ay, Mr. *Roſewell*, firſt remove all his Friends from him; and then remove his Evil Counſellors.

Mr. *Roſew.* Pray *Cryer*, call Mr. *Charles Arthur.* (*but he did not appear.*)

Mr. *Juſt. Withins.* Come it ſeems, he is not here, call another.

Mr. *Roſew.* Call Mr. *Tho. Jolliff.*

(*Who appeared.*)

L. C. Juſt. What do you call this Man to?

Mr. *Roſew.* My Lord, this Perſon I call to teſtify with reſpect to my Converſation and Carriage towards His Majeſty and the Government.

L. C. Juſt. What is your Name, Sir?

Mr. *Jolliff. Thomas Jolliff.*

Mr. *Juſt. Holloway.* Where do you live, Sir?

Mr. *Jolliff.* In *Mary Magdalen*'s Pariſh.

L. C. Juſt. Why not St. *Mary Magdalen*'s?

Mr. *Roſew.* He is my Neighbour, my Lord.

L. C. Juſt. But, I ſuppoſe, he thinks that would have made the Name ſo much the longer; or elſe, he thinks, that there is *Popery* in calling it ſo.

Mr. *Jolliff.* No, my Lord, I have called it a Hundred times, and a Hundred times St. *Mary Magdalen*.

L. C. Juſt. Prithee then do it again, it will never be the worſe for thee, I dare ſay. Well, Mr. *Roſewell*, what do you ask him?

Mr. *Roſew.* Pray, Sir, will you teſtify what you know of my Converſation towards the Government, and particularly towards His Majeſty?

Mr. *Jolliff.* My Lord, in the time of Indulgence I have heard Mr. *Roſewell* once, or twice, or more; and I heard him pray for the King, and the Peace and Wellfare of the Nation, as heartily as ever I heard any Miniſter in *England* in my Life.

Mr. *Roſew.* Pray Sir, for my Converſation; did you ever hear any thing of my Diſloyalty or Diſaffection to his Majeſty, or the Government?

Mr. *Jolliff.* No, Sir, I never heard any thing of any Diſloyalty, or any ſuch thing in my Life; but all the Pariſh will give you an Account, that you have behaved your ſelf as an honeſt Man; and I never knew that either in Word, or Deed, you were accuſed of any Diſloyalty. And, my Lord, if you pleaſe to give me my Oath, I will ſwear it; for it is the ſame thing to me to teſtify here in ſuch a Court under an Oath, or without it; for I ought, I know, to teſtify the Truth.

Mr. *Roſew.* My Lord, I am confident that what he ſays he would Swear; and he is a very honeſt Man.

L. C. Juſt. Well Mr. *Roſewell*, if you have any more Witneſſes, call them; and make what

Mr. Hales. I was in the Country when *Mr. Rosewell* was taken; and when I came home agen, I heard of it.

L. C. J. But you did not remember it till after he was taken?

Mr. Hales. No, my Lord; and I read the Chapter my self, and remember'd these things.

Mr. Sol. Gen. Pray is the Word tremendous in *Hudson*'s Notes, or no?

Mr. Hales. I cannot tell whether it be or no.

Mr. Att. Gen. Pray when was the next Day after this?

Mr. Hales. I cannot tell, I was in the Country.

L. C. J. Did he take Notes in Long-Hand, or Short?

A Stranger that stood by. In Characters, my Lord.

Mr. Att. Gen. Have you not heard him preach since that time?

Mr. Hales. Sir, I went into the Country soon after.

Mr. Att. Gen. Where was his Text at any other time? can you tell?

Mr. Hales. No, I cannot readily.

Mr. Att. Gen. Nor what he discourst upon?

Mr. Hales. As to any particular time I cannot.

Mr. Att. Gen. Do not you remember his Text at any other time?

L. C. J. When was the time before this 14th of *September*, that you did hear him preach? You have heard him before?

Mr. Hales. Yes, my Lord, I have.

L. C. J. Was that upon a *Sunday*?

Mr. Hales. Yes, it was.

L. C. J. Did you hear him the *Sunday* before?

Mr. Hales. Yes, I did.

L. C. J. Well, what did he preach upon then?

Mr. Hales. This I know, that in his Course of Reading and Exposition, he was upon the 19th of *Genesis*.

L. C. J. What was his Discourse upon that Chapter?

Mr. Hales. That I cannot tell.

L. C. J. Nor the Day afterward?

Mr. Hales. No my Lord.

L. C. J. Upon my Word you have a lucky Memory for this Purpose; to serve a turn, it can just hit to this very Day. You are very punctually instructed.

Mr. Sol. Gen. Do you remember any other part of the Sermon of this Day than what you have related?

Mr. Hales. Yes.

L. C. Just. Ay; tell us what you remember besides.

Mr. Hales. I must consider a little; I am not so ready at it.

L. C. J. Ay, Come let us hear it.

Mr. Rosew. These Things he might have more occasion to recollect by reason of my Charge.

L. C. J. You say right, just occasion for this Purpose. But I thought these Men that have such stupendious Memories, as to tell you they remember the Chapter, and the Verse, and particular Words when it serves a Turn, might remember something before or after, at least in the same Sermon. Why do you think they were enlightned to understand, and remember that one Day more than any other? They can remember particularly as to such things, and can Clan it together to answer such particular Questions; but as to any thing before or after, they are not prepared.

Mr. J. Withins. Have you any more Witnesses, *Mr. Rosewell*?

Mr. Rosew. Mr. Cryer, pray call *Mr. John Wharton*. (*Who came in.*)

Mr. *Just. Holloway.* Where do you dwell, *Wharton*?

Mr. *Wharton.* At *Rotherhith*.

Mr. *J. Holloway.* What Calling are you of?

Mr. *Wharton.* A Gardiner.

Mr. *Rosew.* Were you at the Meeting the 14th of *September*?

Mr. *Wharton.* Yes, I was, Sir.

Mr. *Rosew.* What do you remember pray of the Exposition then concerning Flocking of the People to the King to be cured of the King's Evil?

Mr. *Wharton.* Sir, I do remember upon your Exposition of the 20th of *Genesis*, you were speaking concerning *Abimelech* King of *Gerar*; and you took your Exposition thus, That *Abimelech* had taken away the Wife of Faithful *Abraham*, that I do remember very well; and that you did say in your Exposition, That the Prayers of the Prophet were prevalent for the curing of the King's Evil. And then you brought your Proof to the best of my remembrance concerning King *Jeroboam*; that *Jeroboam* stretched out his Hand against the Prophet of the Lord, and that the King cryed, Lay hold of him, when he came to cry against the Altar at *Bethel*, and his Hand dried up; whereupon the King desired the Prophet to pray to the Lord, that his Hand might be restored; and he did so. This was the Exposition that you made upon that Verse in Part.

Mr. *Rosew.* Do you remember any thing of comparing the King of *England* to *Jeroboam*?

Mr. *Wharton.* I do not remember any such Passage.

Mr. *Rosew.* Do you remember any thing about two wicked Kings?

Mr. *Wharton.* I do remember this Passage, concerning *Jehosaphat*, that he had fallen twice into the same Sin, by taking part first with wicked *Ahab*, and then with his wicked Son *Ahaziah*.

Mr. *Rosewell.* Was there any thing of the Kings of *England* mentioned in this Discourse?

Mr. *Wharton.* No, nothing Sir. It was but an accidental thing that I heard you then. I heard nothing of the King of *England* in your Exposition or Sermon, but only in your Prayer; when you pray'd for his long Life and happy Reign.

L. C. Just. Did you ever hear him before that time?

Mr. *Wharton.* Yes, my Lord.

L. C. Just. Did you ever hear him since?

Mr. *Wharton.* Yes, once since.

L. C. Just. Now let us know his Text, and the subject Matter he was upon since.

Mr. *Wharton.* Truly, as to the time since I did not take much Account; for I did not write.

L. C. Just. Canst thou tell us of what past at any time before?

Mr. *Wharton.* Once before, I heard him upon the 19 of *Genesis*, where he made his Exposition—Truly, I have not any Notes—

L. C. J.

L. C. J. Then hark you Friend, have you ſpoken with any Body ſince that 14th of *September* that did take Notes?

Mr. *Wharton.* I am not acquainted much with them that were his conſtant Hearers that did take Notes.

L. C. Juſt. But anſwer my Queſtion that I ask you; did you ever diſcourſe at all about this Matter? and with whom?

Mr. *Wharton.* I came thither by my ſelf, I ſay; I had not much Acquaintance with them.

L. C. Juſt. Nay, do not prevaricate, Friend, with the Court, but ſpeak the Truth out plainly. I ask you in the Preſence of Almighty God, did you ever ſpeak with any Body ſince the 14th of *September* about this Buſineſs?

Mr. *Wharton.* Mr. *Hudſon* did ſpeak with me about it.

L. C. Juſt. Did he read his Notes to you?

Mr. *Wharton.* Yes, he did.

L. C. Juſt. It is a ſtrange thing, Truth will not come out without this Wire-drawing. You cannot help this Canting for your Life; this is Canting, if you would know what Canting is. Did you ever ſpeak with *Hales*, or *Atkinſon*, or *Smith* about it?

Mr. *Wharton.* I do not know *Atkinſon*, or *Hales*. I know Mr. *Smith*; but I never ſpoke with him about it? nor he with me.

L. C. Juſt. When was it that *Hudſon* and you ſpoke together of this thing?

Mr. *Wharton.* It was laſt *Thurſday*.

L. C. J. Did he come to you, or you to him?

Mr. *Wharton.* I met him.

L. C. Juſt. Where did you meet him?

Mr. *Wharton.* At *Rotherhith*.

L. C. Juſt. Did he ſpeak to you of it firſt, or you to him?

Mr. *Wharton.* He ſpoke to me.

L. C. Juſt. Then I ask you, (and remember, though you are not upon your Oath, yet you are to teſtify the Truth, as if you were upon your Oath,) did he mention any thing of *Jeroboam*?

Mr. *Wharton.* Yes, he did.

L. C. Juſt. Of *Jehoſaphat*? and of *Abimelech*?

Mr. *Wharton.* Yes, he did.

L. C. Juſt. Did you mention any of theſe things to him?

Mr. *Wharton.* Yes, Sir, I repeated more then, than I have done now.

Mr. *Att. Gen.* Was your Meeting accidental, or appointed?

Mr. *Wharton.* It was accidental in the Street; I dwell below him a great deal.

Mr. Att. Gen. And where was it?

Mr. *Wharton.* We were talking in the Street.

Mr. *Juſt. Withins.* Did not you go into ſome Houſe?

Mr. *Sol. Gen.* Had you any Diſcourſe at that time of being preſent at the Tryal of Mr. *Roſewell*?

Mr. *Wharton.* No, I did not know any thing of it till I ſaw the *Subpœna*.

Mr. *Sol. Gen.* Before you diſcourſed with him, did you remember all theſe things?

Mr. *Wharton.* Yes I could remember them as well as he; and a great deal more then.

Mr. *Att. Gen.* Then, cannot you remember what was done the next Day?

Mr. *Wharton.* No, I cannot.

Mr. *Att. Gen.* How come you then to remember ſo well what was ſaid that Day?

Mr. *Wharton.* Becauſe there was a remarkable Paſſage, that I had never heard before expounded. I had not ſtaid at that time, but that he was expounding of a very remarkable thing, which I had never heard expounded before.

L. C. Juſt. Have you any more Witneſſes Mr. *Roſewell*?

Mr. *Roſew.* I have ſome Witneſſes to call more, if your Lordſhip pleaſes, to teſtify concerning my Life, and that I always prayed for the King, that God would Crown him with Grace here, and Glory hereafter; and that he would remove all his Enemies from him.

L. C. Juſt. Ay, Mr. *Roſewell*, firſt remove all his Friends from him; and then remove his Evil Counſellors.

Mr. *Roſew.* Pray *Cryer*, call Mr. *Charles Arthur.* (*but he did not appear.*)

Mr. *Juſt. Withins.* Come it ſeems, he is not here, call another.

Mr. *Roſew.* Call Mr. *Tho. Folliff.*

(*Who appeared.*)

L. C. Juſt. What do you call this Man to?

Mr. *Roſew.* My Lord, this Perſon I call to teſtify with reſpect to my Converſation and Carriage towards His Majeſty and the Government.

L. C. Juſt. What is your Name, Sir?

Mr. *Folliff. Thomas Folliff.*

Mr. *Juſt. Holloway.* Where do you live, Sir?

Mr. *Folliff.* In *Mary Magdalen*'s Pariſh.

L. C. Juſt. Why not St. *Mary Magdalen*'s?

Mr. *Roſew.* He is my Neighbour, my Lord.

L. C. Juſt. But, I ſuppoſe, he thinks that would have made the Name ſo much the longer; or elſe, he thinks, that there is *Popery* in calling it ſo.

Mr. *Folliff.* No, my Lord, I have called it a Hundred times, and a Hundred times St. *Mary Magdalen.*

L. C. Juſt. Prithee then do it again, it will never be the worſe for thee, I dare ſay. Well, Mr. *Roſewell*, what do you ask him?

Mr. *Roſew.* Pray, Sir, will you teſtify what you know of my Converſation towards the Government, and particularly towards His Majeſty?

Mr. *Folliff.* My Lord, in the time of Indulgence I have heard Mr. *Roſewell* once, or twice, or more; and I heard him pray for the King, and the Peace and Wellfare of the Nation, as heartily as ever I heard any Miniſter in *England* in my Life.

Mr. *Roſew.* Pray Sir, for my Converſation; did you ever hear any thing of my Diſloyalty or Diſaffection to his Majeſty, or the Government?

Mr. *Folliff.* No, Sir, I never heard any thing of any Diſloyalty, or any ſuch thing in my Life; but all the Pariſh will give you an Account, that you have behaved your ſelf as an honeſt Man; and I never knew that either in Word, or Deed, you were accuſed of any Diſloyalty. And, my Lord, if you pleaſe to give me my Oath, I will ſwear it; for it is the ſame thing to me to teſtify here in ſuch a Court under an Oath, or without it; for I ought, I know, to teſtify the Truth.

Mr. *Roſew.* My Lord, I am confident that what he ſays he would Swear; and he is a very honeſt Man.

L. C. Juſt. Well Mr. *Roſewell*, if you have any more Witneſſes, call them; and make what

Remarks upon the Evidence you please afterwards, for this is not the time for making Remarks.

Mr. *Rosew.* I humbly thank your Lordship for your great Favour.

L. C. Just. I do not speak it to cramp you in your time; but call your Witnesses, and then make what Remarks you will: For, God forbid, we should hinder you from taking your full time; for you stand here for your Life.

Mr. *Rosew.* Is Mr. *Winnacott* here?

(*He did not appear.*)

Then pray call Captain *Richard Cotton.*

(*But he did not appear.*)

Call Mr. *Thomas Fipps.*

(*Then Capt.* Cotton *appear'd.*)

Mr. Rosew. This Gentleman, my Lord, hath known me for several Years. Captain *Cotton*, I pray Sir, will you speak what you know of my Conversation, and Life, and Loyalty, with respect to the King and Government?

Capt. *Cotton.* My Lord, and Gentlemen of the Jury, of late I have not frequented *Mr. Rosewell's* Company, or his Congregation; but when the Door stood open, without opposition, I have been there; and have heard him pray for the King and Government several times; and bless God that we lived under so peaceable a Prince, when all our Neighbours were in Blood and War.

Mr. Rosew. Pray, Sir, have you ever heard, that either in Word or Deed, I should ever declare against His Majesty, or the Government?

Capt. *Cotton.* No, I never heard any such thing in my Life; but what I heard now upon this Trial up and down the Hall, as I was walking below.

Mr. Just. Withins. How long ago is it, that you speak of, *Mr. Cotton?*

Capt. *Cotton.* I was abroad most of the time at Sea; but this was three, or four, or five Years ago.

Mr. Just. Withins. What time was that?

Capt. *Cotton.* It was in the time of the Indulgence.

Mr. Just. Withins. Ay, then it may be, he could speak kindly enough of the Government.

Mr. Rosew. He has known me these ten Years. Have you not, Sir?

Capt *Cotton.* Yes, I believe, I have, ever since you came thither. (*Then Mr.* Fipps *came in.*)

Mr. Rosew. This Gentleman hath known me several Years, have you not Sir?

Mr. Fipps. Yes, Sir.

Mr. Rosew. Pray Sir, will you give my Lord and the Court an Account, what you know of my Life and Conversation, and of my Loyalty or Disloyalty to the King or Government.

Mr. Fipps. My Lord, I have known this Gentleman divers Years. He lived in *Wiltshire*, and there he had the Reputation of a very honest Man, a good Scholar, and a pious Man. I never heard him Preach in my Life, because I never go to Conventicles; but I have been in the House where I have heard him pray in the Family; and there he pray'd very earnestly for the King and Government, for the Prosperity of it. Since I came to *London*, he came to *London* too, and has been here in *London* about ten Years; and has been often in my Company since, and in the late Times, *the Bethelitish Times*, when every Body did take Liberty to say what they would of the King and Government; I have been often in his Company, and heard him speak with a great deal of Respect of the King, and of the Government, and thank God for the Liberty he did enjoy, and the Protection he had from the Government; but I never heard him speak an ill Word of the Government in my Life; and I have known him as much (*I* believe) as any other Man that was not his Hearer; he was always reputed a very ingenious Man; and that is all I can say. I never heard, or knew any thing of ill of him in my Life.

Mr. Rosewell. Pray call Mr. *Caleb Veering.*

(*Who came in.*)

Sir, you have known me several Years. Pray be pleased to testify to my Lord, and the Court, what you have known of my Conversation, with Respect to His Majesty and the Government.

Mr. Veering. My Lord, I have known *Mr. Rosewell* these several Years; and I have been in Company with him upon the Occasion of receiving Money on Account of Rent for a Friend of mine; and likewise have heard him formerly when he preached publickly; and never heard any thing from him that reflected upon the Government, or shewed any disrespect to the King. I have heard him pray often very heartily for the King, and he never meddled with any publick Business, nor spoke of any News while I was concern'd with him.

Mr. *Rosewell.* Pray, Sir, did you ever hear of any ill I should speak of my Sovereign?

Mr. *Veering.* I have heard him often pray for the King and Government; and I never heard any Man say that he did otherwayes, or that ever he spoke an ill Word concerning any of them.

Mr. Rosew. Call *Mr. John Hitchcock*——

(*Who came in.*)

Sir, you are a Gentleman that have known me for several Years; pray will you testify what you have known concerning me? And if you have heard, or known any ill of my Conversation towards the King, pray speak it out, and let me be shamed before God and this great Assembly.

Mr. Hitchcock. I have known him (my Lord,) several Years, and have heard him formerly, though not of late; and when I heard him, he used constantly to pray for the King and Government; I never knew him to speak any thing against the King and Government in my Life; but always spoke very worthily of them.

Mr. Rosew. Have you heard me often pray for the King?

Mr. Hitchcock. I have so, Sir, a great many times.

Mr. Rosew. How long is that ago?

Mr. Hitchcock. About two or three Years ago, my Lord; and I never knew him to be but a very worthy Gentleman.

Mr. Rosew. Pray call *Mr. Michael Hinman*——

(*Who came in.*)

My Lord, here is another Gentleman that hath known me several Years. Pray Sir, will you speak what you know of my Conversation, with Respect to His Majesty, and the Government?

Mr. Hinman. My Lord, I have known him many Years, and been in his Company several times, and never heard him speak any thing of ill relating to the King or Government.

Mr. Rosew. Pray, Sir, have you not been, (upon some Occasions,) present where I have prayed?

Mr. Hinman. Yes, Sir, I have heard you pray;

pray; and I have heard you pray for the King very heartily.

Mr. Rosew. Have you heard of any Evil I should either say or do? Or any thing by Word or Deed, against the King or Government?

Mr. Hinman. No, never in all my Life, one way or other.

Mr. Rosew. Pray call *Mr. Nicholas Wanley.*

(Who came in.)

Sir, you have known me for these many Years; pray will you be pleased to speak the Truth of what you know of my Conversation, with Respect to the King and Government?

Mr. Wanley. My Lord, I have known the Prisoner at the Bar several Years; I have been frequently in his Company; and never heard him speak an ill Word against the King or Government in my Life: But have often heard him wish, that the King might live, and have a long and prosperous Reign; I never heard him say one ill Word of the Government in my Life; but always when he spoke of it, it was with all the Respect that any Person could do.

Mr. *Rosew.* Did you ever hear from any other Person directly or indirectly, that I have spoken reflectively upon His Majesty?

Mr. Wanley. Never in my Life, my Lord.

Mr. Rosew. One way or other?

Mr. Wanley. No, not any way at all.

Mr. Rosew. Pray call *Mr. John Strong*——

(Who appeared)

Sir, you are a Gentleman that have known me many Years too, ten or twelve Years I believe.

Mr. Strong. Yes, Sir.

Mr. Rosew. Pray will you tell my Lord and the Jury, what you know of me with respect to my Behaviour in Word, or Deed, in reference to His Majesty or the Government?

Mr. Strong. Sir, I have heard you teach several times formerly; I was not at this time indeed (for which you now stand Accused) at that Place: But I never heard you speak a Word against his Majesty or the Government. But you always pray'd very earnestly for his Majesty.

Mr. Rosew. Did you ever hear that I should say any thing ill of the King, or Government?

Mr. Strong. No, never.

Mr. Rosew. Call Mr. *John Cuttloe*——

(Who appear'd.)

Sir, You have known me too, very many Years; What do you know pray, concerning my Behaviour towards his Majesty and the Government?

Mr. Cutloe. My Lord, I never knew him speak one Word disrespectfully of the Government, or the King in my Life; tho' I have known him some Years.

Mr. Rosew. Did you ever hear from any body else, that I did speak ill of the King or Government, directly or indirectly?

Mr. Cuttloe. No, never a Word; I assure you, Sir.

Mr. *Rosew.* Have you been where you have heard me pray for his Majesty?

Mr. Cuttloe. Yes, Sir; I remember at *Bristol* once occasionally I heard you in the time of Liberty; otherwise I cannot say I have heard you: But I never heard any thing against the Government; but you always behaved your self Loyally and Peaceably that I know of.

Mr. Rosew. Call Mr. *Charles Melsum*——

(Who appeared.)

My Lord, I call this Gentleman, who will acquaint you that he liv'd with me many Years in an honourable Family, a Person of Quality of this Nation, one of the *Hungerford's*: Where (my Lord) I was Tutor to Sir *Edward's* Son for near Seven Years; a Gentleman well known for his great Loyalty to the King and Government: So that if I had been such an Enemy to the King or so disaffected as these People would make to be, sure he would never have entertained me. Pray, Mr. *Melsum*, will you please to acquaint my Lord, and the Jury, how many Years I was in that Family?

Mr. Melsum Seven Years; and I was above Fourteen my self.

Mr. Rosew. Pray, what do you know of my Carriage in that honourable Family, with respect to the King and Government?

Mr. Melsum. As far as I know for my Life, I will declare. I do not remember he did trouble himself, or meddle or make with any Man's business but his own. He was a Man that kept much to his Study: And when he came up to Prayer, he prayed heartily for the King; and had the good Word of all his Neighbours thereabout.

Mr. Rosew. Have you often heard me pray for the King?

Mr. *Melsum.* I have heard him a Hundred times pray for the King; I never mist Prayers when I was at Home; and it was his constant Practice.

L. C. J. Did he Pray in the Family then?

Mr. *Melsum.* Yes, he did

L. C. J. Did he use to go to Church?

Mr. *Melsum.* Yes, he went to Church, to the beginning of the Prayers; he did frequently attend Divine Service.

L. C. J. Did he receive the Sacrament in all that time?

Mr. *Melsum.* Yes, I believe he did; I cannot say it directly.

Mr. *Rosew.* I was a constant Attender upon the Publick Ministry. It is now above a Dozen Years ago; it was in the Year 1664, my Lord, and so downward. Sir, you know I was a constant Attendant upon the Ministry of the Church, and the Worship of God there.

L. C. Just. Did you ever hear him make use of the *Common Prayer* himself in the Family?

Mr. *Melsum.* I cannot say he did.

L. C. J. Well; Have you any more Witnesses, Sir?

Mr. *Rosew.* Yes, my Lord. Pray call Mr. *Robert Medham.* *(Who appeared.)*

Here is another Gentleman, my Lord, that lived in that Family. Pray Mr. *Medham*, how long did you live in that honourable Family?

Mr. *Medham.* About four Years.

Mr. *Rosew.* Was that in the time that I was there?

Mr. *Medham.* Yes, it was.

Mr. *Rosew.* Pray then, Sir, will you declare what you know of my Conversation in that Family with respect to the Publick?

Mr. *Medham.* My Lord, it is a great while ago; but at that time Mr. *Rosewell* did always keep to the Parish-Church. He was Chaplain

to

to my Lady *Hungerford*; and always pray'd for the King at every time of Prayer.

Mr. *Roſew.* Did you ever hear that I ſhould ſpeak or declare any thing againſt the King, or Government in all my Life, all my time, or your time that I was there?

Mr. *Medham.* I muſt needs ſay, I never did hear any ſuch thing in my Life.

Mr. *Juſt. Holloway.* But it was not the Prayers of the Church that he uſed?

Mr. *Medham.* I cannot ſay that.

L. C. J. Did you ever hear him uſe the Prayers of the Church?

Mr. *Medham.* The Prayer that I heard, was that which was uſually made in the Family.

L. C. Juſt. But pray ſpeak plain; Did he uſe the *Common-Prayer*?

Mr. *Medham.* No, my Lord; I cannot ſay he uſed the Common Prayer.

L. C. J. I tell you what I mean; did he pray out of the Book of the Common-Prayer?

Mr. *Medham.* No, my Lord, I cannot ſay that.

L. C. J. Doſt thou take his *EX TEMPORE* Prayer to be the Prayers of the Church?

Mr. *Juſt. Withins.* My Lord, he does not know the difference, I believe; I believe he does not go to Church.

Mr. *Medham.* Yes, I uſe to attend upon the Publick; and ſo did Mr. *Roſewell.*

Mr. *Juſt. Withins.* Well, Sir, have you any more Witneſſes?

Mr. *Roſew.* Yes, my Lord; Pray call Mrs. *Ann Broadhurſt.*

(*Then Mr.* Winnacott *appear'd and offered himſelf.*)

Mr. *Winnacott.* My Lord, I heard I was call'd; and am come as ſoon as I could get in.

Mr. *Roſew.* Ay, Mr. *Winnacott*, you have known me many Years; I deſire you would teſtify what you know concerning my Converſation and Behaviour.

Mr. *Winnacott.* Formerly, when I heard him, I never heard him ſpeak a Word againſt the King or Government; and it is ſome three years ago, ſince I heard him.

Mr. *Roſew.* Have you heard of any Evil that I have ſaid or done againſt the King or the Government?

Mr. *Winnacott.* No; but I have heard him often Pray for his Majeſty.

Mr. *Juſt. Withins.* Well, there is your other Witneſs *Anne Broadhurſt*; what ask you her?

Mr. *Roſew.* My Lord, this was a Servant that lived ſeveral Years in my Family. Pray *Nan*, how many Years did you live there?

Anne Broadhurſt. Four Years, my Lord.

Mr. *Roſew.* Pray declare what you know of me in my Family, with reſpect to the King and Government.

Ann Broadhurſt. I have generally heard you twice a Day pray in your Family; and I never heard you Pray in my Life, but I heard you Pray as earneſtly for the King as you did for your own Soul. This I can declare during the time that I lived there.

Mr. *Roſew.* Did you ever hear me ſpeak Evil of the King in my Family; or Reflectively upon the Government?

Anne Broadhurſt. No; You always Pray'd for the King, (as I ſay) as earneſtly as for your Self or your Family.

Mr. *Roſew.* If you know any ill Carriage in Word or Deed towards my Sovereign, I deſire you to ſpeak it out, without favour or affection, or any reſpect to me in the World.

Ann Broadhurſt. No, I never did; but have often heard you heartily Pray for him.

Mr. *Juſt. Withins.* Pray, how long ago is this?

Anne Broadhurſt. Two Years ago I lived with him.

Mr. *Roſew.* Pray tell my Lord again, how long it was, and when that you lived there.

Anne Broadhurſt. I lived there four Years; and it is two Years ago ſince.

Mr. *Juſt. Withins.* Pray how often were you at Church in that time?

Anne Broadhurſt. When I had occaſion to go, I did go; but I did uſually hear my Maſter, when I dwelt with him.

Mr. *J. Withins.* Well, who is your next Witneſs?

Mr. *Roſew.* Call *Anne Manning.*

(*Who came in.*)

You lived with me in my Family ſeveral Years?

Anne Manning. Three Years, Sir.

Mr. *Roſew.* Pray will you declare what you know of my Carriage and Behaviour towards the King and Government, in my Family while you were there?

Anne Manning. My Lord, he prayed for the King, for his long Life in his Family Duties, Morning, and Evening; and in Private, when no body heard him but my ſelf.

L. C. J. What! you and he were at Exerciſe together?

Ann Manning. My Lord, I have gone by his Study-door, and have heard him pray for the King's long Life, when he knew not that any body heard him.

Mr. *Roſew.* This, my Lord, is more than I expected; for I little thought that any body could give a Teſtimony of my private Devotion; tho' I never then omitted to pray for the King, and never ſhall as long as I live.

Anne Manning. My Lord, he pray'd as heartily for the King's Life as for his own Soul; and I have heard him often praying and deſiring God to preſerve him in his Kingdom, and give him long Life; and have heard him inſiſt upon that Scripture, *Speak not evil of the King, no, not in thy Bed Chamber; for the Birds of the Air ſhall declare it.*

Mr. *Roſew.* Pray ſpeak the Truth. Did you ever hear me utter an ill Word, or Reflection upon His Majeſty, or the Government?

Anne Manning. No, my Lord, he was always mightily for the King.

Mr. *Roſew.* Speak the Truth of what you know; I hope you would ſpeak the Truth, and nothing more than the Truth, as if you were upon your Oath.

Anne Manning. I do ſpeak the Truth, and it is what I can declare, and would, if I were to die the next Moment; and I can ſafely ſwear it.

Mr. *Roſew.* Then pray call *Iſabella Dickeſon*——

(*Who appear'd.*)

My Lord, ſurely I would not ſpeak Evil of his Majeſty, or the Government in publick in the Congregation, when I prayed for him in my Family and my Cloſet. But here's another Servant that liv'd in my Family; Pray will you ſpeak what you know concerning my Behaviour in my Family, with reſpect to the King and Government?

Iſabella

Iſabella Dickeſon. He uſed to pray twice a day in his Family, Morning and Evening, and he always pray'd earneſtly for the King, for his good Health, long Life, and Proſperity.

Mr. *Roſew.* Did you ever hear me ſpeak any Evil of the King or Government in any Reſpect?

Iſabella Dickeſon. No, never, Sir, in my life; nor do I believe you ever had an evil Thought of the King.

Mr. *Roſew.* Pray then will you call Mr. *James Atkinſon?*

Mr. *Juſt. Withins.* We have had him already, and I ſuppoſe he is gone; he is not here.

Mr. *Roſew.* I call him now to teſtify another Thing, if your Lordſhip pleaſes; and he is at hand, my Lord, I ſuppoſe.

L. C. J. You ſhould examine your Witneſſes together, but we will not ſurprize you; we will ſtay.

Mr. *J. Holloway.* Pray call any body elſe, in the mean time, if you have any other.

L. C. J. Nay, Brother, it may be he hath obſerved a Method to himſelf; he is for his Life; let him take it.

(*Then Mr.* Atkinſon *came in.*)

Mr. *Roſew.* That which I call you now for, Sir, is to teſtify, what you heard upon the 30th of *January* from me, about praying for the King and all that are in Authority?

Mr. *Atkinſon.* My Lord, he kept that Day, the 30th of *January*, as a Day of Faſting and Prayer; and he preached from that Text on the 1 Tim. ii. 1. *Pray for Kings and all in Authority*: And then he did aſſert that Kingly Government was moſt agreeable to the Word of God, and the Conſtitution of the Government of *England*, which was the beſt in the whole World; and had been ſo approved by Writers, both Foreign, and of our own Country: And he did urge it as a Duty incumbent upon all People to pray for the King, and Magiſtrates, that they might *live a peaceable and quiet life under them in all Godlineſs and Honeſty.*

(*Then he ſeem'd a little faint and ſtop'd.*)

Mr. *Roſew.* Pray Sir, will you recollect your ſelf? My Lord will indulge you a little.

Mr. *Atkinſon.* I have been acquainted with Mr. *Roſewell* theſe ten Years.

Mr. *Roſew.* But, pray Sir, what do you remember of the Application of that Sermon upon the Text about praying for Kings, and all in Authority?

Mr. *Atkinſon.* That Perſons were to pray for them, and to obey them, and that it was their Duty. That is all that I can remember.

Mr. *Roſew.* What do you remember of my Invectives againſt thoſe that practiced the Contrary?

Mr. *Atkinſon.* Why truly as to thoſe Things, he did highly condemn thoſe Perſons that had any way acted againſt it. And I have heard him both in publick and private, inveigh againſt thoſe that had any hand in the murder of the late King, and condemned the Fact as a diabolical Deſign.

Mr. *Roſew.* Is Mr. *Smith* there?

Mr. *Atkinſon.* I was very ill on Sabbath-day laſt, and I thought I ſhould not have come out now; and I would not to the beſt of my remembrance ſpeak a Lie, as I am in the preſence of this honourable Court, and in the preſence of God, to whom I muſt give an account another Day.

Mr. *Roſew.* God will reward you for what you come to do for an innocent Perſon this Day.

Mr. *Atkinſon.* I never heard an ill Word againſt the King or Government drop from Mr. *Roſewell* in my Life. I am not upon my Oath, but know my ſelf to be bound to declare and tell the Truth, and nothing but the Truth.

Mr. *Roſew.* I am confident, my Lord, he would not ſpeak what he would not ſwear.

L. C. J. The Jury are Judges of that, Mr. *Roſewell*, I muſt leave it to them.

Mr. *Roſew.* Pray, Mr. *Atkinſon*, was Mr. *Smith* with you?

Mr. *Atkinſon.* Yes, and I have ſent one to call him.

Mr. *Roſew.* Pray, Sir, let me ask you as to what Miſtreſs *Smith* ſays, that I ſhould ſay of the *Recorder* being made a Judge?

Mr. *Atkinſon.* I never heard you ſpeak any ſuch Words in my Life.

Mr. *Roſew.* Upon the laſt day of *Auguſt* laſt, at Mr. *Shed*'s Houſe, ſhe ſays, that I did uſe that Expreſſion.

Mr. *Atkinſon.* As to *Shed*'s Houſe, I was then Sick, and was not there. If my Lord will give me leave to look upon my Note-book, I can tell what Day I was there.

Smith. It was at one *Daniel Weld*'s Houſe, as I think, that you ſpoke about the Mayors and the Sheriffs; but what you ſaid about Fools in Scarlet Gowns was at *Shed*'s Houſe.

Mr. Roſew. Was there any meeting at the Meeting-houſe, ſince *July* laſt, upon the Sabbath Day?

Mr. *Atkinſon.* Truly I be not able to remember; but if my Lord pleaſe to give me leave to look upon my Note-book, I can give an account; for I writ down every Day the Place where we met.

L. C. J. Prithee look upon thy Note book; for I have a mind to know ſomething out of that Note Book. Prithee tell me what was inſiſted upon the 14th of *September.*

Mr. *Atkinſon.* My Lord, I only have a Note of the Day, of the Place, and of the Text.

Mr. *Roſew.* Pray, Sir, did you hear me ſpeak of a great Man in *Grace-church-ſtreet* at the upper end; and that if it had not been for him, the Fire had been quenched?

Mr. *Atkinſon.* I never heard that Expreſſion from you in all my Life.

(*Then Mr.* Smith *came in.*)

Mr. *Roſew.* Pray did you hear any ſuch thing, Mr. *Smith?*

Mr. *Smith.* No, my Lord.

Mr. *Roſew.* My Lord I can bring all the reſt to teſtify the ſame thing if your Lordſhip will let me call them over again.

L. C. J. Do as you will, I would not reſtrain you from any thing of a legal Indulgence, that is fit to give to any Man in your Condition.

Mr. *Atkinſon.* What day of the Month do you ſay it was, Sir, that ſhe ſaid you ſpake of the Recorder?

Mr. *Roſew.* The 31ſt of *Auguſt*, I think.

Mr. *Atkinſon.* At that time I was Sick, and was not there.

Mr. Roſew. Pray, Mr. *Smith*, have you ever heard me preach upon the 30th of *January?*

Mr. *Smith.* Yes, Sir; I have heard you upon that Day, and upon that Text, that we ſhould *Pray for Kings, and all in Authority.* You kept

it

it as a Day of Humiliation, and you abhorr'd the Action of that Day. It was kept very ſolemnly, for the bewailing the horrid Murder of our late King. And you were ſo far from giving any Countenance to the Action of that Day, that you deteſted it, and preached very much againſt it, and you have always preached up Kingly Government.

Mr. Atkinſon. Sir, you were asking me, if there were a Meeting ſince *July*, in the Meeting-houſe.

Mr. Roſew. Yes, becauſe ſhe ſays there was one upon the 10th of *September*.

L. C. J. If you look upon your Notes again, *Mr. Roſewell*, you'll find it was the 10th of *Auguſt*.

Mr. Roſewell. Where were you upon the 10th of *Auguſt*?

Mr. Atkinſon. I was at home Sick then; it is written down, your Lordſhip may ſee it.

L. C. J. Do you take notice where you heard the Meeting was, when you were Sick?

Mr. Atkinſon. Yes, my Lord, I have a ſhort Note of it.

L. C. J. Where was the Meeting then?

Mr. Atkinſon. In the Meeting houſe, as I heard.

L. C. J. Pray recollect your ſelf, and look upon your Book, how is it enter'd there?

Mr. Atkinſon. My ſelf at home the 10th of *Auguſt*.

L. C. J. When didſt thou take that Note, upon your Word now?

Mr. Atkinſon. When my Family came home, ſome body did tell me that Day, or the next day.

L. C. J. Well, where was it the time before?

Mr. Atkinſon. The 3d of *Auguſt*, at *Mr. Crookſhanks*; the Text was the 11 *Heb.* 7. The 10th at the Meeting houſe, my ſelf at home; and *Canticles* the 7th and 13th.

Mr. Roſew. My Lord, theſe Gentlewomen ſay, they were at ſeveral Meetings. I deſire my Lord, that theſe Witneſſes may be called.

L. C. J. Call whom you will. Who do you call firſt?

Mr. Roſew. Thomas How. My Lord, I could bring Hundreds of Witneſſes as to this Point.

L. C. J. Well, there is *Thomas How*; to what purpoſe do you call him?

Mr. Roſew. My Lord, to teſtify that ſhe ſhould ſwear before Sir *George Treby*, that *Mr. How* was at a Conventicle ſuch a time, when he was not. And therefore I deſire him that he would pleaſe to teſtify the Truth of that matter.

Mr. How. My Lord, I will teſtify the Truth as far as I know it; ſhe ſent three Ten——

L. C. J. How do you know that?

Mr. How. So they ſaid.

L. C. J. That is no Evidence; and I care not what they ſaid: if you know any thing your ſelf of your own Knowledge, ſpeak it.

Mr. How. They offered——

L. C. J. I tell you their offering ſignifies nothing.

Mr. *How.* My Lord, it is a Year and an half ago.

L. C. Juſt. Let it be never ſo long ago, if it be only what they ſaid, it ſignifies nothing, it is no ſort of Evidence; but if you can ſay any thing of your own Knowledge, you ſay well; in God's Name we will hear it.

Mr. Roſew. Then, my Lord, ſome Queſtions I deſire I may have leave to put to *Mr. Recorder*.

L. C. Juſt. If *Mr. Recorder* be ready to anſwer your Queſtions, with all my Heart.

Mr. Roſew. Mr. Recorder, I deſire you would pleaſe to do me the Juſtice to teſtify, whether you know any thing concerning Miſtreſs *Bathoe*.

L. C. Juſt. Who is She?

Mr. Roſew. My Lord, it is whether there was not a Conventicle ſworn before Mr. Recorder againſt one Miſtreſs *Bathoe*.

Mr. Recorder. I can't well tell, *Mr. Roſewell*. There was a Conviction before me, (as I remember) of one Miſtreſs *Bathoe* for a Conventicle; and as I take it, (as the Witneſs told you juſt now) ſhe had it from her own Confeſſion.

Mr. Roſew. Do you know any thing, pray, Sir, of a Compoſition that was made upon that Conviction?

Mr. Recorder. No, Sir; you don't think ſure, that I make Compoſitions; or know any thing of them.

Mr. Roſew. Was not the Money, Sir, paid back again?

Mr. Recorder. Not a Penny that I know of, or any Agreement for it.

Mr. Roſew. Pray, Sir, will you acquaint the Court, how that matter was really?

Mr. Recorder. Miſtreſs *Bathoe* came to me, and ſaid ſhe was miſtaken, if any ſuch Words did paſs from her; for indeed there was never any ſuch Conventicle, as Miſtreſs *Smith* ſwore ſhe had confeſt. Upon that, I ſent for Miſtreſs *Smith*, and bid her conſider of it, whether there was really any ſuch Conventicle: and Miſtreſs *Bathoe* hath brought her Appeal, and it is depending now, and will be heard the next Quarter Seſſions.

Mr. Roſew. Pray Sir, Did you tell her that ſhe might have her Money again?

Mr. Recorder. I did tell her, Miſtreſs *Smith* was miſtaken, and did not inſiſt upon it, and ſhe would have her Money return'd again.

Mr. Roſew. Pray Sir, Did you ſend your Warrant for one *Cartwright* under your Hand?

Mr. Recorder. You ask me a hard Queſtion; I might ſend a Summons for ſeveral Perſons, I cannot remember all their Names.

Mr. Roſew. By whom, I pray, Sir?

Mr. Recorder. I can't tell who I ſend all my Summons by.

Mr. Roſew. Was it not by theſe two Women, Miſtreſs *Smith* and Miſtreſs *Hilton*?

Mr. Recorder. I can't tell; it may be it might be ſo.

Mr. Roſew. Pray Sir, What did you ſay to Mr. *Cartwright*, when he came thither?

Mr. Recorder. I can't remember particularly.

Mr. Roſew. Sir, did you not ask him what he had to ſay againſt theſe Witneſſes that are produc'd againſt me?

Mr. Recorder. My Lord, I remember when Mr. *Cartwright* came to me, I did ask him ſome ſuch Queſtion; for they had told me that he had, by a Perſon, been tampering with them, to take them off from proſecuting a great many Perſons.

Mr. Roſew. By whom were you told ſo, Sir?

Mr.

Mr. *Recorder.* By themſelves. I know nothing of it; But I tell you the reaſon why I ſent for him; becauſe they told me they went in Danger of their Lives; that they could not walk the Streets in Safety, but they had Stones thrown at them; and they were reproach'd as common Informers, and were beſet hard with Applications of Money, to take them off from Proſecuting. And among the reſt, they complain'd of one *Cartwright*, that he had been dealing with them; and it was upon that account that I ſent for him, to know what he had to ſay againſt them; and he ſatisfied me, that he had nought to ſay againſt them.

L. C. J. Theſe Queſtions, Mr. *Roſewell*, perhaps, may be better let alone.

Mr. *Recorder.* I have ſeen a Letter that does threaten them very much; but I cannot ſay whence it comes.

Mr. *Roſewell.* My Lord, I deſire to ask Mr. *Recorder*, whether or no he did not ſend for ſome of my Witneſſes.

Mr. *Recorder.* I don't know your Witneſſes, Sir.

Mr. *Roſew.* Did you ſend for one *Richard Gibbs* of *Rotherhith*?

Mr. *Recorder.* Yes, he was Conſtable at *Rotherhith.*

Mr. *Roſew.* Pray Sir, upon what account did you ſend for him?

Mr. *Recorder.* I did it, becauſe I heard the Conſtables of your Side durſt not execute their Warrants, for fear of the Rout of the People.

L. C. J. I tell you, theſe Queſtions were better let alone.

Mr. *Roſew.* Mr. *How*, that which I call you for, is, whether Mrs. *Smith* has not offered to Swear before a Juſtice, that you were at a Conventicle, when you were not?

L. C. J. She ſays, ſhe does not know any thing of her own Knowledge.

Mr. *Roſew.* She offered it a Year and a Quarter ago, before Sir *George Treby.*

L. C. J. Were you by when ſhe offered any ſuch thing?

Mr. *How.* I was by when ſhe was before Sir *George Treby*; and ſhe went into a Yard, and offered to inform againſt one Mr. *How*, for being at ſuch a Conventicle; but I was not the Man, ſhe ſaid.

Mr. *Roſew.* My Lord, ſhe had Sworn it.

L. C. J. No, no, ſhe had not Sworn it, ſhe only offered it, and for ought I perceive, ſhe is a very careful Witneſs, to ſee that ſhe does not fix upon the wrong Perſon.

Mr. *Roſew.* Then if it pleaſe your Lordſhip, I deſire *John Townſend* may be called.

(*Who came in.*)

Pray will you teſtify what you know concerning Mrs. *Smith*'s ſwearing that Mr. *How* was at a Conventicle?

Mr. Townſend. Sir, I will tell the Truth as near as I can, I cannot tell the Day, it was about a Year and an half ſince, that he was out of Town of the Lords Day, and that Day was remarkable; for I met him coming to Town, and it was about Evening, about five of the Clock, and that Day they had brought him ſome notice of a Warrant for the ſeizing of his Goods, for that he had been at a Meeting; now he underſtanding when they were to make Affidavit of it before Sir *George Treby*, he deſired me to go with him thither, and I went with him, and he asked her if ſhe knew the Man. There he was, and I was, and one more, and there came one Stranger: And we went out to the Light, and ſhe look'd upon all of us, and knew never an one of us.

L. C. J. You uſe to go to Conventicles, all of you, I warrant you.

Mr. J. Withins. She was not much out in her Conjecture, I dare ſay.

L. C. J. But ſhe ſeems to be very careful, that ſhe did not ſwear againſt the wrong Perſon. And (*Speaking to Mr.* Townſend;) If ſhe had Sworn that thou hadſt been there that Day, I warrant you ſhe had Sworn true.

Mr. *Roſew.* Is Sir *George Treby* here?

(*He did not appear.*)

Then I deſire Mr. *Thomas Harvey* may be call'd.

L. C. J. There he is; what do you ask him?

Mr. *Roſew.* My Lord, to prove that this *Elizabeth Smith* Swore that ſeveral Perſons were at ſeveral Conventicles, which ſhe afterwards confeſs'd in truth they were not; and made Applications to Compound for the Forfeitures, and they ſhould have their Money again.

L. C. J. Prithee, ask him in general, what does he know of her.

Mr. Harvey. Elizabeth Smith came to a Friend of mine in *April*, or *May* laſt——

Mr. Att. Gen. Were you by?

Mr. Harvey. Yes, I was by. She came to a Friend of mine, I ſay, and ſhe told him that ſhe could Swear againſt him, and ſome others, for a conſiderable Value of Forfeitures upon Conventicles——

L. C. J. What Friend of thine was this?

M. Att. Gen. Where does that Friend live?

Mr. Harvey. In *Southwark.*

L. C. J. What's his Name?

Mr. Harvey. One *Games.*

L. C. J. What Trade is he?

Mr. Harvey. A Sail maker.

L. C. J. Whereabouts does he live in *Southwark*?

Mr. Harvey. By St. *Mary Overy*'s Dock. And he came to me, and deſired me that I would meet and ſpeak with her; I met her, I think it it was about the Exchange at the *Roe-Buck*; there was ſhe, and another fellow with her. She told me ſhe could Swear againſt ſuch and ſuch; and deſired me to give her a Cup of Drink, which I did; and then ſhe told me her Story, and demanded either 10 or 20 Pounds; and that that ſhould take her off from Swearing againſt them. I told her, I could ſay nothing to it; but I would acquaint them; which I did, particularly Mr. *Games*; They thought not fit to give her any thing; which Anſwer I return'd to her. She told me ſhe was very Poor, and if ſhe could have but ſomething, ſhe would declare who it was that would Swear; but upon reaſonable Compoſition (though ſhe had offer'd to Swear) ſhe would not. But ſhe had taken the Copy from a Siſter of hers; and I think ſhe ſaid her Siſter's Name was *Mary Farrar*, as I remember.

L. C. J. Did ſhe offer to Swear any thing againſt you?

Mr. Harvey. No, my Lord.

L. C. J. You know that *Games* very well, don't you?

Mr. Harvey. Yes, my Lord.

L. C. J. Does he uſe to frequent the Church conſtantly?

Mr. Harvey. I don't know that my Lord; I have known him many Years.

L. C. J. Do you live near him?

Mr. Harvey. No, I do not.

Mr. Roſew. Pray call *Mr. John Cartwright*, and Mr. *George Norton.*

(*Mr.* Cartwright *appear'd.*)

Mr. Cartwright, I deſire you would pleaſe to teſtify what you know here concerning Mrs. *Smith*, who hath teſtified againſt me?

Mr. Cartwright. My Lord, may it pleaſe your Honour; the 22d of *July* laſt, *Mrs. Smith* and I were together from Seven o' Clock in the Morning, till half an Hour after Eleven; and that Morning we went to a Conſtable, one *Alexander Venner* in *Alderſgate-ſtreet*; and from thence we went to *Moorfields* to look for a Meeting in *Petty-france*; but there was none: And from that place we went into *Moorfields* again, and followed an ancient Man, whom we ſuppoſed was going to a Meeting; and this Man we followed the ſpace of almoſt an Hour's time, that it was almoſt this time of Day that it now is that I am ſpeaking. That Day ſhe convicted *Mrs. Bathoe* for having a Meeting in her Houſe; when ſhe own'd to me and another Man, that ſhe never was in the Houſe of *Mrs. Bathoe*; and then for the ſame Morning there was one *Rice Bowing* that was convicted of a Conventicle at *Bermondſey*, upon her Oath.

L. C. J. How do you know that?

Mr. Cartwright. As I was told.

L. C. J. But it may be you were told a Lye; you muſt only ſpeak what you know your ſelf.

Mr. *Cartwright.* Then, my Lord, ſeveral times ſhe has asked me to convict with her, when I never had been at a Meeting; and alſo, ſhe has offered to convict with me, when I have been there, and ſhe hath not been there; and ſhe alſo asked my Wife to Convict one *Dod*'s Meeting at *Shoreditch*, and my Wife refuſed it, becauſe ſhe was not there.

L. C. J. Were you by when ſhe asked your Wife to do it?

Mr. *Cartwright.* Yes, and pleaſe your Honour.

L. C. J. Who did you tell this firſt to? Becauſe I ſee you hunted along with her, why did not you go and complain when ſhe had ſeveral times propoſed ſuch a thing to you?

Mr. *Cartwright.* My Lord, I did not ſo well underſtand it at that time.

L. C. J. Who did you firſt of all tell it to, I ask you?

Mr. *Cartwright.* I firſt of all told it to one *Smith.*

L. C. J. Was this before *Mr. Roſewell* was taken, or after?

Mr. *Cartwright.* It was afterwards.

L. C. J. Did you go to *Smith*, or did he come to you?

Mr. *Cartwright.* It was through another's means that I came to ſpeak with Mr. *Smith.*

L. C. J. Who was that?

Mr. *Cartwright.* It was through a Goldſmith's means.

L. C. J. What is his Name?

Mr. *Cartwright*: His Name is *Ferne*; he lives in *Newgate-ſtreet.*

L. C. J. How came he to underſtand it, to bring you together?

Mr. *Cartwright.* Becauſe he underſtood that I was with Mrs. *Smith* that time that ſhe convicted Mrs. *Bathoe*, and was concern'd with her. I did not know any thing of Mr. *Roſewell*, at that time at all.

Mr. *Roſewell.* Did ſhe not tell you, ſhe would do as much for me?

Mr. *Cartwright.* She did offer me this; that if I would go and diſcover any Meeting, ſhe would Convict them, though ſhe was not there.

L. C. J. Who didſt thou tell a thing of this Nature to? only to *Mr. Smith* and that Goldſmith?

Mr. *Cartwright.* I told it firſt to that Mr. *Smith.*

L. C. J. When theſe Witneſſes, and things drop out of the Clouds, I never put any great Value upon them. Theſe come to ſerve a Turn, and never make any Diſcovery till you are taken.

Mr. *Roſew.* My Lord, you may obſerve it was her common Practice to Convict upon a Report, not having any Eye or Ear-Witneſs.

L. C. J. Well, I will obſerve what he has ſaid; but I tell you what I think of it.

Mr. *Cartwright.* She has asked me to do it ſeveral times.

L. C. J. All that I can ſay to it, is, it ſeems ſhe look'd upon thee as ſo very a Knave, as that thou wouldſt have done ſuch a thing; and it may be ſhe was not miſtaken.

Mr. *Roſew.* Then call Mr. *George Norton.*

(*Who appear'd.*)

I call you as a Witneſs, to declare what you know of *Mrs. Smith*'s importuning you, or any one to Swear againſt Meetings.

Mr. *Norton.* Yes, ſhe has offered to Swear, but I cannot ſay with him; for I was not preſent all the time. All that I can ſay, is, that ſhe own'd ſhe was never at Mrs. *Bathoe*'s Houſe.

L. C. J. So ſhe ſays ſtill; and it agrees with all the reſt of the Evidence: It was only Hearſay.

Mr. *Roſew.* Then pray, will you pleaſe to call *John Hobſon*?

L. C. J. There he is: What ſay you to him?

Mr. *Roſew.* My Lord, I bring this Witneſs to teſtify, that Mrs. *Smith* ſwore there was a Conventicle at ſuch a Place, when there was none.

Mr. *Hobſon.* Sir, there was none ſince I came into the Houſe to my Knowledge.

L. C. J. What Houſe?

Mr. *Roſew.* At Mr. *Hale*'s; ſhe ſwore there was a Meeting upon the 13th of *July.*

Mr. *Hobſon.* There was none, to the beſt of my Knowledge.

Mr. *J. Withins.* We muſt not Convict People of Perjury upon ſuch Evidence. Indict her of Perjury, if you have a mind to it.

L. C. J. Where is the Inſtrument Maker, *Atkinſon*? Bid him ſend me his Book.

(*Which was done.*)

L. C. J. Were you at every Meeting always that he preach'd at?

Mr. *Hobſon.* No, my Lord.

L. C. J. Then there might be many Meetings that you do not know of.

Mr. *Hobſon.* I live next Door to this Mr. *Hales.*

L. C. J.

L. C. J. You uſe to go frequently to hear Mr. *Roſewell*, did not you?

Mr. Hobſon. No Sir.

L. C. J. (*Having look'd upon the Book.*) Was there any Meeting that you know of, the 13 of *July*?

Mr. Hobſon. None there: He lives the next Door to me.

L. C. J. Was there no Meeting no where there away?

Mr. Hobſon. Not that I know of.

L. C. J. She Swears to that Day at Mr. *Hales*'s.

Mr. Roſew. Ay, and to the very Place.

L. C. J. Do you know one *Hodgeſon*?

Mr. Atkinſon. It is *Hudſon*, my Lord.

Mr. Hobſon. No, my Lord; I do not know him.

L. C. J. Were you ever at his Houſe at any Meeting?

Mr. Hobſon. No my Lord; I never was at any Meeting this two Years.

Mr. Roſewell. He lives next Door to the Houſe.

L. C. J. There may be a Meeting next Door to my Houſe twenty times over, and I not know it.

Mr. Roſew. Then pray call *John Crook*.

(*Who came in.*)

Pray, Sir, do you know whether there was any Meeting at Mr. *Hales*'s the 13th of *July*?

Mr. Crook. No; I never heard of any ſuch thing, but what was according to his own uſe amongſt his Family. I live under his Roof, and never yet did know that there was a Meeting there.

Mr. Roſew. Pray call *Sarah Whibby*. (*Who came in.*) I deſire ſhe may be asked, whether Mrs. *Smith* did not Swear there was a Conventicle at Mr. *Hale*'s the 13th of *July*; and whether there was any ſuch thing.

Mrs. Whibby. There was none.

L. C. J. That you know of, you mean.

Mrs. Whibby. I am certain of it.

L. C. Juſt. How came you to remember the Day particularly?

Mrs. Whibby. I can tell you by a very good Token; becauſe the Chimney of my Houſe was on Fire that Day.

L. C. J. How do you recollect it was the 13th of *July*?

Mrs. Whibby. Becauſe there was a Neighbour of ours, that is a Waterman, that was ſent for to wait upon His Majeſty; and I went that Day to call him to quench the Fire; not finding him at home, I went further to call more Help.

L. C. J. How can you tell that it was the 13th? It might be the 20th for ought you know.

Mrs. Whibby. No; it was the 13th.

L. C. Juſt. How can you tell that?

Mrs. Whibby. Becauſe there was another Meeting on the 20th Day, for which I paid 20 Shillings; and I can remember my Chimney was on Fire that Day.

L. C. J. What Day of the Week was it?

Mrs. Whibby. It was *Sabbath-Day*.

L. C. J. Why, if my Chimney was on Fire the 14th or 15th, it may be I can remember it a little while, but how came it that you do remember it ſo long?

Mrs. Whibby. It was the 13th of *July*.

L. C. J. How can you be ſure of that?

Mrs. Whibby. Becauſe it was the *Sunday* before the Meeting at Mr. *Bowen*'s.

L. C. J. Where was the Meeting that Day your Chimney was on Fire?

Mrs. Whibby. I did not know then; but I knew ſince, it was at Mr. *Hudſon*'s.

L. C. J. Then you have been inſtructed about it; But pray don't think you come here to ſerve a Turn.

Mrs. Whibby. It was at Mr. *Hudſon*'s.

L. C. J. Was there a Meeting on the 13th of *July*?

Mrs. Whibby. By Relation there was; but I was not at it.

Mr. Roſew. My Lord, I bring her to teſtify there was no Meeting at Mr. *Hale*'s that Day.

L. C. J. We know well enough you ſniveling Saints can lye.

Mrs. Whibby. I have anſwered the Truth as far as I know.

Mr. Roſew. I only ask her about Mr. *Hales*.

L. C. J. She ſhall anſwer ſuch Queſtions as the Court ſhall think fit to ask her.

Mr. Roſew. How far is your Houſe from Mr. *Hales*?

Mrs. Whibby. Next Door.

L. C. J. How far is your Houſe from Mr. *Hudſon*'s?

Mrs. Whibby. A great Way.

L. C. J. Was it half ſo far as you went to fetch the Waterman?

Mrs. Whibby. That was but three Doors off; but Mr. *Hudſon*'s is half a Mile, I believe, or a Mile.

Mr. Roſew. Then pray call *Anne Collins*.

(*She appeared.*)

Mr. J. Withins. Well; what do you ask her?

Mr. Roſew. *Mrs. Smith* hath Sworn, that there was a Conventicle at Mr. *Hales* the 13th of *July*; I deſire to know of you, whether there was ſuch an one or no?

Mrs. Collins. The 13th of *July* there was none.

Mr. Roſew. Upon your certain knowledge?

Mrs. Collins. Upon my knowledge there was none; I can juſtify it.

L. C. J. Not there you mean, at Mr. *Hales*'s: But do you know there was any, any where elſe?

Mrs. Collins. No, not to my knowledge.

L. C. J. Do you know Mr. *Hobſon*? Was there any there that Day?

Mrs. Collins. I know one *Hudſon*.

L. C. J. I thought you had ſaid *Hobſon*.

Mrs. Collins. No, it was *Hudſon*.

L. C. J. Was there any Conventicle there?

Mrs. Collins. I cannot tell any thing as to that.

Mr. Roſew. Then pray call *Sarah Bathoe*, and *Suſan Bathoe*. (Sarah Bathoe *appear'd.*)

L. C. J. Well, what ſay you to this Witneſs?

Mr. Roſew. That which I call Mrs. *Bathoe* for, is to prove that Mrs. *Smith* was miſtaken, when ſhe Swore that Mrs. *Bathoe* permitted a Conventicle at her Houſe the 20th of *July*: Upon which Mrs. *Bathoe* was Convicted, and brought her Appeal.

L. C. J. You do miſtake, Mr. *Roſewell*. She ſays, that *Bathoe* confeſs'd that there had been a Conventicle at her Houſe, as ſhe heard.

Mrs. Bathoe. She has convicted me.

L. C. J. Ay, but it was upon your own Confeſſion.

Mrs. Bathoe. No, I never confeſs'd any ſuch thing; for I had none there at that time, nor did confeſs any ſuch Thing.

L. C. J. Had you ever any Conventicle at your Houſe?

Mrs. Bathoe. That is not it that I am to anſwer to now. I deſire to be excuſed from anſwering that Queſtion.

L. C. J. Then I will not believe her, if ſhe talk'd as long as you Preach.

Mr. Roſew. There was an Appeal brought, my Lord.

Mr. Att. Gen. She is not a Witneſs, it is in her own Caſe. It would be a fine thing if an old Woman's Story ſhould prevail here againſt poſitive Teſtimony.

(*Then* Suſan Bathoe *came in*)

Mr. Roſew. Mrs. *Smith* hath Sworn, that Mrs. *Bathoe* had a Conventicle at her Houſe the 20th of *July*.

L. C. J. No; She only Swears that Mrs. *Bathoe* confeſs'd it; but her ſelf was not there, ſhe ſays.

Mr. Roſew. Did you confeſs it?

L. C. J. No matter what ſhe ſays; it all agrees with that Teſtimony that ſhe has now given: This Matter, it ſeems, is depending upon an Appeal, and ſo ſhe teſtifies for her ſelf. And when I ask her whether ſhe ever had any Conventicle at her Houſe, ſhe will not tell me; which induces a Suſpition that ſhe does not come for a fair Purpoſe, but only to ſerve a Turn.

Mr. Roſew. Pray Mrs. *Suſan Bathoe*, was there any ſuch Conventicles?

Mrs. Bathoe. There was none.

L. C. J. Why I tell you, you miſtake ſtill. Mrs. *Smith* ſwears that Mrs. *Bathoe* confeſs'd to her that ſhe had a Conventicle, but ſhe ſwears ſhe was not there. And take all together, ſeeing ſhe will not anſwer whether ſhe ever had a Conventicle; and ſo it may be only a Miſtake juſt of the Day: Or ſhe might tell her ſo, for any thing appears; and for ought I know *Hales* has had Conventicles: and what is all this to the Purpoſe of which you are Accuſed?

Mr. Roſew. Call Mr. *John Ferne.*

(*He did appear.*)

My Lord, I deſire Mrs. *Bathoe* may not go away.

L. C. J. Let her ſtay then. What do you call this Man for?

Mr. Roſew. It is to prove ſhe has compounded Convictions. Pray Sir, do you know whether Mrs. *Smith* hath compounded with Mrs. *Bathoe* ſince the Conviction, to ſet by the Proſecution; and Mrs. *Bathoe* was prevail'd with ſo to do?

Mr. Ferne. Mrs. *Bathoe* came to me about 8 or 10 Days ago; ſays ſhe, I muſt get you to go with me to the *Recorder*'s. I am promiſed my Mony again, that was paid upon the Appeal I brought. I was glad to hear it, and went with her; the Time appointed was five or ſix a-Clock. I was there a little after five; and Mrs. *Smith* was not there, that was one of the Witneſſes upon her Conviction, *Elizabeth Smith*, for I ſerved her with a notice to attend the *Recorder*. We were there a ſecond Time at the *Recorder*'s Chamber about ſix a-Clock; ſhe was not come. We waited hard by, and went a third Time; and then ſhe was there, and deſired my Siſter to excuſe her that ſhe was not there earlier; but ſhe did not doubt but ſhe ſhould have her Money; and waited to ſee the *Recorder*. Mr. *Recorder* had ſeveral above with him. We waited an Hour or better. Mrs. *Smith* went up, and my Siſter went up with her, or followed her: And ſays the *Recorder* to her, Are not you the Woman that was with me ſuch a Time, with Mrs. *Williams*? Yes, Sir (ſays ſhe) I was. Says he, What made you make ſuch haſte away? Upon that, Mr. *Courthope* ſteps forward with the Book; Sir, (ſays he) I have paid it in to the Clerk of the Peace. Then, ſays the *Recorder*, It is out of my Hands, I can go no further: But promiſed afterwards to ſpeak with Sir *William Smith*, the Chairman of the Seſſions about it.

L. C. J. I can make Nothing of all this. What a Buſineſs is here?

Mr. Ferne. She ſeems to be a Raſh Woman, ready to Swear any thing.

L. C. J. Oh dear, Sir! and you ſeem to be a grave, prudential ſort of a Man.

Mr. Roſew. If ſhe did not Swear that this Meeting was at Mr. *Hale*'s, why was he convicted for that Meeting?

L. C. J. I know nothing of the Conviction at all; it is the firſt time that I have heard of it.

Mr. Roſew. Then if your Lordſhip pleaſe, we deſire to have the Record of it read; here it is.

L. C. J. Make it appear that ſhe ſwore, and that what ſhe ſwore was falſe; and then you ſay ſomething.

Mr. Roſew. We deſire to have theſe Copies of Records read. Here it is *per Teſtimonium Elizabethæ Smith*, or *per Sacramentum*.

L. C. J. Prove that ſhe ſwore it.

Mr. Roſew. My Lord, we had a very graeious Anſwer concerning the Petition that my poor Wife deliver'd to His Sacred Majeſty in reference to her coming to me; which His Majeſty granted with a great deal of Compaſſion: He remitted it to your Lordſhip, and your Lordſhip did ſecond it, for the having the uſe of what Records ſhould be neceſſary for my Defence. And upon what Application we made to the *Attorney General*, it was readily granted: But for the ſearching of the Records, we have deſired the *Recorder*, and cannot have it.

L. C. J. You are much miſ-informed in that. I'll tell you how it was: Your Wife, and a young Man came to me, a matter of a Fortnight ago, and did tell me, there were ſeveral Records that were neceſſary for your Defence, and the Recorder refuſed to let you have Copies of them. I told her then, God forbid but that you ſhould have all manner of Helps from Records that were neceſſary for your Tryal; and thereupon I did require my Brother *Jenner*, who is Recorder, to attend to ſhew Cauſe, why he did refuſe to let you have any Records that you thought neceſſary for your Defence: And he gave me this for Anſwer, that they were Records of Convictions, and were return'd to the Seſſions of Peace; ſome to *Surrey*, and ſome into *Middleſex*, and ſome were in the Clerk of the Peace's Hands. Whereupon I told your Wife, if ſhe would go to the Clerk of the Peace for Copies of the Records, if they did not readily give you Copies at your Charge, I would make them do it, if ſhe came to complain to me; and if they would not, I would lay them by the Heels. When my Brother *Jenner* came to me, ſaid I, I believe that which they have a mind to, is to know upon whoſe Teſtimony the Convictions are made. Now that is no part of the Conviction; and that we thought ought not to be granted.

Nor

Nor is there any Law for it; for that is to open a Way to the tampering with the King's Witneſſes. After this, there was Mr. *Wallop* that came and moved the Court of *King's-Bench* about this Matter; and we gave him the ſame Anſwer, that for any one to diſcover the King's Witneſſes before they come to a Tryal, was not to be allowed by Law. If Mr. *Attorney* had come here, and ſaid, Pray give us a Liſt of all the Witneſſes that Mr. *Roſewell* will make uſe of at his Tryal; we ſhould have denied his Motion. God forbid but that the Witneſſes you bring ſhould be heard; and that the Witneſſes they bring ſhould be heard; but we muſt prevent tampering with the Witneſſes on all ſides.

Mr. *Roſew.* If the Witneſſes are ſuppreſs'd, it is impoſſible to encounter their Teſtimony.

L. C. J. What do you mean by ſuppreſſing the Witneſſes? They are here produced.

Mr. *Roſew.* Their Names, my Lord, upon the Records.

L. C. J. Their Names are never expoſed, nor ought to be.

Mr. *Roſew.* My Lord, it is that which muſt enable me to make my Defence. If we could have their Names, we could prove them Perjured.

L. C. J. It cannot be by Law. You have the ſame Benefit that all the reſt of the King's Subjects have. If any one be Convicted of Treaſon by Witneſſes (twenty in Number) we never enter them upon the Record; and if any be acquitted, the Teſtimony of the Evidence upon that Acquittal, is never enter'd upon Record. It may be in your Matter, it was not upon the Teſtimony of Witneſſes, that the Conviction was; but upon the Notoriety of the Fact, or by Confeſſion, as in the Caſe of Mrs. *Bathoe*; that was by Confeſſion, and Witneſſes. The Notoriety of the Fact, or the Confeſſion of the Party, are all, and each of them, ſufficient to make a Conviction by Record. You have the ſame Liberty that every Subject has.

Mr. *Roſew.* Mr. *Courthope* is the Recorder's Clerk, that ſaw the Convictions in the Clerk of the Peace's Hands.

L. C. J. We cannot tell that, without the Clerk of the Peace was here.

Mr. *Roſew.* Pray, where is Mr. *Charles Walker?* (*He appear'd*)

I deſire you, Sir, to teſtify what you know concerning the Conviction of *Elizabeth Smith* upon Mr. *Hales*, for a Conventicle at his Houſe the 13th of *July*?

Mr. *Walker.* You had a Copy of it from the Clerk of the Peace; I made it out.

Mr. *Roſew.* Of Mr. *Hales* and Miſtreſs *Bathoe*, do you mean?

Mr. *Walker.* No, only of Miſtreſs *Bathoe.*

Mr. *Roſew.* Then I ſuppoſe we may have it; and the Clerk will teſtify it to be a true Copy.

Mr. *Walker.* This is a true Copy.

L. C. J. Then make what uſe you pleaſe of it. Will you have it read?

Mr. *Roſew.* No, my Lord, not yet. If your Lordſhip pleaſe, I deſire *Richard Drew* may be call'd; but however, if your Lordſhip will, let him read that Paſſage in it, that I cannot ſo well read, 'tis in Court Hand.

(*Clerk of the Crown reads.*)

Memorandum quod ad generalem Seſſionem pacis pro Com' Midd' ſeptimo die Octobris, triceſſimo ſexto, &c.

L. C. J. What do you make from this? Here is a Record of the Conviction, which ſays, that by two credible Witneſſes, and the Notoriety of the Fact ſhe was convicted.

Mr. *Roſew.* Pray call *Richard Drew.*

(*Who came in*)

Pray Sir, what do you know about Miſtreſs *Smith*'s Practice in relation to Conventicles?

Mr. *Drew.* Upon the eleventh of *July* laſt, there was an Acquaintance of mine that ſhe did pretend was at a Meeting——

L. C. J. Who was that that did pretend ſo?

Mr. *Drew. Elizabeth Smith*; and ſhe would have had ſome Money of him. He came to me, and asked my Advice. Yes (ſaid I) I think you had better give her Money, than to run the Hazard of ſwearing againſt you: So he did. He took me along with him to a Place where they were to meet, where ſhe took ten Shillings, and promiſed he ſhould come into no further trouble about it.

L. C. J. Had he been at a Conventicle, or not?

Mr. *Drew.* That I cannot ſay.

L. C. Juſt. Do you believe he was, or was not?

Mr. *Drew.* My Lord, I cannot ſay that he was, or was not.

L. C. J. But that is not the Queſtion I ask you; for you would not perſwade him to give her Money, if he had not been at a Conventicle.

Mr. *Drew.* My Lord, I did not know whether he was, or was not.

L. C. J. I ask you again, did you believe he was, or was not?

Mr. *Drew.* I believe he might, by his being ſo willing to take my Advice; tho' he ſaid it was a baſe thing to give her any Money in ſuch a matter.

Mr. *Roſew.* Pray call *James Howard.*

L. C. J. There he is; what would you have with him?

Mr. *Roſew.* My Lord, I crave leave firſt to ask Miſtreſs *Shaftoe*; Are you Mr. *Hilton*'s Wife?

Smith. Yes.

Mr. *Roſew.* Then I deſire Mr. *Howard* may teſtify what he knows concerning this Miſtreſs *Smith*: But firſt, which *Hilton*'s Wife are you?

Smith. George Hilton's.

Mr. *Roſew.* What then do you know of her, Sir?

Mr. *Howard.* I was once drinking a Cup of Ale in *Grub ſtreet*, where ſhe did take a parcel of Money in the Concern of the King, my Lord.

L. C. J. Prithee ſpeak up: In what Concern?

Mr. *Howard.* She took a Bribe in the Concern of the King.

L. C. J. What doſt thou mean?

Mr. *Howard.* Of a Perſon that had been at a Meeting.

L. C. J. Prithee, what Bribe was it?

Mr. *Howard.* About 11 or 12 Shillings.

L. C. J. Prithee, of whom was it?

Mr. *Howard.* The Man I never ſaw, nor the Woman before: I came in by chance.

L. C. J. How long ago is this?

Mr. *Howard.* About the middle of *July* laſt.

L. C. J. Who did you diſcover this matter unto?

Mr. *Howard.* My Lord, I was only drinking

a Cup

a Cup of Ale; and I diſcover'd it to Mr. *Drew*, that was call'd laſt.

L. C. J. Was Mr. *Drew* one of them?

Mr. *Howard.* No; Mr. *Drew* I am acquainted with; he is my Neighbour.

L. C. J. When were you at Church laſt?

Mr. *Howard.* The laſt Lord's Day.

L. C. J. When did you receive the Sacrament there?

Mr. *Howard.* My Lord, I never did. We have no Pariſh-Church at preſent; it is now a Building.

L. C. J. Where do you live?

Mr. *Howard.* In *Mugwell-ſtreet.*

L. C. J. Have you no publick preaching in the Pariſh?

Mr. *Howard.* I do hear Doctor *Fowler*, and Mr. *Smythies* too, ſometimes.

L. C. J. That is when there is no Conventicle (I ſuppoſe) in the way. That Mr. *Smythies* and Doctor *Fowler* are both very well known.

Mr. *Roſew.* Is Mrs. *Anne Fary* here?

(*She did not appear.*)

Pray call *Mrs. Anne Higgerſon.*

(*Who appeared.*)

Do you know *Mrs. Shaftoe*, or *Mrs. Hilton*, as ſhe is call'd?

Mrs *Higgenſon.* My Lord, I have very little Knowledge of her; I have known her but a very little while.

Mr. *Roſew.* What Teſtimony can you give of her Converſation?

Mrs. *Higgenſon.* Since I have known her, I have heard ſome ill things of her: But I cannot ſpeak to any thing of mine own Knowledge.

L. C. Juſt. Why, ſo People may ſay a great many ill things of you, that you do not deſerve, nor know any thing of.

Mr. *Roſew.* Call *Anne Carter.*

(*She did not appear.*)

I deſire Sir *John Talbot* would pleaſe to be examined.

L. C. Juſt. Here is Sir *John Talbot* by me.

Mr. *Roſew.* Sir, I deſire you would pleaſe to teſtify to the Court and the Jury, what you know concerning the Converſation of Miſtreſs *Shaftoe*, otherwiſe called Mrs. *Hilton.*

Sir *John Talbot.* She was a Servant, that liv'd in my Houſe a great many Years; but I did not uſe to converſe with her.

Mr. *Roſew.* No, Sir *John*; but what do you know of her Converſation while ſhe lived in your Houſe?

Sir *J. Talbot.* All that I know of her is, ſhe had no very good Character in the Family.

L. C. Juſt. Do you know any thing of your own Knowledge?

Sir *John Talbot.* As to any thing of my own Knowledge, I cannot ſpeak; it is all no other than Hear-ſay from all the Family.

L. C. J. But I ask you what you know of your own Knowledge, Sir *John.* Tell us the Particulars you your ſelf know.

Sir *J. Talbot.* It was the Complaint of all the Servants of the Houſe, that ſhe was guilty of telling Lyes and Stories in the Family.

Mr. *Roſew.* Was ſhe reported in the Family a frequent Lyer?

Sir *J. Talbot.* She had that Character in the Family; all the Servants complain'd of it. I only know of other things ſince ſhe was gone out of the Family; and that ſhe has been concern'd in an odd ſort of Practice, about attempting to ſteal away a young Lady.

L. C. J. Do you know of it of your own Knowledge?

Sir *J. Talbot.* I had it from her ſelf, and upon her own Affirmation.

L. C. J. What was that?

Sir *J. Talbot.* It was about the Practice that had been ſet on foot of cheating People of Money for procuring Fortunes; particularly concerning the Daughter of one Sir *Harry Jones.* And there have a great many Gentlemen been abuſed about Town in that Matter, and made believe that this Woman had an Intereſt in her, and would put this great Fortune into their Hands: I have not been privy my ſelf to any of the Negotiations, but I have underſtood there were ſuch Practices; there was one *Salem*, and ſhe that were ingaged.

L. C. J. Look you, Sir *John*, do you know this of your own Knowledge? for we muſt not hear Evidence to take away People's Reputation by Hear-ſay: If ſhe hath confeſs'd any thing to you, you may ſpeak that, and let us know it.

Sir *J. Talbot.* My Lord, if it be not too long to give you the Circumſtances, how I come to know it; I will tell you what I have been informed about it.

L. C. J. No, that is not Evidence, Sir *John*; unleſs you know it your ſelf, or had it by her Confeſſion.

Sir *J. Talbot.* My Lord, I do not come here as a voluntary Evidence, but I am here called upon, And my Lord, I think I ought to give my Teſtimony if a Man's Life be concerned.

L. C. J. And ſo ought we who are upon our Oaths, to inſiſt upon it, that you give legal Evidence; what you know of your own Knowlege; and I ask you here again, whether what you relate be of your own Knowledge, or what was by Hear-ſay?

Sir *J. Talbot.* My Lord, I had notice ſent me by a Letter, That there was a Gentleman came to *Thiſtleworth* with a Coach and four Horſes, with a Deſign to ſteal *Mrs. Jones.* I cannot remember whether there was any Name to the Letter, but ſuch a Letter was ſent, and I was to enquire about it of this *Ellinor Shaftoe*, who was engaged in the Deſign. I ſent to her to come to me, and ſhe did come; and told me that there had been ſuch a Practice of one *Salem*, and ſhe would bring a Gentleman to diſcover the whole Buſineſs, and ſhe did ſo; and brought this *Hilton* (by whoſe Name, (as her Husband) ſhe owns her ſelf) and he came to me, and gave me a Note of ſeveral Gentlemen's Names that were concern'd in it; and I believe, I have a Book wherein their Names are. I then asked why ſhe did let it ſo long run, and the Buſineſs go on ſo far. Mr. *Hilton* did confeſs, that one particular Gentleman had been kept in treaty, who was a Country-man, and came to live in Town, and was in Town the greateſt Part of the Winter upon this Deſign; and did walk that Way expecting that this *Nan Carter* ſhould bring down this Heireſs, that ſo they might have an Opportunity to Steal her. Mr. *Hilton* had no other way of Application to me, but by this *Shafto*; and he confeſs'd himſelf that he was a Party concern'd in the Deſign.

L. C. Juſt. Ay; but what did *Hilton*'s Wife

ſay?

ſay? for what he ſaid is nothing to the Purpoſe in this Point.

Sir *J. Talbot.* She is one that I had no Communication with, nor converſe, while ſhe was in my Family, otherways than as an ordinary Servant; but this ſame Mrs. *Jones* was my Ward.

L. C. Juſt. Did ſhe confeſs ſhe had any Deſign in this matter; or was to have a Reward for ſetting the matter on foot?

Sir *J. Talbot.* No, my Lord; ſhe did not particularly confeſs ſhe had any hand in the Deſign; but it was that which ſeveral other Perſons have come and enquired ſince of my Family about; who have told me, that there was one *Shafoe*, otherwiſe *Hilton*, that was concern'd in it.

L. C. Juſt. That is not Evidence, Sir *John*, I muſt tell you agen.

Sir *J. Talbot.* My Lord, I can't make the Evidence otherways than as it is. I tell you what I know.

L. C. J. You underſtand your ſelf ſo well, Sir *John*, that you know it is not Evidence; and you are not to talk of what other People have told you.

Mr. *J. Withins.* How long did ſhe live in your Family?

Sir *J. Talbot.* I can't tell how long (my Lord) but I believe ſhe was there ten Years.

Mr. *Juſt. Withins.* That's a ſtrange thing, that you ſhould keep an ill Woman ſo long.

Sir *J. Talbot.* My Lord, with your Permiſſion, ſhe was a Servant when that Child came to me, and when the Mother died; and my Wife did not think fit to put her away; ſo ſhe came and ſtaid with the Child as long as my Wife could keep her; but at laſt ſhe did foment Differences in the Family, Lyes and Stories; and was found to be a Perſon not fit to live in the Family; and therefore my Wife was afraid to keep her any longer, and put her away.

L. C. J. Well, *Mr. Roſewell*, have you any other Witneſſes?

Mr. *Roſew.* Pray call *Anne Dillingham.*

L. C. Juſt. Well, what do you ask her?

Mr. *Roſew.* My Lord, I bring this Witneſs to prove concerning Mrs. *Shafoe* alias *Hilton*, that ſhe offered to ſwear againſt People as being at Conventicles, whom ſhe had never ſeen.

Mrs. *Dillingham.* She lodged in my Houſe, and is a very ill Woman; and asked me to ſwear of Meetings, that I never knew any thing of at all in my Life. I never was at Meetings but about Thirteen Years ago. I asked her why I ſhould ſwear, or what I could ſwear to? She told me, I ſhould have a ſhare of the Money if I would ſwear to what ſhe ſaid; whether it were right or wrong, I ſhould have a Share if I would but ſwear.

L. C. J. How long ago is this?

Mrs. *Dillingham.* Two Years ago.

L. C. J. Who did you tell this to firſt?

Mrs. *Dillingham.* My Lord, I am Subpœna'd here to give my Teſtimony.

L. C. J. That's true; but who did you tell this that you talk of firſt to?

Mrs. *Dillingham.* My Lord, I never told it to any body but her, except it was to my own Husband.

L. C. J. But why would you keep this as a Secret, and not tell it to any body?

Mrs. *Dillingham.* Why, my Lord, I don't ſpeak it for any Malice to her at all, I aſſure you.

L. C. Juſt. Where do you live?

Mrs. *Dillingham.* In *Long-Acre* at the *Golden Ball.*

L. C. J. If you live in *Long-Acre*, how came you to diſcover any thing of a matter that was tranſacted at *Rotherhith*?

Mrs. *Dillingham.* My Lord, I know nothing of it, of my own Knowledge; but what ſhe would have perſwaded me to.

L. C. J. But how come ſhe to talk to you about a matter of *Rotherhith*? or, you to know any thing about her? that I deſire to know; and how you came here?

Mrs. *Dillingham.* One Mrs. *Peirce*, that is a Neighbour, ask'd me what I knew of her; and ſo would Subpœna me, becauſe ſhe lodged at my Houſe.

L. C. J. How long did ſhe lie at your Houſe?

Mrs. *Dillingham.* I can't tell; I believe about half a Year.

L. C. J. Well, what became of her? How did ſhe behave her ſelf?

Mrs. *Dillingham.* My Husband turn'd her out of the Houſe, and would not entertain her; becauſe ſhe kept Company with a Man that was none of her Husband.

L. C. Juſt. Why, can you tell when they were married?

Mrs. *Dillingham.* She went as the Wife of Mr. *George Hilton*, when ſhe was not married.

L. C. J. How! Was ſhe not married then?

Mrs. *Dillingham.* No, they were not married then. He was not her Husband then. There are a great many of our Neighbours that can ſay more than I. She is a naughty, filthy Woman; a very ill Woman; if I ſhould call her Whore, I believe ſhe might trouble me for it; but I believe it to be true.

L. C. J. Have you any more Witneſſes, Mr. *Roſewell*?

Mr. *Roſew.* No, my Lord; but I hope your Lordſhip will give me leave to ſay ſomething to the Court and Jury.

L. C. J. Mr. Attorny, have you any more Witneſſes to call for the King?

Mr. *Att. Gen.* My Lord, we have ſome Witneſſes to ſupport the Credit of theſe Witneſſes that we have produced: But we don't think there is any need; nor that it is any way diminiſhed by the Defence of the Priſoner at the Bar.

L. C. Juſt. Do as you pleaſe, Mr. Attorny; go on your own way.

Mr. *Att. Gen.* No, my Lord; we ſhall trouble your Lordſhip no further with any Evidence.

L. C. J. Then, *Mr. Roſewell*, let's hear what you have to ſay further for your ſelf; for all the Witneſſes have been heard, of one ſide and t'other.

Mr. *Roſewell.* My Lord, and dear Countrymen who are to be my Judges in this Cauſe this Day; What I now ſpeak, is with reſpect as much to their precious Souls, who are concern'd either in Proſecution or trying of me, as my own Safety. There is not a Man of you of the Jury, tho' you are Strangers to me, but I would lay down my Life to Morrow to ſave one of your Souls, if I might be an Inſtrument therein: How much more then all of them, if the Conſideration be taken of the Worth of an immortal Soul? Your Lordſhip knows, and I am

ſenſible,

ſenſible, how unfit I am now to do ſuch a thing as this is, in the Company of ſo many learned Gentlemen of the long Robe. I have betray'd already too much of my Ignorance in ſuch Affairs, and I beg your Pardon for it; and I humbly thank your Lordſhip, and the Court for the Indulgence that you have ſhewed towards me in my Infirmities. You are my Lord, as in the Preſence, ſo in the Place of the great God, the Judge and Lord of all, at this Day: You are *Elohim, I have ſaid ye are Gods*; whoſe Property it is to help the Weak, and compaſſionate the innocent; therefore I make this Apology in reference to my own Innocency, and my great inability to ſum up the Proofs that have been in this Cauſe. If you will put my Weakneſs in competition with their vaſt Abilities, who are of Council for the King againſt me; and my ignorance in the Laws of the Land againſt their great Knowledge; I cannot but expect to be overthrown, notwithſtanding my Caſe is very innocent, and I have declared in the Preſence of God the Truth of my Heart this Day. And if I were to be call'd to the Bar of the great God, the Judge of all the Earth, before I ſleep; I ſhould ſpeak the ſame thing, and muſt, and no other. I am ſenſible, a Lye is both a baſe, and a very wicked thing; and that the Lake that burneth with fire is prepared for all Lyars. And I pray God convince theſe Gentlewomen wherein they have wrong'd and abuſed me; that they may repent of their Sin; which (I bleſs God) I have prayed for them moſt Days ever ſince I was confin'd, and beg'd it of God with Tears, in Charity to their poor Souls. And I believe I have pray'd more for His Majeſty in one Week, than they have done in all their Lives. They are not the King's Friends, but his Enemies, in bringing ſuch Allegations againſt thoſe that are his true, faithful and innocent Subjects; as I am, my God knoweth.

And here, my Lord, I would firſt obſerve the Variations that are in their Evidence. In the firſt place, Mrs. *Smith* ſwears, That the Text I preached upon was the 21ſt Chapter of *Geneſis*. And here is Mrs. *Hilton* comes, and ſhe ſwears afterwards, that it was the 20th: herein they vary. Then I ſuppoſe, my Lord, if they vary and differ, in Law they are not two Witneſſes: But differing ſo, are both of them incredible: And I think the *Statute Law* of this Land is, that a Man muſt be convicted upon the Oath of two Credible Witneſſes.

Next my Lord, here's Miſtreſs *Smith* ſwears, that theſe Things were delivered, which are charged in the Indictment, altogether in the Morning-Exerciſe, in the Forenoon: Whereas your Lordſhip has heard from ſeveral Witneſſes (and I do not know one Man of them but fears a Lye; and would have ſworn to the Truth of what they have ſpoken. They tell you) how every Paſſage that theſe People would pervert muſt come in, and how it was divided. I hope your Lordſhip will pardon the Infirmity of two or three, a few illiterate Men, that are weak, and could not ſo well inſtruct themſelves to ſpeak in a Court of Juſtice upon ſuch an Occaſion. But upon the whole matter, they give ſuch an account, all, that it cannot be preſumed, or thought that they ſhould agree to ſpeak any thing that was not true. And I am confident, there is not a Man of them but would take his Oath, (as I ſaid) of the Truth of what he has here declared. And they have declared that there were two diſtinct Exerciſes, as I have proteſted in the Preſence of the great God. That in the Morning was upon the 20th of *Geneſis*: And th' other in the Afternoon (there being an Hour that paſt between,) was upon one particular Verſe of a Chapter in the Epiſtle to the *Hebrews*, quite diſtinct from the other Diſcourſe that was in the Morning. She not only varies from the Truth, but alſo from her Fellow-witneſs, that it was all in one Exerciſe. This I ſubmit to your Lordſhip's and the Jury's Conſideration (theſe worthy Gentlemen that are to judge of my Life, and Death) whether they are two Credible Witneſſes, thus varying.

There be ſeveral other Things (my Lord) that becauſe of my preſent Infirmity, I may not ſo readily call to Mind; but which ought to be recall'd and recollected; as in reference to the Perſon whoſe Houſe we met at; One ſays it was one Capt. *Daniel Weldy's*: Another that it was one Mr. *Daniel's*. Therein again they vary, in reference to the Perſon; and if they are out in one Thing, they may be out in another.

Smith. I can ſay nothing about his Name, I never was there in my Life before.

L. C. J. Mrs! Mrs! You muſt not interrupt him; he is upon his Defence for his Life.

Mr. Roſew. Then, my Lord, ſhe ſays that my Text in the Afternoon was upon a *Pſalm*; and there was no ſuch thing as your Lordſhip has had it particularly made appear to you. I have ingenuouſly told you the Text, and the Truth; I have ſpoken it from my heart in the Preſence of the great God; and upon what occaſion every Paſſage that they have wreſted was ſpoken: And your Lordſhip may thereby perceive how moſt abominably they have perverted my Words. Now they having wreſted my Words that are innocent in themſelves (ſo far from being Treaſon, that I do not know there was any Fault or Crime in them; being only plain Scriptural Proofs of Doctrinal Propoſitions in Divinity, without thoſe Applications that they have pretended to) certainly your Lordſhip and the Gentlemen of the Jury will conſider, what is moſt probable or likely; what they have declar'd, or what you have heard from the ſeveral Witneſſes that have come in to teſtify concerning me.

My Lord, I was going to ſpeak ſomething to your Lordſhip of the great Wickedneſs of their making the Application of what was innocently ſpoken and meant, to the late King of *England*, and his preſent Majeſty, whom I daily pray for, and always did; whatſoever theſe Witneſſes have declared concerning me. And your Lordſhip has heard my Maid teſtify (which I little expected) That I uſe to pray for the King every Morning and Evening in my own Houſe; and God knows that to him I have addreſſed my ſelf for him daily: And more than that ſhe heard me (when I thought none but the God of Heaven himſelf had heard me) pray for him in my Cloſet. I would deſire your Lordſhip and the Jury, to conſider, whether theſe are not the Criminals (and not I) that have made application of innocent Paſſages, and wreſted the Words that were plain and innocent in themſelves, to a wrong meaning, to make me Guilty of High-Treaſon; applying them to His Majeſty

jeſty, when I never intended, or thought the leaſt of any ſuch thing.

My Lord, I doubt not but there have been ſeveral that have joyn'd in it, that have help'd to frame and forge this Accuſation againſt me. And there is that which I ſuggeſted to your Lordſhip in the Morning, in the beginning of this Cauſe: Theſe Perſons have not only, or ſo much Sworn me a Knave; but a perfect Fool and a Mad man to ſpeak ſuch abſurd, incoherent, inconſiſtent, ſolleciſtical and nonſenſical Things. I believe there is no Man of common Senſe and Reaſon, no Gentleman that's here this Day, that can imagine that a Perſon that had the uſe of common Senſe and Reaſon, ſhould ſpeak ſuch abſurd Things as theſe are. Beſides, my Lord, I have brought Witneſſes, ſeveral of them, to teſtify there never was any ſuch Thing ſpoken by me as they have teſtify'd againſt me, and miſapply'd. I have likewiſe produced ſeveral Perſons to give Evidence of my uſual and conſtant Practice with relation to the King and Government all along; my contending for Monarchy, and againſt Anarchy, which did too much reign in theſe late Days of Confuſion, which I remember by very ſad Experience, tho' I was then indeed but a Child. And when I came to be a Man, I uſed always to obſerve the 30th of *January*, and the 29th of *May*: Preaching upon thoſe Days, and preſſing People to Obedience; and inveighing againſt thoſe that had acted againſt their Principles, and were Rebels either againſt his preſent Majeſty, or had been concern'd in that barbarous Act againſt his Royal Father; which I did utterly abhor.

And, my Lord, Methinks it ſhould have been very unlikely that a Man that ſhould make it his common Practice ſo to do, as I have teſtify'd concerning my ſelf, ſhould fall under ſuch a Suſpicion and Accuſation as I now am; Or, that ſuch an one ſhould fall into ſuch a Solleciſm, as the Words that are teſtified againſt me muſt import; it is very unlikely. I leave it to the great God of Heaven to vindicate my Innocency in the Matter; which I do not queſtion but he will do.

Then, my Lord, here are ſeveral Gentlemen of the *Church of England* that have teſtify'd concerning my Converſation. They have had Acquaintance with me many Years, ſome of them near 20 Years; the leaſt, 8, 10, or 12. They never heard an indecent Word, with reſpect to His Majeſty, or the Government, fall from me; any unworthy Reflection upon either of them: But my conſtant Practice was to pray for His Majeſty with all earneſtneſs and ſollicitude. There are ſeveral of them Gentlemen of repute in the City. There are particularly two Perſons that belong'd to an honourable Family, in which I lived ſo many Years, who give a Teſtimony what my Converſation there was; and my conſtant Practice of practice of praying for the King, while I was there. This your Lordſhip, and the Gentlemen of the Jury, have heard and obſerved; I doubt not.

But, beſides that; your Lordſhip and the Jury, I hope obſerve as to theſe People who Swear againſt me; what my Witneſſes have teſtify'd; that they would ſwear any thing, and forſwear it; And what a Character is given concerning one of them particularly, your Lordſhip has heard from that worthy Gentleman, Sir *John Talbot*, whoſe Face I never ſaw before it was in this Place. And by the laſt Witneſs, you have a Teſtimony concerning her lewd Converſation. And ſeveral other Witneſſes prove ſhe would Swear any thing for them, if they would Swear for her. So that it appears ſhe would, and does Swear at a venture ſuch and ſuch Conventicles; only upon hear-ſay, and meer report: And that ſhe has taken Money, and made ſome Compoſitions too. Theſe things I muſt refer to your Lordſhip, and theſe worthy Gentlemen, who are of the Jury.

If then my Carriage and Converſation (ſo well known in the World) be compared with that Character that is given of theſe Perſons; I muſt humbly ſubmit it to your Lordſhip, and the Jury, how far they are to be believed againſt me; and might argue from the Incredibility of their Teſtimony; but your Lordſhip cannot but remark it.

My Lord, It is very ſtrange that theſe two Women ſhould ſo exactly remember theſe Words. They agree in every particular Circumſtance. I durſt appeal to your Lordſhip, and the Jury, particularly to the Jury, if now they would undertake to repeat upon their Notes, the Words that have ſo often been repeated here; and whether there is any of them would be able to agree in all the particular Words? They have an incredible Memory that could ſo exactly agree together that theſe were the Words. I do humbly ſubmit this to your Lordſhip. For, my Lord, I lay the ſtreſs of my Defence very much not only upon the incredibility and improbability, but even the impoſſibility of the Evidence that they have given. I humbly ſubmit it, I ſay, to your Lordſhip, and theſe Gentlemen; and leave it with them and the great God of Heaven, whom I pray to direct them. I hope they will conſider the Life of a Man, and the worth of Blood. My Lord, however I am repreſented this Day, I know my ſelf to be a faithful Subject to His Majeſty; and to the great God of Heaven, whoſe I am, and whom I deſire to Serve.

My Lord, I will now, if you pleaſe, ingenuouſly confeſs my Crime, if it were any. I have been frequently Preaching, in my Congregation, out of the Scriptures; and it is true, as your Lordſhip ſees, the Chapter came then in courſe to be Expounded: Which I uſe to do, to let the People underſtand the Scripture, as well as I could; for the People periſh for lack of Knowledge; and it is by the Knowledge of Jeſus Chriſt that they muſt come to Life and Salvation; for him to know is Life Eternal. It has been my way to Expound the Scriptures to them.

In the Preſence of the great God, before whom I ſpeak, to whom I can appeal for the truth and integrity of what I ſay, that God before whom we muſt all ſtand, (all whoſe Faces I ſee here ſhall meet, and ſee one another at the great Tribunal,) It is to this God that I appeal as to the Truth of my Heart in theſe Things. And, my Lord, I ſhall continue as I have done, however God diſpoſe of me, to Pray for the Life, and Happineſs of His Majeſty; my uſual Prayer, Morning and Evening being, that God would crown him with Grace here, and Glory and Honour hereafter. And this I ſhall do by the grace of God unto my Dying day; For my Soul does abhor ſuch

Things as have been testify'd against me this Day.

Thus, my Lord, I have dealt as plainly with your Lordship and the Jury as I can. My Infirmities are great. I desire to leave my whole Cause with the Lord; and with these worthy Gentlemen my Country-men, who I do not question will have a just compassion and consideration of my Case, under these Circumstances wherein I stand; and to all the Circumstances that have been made out in this Cause this Day.

L. C. J. Mr. *Attorney*, Will you please, or any of the King's Council, to say any thing in this Matter?

Mr. *Att. Gen.* No, my Lord, we leave it entirely to your Lordship.

L. C. J. Gentlemen of the Jury, this Case has held a long Time; and Gentlemen, I must tell you, no Body ought to think Time too long in a Case of this Nature, wherein the Government is so much concern'd on the one side, and the Life of the Prisoner at the Bar on th' other. *Et de vitâ hominis nulla est cunctatio longa.* I think no Man ought to apprehend his Patience too much tired in finding out the Truth in the case of a Person that is tried for his Life. However, Gentlemen, by the way; because the Case has been long, it is fit that there should be some recollection made of it; and in order, as near as I can, that I might help your Memories in the Evidence that hath been given, both for and against the Prisoner at the Bar; I would endeavour as well as I can, to repeat, at least the Substantial Part of it, to you; and in case any thing that is material be omitted, God forbid but it should be supply'd by any one that is able for to give any Assistance of that kind; for I cannot pretend to be so exact as to give an account of the whole Evidence my self. But Gentlemen, I must tell you, it is a Duty incumbent upon the Court, to give you all the Assistance that can be in a Matter of this Nature, and I will do it with as much Integrity, and with all the Care and Caution of doing no Injury, either to the Prisoner or to the King, between whom we are to be indifferent, both you, and the Court, as possible can be; that there may be no wrong done on the one side, or on the other; and, according as the Prisoner himself hath said, what I shall speak, I know I speak in the Presence of the great God of Heaven and Earth; who is to be the Judge of all Men. We are upon our Oaths, and you are upon your Oaths; and we are all of us Bound by our Oaths that we have taken, to be guided in this weighty Affair, (for so I must call it) by the Evidence that has been given to us at this time, both against the Prisoner and for him. For certainly there cannot be a Thing of greater concern, nay, even in point of Compassion, than to see any Man come to be accused of so high a Crime as the Prisoner at the Bar is now tried for. And he must have a strange obdurate Heart and Conscience, that cannot so far participate of the common sympathy of human Nature and his Fellow Creatures, as to compassionate any one that stands in such Circumstances as the Prisoner does. But, then on the other hand; the Denials of the Prisoner at the Bar, with all the Imprecations that he has made; and all the Affirmations that he has offered of what he has formerly done; and all these things of his appealing to the great God of Heaven about his Innocency; that I must tell you, of themselves, they are not to weigh with you; for your Business is to know according to the Oath that you have taken, whether you have Evidence given to you, (since you are Sworn upon this Tryal) to satisfy you that he is Guilty according to that Evidence. So that if the Affirmation of the Person accused, tho' attended with never so many Imprecations one way or other, be offered to Persons that are in your case, as Jurymen, it is not to weigh with you at all one way or other, if it be only the Affirmation of the Party accused; for if so, then there would never be any guilty Person brought before any Jury whatsoever; or any Criminal could come to suffer any Judgment, or be convicted of any Crime; if his own Affirmations concerning himself, and his own Commendations of himself would be sufficient to Acquit him, and set aside his Accusation. So that now you are to go according to the Evidence offer'd; and so are we, against this Person that is here before you.

Gentlemen, I must say that it is very untoward; and I hope by this Cause there will be a warning given, at least, to other Persons; that there have been too many notorious Transgressours of the Law in this Matter of Conventicles. I speak that, not to affect this Case at all; but I speak of what the Nation hath had but too woful Experience of, as to these Seditious Meetings, that are, and have been continually kept up in Opposition to the Laws; and I speak nothing as to the Meeting that was at this time; but I speak it that others may be warned for future Times; for always Mischief attends the open and publick Transgression of the Law. God forbid, but that People should worship God, and serve him according to their own Consciences; therefore the Law has been so indulgent to them, as to give them leave to exercise their Religion in other manner than as is done in the Church of *England*; provided there be not any occasion of Tumult; but that there be not above Five, except those of the same Family, meeting together; which you know the Act of Parliament hath provided for. And the truth of it is, the Reason of the Law is very plain: For you all know, who are Gentlemen of Quality, that this Law, as well as another Law that has so great a relation to the Case before you, does declare, that from these Seminaries of Sedition and Faction Conventicles, and the Clubs and Cabals of discontented, irregular People, disaffected to the Laws both of Church and State, was the great Mischief and Confusion that was brought upon us, and which at length brought us into the Distractions of the late Times.

Gentlemen, I must say likewise this to you, that whatsoever the Prisoner at the Bar thinks now, that blessed Martyr King *Charles* the 1st. was by such means brought to that horrid, accursed, murderous Death and End; I cannot call it less than so, in relation to the Persons that brought him to it, under the Pretence of Religion. It was the Cry of Popery and Arbitrary Power, of which he was no way Guilty, tho' that was insinuated into the Minds of silly People, those ignorant Souls that were easily captivated with a base Lye; but that was the

Occasion.

Occaſion. Many of you Gentlemen, that are yet in being, remember it your ſelves; and many of you have, and cannot but have ſeen and read the Hiſtory of thoſe Times, and have been ſo converſant with the Practices of theſe People ſince, that you are able to make a Judgment in the Matter. All theſe ſort of Things are but Pretences, and fair ſhews of dangerous and ſeditious People; that which was moſt dangerous to us at that Time, and I am apt to believe will be ſo to the World's end. For when People come to guild over their bitter Pill of Sedition, it is always under pretence of Religion. For a lack-a-day, perhaps there were as many Rebels againſt the late King raiſed by the beating of the Cuſhion in the Pulpit, as by the beating any Drum in the Street; for it is well known theſe are the Bell-weathers of the Faction, that under pretence of Religion, come there to incenſe the People to commit all theſe Villanies that ſometimes they are incited to do, as we know; and to prepare the Way to bring us into that condition, that we were in, in the late Times: And particularly, were uſed as Inſtruments to bring that bleſſed Martyr, King *Charles* the Firſt, to the Block. Theſe Pulpiteers took Occaſional Texts, of binding their Kings in Chains, and their Nobles in Fetters of Iron; and raiſed up ſuch Doctrines from Texts of Scripture, that were certainly intended for quite far other Purpoſes, to countenance their Practices, to make People kill and ſlay God's Anointed, under pretence of ſaving and protecting the Anointed of God. But who did they mean by it? Pray how did theſe People come to take upon them to preach againſt Popery, when indeed they were preaching down all manner of Religion, under the Pretence of that? So that you grew to have as many Religions as there were Sects or Diſſenters in the Nation; and never any could be tolerated that were not grown into the Party, but they came all into Office, and the more extravagant the more preferr'd; ſo that without the Bleſſing and immediate Providence of God, by a ſecond Reſurrection, reducing us into ſome ſort of Order, in reſtoring his Sacred Majeſty (whom I pray God grant long to Reign over us; and ſo ought all Loyal Subjects to pray) what a miſerable Condition had we been in? And I may call it a ſecond reſurrection, it being the Reſurrection of our Religion; we were turn'd all into Confuſion; we had no other Religion, at leaſt apparently predominant, but that that had the ſtrongeſt Army to ſupport it, and that had force enough to contribute to what the luxurious, debauch'd Profeſſors of it would make to be Religion; for they were the Profeſſors at that time of all things.

Gentlemen, I ſpeak this, becauſe even the Laws that have been made ſince the Reſtoration of the King, have taken notice, that the beginning of all the Miſchief hath been this; and that the great Incendiaries of all Sorts of Rebellion were theſe who took upon them in their Pulpits, under colour of Religion, to countenance Rebellion and Treaſon, Confuſion and Anarchy. Now how far theſe things have been known to you all, that I muſt leave to you; and muſt betake my ſelf a little nearer to the Caſe, having premiſed theſe things; to which I would add this as a Warning to all People; that they would not abet or aſſiſt in any Meeting againſt Law, or that is known to be againſt Law, whatſoever they think; for there will Miſchief come upon it one time or another, let them pretend what they will. As that Gentleman ſays, he undertook to Expound, and teach his People the Knowledge of the Lord: the Knowledge of the Lord is a very good Leſſon to be learnt, and to be taught all People; but bleſſed be God, we thank him for it, we have Church men of as great Learning, (without any reflection upon the Gentleman at the Bar) as he can pretend unto; and Men as Pious, and Virtuous; and perhaps we may ſay at this time, with a little more Confidence than ordinary, that we have as Learned a Clergy as ever was ſince Religion was known within this Kingdom. And God be Thanked, theſe Men are not only learned for themſelves, but they exert themſelves for the good of others, for the Satisfaction of that Duty in which they are imploy'd, by their due and conſtant Attendance upon the Worſhip of God, in their Places of Worſhip, the Churches which are by Law appointed for it; and we need not run into Holes and Corners, and Conventicles, and Clans to underſtand the Word of God and the Practice of our Duty towards him, or towards Men; becauſe we have Churches to apply our ſelves to, where we may learn to know God, to obey him, and them that are put in Authority under him; which I am ſure is a Duty incumbent upon every Preacher of the Word of God to inſiſt upon, and preſs and urge. And I am ſure, whoſoever preaches at a Conventicle cannot with a ſafe Conſcience preach Obedience to the Civil Magiſtrate; becauſe while they are in that very Preaching, they are acting Diſobedience againſt his Laws; in regard what they do, is againſt the Authority of thoſe Laws under which they live; and no Man can Preach well againſt that which he knows in his own Conſcience, at the ſame time, he is practiſing himſelf.

So that Gentlemen, I muſt tell you this is a wonderful dangerous thing; and therefore I give it as a Caution to all People to beware how they break the Laws by going to ſuch Meetings, and Conventicles as theſe are; for it will have at the long run one time or other a very dangerous Iſſue. And there is another thing which is wonderful dangerous too, to ſee what Shoals and Crouds of People come to theſe ſort of Meetings; People of all ſorts of mean Trades and Profeſſions. And how eaſy is it, if a Man has a Mind to inſinuate into ſome ſilly, ignorant People, common, illiterate Fellows that can neither write nor read, ſome of them; yet thereby to feel their Pulſe, to ſee whether they will ſwallow down ſuch a Thing, or ſuch a Pretence at firſt? For they did not in the late Times begin with open Rebellion, and preaching the Doctrine of depoſing of Princes, or bringing them to the Block; but they tryed with ſeveral previous Ways, and as the Bait ſunk, and was ſuck'd in, they attempted to try further. They apply'd themſelves perpetually to purſue the temper of their Auditory; and therefore we muſt have a great deal of Care to prevent all ſuch Miſchiefs as theſe are for the future, that they may give no countenance to ſuch, who pretend to be Expoſitors, but are very ill ones of the Scripture; and thereby inſtill into the Minds of Men ſuch dangerous and pernicious Doctrines; that the Scripture may not be perverted,

verted, to give an Authority to ſuch deſperate Things as theſe are; for we have known over and over how eaſily People are drawn into Miſchief in this Age, even by the very ſame Train that they were, in the time of the late Rebellion.

Now, Gentlemen, theſe things being premis'd, I would take notice to you, that the thing now before you, is a Queſtion of a different Nature from what I have now ſpoken of. It is not the Queſtion that you are to try; Whether he preach'd at a Conventicle or not; or whether the doing of that which he did in ſo Preaching, is againſt the Law or not. But whether he did at any Meeting, (eſpecially as to the time that is particularly ſpecified) ſpeak Words of the ſame ſubſtance, to the ſame effect and intent that are compriſed in the Indictment. For tho' he did Preach at a Conventicle, and thereby did tranſgreſs the Law; yet in caſe he did not Preach to the Subſtance of what is contain'd in this Indictment that hath been read unto you, and that he is accuſed of, he muſt be acquitted. That I muſt declare to you for Law, as no doubt it muſt be acknowledg'd to me to be; therefore you are to take care upon your Conſciences, to try and conſider whether or no you believe theſe three Witneſſes that have been produced againſt him, ſwear true; or are guilty of wilful Perjury. For in downright plain Engliſh, they are guilty of Perjury, if he be not guilty of the Words laid in the Indictment. One of the two is certainly true; either they are guilty of Perjury, or the Priſoner at the Bar is guilty of the Treaſon laid to his Charge; I pray God direct you in your Enquiry; for it is a Queſtion (I muſt needs ſay) of very great Difficulty.

Gentlemen, for the intention of a Man's Heart (I muſt tell you this for Law) as to the compaſſing and imagining of the Death of the King, it is not to be diſcovered but by ſome Action; ſome Word or Overt-Act, there might be to interpret the ſecret Imagination of the Heart. It is impoſſible to diſcover, or diſcloſe the Imagination of any Man's Heart, except we be directed to that Diſcovery by Words or Actions.

Now Gentlemen, Words that in themſelves may bear a good Conſtruction, and are good Words, yet coupled with Actions that are Evil, or other Words that are Evil, theſe very Words may be a Diſcovery of the evil Imagination that is in a Man's Heart. As to expreſs my ſelf in a very familiar Example, for the purpoſe, that I may make things as plain as I can, for that is my deſign, and ought to be every one's that is concern'd in ſuch a Matter as this. Becauſe we have had ſome Diſcourſe concerning the late bleſſed Martyr King *Charles* the Firſt, he was here brought to a Shambles of Juſtice; for I cannot call it a Court of Juſtice, however they called it a High Court; and there was a kind of Mockery or Pageantry of a Tryal. He was Arraign'd and Try'd for Treaſon, and a new notional Treaſon, never yet invented nor known of before amongſt us, Treaſon againſt his People; I ſay, new and never thought of till theſe Butcherly Fellows that ſprung out of the Shambles came to put it in Practice; erecting what they call'd a High Court of Juſtice, but which was truly to be call'd a High Court of Injuſtice; and there they were to have ſome come and cry Juſtice, Juſtice, Juſtice upon the King. Gentlemen, Juſtice is a good Word; but if that Word be uſed and ſpoken as it was in that caſe, in order to bring the King to his Death, that which was a good Word, and if otherwiſe uſed, had been a proper Word even at that time; that is, if apply'd to good purpoſe, to ſet the King and the Nation free; yet being apply'd to the bringing that Sacred Martyr to ſo horrid and barbarous a Death, that was plain downright Treaſon; and I make no difficulty in the World, (nor can any Man that underſtands any thing) that it was ſo by Law; and it was an Overt Act ſufficiently indicating the intention of all Perſons that were therein concern'd to put and bring the King to utter Death and Deſtruction; and all theſe Fellows that made uſe of that good Word, Juſtice, Juſtice, Juſtice, were all undoubted Traytors; making uſe of it for that ill Purpoſe.

Gentlemen, again; Suppoſe if Mr. *Cook* was a Man of Law, that was Sollicitor of what they call'd the Common-wealth at that time, Sollicitor to the State, (I only ſpeak this to explain my Mind) if he comes (when the King had juſt ground to diſpute the Authority of that Court of Injuſtice, that he was dragg'd to, and refuſed to Plead) and does pray Judgment againſt the King, as he did, and it was proved at his Tryal. Judgment alone might be there meant as tending to excuſe the King, as well as to Sentence him to Death; yet he being there, praying Judgment againſt the King, and which was afterwards at his Prayer ſo pronounced; that ſhew'd what his Opinion of the Word he uſed was at that time; and that made him a Traitor, and was an Overt-Act to diſcover his Guilt.

Why ſo, Gentlemen, I am to tell you, tho' there are Words that may be uſed in a Scriptural Way very well, and to very good Purpoſe; yet if they be applied to an ill Purpoſe, they may be a ſufficient Indication of a Man's compaſſing and imagining the Death and Deſtruction of the King. Therefore, Gentlemen, you are the Judges, whether if in this caſe, he ſpeaking theſe Words, of deſtroying our Enemies, and ſtanding to our Principles, they have not an Alluſion to the former Words; and whether they are not Expoſitors of the Mind of this Perſon, the Priſoner at the Bar, of compaſſing and imagining the Death and Deſtruction of the King; and I do this on purpoſe to remind you of what is neceſſary to let you into the Queſtion.

Now for the Teſtimony againſt the Priſoner at the Bar, you have three Witneſſes. Firſt, you have Mrs. *Smith*, ſhe does directly Swear that ſhe did frequently, ſeveral times go between the 13th of *July* and the 14th of *September*, to hear the Priſoner at the Bar preach at ſeveral Conventicles or Places of Meeting. She tells you the particular Days; She tells you as to one, that ſhe heard him the 20th of *July*. She heard him another time the 10th of *Auguſt*, according to the beſt of her remembrance. She heard him again the 17th of *Auguſt*, the 24th of *Auguſt*, the 31ſt of *Auguſt*; and ſhe heard him the 14th of *September*; that is according to the beſt of her remembrance. She both tells you the Time and the Place, and ſhe heard him Preach at theſe Conventicles. All that ſhe ſays as to this, is introductive to what ſhe ſpeaks of the 14th of *September*, which is the Day to which the Indictment does refer; and this ſhe does ſay poſitively, that upon the 17th of *Auguſt*, he pray'd that he might be forgiven for not Praying for the King; and by that ſhe would have you to underſtand, as ſhe would inſinuate, that he did not uſe to Pray for the King.

Mr.

Mr. *Roſew.* [*Turning to the Jury.*] I made uſe of the Words of *Samuel*, God forbid that I ſhould ceaſe to Pray for him.

L. C. Juſt. Sir, you muſt not talk to the Jury now; I am directing of them.

Mr. *Roſew.* My Lord, I beg your Pardon; it was to ſet the Matter right. It was miſ-apprehended.

L. C. Juſt. All this is antecedent to the Matter for which he is accuſed; and you ſee his Anſwer to it, from a Text of Scripture that he offers to you, which he did not repeat with diſlike to pray for the King; but that he thought it his Duty always ſo to do.

Then ſhe tells you particularly at another time, which, I think, was at the Houſe of one *Paul Shed*; I cannot particularly tell directly the Name; there was a talk of the Recorder, and of the Lord Mayor of the City of *London*; but that was before this time. And afterwards, the firſt and the ſecond Witneſs, two of them more, give you an Account, tho' they were never there but then; That he began to talk about the Fire, and that he ſhould ſay there was a great Man at the Corner of *Grace-Church ſtreet*, I need not name his Name, for you all know him very well; that he met with a poor Man, tho indeed he was not a poor Man, he was a labouring Man, a Carpenter; and they began to talk much concerning the Fire, and he did ſay, that in caſe it had not been for that great Man, there had been no ſuch Thing as the Fire in *London*; nor if it had not been for the Lord Mayors and Sheriffs afterwards, there had been no ſuch thing as the Fire in *Southwark* and *Wapping*. And I take notice too, that at the ſame Place, which was *Shed*'s Houſe, that they ſpoke of, there is Mrs. *Farrar*, againſt whom there is not the leaſt Objection that I can hear of; She agrees both in the Circumſtance of Place and Time, and of the Words, and to the Dialogue about *Grace-Church ſtreet*, and the Carpenter; and to the previous Words, that he was not a poor Man, and the like; and about the Diſcourſe relating to the Fires of *London*, *Southwark*, and *Wapping*; and likewiſe relating to the Lord Mayors, and Aldermen, and Sheriffs; theſe Diſcourſes were at that time.

Gentlemen, the next Teſtimony you have, is of theſe Witneſſes that ſpeak of the Time that is in the Record; which all the three Witneſſes that you have heard, ſpeak to; tho' the moſt of what I mentioned before, was another Time: And this is at the Houſe of one Captain *Daniel*; one ſays, Capt. *Daniel Weldy*. But that it was a Captain that was then at Sea, is plain; for this Gentleman himſelf, Mr. *Roſewell*, does not deny that this was at Capt. *Daniel*'s Houſe; and that he did pray for him, as being then at Sea, and for all his Family; and all the Witneſſes ſpeak to the ſame time. Tho' indeed the firſt Witneſs did ſay, that ſhe did not know but it might be Capt. *Daniel Weldy*; but ſhe likewiſe ſaid, ſhe did not directly know his Name. But ſhe directly Swears to the very Words that are mentioned in the Indictment. She does directly Swear that Mr. *Roſewell* preached upon the 21ſt of *Geneſis*. Says ſhe as I remember; tho' Mr. *Roſewell* did think, there was a difference between the Evidence of the one and the th' other Woman about the 20th or 21ſt, yet it was only upon her remembrance, as well as ſhe could, and ſhe did not poſitively Swear it was in that place, but according to the beſt of her remembrance. And the ſecond Witneſs Mrs. *Hilton*, when ſhe come to Swear, ſhe ſaid it was either the 20th or 21ſt; but in ſo many Words ſhe did directly Swear, that he ſhould Preach *that the People made a Flocking to the King on purpoſe for the Curing of the King's Evil; but the King could not do it; but we are they that the* People *ſhould flock to for the curing of all their Evils.* Which are the very ſame Words in Subſtance that are in the Indictment.

The very ſame Words in Subſtance, ſays that other, the ſecond Witneſs; the ſame Day, in the ſame Place, did I hear Mr. *Roſewell* then ſpeak theſe Words; and they go further, and the ſame Witneſſes both Swear, *Hilton* and *Smith*, that Mr. *Roſewell* ſhould ſay, *We have had two wicked Kings together, who have ſuffered Popery to come under their Noſes, who can be compar'd to no other Perſons but wicked* Jeroboam. Mrs. *Smith* Swears theſe Words directly, and Mrs *Hilton* ſays, ſhe thinks there was the Name of *Reboboam* mention'd; but ſhe is ſure there was mention of two wicked Kings, in the ſame Words as Mrs. *Smith* ſpeaks. They go yet further, and ſay, both the one and th' other of them, That he ſaid *if the People would ſtand to their Principles, he did not doubt but they ſhould overcome their Enemies as in ancient Times with Rams-horns, broken Platters, and a Stone in a Sling.* The two Witneſſes, both Mrs. *Smith*, and Mrs. *Hilton* ſwear to the very Words, and at leaſt to the Subſtance of them; and if there ſhould be ſome little Variance in ſome few of the Words, that will ſignify nothing if the Subſtance be the ſame.

But now Gentlemen, beſides theſe two Witneſſes, there is a third Witneſs, Mrs. *Farrar*, againſt whom (that I can ſee) there is not the leaſt Exception in the World, if you remember any, you would do well to conſider of it; you may be better able to recollect what has been ſpoken or offered than I can in ſo long a time; and you ought to endeavour (being Men of Underſtanding, and good Quality) to refreſh one another's Memories, and make what Obſervations you can; which I perceive you have taken Notes about, ſome of you at leaſt.

She does directly Swear as to the buſineſs of the King's Evil, The ſame Words that the other two have Sworn, about *flocking to the King to Cure the King's Evil which he could not do; But they were the Prieſts and Prophets that could cure the Maladies of the People.* And as to the ſecond Words, She ſwears that he ſaid *there had been two wicked Kings that had ſuffered Popery to come in under their Noſes.* And ſhe Swears in the third place, *That there was likewiſe an Exhortation to ſtand to their Principles, and that they ſhould overcome their Enemies.* She does not indeed particularly tell you about *Rams horns, and the Platters, and the Stone in the Sling*, but only of *ſtanding to their Principles, and overcoming their Enemies*: Which I would have you particularly to take notice of, it being the material Part of the Indictment, to make theſe Words Treaſon.

Now Gentlemen, give me leave to tell you, there is great regard, and very great, to be had to the Circumſtances in this Caſe; to ſee how far theſe things are to be tack'd together. Firſt, you remember the Witneſſes were examined apart. And it does not appear that they have talk'd together; and there was all the Care taken that poſſibly could be, they ſhould be out of the Court, and out of one another's hearing; ſo that there was as much endeavour to detect the Falſhood

ſhood of their Teſtimony (if it could be) as poſſible in any caſe, even in the very moſt minute Circumſtance. Mrs. *Smith* Swears, that Mrs. *Hilton* came to her Houſe on *Saturday* Night; that they went together to the Houſe of this Capt. *Daniel* upon the 14th, about Seven of the Clock; that they were there before Mr. *Roſewell* came in; that there was a Lower Room in the Houſe; and a little higher there was a little Room; and then there was a Room up two Pair of Stairs, where there was a Bed; that Mr. *Roſewell* ſtood upon the Stairs, but they both ſate upon the Bed, together with one of Mr. *Roſewell*'s own Witneſſes, which was the Mathematical Inſtrument-maker, and that he was in a Mourning Cloak; and that there was particular notice taken of a Pair of Shoes given by Mrs. *Smith* from under the Bed to the Child of that Mathematical Inſtrument maker; and that there was Prayer made for Capt. *Daniel* the Maſter of the Houſe, who was then at Sea, and for his Child and Family. There were theſe Circumſtances, every one particularly asked of the Witneſſes, and Sworn to by them in the very ſame Words, the ſame manner of Poſture, the ſame Things done both as to the Room, the Bed, who ſate upon the Bed, the Mourning Cloak, the plucking off and delivering of the Shoes; that I may appeal to your Memories, if they did not agree to a tittle exactly.

Then they began to enquire further concerning other Expreſſions of Mr. *Roſewell* at other times: Something about People in Scarlet, and ſomething about Canting: And Mrs. *Smith* tells you, that he did ſpeak ſomething about Canting; that he was talking concerning that Word; ſays he, I will tell you what that Canting means; I went not long ago thro' a Cathedral where the Organs are, and there the People were gather'd together, and they were Singing the Lord's-Prayer, and I don't know what; I heard them Sing, and I could not but laugh out; and he broke out in his Sermon into a He! he! he! that is Canting. This, they ſay, was his Expreſſion at that time.

When Mrs. *Hilton* came in, ſhe tells you the very ſame Words, even to a very particular Phraſe which I had forgot before, that he ſaw the Men in white Gowns that were Singing, and which he counted Canting. It is very true, there is no ſuch thing mentioned in this Indictment; but only it is offer'd by the King's Council to ſhew the Temper of the Man, and how he uſually uſed to Preach.

As concerning the Story of *Sampſon* and *Dalilah*, that's Sworn by both Witneſſes, that there was ſuch a Diſcourſe; for he began to talk of our King's keeping of Women, and he hop'd that they would bring the ſame Deſtruction upon him that they had brought upon *Sampſon*; he hoped it would ſo fall out with our King. How far it is true, (they both having Sworn it) you are the Judges; they have directly Sworn it, and to all the Circumſtances both of Time and Place.

Gentlemen, There is yet another thing that is material too, tho' a ſmall minute Circumſtance, and that is about this ſame *Paul Shed*, that they have ſpoken of. When the firſt Witneſs came in, he chid her for coming in her Pattins, and bid her pull off her Pattins, for they would leave ſuch an Impreſſion there, that People would be apt to diſcover that there was, or would be a Meeting; and therefore ſhe promis'd when ſhe came any more, that ſhe would be ſure to leave off her Pattins. And it is proved, that Mrs. *Hilton* and Mrs. *Smith* were in the Room above, and Mrs. *Farrar* was in the Room below, and it does not appear that ſhe was acquainted with the reſt. She had heard him ſeveral times, and tho' ſhe did not ſee him that Day, he being up two pair of Stairs higher, yet ſhe Swears directly to the ſame Words, the ſubſtantial Part of them that the other two Witneſſes ſpoke of. So that I muſt ſay, if in caſe they have contrived this Story to take away the Life of the Priſoner at the Bar, they have contrived it with all the deviliſheſt Subtilty that ever any could do, or that could enter into the Minds of any People. You are the Judges of the Fact, I pray God to direct you, that you may detect the Truth; far be it from the Court, or any body, to deſire that any thing but Truth ſhould prevail. For it were far better a thouſand times that a hundred guilty Men ſhould eſcape, than one innocent Man ſhould ſuffer. But on the other ſide, far be it from any Man that is upon his Oath to do his Duty between the King and the Subject, to be moved by Compaſſion, or any thing of that Nature, to go againſt the Evidence that is given in open Court; unleſs he be ſatisfy'd that the Evidence is Falſe. For in this caſe, I ſay again, either you muſt find the Priſoner Guilty of what he ſtands charged with in the Indictment; or elſe you muſt find theſe three Witneſſes guilty of wilful Perjury: And I pray God again to direct you what you are to do in it.

Gentlemen, as to the Teſtimony that has been offered on the behalf of the Priſoner; (I would follow the ſame Method that has been taken, both in the Evidence given by the King and the Priſoner, as near as we can.) Firſt, you have had brought by him half a Dozen, (for I would not injure him as near as I could one tittle) that have given you an Account of what he ſaid at that time. There was *Hudſon*, *Hall*, *Atkinſon*, *Smith*, *Hales* and *Wharton*; I took their Names, as near as I could; and all theſe People do directly ſay they were preſent at that time, and they heard nothing ſpoken of the late bleſſed Martyr King *Charles* the Firſt, or of Reflection upon the Government; but all that was ſaid of the King's Majeſty that now is, was in his Prayer, wherein he did pray for him; that they heard nothing come from Mr. *Roſewell* concerning the King's Evil in the manner that the Witneſſes ſpeak of; but what was ſpoken, was ſpoken of another King, in relation to *Abimelech* King of *Egypt*, and not relating any way to the Diſeaſe they call commonly amongſt us the King's Evil. It is true, one of them does ſay (which is a Word that has obtain'd very much amongſt ſome ſort of People) that when he pray'd for the King, he pray'd for his deliverance from evil Counſellors: And under theſe Words, evil Counſellors, and deliverance from them, we know what became of that ſo often mention'd Prince now, King *Charles* the Firſt. Under that Pretence they would remove all his Friends from him; and when he was left alone they could eaſily do what they pleas'd with him. Many with pretence of great Pity and Zeal for the King, cry out that all that they complain of, is not of what the King does; him they think to be a wonderful good Man; it is not he, but his

evil

evil Counſellors that they reflect upon; and ſo we muſt fight againſt theſe evil Counſellors; and when we have laid them aſide, and he ſtands alone, then it will be eaſy to ſerve him as they did his Father. Whatſoever the Pretenſions of ſuch Words are, we know what the Deſigns of the People that made the ſame Pretence heretofore came to; and I pray God that there are not the ſame Deſigns on foot ſtill; nay, that that was not the Deſign of this Prayer of the Priſoner at the Bar.

Gentlemen, they give you a particular Account how he preached upon the 29th of *Geneſis*; and they ſpeak as to the 2d and 7th Verſes of that Chapter, and what Diſcourſe he had upon them. But truly it is pretty ſtrange (as Mr *Roſewell* himſelf objected even to you of the Jury very well) can any one of you remember ſo exactly the Words that were ſpoken as theſe Witneſſes have Sworn? and truly he puts a very material Queſtion: But then the Queſtion turns t'other way; how come all your Witneſſes to give ſuch an exact Account; all except the ſecond Man, who indeed did commit a Blunder or two, your Six Witneſſes, even to the Texts of Scripture, to the very Phraſes that were uſed, particularly to the Word *Tremendous*? they are all as exact as can be. It is ſtrange that five People ſhould agree in all the Circumſtances; but why ſhould it not be as much believable that three ſhould have as exact a Memory as the other five? Nay, and I will tell you what is pretty ſtrange too, that theſe People muſt hear, and remember juſt what was ſaid upon the 14th of *September*; but that which was ſaid upon the Text the time before or after, that they cannot ſo well remember. It is plain they have been dialogueing with one another; and it is plain, that ſome People can neither write, or read, nor remember, but how they ſhall be ſure to ſerve the preſent purpoſe. That ſeems to carry an Objection in it on the other ſide, as the King's Council ſay; and it ſeems the more reaſonable on Our ſide why they ſhould remember ſo exactly, as they have Sworn; becauſe, (ſay they) that Day when we came home, we call'd for Pen, Ink and Paper and ſet down theſe Words, the Subſtance of which we have now here Sworn: So that that does ſhew you we had reaſon to remember what we have teſtify'd againſt this Perſon. But what is yet greater than all this, it cannot be imagined, (ſay the King's Council) that the Priſoner's Witneſſes are ſo much to be believed, ſince they give no Account of what was ſpoken at any time before, nor any time ſince.

Then, Gentlemen, there is another Reaſon, ſays Mrs. *Smith*, I came on purpoſe to ſee who was at the Conventicle; tho' I had been at ſeveral Conventicles before, yet I never heard ſuch Words ſpoken. Says Mrs. *Hilton*, I was glad to be gone: and tells you of her unwillingneſs to ſtay there, having never heard ſuch Words ſpoken againſt the Government before; and therefore ſhe ſet them down immediately as ſoon as they came home; and they went together to the *Bull* and *Mouth*, the *Quakers* Meeting near *Alderſgate* afterwards; and that that Day, or the Day following, they went to Mr. *Recorder*, and gave him an Account of what had paſt in their Knowledge. This is the Anſwer that is given by them to what the Priſoner's Witneſſes ſay; But you are to weigh this Teſtimony of both Sides. For I muſt tell you, Gentlemen, tho' theſe Witneſſes that are for the Priſoner are not upon their Oaths, yet they are as much under the Obligation of giving true Teſtimony, as they can be by Law; and you ought to have regard to their Teſtimony; how far it is conſiſtent with Reaſon and with Truth. Some things they differed in; ſome things they heard in another manner; whether you believe ſuch things may ſlip out of their Memories, or how that is, you are to conſider of it. This, Gentlemen, is the firſt part of the Evidence that the Priſoner hath given for himſelf.

Next, Gentlemen, There is another part of the Evidence, and that is from the Fifteenth Witneſs, one Mr. *Jolliff*, Captain *Cotton*, Mr. *Fips*, Mr. *Veering*, Mr. *Hitchcock*, Mr. *Hinman*, Mr. *Wanley*, Mr. *Strong*, Mr. *Cutloe*, Mr. *Melſum*, Mr. *Medham*, Mr. *Winnacott*, *Anne Broadhurſt*, *Anne Manning*, *Iſabella Dickeſon*; all theſe were call'd to his Reputation, as to his Behaviour and Converſation towards the Government. They tell you that they have known him a long time. It ſeems they frequented the hearing of him ſometimes, when there was an Indulgence and a Diſpenſation for ſuch Meetings; then they went to hear him; and then he uſed to pray for the King; and it has been obſerved, that, it may be, meeting with favour and kindneſs from the King and Government he might be very well pleaſed with the King at that time; tho' that turn'd to the Prejudice of the Government, (as we all know.) But whether his Complexion alter'd towards the Government, when it was thought fit to reſtrain that Indulgence; that you have to conſider. They ſay they know nothing of Harm by him, and that may be true; no more do I; and I preſume you do not; if you do you will tell us. You and I pray God we had never heard of any thing of Harm come from him with relation to the King and Government; but you have heard what has been teſtify'd by theſe Witneſſes.

Then there came two Witneſſes that lived at Sir *Edward Hungerford*'s, when the Priſoner at the Bar lived there; one of them lived Ten Years there, the other Four. And they give you an Account how he was uſed to Pray (not according to the Common-Prayer, but) he uſed to go to Church, and he did Pray for the King very earneſtly and heartily, as they ſay; he came there in the Year 1664, and he continued there Seven Years, and they always look'd upon him to be well-inclin'd to the Government.

Then you have an Account of three Servants that lived in the Houſe; one lived four Years with him, and that ſhe frequently heard him pray for the King, (for I would not willingly forget a Word that ſhould make for the Priſoner's Advantage) ſhe ſaid he prayed as earneſtly for the King as for his own Soul, with as much zeal and earneſtneſs as he could do; this is what ſhe ſays. And the ſecond lived with him three Years, and ſhe does remark particularly, that one time being in private in his own Cloſet, at Prayer by himſelf ſhe heard him very earneſt in Praying for the King: So that he would urge it as improbable, and unreaſonable to believe, that if he, in his private Family, and by himſelf ſhould ſo earneſtly pray for the King, (which was never intended to be heard by any body, and came to be thus heard by Accident) he ſhould in Publick, before a great Congregation, utter

ſuch

ſuch Words againſt the King and Government, as are pretended againſt him. This is the uſe he makes of that.

Then, Gentlemen, you have likewiſe afterwards the Teſtimony of thoſe two Witneſſes that had been examin'd before, that is Mr. *Atkinſon* and Mr. *Smith*; that whereas you ſeem to ſay, ſays he, I made a great Reflection upon the late King and his preſent Majeſty; it was ſo far from that, that I uſed to Teach upon the 30th of *January*; and then to preach Obedience to the King, and to pray for the King, and make ſharp Invectives and Reflections upon thoſe that had been concern'd in that horrid, barbarous Murder of the late King of bleſſed Memory; ſo that I cannot be thought to encourage ſuch Things as theſe, when I uſed to preach to my Auditory ſuch Doctrine as I now tell you of. This is the Subſtance of that part of the Evidence, as near as I can remember, and recollect; you have taken Notes, Gentlemen, your ſelves; you will be able for to make Obſervations, according to what Notes you have taken.

Then Gentlemen, here are eighteen Witneſſes that he has called to endeavour to perſwade you to a diſbelief, and gain a diſcredit as to the Witneſſes that are produced againſt him. Now as to that, which was offer'd by the firſt Witneſs *How*; that was but by Hear-ſay, he knows nothing of his own Knowledge; for my Brother, Sir *Thomas Jenner*, he gives you an Account of all the Queſtions that he was asked about; that ſhe never did ſay that ſhe was preſent at the Conventicle, but that Mrs. *Bathoe* had confeſs'd it to her; and upon that Confeſſion ſhe was Convicted. Now Gentlemen, it is a very untoward thing in this Matter, that Mrs. *Bathoe* it is plain uſed to have Conventicles, and ſhe is the Widow of a Non-conformiſt Preacher, and this Woman was ſo far from ſaying, that ſhe was there; that ſhe only inſiſted upon it, that Mrs. *Bathoe* had confeſs'd it to her. So likewiſe you have been told concerning that Buſineſs of Mr. *Hales*, the Conventicle at his Houſe on the 13th of *July*; it was ſo far from her Swearing that Mr. *How* was there, that tho' he was mention'd, yet ſhe refuſed before Sir *George Treby* to Swear that there was any ſuch Conventicle, or that he was the Man; ſhe did not know the Man, and could not ſay any thing to him. And my Brother *Jenner* being convinc'd that there might be a Miſtake, that there might be no ſuch Conventicle at Mrs. *Bathoe*'s, went as far as he could to retrieve it; but it ſeems it was paſt from him into the Clerk of the Peace's hands; I cannot ſay any thing to it: But if you are ſatisfy'd that there was no ſuch Conventicle at all, all that can be ſaid is, that the Old Woman bely'd her ſelf; and my Brother *Jenner* as to an Accommodation between them did reſolve to do what he could, and promis'd to ſpeak to the Clerk of the Peace: Not but that for any thing yet appears, this Woman that is here brought as a Witneſs againſt Mr. *Roſewell*, did ſwear true, That that other Woman did confeſs to her, that there was ſuch a Conventicle; they indeed have endeavour'd to evince there was no ſuch Conventicle. I muſt leave it to you; for nothing appears clear of the one Side, or the other.

Then Gentlemen, as concerning her talking with, and about one *Games*; wherein you had an Account given you by one *Harvey*, and he adviſed to give Money rather than to be troubled; but they would not give Money. Now, for that the whole Anſwer (that it may be given together) is that you know the Proſecutor in theſe Caſes, has a Share out of the Penalties that are incurr'd by Conventicles; and tho' it may be that it was not ſo well done by ſuch Informations to compound Penalties, yet it is no Evil Thing: For if I will chooſe to inform or not inform, there is a right in me to a Part of the Penalty ariſing from the Offence: And tho' it be not a commendable Thing, yet it is not a criminal Thing for me to Compound it; for I do not obſerve that they are proved to be People that do uſe to go to Conventicles.

Then Gentlemen, There is ſomething to be obſerved concerning the Evidence of *Cartwright*; He comes and tells you, that he was by, and one of the Perſons that went along with Mrs. *Smith* to ſeveral Places, in order to make Convictions of Perſons for Conventicles; and ſhe would have him Swear ſuch and ſuch Conventicles that ſhe would dictate to him; and ſhe promis'd and offer'd to Swear for the Conviction of Conventicles when ſhe was not there: And this was a great while ago; but no body heard a Word of it till now, and that when Mrs. *Smith* was ingaged in this Proſecution againſt Mr. *Roſewell*. Now when we meet with this ſort of People, we ought to conſider of the Nature of their Evidence. It is certainly a very improbable thing, that any Perſon ſhould come and tell him, I will be Guilty of Perjury, I will be forſworn for you, if you will be forſworn for me. It can hardly be believed that any body ſhould ſay ſo to a Fellow that you ſee is likely enough to detect any ſuch thing, if it ſhould be for his Advantage: And it had been his Duty (if he had been an honeſt Man) to have diſcovered this to a Magiſtrate immediately, and detected it, ſo as that the Villany ſhould have been puniſh'd; not to come and ſerve a turn upon ſuch a Tryal juſt as this is. And therefore Gentlemen, I do not like ſuch accidental Witneſſes that ſeem to drop (as it were) out of the Clouds, and we can have no Account of them before. You have no Satisfactory Reaſon how he comes in now to make this Diſcovery. Here you have ſeveral other Witneſſes that were before, that give ſome Account of her Behaviour in theſe Matters.

As to the Conviction that they talk of upon the 13th of *July*; ſeveral Witneſſes give you an Account of the Matter. Firſt of all it is very apparent by that Book that is produced, That there was a Conventicle the 13th of *July*, and it was at Mr. *Hudſon*'s; but indeed it was not at Mr. *Hale*'s; and it is not alledg'd here by her that it was ſo. And for that other, my Brother *Jenner* gives you an Account that upon the Confeſſion of Mrs. *Bathoe* there was a Conviction; but there was no ſuch Conviction of *Hales* in the Caſe, but only of *Bathoe*; as appears by the Record which hath been produced.

Then Gentlemen, the next Queſtion is concerning the Clerk of the Peace, and the Writing that they talk of; which makes nothing one way, nor t'other. Then there are two Witneſſes, *Drew*, and the other Man, that meet with this Woman, Mrs. *Smith*, in *Grub-ſtreet*, in order to make a Compoſition for Penalties for going

going to Conventicles; and they find out a Fellow that uſed to go to Conventicles, and they frighten him into a Compoſition, and ſo much as they ſay, was paid perhaps, and he ought to have paid more: But it's plain, he uſed to go to Conventicles; and it's pretty odd that he ſhould be pick'd up on a ſudden there, on this ſide the Water, to diſcover theſe Practices at the Inſtigation of the Priſoner at the Bar, who lives at ſuch a Diſtance on t'other ſide of the Water.

Then Gentlemen, as for Mrs. *Higgenſon*, I can only ſay this, ſhe ſays nothing to the Purpoſe, that is either material for or againſt the Priſoner; for ſhe ſaid, ſhe knew nothing of her own Knowledge; and all that ſhe did ſay, was but Hear-ſays and Reports, not by way of down right Accuſation againſt the Perſon ſhe was produced againſt. And Gentlemen, you are to conſider that Hear-ſay and Report is no Evidence at all; but it muſt be what the Witneſſes know, and ſay of their own Knowledge.

The next is a worthy Gentleman, Sir *John Talbot*, and as to whatſoever he ſaid, or any of his Family told him, except he knows it of his own Knowledge, that's no manner of Evidence at all to take off the Credit of Mrs. *Hilton*. But what ſhe her ſelf did ſay, (if it can be teſtify'd) is Evidence againſt her. If ſhe confeſt that ſhe had any Deſign, or was ingaged in any Practice to betray the young Lady Sir *John Talbot* talks of; that indeed is a very evil thing. But whatſoever were the Apprehenſions of others concerning her ſhare in that matter; or any of the little things that they talk'd of concerning Miſtreſs *Hilton* before ſhe intermarried, it can ſignify but very little in this matter. And when we ask Sir *John Talbot* the Queſtion, he cannot give any Satisfactory account of it; for he ſays plainly, he had no Converſation with her. It ſeems it was not a Contrivance while ſhe liv'd there for ten Years together; and it is pretty hard to imagine in ſuch a Caſe, if ſhe had been ſuch an evil Perſon as they would repreſent her, in that time that it had not appeared, ſo far at leaſt as that ſhe had been diſcharg'd the Service long before: For Sir *John Talbot* is a Perſon that cannot be thought to permit any thing of ill in his Family. But yet withal, he can't know all that paſſed, any more than any of you of Irregularity in the Family. If indeed they had queſtion'd any of the Servants that were more converſant with her, and taxed her of any thing that was Evil, then it had been a much more probable Exception; but to have Peoples Reputations blaſted barely by Tittle-tattle and Stories, after Perſons are gone out of a Family, where they have liv'd for many Years, is a matter of very dangerous Conſequence; and any Man in the World may be injur'd in his Credit, if ſuch a thing be permitted. What Sir *John Talbot* ſpeaks of his own Knowledge, that is Evidence, and we would hear it, and give all due regard to it: But what was ſpoken of concerning *Hilton*, before ſhe was married; what the reſt of the Servants ſaid concerning her; or the general Reputation that ſhe had in the Family; that's no Evidence at all.

Gentlemen, in the laſt place there is a Witneſs produced, one *Dillingham*; and ſhe pretends that ſhe is a Woman of a very ill Reputation; and that ſhe would have hired her, (as ſhe would have it believed) to have ſworn againſt ſeveral People. Now as to that, ſhe would have done exceeding well to have made a Diſcovery of this before this Queſtion; and it had been her Duty ſo to do; and not now to come, and drop in, juſt when this Queſtion comes to be debated before you: That Gentlemen, draws a Suſpicion along with it, and a very great one: But I muſt leave the whole matter to you, which I do not queſtion but you will examine, and look into, as well as you can. Thus I have offered the Evidence that has been given on the one ſide, and on the other in point of Fact.

Now Gentlemen, there are ſome Remarks made by the Priſoner at the Bar, (as God forbid but he ſhould have the Advantage of whatſoever can be obſerved upon the Evidence given againſt him) that is, he makes a Difference between the Teſtimony of the one and the other of theſe Witneſſes, about the 20th or 21ſt of *Geneſis*; that the one ſaid the 21ſt, the other the 20th. Now it is to be obſerved, as has been ſaid, that ſhe that ſaid the 20th, which was the ſecond Witneſs, ſaid, it was either the 20th or the 21ſt; and Mrs. *Smith* ſaid it was ſo to the beſt of her remembrance; but it appears to be, and ſo I perceive, by all the Witneſſes, upon the 20th; ſo that as to her it cannot be very material, becauſe ſhe does not ſwear poſitively, either the one or the other.

Then Gentlemen, there is another thing, that is, that ſhe ſhould talk of one *Weldy*, Captain *Weldy*, or Captain *Daniel Weldy*, when it ſeems his Name was not *Weldy*, but his Name was Captain *Daniel*; which I think can go no great way in the Caſe. She is not acquainted with the Man himſelf; ſhe tells you one part of his Name right; deſcribes the Houſe in all the Parts of it; and ſpeaks of the Circumſtance of his being at Sea, and being pray'd for by Mr. *Roſewell*; therein they do both agree: So that tho' ſhe apprehended that his Name might be *Daniel Weldy*, yet it is ſo far right enough that it was one Captain *Daniel*; and that is a very ſmall minute difference, that will make little one way or other.

Then Gentlemen, he inſiſts upon the difference between their Evidence about that Circumſtance, whether it was all upon one entire Subject; or part one part of the day, and part the other. One of them ſays it was not an entire Diſcourſe; for that about the Rams-horns, and the broken Platters, and the Stone in a Sling was after Two o'-Clock, after the interval that had been, and the ſpace of time between the Diſcourſe of the King's Evil, and thoſe other things; and therefore, ſays Mr. *Roſewell*, whereas ſhe pretends that it was all ſpoken at the ſame time, juſt as it is laid in the Indictment, that cannot be; and ſo it appears upon his own Evidence. Now, ſays that Woman, I can't ſo well tell whether it was Forenoon or Afternoon; and truly they might call it Forenoon, becauſe they had neither Eat nor Drank; and ſays the Woman, we reckon that it's Forenoon till after we have Dined; and ſhe cannot tell whether it was in the Pſalms, or whether it was upon the Chapter; but it was in that Diſcourſe that he held that Day. She does generally apply it to the whole; and that in that Day's Diſcourſe (all which time ſhe ſtay'd, till all was over) ſuch Words did paſs. You have heard the difference that is between the two Witneſſes, and you will do well to conſider of it, if you think there is any thing material in it.

Gentlemen, I muſt confeſs it carries a notable ſort of Teſtimony in it, of which you are Judges, and will weigh it according as it ought to be weigh'd: *Firſt*, That theſe People ſhould luckily hit together concerning the King's Evil, and that there was ſuch a Diſcourſe as is laid in the Indictment about it; and of the Prophets praying for the People for the Cure of the King's Evil, and then they ſhould be immediately heal'd. And on the other ſide, it is pretty ſtrange (as he urges for himſelf) that that ſhould be perverted which he ſpoke concerning the Prophet's praying for the King, and thereupon his Hand being healed, whereby the Prophets have the Honour, (as he ſays) ſome time by Prayer, of curing the King's Evil: So that ſomething or other there is in the matter that gives a mighty countenance to what the Witneſſes ſpeak. There is a certain ſort of Occaſion given (as one would ſay) for ſuch Expreſſions as they have teſtify'd, in his Diſcourſes.

Then when they come to talk concerning the Rams-horns, and the Platters; the Witneſſes ſay, we heard nothing concerning Platters, much leſs of Pewter Platters; no, it was broken Pitchers, and that was occaſion'd by, and had relation to a Text, (ſays Mr. *Roſewell*) about *Gideon*, how eaſily he diſcomfited the *Philiſtines* Army, and there was no ſuch thing as any Diſcourſe concerning the King or the Government, or any relation thereunto; it was only a Phraſe uſed by me in the Pulpit, to ſhew how great a matter might be done by little means. And ſo likewiſe concerning the Stone in the Sling, that being an occaſional Inſtance too, what great Miracles have been brought about by little Means and Circumſtances: I have inſtanc'd in that (ſays he) how *David* kill'd *Goliah* with a Stone out of a Sling, and that our Saviour Jeſus Chriſt cured the Blind man by a little Spittle mingled with Clay. So that he would inſinuate, that thoſe Words that were ſpoken were not with any ſuch Intention as the King's Council would make it, and as the Indictment inſinuates; but only in a common, ordinary Preachment, as Inferences from ſuch and ſuch Scriptures. And whether this that he talks of was the Diſcourſe he held at that time; or what the Witneſſes ſpeak, muſt be left to you; they having ſworn it. And this (as I take it) is the Subſtance of the Evidence given by the one and the other ſide.

Then Gentlemen, Mr. *Roſewell* put the Queſtion in the Morning, and he ſeem'd to inſiſt very much upon it in Point of Law, that the Diſcourſes of a Mad-man cannot be Treaſon. It is true that ſuch Diſcourſes cannot be Treaſon, if you take (Mad-men) in the true ſenſe that the Law commonly takes it. All Traytors, all Knaves and Villains, are ſome way, and in ſome ſenſe Madmen; for no Perſon can act with any Reaſon in any ſuch Affairs. Treaſon is not to be committed upon the foundation of Reaſon. Therefore upon his asking of the Queſtion of the Witneſſes, what Reaſon there was for him to uſe ſuch Expreſſions; I told him, you did it, according as the Indictment ſays (which is drawn according to the Preſcripts of the Law) by the Inſtigation of the Devil; you did it, not only without Reaſon, but againſt Reaſon. But if the bare ſaying that it was againſt Reaſon, and that therefore a Man was a Madman, would ſerve the turn, there would be no Traytor according to that Rule; becauſe every Traytor would be a Madman. Every Traytor is a Madman; but every Madman is not a Traytor. A Madman, in our common Acceptation, is one that is captivated in his Senſes, not one that is corrupt in his Will and Affections, which muſt be the Definition of a Traytor: So that the Argument, I muſt tell you, is fallacious. Every Man, that is depraved in his Mind and Affections, is a Madman, ſo as to be an Enemy to the Government, or to Mankind; but he is not ſuch a Madman, as is commonly meant by that Word; one whoſe Words may be miſtaken, becauſe of ſome diſorder in his underſtanding; ſo as to be excus'd from the Accuſation of Treaſon. Therefore whatſoever conſequence there may be of the Thing, I muſt tell you, all Men that talk after this rate that this Perſon is accuſed to talk in his Pulpit, they are every one Traytors, and ſo Madmen; for every Traytor is a Madman: And if in Caſe Mr. *Roſewell* be Guilty, he is in that ſenſe a Madman. It is true, in other Things you find him a Man of very notable Underſtanding; a Man of a very great Inſinuation; one that has a great deal of Knowledge in the Tongues; look'd upon to be a very learned and ingenious Man; who was thought fit to be a Tutor to Sir *Edward Hungerford*'s Children; and has had very many learned Diſcourſes, and ſhewn himſelf to be a Man of very great Parts. Tho' if he be a Traytor upon this Evidence that is given, he is *eo nomine* a Traytor, and conſequently a Madman for preaching and publiſhing ſuch Doctrine as this; that will not ſerve to excuſe him from his Treaſon: But the rather, becauſe he is a Man of ſo much Learning, it aggravates the Treaſon; as it muſt needs do to any Body in the World that conſiders it. For he under that pretence offering to preach his Doctrine, as Goſpel-truths to ignorant People, (it ſeems 300 or more, of all Trades and Perſwaſions) whoſe Duty it was, according to Law, to have been then at Church; Men of Strength and Ability of Body, as they appear to be, for the Service of the Government; for theſe People to be debauch'd into ſuch Doctrines as theſe, of *Standing to their Principles*, againſt the Government; the more learned the Man is, the greater and blacker is the Crime of that Man that is guilty of it. God knows whether that be Mr. *Roſewell*'s Caſe, and you that are of the Jury are to try it: To do it under pretence of preaching the Goſpel, is the worſt way of doing it that could be taken; to quote Scripture for Rebellion adds to the Crime; as it did to that of thoſe black Villains that were concern'd in the Murder of our late dread Sovereign, who has been ſo often mention'd; they were generally the Preachers of the late Times that contributed to that horrid Villany.

Gentlemen, it is notoriouſly known to you in this accurſed late helliſh Conſpiracy againſt his ſacred and moſt merciful Majeſty, our Sovereign that now is, (whom I pray God long to reign over us,) thoſe that had an hand in the Intention to deſtroy him, and his Royal Brother, were a great many of them black-Coat Diſſenters to the Church of *England*; and I cannot ſay I know any one Member of the Church of *England* that had any hand in it at all. How many of them ſtand now convicted by Outlawry

lawry for that bloody Treaſon; I won't ſay all Parſons, but generally all of them Diſſenters; and we know theſe are thoſe baſe, profligate Villains, always made uſe of in theſe baſe Sinks of Rebellion. And they are the common Sewers of Faction; theſe Conventicles are, and of Treaſon and Conſpiracy againſt the Government in Church and State. God be praiſed, we have a Religion that teaches us much better; a Religion eſtabliſhed by the Laws of the Land, and with that Decency of Worſhip, and Care of the Souls of Men, that may bring us all to Heaven, by the Grace of God, if we pleaſe to hearken to the Dictates of it, and to mind what is enjoyn'd us our Duty by the Law; but when People are once deluded by the Inſinuation of ſuch falſe Teachers, and run into Faction and Diſcontent, then they'll ſoon run into Rebellion too. And I ſpeak this the rather to deter and give warning to other People, to have a care how they come near ſuch Places, and ſuch Practices, than to affect you.

Gentlemen, here you have had three Witneſſes examined againſt the Priſoner, who ſtands accuſed for a Crime of High Treaſon. I muſt confeſs, I have taken up a great deal of the Time; and a great deal of the Time was taken up before; but there's no Time too long, wherein a Queſtion of ſo mighty Moment as this is, is to be decided: The Government, the Preſervation of our King, the Preſervation of our Religion, the Preſervation of our Laws, are all concern'd: For by the Deſtruction of our King and of our Government, our Religion, and all that is near and dear to us in the World, will run a great Hazard, if not come to a total Deſtruction; and I am ſure it did come near to it in a former Time, by this very ſort of way. Therefore I enjoyn you, in the Preſence of the Almighty God, let neither Diſpleaſure, nor any ſort of perſonal Animoſity, in any thing that has been contracted by Hearſay from abroad, nor any Imaginations that have been ſuggeſted here without proof, any way direct you in the Conſideration of this Cauſe againſt the Priſoner at the Bar: But go according to the Evidence that has been here before you, on the one ſide and on the other ſide. For as on the one ſide you are not to be corrupted by common Talk, or any Prejudice againſt a Party or a Faction; ſo are you not to be miſled by any Affirmation or Reflection, or Comment that the Priſoner has made or ſaid for himſelf, other than what is ſupported by the Teſtimony of theſe Witneſſes that he has produced, and whoſe Evidence is left to you to conſider: For you muſt not be led by any Circumſtances, or by Diſcourſes; but what's ſworn on the one ſide for the King, or teſtifyed on the other for the Priſoner. And therefore I can with all Freedom and Zeal for the Government, and all due Compaſſion to the Priſoner at the Bar (whom with all my Soul I am ſorry to ſee accuſed, or indeed any Man, of ſuch a Crime,) leave this matter entirely upon the Evidence that has been given. And tho', I ſay, I am ſorry to ſee him accus'd; yet ſuch Tranſgreſſions are aggravated now, when we live in an Age, wherein we have all Peace and Plenty, while the reſt of our Neighbours are wallowing in their Blood round about us; ſome we have heard of are brought to the Neceſſity of eating the moſt filthy and baſeſt Animals, that never was deſign'd for the Food of Man: I ſay, when all our Neighbours are groaning under the Miſeries of War, (bleſſed be God) we live and ſleep quietly under our own Vines; we enjoy the Benefit of being Subjects to a gracious King; we enjoy the full extent of our Laws, which are ſufficient to ſecure our Liberties and Properties; and no Man can be brought (no, not one of the meaneſt Subjects the King has) to ſuch an untimely End, but by the true Methods of Juſtice.

He is to be try'd by you, Gentlemen, who are Gentlemen of Quality of the County where the Fact is alledged to be committed; againſt whom he might have made his Challenges and Exceptions, if he had any reaſon, as he did againſt the others (according to the Liberty the Law allows him) without any reaſon. So that you ſtand indifferent between the King and the Priſoner at the Bar, to try this Cauſe, whether he be Guilty, or not Guilty of the Treaſon of which he ſtands accuſed. In caſe the late intended Rebellions and Inſurrections had taken the deſigned Effect, according to the Doctrine preached in theſe Sermons, of ſtanding to Principles and overcoming Enemies; and what ſeveral of his Brethren who ſtand now accuſed of, and are upon Proſecution (and for ought I know every one of them might be actually engaged) I ſay, in caſe ſuch a thing had been, there had been nothing but cutting of Throats; there had been no Juſtice for any Subject to have expected; no Methods or Proceedings of Law; but Deſtruction would have come upon us like an armed Man.

Therefore, Gentlemen, as the Evidence has been long; ſo I hope you will give me your Pardon, that I have been the longer in inſiſting upon it; and according to my beſt Underſtanding and Memory, I have given you the beſt Account I can both of the Evidence for, and againſt the Priſoner. You are Judges of the Fact; and I pray God direct you, and guide you and your Conſciences, that the Truth may be diſcovered by your Verdict.

Mr. *Roſewell.* May a Loyal Subject ſpeak, my Lord?

L. C. J. No Mr. *Roſewell*; after the Jury are charged by the Court, you are not to ſay any thing. Swear an Officer to keep the Jury.

(*Which was done.*)

Then the Jury withdrew into the uſual Room for ſuch Purpoſes, to conſider of their Verdict; and afterwards they returned into Court.

Clerk of the Crown. Cryer, take the Appearance of the Jury.

Cryer. Sir *George Sheers*:

Sir *George Sheers.* Here.

Cryer. Vous avez Sir *George Sheers*, &c.——

(*And ſo of the reſt.*)

Cl. of the Crown. Gentlemen, Are you agreed in your Verdict?

Jury. Yes.

Cl. of the Crown. Who ſhall ſay for you?

Jury. Our Foreman.

Cl. of the Crown. Thomas Roſewell, Hold up thine Hand. (*Which he did.*) You of the Jury, look upon the Priſoner. How ſay you? Is he Guilty of the High-Treaſon, whereof he ſtands Indicted, or not Guilty?

Foreman. Guilty.

Cl. of Cr. What Goods or Chattels, Lands or Tenements had he at the time of the High-Treaſon committed; or at any time ſince to your Knowledge?

Foreman. None that we know of.

Mr. *Roſewell.* Then the Lord have mercy upon the Jury. My Lord, I humbly requeſt this Favour, that they may be asked *ſeparatim*, whether they be all of the ſame Opinion.

L. C. J. That's never done, Mr. *Roſewell*, unleſs there be any difference ſuggeſted from amongſt themſelves:

Mr. *Roſewell.* I ask it in regard to them themſelves; for I have heard many times the Jury go by the major part; and I would know whether they be all of that Opinion. Therefore I beg they may be asked that Queſtion.

L. C. J. You muſt be contented, Mr. *Roſewell*; in caſe there were any difference, we ſhould hear of it from amongſt themſelves.

Cl. of the Crown. Then hearken to your Verdict, as the Court has recorded it. You ſay that *Thomas Roſewell* is Guilty of the High-Treaſon whereof he ſtands Indicted; but that he had no Goods, Chattels, Lands or Tenements at the time of the High-Treaſon committed, or any time ſince, to your Knowledge; and ſo you ſay all?

Omnes. Yes.

Cl. of the Crown. Gentlemen, the Court diſmiſſeth you.

L. C. J. Marſhal, you muſt take him into your Cuſtody, being now Convicted.

Mr. *Roſewell.* My Lord, I would heartily beg, for the Jury's ſake themſelves, that that Queſtion may be asked of them.

L. C. J. We muſt not indulge any Innovations. It is not uſual. You may ask them, if you pleaſe; ſee whether they will anſwer you. We muſt go according to the Forms of Law.

Mr. *Roſewell.* Then, my Lord, if all theſe Gentlemen's Eſtates were joyn'd in one, I would not change Conditions with that Man of them who ſhould poſſeſs the Whole.

L. C. J. Mr. *Roſewell*, We muſt have no Reflections upon the Jury.

Then the Priſoner was taken away, and the Court broke up.

Die Lunæ 24 Nov. *An. Dom.* 1684. B. Regis.

Dominus Rex verſ. Roſewell.

THIS Day Mr. *Roſewell* being brought up to the Court, to receive Sentence, the Court proceeded as follows.

L. C. J. Brother *Jenner*, have you any thing to move?

Mr. *Ser. Jenner.* My Lord, we wait upon the Priſoner at the Bar to deſire Judgment upon the Conviction that was here the other Day for High-Treaſon.

L. C. J. Againſt the Priſoner at the Bar do you mean?

Mr. *Serj. Jenner.* Yes, Sir.

L. C. J. Then call him to his Judgment.

Cl. of the Crown. Thomas Roſewell, Hold up thy Hand. (*Which he did.*) Thou haſt been Indicted for High-Treaſon, in compaſſing and imagining the Death of the King, and the Subverſion of the Government: Upon that Indictment thou haſt been Arraign'd: Upon that Arraignment thou haſt Pleaded not Guilty: And for thy Tryal thou haſt put thy ſelf upon God and thy Country; which Country has found thee Guilty. What haſt thou to ſay for thy ſelf, wherefore Judgement ſhould not be given againſt thee, to die according to the Law?

(*Then he was made to kneel and riſe again.*)

Mr. *Roſewell.* My Lord, I humbly hope that your Lordſhip will not give Sentence againſt me upon this Indictment; conſidering the Circumſtances of it. I have, my Lord, proteſted to this Honourable Court in the Preſence of the great God, the Searcher of Hearts, my Innocency in this Caſe; but I have been found Guilty by the Jury, on whom the Lord have Mercy. I do ſtill proteſt my Deteſtation and Abhorrence of the Fact, even in my very Soul; and I do humbly beg your Lordſhip and the Court to compaſſionate my preſent Condition; and with humble Submiſſion to your Lordſhip, I would enter into my Diſcourſe upon that *Hypotheſis*; for I would be ſtill taken thus, even in this Conviction to deny the *Theſis*; that I ever was guilty of ſpeaking ſuch Words as are laid in the Indictment. But upon the *Hypotheſis*, ſuppoſing that I were Guilty, I do humbly conceive that theſe Words, as they are laid, are not Treaſon. They are very fooliſh and ugly Words; and may be a very great Miſdemeanour in Law (if true, which ſtill I muſt over and over again inſiſt upon) but they are not Treaſon. And I beg your Lordſhip will do me the Favour to let the Indictment be read once more.

L. C. J. Av, with all my heart.

Mr. *Roſewell.* I humbly thank your Lordſhip; I deſire it may read in Latin.

L. C. J. Read it to him in Latin.

Surrey *ſſ. Juratores pro Domino Rege ſuper Sacramentum ſuum præſentant*, &c.

(*The whole Indictment was read.*)

Mr. *Roſewell.* I humbly thank your Lordſhip. There are ſome things that I ſhall offer to your Lordſhip in Arreſt of Judgment out of this Indictment; and I requeſt your Lordſhip to hear me with Patience, being here for my Life. I pray Judgement may be arreſted for theſe Cauſes: That there is not any Crime ſufficiently ſet forth for your Lordſhip to give Judgment upon. My Lord, I humbly take it for granted that in all Indictments of Treaſon, there muſt be ſome particular Matter of Treaſon aſſign'd; and that it is not a ſufficient Indictment in general, that a Man did intend to depoſe the King or to raiſe Rebellion, without ſome *Overt act* poſitively aſſerted to be done by that Perſon; the general Intention being only an inducement to the Charge. The ſpecial Matters that ſet forth the particular Acts of Treaſon are thoſe that make the real Charge, upon which the Court and the Jury

Jury are to proceed. Now, my Lord, if that ſpecial Matter that is alledged be inſufficient, with all humble Submiſſion, tho' there be never ſo many ſuch ſorts of Facts proved, and found by the Jury, the Party cannot be convicted of High-Treaſon: For in this caſe the Party has the ſame Advantage to except againſt the particulars alledg'd, to prove the general ſuggeſted Treaſon, as againſt the general Treaſon it ſelf. Now, with humble Submiſſion, my Lord, again I ſay, that the Matter here ſuggeſted is inſufficient; as will evidently appear by what I am going to offer to your Lordſhip.

The firſt and principal Objection that I have, is againſt the Inuendo's, which are ſo many and ſo ſtrange in theſe Words that are alledged againſt me. Theſe Inuendo's, my Lord, I ſay, are naught and void; and I preſume that it will be allowed to me upon reading of the Words by themſelves, as bad and as fooliſh as they are. Without theſe Inuendo's, there could nothing be made out of ſuch Words as theſe are, neither Treaſon nor any thing elſe.

Then, my Lord, in the ſecond Place laying aſide the Inuendo's, I muſt inſiſt upon the repugnancy and inſenſibility of the Words laid in the Indictment, being in *Latin*, and ſuch *Latin* as I believe your Lordſhip never ſaw; and upon theſe two Points, I deſire that Judgment may be arreſted; and I humbly pray Council may be aſſign'd me to make them out in better form.

L. C. J. What ſay you to it, Brother *Jenner*, and the King's Council?

Mr. *Serj. Jenner.* I cannot ſee that he has alledg'd any Objection which here requires an Anſwer from any of us that are of Council for the King.

L. C. J. Yes, Brother; Methinks he does.

Mr. *Att. Gen.* If he does pretend to object againſt any of the Overt-Acts alledg'd in the Indictment; your Lordſhip obſerves, this Indictment is upon the Statute of the 13th of this King, wherein Words are made Treaſon, if they intend any Hurt or Impriſonment to the King's Perſon. For his Objection as to the Inuendo's, he does not aſſign wherein they are repugnant or inſufficient. He does aſſign in particular, indeed, that it is inſufficient, being a general Crime; which yet he does not ſay is not ſufficiently laid; for it is ſaid, that he did compaſs and imagine the Death and Deſtruction of the King: And to effect that compaſſing and imagination, he did ſpeak ſuch and ſuch Words, which by the Statute are made Treaſon, if they tend to attempt by Preaching or Writing any Impriſonment or Harm to the King's Perſon. Then for him to come to Talk of *Standing to their Principles*, after he had ſpoken of *two wicked Kings together*, (meaning the late King, and the Preſent) and that *then we ſhould overcome our Enemies*; what is that but Preaching in order to raiſe a Rebellion and Inſurrection, tending to the Deſtruction of the King, and his Government? All this is laid in the Indictment; the Jury find it ſpoken maliciouſly, and with ſuch an Intention as we have laid; and therefore we think that it is ſufficient.

L. C. J. But if I take the Gentleman right, (for I tell you before hand Juſtice muſt be done to all People impartially. The Crime is a very great Crime that he ſtands accuſed of; and the Jury have found him guilty of the Crime laid in the Indictment: But if I take him aright) he does not ſay that Words are not ſufficient to create a Treaſon, but the Words here as they are laid in this Indictment are not ſufficient: And as I take it, there is no great difficulty in the Matter; but the Words would have been ſufficient to have ſupported the Accuſation, if they be well laid. But the Queſtion is, whether the Words that you have laid here be ſo poſitively affirm'd to have been ſpoken by the Priſoner, and to relate to the Government, as they ought to be in an Indictment of High-Treaſon.

Mr. *Att. Gen.* That the Indictment muſt make out; and the Jury have found him Guilty, according to the Indictment.

L. C. J. But that is his Objection, they are not ſo in the Indictment.

Mr. *Att. Gen.* My Lord, they are laid as the Witneſſes ſwore them; as your Lordſhip can't but remember.

L. C. J. That they are not poſitively affirmed, but only alledg'd under an *Innuendo*; that is, he ſpoke ſuch and ſuch Words whereby he compared the King to *Jeroboam*, and the like; and we had two wicked Kings together, but if we would ſtand to our Principles, we ſhould overcome our *Enemies*, *Innuendo* the King. The alledging of the Words ſpoken in the Indictment is poſitive, if there be ſufficient Matter in the Words to make them applicable to the Government, ſo as to make it Treaſon. But if you only ſay he ſpoke them, *Innuendo* ſo and ſo, that is not poſitive enough to make the Indictment good. I take it the Objection runs that way.

Mr. *Roſewell.* My Lord, I humbly thank your Lordſhip for explaining my meaning; It is ſo.

L. C. J. In an Action on the Caſe, if you ſay the Defendant ſpake ſuch and ſuch Words, if you do not lay it that he ſpoke them of the Plaintiff; *Innuendo* the Plaintiff in repeating the Words won't do. So here, if you had brought it in the Indictment, that having diſcourſe of the late King and this King, he had ſpoken theſe Words, *We have now had two wicked Kings*, &c. You then had brought it home to him: But you do not lay it that it was ſpoken of them at all, but only in the *Innuendo*; whereas you ought to ſay firſt, That he ſpoke of the late King, and this King; and then ſaid, We have had two wicked Kings together, *Innuendo* the late King, and this King.

Mr. *Att. Gen.* My Lord, I do not know, how we could have done it better than we have done.

L. C. J. Look ye, we give no Opinion; but the Objection has weight in it upon my Word. As I told you before, in common Caſes, an Action of the Caſe for Words, or the like, you muſt lay a Communication concerning the Plaintiff, or an *Innuendo* will not be a ſufficient Averment of its being ſpoken of him. In an Action of the Caſe for Words, till within this Seven or Eight Years, they were obliged to lay a *Colloquium* of the Plaintiff, and of his Trade; and that to Defame him, were ſpoken of him at ſuch a Time ſuch Words, as that he was a Cheating Knave; where the Word Knave would bear an Action; a bare *Innuendo* would not do, that was not enough. But now I confeſs ſince Declarations are made a little more conciſe, you need only ſay *dixit de Querente*, ſuch and ſuch Words without

without a *Colloquium*, but you muſt aver it to be ſpoken of the Plaintiff. I never thought it good in ſuch a Caſe, to ſay of a Merchant he is a Bankrupt Knave, (*Innuendo* the Plaintiff) unleſs he ſay he ſpoke of his Trade and Merchandiſe. So that the Objection does ſeem to carry very much weight in it.

Mr. *Sollicitor.* My Lord, if your Lordſhip would give me leave, I would endeavour to anſwer the Caſe as your Lordſhip has put it; for my Lord, no doubt in all common Actions of the Caſe for Words, it muſt be averr'd that the Words were ſpoken *de Perſonâ*, of the Plaintiff; but the Firſt part of the Indictment, in this Caſe, ſhews that the Words muſt be ſpoken of the Perſon of the King, and of the late King; for it ſays he did conſpire the Death and Deſtruction of the King, and to depoſe him from his Government, and to manifeſt that traiterous, wicked Intention of his; *Ed Intentione* he did ſpeak theſe Words of the Government, *we have had two wicked Kings together*, meaning this King and the late King.

L. C. J. If you had ſaid ſo, that he ſpoke theſe Words of the King, you had anſwered my Objection; but the Conſpiracy of the Death of the King being only a general form for Treaſon, will not make good an Indictment of High-Treaſon; but you muſt ſhow ſome Acts or Words to evince and prove that that was his Intention; that he did either ſpeak ſuch and ſuch Words, or did ſuch and ſuch Actions. It is not a good Indictment to prove that he did conſpire, for he ſpoke ſuch and ſuch Words; but that to carry on his Conſpiracy he did ſpeak ſuch and ſuch Words of the Government; that muſt be poſitively alledged.

Mr. *Sollicitor.* We do ſo, my Lord; for we ſay, *& ad eaſdem nefandas proditiones*, &c *perimplendas*, He ſpoke ſuch and ſuch Words, we have had two wicked Kings together, *Innuendo* this King and the late.

L. C. J. You have *Innuendo*'d it too much I do doubt; for all the Facts are laid under an *Innuendo*, without a poſitive Averment.

Mr. *Att. Gen.* My Lord; I think it is as fully laid as it poſſibly could be.

L. C. J. Come, Mr. *Attorney*, if in Caſes of common Actions for Words, there be ſuch Strictneſs requir'd, ten Times more ought there to be in an Indictment of Treaſon, where a Man's Life, and All, is ſo much concern'd. I am not ſatisfy'd I aſſure you that this Indictment is well laid, tho' I give no Opinion; but in all Juſtice we ought to aſſign him Council to make out his Objection.

Mr. *Att. Gen.* All this, my Lord, is only in delay.

L. C. J. Mr. *Attorney*, *De vitâ Hominis nulla eſt Cunctatio longa.* I think we ought to aſſign him Council; and the reſt of my Brothers are of that Opinion too.

Mr. *Att. Gen.* Let them read Colonel *Sidney*'s Tryal, and the Indictment there; and they'll find it the ſame thing.

L. C. J. I cannot tell whether there are any ſuch *Innuendo*'s there, I believe not; but I know not if there were, if in caſe it had been moved in arreſt of Judgement, what the Court would have done then. But I think we ought to aſſign him Council to make out his Objection.

Mr. *Sollicitor.* The very Fact, that makes this Treaſon is his ſtirring up Sedition and Rebellion within the Kingdom; and we ſay, to effect it he had theſe Expreſſions in his Pulpit, we have now had two wicked Kings together (meaning this King and the late) who have ſuffered Popery to come under their Noſes; but if you will ſtand to your *Principles* (meaning the People) we ſhall overcome our Enemies (meaning the King and Government.)

L. C. J. Ay, but you do not ſay that he ſpoke theſe Words of the King: This you ſhould have ſaid at firſt; becauſe the ſpeaking of theſe Words is the very Overt-act; and if he did not ſpeak them of the King (which you ought to affirm) but only by way of *Innuendo*, that cannot, we think, be ſo good nor ſufficient.

Mr. *Juſt. Withins.* I take it that theſe are the main Words that are to maintain this Indictment of Treaſon; and the Queſtion is whether they ought not to have been aver'd that they were ſpoken of the two Kings.

L. C. J. We do not give any Opinion, Mr. *Attorney*; but becauſe there ſeems to be ſome reaſonable Doubt, and Weight in the Objection, we deſire to have it argu'd; and therefore will aſſign him Council.

Mr. *Roſewell.* I humbly thank your Lordſhip.

L. C. J. We do think it fit to look into it, before we proceed any further in a caſe where a Man's Life is concerned.

Mr. *Roſewell.* I pray God to bleſs your Lordſhip.

L. C. J. Nay, you have no need to thank me; for I deſire to do Juſtice to all Men.

Mr. *Roſewell.* But I deſire to return my hearty thanks to your Lordſhip, for explaining and making out what my Unskilfulneſs in the Law would not permit me to do. God be your Rewarder for it.

L. C. J. Well; Who would you have to be your Council?

Mr. *Roſewell.* If your Lordſhip pleaſes, Mr. *Wallop*, Mr. *Pollexfen*, and Mr. *Thomas Bampfeild*.

L. C. J. Let them be aſſign'd of Council for him. But, Mr. *Roſewell*, I think it is not improper for me upon this Occaſion to take notice of this that is in my Mind relating to your Affair; becauſe I obſerve it is a Matter of great Expectation, and ſo was at your Tryal, and here is a great Croud of People now; that as this Fact is found, if the Indictment falls out to be a good Indictment (which is the Queſtion that now depends before the Court) ſo that you come to have Judgment of High-Treaſon paſs'd upon you, and to Suffer according to that Judgment; what will become of theſe 400 People that were your Auditors at the Time that theſe Words (that are thus found and adjudged to be Treaſon) were ſpoken? And I ſpeak it for the ſake of all Conventiclers, and Frequenters of ſuch Meetings as theſe are. If you that are the Preachers and Teachers, the Mouths of ſuch Congregations, do utter Treaſon, and ſo they conceal that Treaſon, what a Condition are they in? what are they Guilty of? Therefore if People will conſider, they would do well to think, that when they go to ſuch Places, they go at a great Peril; being to anſwer for Themſelves, their Lives, and Eſtates upon the Prudence of the Expreſſions (to ſay no more) that come from the Teachers. I only put you in mind of this, becauſe I would have all Standers by, and the Auditory (which

I ſee is very great) in Mind what Danger and Riſque they run in thus offending the Law.

Mr. *Roſewell.* My Lord, I do believe, that no one in the World (beſides theſe Witneſſes that here were produced againſt me) can ever teſtify the leaſt diſreſpectful Word ſpoken by me of the late King, or of his preſent Majeſty.

L. C. J. Well; when will you be ready, Gentlemen?

Mr. *Pollexfen.* My Lord, we deſire to have as much time to prepare our ſelves as we can.

L. C. J. Two or three Days time will ſerve.

Mr. *Att. Gen.* It is fit we ſhould know what Points they intend to inſiſt upon, that we may prepare to anſwer them.

L. C. J. Yes, yes, that muſt be; but I perceive his main Objection is, what I tell; Let him be brought by Rule hither upon *Thurſday*, becauſe the Court may have time to conſider of what ſhall be ſaid on both Sides.

Mr. *Roſewell.* My Lord, theſe Gentlemen are Strangers to me; but I dare rely upon them, from the Character I have heard of them, that they will do me all the Juſtice that they can.

L. C. J. Well, they are aſſigned of Council for you. But I could not forbear giving that hint that I did, that this might be a Warning to People, how they tranſgreſs the Law in going to ſuch Meetings.

Die Mercurij 26 Novemb. 1684.

Rex verſus Roſewell.

L. C. J. MR. *Pollexfen*, Have you any thing to Move?

Mr. *Pollexfen.* My Lord, I have one Word to Move for my ſelf, and the others, that are appointed to be of Council for Mr. *Roſewell.* We think it our Duty to apply our ſelves to your Lordſhip for this Favour; that to enable us the better to do our Duty for the Perſon for whom we are aſſign'd, your Lordſhip and the Court would pleaſe to order that we may have a Copy of the Indictment. We do acknowledge, that it is not an uſual thing to have Copies granted (tho' there be no expreſs Law that we know againſt it) in capital Matters; but where any Doubt does ariſe upon the Penning the Indictment, and Council is aſſign'd; to enable them to do what is fitting for them to do for their Client, Copies of the Indictment have been granted; as particularly in the Caſe of *Fitzharris*, in order to the Plea that he was to put in; and I my ſelf was one of the Council at that time.

L. C. J. Mr. *Pollexfen*, I make no doubt in the World, it is in the Power of the Court to order a Copy of the Indictment, if they ſee Cauſe; but if you remember, (for you were of Council in that Cauſe too) it is not to be granted, becauſe it is asked. For my Lord *Ruſſel* had no Copy of the Indictment, tho' he inſiſted very much upon it: And it was in the Caſe of *Fitzharris* granted, that he might particulatly apply his Plea (if he had a Mind to it) to the Indictment it ſelf.

Mr. *Pollexfen.* My Lord, I do not deſire a Copy of all the whole Indictment; but of ſo much thereof, as may be enough for us to know the Foundation upon which we are to go. I do remember we were call'd in, in my Lord *Ruſſel*'s Caſe, upon the Point of Challenge, for want of Free-holders; but that was not in the Point of the Indictment; and there I cannot ſee what we had to do with the Indictment; but here we muſt underſtand how it is laid really in the Indictment, that we may apply our Arguments to the Caſe; and that I believe was never denied.

L. C. J. Look ye, if you ſpeak to me privately, as to my own particular Opinion; it is hard for me to ſay that there is any expreſs Reſolution of the Law in the Matter: But the Practice has been always to deny a Copy of the Indictment. And therefore, if you ask me as a Judge, to have a Copy of the Indictment delivered to you in a Caſe of High-Treaſon, I muſt anſwer you, ſhew me any Precedents where it was done: For there are abundance of Caſes in the Law which ſeem hard in themſelves; but the Law is ſo, becauſe the Practice has been ſo; and we can't alter the Practice of the Law without an Act of Parliament. I think it's a hard caſe, that a Man ſhould have Council to defend himſelf for a Twopenny-treſpaſs, and his Witneſſes examined upon Oath; but if he Steal, commit Murder, or Felony, nay, High-Treaſon, where Life, Eſtate, Honour, and all are concern'd; he ſhall neither have Council, nor his Witneſſes examined upon Oath: But yet you know as well as I, that the Practice of the Law is ſo; and the Practice is the Law.

Mr. *Pollexfen.* My Lord, we heard the other Day the Indictment read, and ſo may have ſome little Account of the Indictment; but we deſire ſuch a Copy as may enable us to argue as we ought to do; and as the Court will expect from us, being aſſigned by the Court.

Mr. *Wallop.* My Lord, if we ſhould offer any thing that is not in the Indictment, it's all one as if we held our Tongues; and if we have only a looſe Account of the Indictment, that may be as bad as if we had a falſe one: And therefore we deſire, to the end that we may argue *ad idem*, that your Lordſhip will pleaſe to favour us that we may have a Copy of ſo much of the Indictment, as upon which our Objections may be grounded.

L. C. J. Mr. *Pollexfen*, you may remember a particular Caſe; I have forgot the Name; but I believe you may remember it; where a Priſoner at this Bar deſired to have the Indictment delivered to him to read; but it was denied him. It is hard, I confeſs, and ſo are many other Things in the Law; but I am wonderfully tender of making Precedents: And therefore if it has not been practiced, I do not ſee how we can do it.

Mr. *Juſt. Withins.* That is the uſual Practice, my Lord; but it is in the Power of the Court ſure to grant a Copy; or at leaſt of ſo much as is neceſſary for them to apply themſelves to. There have been many Caſes of Murders where they have had Copies of the Indictment, in order

der to move in Arrest of Judgment; as this Case is.

Mr. *Just. Walcot.* But have there been any in High-Treason?

Mr. *Just. Withins.* I do not take it that there is any difference between the one Case and the other; they being both capital Crimes; and Council being assign'd they must know what they are to speak to.

L. C. J. I would know when ever a Copy was granted to enable the Party to move in Arrest of Judgment.

Mr. *Just. Withins.* My Lord, when there is a Motion in Arrest of Judgment, and Council is assign'd, that is a Thing they ought to know, how to demean themselves in their Arguments.

Mr. *Pollexfen.* My Lord, we submit it to you. We desire the Favour that we may acquit our selves as we ought to do; and as the Court (we know) expects from us.

L. C. J. As far forth as I could do, being in the Case of Life, I would indulge you: But I tell you, I am loath to be the Author of Precedents in Cases of this Nature, one way or other; especially in this Case, where I know you cannot but understand by what was spoken here t'other Day, what the Objection is, and where the Stress of it lies: Every Man at the Bar must needs understand it.

Mr. *Pollexfen.* My Lord, we know People have various Understandings; and the case is many times variously stated, not only in our Minds, but in our Books.

L. C. J. Well, we know you understand your selves well enough: And what we could grant we would.

Mr. *Just. Withins.* It may be Mr. *Pollexfen* does it only to make way for an excuse, when he comes to argue, that he is not so well prepared as he should have been; but we know him well enough.

Mr. *Pollexfen.* But, my Lord, if we miss the Words of the Indictment, we hope your Lordship will not think us impertinent in having made this Motion, which is for our Selves, not for our Client: And therefore we hope you will Pardon us, if in case we mistake; which we could have had no colour to have desired, if what we had to say were guided by a true Copy of the Record.

No Copy was granted, nor Rule made.

Die Jovis, 27 Novembris 1684. B. Regis.

Dominus Rex vers. Rosewell.

THIS Day Mr. *Rosewell* was brought to the Bar, and the Court asked the Council assign'd for him, what they had to say.

Mr. *Wallop.* May it please your Lordship, I am of Council with Mr. *Rosewell*, by your Lordship's Appointment; he being here a Prisoner now at the Bar. My Lord, I am inform'd (for I have not seen the Proceedings, nor heard the Indictment read) that it is an Indictment for treasonable Words; and many treasonable Words; and likewise, as I take it by Information, these Words are apply'd by divers Innuendo's; so that for ought I can apprehend by what I am inform'd (which I must still keep to) it is so uncertain, insensible, involved and intricate, that no safe Judgment, as I humbly conceive, can be given upon it.

My Lord, to consider these Words; First, if you please, I shall state them as discharged of the Innuendo's, and put them to your Lordship barely and nakedly, as they are in the Indictment, and as they were sworn, and are to be supposed by the Conviction to have been spoken. The Words are these, as they stand discharged of their Innuendo's. That *the People make a flocking to the King under pretence of healing the King's Evil, which he could not do; but we are they to whom they ought to flock, because we are Priests and Prophets, that by our Prayers can heal the Dolours and Griefs of the People. We have had now two wicked Kings together, who have suffered Popery to enter under their Noses; who can be liken'd to no other Person but the most wicked* Jeroboam: *And if they would stand to their Principles, he did not fear but they should overcome their Enemies as in former times, with Rams-horns, broken Platters, and a Stone in a Sling.*

These, my Lord, are the Words nakedly in themselves; and these are said to be spoken in a Publick Assembly, where they were likely to do hurt to the Government. Thus, I say, they stand without any of the Innuendo's. Now, tho' your Lordship will have, and justly ought to have, a good Account given you of such Words as these, how they came to be spoken, even taking them as they stand discharged of the Innuendo's; yet I humbly conceive with Submission, they do not contain any intention of deposing or destroying the King, and so can have no treasonable Intention in them: And then your Lordship, I suppose, will likewise expect to have a good account of these Words in another respect; how Words which in the hearing of them barely and nakedly spoken, could not carry a treasonable Intention, I say, how it comes to pass that in the writing of them down in an Indictment they become High Treason.

My Lord, these Words as they stand discharged of the Innuendos, are loose, extravagant, insensible Words; sounding rather towards Phrenzy, than Treason. So that as they stand without further Explanation by an Innuendo, they are perfectly insensible, and one cannot tell what they refer to, or whom; and if the Words, *Ex vi termini*, without further Averment, contain no treasonable intention and meaning, and so consequently have no Treason; it may seem very difficult and hard to maintain, how, out of the Assembly in which they were spoken, being put into Latin, in an Indictment, they should become Treason: They not being Treason at *Rotherhith*, where they were spoken; how they should be made Treason at *Kingston* or here, where they are dress'd up in another Form. Indeed I know no way that it can be done, but by adding some other Words by some other Hand. And, my Lord, I suppose it was so

ſo done by thoſe who framed this Indictment that is before your Lordſhip, by inſerting, and adding this Multitude of Innuendos.

But I ſuppoſe then, they that would inſert theſe Innuendos muſt have a good Warrant to inſert them: For if they are inſerted without Warrant in Law, then it muſt be acknowledg'd to me that the Indictment is not good; and I humbly conceive it to be a Rule in Law, that no Innuendo can warrantably be inſerted in an Indictment, Information, or Declaration, upon an Action of the Caſe for Words, unleſs the Defendant firſt himſelf be averr'd, and that directly to have mention'd a Perſon in certain, to whom thoſe Words may be referr'd; and it muſt not ſlide in by Suppoſition, but it muſt appear in the Body of the Diſcourſe of the Defendant. And the Reaſon is evident, in all Caſes of Slander, and particularly in theſe of treaſonable Words; for how could the Hearer underſtand whom the Preacher meant, or he that diſcourſed ſo and ſo; and ſo be influenced to Rebellion, unleſs he had named the Perſon of whom he ſpoke; as here, unleſs the Defendant had named the King to whom the Words he ſpoke ſhould be referred?

My Lord, the Treaſon of the Words is in ſtirring up Sedition and Rebellion; and if then the Words cannot terminate upon the King, and the Hearers could not collect that to be the Intention of the Speaker, theſe Words could not influence a People to Rebellion and Sedition. And according to this Rule, I conceive that moſt of the Innuendos in this Indictment are not warrantable.

For my Lord, as to the firſt Words, to take them in order, tho' I take it, that that is the moſt remote Matter from the Crime charged; yet let us ſtrike off theſe Innuendos as we go along, if we can. There it is *Quod populus*, &c. *the People* (meaning the Subjects of our Lord the King) *keep a flocking to the King, to cure the King's Evil, which he cannot do*, &c. Here the firſt Innuendo is *the People* (meaning the Subjects of our Lord the King). Now he had never before named the People of *England*; but the Innuendo faſtens that meaning upon the Word (*People.*) Which with Submiſſion, my Lord, is always a Sign of a naughty *Innuendo*; and it is without Warrant of Law; an endeavouring to give an original certainty to uncertain Words; which is more than the Office of an Innuendo will allow or warrant. I ſay, my Lord, it always bears a bad face, where Words firſt appear with an Innuendo, and have no certainty even in the Beginning of them but by the Innuendo: that with Submiſſion, is to be rejected, the Innuendo not doing its proper Office, for which it ought to be uſed in Law: For *Populus* may intend any People; it may intend the *French* People flocking to the *French* King, (and he does heal the King's Evil in the ſame manner; nay, pretends to it as a ſole Gift to him, his Predeceſſors and Succeſſors: But I only put that for an inſtance) and all the Innuendos, if you obſerve them, are of this Nature. The Words firſt appear without any light, but what theſe Suppoſitions give them; and therefore, I ſay, they are to be rejected.

But now, my Lord, I come to that which is more particular, *Nos habuimus nunc duos iniquos Reges in ſimul*; *We* (meaning the Subjects of the King) *have had two wicked Kings* (meaning King *Charles* the Firſt, and this King) *together*. Now that we ſay is altogether void, for there was no mention of any Kings; wicked Kings or good Kings, Pious or Bad, before in the Diſcourſe; to which, according to the Office of an Innuendo, theſe Words are to be apply'd. My Lord *Coke* in his 4 *Rep. fol.* 17. *B.* has this Caſe.

* *John Jeames* brings his Action againſt *Alexander Rutlech*, for ſpeaking the following words concerning him, to one *John Bonner*. "*Hang* "*him* (prædictum Johannem Jeames innuendo) *he is full of the* "*Pocks.* (innuendo the French Pocks.) *I marvail that you* (prædictum Johannem Bonner innuendo) *will* "*eat or drink with him* (prædictum Johannem Jeames innuendo) *I* "*will prove that he is* "*full of the Pocks* (innuendo the French Pocks.) Upon a Motion in Arreſt of Judgment, it was Reſolved by the Court, that in every Action of the Caſe for Slander, *two things* are requiſite. *Firſt*, That the Perſon who is Scandalized be certain. *Secondly*, That the Words ſpoken be *apparent* Slander. The Office of an *innuendo* is to deſign the ſame Perſon that has been named before: And is in Effect, inſtead of a *Prædict'*. But it cannot make the Perſon certain, that was uncertain before. In the preſent Caſe, it was evident that the Plaintiff did ſpeak the Words of the Defendant. But as to the *ſecond* Thing, it did not appear that the Words ſpoken did mean the *French* Pocks; and Words are to be taken *in mitiori ſenſu*.

12.

Mich. 41. & 42 Reginæ Eliz en bank le Roy, enter John Jeames pl. & Alex. Rutlech def.

LE plaintiffe count que le defendant, & un John Bonner ayant conference de le plaintiffe; Le defendant dit del plaintiffe al dit John Bonner ceux parols. Hang him (prædictum Johannem Jeames innuendo) he is full of the Pocks (innuendo the French Pocks,) I marvaile that you (prædictum Johannem Bonner innuendo) will eat [*B*] or drink with him, (prædictum Johannem Jeames innuendo) I will prove that he is full of the Pocks (innuendo) the French Pocks: *Le defendant plead non culpable, & fuit trove pur le plaintiffe & damages aſſeſſe: Et fuit move en arreſt de judgement que les dits parols ne fueront actionable. Et fuit reſolve que en cheſcun action ſur le caſe per ſlanderous parols, deux choſes ſont requiſite.* ¶ 1. *Que le perſon que eſt ſcandalize ſoit certain.* ¶ 2. *Que le ſcandal ſoit apparent per les parols meſmes. Et pur ceo ſi un dit ſauns aſcun precedent communication, que lun des ſervaunts de J. S. (il ayant divers) eſt un notorious Felon, ou Traitor &c. icy pur le incertaintie del perſon nul action giſt; & un* (innuendo) *ne poit faire ceo certain: Iſſint ſi un dit generalment:* I know one near about I. S. that is a notorious Thief, *ou tiels ſemblables Mes quant le perſon eſt un foits neſme en certaine, come ſi deux parlant enſemble de J. S lun dit*, He is a notorious Thief: *La J. S. en ſon count poit monſtre qua la fuit parlance de luy enter les deux, & que lun dit de luy:* He (innuendo prædictum I. S.) is a notorious Thief. *Car le office de un* innuendo, *eſt a containe & deſigne meſme le perſon que fuit neſme en certaine devant: & en effect eſtoit en lieu de un* (prædict') *mes un* (innuendo) *ne poit faire perſon certain que fuit in certain devant: Car ſerra inconvenient que actions ſerra maintaine per imagination dun entent que nappiert per les parols ſur que laction eſt fondue, mes eſt tout incertain & ſubject al deceivable conjecture: Mes ſi un dit a J. S.* Thou art a Traitor, &c. *la*, conſtat de perſona, & *action giſt: Iſſint icy en le caſe al barre, quant le defendant & Bonner ad parlance del pl'donques quant le defendant dit* hang him: *La* (innuendo) *voyle de note meſme le perſon noſme devaunt: Mes ſi le defendant ſauns aſcun parlance del plaintiffe ad dit*, hang him &c. *La nul* innuendo *voyle aver fait le perſon certain.* ¶ *Quant al 2. ſicome* (innuendo) *ne poit faire le perſon certain que fuit incertain devant, iſſint un* (innuendo) *ne poit alter le matter ou ſence des parols meſmes: Et pur ceo quant le defendant en le coſe al barre dit al plaintiffe*: That he was full of the Pocks, (innuendo) the French Pocks, *ceſt* innuendo *ne fait ſon proper office, car ceo contende a extender les general parols* the Pocks *a le* French Pocks *per imagination dun entent que neſt apparent per aſcun precedent purols, a que le* innuendo *referrer; Et les parols meſmes ſerra priſe* in mitiori ſenſu.

And I humbly conceive this Book is a moſt pregnant Authority that ſtates the Matter truly, with a Judgment of Law, and the Reaſon of it; and all the Books that come after this, borrow their Light from what is laid down as the Rule of Law in this Caſe; as there are an infinite Number of them, which I ſhall not trouble your Lordſhip with particularizing; only juſt to name ſome of them. 5 *Co.* 20. *Hob.* 45. and 2 *Cro.* 126. wherein they ſay, That altho' the Plaintiff be particularly nam'd by a ſpecial Name; yet if the Declaration comes to Name him in an Action of the Caſe for Words, at the firſt Appearance with an Innuendo, then that Innuendo is Void; tho' his Name be expreſly alledg'd in the very Words, yet they will reject that Innuendo, as not doing the proper Office of an Innuendo: And that Judgment ſhall be Arreſted, tho' the Jury found that the Party ſpoke ſuch Words: And this is upon the Rule in 4 *Co.* before-mentioned.

Now, my Lord, to apply this Rule in the 4*th* Report to the Caſe before your Lordſhip; we ſay there was no mention at all before of any two Kings; nay, not of any King, in his Diſcourſe, to which the Innuendo ſhould refer; and the Innuendo being join'd to the Words firſt ſpoken, without any Diſcourſe laid concerning ſuch a Perſon, or Averment to be ſpoken of ſuch an one before, the Innuendo cannot give any certainty to that which had no ſuch original Certainty; that being againſt the Office of an Innuendo, and ſo is to be rejected. And the meaning of the Books, and of that great Rule which I firſt cited is this, That the Defendant muſt himſelf in his Diſcourſe, firſt ſet up ſuch a Light about the Words of the Perſon concerning whom they are ſpoken, that the Intention of the Speaker may with eaſe be collected; then comes the Innuendo with a Beck or a Nod, as it were; and that Collection is to be the *nutus* to ſhew who was meant; but it is not ſufficient to give an original Certainty, where ſuch a Certainty is not fix'd before the Innuendo comes. The Defendant himſelf muſt ſet up ſuch a Light as will carry the Intention to the End of the Diſcourſe.

Then it is ſaid *Duos iniquos Reges*, in the Plural Number; meaning the late King *Charles* and his preſent Majeſty; now King *Charles* the Firſt was never pretended to be mention'd before; why then according to that Rule, as to him the Innuendo ſignifies nothing at all; and then it muſt be taken in common Underſtanding, *We have now had two wicked Kings together*, Innuendo our Sovereign Lord the King that now is, againſt whom the Treaſon muſt be ſaid to be committed: But this is very harſh, and inſenſible, and impoſſible; it is harſh in all reſpects both of Grammar, and Reaſon, and Law; it is inſenſible becauſe it is impoſſible; and it is impoſſible becauſe you muſt elſe make two Kings to be one, or one King to be two, and the Innuendo muſt ſerve both ways; which I believe your Lordſhip will hardly undertake to do.

And beſides, my Lord, there is another Inconſiſtency in theſe Words, *habuimus nunc*, that's contradictory; *habuimus* refers to the Time paſt, and draws one Way; *nunc* to the Time preſent, and draws another Way; and when there are ſuch Inconſiſtencies and Incoherences, how can any Man make a Judgement in this Caſe where the Life of a Man eſpecially is concerned?

But, my Lord, if *habuimus* be that which being firſt ſhall take place, then theſe Words refer to any two Kings that we have had, under whom Popery hath been let in; and ſo we muſt run back from *Harry* the 8th up to the Conqueſt, nay beyond the Conqueſt to the *Saxons*, and other former Kings, to the firſt that Eſtabliſhed the Chriſtian Religion, which was then ſubject to the Papacy. And it will be hard to conſtrue them wicked Kings for ſo doing at that Time; as any Man's reading, that knows any thing of the Hiſtory of *England*, will eaſily tell him. So that it is unintelligible and inſenſible, even that way; and to be ſure, if it be ſo, that we have had two wicked Kings together, referring ſo far back, it cannot at all concern the preſent King.

My Lord, I ſhall be ſhort; I only ſtate theſe things before you, and recommend them to your Lordſhip's Conſideration. Then come theſe Words, which it ſeems are moſt relyed upon, *if they would ſtand to their Principles*, he did *not not Queſtion, but they ſhould be able Inimicos ſuos vincere*; Inuendo the King and the Government. This is the moſt inſenſible, (as I apprehend) of all; and it is in the fatalleſt part, it being there that the Treaſon muſt lye, if there be any. Now my Lord, we firſt ſay, there is no mention at all of any Enemies throughout all the Words precedent; there is no Averment that the King was Enemy to any body, or any body to him; and therefore the Inuendo, for this reaſon, is to be rejected; and the rather, in that it makes the King and his Subjects to be Enemies one to another; which is an Imputation that ought not to be admitted; and I dare ſay, will not be by your Lordſhip. Therefore in this Caſe, to put ſuch a Senſe, in ſuch a Weighty Matter, (being a Matter of Fact,) upon ſuch Uncertainties without any further Averment of the Intention and Meaning of the Speaker to be ſo and ſo; and without any thing but ſuch Inuendo's, is very hard: For now perhaps the Jury only from this Inuendo were perſwaded that all theſe things pointed upon the King and the Government; and did take it that the Law was ſo; that the Words intended as much: Then do they give their Verdict of a Matter that was never averr'd, and for want of an Averment could never be put in iſſue, ſo that the Party could have a Tryal whether he were Guilty as the Indictment ſays.

My Lord, I ſhall cite no Books more than I have done. I humbly conceive that putting that great Rule in the Book I firſt mention'd, and the reaſon of the thing together, and the ſubſequent Authorities that I have cited, and they ſtand ſo fair and clear to avoid this Indictment, that to trouble your Lordſhip further were to embroil the caſe; therefore I ſhall ſay no more out of the Books. But the Rule is a firm, reaſonable, undeniable Rule, which muſt rule all Caſes that come under the Reaſon of it. And I never heard that Book was ever contradicted; but all ſubſequent Judgments were agreeable the runto.

Mr. *Juſt. Withins.* What Folio is it, Mr. *Wallop*, in he 4th Rep?

Mr. *Wallop.* Folio 17 *B.*

Mr. *Juſt. Holloway.* It is ——'s Caſe, is it not?

Mr. *Wallop.* Yes, Sir. My Lord, I have ſtript the Words of the Inuendo's. You will not

not I am ſure put, nor can an Inuendo put ſuch a Violence or Force upon Words, as to make them Treaſon, when in themſelves they have no ſuch meaning. Inuendo's are to follow the meaning of the Words as they lie in the Record, and not to draw the Meaning of the Words after the Inuendo; for you will never, (eſpecially in a Caſe of Life) preſs Words, or ſtrain them to ſpeak more than willingly they mean or intend. It is not the practice of the Law ſo to do, to make any ſuch Stretches. *Qui nimis emungit, elicit ſanguinem*, he that wrings the Noſe too hard will draw forth Blood; that is the Rule of that great Lawyer, my Lord *Coke*, who applies that Saying to the forced Straining of Words beyond what in themſelves they naturally and eaſily will bear. And it is plain that God is not well pleaſed with ſuch Emunctions: Nor does the Law of the Land at all allow it, but abſolutely forbid it; for the Law of *England* ſpeaks thus, *In dubiis & generalibus, benignior ſenſus eſt præferendus*; in all dubious, uncertain, and general Caſes, the moſt benign and candid Interpretation is to be taken: So that if there ſhould be a doubt about theſe Words, what Senſe they be taken in; the Law of *England* does enjoyn your Lordſhip to take the Way that lies on the Right hand, and make the moſt favourable Conſtruction that can be of them. We ſay then, the Words (as I conceive) ſtanding quite otherways and without the Innuendo's, are inſenſible; at leaſt uncertain to what they ſhould be applyed, or to whom; and then if there ſhould be a Doubt, (though indeed in one reſpect I think there is none; yet if there ſhould remain a Doubt) I ſay your Lordſhip and the Court are to take that which is the moſt mild and gentle way of conſtruing theſe Words.

My Lord, I ſhall not trouble your Lordſhip further in the matter; for I think it is ſeen by its own Light, and theſe few Touches that I have given of that general Rule as applyed to the particular Caſe before your Lordſhip: And I do not queſtion but they will be apply'd by your Lordſhip and the Court, in their Conſideration of the Caſe: Therefore I lay it at your Lordſhip's Feet, and humbly pray that the Judgment may be arreſted.

Mr. *Pollexfen*. My Lord, I am aſſign'd by the Court to be of Council for Mr. *Roſewell*, the Priſoner at the Bar; and therefore humbly deſire your Lordſhip would pleaſe to ſpare me a Word of the ſame Side with Mr. *Wallop*. The Caſe, that is, this Part of the Indictment hath been put (according to what our Information is) right by Mr. *Wallop*; but becauſe there may be many Words in the Indictment, (and there are ſo) ſome of a higher Nature than others; therefore I beg leave to put the Words diſtinctly as they lie; and I ſhall endeavour, with Submiſſion to your Lordſhip, to ſhew what Words are in themſelves Treaſon; and what are not Treaſon, tho' they may be a great Miſdemeanour, and highly puniſhable by the Law, and by the Court.

My Lord, Tho' the Statute of the 25 *Ed.* 3. does provide that for the Convicting of any for Treaſon, there ſhall be an Overt Act; yet I do not hold, nor do I think, but that there may be Words that are an Overt Act, and conſequently Treaſon within that Statute; but then what ſort of Words theſe are, is that which I would humbly offer to your Lordſhip to diſcourſe of: For my Lord it plainly appears that Words in themſelves that are very evil and wicked, yet are not Treaſon, nor are to be Puniſh'd by vertue of that Statute of the 25 *Ed.* 3. As in one *Cro.* 117. & 125. *Hugh Pine*'s Caſe. The Words there ſpoken by *Pine*, are moſt evil and wicked Words; yet by all the Judges of *England* they are agreed not to be Treaſon.

But, my Lord, for a further Determination of this Point, what Words are Treaſon and what not; give me Leave to mention the Statute of 13 *Car.* 2. which I underſtand to be the Statute upon which the Priſoner is Indicted, and the two Branches of that Statute: for the Firſt tells what is Treaſon, and the Second what is not Treaſon, but only Miſdemeanour; And that ſecond Branch of the Statute ſays, That if any Perſon ſhall maliciouſly and adviſedly publiſh or affirm the King to be an Heretick, or a Papiſt; or that he endeavours to introduce Popery, or maliciouſly and adviſedly by Writing, Printing, Preaching or expreſly Speaking, publiſh, utter or declare any Words, Sentences, or other Things, to ſtir up the People to hatred, or diſlike of the King's Perſon, or the Eſtabliſhed Government; then he is diſabled to have or exerciſe any Place or Office, Civil or Military, and be liable to ſuch further Puniſhment as by the Common Laws or Statutes may be inflicted in ſuch Caſes: By which, I take it, the meaning to be Fine and Impriſonment, or bodily Puniſhment; But not the Puniſhment that is appointed to the Judgment of High-Treaſon, or loſs of Life or Member.

Mr. *Att. Gen.* My Lord, I humbly crave your Lordſhip's Judgment whether this ſhall be permitted, that the Council ſhould enter into ſuch a Diſcourſe as this. The Queſtion (I take it) that your Lordſhip appointed to be Spoke to is, Whether this Indictment as to Form, be ſufficient for your Lordſhip to give Judgment upon: But Mr. *Pollexfen* is going into that which is a far greater Point; whether theſe Words abſtracted from all their Innuendo's are Treaſon, or no. My Lord, the Priſoner did not move that in Arreſt of Judgment; and whether your Lordſhip expects any ſuch thing ſhould be ſpoken unto, that was not moved or ſtirred by him, I muſt ſubmit it to you. The Jury found that theſe Words were ſpoken with an intent to depoſe the King. Whether that your Lordſhip will permit it to be argued whether ſuch Words are Treaſon in their own Nature, is of quite another Conſideration.

Mr. *Pollexfen*. Good Mr. *Attorney*, Pray ſpare us. We come to ſhow that if in their Nature they import not Matter of Treaſon, then the Innuendo's cannot help them, ſo as to make Treaſon of them.

Mr. *Att. Gen.* Truly, my Lord, I did not underſtand that it was your Lordſhip's Pleaſure the Council ſhould have liberty to argue any ſuch thing as whether the Words be Treaſon, being found to be ſpoken with ſuch an Intention; but whether theſe Innuendos have ſufficiently been laid to maintain the Indictment in point of Form.

Mr. *Pollexfen*. If you leave out the Words Innuendo, then ſure we may ſpeak to the Words themſelves.

L. C. J. Look you, Mr. *Attorney*, either you miſtake Mr. *Pollexfen*, or I do: For I take it, that he is entring into the Conſideration of theſe Words, as they are laid in the Indictment; that

are uncertainly laid, ſo as that they will not ſupport an Indictment of Treaſon.

Mr. *Att. Gen.* My Lord, He is arguing that if they were ſpoken of the King, yet they would not be Treaſon.

L. C. J. Will he ſay ſo? I dare ſay he will not.

Mr. *Att. Gen.* He is arguing upon the Statute, what Words are Treaſon, tho' ſpoken of the King, and what not; which, I take it, is not the Queſtion now.

Mr. *Sol. Gen.* My Lord, We humbly offer it to your Lordſhip, whether it be according to your Lordſhip's Rule and Intention that he was to argue whether the Words were Treaſon; or only whether the Form of the Indictment, as to the Innuendos, was good and ſufficient.

L. C. J. Taking the Words to be ſufficiently ſet forth in the Indictment, and found by the Jury to be ſpoken of the King, eſpecially the laſt Words; Do you think we would ſuffer that Queſtion to be debated, whether they were Treaſon or not? God forbid. I will not ſit here to hear that Queſtion at all ſo much as made or put, I'll aſſure you. I took him not to argue at all any thing that way.

Mr. *Pollexfen.* Pray, my Lord, hear me; I am going only to this; for I would not offer any thing beyond what is fit for me to offer, and for the Court to hear: But this we ſay, That the Words, the effective Words are not ſo ſufficiently laid in this Indictment, as to make them amount to Treaſon; I am only going to that.

L. C. J. Ay; That's the ſtinging Part of the Queſtion, and ſo I underſtood him before.

Mr. *Pollexfen.* My Lord, I only mention'd that of the Statute, that there were two ſorts of Words there taken notice of; to ſhew that I thought theſe Words were not within that Branch that is ſaid to be Treaſon.

L. C. J. Well, go on.

Mr. *Pollexfen.* I will keep my ſelf to the firſt Clauſe of the Statute; for what I mean, is this, That if theſe Words come not within that firſt Branch which makes the Treaſon, then your Lordſhip cannot give Judgment upon this Indictment. For tho', my Lord, it may be theſe Words are extraordinarily ill; and being ſpoken or Preached, may have an ill ſenſe or meaning with them; yet I would obſerve to your Lordſhip, there are other Penalties and Puniſhments provided for ſome ſort of Words, than there are for others.

But then my Lord, let us conſider the Words of the firſt Branch of this Statute. If ſo be any Perſon does compaſs the Death, or bodily Reſtraint, or other harm to the King's Perſon, or to deprive the King, or levy War againſt the King, *&c.* And this compaſſing and imagination does expreſs by Printing, Writing, Preaching, or malicious and adviſed Speaking, they ſhall ſuffer Judgment of High-Treaſon. Now then, all that I would come to is this, that this ſame treaſonable Printing, Writing, Preaching or Speaking, muſt be of ſuch Words as ſhall intend the Death, bodily Hurt, Reſtraint or Impriſonment of the King's Perſon; or Levying of War.

My Lord, having ſaid this, the next thing is to come to the Words themſelves; and to take them as they are in themſelves without the Innuendo's; and ſee what the Natural Senſe of them will be: And we'll take them in the Natural Order as they are laid in the very Indictment, and found by the Jury.

The firſt Paſſage of them is *quod Populus*, &c. (meaning the People of *England*, the Subjects of our Lord the King) *made a flocking to the King* (meaning our ſaid Lord the King that now is) *to cure the King's Evil, which he could not do; but we are they to whom they ſhould come, being Prieſts and Prophets, that by our Prayers can heal the Griefs of the People.* Now, my Lord, with humble Submiſſion, it is plain that as to theſe Words, they have not in themſelves any tendency to Treaſon at all, whatſoever Reflection they may make upon the King; they are the Words of a Prieſt magnifying his own Office, and his Power with God Almighty; but they do not come up (I think) to this Crime, for which the Priſoner at the Bar ſtands accuſed.

Then the next Words that follow are theſe, *Nos habuimus nunc duos iniquos Reges in ſimul, qui permiſerunt Romanam ſuperſtitionem intrare in eorum conſpectu, &c. and whom can be liken'd to none but wicked* Jeroboam. My Lord, theſe I do acknowledge are very wicked and bad Words, eſpecially if they muſt be apply'd as the Indictment has ſet them forth, to the late King and his preſent Majeſty: Yet theſe very Words (under favour) will not amount to the Charge of High-Treaſon. They deſerve very ſevere Puniſhment; but they ſeem not to come up to any thing of an Intention, or compaſſing, or deſigning the Death, bodily Hurt, or Impriſonment of the King; or the levying War againſt him. This I ſpeak, my Lord with Submiſſion, and I believe your Lordſhip may be of the ſame Mind.

But then, my Lord, the next Words that follow, are the Words (I ſuppoſe) that are rely'd upon to make out this Accuſation; *Quod ſi ipſi ſtarent ad fundamentalia, ipſe non timebat, &c. That they ſhould overcome their Enemies as in former times, with Ram's horns, broken Platters, and a Stone in a Sling.* Theſe, my Lord, ſeem to be the Words in which the Crime conſiſts. Now, my Lord, if theſe Words in themſelves are ſo uncertain, or ſuch as do not tend or relate to the preſent King, or the preſent Government, to ſtir up Sedition or Rebellion againſt them; then they will not be Treaſon, becauſe they do not ſo relate.

Now, my Lord, theſe Words if you take them alone without the former Clauſe, *Nos habuimus nunc duos iniquos Reges in ſimul &c* cloſed with the Innuendo, that he meant the late King and this, I ſee not poſſibly how they can be ſaid to relate to the preſent King and Government to make them Treaſon within this Act. Which way can it be? if they would *ſtand to their Principles, they ſhould overcome their Enemies*: How can they be intended to be meant of the King, and his Loyal Subjects? Then let us conſider the Words that go afore, whether they will help any thing or no; *habuimus nunc duos iniquos Reges in ſimul.* Theſe Words of themſelves ſtript of the Innuendo, do not expreſs what two Kings are meant by them. If you take the Words ſtrictly, that *We have had two Kings now together, in ſimul*; as the Word ſignifies, it muſt be two Kings at one and the ſame time; But take it in the *Engliſh* Phraſe (as perhaps they would have it turned into *Engliſh*) *We have had now two wicked Kings together* (meaning the late bleſſed Martyr, and his now Majeſty) then it muſt be, we have had now two

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Kings ſucceſſively; but it is a ſtrange thing to render ſuch *Latin* into ſuch *Engliſh*, which ſeems to be in the Nature of the Words themſelves, ſuch as will bear no ſuch Senſe or Conſtruction as that. And then the *qui permiſerunt Romanam ſuperſtitionem intrare in eorum conſpectu*; if the firſt words do not in themſelves expreſs what Kings were meant, theſe Words that follow can give no manner of Certainty to them at all: For here's not ſo much as any Innuendo; nor can the Words that follow them (*qui aſſimilari poſſunt, &c. which can be liken'd to none but wicked* Jeroboam) in any ſort ſhew any certainty to whom the Words are to be apply'd, or illuſtrate whom the Speaker meant.

But now that which is the next Clauſe is the worſt Clauſe of all, *Sed ſi ipſi ſtarent ad fundamentalia*, &c. *Ipſi* in all ordinary Conſtruction of ſpeech in all Language, being coupled to the former Words, (and ſo I think the rule in the Grammar is, and will be read by any reaſonable Perſon that reads) muſt refer to the next Antecedent. And then who are *they* that are laſt ſpoken of? It muſt be the two wicked Kings, let them be who they will, that were meant by thoſe wicked Kings; for there is no other Perſon that does intervene as ſpoken of, to whom they ſhould be referr'd. The former Words are ſpoken in the firſt Perſon, and plural Number; *we have had*, ſpeaking in the Name of himſelf, and they that were his Auditors; and then to come with *ipſi* after he had mention'd two Kings who had ſuffered Popery to come in, and were to be liken'd to *Jeroboam*, changes the form of the whole Speech. It ſhould ſeem according as it is laid in the Indictment, to run thus; and then I deſire your Lordſhip to conſider the Senſe and Grammar of them; *We had now two wicked Kings together, who have ſuffered Popery to come under their Noſes; we cannot compare them to any but wicked* Jeroboam: *And if they would ſtand to their Principles, then he did not doubt but they ſhould overcome their Enemies as in former times*, &c. Why then if *ipſi* according to Grammar and ordinary reading, being a relative muſt refer to that which went laſt before, there is nothing in all the Sentence before, but, *We*, (that is he and the People that heard him;) and the two Kings that he ſpoke of; and the two Kings being laſt ſpoke of, it muſt in all Grammar I ſay and Senſe be underſtood of the Kings. Then let us ſee what Senſe we can make of it; *We have had two wicked Kings that have permitted Popery under their Noſes, that they can be compar'd to none but wicked* Jeroboam: *and if they ſtand to their Principles he did not fear but they*, (*the Kings*) *ſhould overcome their Enemies.* In all ordinary and fair Reckoning, I cannot ſee how they can mend it, but the *Ipſi* muſt refer to the *Reges*; and the *Eorum fundamentalia, ipſorum Regum*, if you take theſe Words as they do lye; and if they have any Senſe or Meaning at all in them, this is the proper and natural Senſe and Meaning of them.

For it is pretty hard to apply the *Nos habuimus nunc duos iniquos Reges* to the *ipſi qui ſtarent ad fundamentalia*. In all Probability he ſpoke it thus, (if it continued on in a Diſcourſe, which I can ſay nothing to, being only to ſpeak to the Words as they are laid in the Indictment;) *and if we do but ſtand to our Principles; I do not doubt but we ſhall overcome our Enemies as formerly*, &c. But *ipſi* is a Variation of the Perſon, and according to all Grammatical Conſtruction, we know how it muſt be expounded. The other ſeems to be the natural reading of the Words, but the Indictment has not purſued them; but has made them inſtead of that, to be quite Nonſence, ſuppoſing them to have been ſpoken as the Jury have found them.

But my Lord; if they do not well bear that Senſe which I think they ſhould properly and naturally bear, if they had been right laid; the Queſtion then is whether we can make theſe Words as they are laid, to bear any ſuch Senſe as the King's Council (by their Innuendos) have placed upon them; that is *if they*, (meaning his Auditors) *ſhould ſtand to their Principles, then they ſhould overcome their Enemies* (meaning the King and his Loyal Subjects). Truly my Lord, I cannot ſee how that can be, how *Ipſi* ſhould be me; I and mine Auditors ſhould ſtand to their Principles.

But ſetting that aſide, come we then to the main Words. *He did not fear but they ſhould overcome their Enemies.* The great force of theſe Words lye in the Word *Enemies*. What is meant by Enemies? For all the reſt without that, would not ſignify any great Matter, with Submiſſion to your Lordſhip, as I think: And therefore here comes the great Burden, and that which is the ſharp Sting of all this Indictment. And to make *Enemies* to ſignify the King and his Subjects, my Lord is a very wonderful Innuendo, as I believe ever was attempted to be made. So it ſeems to me with Submiſſion to your Lordſhip; the Word *Enemies* it ſelf is a Word of ſo large Comprehenſion that it reaches to a great part of the World. God knows Mankind is ſo very unhappy as that every one hath very many, and too many Enemies. Who is not an Enemy? A Man ſcarce knows; its well if he does. And this is a thing that's mighty hard, that ſo general a Word ſhould have ſo hainous a particular Application.

There then reſts the Burden of the Caſe; whether *Inimicos* ſhould ſignify the King and his Loyal Subjects. If in the natural Grammar, the former Words of *Ipſi ſtarent ad fundamentalia*, be, as I have ſhown, to be referr'd to the *duos Reges* as the laſt Antecedent, then it muſt mean that the *duo Reges* would overcome their Enemies; and then there is no hurt in all theſe Words; but whatſoever was ſpoken is very commendable and very allowable: But if you would take it otherwayes, I ſee not how it can be done without the greateſt Strain in the World of ſo general a Word, to make *inimicos* mean the King and his Subjects.

Now my Lord, let us ſee how they intend to help it out, and that is by theſe Innuendos. The Nature of an Innuendo hath been already open'd to your Lordſhip by Mr. *Wallop*. I ſhall not repeat any thing of that which was ſaid before; for that I cannot take to be any Service to the Priſoner at the Bar, to take up your Lordſhip's time in Repetitions. The Books have been cited, and Reaſon it ſelf will direct to that; for muſt not a Man be convicted by his own Words as well as puniſhed for them? It is not ſure the skill of the Clerk to put in an Innuendo (or of any one elſe) that ſhall be conſtrued to make my Words to have any other Senſe than I that ſpake them intended them in. If the words are not clear, why then they cannot affect the Auditory ſo as to have any evil Influence upon them

them to incite them to Sedition or Rebellion; for ſenſible words muſt influence ſenſible Men: But words that are inſenſible can have no influence at all upon rational Creatures. Then ſhall an Innuendo make that an Offence, which without it, was not an Offence; eſpecially ſo great an Offence, as that of High-Treaſon? Surely not.

Beſides my Lord, all our Books are againſt making any ſuch Conſtruction. *Roll's Abr.* 1. *Part* 84. There is a whole Bead Roll of them to prove, that Innuendos will not help where the Words in themſelves have any Incertainty in them. The bare ſetting down the Words with Innuendos are not an Averrment ſufficient to maaintain an Action, or an Indictment. The Caſes there are indeed upon Actions of the Caſe for Words, which in reaſon are under the ſame Rule.

For my Lord, there are two Ways to apply words that are uncertain, to bring out the true Intent and Meaning of them, to whom they are to be apply'd; the one is by a *Colloquium* precedent; and where there is a *Colloquium* precedent of ſuch Matter as will lead in the Senſe of the words, which without it were not to be underſtood, there the laying that *Colloquium* makes the words come to be ſenſible; and there is this reaſon for it, whenever that's done, the *Colloquium* muſt come in Evidence and muſt be proved: But I never yet knew an Innuendo offer'd to be proved. Another Way is this, where words are laid in a Declaration with an Averment precedent to be ſpoken of ſuch a Perſon, then the words with an Innuendo after that Averment, ſhow ſufficiently what is meant by them. If ſo be ſcandalous words are ſpoken, as to ſay, *Thy Landlord, your Brother, your Maſter, your Servant, your Son is a Thief*, or the like: In theſe Caſes the words in themſelves do not expreſs the Man of whom the Scandal is raiſed, but they give ſuch a Denomination of the Man, that may by the Hearers be ſufficiently known. Why then in that Caſe, if in the Declaration it is averr'd that the Plaintiff was his *Landlord*, was his *Brother*, was his *Maſter*, was his *Servant*, was his *Son*, and that theſe words were ſpoken of him; and thereby it comes to be made apparent to the Court what is meant, and who is meant, that is well; and all that muſt be proved to the Court upon Evidence; or the Action cannot be maintain'd. By ſuch means as this, it is made plain and demonſtrable, that there can no Doubt remain, either with the Court or the Jury, to whom the Injury is done, and of whom the Scandal is utter'd. And theſe are the only two Ways that ever I could obſerve were allow'd to be ſufficient to maintain any ſuch Action; And there the Innuendo comes very properly in to aſſiſt the Averment, or the *Colloquium.*

But now my Lord, here in this Caſe, here's nothing of that kind but only a bare *Innuendo*, that ſuch and ſuch were meant, without either a *Colloquium* that there was a Diſcourſe concerning ſuch and ſuch Perſons; or an Averment that the words were ſpoken of the Perſons.

My Lord, I cannot tell what Precedents they will offer to your Lordſhip of former or later Times. We have had but a very little time to look into it; and have not that recourſe to the Precedents on the Crown's ſide, that the King's Council have. But my Lord, for Precedents that may have paſt *ſub ſilentio*, without having the Queſtion ſtir'd, I ſuppoſe will not be allowed by your Lordſhip and the Court as Precedents againſt us. But I think there will be no Inſtance given where ever any ſuch thing came in queſtion, that ever Judgment was given againſt the Defendant.

My Lord, this ſeems to be the ſenſe and nature of the words as they are laid in this Indictment, ſtript of the Innuendos; and your Lordſhip knows what a Caſe we have now before you. We are in the Caſe of the Life of a Man, which is much favour'd in Law; and if there be any doubt or uncertainty, your Lordſhip will lean rather towards the favourable Side; and if according to the Rules of Law, words to make Men Criminal ſhall not be ſtrained or forced beyond their plain, natural Meaning; ſure they ſhall not to make a Man capitally ſo: For the greater the Crime is, the greater Conſideration the Court will have to ſee that there be no ſtrain'd, forc'd Conſtructions to bring the Life of a Man in danger: And therefore I humbly pray that Judgment may be Arreſted.

Mr. *Att. Gen.* May it pleaſe your Lordſhip, I am of Council in this Caſe for the King; and notwithſtanding any thing that has been ſaid, I do conceive, that there is High-Treaſon well alledg'd in this Indictment, of which the Priſoner is found guilty, againſt whom I muſt demand your Judgment. My Lord, there is a great difference in this Matter; that is, whether the words are Treaſon, as they were ſpoken by him; and whether or no this Treaſon, admitting it to be Treaſon, be well diſcloſed by this Indictment: For my Lord, I think to preach in a Publick Aſſembly, that *we have had two wicked Kings together who have permitted Popery to come under their Noſes*, and then to go on with it to *Stand to their Principles* (for ſo the words are laid in this Indictment) *and they ſhould overcome their Enemies as in former times with Ram's-horns, broken Platters, and a Stone in a Sling*, is a very high Aggravation of ſuch words. And my Lord, if you remember the Evidence, as I doubt not you do, it was all ſpoken in a Publick Aſſembly, before 4 or 500 People; and they were ſpoken without any words intervening whatſoever. Theſe were the only words that were ſpoken relating to this Matter: So that theſe muſt carry their own pregnant Senſe with them, of exciting the People to ſtand to their Arms againſt the wicked Kings, or elſe they are of no Signification. And thus they are laid in the Indictment, and found by the Jury to be ſpoken poſitively to ſtir up the People againſt the King, to depoſe him, and to raiſe Rebellion within the Kingdom. This I ſay, is poſitively affirmed, and laid down in the Indictment. But now whether or no theſe words are in point of Form ſo laid, that the Court muſt underſtand them with relation to the King and Government, and as an Argument to ſtir up the People, is the Queſtion: For if they be ſo, then they are well laid to ſupport this Conviction of Treaſon.

Now for that, my Lord, I would only firſt ſay, they muſt either import Treaſon in themſelves, or they do not. If they do import Treaſon in themſelves, no Addition of the Perſon concerning whom they were ſpoken (as that they were ſpoken of the King) will mend the

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Caſe, or make it better. Tho' it be laid never ſo much to be ſpoken of the King, and that be never ſo much averr'd; yet if it be not ſpoken to diſturb the Government, or to raiſe Rebellion and Inſurrection, the adding a thouſand times that it was ſpoken *de domino Rege* would not avail. They confeſs they have no Precedents to produce; and I believe truly they have not: And ſo they only go by way of Argument, taken from Actions upon the Caſe for words: Whereas there is a great Diſparity in the Caſe between Actions of the Caſe for words, and Informations or Indictments for words that are Criminal or Capital; and I know if they will look into the Precedents that are in Print, in the Entries and in the Reports of Informations or Indictments, they will find it is never, or very ſeldom, or rarely done; it being look'd upon as to no Purpoſe, or as perfect Surpluſage, to lay that ſuch or ſuch a thing was ſpoken, *de domino Rege, de Gubernatione.* But in Criminal Caſes, and not Capital, it is commonly thus; of which there are Multitudes of Inſtances: That ſuch a one being of an ill Mind, to raiſe Commotion in the Kingdom, and ſtir up Sedition, ſpoke theſe and theſe words. This was the conſtant Form in your Lordſhips time, as your Lordſhip can remember, in the Informations that were, or the Indictments of Perſons that had ſpoken words relating to the Duke of *York.* I can remember when your Lordſhip us'd to ſay, *Never conſult me, but follow the ancient Precedents,* which I dare undertake to ſay are all thus; and ſo I ſhall ſhew by and by, it has been in Indictments of Treaſon: And tho' perhaps one or two might at any time be otherways drawn, (of which yet we can find none) yet, this hath been the conſtant Form for any thing that I can find; and it is of very great Conſequence to ſay at this time of Day, That what has for 100's of Years together been the conſtant Practice, and way of Indictments and Informations, is not good; it were to turn all things *topſie turvie,* and to make great confuſion in Proſecutions, and the Practice of the Law in Criminal Matters. I ſhall therefore ſhow your Lordſhip that here is ſuch a certainty as the Law does require, and as is uſually practiſed; and that the Words in themſelves are ſuch, that they muſt have relation to what we have laid down in the Indictment, and to nothing elſe.

But then they do lay down this for a Ground, which I think I may grant them very eaſily, and yet it will ſignifie nothing to what they mean; I would wipe off all theſe Innuendos, leave them out of the Caſe, for I never expect any help from them at all; and then I do agree that an Innuendo without a ſtrong, urgent Averment that the People which hear the words ſpoke, and the Court that are to paſs Judgment upon them ſhall ſay forcibly appears from the words themſelves, who was meant, and what was meant, will not ſupport the Indictment, nor has the Verdict fortify'd it at all.

But they tell you in Actions of the Caſe, if *John-a-Stiles* be called a *Bankrupt*; if he will bring an Action againſt the Party that ſpoke theſe words, he muſt aver, and affirm, that they were ſpoken *de quærente,* of that particular Perſon that doth bring the Action; and ſo it is, the Law is ſo, and the Reaſon's plain; becauſe there are many *John-a-Stiles*'s perhaps, and the Plaintiff that brings the Action is but one; and therefore if he does not ſhow that the Diſcourſe was of that *John a-Stiles* who brings the Action, it is uncertain who was meant, and cannot be ſupported by a bare Innuendo. But I take it in theſe Caſes, wherever the precedent Averment is neceſſary, there muſt be a diſtinct Proof of that Averment; as if *John-a-Stiles* be called Bankrupt, (in the Caſe I mention'd) and he brings his Action and avers the Diſcourſe to be *de Quærente*; and he calls Witneſſes, who prove the words to be ſpoken, that the Defendant did ſay *John-a Stiles* was a Bankrupt; and the Court demands this Queſtion of the Witneſſes, but do you know what *John-a-Stiles* the Defendant meant? and he ſhall anſwer, no, we only heard the Party ſay *John-a-Stiles* is a Bankrupt: It is apparent that Evidence will not ſupport the Action; for that Averment muſt be proved, that he that brings the Action was intended, and that there was a Diſcourſe concerning him. There muſt be, I ſay, the Proof of the Averment to make up that certainty of the Application of the Words which the Law requires. And therefore in what Caſe ſoever it be, if the words be the only Proof, or if the words carry ſufficient in themſelves to ſhew of whom they were ſpoken, it is ridiculous to ſay there muſt be an Averment that they were of ſuch a one; becauſe Words cannot prove themſelves.

For my Lord, where ever words by ſtrong and pregnant Intendment do carry Slander, and of ſuch a particular Perſon, there the Books are expreſs that there needs no Averment, that they were ſpoken of ſuch a one; as in the Caſe of *Fleetwood* and *Curle, Hob.* 267. which is a Rule for all Caſes upon Actions of the Caſe for Words. Sir *Miles Fleetwood* being Receiver of the Court of Wards, brought an Action of the Caſe againſt *Curle,* for that he (having Speech with one *Whorewood*) did ſpeak of the Plaintiff theſe Words, Mr. *Deceiver* (Innuendo the Plaintiff) had deceived and couzened the King, *&c.* He did there alledge the Words to be ſpoken of the Plaintiff. In that Caſe, upon not Guilty pleaded, it was found for the Plaintiff; and it was moved in Arreſt of Judgment, that it did not appear by the Words ſpoken, that they were ſpoken of the Plaintiff: For Mr. *Deceiver* had no Propriety to that purpoſe; and the Innuendo would not make it certain; when it appeared to the Court that the words would bear no certainty, tho' he did alledge the words to be ſpoken of the Plaintiff in that Caſe; becauſe there may be many Deceivers or Receivers; and he muſt prove it particularly ſpoken of himſelf. But then the Book is expreſs, that after a Verdict, tho' he did not averr it was ſpoken of him in his Office, yet Judgment ſhould be given for the Plaintiff, becauſe there is a pregnant, violent, certain Senſe, that may lead the Court and Hearers to take it ſo to be meant, and cannot be other ways imagin'd; and therefore the Court will not imagine it. As if a Man ſpoke of an Attorny, that he is a Knave, and ſpoke not of his Practice; why then the Action won't lye: But if he be named an Attorny in the Declaration, and the Hearers knew him to be an Attorny; in that Caſe, it was rul'd not neceſſary to have any ſuch Averment; for the words themſelves did import it in the Original Caſe that it was ſpoken of him in his Office by the Word Deceiver; that having an Alluſion and Ironical reſemblance to the Name of his Office;

fice; and in the other Caſe, becauſe the Hearers knew him to be an Attorney.

So my Lord, upon theſe Grounds, Judgments have gone in thoſe Caſes which they themſelves do ſo much rely upon; Actions for the Caſe for Words; wherever the Words import pregnantly ſuch a Senſe, there does not need ſuch an Averment. But I ſhall ſhew that in Informations and Indictments this cannot be neceſſary, and the Reaſon ſeems plain: For here as we have laid it, and as the Truth is, we all know it, there is but one King, and one Government; and when Words are laid to be ſpoken to excite Commotions, or Rebellions, or Inſurrections, they are but external Declarations of the Mind; the Treaſon that he is charg'd with, that is inward, it is the thoughts that are Treaſon. But it is true, the laying that alone, that he did ſo compaſs and imagine, without ſome outward Declaration, would not be good in an Indictment, any more than the outward Declaration without the inward Intention. But the Treaſon is, that he did imagine to raiſe Rebellion and War within the Kingdom, to ſtir up the People againſt the King, and to depoſe the King, and bring him to Death, and deprive him of his Crown and Dignity; and then goes the Indictment on, and ſays, to the end that he might effect this Treaſon, he ſpoke ſuch and ſuch Words, which by that new Law (that Mr. *Pollexfen* mention'd) will amount to Treaſon in Speaking, as well as Writing. I ſay, it is poſitively charged in the Indictment, that he did thus and thus ſpeak to ſtir up the People to Rebellion and War againſt the King; and then come the Words. If indeed any collateral Words be ſpoken, which in their own Nature import not a Tendency to incite and ſtir up the People againſt the King, it would be naught with Innuendo's; and ſo it would be if there were twenty Averments. But I think that this is as ſtrong an Averment as can be (what we all know to be true) that there is but one King and one Government. And then he ſpoke the Words in a Publick Aſſembly, *We have had ſo and ſo, and if they would do ſo and ſo*; which carries forcibly and pregnantly this Senſe, that it cannot be intended to be ſpoken againſt any one elſe, but againſt the King and the Government; eſpecially now after the Verdict, when the Jury find that he did all this to raiſe up the People againſt the King. All the Diſcourſe is in it ſelf pregnantly and forcibly tending that Way.

My Lord, we are now upon the Form of the Indictment. Put the caſe there are many idle Expreſſions in it, as I may grant there are; yet if the greateſt part import Treaſon, Sedition, and Rebellion; and are laid to be done to incite the People to Rebellion; and ſo found by the Jury; then the Indictment is well laid, and Judgment muſt be given for the King. The firſt Words are highly derogatory to the King, and muſt be underſtood to be ſpoke of him. If the Priſoner had thought theſe Words would not have been Treaſon, if he had demurr'd in the Caſe, by that, as the Jury find it now here, he wou'd have confeſs'd it to have been ſpoken of the King; for it is ſaid he ſpoke it to the People, and he ſpoke it of the People of *England*; and to ſay that *Populus* may mean the King of *France*'s People, as Mr. *Wallop* would have it, certainly no Man can think that: For when he ſpeaks in Engliſh, to an Engliſh Auditory in a Publick Aſſembly, *That the People make a flocking to the King*, how can that King mean the King of *France*? And how can the Word *People*, by any Intendment, but a very foreign and ſtrange one, be interpreted to mean that the *French* People ſhould come over hither for to be cured of the King's Evil, when (as he himſelf ſays) the *French* King claims ſuch a Power? No, That does fix it particularly upon our own King.

Pray let's conſider then, what poſſibly can the Intendment of theſe Words be that follow, *We have had now two wicked Kings together*? as for that Objection of the Word *inſimul*, that it means together at one time; that ſure can have very little in it; it being to be taken according to common Underſtanding in our Dialect; and in Engliſh to ſay we have had now two wicked Kings together; every one will underſtand it, we have had them one after another, becauſe we have but one King at a time.

And then, my Lord, if the latter Words were left out, with Submiſſion, I conceive upon the Authorities that are in our Books, theſe Words would have been Treaſon upon the Statute of 25 *Ed.* 3. For, my Lord, in a publick Aſſembly of People, which is an unlawful Aſſembly as this was, to ſpeak ſuch Words of the King would be Treaſon. For put the caſe he had collected a number of armed Men, at *Hounſlow Heath*, and there exhorted them to ſtand together; that the King was a wicked Prince, and had miſgovern'd himſelf in the Adminiſtration of the Government; I think that would be Treaſon within the Law. By the new Statute, to ſay the King is a Papiſt, plainly is a *Præmunire*; but to ſay the King is a wicked King, and has miſgovern'd himſelf in introducing Popery; that's a Step further than what the Act makes a *Præmunire*; for theſe are Words to ſtir up the People againſt the King, eſpecially preach'd in a publick Aſſembly.

Then, my Lord, you'll take all theſe Words together; firſt after he had drawn away that great Authority, and great Power that the God of Heaven hath given to the King in curing the King's Evil, and declar'd him to be a wicked Prince, by ſuffering Popery to come under his Noſe, and that he was to be compar'd to none but wicked *Jeroboam*: And then to exhort the People, to ſtand to their Principles, and he did not doubt, but they ſhould overcome their Enemies. What can be plainer Treaſon? For it is plain, that he did ſpeak to the People, to the Congregation; and that can never be underſtood otherways by the Court, nor by the Hearers. For that Interpretation, that the King ſhould overcome his Enemies; it is foreign and ridiculous; and not to be imagin'd by any body that has either Senſe or Reaſon about them.

But my Lord I ſhall leave all this (the Jury having now found it) to ſhew what Precedents we could prepare for your Lordſhip; how things of this Nature have been uſed to be drawn; For we have made for the little time we had, as good a Search as we can; and I have found ſeveral: And indeed, I cannot find one otherways, than as this is. And for late Informations, and Indictments, if you examine the Clerks that now are, they'll tell you, that there is not one otherways: But that if it be ſaid to be done with an intent to raiſe Rebellion or War againſt the King, or Sedition, or the like; and then ſay, he ſpoke ſuch and ſuch Words, that is ſufficient.

But

But I will ſhew your Lordſhip ſome ancienter Precedents, ſome few which will ſhew how the Practice was heretofore.

The firſt is 3 *H.* 8. *Rot.* 17. in the Indictment againſt my Lord *Grey*, of High-Treaſon; after the general Charge of machinating the Deſtruction and Death of the King, and Subverſion of the Government; it is ſaid there, that *Proditorie* he did ſpeak theſe Words, '*That the King's Grace ſhould be driven out of the Realm, and the Prince's Grace ſhould never Succeed.* And it is not averr'd that theſe Words were ſpoken of the King, and of the Prince; nor was there any need it ſhould be averr'd; for the Words plainly import they were ſpoken of them; and the laying it, that it was to raiſe Sedition within the Realm, was ſufficient to make them High-Treaſon.

Then the next is my Lord *Cobham's* Caſe, 2 *Jac. Seſſione 1mâ*; for it is one of the great Records that lye in the Cheſt, amongſt the *Arcana*. But by the Book in the Office, we have a Copy of it; but there is the Record in the Cheſt, and there it is, '*Poſteaque 12 die Junii, 'ultimo præterit. ac diverſis aliis diebus & vicibus, 'tam poſtea quam antea, dixerunt*, &c. (for there are other Defendants) *Proditorie* '*there will be no good till the King* (meaning our Sovereign Lord the King) '*and all his Cubs* (meaning the Children of our ſaid Lord the King) '*were quite taken away*, &c. I leave out the general Charge of the Machination and contriving of the Death of the King; but to the intent to effect that Treaſon, ſuch Words were ſpoken, without any Averment that they were ſpoken *de Rege*. There was no mention of the Progeny of the King before; or that the Cubbs that were ſpoken of, were the King's Children; neither would the Words *Regalis Progenies*, anſwer the Engliſh Word *Cubbs*; which was a Word abuſively mention'd by him. But in that Caſe it was held to be a good Indictment; and Sir *Walter Rawleigh* was condemn'd upon it.

Another is *William's* Caſe; and that's very like our Caſe in the firſt Part; that is, the firſt Words inſiſted upon are laid poſitively to be ſpoken of King *James*, by an Innuendo. *Paſch.* 17. *Jac. Rot.* 40. there after the *Machinans & intendens &c.* it is laid that he ſuch a Day of *September, Proditorie deviſavit* a treaſonable Book, call'd *Balaam's Aſs*; wherein there are ſuch and ſuch Paſſages apply'd to the King by the Innuendo. There is nothing ſaid of that, to be ſpoken of the King, *de Rege*; but the Words of the Book, carrying their own plain Senſe and meaning in them that they muſt be intended of the King and the Government; that was ſufficient to maintain the Indictment; and he was executed. The Innuendo's are not material. If it can have no other Senſe, that is enough to maintain the Indictment.

My Lord, In *Fitzharris's* Caſe, which your Lordſhip and all the Court remember; part of the Libel related to the Duke of *York*, by the Letters *D.* of *Y.* and ſometimes only call'd by the Letter *Y*; and the King himſelf by the Letters *Ch.* And the Innuendo is, Meaning our Sovereign Lord the King; and there is nothing averr'd in that Caſe, and indeed, there can be be nothing averr'd; for by the import of the Thing it muſt have that Senſe.

Colonel *Sidney's* Caſe, my Lord, you'll find to be the ſame: There's no Averment; but the Words of the Libel are brought in with an Innuendo.

And you have another Indictment at *Salop*, 31 *Car.* 2. One *Pitt* was Indicted of High-Treaſon, and convicted for theſe Words, '*If the King ſhould hang, or baniſh any of the Papiſts, his Throat ſhall be cut.* This is laid in the ſame Form in the Indictment, as we have it here in our Caſe. If you pleaſe it may be read that he did *adviſatè, proditorie*, ſpeak ſuch and ſuch Words *if the King* (meaning our Sovereign Lord the King, without any previous Diſcourſe of the King, or ſaying it was ſpoken *de Rege*) *ſhould hang or baniſh any of the Papiſts* (*quaſdam perſonas male diſpoſitas*, &c. innuendo) *his Throat ſhall be cut.* He was convicted (I ſay) and I think was executed, tho' I cannot directly tell that: But this is the Record of his Conviction.

So I take it, it is (with Submiſſion) that the Precedents go all along, both in Criminals that are not Capitals, in Indictments and Informations; and alſo in Indictments for High-Treaſon. The charging the Words to be ſpoken to ſtir up Sedition and Rebellion within the Kingdom, without the help of any Averment whatſoever, is ſufficient; that is a ſtrong Implication that they are ſpoken of the King and Government.

And my Lord, as to theſe Words they could not be laid otherways, than they are in this Indictment; for this is all that the Perſons that are the Witneſſes ſwore was Spoken. Your Lordſhip remembers it, it was ſo when they were here, they could ſwear no more. So that to have averr'd that he ſpoke to them *de Rege & Gubernatione*, would have put a proof upon us that our Witneſſes would not have come up to. We muſt have prov'd a Diſcourſe of the King and Government, and a Swearing of the Words would not have been a Proof of that. The Jury has found that this was done to ſtir up Sedition and to levy War; therefore I conceive according to the conſtant courſe of the Precedents, there is no need of any Averment; but the Words are well laid and well prov'd; and he well convicted.

To ſay that Enemies is a very general Word, and that we have Enemies of all ſorts, and that therefore a bare Innuendo cannot make it mean one more than another, is odd in this Caſe: For I would fain have any Man aſſign me what ſort of Enemies he could be thought to mean in ſuch a Diſcourſe; he could not mean Spiritual Enemies; becauſe the Inſtruments that they were to be deſtroy'd with, were carnal Weapons, broken Pitchers, and a Stone in a Sling. Theſe are not fit for overcoming Spiritual Enemies; but they muſt be ſuch Enemies as can be deſtroy'd by ſuch Inſtruments; Carnal Enemies, that are to be vanquiſh'd by outward Force. And then what Enemies can ſuch a publick, unlawful Aſſembly have but the Government? All that are of their own Side and Party, are none of their Enemies. And it cannot be taken diſtributively, that every particular Man has his Enemy, that's a foreign Underſtanding: But when he ſpoke to the Congregation in a Conventicle, that they *ſhould overcome their Enemies*, being ſo unlawfully aſſembled, that muſt be the Government. And had he not told you before who were the Enemies that he plainly meant? He had ſaid that the King was a wicked Man; and

ccording as he repreſented him, an Enemy to God and Man by introducing Popery into the Kingdom. And you are to conſider the Time when, and the Place where theſe Words were ſpoken. We know that in theſe Conventicles, it has been the conſtant Cry, that we ſhould be all over-run with Popery, and the like: And therefore that is conſiderable in the Caſe.

My Lord, I make a great Difference between Words ſpoken in private, and Words ſpoken in a great and large Aſſembly. It is the ſame Thing as if it had been ſpoken at the Head of an Army; eſpecially when People meet contrary to the Laws of the Land in Defiance of the Government; and gather together in ſuch great Multitudes; and have ſuch Diſcourſes and Opinions broach'd amongſt them. I cannot ſee truly how it is poſſible to have been better laid, being Sworn directly as it is laid; and eſpecially being found to be all ſpoken to diſturb the Government, and to raiſe Sedition and Rebellion. Therefore I muſt ſubmit it to your Lordſhip; and pray your Judgment againſt the Priſoner for the King.

Mr. *Sol. Gen.* My Lord, I beg leave to add one Word on the ſame Side. That which I ſhall apply my ſelf to, is to ſhew that this is a very good Indictment, in the Form of the Indictment, and that upon this Matter which the Priſoner is proceeded againſt; for it could not be better.

My Lord, the Fact charged upon the Priſoner is as Mr. *Attorney* has open'd. Theſe Words were ſpoken in a Conventicle, *The People make a flocking to the King to cure the King's Evil, which he cannot do*, &c. Theſe are the Words upon which the Priſoner was committed: Theſe are the Words upon which he is proceeded againſt; and Theſe are the Words which have been found againſt him. And, my Lord, more Words than theſe are not alledg'd to be ſpoken by the Priſoner, nor proved to be ſpoken by him at his Tryal upon this Indictment. Therefore if theſe Words are High-Treaſon, this is a good Indictment in Subſtance, if it prove ſo too in Form. And whether theſe Words are not themſelves Treaſon, I ſhall not now ſpeak, but ſhall only go to ſhew (as I ſaid) that it is a good Indictment in Point of Form. For theſe Words are his Crime, as ſpoken in that Conventicle; and the only Crime of which he was accus'd, and of which he is found guilty.

Now, my Lord, let us ſee how the Indictment is. He is charged with compaſſing, imagining, and intending to raiſe Rebellion, and levy War in the Kingdom; and to depoſe the King; and to bring the King to Deſtruction: That is the Charge of High-Treaſon, in the Kind of it. Now, as that is the Charge, it is of abſolute Neceſſity to alledge an Overt-Act, which muſt be proved too; and, if there be not an Overt-Act, the Indictment is naught. Well then, the Treaſon is compaſſing the Death of the King, and intending to raiſe Sedition, and levy War. What is the Overt-Act charg'd upon him? Why, to bring ſuch his wicked Purpoſes to paſs, he did traiterouſly ſpeak, publiſh and utter [*the Words of the Act of Parliament* in 13 Car. 2.] in an unlawful Aſſembly, in the Preſence of divers of the Kings Subjects, theſe Words that I repeated before to your Lordſhip.

Now, my Lord, I ask; Are theſe Words Treaſon in themſelves, or are they not? If they are Treaſon of themſelves; then the Indictment is certainly good in Form, without ſaying, that he ſpoke the Words of the King, or of the People of *England*, Subjects of the King. For either they do import that of themſelves, or they do not. If they do import it of themſelves, the ſaying that he did ſpeak them of the King, and of the People, would have been impertinent and idle; becauſe it is a thing manifeſtly plain of it ſelf. If they do not import this of themſelves; then had it been charged that they were ſpoken of the King and of the People, this muſt have been proved.

To go on then, my Lord: If it muſt have been proved; it muſt have been proved either by the Words themſelves, or by ſomething elſe. If it were to be proved by the Words themſelves; why then it returns to the old Queſtion, and we need not alledge it. If it were to be proved by ſomething elſe; then the Fault is not in the Indictment, but it muſt be want of other Matter than what our Witneſſes would prove; which, I am ſure, would have been a very great Fault in us to have drawn upon our ſelves. But if the Words import of themſelves the Meaning to be of the King, and of the People of *England*; then it is plain they make the Treaſon of themſelves, and there requires no Averment.

As now, for Inſtance, (my Lord) to change the Words a little, to illuſtrate the Caſe; as ſuppoſe it had been charged in the Indictment, that to bring his wicked Purpoſes forth to effect, he did ſpeak theſe Words in ſuch an Aſſembly, *Procure to your ſelves Arms, and make your ſelves ready by ſuch a Day, and go to* Whitehall *and kill the King*; Would any Man have ſaid here, that it was neceſſary that we ſhould ſay in the Indictment that he *dixit de Populo, vel de Rege*, ſo and ſo; No certainly, it is not neceſſary, becauſe the Words plainly import their own Meeting.

So here in this Caſe; if the Words themſelves neceſſarily import to be ſpoken of the King, it is as impertinent here to ſay *dixit de Rege, dixit de Populo*, as in that Caſe; becauſe it is no more than what they neceſſarily and naturally import of themſelves: Which ſhews that this Averment that they would have, is abſolutely immaterial; and, if it had been charg'd, would have requir'd ſome other Proof than the Words themſelves. And ſo the Fault cannot be, as they would alledge, in the Form of the Indictment; but in the Subſtance of the Words, that they do not import in themſelves ſuch a Meaning. And therefore, I think (with Submiſſion) I have maintain'd the Form of this Indictment, beyond all Contradiction; and, notwithſtanding all their Objections, it is a very good Form without the Words, *dixit de Rege, vel de Populo*.

As Mr. *Attorney* ſaid, it is neceſſary (my Lord) in Actions on the Caſe for Slander, to aver, *dixit de quærente*, becauſe he muſt aſcertain the Perſon of whom the Words are ſpoken, to be the very Plaintiff; for there may be divers of the ſame Name: And you muſt always, upon a Record, aſcertain the Perſon, to entitle the Plaintiff to the Action: But where Words are pregnant, and full of themſelves, there needs no Averment in ſuch a Caſe; which, without

without ſuch Pregnancy; would be neceſſary, and if not done the Action would fail. As in that Caſe that was cited by Mr. *Attorney* of Sir *Miles Fleetwood*; if it had been that the Words were, Sir *Miles Fleetwood has deceived the King*, it would not have born an Action, unleſs it had been averr'd to have been ſpoken of him as of *couzening* the King in his Office: Becauſe generally to ſay a Man has *couzen'd* the King will not bear an Action, it is ſo looſe. But when he ſays Mr. *Deceiver*; the Ironicalneſs of that ſhall not excuſe him, but rather demonſtrate both who and what he meant; that it ſhall be apply'd to him as doing it in his Office. And, being ſo, it muſt neceſſarily be underſtood to be a very great Slander, and then it needs no Averment. So ſays the Book.

So that where Words are plain and full, even in an Action on the Caſe, there requires no Averment: But in Indictments, they being for Offences againſt the Government, the very ancient Forms uſed will govern the Caſe; as well as the Reaſon and Nature of the thing; that no one can be meant, by ſuch ſort of Words, but the King and the Government: And for that I rely upon the Precedents that have been cited, that the Forms were always thus. The Precedents (with humble Submiſſion) where the Overt-Act laid in the Indictment is by Words ſpoken, that it is ſaid, *dixit de Domino Rege*, &c. there is not one that does ever carry it ſo, but the Forms are conſtantly in the ſame Manner with this that is now before your Lordſhip, without ſuch Averment, as carrying plain Surpluſage, to averr that which the Words neceſſarily import.

To ſay, my Lord, in this Caſe (as we hear it objected on the other Side,) That theſe Forms paſs'd *ſub Silentio*, and no ſuch Objection was ever made: I ſay that is no Objection to our Indictment; for the Argument ſure turns the other way; becauſe the Forms have been conſtantly in this Manner that ours is, therefore it is aſſign'd that what they offer is no Objection at all; for, doubtleſs, in ſo long a tract of time, when ſo many learned Men ſate on the Bench; and ſo many learned of the King's Council attended the King's Courts, and ſo many Perſons have been indicted, try'd, and ſuffer'd upon ſuch Indictments, who would have ſaved their Lives (no doubt) if they could, by making ſuch Advantage of ſuch an Exception; that is a ſtrong Argument that it was never thought an Exception. So that, beſides the Reaſon of the thing, the Precedents are all with us, which hath always been accounted a good Argument.

My Lord, a great many of us remember the Indictments of latter Times; particularly that of Colonel *Sidney*: Tho' there is another Overt-Act laid in that Indictment too, yet that is nothing to this Caſe. If there be but one Overt-Act laid in the Indictment, it muſt be proved by two Witneſſes; but if there be ſeveral Overt-acts laid in the Indictment, and one is proved by one Witneſs, and the other by another Witneſs, that is ſufficient to maintain the Indictment. In Mr. *Sidney*'s Caſe there was to one Fact but one Witneſs; and therefore it was neceſſary to lay another Overt-Act, which was proved by other Witneſſes. And one Overt-Act comes to this point that's now in Queſtion before your Lordſhip. It is in this Form directly, without any Averment that the Words were ſpoke or written *de Rege* or *de Regimine*; but that the Book contain'd ſo and ſo: And the Thing it ſelf ſpeaks it ſelf of whom it was meant. If therefore the Words in that Caſe, being proved, were neceſſarily to be apply'd to the Government of *England*, there need no Averment: No more does there here.

My Lord, not to trouble your Lordſhip further in ſo plain a Caſe; the Precedents being thus, and it being known to be the conſtant Practice in point of Form; I would fain know what they would have had us done. The Witneſſes ſwear theſe are the Words, and there are no more; how then can we frame a better Indictment than upon the Words that they ſwear were ſpoken? My Lord, we pray your Judgment for the King.

L. C. J. Well, have you done on both Sides?

Mr. *Attorny.* Yes, my Lord,

L. C. J. Truly for my part, I think this is a Caſe of great Conſequence on the one ſide; and on the other. I hear it's ſaid there are abundance of Precedents in the Caſe; ſome have been mention'd; and it is neceſſary we ſhould look upon theſe Precedents before we deliver any abſolute Opinion. But truly I muſt ſay, Mr. Attorney's Precedents have with me very little weight. And I muſt differ from Mr. Attorny in another Thing: For if in Caſe the laſt Words were out of the Caſe, of *ſtanding to their Principles*, and *overcoming their Enemies*, Do you think, that becauſe it is ſaid in the fore part of the Indictment, that he intended the Death of the King, and to raiſe Rebellion, and therefore ſaid, there *were two wicked Kings* who ſuffer'd *Popery under their Noſes*, and were to be liken'd to *Jeroboam*; that that would be a good Indictment for High Treaſon? Then it were plain the Act of Parliament, 13 *Car.* 2. was made to no Purpoſe. For tho' I doubt not in the leaſt, words may be an Overt-Act of High-Treaſon, in compaſſing the Death of the King, upon the Stat. of 25 *Ed.* 3. I make no difficulty in the World of that: So was my Lord *Cobham*'s Caſe; and ſo were the Caſes in *Harry* the Eighth's Time, '*We will drive the King out of* England, or any thing of that Nature: I ſay that would be an Overt-Act ſufficient to bring a Man within the Compaſs of the Statute of 25 *Ed.* 3. becauſe thoſe are expreſs words tending to the death and deſtruction of the King, the depoſing him and depriving him; and they call him the King. But if a Man comes and ſays, That ſuch a one with a Purpoſe and Intent to deſtroy the King, ſaid theſe words, That *the King could not cure the King's Evil*; that's not ſuch an Overt Act, as to make good an Indictment of High Treaſon. And to ſay that the King introduces Popery under his Noſe into the Kingdom; why it's a very high Crime; but it is preſcribed by the Act of Parliament to be proſecuted only as a Miſdemeanour, and puniſhed by *Præmunire*. If you look into that Statute, you will find which way the words ſhall have a Tendency that are to convict a Man of Treaſon; that is, that tend to the Impriſonment, bodily harm, death or deſtruction of the King; or raiſing Inſurrection and Rebellion; or levying War within the Kingdom, that is High Treaſon. But words that do not neceſſarily tend to any ſuch thing; as to ſay the King is a *Papiſt*,

introduces *Popery*, is *Popiſhly affected*; Phraſes that ſome People delight in; that has a peculiar Puniſhment appointed to it by this Act. And this is all taken care of, to ſhew the Judges how they ſhould proceed, being careful of leaving it looſe in ſo great a Caſe as High Treaſon. And the Parliament ſeems to be the more careful in it; becauſe they make the treaſonable words ſuch an Offence during the King's Life only. Now as Mr. Sollicitor puts the Caſe by way of Illuſtration in other words; I make no difficulty, but to bid Men prepare Arms, and go to *White-hall*, and kill the King, would be rank down right Treaſon. Would any Man in the World doubt to averr, that that were an Overt Act? No Man living would. But if I will ſay, that to compaſs and imagine the King's Death, he bid them riſe up and go to *White-hall* and they ſhould overcome their Enemies, does that import the King? There's no neceſſity of that. The King cannot be ſaid to be an Enemy, unleſs it be plainly declar'd by the Party himſelf who he meant. And then to ſay, how could it be made better? No doubt of it, it might eaſily be made better if it had been conſider'd of. For if you had come and averr'd, that theſe Words were ſpoken concerning the King, and the People of *England*, cetainly it would have made it more certain. I don't bind my ſelf now in my Opinion, by what I now tell you; but I am only breaking the matter. If you had ſaid, that he ſaid, if we will ſtand to our Principles, we ſhall deſtroy them, I think it had made the Caſe ſtronger ten times; but you have not ſo done. Indeed I am not ſo fond in my Imagination as the Council for the Priſoner ſeem to be; That *we have had two wicked Kings together, who have ſuffered Popery to come under their Noſes*; that therefore we muſt run it up to King *Ethelbert*, and I don't know who; no, that plainly in common *Engliſh* ſpeaking, means two Kings ſucceſſively; and it muſt be made a ſtrange, forc'd Conſtruction, if we ſhould interpret it that he did not ſpeak theſe Words of the late bleſſed Martyr and his preſent Majeſty. And becauſe *Enemies* is in the Plural Number therefore to make it Nonſenſe, becauſe one is deſtroy'd, (if the words had been well laid as they might) therefore it could have no relation to him that was left, (I ſay) would make a ſtrange forc'd Conſtruction. That might be well enough if the words had been properly laid. But when you come to ſpeak of Enemies, innuendo the King and his Subjects; how can that poſſibly be? For you had talk'd of no body before that they are ſaid to have a Diſpleaſure to; and therefore without ſaying that the King is an Enemy to ſay, *Stand to your Principles, and you ſhall deſtroy your Enemies*, Innuendo, *The King*, is I doubt to ſtretch it a little too far. But whereas I have put the words how I think they ſhould have been laid; ſays Mr. Sollicitor the Truth is, they were not ſo ſpoken as you would have them laid; but they are laid as they were ſpoken, and as they were ſworn; and that's a Point of Fact to be left to the Jury, whether they aim'd at the King and Government, or not. Do you think that an Anſwer? for it would be the ſame Argument in an Action of the Caſe for Words? Where it's plain it muſt be *dixit de quærente*, you do ſo, and ſo. My Declaration muſt averr it, and I muſt prove it too. If I do not ſay it, tho' I prove it, that won't maintain the Action; if I do ſay it, and not prove it, it will not maintain the Declaration; all's naught: and what is there more in this Caſe? If you had ſaid it, that would have directed the Jury plainly upon finding the words as laid in the Indictment, to have found what was the Intention of the Party by theſe Words. Theſe are things (I muſt confeſs) that wonderfully weigh with me. It is in a Caſe of a capital Offence, where the Life of a Man is concern'd. If the Precedents have all gone ſo, there is ſome weight in that: But if the Precedents be only ſuch as you have ſpoken of, Words directly telling who is meant; they have no manner of likeneſs to the words in this Indictment; becauſe there they could never import any thing elſe.

In the next place, I am ſtumbled at another thing, Mr. Attorny; and that is, the difference of the Perſons in one part of the Words, and t'other. You have begun in the firſt Perſon Plural; *We have had two wicked Kings together*; and as the Latin Words are, *Nos habuimus nunc duos iniquos Reges in ſimul*; but afterwards you ſay, and *if they*, *Ipſi*, will ſtand to *their Principles, he did not doubt but they ſhould overcome their Enemies*. It had been beſt to have laid them, as (certainly in common underſtanding) they muſt be believed to be ſpoken; *if you or we, will ſtand to our Principles*; and then the very Innuendo would have been more ſenſible and applicable.

Mr. *Soll. Gen.* But my Lord, it was ſworn ſo by the Witneſſes, that he ſaid, *if they*.

L. C. J. The words ſay he preached, *We have had*, that is he, and the Congregation aſſembled; and then it is afterwards turn'd to *they*. I make no difficulty in the World, but that *we have had two wicked Kings together, was intended* of the late King and this; and if it had been alledg'd, That afterwards he had ſaid, *We ſhall overcome them*, and a Jury had found that theſe words were ſpoken with ſuch an Intention as is laid in the Indictment, it would have been Treaſon. But both in Grammar and Reaſon, when you come to ſay, and *ſi ipſi*, *&c.* Pray to whom ſhould that relate? What's the Engliſh of *ipſi*? Is it *we* or *they*? If it be *they*, in the third Perſon, there are no third Perſons ſpoken of, but the two Kings; and they are the laſt Antecedent. For my part, it does ſtumble me, it is a thing of great Conſideration. I ſpeak not, as I ſaid, to bind my ſelf in Opinion; but I think if ye had put the words *Nos* inſtead of *Ipſi*, it had come nearer to the Underſtanding of Men, both in Grammar and Senſe. For I exclude my ſelf, and them I ſpeak to, if I put it in the third Perſon; and your Innuendo (I ſaid) can no way help it.

Mr. *Att. Gen.* Truly, my Lord, I did not think, that that did reſt upon your Lordſhip at all as any Objection.

L. C. J. It does reſt, I aſſure you, Mr. Attorny.

Mr. *Sol. Gen* If we had done otherways, we ſhould not have laid it as the Truth is; and the Latin does not alter the Caſe; for the word ſpoken was *they*.

L. C. J. Ay; but certainly he ſaid (no doubt) *You* or *We*; if *you will ſtand to your Principles*; it's Nonſenſe elſe.

Mr. *Sol. Gen.* My Lord, I take that to be well enough; for here are three Sentences. The firſt is, *That the People make a flocking to the King*, &c.

Quod

Quod Populus, &c. The next is, *Quod nos habuimus* &c. And then the third is, *Quod ſi ipſi.* Now *Quod* governs the particular Sentence; and it being a particular Sentence by it ſelf (with humble Submiſſion) it is good in Grammar and in Senſe too.

L. C. J. Suppoſe you were to ſpeak it in Engliſh. Mr. *Sollicitor*, ſuppoſe you were to ſpeak it, *Now we have had two wicked Kings together, who have ſuffered Popery to come in under their Noſes*, (meaning the late King and this) there perhaps the Innuendo is ſenſible, and no doubt of it, then he muſt mean them: But to ſay, *If they* will *ſtand to their Principles, they ſhall overcome their Enemies*; Pray to whom does that *they* relate?

Mr. *Soll. Gen.* My Lord, with humble Submiſſion, you put the Caſe of an entire Speech, made in the Perſon of the Preacher and the Congregation; and as the Words were ſpoken all at one time. I would make it an entire Speech too; but it ſeems to be ſeveral Sentences, and therefore that differs the Caſe. For taking it that theſe are three diſtinct Sentences, they might be ſpoken in a ſeveral manner by varying the Perſon, and ſo they were Sworn. And ſuppoſe he had only ſpoke the laſt Words; an Indictment for this in the third Perſon had been a good Indictment: And if it had been charged in that Caſe *Quod dixit & aſſeruit quod ſi ipſi*, &c. and then in Evidence come and prove theſe Words; would not that have been good?

L. C. J. Truly, I think, Mr. *Sollicitor*, if the Indictment for theſe laſt Words alone, had been in the third Perſon, it is a Queſtion whether that might have been a good Indictment, if you had come in Evidence, and proved, that he had ſaid of the King and Government, *If you will ſtand to your Principles, you ſhall overcome your Enemies.* Though I deliver no abſolute Opinion of that; becauſe there ought (I think) to have been an Averment, that they were ſpoken of the King and the People.

Mr. *Soll. Gen.* In an entire Speech, (my Lord) there the Relative muſt be apply'd to the laſt Antecedent, according to Grammar.

L. C. J. And I think it muſt be taken to be an entire Speech; and you lay it in the Indictment to be ſo; and then the Relative muſt go to the laſt Antecedent; or elſe Dr. *Busby* (that ſo long rul'd in *Weſtminſter School*) taught me quite wrong; and who had try'd moſt of the Grammars extant; and uſed to lay down that as a poſitive Rule in Grammar, that the Relative muſt refer to the next Antecedent.

Mr. *Juſt. Withins.* Mr. *Sollicitor*, If you make it ſeveral Speeches, then it's ten times worſe; for then the latter Part is ſo uncertain without an Averment of whom the Words were ſpoken, that ſure it can never be made good.

Mr. *Sol. Gen.* Suppoſe it had been *Ulterius dixit*; would that have made it a diſtinct Sentence? If it would, our Proof it may be was, that it was an entire Speech; but yet conſiſting of ſeveral Sentences, and muſt have the common underſtanding as to their relation one to another.

Mr. *Att. Gen* This Objection of *quod ipſi* &c. was not moved by the Priſoner at the Bar; and therefore we did not expect to ſpeak to it.

L. C. J. It is ſtarted here now by the Council. And it is a Queſtion truly with me, whether this can be any way ſenſibly apply'd, as you would have it. Surely the Innuendo can never make it good.

Mr. *Att. Gen.* My Lord, I ſay fling all the Innuendo's out of Doors; the Words in themſelves will do it.

L. C. J. Why then we muſt ſee whether it be a good Indictment in point of Form, or rather in Point of Subſtance, as you have laid theſe Words; without ſaying they were ſpoken *de Rege*. It is a Queſtion of great Weight and Concernment, both to the King and to the Priſoner; and therefore we muſt take good time to conſider of it before we deliver a ſettled Opinion. But, Mr. *Sollicitor*, you very well remember that *Staley*'s Caſe was otherways. For, tho' the Words were, the King of *England* is a *Tyrant*, &c. yet there it is ſaid, and expreſly averr'd that he ſpoke the Words *de Rege*.

Mr. *Att. Gen.* Could Colonel *Sidney* have moved in Arreſt of Judgment, this that the Priſoner now ſtarts? No, he could not ſure. He might have moved for a new Tryal——

L. C. J. Certainly (Mr. *Attorney General*) that Caſe comes not up to this. Where the Words import in themſelves that the King is meant; or any way circumſtantially; it does neceſſarily imply they could be meant of no one elſe; and that would be good without the Averment: Which was the Caſe of Colonel *Sidney*, where the Matter declar'd in the Libel was plainly down-right relating to the Government, that *if he did ſo and ſo he muſt renounce his Crown*, and the like. How can that be apply'd to any but the King? *The People of* England *have committed the Kingdom to his Power*, &c. Why, how can it be interpreted that any Body elſe is meant?

Mr. *Att. Gen.* When will your Lordſhip pleaſe to give Judgment?

L. C. J. Mr. *Attorney*, we will conſider of it. It is uſual, in Caſes of leſs Difficulty than this, to take time of Conſideration. I do not ſay, but that looking upon the Precedents perhaps I may alter my Opinion; and therefore do not ſpeak this to bind my ſelf: But we will conſider of it.

Mr. *Att. Gen.* I look upon it that the Government is greatly concern'd in this Matter; more than ten ſuch as the Priſoner at the Bar.

L. C. J. It is true (Mr. *Attorney*) the Government is greatly concern'd; and the Priſoner is greatly concern'd, for his All is at Stake. I do ſay a good Indictment might have been made, I am ſure.

Mr. *Sol. Gen.* This is the beſt we could make; for we had no Proof to make out any Averment, becauſe theſe were all the Words he ſaid.

Mr. *Att. Gen.* After the Jury have found the Words as laid in the Indictment, was it ever ask'd of a Jury; *Theſe Words were ſpoken of the King, or they were not; but you have not ſaid that they are ſpoken of the King, for it is not laid in the Indictment?* Would that ever vitiate the Verdict?

L. C. J. Mr. *Sollicitor*, Pray, would you have us give Judgment, That the Jury could not find that the Words were ſpoken of the King?

Mr. *Pollexfen.* The Jury have not found that that they were ſpoken of the King; for there is no ſuch thing averr'd.

Mr. *Att. Gen.* Nor they have not found them to be not ſpoken of the King: But they have found them to be ſpoken to ſtir up Sedition.

Mr. *Sollicitor.* We are never bound by Law to aver *that* that we cannot prove. And therefore I put all upon that *Dilemma*: Either the Words im-

import of themſelves to be ſpoken of the King, or they do not. If they do not; if we had ſaid, *dixit de Domino Rege*, it muſt have been proved; and that would have been to have left it to the Jury whom he did mean. And if they be not ſelf-evident, God forbid the Jury ſhould be charged to find out ſuch a Meaning; but if they are ſelf-evident, they need no Averment.

Mr. *Juſt. Holloway.* Truly, we think it may be good Evidence to a Jury; and it is every Day done in Caſes of Actions for Words. It is left to the Jury to conſider whether he meant the Plaintiff, *John a-Stiles*, or any other: And the Evidence is help'd by this or that Circumſtance, where the Words do not naturally import it.

Mr. *Juſt. Walcot.* I do think that the Averment that theſe Words were ſpoken of the King, is a Point of Fact that ought to be averr'd, and proved. Might not the Jury, in this Caſe, have found that they were not ſpoken of the King? If they had found that, why, they would have acquitted him; if they had found they were, and you had not alledg'd it, why then they had found more than the Indictment would lead them to.

L. C. J. Well, this is only by way of Diſcourſe; not that we bind our ſelves by our preſent Opinion We muſt look upon it. We will not give our Judgment ſuddenly in a Caſe of this Nature.

Mr. *North.* Will your Lordſhip pleaſe to ſpare me one Word?

L. C. J. Ay, Sir; let every Man be heard, in God's Name.

Mr. *North.* My Lord, as to this Objection; *quod ipſi* relates to the two wicked Kings ſpoken of juſt before; that cannot be: For you take Notice that theſe Words of the two wicked Kings relate to the late King, and to the preſent, as the Indictment ſays. One of the Kings is dead; ſo that you cannot underſtand it to be of the two Kings, that ſhould overcome their Enemies; and therefore it muſt be the People. This *Populus* being a Noun of Multitude, and taken in the Plural Number, *Ipſi* will very well relate to it.

L. C. J. Mr. *North*, The Argument turns both Ways upon that; and certainly he did not expreſs himſelf after that rate. It is ſo looſe a hung-together Indictment as truly I have ſcarce ſeen. For my Part, I would know how it come to paſs, that we ſhould not have as much Certainty in Indictments, as we have in Actions upon the Caſe.

Mr. *Att. Gen.* My Lord, there muſt be Certainty in all Caſes; and we think there is Certainty enough in this for your Lordſhip to give Judgment upon.

Lord Ch. Juſt. Mr. *Attorney*, I believe if you ſate in our Places you would not think ſo. All our Books require greater Certainties in Indictments than in Actions on the Caſe: Nay, in Cauſes of this Nature, we are bound, by our Law-Books, to be of Council for the Priſoner; which we are not in Civil Cauſes, where the Priſoner may chuſe his own Council. And we have not one Act of Parliament to help the defect of forming Indictments, as we have in Civil Actions; but ſtill in all the Statutes made in *Feofeils*, there is an Exception of capital Offences, to ſhew that our Anceſtors would not help Uncertainties or Inſufficiencies in Form, where the Life of a Man was concern'd. This ſeems to carry a great Conſideration with it.

Mr. *Att. Gen.* My Lord, I was very willing and deſirous your Lordſhip ſhould aſſign the Priſoner this Learned Council; becauſe we did ſuppoſe they would have produced ſome Precedents of a better Form than this: But they have cited none.

L. C. J. And you have cited never ſuch a Caſe as this Mr. *Attorney*. And if we can find no other like Caſe, we muſt be govern'd by the Reaſon of the thing.

Mr. *Att. Gen.* My Lord, we hope you will expedite it, for the ſake of the Government.

L. C. J. Certainly, I think, it is very uncertain who are meant by *Enemies*; it may be Mr. *Sollicitor*; Mr. *Attorney*; it may be the Court; no Body knows who it is: For every Body knows, that to Preachers in Conventicles, and to thoſe that meet there, the Judges, and all that are for the Support of the Laws, may be reckon'd to them as *Enemies*. But when it is ſo uncertain who are meant, how can we ſupply it by ſuch an Innuendo? That there might have been a good Indictment fram'd upon ſuch Words as theſe, as he in all Probability ſpoke them; and he juſtly found guilty, is no Queſtion with me at all. And (as I ſaid the other Day, for the ſake of the Auditory) if he be guilty of ſpeaking ſuch Words, and of Treaſon in ſpeaking them; what will they be guilty of that were preſent, and heard the Words ſpoken? They may thank God that we have a gracious King, that does not take all the Advantages the Law gives him againſt thoſe that break his Laws.

Mr. *Sol. Gen.* My Lord, your Lordſhip was pleaſed to mention *Staley*'s Caſe to me. As I do remember it, it is not as your Lordſhip ſays: But it is, *That he, to perfect his wicked Treaſon, (ſpeaking of the King) ſaid ſo and ſo.* Now, if an Averment be neceſſary, this is a naughty Averment; for it is not poſitively averr'd that he did ſpeak of the King.

L. C. J. Well, we will look upon it. And I would ask you, Mr. *Sollicitor*, Whether if he ſaid, (as it is moſt likely he did,) *If you will ſtand to your Principles*; and you put it in *ſi Ipſi*, whether that would be good?

Mr. *Sol. Gen.* My Lord, we put it in as the Witneſſes ſwore it.

L. C. J. They did ſwear the Words according to their Apprehenſion; but, no doubt of it, in common Form he muſt ſpeak them as I ſay.

Mr. *Att. Gen.* They ſwore the Words ſo; and we could lay them no otherways.

L. C. J. Well, Mr. *Attorney*, will you move any thing?

Mr. *Att. Gen.* No, my Lord.

L. C. J. Then we will conſider of it. And take you back the Priſoner; and you ſhall have a Rule of Court to bring him, when the Court is ready for Judgment.

Then the Priſoner was carried back to the King's-Bench; *and no Judgment was given that Term: But the next Term Mr.* Roſewell *pleaded the King's Pardon at the Bar of the Court of* King's-Bench; *and was Diſcharged.*

The

The RECORD, &c.

[*Inter Placita Regis.*] *Placita coram Domino Rege apud* Weſtmonaſter' *de Termino* Sancti Michaelis *Anno Regni Domini* Caroli Secundi, *nunc Regis* Angliae *&c. Triceſimo Sexto.* Ro 133.

Surry ſſ. ALias, ſcil. die *Martis*, ſcil. ſeptimo die *Octobris*, Anno Regni Domini noſtri *Caroli Secundi*, Dei Gratia, *Angliæ*, *Scotiæ*, *Franciæ*, & *Hiberniæ* Regis, Fidei Defenſ' &c. Triceſimo ſexto. Per quandam Inquiſitionem capt' pro Sereniſſimo Domino Rege apud *Kingſton* ſuper *Thames'*, in Comitatu *Surr'*, coram *Georgio* Com' *Berkley*; *Franciſco Wythens* Mil', un Juſtic' dicti Domini Regis ad placita coram ipſo Rege tenend' aſſign'; *Thoma Jenner* Mil', un' Servien' dicti Domini Regis ad legem, ac *Recordator* Civitat' *London*; *Adamo Browne* Barr'; *Franciſco Vincent* Barr'; *Edvardo Evelin* Mil' & Barr'; *Jacobo Clarke* Mil'; *Chriſtophero Buckle* Mil'; *Richardo Heath*, Servien' ad Legem; *Petro Rich* & *Stephano Harvey* Arm', Juſtic' dicti Domini Regis per literas patentes ipſius Domini Regis eiſdem Juſtic' prænominat', ac quibuſcunque tribus vel pluribus eorum, ſub magno Sigillo dicti Domini Regis *Angliæ* confect', ad inquirend' per ſacramentum proborum & legalium Hominum Com' prædict', ac aliis viis, modis & mediis quibus melius ſciverint aut poterint, tam infra Libertat' quam extra, per quos rei veritas melius ſciri poterit, de quibuſcunque Proditionibus, Miſpriſionibus Proditionum, Inſurrectionibus, Rebellionibus, Contrafacturis, Tonſur', Lotur', falſis Fabricationibus, & aliis falſitat' Monetæ hujus Regni *Angliæ*, ac aliorum Regnorum, ſive Dominior' quorumcunque; ac de quibuſcunque Murdris, Feloniis, Homicid', Interfectionibus, Burglar', Raptibus Mulierum, Congregationibus ac Conventiclis illicitis, Verborum prolationibus, Coadunationibus, Miſpriſionibus, Conſederationibus, falſis Allegantiis, Tranſgreſſionibus, Riot', Rout', Retentionibus, Eſcapiis, Contempt', Falſitat', Negligent', Conceleament', Manutenent', Oppreſſionibus, Cambipartiis, Deceptionibus, ac aliis malefactis, Offenſ' & Injur' quibuſcunque; nec-non Acceſſar' eorumdem, infra Com' prædict', tam infra Libertat' quam extra; per quoſcunque & qualitercunque habit' fact', perpetrat', ſive commiſſa; & per quos vel per quem; cui vel quibus; quando, qualiter, & quomodo. Ac de aliis Articulis & Circumſtantiis, Præmiſſa & eorum aliquod, vel aliqua, qualitercunque concern'; plenius veritat', & ad eaſdem Proditiones, & alia præmiſſa, audiend' & examinand' aſſign', ſecundum Legem & Conſuetud' Regni dicti Dom. Regis *Angliæ*, per ſacramentum duodecim Jur', proborum & legalium hominum Com' prædict', qui ad tunc & ibidem jurat' & onerat' exiſten' ad inquirend' pro dicto Domino Rege, & Corpore Com' prædict' extitit præſentat'. *Surr. ſſ.* Juratores &c.

The whole Indictment as in the Tryal.

Quod quidem Indicamentum Dominus Rex nunc coram eo poſtea certis de cauſis venire fecit terminand' *&c.* PER QUOD præcept' fuit Vic' Com' prædict' non omitt' *&c.* quin caperet eum ſi *&c.* ad reſpondend' *&c.* ET MODO, ſct' die *Jovis* prox' poſt tres ſeptimanas *Sancti Michaelis* iſto eodem Termino, coram Domino Rege apud *Weſtm'* venit prædict' *Thomas Roſewell*, ſub cuſtod' Cuſtod' Priſon' de le *Gatehouſe Weſtm'*, in cujus cuſtod' præantea ex cauſa prædict' commiſſ' fuit, virtute Brevis dicti Domini Regis de *Habeas Corpus*, ad ſubjiciend' & recipiend' ad barram hic duct' in propria perſon' ſua, qui committitur Marr' *&c.* Et ſtatim de Præmiſſis ei ſuperius impoſit', alloquut' qualit' ſe velit inde acquietari. Dicit quod ipſe in nullo eſt inde culpabilis; & inde de bono & malo ponit ſe ſuper Patriam. Ideo ven' inde Jur' coram dicto Domino Rege apud *Weſtm'* die *Martis* in Octab' *Sancti Martini* per quos, *&c.* Et qui, *&c.* ad recogn' *&c.* quia *&c.* Idem dies dat' eſt præfat' *Thomæ Roſewell* ſub cuſtod' præfat' Cuſtodis Priſon' de le *Gatehouſe Weſtm* iterum commiſs' ſalvo cuſtodiend' quouſque, *&c.* Ad quem quidem diem *Martis* in Octab. *ſancti Martini* coram Domino Rege apud *Weſtm'* venit prædict' *Thomas Roſewell* ſub cuſtod' præfat' Cuſtod' Priſon de le *Gate-houſe Weſtm'* prædict', virtute Brevis Domini Regis de *habeas Corpus*, ad ſubjiciend', *&c.* ad barram hic duct' in propria perſona ſua, qui committitur Marr', *&c.* Et Jur' prædict per Vic' Com' prædict' ad hoc impanellat' exact' ven' qui ad veritatem de Premiſſis dicend' elect' triat' & Jurat', dicunt ſuper ſacramentum ſuum quod prædict' *Thomas Roſewell* eſt culpabilis de alta proditione prædict' in Indicam' prædict' ſpecificat' modo & forma, prout per Indicament' prædict' ſuperius verſus eum ſupponitur. Et quod idem *Thomas Roſewell* tempore perpetrationis altae proditionis prædict' ſeu unquam poſtea, nulla habuit bona, ſeu catalla, terras, ſive tenementa, ad Notitiam Jur' prædict'. Et quia Curia dicti Domini Regis hic de Judic' ſuo inde reddend' nondum adviſatur, dies inde dat' eſt præfat' *Thomae Roſewell* in ſtatu quo nunc *&c.* uſque diem *Mercur'* prox' poſt Octab. *Purificationis beatæ Mariæ Virginis* coram Domino Rege ubicunque, *&c.* de judic' ſuo inde reddend' *&c.* ANTE quem diem dictus Dominus *Carolus ſecundus* Rex *Angliæ &c.* diem ſuum clauſit extremum; & Dominus *Jacobus ſecundus* ſuper ſe ſuſcepit gubernationem hujus Regni *Angliae.* ET MODO, ſcilicet die *Mercur.* prox. poſt octab' *Purificationis beatæ Mariæ Virginis*, iſto eodem Termino coram Domino Rege apud *Weſtm'* venit prædict' *Thomas Roſewell* in propria perſona ſua, ſub cuſtod' præfat' Cuſtodis Priſon' de le *Gatehouſe Weſtm'* prædict' & alloquut' ei ſi quid pro ſe habeat vel dicere ſciat quare Curia hic ad judic' ſuper Indicament' prædict' procedere non debeat. DICIT quod dictus Dominus *Carolus ſecundus* Dei Gratia *Angliæ*, *Scotiæ*, *Franciæ & Hiberniæ* nuper Rex, Fidei Defenſor, *&c.* per Literas ſuas patent' ſub magno ſigillo ſuo *Angliæ* ſigillat' geren' dat' apud *Weſtm'* viceſſimo octavo die Januar', anno Regni ſui triceſimo ſexto, de gratia ſua ſpeciali ac ex certa ſcientia & mero motu ſuis, PARDONAVIT, remiſit & relaxavit, ac per eaſdem Literas patentes, pro ſe, Hæred' & Succeſſor' ſuis, pardonabat, remittebat & relaxabat eidem *Thomae Roſewell*, per Nomen *Thomæ Roſewell* nuper de paroch' de *Redriffe* in Com' *Surr'* Clerico, ſeu quocunque alio nomine, vel cognomine, ſeu additione nominis vel cognominis, aut Loci, idem *Thomas Roſewell* ſciatur, cenſeatur, vocabatur

tur ſive nuncupabatur, OMNES proditiones quaſcunque unde praefat' *Thomas Roſewell* in Termino *Sancti Michaelis* jam ult' elapſ' in Curia dicti nuper Regis, coram attinet ipſo Rege apud *Weſtm'* tent', convict', ſive fuit; ac omnia & ſingula Indicament', Judicia, Convictiones, Condemnationes, Executiones, Impriſonament', Punitiones, & omnes alias paenas & paenalitat' quaecunque ſuper, vel verſus ipſum *Thomam Roſewell* de, pro, ſive concernen' Praemiſſis, ſeu eorum aliquo habit', fact', reddit' ſive adjudicat' aut in poſterum habend', reddend', faciend' ſive adjudicand': nec non omnia & ſingula Utlagar' verſus dictum *Thomam Roſewell*, ratione ſeu occaſione Praemiſſorum, ſeu eorum aliquor' vel alicujus, promulgat' ſive in poſterum promulgand'; ac omn' & omnimod' ſect', quaerel', forisfactur', impetitiones & demand' quaecunque que dictus nuper Rex verſus ipſum ratione Praemiſſorum ſeu eorum alicujus habuit, habet, ſeu in futuro habere poterit, aut Haered' ſeu ſucceſſores dicti nuper Regis ullo modo habere poterint in futuro; ſectamque Pacis ipſius nuper Regis quae ad ipſum nuper Regem verſus praefat' *Thomam Roſewell* pertinet ſeu pertinere potet occarione præmiſſorum ſeu eorum aliquor' vel alicujus. Et firmam Pacem dicti nuper Regis ei inde dabat & concedebat per eaſdem Literas patent'. Nolens quod idem *Thomas Roſewell* per Vicecomites, Juſtic', Ballivos, aut alios miniſtros ipſius nuper Regis, Haered' ſeu ſucceſſor' ſuorum, occaſione Praemiſſor' ſeu eorum alicujus, moleſtetur, occ'onetur, perturbetur, ſeu in aliquo gravetur. Volens quod eaedem Literae ſuae patent' quoad omnia & ſingula praemiſſa ſuperius mentionat', bon', firm', valid', ſufficient', & effectual' in lege ſint & erint, licet Crimina & Offenſ' praedict' minus certe ſpecificat' exiſtunt' Quodque Pardonatio illa in omnibus Cur' dicti nuper Regis, & alibi, interpretetur & adjudicetur in beneficentiſſimo ſenſu pro firmiori exoneratione praefat' *Thomae Roſewell*; ac etiam placitetur & allocetur in omnibus Cur' dicti nuper Regis, abſque aliquo Brevi de allocatione in ea parte prius obtent' ſive obtinend'; non obſtant' ſtatut' in Parliamento, anno Regni dict' nuper Regis decimo tertio fact & edit': Et non obſtante aliquo defect' aut aliquibus defectibus in eiſdem Literis patent' content' aut aliquo alio ſtatut', Actu, Ordinatione, Proviſione, Proclamatione, ſive Reſtrictione, aut aliqua alia re, cauſa, vel materia quacunque in contrar' inde in aliquo non obſtant'. Ita tamen quod dictus *Thomas Roſewell* tal' bon' & ſuffic' ſecuritat' de ſe bene gerend' a Dat' Literar. patent' praedict' erga dictum nuper Regem, Hæred' & ſucceſſores ſuos, & cunctum populum ſuum inveniat, qual' appunctuat' & limitat' erit per Capital' Juſtic' de Cur' praedict' pro tempore exiſten'. Et idem *Thomas Roſewell* profert hic in Cur' Literas patentes præmiſſa teſtificantes in hæc verba.

CAROLUS *ſecundus Dei Gratiâ*, Angliae, Scotiae, Franciae & Hiberniae *Rex, fidei Defenſor' &c.* OMNIBUS *ad quos praeſentes Literae noſtrae pervenerint, ſalutem. Sciatis quod nos de Gratiâ noſtrâ ſpeciali, ac ex certâ ſcientia & mero motu noſtris*, PARDONAVIMUS, *remiſimus & relaxavimus; ac per praeſentes, pro nobis, Haeredibus & Succeſſoribus noſtris pardonamus, remittimus & relaxamus* Thomae Roſewell, *nuper de Paroch' de* Redriffe *in Com'* Surr' *Clerico; ſeu quocunq; alio Nomine vel cognomine, ſeu additione nominis, aut loci, idem* Thomas Roſewell *ſciatur, cenſebatur, vocetur, ſive nuncupetur; aut nuper ſciebatur, cenſebatur, vocabatur, ſive nuncupabatur;* OMNES *proditiones quaſcunque, unde praefat'* Thomas Roſewell *in Termino Sancti* Michaelis *jam ult' elaps', in Curia noſtra coram nobis apud* Weſtmonaſt' *tent', convict', ſive attinct' fuit; ac omnia & ſingula Indicamenta, Judicia, Convictiones, Condempnationes, Executiones, Impriſonamenta, Punitiones, & omnes alias paenas & paenalitates quaſcunque ſuper vel verſus, ipſum* Thomam Roſewell, *de pro, ſive concernen' Praemiſſis, ſeu eorum aliquibus habit', fact' reddit' ſive adjudicat'; aut in poſterum habend', reddend', faciend' ſive adjudicand'*: Nec non omnia & ſingula utlagar' verſus dict' Thomam Roſewell *ratione ſeu occaſione Praemiſſorum, ſeu eorum aliquorum, vel alicujus promulgat', ſive in poſterum promulgand'; ac omnia & omnimod' ſect', quaerel', forisfactur', Impetitiones & demand' quaecunq; quae nos verſus ipſum ratione praemiſſorum ſeu eorum alicujus habuimus, habemus, ſeu in futuro habere proterimus; aut Haered' ſeu ſucceſſor' noſtri ullo modo habere poterint in futuro; ſectamque Pacis noſtrae quae ad nos verſus praefat'* Thomam Roſewell *pertinent ſeu pertinere poterit ratione Praemiſſorum, ſeu eorum aliquorum, vel alicujus; Et firmam Pacem noſtram ei inde damus & concedimus, per praeſentes. Nolentes quod idem* Thomas Roſewell *per Vicecomites, Juſticiar', Ballivos, aut alios Miniſtros noſtros, Haeredum ſeu ſucceſſor' Noſtrorum occaſione Præmiſſorum, ſeu eorum alicujus, moleſtetur, occ'onetur, ſeu in aliquo gravetur. Volent' quod hae Literæ noſtræ Patentes quoad omnia & ſingula Præmiſſa ſuperius mentionat' bonæ, firmæ, valid', Sufficient' & effectual' in lege ſint & erint, licet Crimina & Offens' prædict' minus certe ſpecificat' exiſtunt. Quodque hæc Pardonatio noſtra in Omnibus Curiis noſtris, & alibi, interpretetur & adjudicetur in beneficentiſſimo ſenſu pro firmiori exoneratione præfat'* Thomæ Roſewell; *Ac etiam placitetur & allocetur in omnibus Curiis noſtris abſque aliquo Brevi de allocatione in ea parte prius obtent' ſive obtinend', non obſtante Statut' in Parliament' Anno regni noſtri decimo tertio fact' & edit': Et non obſtant' aliquo defect' aut aliquibus defectibus in his Literis patentibus content' aut aliquo alio ſtatuto, Actu, Ordinatione, Proviſione, Proclamatione ſive Reſtrictione; aut aliqua alia re, cauſa, vel materia quacunque in contrar' inde in aliquo non obſtante. Ita tamen quod dict'* Thomas Roſewell *tal' bon' & ſufficien' ſecuritat' de ſe bene gerend' ex nunc erga nos, Hæred' & ſucceſſores noſtros, & cunctum populum noſtrum inveniat qual' appunctuat' & limitat' erit per Capital' Juſtic' de Curia prædict' pro tempore exiſten': In cujus rei Teſtimonium has Literas noſtras fieri fecimus patentes, Teſte meipſo apud* Weſtmonaſt' *Viceſimo octavo die Januarii, Anno regni noſtri Triceſimo ſexto.*

Per Breve de Privato Sigillo

BARKER.

SUPER quo Vis' & per Cur' hic intellect' omnibus & ſingulis præmiſſ', conſ' eſt per Cur' hic quod prædict' *Thomas Roſewell* (ſub conditione mentionat' in Literis patent' ſuperius recitat') de altis proditionibus prædict' in Indicament' prædict ſuperius ſpecificat' exoneretur; & eat inde ſine die.

" On the Back of the Pardon is written as follows:

Iſta Charta placitatur, allocatur & irrotlatur de Record' coram Domino Rege apud Weſtm' *Termino* Sancti Hillar'. *Anno Regni Domini* Jacobi *Secundi nunc Regis Angliæ &c. Primo.*

Inter Placita de Termino Sancti Michaelis, *Anno* XXXVI. Car. *ſecundi Regis*, Ro. CXXXIII.

FINIS.

A Defence of the late Lord RUSSEL'S *Innocency. To which are prefix'd two Letters upon the Subject of his Lordship's Tryal. By Sir* ROBERT ATKYNS, *Knight of the* Bath.

[*N. B.* This should have been printed before *The Magistracy and Government of* England *vindicated*, pag. 174.]

First LETTER *concerning my Lord* RUSSEL'S *TRYAL.*

'*SIR*,

'I AM not without the Apprehensions of Danger that may arise by advising in, or so much as discoursing of Publick Affairs; yet no fear of Danger shall hinder me from performing that Duty we owe to one another, to counsel those that need our Advice, how to make their just Defence when they are called in question for their Lives; especially if they are Persons that have by their general Carriage and Conversation appeared to be Men of Worth, and Lovers of their King and Country, and of the Religion establish'd among us. I will follow the Method you use, and answer what you ask in the Order I find in your own Letters.

'I cannot see any disadvantage or hazard by pleading the general Plea of *Not Guilty:* If it fall out upon the Proofs that the Crime is only Misprision of Treason, and not the very Crime of Treason, the Jury must then find the Prisoner not guilty of Treason, and cannot upon an Indictment of Treason find the Party guilty of Misprision, because he is not indicted for the Offence of Misprision, and Treason and Misprision of Treason are Offences that the Law hath distinguished the one from the other, and the one is not included in the other; and therefore if the Proofs reach no farther than to prove a Misprision, and amount not to Treason, the Prisoner may urge it for himself, and say that the Proofs do not reach to the Crime charged in the Indictment: and if the Truth be so, the Court ought so to direct the Jury, not to find it.

'Now being present in Company with others, where those others do consult and conspire to do some Treasonable Act, does not make a Man guilty of Treason, unless by some Words and Actions he signify his Consent to it, and Approbation of it: but his being privy to it, and not discovering it, makes him guilty of Misprision of Treason, which consists in the concealing it, but it makes him not guilty of Treason. And if the same Person be present a second time, or oftner, this neither does not make him guilty of Treason; only it raises a strong suspicion that he likes it, and consents to it, and approves of it, or else he would have forborne after his having been once amongst them. But the strongest Suspicion does not sufficiently prove a Guilt in Treason, nor can it go for any Evidence: And that upon two Accounts.

'*First*, The Proofs in case of Treason must be plain, and clear, and positive, and not by Inference, or Argument, or the strongest Suspicion imaginable: Thus says Sir *Edward Coke* in many places in his third Institutes, in the Chapter of High Treason.

'*Secondly*, In an Indictment of High Treason, there must not only be a general Charge of Treason, nor is it enough to set forth of what sort or species the Treason is, as killing the King, or levying War against him, or Coining Mony, or the like; but the Law requires that in the Indictment there must be also set forth some Overt or Open-Act, as the Statute of the 25*th* of *Edw.* the 3*d* calls it, or some instance given by the Party or Offender, whereby it may appear he did consent to it, and consult it, and approve of it. And if the bare being present should be taken and construed to be a sufficient Overt or Open-Act, or Instance, then there is no difference between Treason and Misprision of Treason; for the being present without consenting makes no more than Misprision, therefore there must be something more than being barely present, to make a Man guilty of Treason, especially since the Law requires an Overt, or Open-Act, to be proved against the Prisoner accused. See Sir *Edward Coke*'s third Institutes, *fol.* 12. upon those Words of the Statute, *(per overt fact)* and that there ought to be direct and manifest Proofs, and not bare Suspicions and Presumptions, be they never so strong and violent: see the same *fol.* in the upper part of it upon the word (*Proveablement.*) And the Statute of the 5*th* of *Edw.* 6. *Chap.* 11. requires that there should be two Witnesses to prove the Crime: o that if there be but one Witness, let him be never so credible a Person, and never so positive; yet if there be no other Proof, the Party ought to be found Not Guilty: and those two Witnesses must prove the Person guilty of the same sort or species

'ſpecies of Treaſon. As for Example, if the 'Indictment be for that Species of Treaſon of 'conſpiring the King's Death; both Witneſſes 'muſt prove ſome Fact or Words tending to 'that very ſort of Treaſon: but if there be two 'Witneſſes, and one proves the Priſoner con-'ſpired the Death of the King, and the other 'Witneſs proves the conſpiring to do ſome other 'ſort of Treaſon; this comes not home to prove 'the Priſoner guilty upon that Indictment: for 'the Law will not take away a Man's Life in 'Treaſon upon the Teſtimony and Credit of one 'Witneſs, it is ſo tender of a Man's Life, the 'Crime, and the Forfeitures are ſo great and 'heavy.

'And as there muſt be two Witneſſes, ſo by the 'Statute made in the 13*th* Year of his now Ma-'jeſty, *Chap.* the 1*ſt*, (intitled, *For the Safety of 'his Majeſty's Perſon*) thoſe two Witneſſes muſt 'not only be lawful, but alſo credible Perſons: 'See that Statute in the 5*th* Paragraph. And the 'Priſoner muſt be allowed to object againſt the 'Credit of all, or any of the Witneſſes; and if 'there be but one Witneſs of clear and good 'Credit, and the reſt not credible, then the Teſti-'mony of thoſe that are not credible muſt go for 'nothing, by the Words and Meaning of this Sta-'tute: See the Statute. Now were I a Jury-Man, 'I ſhould think no ſuch Witneſs a credible Wit-'neſs, as ſhould appear either by his own Teſti-'mony, or upon proof made by others againſt 'him, to have been *Particeps Criminis*; for that 'proves him to be a bad, and conſequently not 'ſo credible a Man; eſpecially if it can appear 'the Witneſs has trapann'd the Priſoner into the 'committing of the Crime: Then the Witneſs 'will appear to be guilty of a far higher Crime 'than the Priſoner, and therefore ought not to 'be believed as a credible Witneſs againſt the 'Priſoner; for he is a credible Witneſs that has 'the Credit of being a good and honeſt Man, 'which a Trapanner cannot have; and this Tra-'panning proves withal, that the Trapanner did 'bear a Spite and Malice againſt the Perſon 'trapann'd, and intended to do him a Miſchief, 'and deſigned to take away his Life. Shall ſuch 'a one be a credible Witneſs, and be believed a-'gainſt him? God forbid!

'Then again; It cannot but be believed, that 'ſuch Perſons as have been guilty of the ſame 'Crime, will out of a natural Self-love be very 'forward and willing to ſwear heartily and to 'the purpoſe, in order to the Convicting of 'others, that they may by this Service merit their 'Pardon, and ſave their own Lives: And for this 'Reaſon are not ſo credible Witneſſes, ſuch as the 'Statute of the 13*th* of *Car.* 2. does require. 'Read over the whole Chapters of Sir *Edward 'Coke* of High Treaſon, and of Petty Treaſon; 'for in this latter of Petty Treaſon, there is much 'Matter that concerns High Treaſon.

'I wiſh with all my Soul, and I humbly and 'heartily pray to Almighty God, that theſe Gentle-'men that have given ſo great Proof of their 'Love to the true Religion, and of the juſt Rights 'and Liberties of their Country, and of their 'Zeal againſt Popery, may upon their Tryal ap-'pear innocent. I am ſo ſatisfy'd of their great 'Worth, that I cannot eaſily believe them guilty 'of ſo horrid a Crime. I pray God to ſtand by 'them in the time of their diſtreſs.

'I wiſh I might have the liberty fairly to give 'them the beſt aſſiſtance I could, in that wherein 'I might be any way capable of doing it. I be-'ſeech Almighty God to heal our Diviſions, and 'eſtabliſh us upon the ſure Foundations of Peace 'and Righteouſneſs. I thank you for the Favour 'you have done me, by imparting ſome publick 'Affairs which might perhaps have been unknown 'to me, or not known till after a long time, for 'I keep no correſpondence.

'When there is an occaſion, pray oblige me by 'a further account, eſpecially what concerns theſe 'Gentlemen: And tho I have written nothing 'here but what is innocent and juſtifiable, yet 'that I may be the ſurer againſt any diſadvantage 'or miſconſtruction, pray take the pains to tran-'ſcribe what Notes you think fit out of this large 'Paper; but ſend me this Paper back again incloſed 'in another, by the ſame hand that brings it.

'There is nor ought to be no ſuch thing as 'conſtructive Treaſon, this defeats the very Scope 'and Deſign of the Statute of the 25*th* of *Edw.* 3. 'which is to make a plain Declaration, what ſhall 'be adjudged Treaſon by the Ordinary Courts of 'Juſtice: the conſpiring any thing againſt the 'King's Perſon, is moſt juſtly taken to be to con-'ſpire againſt his Life.

'But conſpiring to levy War, or to ſeize the 'Guards, is not conſpiring againſt the King's 'Life. For theſe are Treaſons of a different 'Species.'

Your faithful

Friend and Servant,

R. A.

The Second LETTER.

SIR,

'I Thank you for the unexpected Account you 'gave me by your firſt Letter; but this exact 'Narrative you have now ſent me of the Tryal 'of that Honourable Excellent Perſon my Lord '*Ruſſel*, has exceedingly obliged me. It was a 'thing I much deſired, but I knew not from what 'hand to gain it; for I was a little impatient to 'hear what could be prov'd of ſo foul a nature 'as High Treaſon againſt a Perſon of whom I 'had ever entertained a very high eſteem: and 'tho I had a very ſmall and ſhort Acquaintance 'with him, yet no Man that has known any 'thing of the Publick Affairs, or of our late 'Tranſactions, could be a mere Stranger to his 'great Worth. He had as great a Name for a 'true and honeſt *Engliſh* Gentleman, and for 'good Temper, and Prudence, and Moderation, 'as ever I knew any Man have, and was generally 'belov'd by all that love our Religion and Coun-'try. I preſume your Relation of the Proofs at 'his Tryal is certainly true in every part, and 'in the very words, and it is a thing that might 'be had by many hands, the Proceedings being ſo 'publick, and I ſuppoſe deliberate: Preſuming it 'to be true, this I will affirm, that upon this Evi-'dence,

'dence, both that againſt him, and for him, '(might I have been permitted to have made 'his Defence for him at his Tryal after the 'Evidence given) I could eaſily have ſatisfy'd any 'equal and underſtanding judicious Man, that my 'Lord ought to have been acquitted; and had I been 'one of the Jury that try'd him, I make no doubt 'I could clearly have convinced all my Fellows '(if they were honeſt and indifferent) that they 'ought not to have found him Guilty. The Spe-'cies or Sort of High Treaſon that the Wit-'neſſes inclin'd to prove againſt him, was a Con-'ſpiracy with others to levy War againſt the 'King.

'The two firſt Witneſſes, *viz. Rumſey* and *Sheppard*, tho what they ſay may raiſe a ſtrong 'Suſpicion upon my Lord, and make it probable 'that he was guilty, yet neither of them do come 'home and cloſe to the Perſon of my Lord *Ruſſel*; 'as they do (I confeſs) againſt the Earl of *Shafteſ-'bury*, Sir *Thomas Armſtrong* and *Ferguſon.*

'The firſt does not affirm, that the Lord *Ruſſel* 'did join in the Diſcourſe, or agree to any thing 'in the Conſult, but only ſays, he was preſent; 'which extends no further than to make a Miſ-'priſion of Treaſon, and this too not directly 'and poſitively, as legal Proof ought to be, to 'convict a Man of Treaſon: the latter (*Shep-'pard*) when he applies what he ſwore to the 'Perſon of the Lord *Ruſſel*, only ſays, *He be-'lieves* the Lord *Ruſſel* was there at that time 'when the Diſcourſe he ſpeaks of was uſed; which 'is a very imperfect uncertain Proof, and not 'poſitive enough: ſo that neither of theſe were 'full Witneſſes. As to the Evidence given by the 'Lord *Howard* againſt my Lord *Ruſſel*, it is 'ſtrange to me, (as the Evidence is ſtated) that 'any Credit ſhould be given to it; that he ſhould 'be believed againſt thoſe Execrations, that (it 'ſeems) he had ſo ſolemnly, and ſo lately uſed to 'the contrary of his Evidence; eſpecially when 'by giving this Evidence, he muſt merit his own 'Pardon, and ſave his own Life, which extremely 'takes off from the Credit and Weight of his 'Evidence.

'What Mr. *Weſt* ſays, in reference to my Lord '*Ruſſel*, was but bare Opinion and Hear-ſay, and is 'no proof at all in Law; ſo that inſtead of two 'plain, direct, manifeſt, and poſitive, and two 'credible Witneſſes, as the Law requires in Trea-'ſon, here is not, in my opinion, ſo much as one 'poſitive credible Witneſs. The Lord *Howard* '(as your Caſe and Narrative ſtates it) is not 'credible, tho direct and poſitive; none of the 'other three are poſitive, tho more credible. In 'the Statute of the 25*th* of *Edward* the Third, 'of Treaſons, the word (*Proveablement*) as Sir '*Edward Coke* obſerves upon it, in his *Third In-'ſtitutes*, *fol.* 12. imports direct and manifeſt 'Proofs, not Preſumptions and Conjectures, and '(as may be added) not Probabilities: and ſo 'the words (*per overt fact*) do (as he obſerves) 'ſtrengthen that Senſe of the word (*Proveable-'ment*;) and the Act of Treaſons made ſince this 'King's Time, requires there ſhould be two cre-'dible Witneſſes. Now, tho the Lord *Howard* 'was not, by the Evidence offer'd againſt him by 'the Lord *Ruſſel*, utterly diſabled from being a 'Witneſs; yet I will be bold to ſay, it made 'him no credible Witneſs in this Caſe. That the 'Lord *Ruſſel* made no uſe of theſe Things in his 'Defence, tho a Man of Parts, is no wonder to 'me; the ableſt Man under that Terror, and 'upon ſo ſpeedy a Proceeding, and where it is 'impoſſible to be ſo compoſed and free from 'diſtraction, may eaſily paſs by many juſt Ad-'vantages, which a Stander-by, with leſs Abilities, 'might quickly have apprehended. I am far from 'reflecting upon the Court that try'd him; this 'matter that I obſerved, reſted principally upon 'the Jury. And he is found Guilty and Con-'demn'd, and it may be before this comes to your 'hand, put to death too: If it hath ſo happen'd '(as poſſible it may) that the Earl of *Bedford*, and 'his other great Relations, have prevail'd with 'the King for a Reſpit of the Execution, I wiſh, 'and heartily beg of Almighty God, that theſe 'Conſiderations may yet be made uſe of to the 'King, (with whom it then reſts) as *Tabula poſt 'Naufragium*, to ſave the Life of this Noble Lord. 'Much more than this may be ſaid, were there 'ſuch an Opportunity before the King, (and I ſo 'intend it, and no otherwiſe) and if I might be 'any ways ſerviceable in it, I would come up to '*London* bare-foot, rather than neglect ſo good an 'Office. And I ever thought it a Severity in our 'Law, that a Priſoner for his Life is not allowed 'the Aſſiſtance of a grave and prudent Lawyer, 'or ſome other Friend, to make his Defence for 'him, even as to Matter of Fact, as well as to 'Law. I know 'tis ſaid, the Court is of Counſel 'for the Priſoner; but for my part, I ſhould never 'deſire to depend upon that only. I know what 'this is by Experience. If the Caſe be in any part 'of it miſtaken, I have loſt all my Obſervations, 'and beg your pardon for all this trouble; it is 'out of the great Honour and Zeal I have for 'that good Lord: but the Narrative you give is 'very ably and well compoſed, and in very good 'Method; and, I think, could not have been bet-'ter done, which inclines me to think it very true 'alſo. I could be contented the Earl of *Bedford* '(to whom I am known) might have the view of 'this Letter, if it come not too late, and may be 'thought of any uſe; I heartily thank you for 'your Favour, which obliges me to be

Your faithful

July 21. 1683. *Friend and Servant,*

R. A.

A Defence of the late Lord RUSSEL's *Innocency: By way of Anſwer or Confutation of a Libellous Pamphlet, entitled,* An Antidote againſt Poiſon.

1. THE Pamphlet ſtiles it ſelf, *An Antidote againſt Poiſon*; but it is ſo far from deſerving that Title, that it may be truly ſaid, *That the Antidote it ſelf is the rankeſt Poiſon.*

We read in Hiſtory, That the Noble Emperor, called *Henry* of *Luxenburgh*, was poiſoned in the Sacrament; and Pope *Victor* was poiſoned in receiving of the Chalice. Who could have ſuſpected ſuch horrid Villany in the Adminiſtration of ſuch ſacred and ſolemn Rites? Who could without Horror and Amazement contrive the mingling of a deadly Poiſon with the Bread and Water of Life? To make thoſe conſecrated Elements (which ought to be the Savour of Life unto Life) to be the dreadful Meſſengers of ſudden Death? Surely had thoſe outward Signs been changed into the very Body and Blood of the Lord of Life, (as they that acted in thoſe execrable Villanies profeſs'd to believe) there muſt needs have been a Miracle wrought in altering likewiſe the Subſtance and malignant Nature of thoſe Poiſons, that they ſhould not have wrought thoſe direful Effects; which yet they did. There appears the like wicked Policy in the Author of this Pamphlet; who, under pretence of preſcribing an Antidote againſt Poiſon, under the Vizor and Diſguiſe of preventing Miſchief, does moſt deceitfully infuſe the worſt of Poiſons, and labours to intoxicate a whole Nation. This Author would have the World believe that the Noble Lord, in the compoſing of his Speech, was wholly govern'd by his *Confeſſor*; and that the Compiler of it was infected with thoſe Doctrines, that the Northern Climate has of late furniſhed us with. The very Language and Spirit of *Coleman!* Sure the Soul of *Coleman* is by Tranſmigration enter'd into this Author: It is eaſy to gueſs at his Religion. He ſuppoſes all that were preſent at my Lord's Tryal, muſt needs be ſurprized to find the Truth of the Caſe ſo untruly and unfaithfully ſet down in my Lord's Speech. But whoever will take the pains to read the Tryals, publiſh'd by Authority, (which no Man will ſuſpect of Partiality towards the Perſon tried) will receive abundant Satisfaction in the Truth of what was ſaid by the Lord *Ruſſel*, and diſcover the ſhameleſs Impudence of this malicious Author.

The Indictment (as we find it printed at large in the Tryal, *fol.* 29.) charges the Priſoner, *That he intending* to diſturb the Peace of the Kingdom, and *to move War and Rebellion* againſt the King, and to ſubvert the Government, and *to depoſe, or put down, and deprive the King* from his Title and Kingly Name of the Imperial Crown of his Kingdom of *England*, and *ſo bring and put the King to Death and Deſtruction*; 2 *Novem.* 34 *Car.* 2. and at other Times, maliciouſly and traitorouſly, with divers others, did *Conſpire*, Compaſs, Imagine, and Intend,

1. To deprive the King of his Title and Government.

2. And to kill the King, and to ſubvert the Government.

3. And to move Inſurrection and Rebellion againſt the King.

And to fulfil and perfect theſe Treaſons and traitorous Compaſſings and Imaginations, the ſaid *William Ruſſel* did meet together with divers other Traytors, and Conſult, Agree, and Conclude,

1. To move and ſtir up Inſurrection and Rebellion. And,

2. To ſeize and deſtroy the King's Guards.

The Operative and Emphatical Words of this Indictment are the *Intending, Conſpiring, and Concluding.*

The Things intended and conſpired were,

1. *To move and ſtir up War and Rebellion againſt the King.*

2. *To depoſe the King.*

3. *To kill the King.* And in order to the accompliſhing of theſe horrid Crimes,

The Things *concluded* on were,

1. To move *and ſtir up Inſurrection* and Rebellion.

2. To *ſeize and deſtroy the Guards.* This is the very Sum and true Method of the Indictment, if it be truly printed in the Tryals.

Note, Here is no open Act or Deed charged to be done by the Lord *Ruſſel*, unleſs his meeting together with others be meant to be an open Act or Deed: But then, again, that Act of Meeting terminates merely in Conſulting, Agreeing, and Concluding. They met only to conſult, agree, and conclude; but they acted nothing in purſuance of that Conſulting, Agreeing, and Concluding, for any thing that appears in the Indictment: So that the Meeting properly hath not the Nature of an Acting or Action, or of a Thing done. But the Effect of the Indictment is, That the Lord *Ruſſel* and others did conſult, agree, and conclude to do ſomething; but the Indictment ſtops there, and goes no further, for it ſets not forth any thing done at all. So that here is no *Overt-Act* or Deed, and therefore the Indictment is void; for there is no Act charged but meeting, and that was merely in order to conſult and agree: And they did agree upon a Thing to be done; but it is not ſaid they did it, or did any thing towards it. I repeat this the oftner, that it may be the better underſtood and minded, being very material. Read the Indictment.

The Indictment is grounded upon the Statute of 25 *E.* 3. *cap.* 2. (the old Statute of Treaſons.) So the *Attorney-General* declares himſelf, *fol.* 49. of the Tryal.

Now let us ſee how far this Charge in the Indictment will make my Lord guilty of any Treaſon within that Statute.

The Body of that Statute of 25 *Ed.* 3. of Treaſons, is printed together with the Tryal; (ſee the Tryal, *fol.* 50.) ſo that it need not be repeated here, though there are ſome other Clauſes in that Statute not printed in the Tryal.

The

The occaſion of making that Statute, appears to be the Variety of Opinions that then were, what ſhould be accounted Treaſon, and what not; which was very miſchievous to the Subjects, and gave too great a Liberty to the Judges of the ordinary Courts.

To cure this mighty Miſchief, and to prevent that arbitrary Power of Judges, this excellent Statute makes a *Declaration* what ſhall be adjudged Treaſon by the ordinary Courts of Juſtice. Not but that there might be like Caſes, or other Facts amounting to Treaſon, beſides thoſe there enumerated; but thoſe other Facts or Treaſons muſt not be adjudg'd by thoſe ordinary ſtanding Courts, (ſuch as the Goal-Delivery of *Newgate*, and the Court of the *King's-Bench* at *Weſtminſter* it ſelf are:) But in ſuch Caſes thoſe Courts muſt forbear proceeding, and the Caſe muſt be reſerved for the Determination of the King and Parliament. See that Statute in the printed Statutes at large.

So that the Court of Goal-Delivery at *Newgate* muſt judge only, and proceed upon no other Treaſons but what are there enumerated and ſpecified.

Now the Treaſons in that Statute enumerated and ſpecified (for the Word *Specified* is the very Word uſed by that Statute) are theſe:

1. Compaſſing or imagining the Death of the King, Queen, or Prince.

2. Violating, or carnally knowing the Queen, King's eldeſt Daughter unmarried, Prince's Wife.

3. Levying War againſt the King. Not a compaſſing or imagining to levy War, but an actual levying War: It muſt be a War begun. And ſeveral other Sorts of Treaſons are there ſpecified, not to our purpoſe to be recited.

The Statute further requires, That the Perſon indicted be *provably* attainted of ſome one of theſe Treaſons by *Overt Deed*, that is, ſome open manifeſt Act or Deed done, which muſt of neceſſity alſo be expreſly ſet down in the Indictment, and fully and clearly proved at the Tryal by two Witneſſes.

See Sir *Edward Coke*'s Third *Inſtitutes*, in his Chapter of *High Treaſon*, *fol.* 12. in his Expoſition of the Words of that Statute, (*per Overt Fait*) and there, *fol.* 5. upon the Words (*Fait Compaſſer*) he tells you the Nature of that *Open Deed* that the Statute intends. It muſt be a Deed, and not mere Words: It muſt be a Deed tending to the Execution of the Treaſon imagined. That Deed muſt be an *open Deed*, that is, *it muſt be fully* proved, and made open and manifeſt at the Tryal by clear Proof.

So that if the Indictment fail of ſetting forth *one of thoſe Treaſons* that are there enumerated, it is not a good Indictment upon that Statute.

If it do ſet forth one of thoſe Treaſons, yet if it do not ſet forth ſome *open Deed* done by the Party indicted, that is, ſuch a Deed as does properly and naturally tend to Execution of that ſort of Treaſon ſet forth in that Indictment; in ſuch caſe alſo the Indictment is not good.

If both theſe, *viz.* the Treaſon intended, and a proper ſuitable open Deed, be well ſet forth in the Indictment, (which makes a good Indictment) yet if that very ſort of Treaſon intended, and that open Deed or Fact, ſo ſet forth in the Indictment, be not alſo fully, clearly, and *manifeſtly proved* upon the Tryal againſt the Priſoner, he ought to be acquitted.

It will not ſuffice either to prove it by one Witneſs, or to prove any other ſort of Treaſon, (not charged in the Indictment, nor any other Over-Deed) other than what is ſo ſet forth in that Indictment, tho it be by never ſo full a Proof; but upon that Indictment the Priſoner ought to be acquitted, if that ſpecial Treaſon, and that ſpecial Overt or Open Deed, ſet forth and expreſſed in that very Indictment, be not fully proved.

Now let us examine the Indictment in this Caſe againſt the Lord *Ruſſel*, and the Proofs againſt him, as they are publiſhed by Authority, and obſerve how they agree with the Statute, and how the Indictment and Proofs agree the one with the other.

It may be admitted that here is in the Indictment againſt the Lord *Ruſſel*, a Treaſon ſufficiently charged and ſet forth, *viz.* one of the Treaſons ſpecified in that Statute of 25 *Edw.* 3. namely, That the Lord *Ruſſel* did compaſs and imagine the Death of the King. This is not denied, but it is duly charged in the Indictment. For thoſe other Charges in the Indictment, *viz.* His intending *to depoſe the* King, and his intending *to move or levy War and Rebellion* againſt the King; theſe are inſerted into the Indictment as Aggravations of that horrid Crime of intending to kill the King, or as open Acts of the other; but of themſelves alone, they are no diſtinct ſubſtantial Charges, nor are they any of the Treaſons ſpecified in this Act, upon which Act this Indictment is ſolely grounded. For tho by the Act of 13 of this King that now is, *cap.* 1. entitled, *An Act for the Safety and Preſervation of the King's Perſon*, it is made High Treaſon (during the now King's Life only) to compaſs or imagine to depoſe the King, or to compaſs or imagine to levy War againſt the King, if ſuch Compaſſing or Imagination be expreſſed by ſpeaking or writing, (altho without any open Deed) yet the Lord *Ruſſel* was not indicted upon that Statute, (as the Attorney-General himſelf acknowledged openly at the Tryal) but only upon the old Statute of 25 *Ed.* 3. So that thoſe late-made Treaſons are not to our purpoſe.

So that the only Treaſon charged in the Indictment, as a ſubſtantial Charge, is that of *imagining to kill the King*. And ſo the Lord Chief Juſtice agrees in his Direction to the Jury. See the Tryal, *fol.* 61.

But where is that other Requiſite, that other moſt material part of the Indictment, of *the Open Deed or Act?* without which the reſt ſerves for nothing: For it is not enough by this Statute to make a Man guilty of conſpiring or imagining the Death of the King, unleſs the Party indicted have expreſſed that Imagination by ſome *open Deed*; and that muſt be plainly ſet down in the Indictment too, or elſe the Indictment (as was ſaid before) is no good Indictment. And it muſt appear to the Court upon the Indictment not only to be an open Deed, but ſuch a Deed as has a natural Aptitude and Tendency to the Execution of that very Treaſon ſo imagined. And there is no ſuch ſet forth in this Indictment; and therefore the Indictment it ſelf was inſufficient and void.

And that which ſeems to have a colour of an Overt-Fact, or *open Deed*, ſet forth in this Indictment, was not fully and ſufficiently proved neither: And then, tho the Indictment had been ſufficient, yet for want of due Proof, the Party indicted ought to have been acquitted.

To theſe two Points or Matters ſhall the enſuing Diſcourſe confine it ſelf. And if this Undertaking be made good, the *Antidote* will appear to be a rank Poiſon, the Lord *Ruſſel*'s Speech juſtified, and his Innocency and Loyalty cleared, and his Honour vindicated.

The *Overt-Fait*, or open Deed, ſet forth in the Indictment, (if there be any) are the Things ſaid to be conſulted of, agreed and concluded on; *viz.* 1. To *move and ſtir up Inſurrection and Rebellion.* 2. To *ſeize and deſtroy the Guards.* (Peruſe the Indictment carefully.)

Now neither of theſe are *Open Deeds*, in the Nature of them.

The Firſt, which is to ſtir up Inſurrection and Rebellion: This is a diſtinct Species of Treaſon it ſelf; it is the ſame with a Levying of War, (ſpecified in this Statute of 25 *Edw.* 3. which is the only Statute we have to do with in this Caſe of my Lord *Ruſſel*;) and if it had been ſet forth in the Indictment as a Deed done, or Thing acted, that is, if it had been laid in the Indictment that the War was actually levied, or the Inſurrection or Rebellion actually raiſed or ſtirred up, (as it is not, for it is only mentioned as a Thing agreed and concluded on, and not done) yet it had not been a ſufficient proper *Overt Fait*, or *Open Act*, to make it a good Indictment: becauſe (as is ſaid before) levying of War is a diſtinct Species from that of compaſſing to kill the King; and therefore cannot be made an *Overt Fait*, or Open Deed, to manifeſt an Imagination of killing the King: For that one Species of Treaſon cannot be a proper Open Act to another Species of Treaſon, as will be proved hereafter.

Sir *Edward Coke* in his third *Inſtitutes*, *fol.* 14. in the third Clauſe or Paragraph of that *Folio*, tells us, That the Connexion of the Words is to be obſerv'd, *viz.* [*thereof be attainted by Overt or Open Deed.*] This, ſays Sir *Edward Coke*, relateth to the ſeveral and diſtinct Treaſons before expreſſed; whereof that of imagining to kill the King, and that of leying War againſt the King, are two diſtinct Species of High Treaſon. And therefore, ſays Sir *Edward Coke*, the one of them cannot be an Overt-Act for another, that is, levying of War cannot be an Overt-Act for that ſort of Treaſon in imagining to kill the King, much leſs when the Indictment does not charge it as a War actually levied, but only an Agreement or Concluſion for levying a War. Such Agreement can be no Open Deed to manifeſt an Intent or Imagination of killing the King. This is the main Queſtion between us.

The other only Colour or Pretence to an *Overt-Fait*, or *Open-Deed*, muſt be that of ſeizing or deſtroying the King's Guard: For no other but theſe two are ſet forth in the Indictment, or look any thing like *Overt* or Open-Acts.

And this latter is nothing like to an *Overt-Fait*, or *Open-Deed*, in the Nature of it; for it is not ſaid to be done, but only agreed on, and concluded on to be done. If it had been but alledged in the Indictment, That in purſuance of this Agreement or Concluſion of the Conſpirators, a View was accordingly taken of thoſe Guards, and reported to the reſt (whereof the Lord *Ruſſel* was one) that it was feaſible, (whereof there is ſome Colour or Proof againſt ſome of them) this had been more to the purpoſe: But being laid ſo imperfectly as it is, the Indictment it ſelf muſt needs be inſufficient, for the Reaſons before given.

But, alas! the Noble Lord is gone; and he is gone from whence he would not be recall'd, a Place of infinite Bliſs and Glory, out of a ſpiteful malicious World: It is we, it is the King and Kingdom, it is the whole Proteſtant Part of the World that ſuffers the ineſtimable Loſs of him: Not to ſpeak of the unſpeakable Grief of his dear and diſconſolate Widow, and other Noble Relations; *Factum infectum fieri nequit.* So that we may ſeem to labour in vain, and it comes too late. But ſomething may be done for the Benefit of his hopeful Poſterity, and ſome ſmall Satisfaction may be made to his Noble Family, by a Writ of Error for reverſing of this Attainder, and the avoiding of the Record; for the Statute of 29 *Eliz. cap.* 2. extends only to ſuch Attainders for High Treaſon as then had been before the making of that Statute, and does not hinder a Writ of Error in this Caſe, if the King will ſign a Petition for it.

But to examine this laſt *Overt-Fait*, or Open-Deed, a little further;

Viz. To ſeize and deſtroy the King's Guards.

The Guards! What Guards? What or whom does the Law underſtand or allow to be the King's Guards, for the Preſervation of his Perſon? Whom ſhall the Court that tried this Noble Lord, whom ſhall the Judges of the Law that were then preſent, and upon their Oaths, whom ſhall they judge or legally underſtand by theſe Guards? They never read of them in all their Law-Books: There is not any Statute-Law that makes the leaſt mention of any Guards. The Law of *England* takes no notice of any ſuch Guards; and therefore the Indictment is uncertain and void.

The King is guarded by the ſpecial Protection of Almighty God, by whom he reigns, and whoſe Vicegerent he is: He has an inviſible Guard, a Guard of glorious Angels.

Non eget Mauri jaculis nec arcu;
Nec venenatis gravida ſagittis,
Crede, Pharetra.

The King is guarded by the Love of his Subjects:

The next under God, *and the ſureſt Guard.*

He is guarded by the Law and Courts of Juſtice.

The *Militia* and the Trained-Bands are his legal Guard, and the whole Kingdom's Guard.

The very Judges that tried this Noble Lord were the King's Guards, and the Kingdom's Guard, and this Lord *Ruſſel*'s Guard againſt all erroneous and imperfect Indictments, from all falſe Evidence and Proof, from all Strains of Wit and Oratory miſapplied and abus'd by Counſel.

What other Guards are there? We know of no Law for more. King *Henry* the Seventh of this Kingdom (as Hiſtory tells us) was the firſt that ſet up the Band of Penſioners. Since this the Yeomen of the Guard; ſince them certain Armed Bands, commonly, now a-days, (after the *French* Mode) called the King's Life-Guard, ride about and appear with naked Swords, to the Terror of the Nation: But where is the Law? where is the Authority for them?

It had been fit for the Court that tried this Noble Lord on this Indictment to have ſatisfied themſelves, from the King's Counſel, what was meant by theſe Guards; for the alledging and ſetting forth an *Overt-Fait*, or *Open-Deed*, in an Indictment

of

of Treaſon, muſt be of ſomething that is intelligible by Law, whereof Judges may take notice by Law. And herein too the Indictment fails, and is imperfect.

But admit the ſeizing and deſtroying of thoſe who are now called the King's Life-Guard, had been the Guard intended within this *Overt-Fait*, or *Open-Deed*; yet the Indictment ſhould have ſet forth that *de Facto* the King had choſen a certain Number of Men to attend upon and guard his Perſon, and ſet forth where they did attend, as at *Whitehall*, or the *Meuſe*, or the *Savoy*, *&c.* and that theſe were the Guard intended, by the Indictment, to be ſeized and deſtroyed: That by this ſetting forth the Court might have taken notice judicially what and who were meant. But to ſeize and deſtroy the King's Guards, and not ſhew who, and what is meant, makes the Indictment very inſufficient.

So much as to the *Indictment* it ſelf.

In the next place, let us look into the *Proofs*, as they are at large ſet forth and owned in the printed Tryal; and let us conſider how far thoſe Proofs do make out the Charge of the Indictment, *viz.* the Compaſſing and Imagining the Death of the King, and how far they make out that *Overt-Fait*, or *Open-Deed*, (ſuch as it is) of ſeizing or deſtroying the King's Guards, in order to the effecting of that Compaſſing and Imagining the Death of the King. And it muſt appear by Proof to be in truth ſo intended by the Conſpirators, and levelled to that end; for if it were done, yet if it were done quite to another Intent and Purpoſe, and not to that of Compaſſing the King's Death, it does not come home to this Indictment.

There are but three Witneſſes that can be thought to bring the Matter home, and to fix any thing upon the Lord *Ruſſel*, Colonel *Romſey*, Mr. *Sheppard*, and the Lord *Howard*.

It is true, two of the three, that is, Col. *Romſey*, and the Lord *Howard*, poſitively prove a traitorous Deſign, or a Diſcourſe at leaſt, by ſome of the Company, of making an Inſurrection or Rebellion, or (to ſpeak it in the Language and Phraſe of this Statute of 25 *E.* 3.) of levying a War againſt the King, (for all theſe ſignify one and the ſame thing) and they prove the Lord *Ruſſel* was ſometimes preſent at thoſe Meetings: But is that enough? Admit he were preſent, and heard the Debate of it, (which yet is not fully and directly proved) yet if he did not join in the Debate, and expreſs and ſome way ſignify his Approbation of it, and conſent to it, it makes him not at all criminous. It is true, his After-concealing of it might have made him guilty of Miſpriſion of Treaſon; but that is a Crime of another Nature, and is another diſtinct Genus of Crimes, of which he was not indicted.

Col. *Romſey*, as to the *Overt-Fait*, (as they would make it) ſays, *There was ſome Diſcourſe about ſeeing what Poſture the Guards were in:* And being asked by one of the Jury, By whom the Diſcourſe was? he anſwers, *By all the Company that was there*, (whereof, as he ſaid before, the Lord *Ruſſel* was one.) So that my Lord *Ruſſel* may (I agree) be underſtood to be one that diſcourſed about ſeeing what Poſture the Guards were in. Nay, the Colonel ſays, *All the Company did debate it:* And he ſays further, *The Lord* Ruſſel *was there when ſome of the Company undertook to take the View of thoſe Guards.* And being asked by the Attorney-General to what purpoſe the View was to be? the Colonel anſwers, *It was to ſurprize our Guards, if the Riſing had gone on.*

The Chief Juſtice obſerving to the Witneſs, that he ought not to deliver a doubtful Evidence, and to ſpeak it with Limitations, that made it not ſo poſitive; as by ſaying, *I apprehend ſo and ſo:* then the Colonel grows more poſitive, and ſays further, *That a Riſing was intended*; but afterwards he ſays, *There was no debate of the Riſing.* At laſt the Witneſs being asked by Sir *George Jefferies*, whether the Priſoner were preſent at the Debate concerning the Meſſage from the Lord *Shaftesbury* to the Company then met, and the Anſwer return'd to it; he flatly ſays, *The Priſoner was preſent at that Debate*, (which Debate did indeed concern the Riſing.) Being ask'd by the ſame Perſon, whether my Lord was averſe to it, or agreeing to it; he anſwers like an Echo, *Agreeing to it.* Nay, then he ſays, my Lord *Ruſſel* did ſpeak, and that *about the Riſing of* Taunton, and *that he did diſcourſe of the Riſing:* but what were his Words? Being queſtion'd again by the Chief Juſtice, whether *my Lord did give any Conſent to the Riſing*, he anſwers ſtill like an Echo, *My Lord did.* And this laſt Anſwer is the weighty Part of his Evidence, if there be any weight at all.

Now mind the Defect of the Witneſs's Memory in ſome other moſt material Paſſages. He *thinks* the Lord *Grey* did ſay ſomething to the ſame purpoſe, with the Anſwer deliver'd by *Ferguſon* to the Lord *Shaftesbury*'s Meſſage.

He does *not know* (ſays he) how often he himſelf (the Witneſs) was at Mr. *Sheppard*'s Houſe where this Debate was. He ſays he was there more than once, *or elſe* I heard (ſays he) Mr. *Ferguſon* make a Report of another Meeting to the Lord *Shafteſbury*. And then he ſays, *That this was all at that time that he remembred*; and before this he had ſaid no more againſt the Lord *Ruſſel*, but that he was preſent; and after this upon much interrogating of him, he proceeds to tell a great deal more, indeed all the reſt that has been before obſerv'd to proceed from him. And after all, he ſays he thinks he was not there above a quarter of an Hour. He ſays he was *not certain* whether he did hear ſomething about a *Declaration* there, or whether Mr. *Ferguſon* did report it to my Lord *Shaftesbury*, that they had debated it. And the Witneſs ſpeaking of a View to be taken of the Guards, to ſurprize them; the Lord Chief Juſtice ſeems to be ſurpriz'd at that Word: The *Guards!* he never met it in all his Books. What Guards? why you know it is mention'd in the Indictment; but he might yet very well ask what Guards: And the Colonel anſwers, The Guards at the *Savoy* and the *Meuſe*.

The Colonel ſays, *He thinks* the Duke of *Monmouth*, and the Lord *Grey*, and Sir *Thomas Armſtrong*, were the Perſons that undertook to view the Guards. And *he thinks*, Sir *Thomas Armſtrong* began it, and Mr. *Ferguſon*. And he ſays, further Direction was given to take a view of the Guards, *if the Riſing had gone on*, (as it never did) and then he mentions the very Day that had been appointed for the Riſing, *viz.* the 19th of *November*; and that the Meſſage from the Lord *Shaftesbury* was, *he thinks*, a matter of a Fortnight before that Day, or ſomething more; for *he thinks* it was concluded *Sunday* fortnight after my Lord *Grey* met. The mention of my Lord *Ruſſel*'s Conſent to this Riſing,

ſing, comes in at the laſt, and after many Queſtions ask'd him, and not till that very particular Queſtion was put to him; and he anſwers in the very ſame Words as the Queſtion was ask'd. The Chief Juſtice ask'd him in theſe Words, Did my Lord give any conſent to the Riſing? The Colonel's Anſwer was, *Yes, my Lord, he did.* But how did my Lord *Ruſſel* ſignify that Conſent? What Words did he uſe that may clearly expreſs it? For this is the pinching Proof, if it had been certain and clear'd by remembring the manner of his Conſenting, or how it did appear. Why was not this put home to the Witneſs? This is the material Part of his Evidence, without which the reſt had not come home to the Priſoner: And why did not the Witneſs deliver this of himſelf, and before his giving this home Evidence he had ſaid, *That was all at that Time that he remember'd?* And this was at the ſame Time with that of the Meſſage, and of the Diſcourſe about viewing the Guards. He afterwards *doubts* whether he was any more than once there with that Company, or *whether he heard* Mr. *Ferguſon* report things to the Lord *Shaftesbury*; which ſhews a wild kind of Memory in a Witneſs, and the Colonel is no Fool, nor Baby; ſo that there is but one Time poſitively ſpoken of by this Witneſs. How ſtrangely uncertain is he in the Matter of the Declaration, to which he was examined? A moſt noted Thing, and he cannot tell whether he heard any thing of it there, or whether Mr. *Ferguſon* told him of it. It is to be ſuſpected too, that what he has delivered poſitively at laſt ſo late in his Evidence, and after ſo much interrogating of him, was but mere hearſay too, and then it would not have been any Evidence. He has not, it ſeems, a good diſtinguiſhing Head or Memory, as a Witneſs ought to have in caſe of Life, and a Life of ſo high a Value as this of that Noble Lord.

And many other material Paſſages this Witneſs delivers under that Limitation, as *he thinks.*

The Riſing was intended, but never took effect; and the View was no more than appointed and undertaken: but the Seizing of the Guards, as this Witneſs ſays, was not to be *unleſs the Riſing had gone on*; which it never did. He ſpeaks nothing of any View made of the Guards, or any Report upon it: but he ſwears my Lord *Ruſſel* conſented to the Riſing. That is his ſtabbing Evidence; but by what Words, or how he ſignify'd his Conſent, not a Word, tho mighty material.

But what is this Conſpiracy for a Riſing? and a Conſpiracy to ſeize the Guards? (in caſe the Riſing had gone on:) What are theſe to the Crime charged in the Indictment againſt the Lord *Ruſſel*, for conſpiring the Death of the King?

Here is not a word of any ſuch Matter, nor of ſeizing the Guards in order to it, no not one Word.

And that is the only material Part of the Indictment (as ſhall appear more plainly hereafter.)

The ſecond Witneſs, Mr. *Sheppard*, mentions the meeting (at his Houſe) of the Duke of *Monmouth*, and among the reſt, the Lord *Ruſſel*, and they diſcours'd of *ſurprizing the Guards*; and that the Duke, the Lord *Grey*, and Sir *Thomas Armſtrong*, (*as he remembers*) went one Night to view the Guards, and the next Day at his Houſe they ſaid it was very feaſible, if they had ſtrength to do it. And then he ſays there was two Meetings there, and, *as he remembers*, my Lord *Ruſſel* was both times there. Being ask'd by the Attorney-General, beſides the ſeizing of the Guards, if there were any diſcourſe of a Riſing; he anſwers, *He did not remember any further Diſcourſe*, for he was often gone out of the Room: And this is the effect of that he ſays.

If any thing of this comes near my Lord *Ruſſel*, it is thoſe Words, firſt giving an Account of who they were that were met, and that my Lord *Ruſſel* was one of them; he ſays the Subſtance of *their* Diſcourſe was how to ſurprize the King's Guards. This may be true, if one or two of the Company only diſcourſes it; for it does not neceſſarily affirm, that every one did ſpeak in that Diſcourſe. He does not mention one Word ſpoken by my Lord *Ruſſel*, nor that he approv'd of, or conſented to any thing. At the worſt, for any thing that he ſays, it can be but Miſpriſion: He can ſay nothing *as to the intended Riſing*. Now Colonel *Romſey*'s Evidence is altogether of that Riſing, and the ſeizing of the Guards was to have been if the Riſing had gone on; and this was at the ſame time that Mr. *Sheppard* ſpeaks to: and yet Mr. *Sheppard* being ask'd if there was any Diſcourſe of a Riſing, he anſwers, he did not remember any further Diſcourſe.

Nor does Colonel *Romſey certainly remember* any thing of a Declaration read amongſt them, whether he heard it there, or whether by Mr. *Ferguſon*'s Report of it to my Lord *Shaftesbury*; which is one of the principal things that Mr. *Sheppard* ſpeaks to, (beſides that of ſeizing the Guards.) And as to the Declaration, Mr. *Sheppard* ſays, he cannot ſay my Lord *Ruſſel* was there when that Declaration was read

So they agree in nothing but in the Diſcourſe of ſeizing the Guards, and that my Lord *Ruſſel* was then preſent.

So that as yet the Sum of the Proof by Colonel *Romſey* is, that my Lord *Ruſſel* conſented to the Riſing, which is too general; and the Sum of the Proof by Mr. *Sheppard* is, that my Lord *Ruſſel* was preſent in Company when the Company diſcours'd of ſeizing the Guards, but he knows nothing of the Riſing.

The third Witneſs (the Lord *Howard*) diſcourſes much about a Conſpiracy to riſe, but he ſpeaks moſt (of what he ſays) by report from the Earl of *Shaftesbury*, and from the Duke; ſo it goes for no Evidence againſt my Lord *Ruſſel*, and the Chief Juſtice did the Priſoner that Right, as to declare as much to the Jury: and the Lord *Howard* clears the Duke from any ſuch horrid Act as the killing the King, the Duke ſaid he would not ſuffer it; and if the Duke be innocent in that, it is probable that my Lord *Ruſſel*, and the reſt of the Company that met, had no diſcourſe about killing the King, nor any Thought that way; which yet is the great and only ſubſtantial Charge of this Indictment, which muſt ſtill be minded and obſerv'd.

My Lord *Howard* does indeed prove two ſeveral Conſults, one at Mr. *Hampden* the younger's, the other at my Lord *Ruſſel*'s about the middle of *January* laſt, and after, and that my Lord *Ruſſel* was at both; and theſe Conſults were of an Inſurrection, and where to begin it, and of providing Arms and Money, and of ſending into *Scotland* to ſettle an Underſtanding with the Lord of

Argyle

Argyle: and being asked what my Lord did ſay, he anſwers thus, *viz. Every one* (ſays he) *knows my Lord* Ruſſel *is a Perſon of great Judgment, and not very laviſh in Diſcourſe.* But did he conſent? was a Queſtion ask'd by Sir *George Jefferies:* the Lord *Howard* anſwered, We did not put it to the Vote, but it went without Contradiction, and *I took it* that all there gave their Conſent. That my Lord *Ruſſel* join'd in the Council of Six, that he approv'd of his being choſen for one, that he ſaid one Word in theſe two Conſults, there is not any Proof by the Lord *Howard*; only he ſays, *He took it that all there conſented.* Is that enough? O ſtrange Evidence!

I will not here take notice, or examine how far the Lord *Howard* is a credible Witneſs in this Caſe, but refer the Reader to the Teſtimony of my Lord of *Angleſey*, Mr. *Howard*, and Dr. *Burnet:* or how far any of the three Witneſſes are to be believ'd, having all three upon their own Teſtimony been *Participes Criminis*, and it is ſuppos'd have their Pardons, or are promis'd Pardons: Not that this is offer'd to diſable them quite from being Witneſſes, but ſurely, all things conſider'd, it much leſſens their Credit in this Caſe; nor does it make them the more Credible, becauſe no other Witneſſes can be had. But then conſider that moſt Excellent Character given of the Priſoner by Perſons of Honour, and of the higheſt Eſteem for Ability and Integrity, and ſuch as contradicts, and is inconſiſtent with the Charge of the Indictment, and whatever is of weight in the Evidence againſt him; and eſpecially if you give any Credit to the Lord *Howard* himſelf, who upon his Oath does declare, as in the Preſence of God and Man, That he did not believe that either the Duke of *Monmouth*, or my Lord *Ruſſel*, had any deſign to murder the King; which is the only effectual Charge of this Indictment. Theſe things conſider'd, it ſeems very ſtrange to me, how the Lord *Ruſſel* could be found guilty of a compaſſing and imagining the Death of the King; for ſo is the Verdict.

This anſwers moſt of the Obſervations made by the Author of the *Antidote* upon my Lord *Ruſſel*'s Speech, reſtraining the Expreſſion, as he ſays, of his Innocency to the Deſign upon the King's Life, and to killing of the King, and of his omitting to mention the general Riſing; which, as this Author boldly affirms, was fully proved upon him; and that my Lord's Profeſſions of his Innocency, as to any Plot upon the King's Life, or to kill the King, or his knowing any thing thereof, theſe (ſays the Author) are no plain Declarations of his Innocency, as to the Crime charged and proved upon him, of conſpiring and conſulting to raiſe an Inſurrection. Nor was there any need of my Lord's anſwering that, for it was little [illegible].

How uncertain, how diſagreeing, how inapplicable to the Charge of the Indictment [illegible] Proofs are, has been fully obſerv'd already, and the Author groſly miſtakes in his Judgment, when he takes the conſpiring and conſulting to raiſe an Inſurrection, to be the Crime charged in the Indictment; for (as was obſerv'd before) the Charge of the Indictment is, the *compaſſing and imagining to kill the King*; and that of a Conſpiracy to raiſe an Inſurrection, or to levy War, is none of the Crimes or Treaſons enumerated or ſpecified in the Act of 25 *Edw.* 3. and therefore could not be the Crime charged in the Indictment, which is grounded only upon that Act of 25 *Edw.* 3. (as the Attorney-General acknowledges) for it is an actual levying of War, and not a conſpiring only to levy War, or raiſe an Inſurrection, that is the Treaſon ſpecified in that Act of 25 *Edw.* 3. And therefore the mention of other things are but by way of Aggravation, for the more ample ſetting forth of the Crime charged, which is of compaſſing the King's Death: and that the conſpiring to make an Inſurrection, cannot be an open Deed to prove a compaſſing the King's Death, has been already ſpoken to, and ſhall be yet more fully.

Nor is the Author more miſtaken in his Obſervations upon the Matter of Fact, and his unwarranted Concluſions and Inferences raiſed from thence, than he is in his Determinations of Matters in Law ariſing from that Fact.

The Death of the King (ſays the Author) *in that Law of* 25 *Edw.* 3. is not reſtrained to killing of his natural Perſon, but extends as well to his civil Death as natural: As to conſpire *to depoſe* the King, *to impriſon* him, or *laying any force* or reſtraint upon him; theſe (ſays the Author) are all High-Treaſon, for compaſſing his Death, natural or civil. If ſo, why then we are at never the more certainty for this excellent Law of 25 *Edw.* 3.

I agree, that conſpiring to depoſe the King, to impriſon him, are Treaſons; but it is not ſo plain that they are Treaſons within this Law of 25 *E.* 3. upon which this Indictment is grounded. It is true, they are made Treaſon by the late Act of 13 of the now King, and have by ſeveral temporary Acts (ſuch as this of 13 *Car.* 2. is) been made Treaſon: but this proves that they were not judged by thoſe Parliaments, that paſs'd thoſe temporary Acts, to be Treaſons within the Statute of 25 *Edw.* 3. For why then were theſe temporary Acts made? What need was there of them? Sir *Edward Coke*, 3 *Inſt. fol.* 9. in the laſt Paragraph but one of that *fol.* ſays, A Conſpiracy to levy War is no Treaſon; he means within the Act of 25 *Edw.* 3. but it has been made Treaſon ſince Sir *Edward Coke*'s time, *viz.* by 13 *Car.* 2. And let it be remembred, that the great End of making this excellent Law of 25 *Edw.* 3. (as appears by the Preamble) was to avoid Uncertainty, and Variety of Opinions, and to prevent the Arbitrarineſs of Judges, in the ordinary Courts; and the Act takes care, that doubtful Caſes, ſuch as are not plainly within the enumeration of the Act, are to be reſerv'd for the Judgment of the King and Parliament. And herein conſiſts the Excellency of this Law: *Quoad fieri poſſit, quam plurima Legibus ipſis defineantur: Quam pauciſſima Judicis arbitrio relinquantur.* And as the learned Lord *Bacon* in his *Advancement of Learning*, fol. 447. ſays, That is the beſt Law, which gives leaſt Liberty to the Judge; he the beſt Judge that takes leaſt Liberty to himſelf: *Miſera eſt ſervitus, ubi Jus eſt vagum.* And this Law is a Declaration of Law, and therefore ought not to be extended to like Caſes in the Conſtruction of it: And it is made in the Puniſhment of the greateſt Offences, and is as penal as a Law can be; and therefore ought not to be expounded by Equity, that is, to be extended to like Caſes.

It is true, the Opinion of the Judges hath been, That conſpiring to depoſe or impriſon the King, is a compaſſing or imagining the Death of

the King. And if a Man declares *by Overt-Act*, that he will depoſe or impriſon the King; this, ſays Sir *Edward Coke*, 3 *Inſt. fol.* 6. upon the Word (*Mort*) is a ſufficient Overt-Act, for the Intent of killing the King. Mind him well, he does not ſay, that *conſpiring* to depoſe or to impriſon the King, is an Overt-Act, to prove the conſpiring the King's Death; which is the Opinion the Antidoter maintains, and for which he cites all his Caſes afterwards cited. But Sir *Edward Coke* ſays, That conſpiring to depoſe or impriſon the King, *being declar'd by Overt-act*, this Overt-Act is alſo a ſufficient Overt-Act for the Intent of killing the King.

It is one thing to conſpire to depoſe the King,

And another thing to declare, that Conſpiring by ſome Open-Act: They differ as much as thinking does from acting. Now in this Caſe of the Lord *Ruſſel*, the Author of this Antidote, and ſome others (as appears by the printed Tryals) would have us believe that very conſpiring to levy War, is an Overt-Act to prove the compaſſing and imagining the King's Death: For which there is not the leaſt ground from Sir *Edward Coke*. Firſt they are different Species, as Sir *Edward Coke* obſerves in his third *Inſtitutes*, *fol.* 14. the third Paragraph; and therefore (ſays he) the one of them cannot be an Overt-Act for another. That is, Conſpiring to levy War, nay the actual levying of War too, which is one Species of Treaſon, cannot be an Overt-Act for the compaſſing the Death of the King, which is another Species of Treaſon. But this is that the Antidoter labours; only ſays Sir *Edward Coke*, the *Overt-Act* of the one, may be an Overt-Act for another Sort or Species of Treaſon.

And I agree it, if the Overt-Act in the one ſort of Treaſon, may as fitly and as properly in its own nature, and as equally be alſo an Overt-Act in the other ſort, and had a Tendency to the Execution of that other ſort. And it alſo does appear by the Proofs, to be ſo intended by the Conſpirators: As for example; Actual ſeizing of the King's Guards (not a Conſpiring to ſeize the King's Guards, and ſuch Guards as are not plainly ſet forth in the Indictment what they are) may in its nature be an Overt-Act, to make manifeſt the compaſſing of the King's Death, and is an Act proper enough, and has in its nature a Tendency towards the Execution of the Conſpiracy to kill the King: But then it muſt be proved to be ſo intended and deſigned, that is, in order to the killing of the King. But if it appear otherwiſe upon the Proof (as here it did) that it was not ſo intended, but deſign'd merely in order to a Rebellion, and levying of War (for which alſo it is as apt, and proper in its nature, and has as great a Tendency that way;) then it cannot be applied nor made uſe of as an Overt-Act, to prove the compaſſing the King's Death, (as in this Caſe of my Lord *Ruſſel*'s it was:) For this (as Sir *Edward Coke* well ſays, *fol.* 14. the latter part of the third Paragraph of that *Folio*) would be to confound the ſeveral Claſſes or Species of Treaſon: And the Confuſion of Species is abominable in Nature.

And where Sir *Edward Coke* ſeems to comply with the Opinion and Practice of ſome Judges, that the *Overt-Act of Depoſing* may be a good *Overt-Act of Killing*, (which, with the Diſtinction that I have offered, is juſt enough) yet he has ſome Heſitation; for he concludes that Opinion of his with theſe Words, *fol.* 6. in his third *Inſtitutes*, upon the Word [*Mort*:] But (ſays he) peruſe adviſedly the Statutes of 13 *Eliz. cap.* 1. And why thoſe Statutes? Becauſe by thoſe Statutes conſpiring to depoſe the Queen is made Treaſon; which needed not, (as has been obſerv'd already) if it was Treaſon, within that Clauſe of Compaſſing the King's Death, within the Statute of 25 *Ed.* 3. The like may be obſerved in many other ſuch temporary Laws, as that of 25 *H.* 8. *cap.* 22. 26 *H.* 8. *cap.* 13. 28 *H.* 8. *cap.* 7. 1 *Edw.* 6. *cap.* 12. and 5 *&* 6 *Edw.* 6. *cap.* 11.

And it is worthy Obſervation, tho by way of a ſhort Digreſſion, that in many, if not in every one of theſe temporary Laws of Treaſon, there is an expreſs Clauſe and Proviſion ſtill, that Concealment, or keeping ſecret of any High Treaſon, ſhould be adjudged Miſpriſion of Treaſon: As if there were great need of that Caution, leſt the Judges might judge concealing of Treaſon for High Treaſon.

Now to ſhew the Tenderneſs that the Judges heretofore ſhewed in the expounding of this Statute of Treaſons of 25 *Edw.* 3. and how cautious they were in extending it beyond the ſtrict Senſe and Letter of the Statute, read the Caſe in *Mich.* 19 *Hen.* 6. *fol.* 47. *Caſe* 102. A Man was indicted in the *King's-Bench* of Petty-Treaſon (which is declared too by the ſame Statute of 25 *Edw.* 3. *cap.* 2.) for killing his Miſtreſs, whom he ſerved. And becauſe the Words of this Statute of 25 *Edw.* 3. declares it Petty-Treaſon where the Servant kills the *Maſter*, they were in doubt whether it ought to be extended to the *Miſtreſs*, or not. And there the Judges of the *King's-Bench* (before whom the Caſe was) ſent to the Judges of the Court of *Common-Pleas*, then ſitting, and to the Serjeants there, to know their Opinion of the Caſe. And by Advice of all the Judges of both Courts, it was adjudged Petty Treaſon for the Servant to kill the Miſtreſs, not only within the Meaning, but within the very Words of that Statute; for *Maſter* and *Miſtreſs* are in effect but one and the ſame Word, they differing only in Gender.

Sir *Edward Coke* ſays, 3 *Inſtit. fol.* 20, *&* 22. The Judges ſhall not judge *à ſimili*, or by Equity, by Argument, or by Inference of any Treaſon; but new or like Caſes were to have been referred to the Determination of the next Parliament: *Ubi terminatæ ſunt dubitationes Judiciorum*, ſays *Bracton*.

Let us in the next place examine the Authorities in Law, and Book-Caſes, cited by this Author of the Antidote, and ſee how far they make good his Opinion, That meeting and conſulting to make an Inſurrection againſt the King, or raiſe a Rebellion, (which is the ſame with levying War, within the Words of 25 *Edw.* 3.) tho the Rebellion be not actually raiſed, is High Treaſon within this Law of 25 *Edw.* 3. For ſo he propoſes the Queſtion, *Fol.* 5. of his Book. And if he does not confine his Argument to that Statute, he ſays nothing to the Lord *Ruſſel*'s Caſe.

To prove the Meeting and Conſulting to make an Inſurrection againſt the King, or raiſe a Rebellion within the Kingdom, (tho the Rebellion is not actually raiſed) is High Treaſon within the

Statute

Statute of 25 *Edw.* 3. *cap.* 2. (which, put all together, is the Poſition the *Antidote* maintains:) He cites the Caſe of *Conſtable*, mentioned in *Calvin*'s Caſe, Sir *Edward Coke*'s 7th *Rep. fol.* 10. *b.* and thence infers, That whatſoever tended to the depoſing of Queen *Mary* was adjudged Treaſon for compaſſing her Death.

And this no Man denies; and it agrees with the Judgment of Sir *Edward Coke*, in his Chapter of Treaſon, *fol.* 6. upon the Word [*Mort*,] where he ſays, He that declareth by Overt-Act to depoſe the King, does an Overt-Act of compaſſing and imagining the Death of the King: And ſo ſays Sir *Matthew Hale*'s *Pleas of the Crown*, *fol.* 11. towards the latter end. But what is this to the Point in hand, which merely concerns a Meeting and Conſulting to make an Inſurrection, or raiſing a Rebellion, which is the ſame thing with Conſpiring to levy War? Conſpiring to depoſe the King, and conſpiring to levy War, are different Things; as conſpiring to levy War is clearly held to be a diſtinct Treaſon from conſpiring the Death of the King: And therefore the former of theſe (as hath been before obſerved) cannot by Law be an Overt-Act of the latter, as appears by the ſaid Treatiſe of the *Pleas of the Crown*, *fol.* 13. towards the latter end. Nor was conſpiring to levy War, without an actual levying of it, any Treaſon within the Statute of 25 *Edw.* 3. upon which Statute only the Indictment of the Lord *Ruſſel* is grounded, as is acknowledged by the Attorney-General. And therefore to ſupply that Defect, the Statute of 13 *Car.* 2. does expreſly make it to be Treaſon. But the Lord *Ruſſel* was not indicted upon that Statute of 13 *Car.* 2. and for this Reaſon he ought to have been acquitted upon this Indictment grounded only upon the Statute of 25 *Edw.* 3.

And if practiſing with a foreign Prince to make an Invaſion, (when no Invaſion followed, as the Caſe of Doctor *Story* was) *Dyer* 298. be all one with conſpiring to levy War, when indeed no War is raiſed; it is out of all diſpute that ſuch Practiſing and ſuch Conſpiring cannot be Treaſon within the Statute of 25 *Edw.* 3. tho it be Treaſon within the Statute of 13 *Car.* 2.

In the Caſe of the Lord *Cobham*, 1 *Jacobi*, there was more in the Caſe than conſpiring to make an Inſurrection, (which is all that the Author of the *Antidote* takes notice of:) There was alſo an actual Rebellion raiſed, as appears by the ſaid little Treatiſe, ſtiled, *The Pleas of the Crown*, *fol.* 13. for the People were there aſſembled to take the King into their Power, as that Book puts the Caſe of the Lord *Cobham*.

And ſo it is in the Caſe of the Lord *Grey*: For there they had not only conſpired to make an Inſurrection, but, further, to ſeize the King, and get him into their power; which is a direct Conſpiring againſt his Perſon, which naturally tends to the Deſtruction of his Perſon, and is the ſame with conſpiring his Death, as hath been uſually expounded: But 'tis otherwiſe merely to conſpire to make an Inſurrection, which can be no more than conſpiring to levy War. The Caſe of Sir *Henry Vane* and *Plunket* had many other Ingredients to mount them up to Treaſon, which difference them from my Lord *Ruſſel*'s Caſe.

As to the Point of Miſpriſion of Treaſon, with which the Author of the *Antidote* concludes, I have fully declared my Opinion already in the former part of this Diſcourſe; and, I think, plainly evinced, That tho the Noble Lord might be preſent while others might between themſelves privately debate Matters, and conclude upon them, yet it did not clearly appear by any Proofs that this Noble Lord ever gave the leaſt Conſent to what was ſo concluded; without which Conſent it could not amount to Treaſon, but at the moſt be a Miſpriſion only. Nor muſt any Man's Life be taken from him upon Preſumption or probable Arguments, but by plain, direct, and manifeſt downright Proofs. But a more ſtrong, and indeed a violent Preſumption lay quite the other way, that this Noble, Prudent, and Pious Lord, could never be guilty of ſuch a Crime, as to conſpire the Death of King *Charles* the Second: It was extremely againſt his Intereſt ſo to do; for the Life of that King, ſo long as it continued, by the Bleſſing of God was the great Security, both he and all good Proteſtants had againſt the greater Danger that might happen by the Change ariſing by the Death of that King, of loſing our Religion, and all our Civil and Religious Rights, as the Experience we have lately had, hath ſadly taught us. And if any thing were conſulted between this Excellent Lord, and thoſe with whom he met, as is more than probable, it was how to ſecure themſelves againſt thoſe Dangers they ſaw ſo near approaching, if the Life of King *Charles* the Second ſhould fail; there was ſo great a Cauſe to fear them, conſidering who was like to ſucceed in the Throne.

The End of the Third Volume.